

# ***NORTH CAROLINA REGISTER***

**VOLUME 25 • ISSUE 05 • Pages 604 - 690**

**September 1, 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.**

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

contact: Molly Masich, Codifier of Rules molly.masich@oah.nc.gov (919) 431-3071  
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### **Rule Review and Legal Issues**

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

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

### **Fiscal Notes & Economic Analysis**

Office of State Budget and Management  
116 West Jones Street (919) 807-4700  
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX  
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919)807-4740

NC Association of County Commissioners  
215 North Dawson Street (919) 715-2893  
Raleigh, North Carolina 27603  
contact: Jim Blackburn jim.blackburn@ncacc.org  
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000  
215 North Dawson Street  
Raleigh, North Carolina 27603  
contact: Erin L. Wynia ewynia@nclm.org

### **Governor's Review**

Edwin M. Speas, Jr. edwin.speas@nc.gov  
General Counsel to the Governor (919) 733-5811  
116 West Jones Street  
20301 Mail Service Center  
Raleigh, North Carolina 27699-0301

### **Legislative Process Concerning Rule-making**

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

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net  
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

**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 <sup>th</sup> 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
24:14	01/15/10	12/22/09	01/30/10	03/16/10	03/22/10	05/01/10	05/12/10	10/12/10
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
24:16	02/15/10	01/25/10	03/02/10	04/16/10	04/20/10	06/01/10	01/26/11	11/12/10
24:17	03/01/10	02/08/10	03/16/10	04/30/10	05/20/10	07/01/10	01/26/11	11/26/10
24:18	03/15/10	02/22/10	03/30/10	05/14/10	05/20/10	07/01/10	01/26/11	12/10/10
24:19	04/01/10	03/11/10	04/16/10	06/01/10	06/21/10	08/01/10	01/26/11	12/27/10
24:20	04/15/10	03/24/10	04/30/10	06/14/10	06/21/10	08/01/10	01/26/11	01/10/11
24:21	05/03/10	04/12/10	05/18/10	07/02/10	07/20/10	09/01/10	01/26/11	01/28/11
24:22	05/17/10	04/26/10	06/01/10	07/16/10	07/20/10	09/01/10	01/26/11	02/11/11
24:23	06/01/10	05/10/10	06/16/10	08/02/10	08/20/10	10/01/10	01/26/11	02/26/11
24:24	06/15/10	05/24/10	06/30/10	08/16/10	08/20/10	10/01/10	01/26/11	03/12/11
25:01	07/01/10	06/10/10	07/16/10	08/30/10	09/20/10	11/01/10	01/26/11	03/28/11
25:02	07/15/10	06/23/10	07/30/10	09/13/10	09/20/10	11/01/10	01/26/11	04/11/11
25:03	08/02/10	07/12/10	08/17/10	10/01/10	10/20/10	12/01/10	01/26/11	04/29/11
25:04	08/16/10	07/26/10	08/31/10	10/15/10	10/20/10	12/01/10	01/26/11	05/13/11
25:05	09/01/10	08/11/10	09/16/10	11/01/10	11/22/10	01/01/11	01/26/11	05/29/11
25:06	09/15/10	08/24/10	09/30/10	11/15/10	11/22/10	01/01/11	01/26/11	06/12/11
25:07	10/01/10	09/10/10	10/16/10	11/30/10	12/20/10	02/01/11	05/2012	06/28/11
25:08	10/15/10	09/24/10	10/30/10	12/14/10	12/20/10	02/01/11	05/2012	07/12/11
25:09	11/01/10	10/11/10	11/16/10	01/03/11	01/20/11	03/01/11	05/2012	07/29/11
25:10	11/15/10	10/22/10	11/30/10	01/14/11	01/20/11	03/01/11	05/2012	08/12/11
25:11	12/01/10	11/05/10	12/16/10	01/31/11	02/21/11	04/01/11	05/2012	08/28/11
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.

**Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use**

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DENR:

Application by: Ben Berteau  
EZflow, LP, a wholly owned subsidiary of Infiltrator Systems, Inc.  
6 Business Park Rd.  
Old Saybrook, CT 06475

For: Revised Innovative Approval for "EZflow" gravelless subsurface wastewater system

DENR Contact: Ted Lyon  
1-919-715-3274  
Fax: 919-715-3227  
ted.lyon@ncdenr.gov

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Water Protection Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Water Protection Section web site: [http://www.deh.enr.state.nc.us/osww\\_new/new1//index.htm](http://www.deh.enr.state.nc.us/osww_new/new1//index.htm).

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Ted Lyon, Chief, On-site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or [ted.lyon@ncdenr.gov](mailto:ted.lyon@ncdenr.gov), or fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

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

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

## TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commissioner of Agriculture intends to adopt the rules cited as 02 NCAC 48A .0256, .0258-.0260, .0263, .0265.

**Proposed Effective Date:** January 1, 2011

**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 September 16, 2010, to David S. McLeod, Assistant Commissioner, NC Department of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

**Reason for Proposed Action:** The proposed action includes the repeal of the administrative rules that relate to the honey bee industry and the adoption of new rules in their place which address the movement of bees within and into North Carolina, regulate the maintenance, treatment, and disposition of bees and bee equipment which is infected or infested with diseases or disorders, provide for the issuance of permits to sell bees in North Carolina and the inspection of bee colonies or apiaries within the state, and which simplify the forms on which registrations and notifications must be provided to the North Carolina Department of Agriculture and Consumer Services, correct verbiage in the existing rules regarding bee diseases, clarify the source of materials referenced in the rules and incorporated by reference, and which establish the procedure for beekeepers seeking notification of aerial application of pesticides which are toxic to bees.

**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, Assistant Commissioner, NC Department of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

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

**Comment period ends:** November 1, 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 48 - PLANT INDUSTRY

### SUBCHAPTER 48A - PLANT PROTECTION

#### SECTION .0200 - HONEY AND BEE INDUSTRY

#### 02 NCAC 48A .0256 CLEAN-UP AREAS

(a) When in the opinion of the Commissioner action is necessary to prevent or check the spread of bee diseases or disorders he may designate areas or counties as "clean" or under a "clean-up campaign" for designated diseases or disorders and prohibit the movement of bees and/or equipment into or from these areas, except when they have been inspected within 60 days of the time they are to be moved, and found apparently free of the designated diseases or disorders, and a certificate of inspection issued.

(b) The following types of clean-up areas may be designated and the diseases or disorders regulated in the areas:

- (1) areas where bees are moved to or concentrated at certain times of the year such as apple and blueberry pollinating areas;
- (2) areas with a concentration of bee disease;
- (3) areas around queen or package bee rearing sites;
- (4) areas around an infestation of a disease new to the state;
- (5) any other area where disease clean-up is needed at the time.

(c) Before designating or removing a clean-up area, a public hearing must be held before the Board of Agriculture.

(d) The diseases or disorders regulated in the clean-up areas are dependent on the type of clean-up area and must be designated by the Commissioner.

(e) Any bees or beekeeping equipment moved in violation of this Regulation shall be subject to seizure and destruction without compensation to the owner.

*Authority G.S. 106-640.*

**02 NCAC 48A .0258 EXTERIOR QUARANTINE**

The Commissioner shall quarantine areas outside of North Carolina when he has reason to believe that a bee of the genus *Apis* other than *Apis mellifera*, or a bee disease or disorder that is not established throughout North Carolina exists in that area and that importation of honeybees or beekeeping equipment present an introduction hazard to North Carolina beekeeping.

*Authority G.S. 106-640.*

**02 NCAC 48A .0259 DISEASES AND DISORDERS OF SPECIAL CONCERN**

The following diseases, disorders, and conditions are of special concern to beekeeping in North Carolina. These are prescribed for special regulatory action as referenced in the rules in this Section:

- (1) American foulbrood disease, *Paenibacillus larvae*;
- (2) Chalkbrood disease, *Ascosphaera apis*;
- (3) Any bee disease or disorder which, in the opinion of and so declared by the Commissioner, constitutes a threat to the bee and honey industry in North Carolina;
- (4) Any bee of the genus *Apis* other than *Apis mellifera*;
- (5) Any bees, beekeeping equipment or products that have been moved or used in violation of North Carolina bee and honey statutes and rules;
- (6) Genetic material of exotic strains of bees;
- (7) Honeybee tracheal mite, *Acarapis woodi*, Rennie;
- (8) Africanized bee – Hybrids of *Apis mellifera scutellata*;
- (9) Varroa mite – *Varroa destructor*; and
- (10) Small Hive Beetle – *Aethina tumida*.

*Authority G.S. 106-640.*

**02 NCAC 48A .0260 CERTIFICATION OF POLLINATION CONDITIONS**

At the request of either a beekeeper or a grower renting bees for pollination, and with knowledge of both parties, the State Apiarist shall inspect each colony for colony strength and condition of bees rented or provided for pollination, and shall make a certification of his or her findings available to both parties.

*Authority G.S. 106-636.*

**02 NCAC 48A .0263 PERMIT TO SELL BEES**

(a) The Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services shall issue permits to individuals, corporations, or firms intending to sell honeybees in North Carolina.

(b) Permitting procedure:

- (1) Individuals, corporations, or firms desiring to sell bees in North Carolina shall apply annually for a permit. The permitting period is from July 1 to June 30 of the following year. Permit applications must be on a form provided by the Plant Industry Division. Permit application forms are available from the following:
  - (A) North Carolina Department of Agriculture and Consumer Services, Plant Industry Division, 1060 Mail Service Center, Raleigh, NC 27699-1060; and
  - (B) available on-line at NCDA&CS, Plant Industry Division, Plant Protection website.
- (2) A permitting fee must be paid on an annual basis in accordance with the provisions of G.S. 106-639.1 and subsequent amendments;
- (3) Individuals, corporations, or firms may obtain a permit to sell bees at any time of year;
- (4) The permit shall expire on June 30 of each year and must be renewed each year;
- (5) All provisions of the N.C. Bee and Honey Act and the rules adopted thereunder must be met as a prerequisite to obtaining a permit to sell bees, including compliance with existing quarantines;
- (6) A permit to sell bees in North Carolina shall be denied or revoked if necessary to prevent the introduction or spread of bees or colonies with contagious or infectious diseases, disorders, or conditions deemed harmful to the North Carolina beekeeping industry;
- (7) A permit is non-transferable; and
- (8) A permit holder shall not sell bees owned by another person.

*Authority G.S. 106-639.1.*

**02 NCAC 48A .0265 AFRICANIZED BEE/VARROA MITE CLEAN UP AREA**

(a) To prevent introduction of the Africanized bee (hybrids of *Apis mellifera scutellata*) and the Varroa mite (*Varroa destructor*) into North Carolina through the ports at Morehead City and Wilmington, Africanized bee/Varroa mite clean up areas are hereby established at these ports.

(b) The clean up areas are the areas encompassed within a two mile radius with center at the western terminus of Morehead City-Beaufort Bridge on U.S. 70 in Morehead City, North Carolina and within a two mile radius with center at the western terminus of Shipyard Boulevard in Wilmington, North Carolina.

(c) These areas are hereby declared bee-free areas. No bees shall be kept or husbanded in these areas without permission of the State Apiarist. Apiary inspectors are authorized to take and destroy any bees found in these areas including bees on ships or in cargo. No one shall transport or ship bees into or from these areas unless they are part of a bee shipment through the ports. Any cargo containing bees shall not be removed from the area until declared bee-free by an Apiary Inspector. No one shall capture or take a swarm of bees from the area. Bees and their progeny taken from the area are subject to destruction without regard to whether they are Africanized or not.

Authority G.S. 106-640.

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**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rules cited as 02 NCAC 48A .0242-.0255, .0257, .0261-.0262, .0264 and repeal the rules cited as 02 NCAC 48A .0201-.0211, .0213-.0223, .0225-.0241.

**Proposed Effective Date:** January 1, 2011

**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 September 16, 2010, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.*

**Reason for Proposed Action:** *The proposed action includes the repeal of the administrative rules that relate to the honey bee industry and the adoption of new rules in their place which address the movement of bees within and into North Carolina, regulate the maintenance, treatment, and disposition of bees and bee equipment which is infected or infested with diseases or disorders, provide for the issuance of permits to sell bees in North Carolina and the inspection of bee colonies or apiaries within the state, and which simplify the forms on which registrations and notifications must be provided to the North Carolina Department of Agriculture and Consumer Services, correct verbiage in the existing rules regarding bee diseases, clarify the source of materials referenced in the rules and incorporated by reference, and which establish the procedure for beekeepers seeking notification of aerial application of pesticides which are toxic to bees.*

**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.*

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

**Comment period ends:** November 1, 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

Note: Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncvah.com>.

**CHAPTER 48 - PLANT INDUSTRY**

**SUBCHAPTER 48A - PLANT PROTECTION**

**SECTION .0200 - HONEY AND BEE INDUSTRY**

<b>02 NCAC 48A .0201</b>	<b>DEFINITIONS</b>
<b>02 NCAC 48A .0202</b>	<b>PROTECTION FROM AND ABATEMENT OF BEE DISEASES</b>
<b>02 NCAC 48A .0203</b>	<b>INSPECTIONS</b>
<b>02 NCAC 48A .0204</b>	<b>THE INSPECTION PROCESS</b>
<b>02 NCAC 48A .0205</b>	<b>INTERSTATE SHIPMENT</b>
<b>02 NCAC 48A .0206</b>	<b>THE TRANSPORTATION OF BEES</b>
<b>02 NCAC 48A .0207</b>	<b>REQUIREMENTS FOR ISSUANCE OF PERMIT</b>
<b>02 NCAC 48A .0208</b>	<b>LOCATION OF BEES</b>
<b>02 NCAC 48A .0209</b>	<b>INSPECTION OF NUCLEI AND QUEEN BREEDING APIARIES</b>
<b>02 NCAC 48A .0210</b>	<b>HEALTH CERTIFICATES</b>
<b>02 NCAC 48A .0211</b>	<b>COMPLIANCE AGREEMENT</b>

Authority G.S. 106-634 through 106-644.

<b>02 NCAC 48A .0213</b>	<b>EXPOSURE OF DISEASED MATERIALS</b>
<b>02 NCAC 48A .0214</b>	<b>INFESTED APIARY MATERIAL LIABLE TO DESTRUCTION</b>
<b>02 NCAC 48A .0215</b>	<b>DESTRUCTION OF BEES; APIARY PRODUCTS OR EQUIPMENT</b>
<b>02 NCAC 48A .0216</b>	<b>FUMIGATION OR</b>



**STERILIZATION OF APIARY EQUIPMENT**

- 02 NCAC 48A .0217 FUMIGATION BY PRIVATE PRACTITIONER**  
**02 NCAC 48A .0218 CLEAN UP AREAS**  
**02 NCAC 48A .0219 DISEASED APIARIES QUARANTINED**  
**02 NCAC 48A .0220 OUT OF STATE AREAS MAY BE QUARANTINED**  
**02 NCAC 48A .0221 DISEASES AND DISORDERS OF SPECIAL CONCERN**  
**02 NCAC 48A .0222 CERTIFICATION OF POLLINATION CONDITIONS**  
**02 NCAC 48A .0223 ABANDONED BEES OR BEE EQUIPMENT**

*Authority G.S. 106-634 through 106-644.*

- 02 NCAC 48A .0225 REGISTRATION OF HONEYBEE COLONIES**  
**02 NCAC 48A .0226 FORMS**  
**02 NCAC 48A .0227 FORM BS-1**  
**02 NCAC 48A .0228 LOCATION OF FORMS**  
**02 NCAC 48A .0229 FORM BS-2**  
**02 NCAC 48A .0230 FORM BS-3**  
**02 NCAC 48A .0231 FORM BS-4**  
**02 NCAC 48A .0232 FORM BS-5**  
**02 NCAC 48A .0233 FORM BS-6**  
**02 NCAC 48A .0234 FORM BS-7**  
**02 NCAC 48A .0235 FORM BS-8**  
**02 NCAC 48A .0236 FORM BS-9**  
**02 NCAC 48A .0237 FORM BS-10**  
**02 NCAC 48A .0238 AFRICANIZED BEE/VARROA MITE CLEAN UP AREA**  
**02 NCAC 48A .0239 PERMIT TO SELL BEES**  
**02 NCAC 48A .0240 FORM BS-11**  
**02 NCAC 48A .0241 FORM BS-12**

*Authority G.S. 106-634 through 106-644.*

**02 NCAC 48A .0242 DEFINITIONS**

For the purpose of this Section:

- (1) Compliance Agreement means an agreement between the State Apiarist and a beekeeper wherein the beekeeper agrees to follow the practices and procedures set forth in 02 NCAC 48A .0248 and 02 NCAC 48A .0252 as a prerequisite for authorization to ship bees or apiary equipment into or within North Carolina;
- (2) Inspector means a person designated by the Commissioner to be responsible for performing inspections, services and enforcing the bee and honey statutes and rules of North Carolina;
- (3) Nuclei or Nuc means colonies of honeybees on one to four brood combs, usually with queen, eggs and developing bees, in a hive or box suitable for shipping or mailing;

- (4) Package Bee Producer means a beekeeper who is in the business of producing worker bees for sale and shipment without comb or honey in screened cages or packages suitable for shipping or mailing;
- (5) Queen Breeder means a beekeeper who is in the business of producing queen bees for sale and shipment without comb or honey in cages suitable to shipping or mailing;
- (6) State Apiarist means the person designated by the Commissioner to be responsible for administering and enforcing the North Carolina bee and honey statutes and rules;
- (7) Uniform Health Certificate means a Uniform Health Certificate agreed on by several states.

*Authority G.S. 106-638.*

**02 NCAC 48A .0243 INSPECTIONS**

- (a) Apiary inspectors shall inspect bees at the request of a beekeeper on a first-come, first-serve basis compatible with the weather and the schedule of the inspector.
- (b) Apiary inspectors shall conduct random survey inspections to evaluate bee disease conditions in North Carolina and other inspections are performed as called for in the rules in this Section.
- (c) Apiary inspectors shall inspect for diseases by sampling and submission of the sample for laboratory diagnosis.
- (d) To the extent of available resources, laboratory diagnosis of bee diseases shall be made on samples sent in to the State Apiarist by beekeepers.

*Authority G.S. 106-638.*

**02 NCAC 48A .0244 THE INSPECTION PROCESS**

- (a) Apiary inspectors inspect colonies of bees by opening the hive and observing the brood (eggs, larvae and developing bees) and adult bees. Diagnosis of the common bee diseases shall be made based on characters listed in Table 1, "Agricultural Extension Beekeeping Note No. 2.01," January 2007, published by North Carolina State University's Cooperative Extension Service, including subsequent amendments and editions. A copy of this document is available for inspection at the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division office located at 216 West Jones Street, Raleigh, NC 27603. It may also be obtained online at <http://www.cals.ncsu.edu/entomology/apiculture/PDF%20files/2.01.pdf>.
- (b) If the beekeeper desires a confirmation of a diagnosis given by an inspector, the apiary inspector shall send a sample of the disease in question to the Apicultural Laboratory, N.C. State University or the United States Department of Agriculture Bioenvironmental Laboratory, Beltsville, Maryland, for a laboratory diagnosis.
- (c) Destruction of a beehive shall be performed in the same manner as is described in "Agricultural Extension Beekeeping Note No. 2.01," January 2007, published by North Carolina State University's Cooperative Extension Service, including subsequent amendments and editions or in "Beekeeping Basics."

Mid-Atlantic Apiculture Research and Extension Consortium, 2004, including subsequent amendments and editions. Copies of these documents are available for inspection at the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division office located at 216 West Jones Street, Raleigh, NC 27603. They may also be obtained online at [http://www.cals.ncsu.edu/entomology/apiculture/PDF%20files/2\\_01.pdf](http://www.cals.ncsu.edu/entomology/apiculture/PDF%20files/2_01.pdf) and <http://pubs.cas.psu.edu/FreePubs/pdfs/agrs93.pdf>.

*Authority G.S. 106-638.*

**02 NCAC 48A .0245 INTERSTATE SHIPMENT**

- (a) Apiary inspectors shall inspect North Carolina bees within 14 calendar days of a beekeeper requesting such an inspection at a time of year when there is brood rearing activity in a majority of the colonies as a prerequisite for interstate shipment of bees.
- (b) Apiary inspectors shall issue health certificates in accordance with the provisions of the rules in this Section.
- (c) The State Apiarist may charge the additional costs of making inspections when the beekeeper requests inspection at a specified time for his own convenience and there is not adequate time for normal routine scheduling of the inspection.

*Authority G.S. 106-638.*

**02 NCAC 48A .0246 THE TRANSPORTATION OF BEES**

The transportation or importation into North Carolina from any other state or country of bees of the superfamily Apoidea in any stage of development, the causal agents of their diseases or disorders, their pests, their products, nests or hives, and associated equipment are prohibited except under the following conditions:

- (1) All bees of the superfamily Apoidea except *Apis mellifera* and cross bred strains of *Apis mellifera* with other species of *Apis* that are naturalized in the United States shall be allowed entry into North Carolina only by scientific permit. Procedures for obtaining a scientific permit are:
  - (a) An application for a permit to move regulated articles shall be obtained from:  
State Apiarist  
Plant Industry Division  
North Carolina Department of Agriculture and Consumer Services  
1060 Mail Service Center  
Raleigh, NC 27699-1060  
This application shall be returned to the State Apiarist for processing;
  - (b) Decisions of acceptance or rejection of applications for movement of regulated articles for scientific purposes shall be based on the following criteria:
    - (i) pest disease risk hazard;
    - (ii) safeguards against spread which can be applied;

- (iii) amount of material involved;
- (iv) biological conditions in the area in which the regulated article is to be moved;
- (v) method of packaging and method of shipment to be employed; and
- (vi) use for which the regulated articles are to be applied.

- (2) Bees of the species, *Apis mellifera* cross bred with other species of *Apis* that are naturalized in the United States and their equipment and products are allowed entry into North Carolina under the following conditions:

- (a) Live adult bees in cages, without combs or foundation provisioned with "candy" or "syrup" made from sugar and boiled honey possessing a valid certificate of inspection shall be admitted when not from an area under quarantine;
- (b) Bees on combs or foundation, nuclei, used hives, used combs and other used apiary equipment of any kind are allowed when issued a permit according to the provisions of the Rules in this Section;
- (c) New or unused apiary equipment and products packed for nonbee consumption may be transported into North Carolina without restriction;
- (d) Pollen shipped for bee food may be transported into North Carolina when an individual authorized by the law of the state of origin to inspect and certify pollen as free of bee disease has made such a determination;
- (e) Nuclei of commercial beekeepers or a beekeeper who is not in the business of raising queens, package bees or nuclei for sale are allowed when issued a permit according to the provisions of the rules in this Section;
- (f) Nuclei of queen breeders, package bee producers or nuclei producers must be accompanied by a valid certificate of apiary inspection issued by an official of the state of origin and marked with the North Carolina compliance agreement number. A compliance agreement may be made between the State Apiarist and those rearing bees in other states for sale as nuclei providing the shipper agrees to the conditions in the compliance agreement; and
- (g) The transportation into North Carolina from any other state or country of bees on combs, used hive

- bodies, frames, combs and other apiary equipment is allowed into North Carolina when each shipment is accompanied by a valid permit issued by the State Apiarist.
- (3) Bees may be transported through North Carolina in interstate commerce to a destination outside North Carolina only under the following conditions:
- (a) Hives must be securely covered at all times;
  - (b) Transporting vehicles must keep motors running at all times unless refueling, or unless the bees are enclosed in a refrigerated containment vehicle that maintains the bees at a constant temperature below 45 degrees Fahrenheit;
  - (c) Transporting vehicles must travel on and remain within one mile of an interstate highway; and
  - (d) The vehicle operator or other responsible person must report to the North Carolina Department of Agriculture and Consumer Services and accidental or intentional release of bees.
- (4) Bees may be transported freely within North Carolina except as restricted by quarantine, clean-up areas, or other rules in this Section.
- (5) Any colony or colonies of bees or used apiary equipment of any kind found to be moving or to have been moved into North Carolina in violation of the requirements of this Section is subject to seizure, destruction or such other disposition as shall be determined by the State Apiarist, or other authorized inspector, without compensation to the owner.

Authority G.S. 106-638.

**02 NCAC 48A .0247 REQUIREMENTS FOR ISSUANCE OF PERMIT**

- (a) No permits for entry into North Carolina shall be issued until the following information has been filed with the State Apiarist:
- (1) A valid certificate of apiary inspection from the State Apiarist, State Entomologist or apiary inspector of the state of origin of the bees and equipment to the effect that said bees and equipment have been inspected within 60 days of the proposed date of entry into North Carolina and found apparently free from contagious and infectious diseases, and giving the number of colonies inspected, date of inspection, whether all of the bees owned by the owner of said bees were inspected and included in the certificate. Certificates not meeting the requirements of this Section

- regarding specific diseases inspected for and thoroughness of inspection may be rejected;
- (2) If the bees and equipment have been in more than one state during the year previous to the date on the certificate, a certificate from each state;
  - (3) A statement from the owner of the bees and equipment giving the number of colonies of bees and amount of equipment to be brought into North Carolina, the proposed date of entry into the state, and where the bees and equipment will be located in the state; and
  - (4) Permission from the owner of said bees for North Carolina inspectors to inspect at any time the bees and equipment while in North Carolina.
- (b) A permit shall be granted for used beekeeping equipment without bees if:
- (1) The State Apiarist has received a statement from the State Apiarist, State Entomologist or apiary inspector of the state of origin that the bees on which the equipment was last used have been inspected and found free of American foulbrood or other dangerous diseases;
  - (2) The equipment has been fumigated or otherwise sterilized in such a manner that in the opinion of the State Apiarist the equipment is free of infectious American foulbrood or other dangerous disease;
- (c) The State Apiarist may require specified marking or other identification of used beekeeping equipment to avoid that equipment being comingled with new equipment as a prerequisite for granting a permit.
- (d) The State Apiarist may require treatments or fumigations for diseases and disorders of special concern as identified in this section as a prerequisite for granting a permit from areas under quarantine.
- (e) The proposed location of imported bees and bee equipment in North Carolina shall be approved by the State Apiarist in advance of issuance of a permit. In determining whether a proposed location will be approved, the State Apiarist shall consider the following criteria in determining whether the requested movement of bees or equipment could create or lead to overcrowding of bees or other detrimental conditions at the proposed site:
- (1) The bee population or density in the proposed entry area and proximity to other bees with respect to creation of conditions favoring honeybee stress diseases or increased disease or pest spread hazard;
  - (2) The number of colonies for which the entry permit is requested;
  - (3) The adequacy of the honey pasture in the proposed entry area;
  - (4) The effect on incorporated cities in North Carolina or any local bee ordinance;
  - (5) The effect on honeybee research being conducted in North Carolina;

- (6) The effect on honeybee disease quarantine or clean-up areas in North Carolina;
- (7) Any previous locations or enforcement histories in North Carolina;
- (8) Any unusual or mitigating circumstances; and
- (9) The timing of the request.

*Authority G.S. 106-638.*

**02 NCAC 48A .0248 LOCATION OF BEES**

- (a) The statement as specified in 02 NCAC 48A .0247(e) regarding where bees are to be located in North Carolina must be in sufficient detail to enable location of the bees.
- (b) Honeybees requiring an entry permit which are moved into North Carolina from other states or countries shall be placed under postentry quarantine for a period of one year after entry. These bees shall not be moved from the initial location to other locations in North Carolina while under quarantine.

*Authority G.S. 106-638.*

**02 NCAC 48A .0249 INSPECTION OF NUCLEI AND QUEEN BREEDING APIARIES**

- (a) No one shall sell queen bees, package bees or nuclei in North Carolina without having the bees from which the above are produced, inspected and found apparently disease free by the State Apiarist.
- (b) All nuclei, package bees and queen bees produced in North Carolina must have a North Carolina health certificate attached to each shipment from the producer's apiary. The health certificate shall be issued in accordance with the rules in this Section.
- (c) Beekeepers shall not sell nuclei, package bees or queens produced in other states from North Carolina locations without having a North Carolina health certificate on all the bees they own in North Carolina issued in accordance with the rules in this Section.
- (d) If the inspector has reason to believe that bees or equipment offered for sale are symptomless carriers of any disease or disorder listed in the Rules in this Section he shall forbid movement or sale of the bees and equipment.
- (e) A protective quarantine area of a two-mile radius shall exist around the production apiaries of nuclei, queen bee or package bee producers in North Carolina who are in compliance with this Section. No one shall move bees into the quarantined area without a health certificate issued by the State Apiarist based on an inspection within 30 days prior to movement.
- (f) All persons who sell, ship, or deliver queen bees, package bees or nuclei in North Carolina must keep complete records of their acquisitions, sales, shipments or deliveries. These records must show contents of shipments; where sold, shipped, or delivered; to whom sold, shipped or delivered; and the date sold, shipped or delivered. These records must be kept for three years after the transaction and must be made availability to any North Carolina Department of Agriculture apiary inspector on request. All persons who sell, ship, or deliver either queen bees, package bees, or nuclei in North Carolina must obtain a permit from the Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services.

*Authority G.S. 106-638; 106-639.*

**02 NCAC 48A .0250 HEALTH CERTIFICATES**

The State Apiarist shall grant health certificates as follows:

- (1) For queen breeders, package bee shippers, and nuclei producers in North Carolina:
  - (a) The beekeeper shall have an inspector inspect all of the bees owned or operator by the beekeeper at least one time a year at a time the bees are actively rearing brood;
  - (b) All frames of brood shall be inspected in each hive;
  - (c) If no disease is found, the State Apiarist shall issue a North Carolina health certificate dated to expire 12 months after issuance;
  - (d) If disease is found the disease shall be suppressed by destruction of hives or eradicated by fumigation;
  - (e) The inspector must wait 30 days after the disease has been eradicated or suppressed before performing a re-inspection for health certification purposes; and
- (2) For certification of bees to be moved from North Carolina:
  - (a) The inspector shall inspect the bees according to the entry requirements of the destination state or country;
  - (b) A uniform health certificate shall be issued if the disease freedom requirements of the destination state are met;
  - (c) The State Apiarist may make any additional declarations for which he has supporting data when such declarations are required by the destination state; and
  - (d) The inspector may mark or stamp hives that are disease-free if such is required by the destination state.

*Authority G.S. 106-638; 106-639.*

**02 NCAC 48A .0251 COMPLIANCE AGREEMENT**

(a) A compliance agreement may be made between the State Apiarist and those rearing bees for sale provided the shipper agrees to:

- (1) Notify the State Apiarist of bees shipped into or within North Carolina, the date shipped, and the destination;
- (2) Not use chemotherapy to mask the presence of disease;
- (3) Not exchange used frames in the operation;
- (4) Have all of his bees inspected twice a year when brood is present, and at intervals no less than 90 days, and send the State Apiarist copies of health certification issued; and

(5) Meet all other conditions provided for by the rules in this Section.

(b) If conditions within the state of origin warrant or violations of the compliance agreement or other health standards occur, the State Apiarist shall discontinue the issuance of compliance agreements and revoke any outstanding agreements.

(c) The compliance agreement expires December 31 of each year unless revoked by the State Apiarist prior to that date.

*Authority G.S. 106-638.*

#### **02 NCAC 48A .0252 EXPOSURE OF DISEASED MATERIALS**

(a) No one shall knowingly expose bees, bee products, or equipment which is known to be infested with a contagious and infectious bee disease in such a manner as to be accessible to robber bees.

(b) When a colony of bees dies as a result of disease, the beekeeper shall seal or close the colony to prevent robber bees from carrying disease to healthy colonies.

(c) If apiary products or equipment that are infested with infectious disease are mixed with uninfected products or equipment, the entire lot is considered infested.

*Authority G.S. 106-638.*

#### **02 NCAC 48A .0253 INFESTED APIARY MATERIAL LIABLE TO DESTRUCTION**

(a) Anyone possessing bees, apiary products, or equipment that is infested or infected with infectious and contagious bee disease or disorders must disinfect or sterilize such bees, apiary products, or equipment in such a manner as to prevent propagation or spread hazard of the disease.

(b) If bees, equipment, or apiary products that are infested or infected with infectious and contagious bee diseases or disorders are not disinfected or sterilized the inspector shall take measures to eradicate such bee diseases or disorders at the expense of the beekeeper.

(c) If sterilization treatments or fumigations are not available or acceptable to the beekeeper, bees, apiary products, or equipment that are infested with contagious and infectious bee diseases or disorders shall be destroyed by the State Apiarist or inspector without compensation to the beekeeper.

*Authority G.S. 106-639.*

#### **02 NCAC 48A .0254 DESTRUCTION OF BEES: APIARY PRODUCTS OR EQUIPMENT**

(a) The inspector shall consider all factors and make the determination as to whether the bees, apiary products, or equipment can be safely sterilized or disinfected.

(b) This Rule shall be enforced for diseases as listed in this Section.

(c) The inspector shall consider all treatments approved by the United States Environmental Protection Agency, including drug therapy and fumigation, in making the safe sterilization determination.

(d) The destruction or disposition of bees and equipment shall be conducted under the supervision of the inspector.

(e) The destruction of a beehive shall be performed as is described in "Agricultural Extension Beekeeping Note No. 2.01," January 2007, published by North Carolina State University's Cooperative Extension Service, including subsequent amendments and editions. A copy of this document is available for inspection at the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division office located at 216 West Jones Street, Raleigh, NC 27603. It may also be obtained online at <http://www.cals.ncsu.edu/entomology/apiculture/PDF%20files/2.01.pdf>.

*Authority G.S. 106-639.*

#### **02 NCAC 48A .0255 FUMIGATION OR STERILIZATION OF APIARY EQUIPMENT**

(a) The State Apiarist shall allow fumigation or sterilization of diseased bee equipment in lieu of destruction when fumigation or sterilization is sufficient to eliminate the disease or disorder.

(b) The State Apiarist shall, at the request of the beekeeper, provide and operate the chamber for fumigation of diseased bee equipment in lieu of destruction, when fumigation or sterilization is sufficient to eliminate the disease or disorder. When the beekeeper makes such a request, the beekeeper shall pay for the cost of the fumigant.

(c) The State Apiarist shall dispose of honey, wax, or bee equipment abandoned in connection with the fumigation program in a manner such that there is no disease spread hazard.

*Authority G.S. 106-639.*

#### **02 NCAC 48A .0257 DISEASED APIARIES QUARANTINED**

(a) Any apiary or colony of bees infected with contagious and infectious diseases, disorders, or conditions prescribed in the Rules in this Section shall be placed under quarantine by the State Apiarist or inspector. Such quarantine becomes effective upon a verbal or written notice to the person in charge of the bees from the State Apiarist or inspector and remains in effect until the inspector has determined that the disease is eradicated or under control to his satisfaction.

(b) The movement or transportation of any and all colonies of bees, apiary equipment, queen bees, nuclei, combs, or other diseased materials from a quarantined apiary or colony is prohibited.

(c) A quarantine zone shall exist within a radius of two miles around the diseased apiary or colony of bees. No bees may be moved from a quarantine zone until after they have been inspected and found to be apparently free from disease.

*Authority G.S. 106-638; 106-639.*

#### **02 NCAC 48A .0261 ABANDONED BEES OR BEE EQUIPMENT**

Honeybee colonies left untended on the property of another for a period of 12 months shall be considered abandoned. The State Apiarist, upon permission of the property owner or manager, may take possession and care for the abandoned apiary.

Authority G.S. 106-639.

**02 NCAC 48A .0262 REGISTRATION OF HONEYBEE COLONIES**

(a) Beekeepers requesting notification of an applicator who applies pesticides by using aircraft in compliance with Federal Aviation Administration regulations under Title 14 CFR Part 137 shall register such a request in accordance with the provisions of this subsection.

(b) Registering agency. The Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services shall be responsible for the registration of honeybees and making registration information available to aerial applicators. Assistance of other state, federal, or local agencies will be secured when needed.

(c) Registration procedure:

- (1) Beekeepers desiring advance notification of pesticide application under these procedures shall register their apiaries with the registering agency. The registration period shall be from January 1 to December 31 of each year;
- (2) Beekeepers may register their bees at any time of the year but registration shall not be effective until the registration revisions have been distributed to aerial applicators;
- (3) The registration will expire on December 31 of each year and must be renewed each year;
- (4) The Plant Industry Division will distribute a list of registration revisions by U.S. mail on the first of March, July, and October to all aerial applicators licensed in North Carolina and the revisions will be effective on the fifth day of the month. When deemed necessary by the state apiarist due to pesticide use patterns, a special registration list may be distributed more frequently;
- (5) Registration must be on forms provided by the Plant Industry Division and are available from the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division, 1060 Mail Service Center, Raleigh, NC 27699-1060; Apiculturist, Entomology Department, NC State University, Campus Box 7613, Raleigh, NC 27696 and all agricultural extension offices. The names, addresses, and phone numbers of persons authorized to receive notification must be of people within North Carolina and of such nature that the aerial applicator or his representative can easily give notification of planned application of pesticide; an alternative notification procedure must be provided by beekeepers who are away from primary notification address for periods on excess of 24 hours. Beekeepers who cannot be contacted or notified of intent to spray for extended periods of time in excess of 24 hours are hereby declared not properly registered; and

- (6) A registration fee of ten dollars (\$10.00) must be paid for each separate registration.

Authority G.S. 106-638.

**02 NCAC 48A .0264 FORMS**

Forms needed to implement the provisions of the rules in this Section shall be provided by the North Carolina Department of Agriculture and Consumer Services, Plant Protection Section as needed.

Authority G.S. 106-641.

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**TITLE 11 – DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Home Inspector Licensure Board and the Department of Insurance intends to adopt the rule cited as 11 NCAC 08 .1012 and amend the rules cited as 11 NCAC 08 .1303 and .1326.*

**Proposed Effective Date:** January 1, 2011

**Public Hearing:**

**Date:** September 17, 2010

**Time:** 9:00 a.m.

**Location:** 322 Chapanoke Road, Suite 115, Raleigh, NC 27603

**Reason for Proposed Action:**

**11 NCAC 08 .1012** – To limit the time a license may be left on inactive status.

**11 NCAC 08 .1303** – The Board's proposal to increase Active license CE from 12 to 16 and the extra four hours required of new licensees after October 1, 2011 who have neither 100 inspections or attended a prelicensing program. Twenty-four hours is the maximum CE allowed by G.S. 143-151.55(c).

**11 NCAC 08 .1326** – To reduce the rising expenses for CE for licensees; the Board is proposing to delete the requirement for continual visual contact for instruction.

**Procedure by which a person can object to the agency on a proposed rule:** The Home Inspector Licensure Board will accept written objections to these rules until the expiration of the comment period on November 1, 2010.

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

**Comment period ends:** November 1, 2010

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission

approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal Impact:**

- ☐ State  
☐ Local  
☐ Substantial Economic Impact ( $\geq \$3,000,000$ )  
☒ None

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

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

**11 NCAC 08 .1012 INACTIVE LICENSE**

A person may hold an inactive license for no more than two consecutive licensure periods. After two consecutive licensure periods, an inactive license shall expire and a person must meet the licensure requirements set forth in G.S. 143-151.51 in order to obtain an active home inspector license. The expiration of a license may be appealed upon a written application to the Board showing evidence that the licensee was unable to reactivate his or her license because of exceptional hardship.

*Authority G.S. 143-151.49; 143-151.55.*

**SECTION .1300 - HOME INSPECTOR CONTINUING  
EDUCATION**

**11 NCAC 08 .1303 INACTIVE LICENSE**

A person holding an inactive license is not subject to this Section. In order to change a license from inactive status to active status, the licensee must complete the same number of continuing education credit hours that would have been required for an active license during the period of inactive status; but not more than ~~46~~ 24 credit hours.

*Authority G.S. 143-151.49; 143-151.55.*

**11 NCAC 08 .1326 ELECTIVE COURSE  
INSTRUCTIONAL DELIVERY METHODS**

(a) The principal instructional delivery method utilized in elective courses shall be one or more of the following:

- (1) Personal teaching by an instructor in a traditional classroom setting.
- (2) Instruction through an interactive ~~television system or other~~ audio and video system that ~~permits~~ requires continuous audio ~~and visual~~ communication between the instructor and all students and that provides for monitoring and technical support at each site where the instructor or students are located.

- (3) Instruction through an interactive computer-based instructional program, which program provides for control of student progress through the educational materials by testing to assure student mastery of the subject matter at the end of each lesson, monitoring of time devoted to each lesson by the computer with automatic program shutdown after a period of non-activity by the student, which period shall be determined by the sponsor, and a monitoring system that assures that the student receiving continuing education credit for completing the program actually performed all the work required to complete the program.

- (4) Personal teaching by an instructor in a field setting, such as a house or other structure, a new home construction site, a home renovation site, or other locations outside of a classroom that are appropriate for the subject matter of the course.

(b) The use of passive or non-interactive instructional delivery systems such as video, remote non-interactive television, or similar systems may be employed only in a limited manner to enhance or supplement one of the acceptable instructional delivery methods previously described in this Rule. No portion of a course may consist of correspondence instruction.

(c) A field setting shall have technical support at each site where the instructor and students are located, and have safeguards in place to prevent injury to the students, such as hardhats. A field setting shall not be at the residence of the instructor, course sponsor, or any other person affiliated with the course.

*Authority G.S. 143-151.49(13); 143-151.64.*

**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 rule cited as 15A NCAC 02B .0312.*

**Proposed Effective Date:** July 1, 2011

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Any person requesting that the Environmental Management Commission (EMC) conduct a public hearing on any portion of this proposed rule must submit a written request to Elizabeth Kountis, Division of Water Quality, 1617 Mail Service Center, Raleigh, NC 27699-1617 by September 16, 2010. The request must specify which rule the hearing is being requested on. Mailed written requests must be postmarked no later than September 16, 2010.*

**Reason for Proposed Action:** *The Wilmington Regional Office DWQ staff submitted a request for reclassification of a segment of Southwest Creek (Onslow County, White Oak River Basin) from Class C to Class SC. This reclassification concerns the*

portion of the Southwest Creek main stem from approximately 0.5 mile upstream of Mill Run to New River. Approximately 2.0 miles of the creek are proposed to be reclassified. Federally owned Camp LeJeune and Onslow County lands exist adjacent to the proposed waters.

The purpose of this rule change is to reflect the saltwater nature of these waters. The current and proposed uses for these waters are secondary recreation (such as fishing, wading, and boating), wildlife, and aquatic life including propagation and survival; the Class C designation also protects agricultural use.

If reclassified, the ambient water quality standards for Class SC waters will apply. Compared with the ambient standards for Class C waters, the Class SC standards are less restrictive, equal to, or more restrictive depending on which parameters are compared. Thus, the specific wastewater components of any new NPDES facility that would be discharged to these waters would determine whether the discharge would be affected by this reclassification. However, there are no current or planned dischargers in the proposed waters. Development practices will not be affected.

**Procedure by which a person can object to the agency on a proposed rule:** Any person may submit written comments, data or other relevant information by November 1, 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 G.S. 150B-21.2(g)). Written comments on the proposed reclassification may be submitted to Elizabeth Kountis of the Water Quality Planning Section at DENR/DWQ Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617; email [elizabeth.kountis@ncdenr.gov](mailto:elizabeth.kountis@ncdenr.gov); and fax (919) 807-6497.

**Comments may be submitted to:** Elizabeth Kountis, DENR/DWQ Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617; phone (919) 807-6418; fax (919) 807-6497; and email [elizabeth.kountis@ncdenr.gov](mailto:elizabeth.kountis@ncdenr.gov).

**Comment period ends:** November 1, 2010

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions

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

**Fiscal Impact:**

- ☐ **State**
- ☐ **Local**
- ☐ **Substantial Economic Impact** ( $\geq$ \$3,000,000)
- ☒ **None**

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT  
COMMISSION**

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

**SECTION .0300 - ASSIGNMENT OF STREAM  
CLASSIFICATIONS**

**15A NCAC 02B .0312 WHITE OAK RIVER BASIN**

(a) The White Oak River Basin Schedule of Classifications and Water Quality Standards may be inspected in 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) Washington Regional Office  
943 Washington Square Mall  
Washington, North Carolina
  - (B) Wilmington Regional Office  
127 Cardinal Drive Extension  
Wilmington, North Carolina
  - (C) Division of Water Quality  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) The White Oak River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) December 13, 1979;
- (2) June 1, 1988;
- (3) January 1, 1990;
- (4) August 1, 1990;
- (5) August 1, 1991;
- (6) June 1, 1992;
- (7) December 1, 1992;
- (8) November 1, ~~2007~~ 2007;
- (9) July 1, 2011.

(c) The Schedule of Classifications and Water Quality Standards for the White Oak River Basin has been amended effective January 1, 1990 as follows:

- (1) Intracoastal Waterway (Index No. 19-39) from northeastern boundary of Cape Fear River Basin to Daybeacon No. 17 including all unnamed bays, guts, and channels, except Rogers Bay and Mill Creek and Intracoastal Waterway (Index No. 19-41) from the northeast mouth of Goose Creek to the southwest mouth of Queen Creek were reclassified from Class SA to Class SA ORW.



- (2) Bear Island ORW Area, which includes all waters within an area north of Bear Island 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 to the western mouth of Foster Creek including Cow Channel were reclassified from Class SA to Class SA ORW.
- (3) Bogue Sound (including Intracoastal Waterway from White Oak River Basin to Beaufort Inlet) (Index No. 20-36) from Bogue Inlet to a line across Bogue Sound from the southwest side of mouth of Gales Creek to Rock Point and all tributaries except Hunting Island Creek, Goose Creek, and Broad Creek were reclassified from Class SA to Class SA ORW.
- (4) Core Sound (Index No. 21-35-7) from northern boundary of White Oak River Basin (a line from Hall Point to Drum Inlet) to Back Sound and all tributaries except Atlantic Harbor Restricted Area, Nelson Bay, Jarrett Bay, Williston Creek, Wade Creek and Middens Creek were reclassified from Class SA to Class SA ORW.
- (5) Back Sound (Index No. 21-35) from a point on Shackleford Banks at lat. 34 degrees 40' 57" and long 76 degrees 37' 30" north to the western most point of Middle Marshes and along the northwest shoreline of Middle Marshes (to include all of Middle Marshes) to Rush Point on Harkers Island and along the southern shore of Harkers Island back to Core Sound and all tributaries were reclassified from Class SA to Class SA ORW.

(d) The Schedule of Classifications and Water Quality Standards for the White Oak River Basin was amended effective August 1, 1991 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the New River Drainage Area above a line running across the New River from Grey Point to a point of land approximately 2,200 yards downstream of the mouth of Duck Creek.

(e) The Schedule of Classifications and Water Quality Standards for the White Oak River Basin was amended effective June 1, 1992 with the reclassification of Peletier Creek (Index No. 20-36-11) from its source to Bogue Sound from Class SA to Class SB with the requirement that no discharges be allowed.

(f) The Schedule of Classifications and Water Quality Standards for the White Oak River Basin has been amended effective December 1, 1992 with the reclassification of the Atlantic

Harbor Restricted Area (Index No. 21-35-7-2) from Class SC to Class SA ORW.

(g) The Schedule of Classifications and Water Quality Standards for the White Oak River Basin has been amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water Quality maintains a Geographic Information Systems data layer of these UWLs:

- (1) Theodore Roosevelt Maritime Swamp Forest near Roosevelt Natural Area Swamp [Index No. 20-36-9.5-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (2) Bear Island Maritime Wet Grassland near the Atlantic Ocean [Index No. 99-(4)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(h) The Schedule of Classifications and Water Quality Standards for the White Oak River Basin has been amended effective July 1, 2011 with the reclassification of a portion of Southwest Creek [Index No. 19-17-(0.5)] from a point approximately 0.5 mile upstream of Mill Run to Mill Run from Class C NSW to Class SC NSW, and another portion of Southwest Creek [Index No. 19-17-(6.5)] from Mill Run to New River from Class C HQW NSW to Class SC HQW NSW.

*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 Department of Environment and Natural Resources intends to amend the rules cited as 15A NCAC 11 .1105-.1106 and .1423.*

**Proposed Effective Date:** July 1, 2011

**Public Hearing:**

**Date:** September 16, 2010

**Time:** 9:00 a.m.

**Location:** 3825 Barrett Drive, Raleigh, NC 27609

**Reason for Proposed Action:** *The amendments to 15A NCAC 11 .1105, 15A NCAC 11 .1106 and 15A NCAC 11 .1423 increase fees to tanning facilities, tanning facility services, radioactive materials licensees, x-ray registrants and x-ray service providers to amounts that offset the Department's expected costs in performing its duties under G.S. 104E. The Radiation Protection Section performs these duties on behalf of the Department. The increase is necessary since the General Assembly rewrote, as part of the Appropriations Act of 2009, the G.S. 104E-19 to require the Department of Environment and Natural Resources to set the fees at amounts that provide revenue to offset its costs in performing its duties under Chapter 104E. Therefore the Radiation Protection Section will no longer receive appropriated funds to cover the costs of duties of the Section.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be submitted in writing to Jon Granger of the Radiation Protection Section at 1645 Mail Service Center, Raleigh, NC 27699-1645 or at [jon.granger@ncdenr.gov](mailto:jon.granger@ncdenr.gov) during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for these rules.*

**Comments may be submitted to:** *Jon Granger, NC DENR-Radiation Protection Section, 1645 Mail Service Center, Raleigh, NC 27699-1645; fax (919) 571-4148; email [jon.granger@ncdenr.gov](mailto:jon.granger@ncdenr.gov)*

**Comment period ends:** *November 1, 2010*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S.*

*150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.*

**Fiscal Impact:**

- ☒ **State**  
☒ **Local**  
☐ **Substantial Economic Impact** ( $\geq$ \$3,000,000)  
☐ **None**

**Fiscal Note posted at**

[http://www.osbm.state.nc.us/files/pdf\\_files/DST08102010.pdf](http://www.osbm.state.nc.us/files/pdf_files/DST08102010.pdf)

**CHAPTER 11 - RADIATION PROTECTION**

**SECTION .1100 - FEES**

**15A NCAC 11 .1105 X-RAY FEE AMOUNTS**

(a) Annual fees for persons registered pursuant to provisions of Section .0200 of this Chapter are as listed in the following table:

Type of Registered Facility	Letters Appearing in Registration Number	Facility Plus First X-ray Tube	Each Additional X-ray Tube
<del>Clinics</del>	<del>A</del>	<del>\$ 90.00</del>	<del>\$ 90.00</del>
Chiropractors	C	\$ 90.00 180.00	\$ 16.25 24.00
Dentists	D	\$ 90.00 180.00	\$ 16.25 24.00
Educational	E	\$ 65.00 130.00	\$ 13.00 22.00
Government	G	\$ 65.00 130.00	\$ 13.00 22.00
Podiatrists	H	\$ 90.00 180.00	\$ 16.25 24.00
Industrial	I	\$ 90.00 180.00	\$ 16.25 24.00
Industrial Medical	IM	\$130.00 260.00	\$ 22.75 33.00
Health Departments	L	\$130.00 260.00	\$ 22.75 33.00
Hospitals	M	\$195.00 390.00	\$ 29.25 44.00
Physicians	P	\$ 90.00 180.00	\$ 16.25 24.00
Industrial Radiography	R	\$195.00 380.00	\$ 29.25 44.00
Services	S	\$130.00 260.00	\$ 0.00
Therapy	T	\$400.00	\$ 50.00
Other	Z	\$ 90.00 180.00	\$ 16.25 24.00

(b) Annual fees for out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rule .0211 of this Chapter are the same as that provided for in the applicable category specified in Paragraph (a) of this Rule. ~~The fees are due when application for reciprocal recognition of out of state license or registration is made in the same manner as for a new license or registration as specified in Rule .1102.~~

(c) When fees become delinquent as specified in Rule .1104 of this Section, in addition to any delinquent fee owed to the agency, the licensee or registrant shall pay to the agency a processing fee of one hundred fifty dollars (\$150.00).

*Authority G.S. 104E-9(a)(8); 104E-19(a).*

**15A NCAC 11 .1106 RADIOACTIVE MATERIALS  
AND ACCELERATOR FEE AMOUNTS**

(a) Annual fees for persons licensed pursuant to provisions of Section .0300 of this Chapter are as listed in the following table:

Type of Radioactive Material License	Annual Fee
Specific license of broad scope	
-Medical Broad	<del>\$ 3,600.00</del> <u>\$ 5,250.00</u>
-Academic Broad	<del>\$ 2,500.00</del> <u>\$ 3,500.00</u>
-Research and Development Broad	<del>\$ 2,000.00</del> <u>\$ 3,000.00</u>
Specific license	
-industrial radiography (with temporary subsites)	<del>\$ 2,500.00</del> <u>\$ 3,500.00</u>
-industrial radiography (in plant only)	<del>\$ 2,000.00</del> <u>\$ 2,600.00</u>
-medical institution other than teletherapy	<del>\$ 2,000.00</del> <u>\$ 2,900.00</u>
-medical private practice	<del>\$ 650.00</del> <u>\$ 950.00</u>
-mobile medical practice (home office)office including 1 client site)	<del>\$ 1,200.00</del> <u>\$ 1,600.00</u>
-mobile medical practice (per additional client location)	<del>\$ 250.00</del> <u>\$ 350.00</u>
-medical teletherapy	<del>\$ 750.00</del> <u>\$ 2,100.00</u>
-fixed industrial gauges	<del>\$ 350.00</del> <u>\$ 550.00</u>
-portable gauges	<del>\$ 250.00</del> <u>\$ 425.00</u>
-gas chromatographs	<del>\$ 250.00</del> <u>\$ 375.00</u>
-manufacture or distribute	<del>\$ 1,500.00</del> <u>\$ 2,250.00</u>
-wet shielded irradiator >100,000kCi	<del>\$ 3,600.00</del> <u>\$ 8,500.00</u>
-irradiator <100,000kCi	<del>\$ 4,500.00</del> <u>\$ 4,500.00</u>
-educational institutions	<del>\$ 1,750.00</del> <u>\$ 1,900.00</u>
-water remediation activities (home office)office including 1 client site)	<del>\$ 1,200.00</del> <u>\$ 1,350.00</u>
-water remediation activities (per additional client location)	<del>\$ 250.00</del> <u>\$ 280.00</u>
-services/consultants	<del>\$ 250.00</del> <u>\$ 400.00</u>
-other	<del>\$ 250.00</del> <u>\$ 500.00</u>
General licenses	
-licenses subject to annual registration requirements	<del>\$ 250.00</del> <u>\$ 325.00</u>
-licenses not subject to annual registration requirements	<del>\$ 150.00</del> <u>\$ 200.00</u>

(b) Annual fees for persons licensed pursuant to provisions of Section .0900 of this Chapter are ~~one thousand five hundred dollars (\$1,500)~~ for a facility with accelerator unit(s) as listed in the following table:

Type of Accelerator License	Annual Fee
-Medical (home office including 1 unit)	<u>\$ 2,000.00</u>
-Medical (per additional unit)	<u>\$ 200.00</u>
-Industrial/Manufacturing (home office including 1 unit)	<u>\$ 2,000.00</u>

-Industrial/Manufacturing (per additional unit)	<u>\$ 200.00</u>
-Sales, Service, Refurbishment, Manufacture	<u>\$ 2,000.00</u>

(c) Annual fees for out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rule .0345 of this Chapter are the same as that provided for in the applicable category specified in Paragraphs (a) and (b) of this Rule. Such fees are due when application for reciprocal recognition of out-of-state license or registration is made in the same manner as for a new license or registration as specified in Rule .1102.

(d) Application fees for new specific licenses or renewal of existing specific licenses are:

- (1) Two hundred fifty dollars (\$250.00) or 10 percent of the applicable annual fee, whichever is greater; and
- (2) Application fees for new specific licenses or renewal of existing specific licenses for licensees with client locations shall be two hundred fifty dollars (\$250.00) or 10 percent of the applicable home office annual fee whichever is greater.

(e) Sealed Source and Device Registry application review fees are as listed in the following:

- (1) Application fee for new registry applications five hundred dollars (\$500.00), or
- (2) Application fee for revising or amending existing registrations two hundred dollars (\$200.00), and
- (3) Cost recovery fee based upon actual expenses incurred by the agency for engineering, mechanical, physics or other consulting services necessary to assess the structural, mechanical, or radiological safety of the device or sealed source. Withdrawal of an application for any reason prior to the completion of this review does not relieve the applicant of the cost recovery fee.

(f) Application fees listed in Paragraphs (d) and (e) of this Rule are payable upon receipt of the application by the agency. The cost recovery fee listed in Paragraph (e) of this Rule is payable upon receipt of the invoice issued by the agency. All fees are nonrefundable.

(g) When fees become delinquent as specified in Rule .1104 of this Section, in addition to any delinquent fee owed to the agency, the licensee or registrant shall pay to the agency a processing fee of one hundred fifty dollars (\$150.00).

Authority G.S. 104E-9(a)(8); 104E-19(a).

**SECTION .1400 - TANNING FACILITIES**

**15A NCAC 11 .1423 FEES AND PAYMENT**

(a) This Rule establishes initial, annual and reinstatement fees for persons registered pursuant to the provisions of this Section to cover the anticipated costs of tanning equipment inspection and enforcement activities of the agency.

(b) Annual fees established in this Rule are due on the first day of July of each year. Reinstatement fees shall be paid prior to reinstatement.

(c) Notwithstanding Paragraph (b) of this Rule, when a new registration is issued by the agency after the first day of July of any year, the initial fee is due on the date of issuance of the registration.

(d) The initial fee in Paragraph (c) of this Rule shall be computed as follows:

- (1) When any new registration is issued before the first day of January of any year, the initial fee is the full amount specified in this Rule; and
- (2) When any new registration is issued on or after the first day of January of any year, the initial fee is one-half of the amount specified in this Rule.

(e) All fees received by the agency pursuant to provisions of this Rule are nonrefundable.

(f) Each registrant may pay all fees by cash, check or money order provided:

- (1) Checks or money orders shall be made payable to "Radiation Protection Section", and mailed to 1645 Mail Service Center, Raleigh, NC 27699-1645 or delivered to the agency office

at 3825 Barrett Drive, Raleigh, NC 27609-7221; and

- (2) Cash payments shall be made only by appointment by calling the agency at 919/571-4141 and delivered to the agency office at 3825 Barrett Drive, Raleigh, NC 27609-7221.

(g) Within five days after the due dates established in Paragraphs (b) and (c) of this Rule, the agency shall mail to each registrant, who has not already submitted payment, a notice which indicates the due date, the amount of fees due, the delinquent date and the amount of the reinstatement fee if not paid by the delinquent date.

(h) Payment of fees established in this Rule is delinquent, if not received by the agency within 60 days after the due date specified in Paragraphs (b) and (c) of this Rule.

(i) If a registrant remits a fee in the form of a check or other instrument which is uncollectible from the paying institution, the agency shall notify the registrant by certified mail and allow the registrant 15 days to correct the matter, which includes payment of any fee charged to the agency by a banking institution.

(j) If payment of fees is uncollectible from the paying institution or not submitted to the agency by the delinquent date, the agency may institute legal action to collect.

(k) Annual fees for persons registered pursuant to provisions of this Section are as listed in the following table:

Type of registered facility	Letters appearing in registration number	Facility plus first Piece of Tanning Equipment	Each additional Piece of Tanning Equipment
Tanning Facility	B	<del>\$100.00</del> <u>200.00</u>	<del>\$16.00</del> <u>30.00</u>
Tanning Equipment Services	F	<del>\$100.00</del> <u>200.00</u>	NA

(l) When fees become delinquent as specified in this Rule, in addition to any delinquent fee owed to the agency, the registrant shall pay to the agency a reinstatement fee of one hundred fifty dollars (\$150.00).

*Authority G.S. 104E-9(a)(8); 104E-19(a).*

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

### **CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14H .0105, .0107, .0112, and .0120-.0121; 14N .0103; and 14R .0101-.0103.*

**Proposed Effective Date:** January 1, 2011

#### **Public Hearing:**

**Date:** September 16, 2010

**Time:** 8:00 a.m.

**Location:** 1201 Front Street, Suite 110, Raleigh, NC 27609

**Reason for Proposed Action:** *These rule changes are proposed to provide updated sanitation and procedure guidelines.*

**Procedure by which a person can object to the agency on a proposed rule:** *Send written objections to NC State Board of Cosmetic Art Examiners, 1201 Front Street, Suite 110, Raleigh, NC 27609.*

**Comments may be submitted to:** *Stefanie Kuzdrall, NC State Board of Cosmetic Art Examiners, 1201 Front Street, Suite 110, Raleigh, NC 27609*

**Comment period ends:** November 1, 2010

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal Impact:**

- ☐ **State**  
☐ **Local**  
☐ **Substantial Economic Impact** ( $\geq$ \$3,000,000)  
☒ **None**

**SUBCHAPTER 14H - SANITATION**

**SECTION .0100 - SANITATION**

**21 NCAC 14H .0105      SANITARY RATINGS AND POSTING OF RATINGS**

(a) The sanitary rating of a beauty establishment shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments shall be rated in the following manner:

- (1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;
- (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded grade B;
- (3) all establishments receiving a rating of at least 70 percent or more, and less than 80 shall be awarded grade C.

(b) Every beauty establishment shall be given a sanitary rating. A cosmetic art school shall be graded no less than three times a year, and a cosmetic art salon shall be graded once a year.

(c) The sanitary rating given to a beauty establishment shall be posted in a conspicuous place at all times.

(d) All new establishments must receive a rating of at least 90 percent before a license will be issued.

~~(d)(e)~~ The willful operation of a beauty establishment which fails to receive a sanitary rating of at least 70 percent (grade C) shall be sufficient cause for revoking or suspending the letter of approval or permit.

~~(e)(f)~~ A re-inspection for the purpose of raising the sanitary rating of a beauty establishment shall not be given within 30 days of the last inspection, unless the rating at the last inspection was less than 80 percent.

~~(f)(g)~~ A ~~pedi-spa unit~~ whirlpool and footspa sanitation record must be kept on each whirlpool and footspa for inspection on a form provided by the Board.

*Authority G.S. 88B-4; 88B-23; 88B-24.*

**21 NCAC 14H .0107      WATER SUPPLY**

A beauty establishment shall have a supply of running hot and cold water in the clinic area, approved by the local health department. When a service is provided in a room, closed off by a door the water supply required in this Rule must be within 20 feet of the door or 25 feet from the service table or chair. The restroom sink cannot be used to meet this requirement.

*Authority G.S. 88B-4.*

**21 NCAC 14H .0112      CLEANLINESS OF CLINIC AREA**

(a) The clinic area shall be kept clean.

(b) Waste material shall be kept in covered receptacles. The area surrounding the waste receptacles shall be maintained in a neat and sanitary manner.

(c) Sanitation rules which apply to towels and cloths are as follows:

- (1) Separate and clean protective drapes, linens and towels shall be used for each patron.
- (2) After a protective drape, linen or towel has been used once, it shall be discarded and placed in a clean, closed container until laundered.
- (3) There shall be an adequate supply of clean protective drapes, linens and towels at all times.
- (4) All capes used on patrons shall not be allowed to come in direct contact with the patron's neck.
- (5) Clean drapes, linens and towels shall be stored in a clean closed container covered receptacle when not in use.

(d) At least six combs and brushes shall be provided for each cosmetology operator and cosmetology student.

(e) All combs, brushes, and implements shall be cleaned and disinfected after each use in the following manner:

- (1) They shall be soaked in a cleaning solution that shall not leave a residue and, if necessary, scrubbed.
- (2) They shall be disinfected in accordance with the following:
  - (A) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and or tuberculocidal, that is mixed and used according to the manufacturer's directions; or
  - (B) household bleach in a 10 percent solution for 10 minutes. 1 and 1/3 cup of 5.25 percent household bleach to one gallon of water for 10 minutes.

The disinfectant shall not shorten the service life of the comb, brush, esthetics or manicuring instrument. In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended in the Material Safety Data Sheet prepared on the disinfectant manufacturer.

- (3) They shall be rinsed with hot tap water and dried with a clean towel before their next use. If they are not used immediately, they shall be stored in a clean, closed cabinet or container until they are needed.

(f) Disposable and porous implements must be discarded immediately after use.

(g) Product that comes into contact with the patron must be discarded immediately.

(h) Clean items and items needing to be disinfected shall be kept in separate containers.

(i) A covered receptacle may have an opening so soiled items may be dropped into the receptacle.

*Authority G.S. 88B-4; 88B-14.*

## **21 NCAC 14H .0120 WHIRLPOOL, FOOTSPA AND FACIAL STEAMER SANITATION**

~~Manicurists and Cosmetologists shall use the following disinfection procedures to ensure proper cleaning and maintenance of any footspa equipment and to prevent bacterial infection:~~

- ~~(1) Between each customer a manicurist or cosmetologist shall:
  - ~~(a) drain all water and remove all debris from the footspa;~~
  - ~~(b) clean and scrub the surfaces and walls of the footspas with a scrub brush and soap or detergent and rinse with clean, clear water; and~~
  - ~~(c) disinfect with an EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal disinfectant, used according to the manufacturer's instructions.~~~~
- ~~(2) At the end of the day a manicurist or cosmetologist shall:
  - ~~(a) remove the screen. All debris trapped behind the screen of each footspa shall be removed, and the screen and the inlet shall be washed with soap or detergent and water;~~
  - ~~(b) before replacing the screen wash the screen with a chlorine bleach solution of one part bleach to 10 parts water, or totally immerse the screen in an EPA registered disinfectant;~~
  - ~~(c) fill the footspa tub with five gallons of water and four cups of five percent bleach solution; or~~~~

- ~~(d) disinfect with an EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal disinfectant, used according to the manufacturer's instructions;~~
- ~~(e) circulate the solution through the footspa system for no less than 10 minutes;~~
- ~~(f) let the solution sit overnight (at least six hours);~~
- ~~(g) drain and flush the system the following morning; and~~
- ~~(h) make a record of the date/time of this cleaning and disinfecting, on a form provided by the Board. The record for the last 90 days shall be accessible upon client or Board inspector request.~~

(a) Whirlpool or footspa means any basin using circulating water.

(b) After each patron each whirlpool or footspa must be cleaned and disinfected as follows:

- (1) All water must be drained and all debris removed from the basin;
- (2) The basin must be disinfected by filling the basin with water and circulating:
  - (A) Two tablespoons of automatic dishwashing powder and ¼ cup of 5.25 percent household bleach to one gallon of water through the unit for 10 minutes; or
  - (B) Surfactant or enzymatic soap with an EPA registered disinfectant with bactericidal, fungicidal and virucidal activity is used according to manufacturer's instructions through the unit for 10 minutes;
- (3) The basin must be drained and rinsed with clean water; and
- (4) The basin must be wiped dry with a clean towel.

(c) At the end of the day each whirlpool or footspa must be cleaned and disinfected as follows:

- (1) The screen must be removed and all debris trapped behind the screen removed;
- (2) The screen and the inlet must be washed with surfactant or enzymatic soap or detergent and rinsed with clean water;
- (3) Before replacing the screen one of the following procedures must be performed:
  - (A) The screen must be totally immersed in a household bleach solution of ¼ cup of 5.25 percent household bleach to one gallon of water for 10 minutes; or
  - (B) The screen must be totally immersed in an EPA registered disinfectant with bactericidal, fungicidal and virucidal

activity and used in accordance to the manufacturer's instructions for 10 minutes;

- (4) The inlet and area behind the screen must be cleaned with a brush and surfactant soap and water to remove all visible debris and residue; and
- (5) The spa system must be flushed with low sudsing surfactant or enzymatic soap and warm water for at least 10 minutes and then rinsed and drained.

(d) Every week after cleaning and disinfecting pursuant to Paragraphs (a) and (b) of this Rule each whirlpool and footspa must be cleaned and disinfected in the following manner:

- (1) The whirlpool or footspa basin must be filled completely with water and ¼ cup of 5.25 percent household bleach for each one gallon of water;
- (2) The whirlpool or footspa system must be flushed with the bleach and water solution pursuant to Subparagraph (c)(1) of this Rule for 10 minutes and allowed to sit for at least six hours; and
- (3) The whirlpool or footspa system must be drained and flushed with water before use by a patron.

(e) A record must be made of the date and time of each cleaning and disinfecting as required by this Rule including the date, time, reason and name of the staff member that performed the cleaning. This record must be kept and made available for at least 90 days upon request by either a patron or inspector.

(f) The water in a vaporizer machine must be emptied daily and the unit disinfected.

*Authority G.S. 88B-4; 88B-14.*

## **21 NCAC 14H .0121 PROHIBITED PRACTICES**

(a) ~~Licensed cosmetologists, estheticians, and manicurists shall~~ Licensees must not use or possess in a shop any of the following products:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA;
- (2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses;
- (3) Permanent makeup, defined as beautifying the face by inserting or implanting facial cosmetic pigment under the surface of the skin or mucosa; or
- (4) FDA rated Class III ~~devices~~ devices;
- (5) Any adulterated chemical exfoliating substances;
- (6) Carbolic acid (phenol) over two percent strength;
- (7) Animals to perform any service, including, but not limited to worms, insects, fish, amphibians, reptiles, birds or mammals;

(8) Variable speed electrical nail file on the natural nail unless it has been specifically designed for use on the natural nail.

(b) A licensee must not:

- (1) Use product in any other manner than the product's intended use;
- (2) Diagnose any medical condition or treat any medical condition unless referred by a physician;
- (3) Provide any service unless trained prior to performing the service;
- (4) Perform services on a client if the licensee has reason to believe the client has any of the following:
  - (A) a communicable disease;
  - (B) a contagious condition;
  - (C) an inflamed, infected, broken, raised or swollen skin or nail tissue; or
  - (D) an open wound or sore in the area to be worked on that would contraindicate the efficacy of the service;
- (5) Alter or duplicate a license issued by the Board;
- (6) Advertise or solicit clients in any form of communication in a manner that is false or misleading.

~~(b)(c)~~ Class II devices may be used by licensees while under the direct supervision of a licensed physician.

*Authority G.S. 88B-2; 88B-4.*

## **SUBCHAPTER 14N - EXAMINATIONS**

### **SECTION .0100 - GENERAL PROVISIONS**

## **21 NCAC 14N .0103 GENERAL EXAMINATION INSTRUCTIONS**

~~(a) All candidates scheduled for an examination, conducted by Promissor, Inc., must bring:~~

- ~~(1) two forms of signature identification, one of which must be photo bearing;~~
- ~~(2) your Promissor confirmation number; and~~
- ~~(3) practical exam only: tools and supplies (as required by Promissor), and a mannequin or live model (esthetics exam only).~~ Examinations conducted by the Board shall be administered by a testing agency contracted by the Board.

~~(b) No briefcases, bags, books, papers, or study materials are allowed in the examination room. Promissor is not responsible for lost or misplaced items. Once a candidate has scheduled an examination they shall be provided with:~~

- (1) the date, time and place of examination;
- (2) information on how to obtain a Candidate Information Bulletin (CIB). The CIB contains the admission requirements, exam requirements and necessary supplies needed for the examination; and

(3) a name and telephone number for further assistance.

~~(e) No cell phones, calculators or other electronic devices are permitted during the examination.~~

~~(d) No eating, drinking, smoking or gum chewing is permitted during the examination.~~

~~(e) No visitors (with the exception of models), children, pets or guests are allowed at the test center.~~

~~(f) No extra time for the examination will be permitted.~~

~~(g) No leaving the test center is permitted during the examination. Candidates may visit the restroom without the proctor's permission, but will not receive any additional time for the examination.~~

~~(h) No giving or receiving assistance during the examination. If a candidate gives or receives assistance during the examination, the test center manager will stop the examination and the candidate will be dismissed from the test center. Promissor will not score the examination and will report the candidate to the Board, which will make any decisions regarding discipline.~~

~~(i) Candidates must maintain silence during the examination, and shall not mention the name of the school attended or the names of instructors. Candidates shall not wear or carry any school identification on uniforms or equipment.~~

*Authority G.S. 88B-4; 88B-7; 88B-9; 88B-10; 88B-11; 88B-18.*

## **SUBCHAPTER 14R - CONTINUING EDUCATION**

### **SECTION .0100 - CONTINUING EDUCATION**

#### **21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS**

~~(a) The continuing education requirement for all licensees is eight hours per year. Cosmetologists may complete the 24 hours of continuing education any time within the cosmetologist's three-year licensing cycle. No licensee shall receive credit for course duplication completed during the licensing cycle.~~

~~(b) Courses completed prior to an individual's being licensed by the Board shall not qualify for continuing education credit. A licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board. Apprentices shall not earn continuing education credit for any class.~~

~~(c) All licensees must complete courses in their subject area. Only licensed teachers may complete courses in teacher training techniques.~~

~~(d) All providers shall allow any representative or employee of the Board entrance into any Board approved continuing education requirement course at no cost to the Board.~~

~~(e) The Board shall keep a current roster of approved continuing education courses. Copies of the roster shall be posted to the Board's website and updated monthly. Additional copies of the roster shall be available to licensees and the public upon request to the Board. Requesting individuals shall provide stamped, self-addressed envelopes.~~

~~(f) Out-of-state continuing education hours shall be submitted for approval to the Board, Board within 30 days of completing the course in order to be acceptable in meeting the annual requirements.~~

(g) The Board shall approve out-of-state continuing education hours provided the course is a lecture or hands-on. The actual course must be at least two hours and the licensee must submit the following:

(1) Out-of-state continuing education form, created by the Board which contains the following:

(A) Licensee's name, telephone number and mailing address;

(B) Licensee license number;

(C) Provider name and contact information;

(D) Date and location of course;

(E) Course description;

(F) Length of class;

(G) Instructor original signature; and

(H) Licensee's original signature;

(2) The licensee shall attach to the form the following:

(A) Provider curriculum for the course;

(B) Itinerary; and

(C) Detailed timed outline;

(3) All material required in Subparagraph (2) of this Paragraph must be typed.

(4) The licensee must submit all the above within 30 days of completing the course.

~~(g)(h)~~ Licensees shall be exempt from 8 hours of continuing education requirements until the licensing period commencing after their initial licensure.

~~(h)(i)~~ CE Course instructors shall receive credit for any approved CE class taught once during the renewal period.

~~(i)(j)~~ Licensees may take internet and correspondence courses not to exceed 12 hours per renewal period for cosmetologists, four hours per renewal period for natural hair care specialists, manicurists and estheticians and eight hours per renewal period for teachers.

(k) An internet course is defined as accessible only through a computer that has internet access including emailed information and video.

(l) A correspondence course is defined as accessible via mail, DVD, exercises and test which upon completion are returned to the CE provider by mail for grading.

(m) A classroom course is provided to the licensee by physically attending the class.

*Authority G.S. 88B-4; 88B-21(e).*

#### **21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE APPROVAL**

(a) Application for course approval shall be completed on forms provided by the Board and shall demonstrate that the applicant is:

(1) Submitting the form to the Board's office at least ~~30 days~~ 90 days prior to the proposed initial date of the course offering.

(2) Proposing a course offering that must include at least ~~least~~ least:

(A) 50 percent of subject matter in the cosmetic arts or cosmetic art teacher



training techniques; techniques, 25 percent business ethics and management and 25 percent subject matter related to cosmetic art; or

(B) 50 percent of subject matter in the cosmetic arts or cosmetic art teacher training techniques and 50 percent of subject matter must be related to cosmetic art.

(3) Providing a resume for all course ~~instructors~~. each instructor for the classroom course.

(4) Provide a timed outline for the proposed course with timed increments for each segment.

(5) Submitting the lesson plan with detailed course proposal information for all demonstrations, hands-on or lecture materials.

(6) Providing course materials that are typed and legible.

(7) Providing a floor plan with the dimensions for attendance greater than 50.

(8) Providing current sanitation regulations.

(b) The following offerings shall not be approved by the Board for continuing education credit:

(1) That portion of any offering devoted to any breaks including: breakfast, lunch and dinner or other ~~refreshments~~; refreshments.

(2) Any application that fails to meet the standards of Rule .0103.

(3) Any curriculum for a classroom course that is sanitation only that is not administered by the Board.

(4) Any curriculum that contains diagnosis or medical treatment.

(5) That contains duplication of information in course contents.

(c) ~~A continuing education number shall be assigned to each approved course. An internet course shall have an examination or methodology built into the course to verify the course material has been completed. All courses shall have a timing element to prevent advancement within each section or page of the course until all material has been reviewed.~~

(d) ~~Approved courses may be conducted as often as desired during the calendar year. While in the review process the provider must disable timing methodology.~~

(e) A correspondence course shall have an examination or methodology built into the course to verify the course material has been completed and all material is mailed through the postal service or comparable mail services.

(f) The Board shall approve or deny an application within 45 days of receiving the request.

(g) A unique continuing education number shall be assigned to each approved course.

(h) The continuing education program approval shall be for two years from the date of approval.

(i) Approved courses may be conducted as often as desired during the approved period. The provider must send a list of scheduled course dates to the Board.

*Authority G.S. 88B-4; 88B-21(e).*

## **21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES**

(a) Programs shall not be approved by the Board in segments of less than two hours.

(b) Course monitors are required at the rate of one monitor per 20 students with a maximum of 10 monitors for a seminar course and one monitor per 10 students for a hands-on course. Instructors may serve as the course monitor with fewer than 20 students.

~~(b)(c)~~ Providers must use an attendance sign-in sheet provided by the Board, listing the licensee's ~~name~~ name, signature and teacher's license number, to verify attendance. If a course monitor was required the individual's name and signature must be listed on the sign-in sheet indicating participation as a class monitor. Forms may be copied. Course monitors will be required at the rate of one monitor per 20 students with a maximum of 10 monitors at any course. Instructors may serve as the course monitor for courses with fewer than 20 students.

~~(c)(d)~~ No provider shall certify the attendance of a person who was not physically present during at least ninety percent of the course time.

~~(d)(e)~~ A provider shall maintain for four years a record of attendance of each person attending a course including the following information:

- (1) Board approved continuing education number;
- (2) Name and license number of attendee;
- (3) Course title and description;
- (4) Hours of attendance;
- (5) Date of course;
- (6) Name and original signature of instructor/monitor in employ of provider;
- (7) Provider name;
- (8) A copy of course certificate.

~~(f)~~ The provider shall certify the items above and furnish a copy must give a certificate noting items listed in Paragraph (e) of this Rule to the attendee immediately upon completion of the course. The certificate must contain the requirement listed in Paragraph (e) of this Rule.

~~(e)(g)~~ Course attendance may be restricted to licensees due to valid course prerequisites for admission or by the maximum number of participants allowable as determined by the provider and fully disclosed during the application criteria and procedures for continuing education approval.

~~(f)(h)~~ Minimum attendance of a course for credit purposes is four licensees attendees. The maximum attendance of a class for credit purposes is 200 licensed attendees.

~~(g)(i)~~ Each provider shall notify the Board; at least ~~one day~~ five days in advance, of any additional course dates, or any changes including locations, times, floor plan and changes of course instructors, within 10 days. The Board must be notified at least 48 hours in advance of a cancellation.

(j) A course must not be approved in segments of an hour, less than two hours or more than eight hours per day.

(k) Classroom courses may be no less than two hours or more than eight hours per day.

(l) Internet and correspondence courses may be no less than 2 hours or more than 12 hours.

~~(h)(m)~~ Each provider ~~shall~~ must enter into the Board's database ~~submit to the Board~~, within ten days after completion of each course, an attendance list of licensees who completed the course. The list shall include for each licensee:

- (1) Course title;
- (2) Date conducted;
- (3) Address location where the course was conducted;
- (4) Licensee name;
- (5) Licensee's license number;
- (6) Course continuing education number;
- (7) Continuing education hours earned.

(n) The use of both the electronic attendance form and the on-site sign-in sheet with original attendee signatures is mandatory.

These forms will be used to verify attendance. Each provider shall submit to the Board, within 10 days after completion of each course, the course sign-in sheets of all licensee names and signatures of attendees that completed the course.

~~(i)(o)~~ The Board may suspend, revoke, or deny the approval of an instructor or provider, who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.

~~(i)(p)~~ Audits of CE course providers may be conducted and complete records must be provided to the Board upon request.

*Authority G.S. 88B-4; 88B-21(e).*

**Note from the Codifier:** The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code.  
 This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

**TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION**

**Rule-making Agency:** State Board of Education

**Rule Citation:** 16 NCAC 06C .0407

**Effective Date:** August 17, 2010

**Findings Reviewed and Approved by the Codifier:** August 9, 2010

**Reason for Action:** This rule is adopted pursuant to S.L. 2010-31, Section 29.1(f).

**CHAPTER 06 - ELEMENTARY AND SECONDARY  
EDUCATION**

**SUBCHAPTER 06C – PERSONNEL**

**SECTION .0400 - ANNUITIES AND PENSIONS**

**16 NCAC 06C .0407 FLEXIBLE FURLOUGH LEAVE**

**(a) Definitions:**

- (1) Salary means base pay, plus local supplemental and new teacher orientation pay, from all funding sources.
- (2) Annual salary means the salary an employee earns over a fiscal year. For hourly employees, annual salary is hourly rate of pay, times the hours worked in a regular week multiplied by the estimated weeks worked in the fiscal year.
- (3) Bonus pay means monetary compensation not contingent on performance of additional work.
- (4) Furlough means:
  - (A) a temporary period of leave from employment;
  - (B) without pay;
  - (C) ordered by a local board of education; and
  - (D) not related to disciplinary action.
- (5) Public school employee means any person, including public officers, employed by a local school administrative unit.
- (6) Teacher means a public school employee defined as a teacher under N.C. Gen. Stat. 115C-325(a)(6).

(b) A local board of education may furlough a public school employee, provided:

- (1) An employee who works only on instructional days shall not be subject to furlough;
- (2) An employee who earns an annual salary of thirty two thousand dollars (\$32,000) or less shall not be subject to furlough;

(3) No employee shall be furloughed for more than two days;

(4) No teacher shall be furloughed on a protected work day as defined under N.C. Gen. Stat. 115C-84.2(a)(4); and

(5) No employee shall be subject to a furlough on an instructional day.

(c) Before implementing a furlough, a local board of education shall:

- (1) hold a public hearing and disclose the local school administrative unit's finances;
- (2) eliminate all bonus pay, provided a local board may continue to pay bonuses that it is contractually obligated to pay from any federal grant.

(d) Local boards of education may only implement furloughs in half-day increments.

(e) Local boards of education shall furlough all employees subject to furlough for the same number of half-day increments.

(f) A local school administrative unit may spread the salary or wage reduction for furloughed employees over the contract period in order to lessen the impact on the employees.

(g) A local board of education shall apply any savings realized from implementing a furlough only to offset the LEA funding flexibility adjustment.

(h) A furlough implemented in accordance with this rule shall not constitute a demotion under any statute or personnel policy.

(i) A county in which a local school administrative unit implements a furlough pursuant to this section shall not supplant existing local current expense funds for schools.

(j) Reporting Requirements: Within 10 days of approving a furlough under this rule and in no case later than September 1, 2010, the LEA shall file a report with the Superintendent of Public Instruction which includes the following:

- (1) The number of employees affected by the furlough categorized by position type as defined on the Full Time Personnel Report SS-200;
- (2) The number of half-day increments required in the furlough;
- (3) The savings realized from the furlough; and
- (4) A certification signed by the board chair, the superintendent and the chief finance officer that the furlough complies with the provisions of N.C. Sess. Law c. 31, sec. 29.1(a) (2010) and these Rules.

(k) This Rule expires June 30, 2011.

*History Note:* Authority N.C. Constitution, Article X, Sec. 5; S.L. 2010-31, sec. 29.1(a) July 1, 2010; G.S. 150B-21.1A; Emergency Adoption Eff. August 17, 2010 to expire June 30, 2011 (see S.L. 2010-31).

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**APPROVED RULES**

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

*Rules approved by the Rules Review Commission at its meeting on July 15, 2010.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT****AGRICULTURE, BOARD OF**

<u>Fees</u>	02	NCAC	48A	.1205*	24:10 NCR
<u>Collected Plant Certificate</u>	02	NCAC	48A	.1209*	24:11 NCR
<u>Health Regulations for Poultry Exhibitions</u>	02	NCAC	52B	.0502*	24:14 NCR
<u>Entry of Avian Species into the State of North Carolina</u>	02	NCAC	52B	.0603*	24:14 NCR

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

<u>Location and Address</u>	04	NCAC	02R	.0102*	n/a G.S. 150B-21.5(a)(4)
<u>Petition for Adoption of Rules</u>	04	NCAC	02R	.0402*	n/a G.S. 150B-21.5(a)(4)

**FUNERAL SERVICE, BOARD OF**

<u>Name and Address</u>	04	NCAC	04	.0101	24:19 NCR
<u>Purpose</u>	04	NCAC	04	.0102	24:19 NCR
<u>Structure</u>	04	NCAC	04	.0103	24:19 NCR
<u>Merger</u>	04	NCAC	04	.0303	24:19 NCR
<u>Surplus or Reserve Account</u>	04	NCAC	04	.0304	24:19 NCR
<u>Bonding</u>	04	NCAC	04	.0305	24:19 NCR
<u>Definitions</u>	04	NCAC	04	.0601	24:19 NCR
<u>Notice of N.C. Mutual Burial Association Commission</u>	04	NCAC	04	.0602	24:19 NCR
<u>Notice to Members of Domestic Mutual Burial Association</u>	04	NCAC	04	.0603	24:19 NCR
<u>Conduct of Public Meeting</u>	04	NCAC	04	.0604	24:19 NCR
<u>Approval of Assumption</u>	04	NCAC	04	.0605	24:19 NCR
<u>Authority to Continue Issuance of Policies</u>	04	NCAC	04	.0606	24:19 NCR
<u>Issuance of Policies in Excess of Two Hundred Dollars</u>	04	NCAC	04	.0607	24:19 NCR
<u>Requirements of Companies Writing Policies</u>	04	NCAC	04	.0608	24:19 NCR

**CHILD CARE COMMISSION**

<u>Definitions</u>	10A	NCAC	09	.0102*	24:08 NCR
<u>Activities for Children Two Years of Age</u>	10A	NCAC	09	.0511*	24:08 NCR
<u>Staff Qualifications</u>	10A	NCAC	09	.2510*	24:08 NCR

**SOCIAL SERVICES COMMISSION**

<u>Personnel</u>	10A	NCAC	70K	.0201*	24:19 NCR
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**COASTAL RESOURCES COMMISSION**

<u>Application of Erosion Rate Setback Factors</u>	15A	NCAC	07H	.0104	24:15 NCR
<u>Use Standards</u>	15A	NCAC	07H	.0208*	n/a G.S 150B-21.5(a)(3) &(6)

**COSMETIC ART EXAMINERS, BOARD OF**

<u>Cosmetologist License Fee and Staggered License Renewal S...</u>	21	NCAC	14B	.0605*	24:18 NCR
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**FORESTERS, BOARD OF REGISTRATION FOR**

<u>Qualifications for Registration</u>	21	NCAC	20	.0103*	24:20 NCR
<u>Examinations</u>	21	NCAC	20	.0104*	24:20 NCR
<u>Registration Fees</u>	21	NCAC	20	.0106*	24:20 NCR
<u>Delinquent Fees</u>	21	NCAC	20	.0108	24:20 NCR
<u>Registration Card</u>	21	NCAC	20	.0109	24:20 NCR
<u>Reciprocity</u>	21	NCAC	20	.0117*	24:20 NCR
<u>Handling of Complaints</u>	21	NCAC	20	.0122*	24:20 NCR
<u>Continuing Education</u>	21	NCAC	20	.0123*	24:20 NCR
<u>Compliance with Annual Reports Requirements</u>	21	NCAC	20	.0124	24:20 NCR
<u>Declaratory Rulings: Availability</u>	21	NCAC	20	.0126*	24:20 NCR

**MEDICAL BOARD**

<u>Definitions</u>	21	NCAC	32B	.0101	24:19 NCR
<u>Discarding Application Material</u>	21	NCAC	32B	.0102	24:19 NCR
<u>Criminal Background Check</u>	21	NCAC	32B	.0104	24:19 NCR
<u>Federation Credential Verification Service Profile</u>	21	NCAC	32B	.0105	24:19 NCR
<u>Data Bank Reports</u>	21	NCAC	32B	.0106	24:19 NCR
<u>Medical Education</u>	21	NCAC	32B	.0301	24:19 NCR
<u>ECFMG Certification</u>	21	NCAC	32B	.0302	24:19 NCR
<u>Application Forms</u>	21	NCAC	32B	.0304	24:19 NCR
<u>Examination Basis for Endorsement</u>	21	NCAC	32B	.0305	24:19 NCR
<u>Letters of Recommendation</u>	21	NCAC	32B	.0306	24:19 NCR
<u>Certified Photograph and Certification of Graduation</u>	21	NCAC	32B	.0307	24:19 NCR
<u>Fee</u>	21	NCAC	32B	.0308	24:19 NCR
<u>Personal Interview</u>	21	NCAC	32B	.0309	24:19 NCR
<u>Endorsement Relations</u>	21	NCAC	32B	.0311	24:19 NCR
<u>Routine Inquiries</u>	21	NCAC	32B	.0312	24:19 NCR
<u>Graduate Medical Education and Training</u>	21	NCAC	32B	.0313	24:19 NCR
<u>Passing Exam Score</u>	21	NCAC	32B	.0314	24:19 NCR
<u>Ten-Year Qualification</u>	21	NCAC	32B	.0315	24:19 NCR
<u>Credentials</u>	21	NCAC	32B	.0401	24:19 NCR
<u>Temporary License Fee</u>	21	NCAC	32B	.0402	24:19 NCR
<u>Application Form</u>	21	NCAC	32B	.0501	24:19 NCR
<u>Certification of Graduation</u>	21	NCAC	32B	.0502	24:19 NCR
<u>Certified Photograph</u>	21	NCAC	32B	.0503	24:19 NCR
<u>Letters of Recommendation</u>	21	NCAC	32B	.0504	24:19 NCR
<u>Appointment Letter</u>	21	NCAC	32B	.0505	24:19 NCR
<u>Fee</u>	21	NCAC	32B	.0506	24:19 NCR
<u>ECFMG Certification</u>	21	NCAC	32B	.0507	24:19 NCR
<u>Medical Education</u>	21	NCAC	32B	.0508	24:19 NCR
<u>Certified Photograph</u>	21	NCAC	32B	.0603	24:19 NCR

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**APPROVED RULES**

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<u>Letters of Recommendation</u>	21	NCAC	32B	.0604	24:19 NCR
<u>Diploma of Psychological Medicine</u>	21	NCAC	32B	.0605	24:19 NCR
<u>Fee</u>	21	NCAC	32B	.0606	24:19 NCR
<u>ECFMG Certification</u>	21	NCAC	32B	.0607	24:19 NCR
<u>Personal Interview</u>	21	NCAC	32B	.0608	24:19 NCR
<u>Request for the Certificate of Registration</u>	21	NCAC	32B	.0701	24:19 NCR
<u>Medical Licensure</u>	21	NCAC	32B	.0702	24:19 NCR
<u>Limitation</u>	21	NCAC	32B	.0703	24:19 NCR
<u>Duration</u>	21	NCAC	32B	.0704	24:19 NCR
<u>Personal Interview</u>	21	NCAC	32B	.0705	24:19 NCR
<u>Fee for Visiting Professors Certificate of Registration</u>	21	NCAC	32B	.0706	24:19 NCR
<u>Certified Photograph</u>	21	NCAC	32B	.0707	24:19 NCR
<u>Definition of Practice</u>	21	NCAC	32B	.0901	24:19 NCR
<u>Qualification for Licensure</u>	21	NCAC	32B	.0902	24:19 NCR
<u>Application Forms</u>	21	NCAC	32B	.1101	24:19 NCR
<u>Fee</u>	21	NCAC	32B	.1102	24:19 NCR
<u>Personal Interview</u>	21	NCAC	32B	.1103	24:19 NCR
<u>Routine Inquiries</u>	21	NCAC	32B	.1104	24:19 NCR
<u>CME</u>	21	NCAC	32B	.1105	24:19 NCR
<u>Application Forms</u>	21	NCAC	32B	.1201	24:19 NCR
<u>Letters of Recommendation</u>	21	NCAC	32B	.1202	24:19 NCR
<u>Fee</u>	21	NCAC	32B	.1203	24:19 NCR
<u>Personal Interview</u>	21	NCAC	32B	.1204	24:19 NCR
<u>Routine Inquiries</u>	21	NCAC	32B	.1205	24:19 NCR
<u>ECFMG Certification</u>	21	NCAC	32B	.1206	24:19 NCR
<u>Ten-Year Qualification</u>	21	NCAC	32B	.1207	24:19 NCR
<u>Definitions</u>	21	NCAC	32B	.1301*	24:19 NCR
<u>Scope of Practice Under Physician License</u>	21	NCAC	32B	.1302	24:19 NCR
<u>Application for Physician License</u>	21	NCAC	32B	.1303*	24:19 NCR
<u>Reinstatement of Physician License</u>	21	NCAC	32B	.1350*	24:19 NCR
<u>Reactivation of Physician License</u>	21	NCAC	32B	.1360*	24:19 NCR
<u>Scope of Practice Under Resident's Training License</u>	21	NCAC	32B	.1401*	24:19 NCR
<u>Application of Resident's Training License</u>	21	NCAC	32B	.1402*	24:19 NCR
<u>Scope of Practice Under Special Purpose License</u>	21	NCAC	32B	.1601	24:19 NCR
<u>Special Purpose License - Visiting Instructor</u>	21	NCAC	32B	.1602*	24:19 NCR
<u>Scope of Practice Under Military Limited Volunteer License</u>	21	NCAC	32B	.1701	24:19 NCR
<u>Application for Military Limited Volunteer License</u>	21	NCAC	32B	.1702*	24:19 NCR
<u>Scope of Practice Under Retired Limited Volunteer License</u>	21	NCAC	32B	.1703	24:19 NCR
<u>Application for Retired Limited Volunteer License</u>	21	NCAC	32B	.1704*	24:19 NCR
<u>Limited Physician License for Disasters and Emergencies</u>	21	NCAC	32B	.1705*	24:19 NCR
<u>Expedited Application for Physician License</u>	21	NCAC	32B	.2001*	24:19 NCR
<u>Waiver for Licensees Serving on Active Duty in the Armed</u>	21	NCAC	32F	.0106*	24:19 NCR
<u>Application for Reinstatement</u>	21	NCAC	32J	.0101	24:19 NCR
<u>Consideration by Board</u>	21	NCAC	32J	.0102	24:19 NCR
<u>Hearing Upon Denial</u>	21	NCAC	32J	.0103	24:19 NCR

<u>Waiver for Licensees Serving on Active Duty in the Armed</u>	21	NCAC	32R	.0105*	24:19 NCR
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**PHARMACY, BOARD OF**

<u>Suspension of Authority to Expend Funds</u>	21	NCAC	46	.1614	24:19 NCR
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**ENVIRONMENTAL HEALTH SPECIALIST EXAMINERS, BOARD OF**

<u>Disciplinary Action</u>	21	NCAC	62	.0404*	24:16 NCR
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**COMMUNITY COLLEGES, BOARD OF**

<u>Donated or Loaned Property</u>	23	NCAC	02C	.0503	24:18 NCR
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<u>Special Purchasing Delegation</u>	23	NCAC	02C	.0506*	24:16 NCR
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**STATE PERSONNEL COMMISSION**

<u>Purpose</u>	25	NCAC	01E	.1601*	24:18 NCR
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<u>Applicant Information and Application</u>	25	NCAC	01E	.1602*	24:18 NCR
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<u>Uses of Community Service Leave</u>	25	NCAC	01E	.1604*	24:18 NCR
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<u>Applicant Information and Application</u>	25	NCAC	01H	.0632*	24:18 NCR
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**TITLE 02 - DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES**

**02 NCAC 48A .1205 FEES**

Fees for nursery inspection or registration based on acres of salable nursery stock are as follows:

- |     |                                |          |
|-----|--------------------------------|----------|
| (1) | Certified:                     |          |
|     | First acre or fraction thereof | \$100.00 |
|     | Each additional acre           | \$ 3.00  |
| (2) | Registered                     | \$ 20.00 |
| (3) | Institutional                  | None     |

A certificate shall not be issued until the nursery has complied with all plant pest quarantine rules in this Chapter and all inspection or registration fees are paid.

*History Note: Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420;*

*Eff. January 1, 1985;*

*Amended Eff. August 1, 2010.*

**02 NCAC 48A .1209 COLLECTED PLANT  
CERTIFICATE**

Persons who dig or gather collected plants must possess a collected plant certificate. To obtain such a certificate, the collector must submit to the Plant Industry Division an application which states where collected plants are to be obtained. Upon a determination by the Division that the proposed collection of plants will comply with all plant pest quarantine rules in this Chapter, and payment of an annual fee of twenty dollars (\$20.00), a collected plant certificate shall be issued. This certificate expires September 30 of each year, but may be revoked sooner for failure to comply with the plant pest quarantine rules in this Chapter. A record of plant collections and sales shall be maintained and shall be made available to any inspector of the North Carolina Department of Agriculture upon

request. Nurserymen who also collect plants must have a collected plant certificate in addition to a nursery certificate. This requirement is waived for digging or collection of plants from the National Forest Land on Roan Mountain, Mitchell County, North Carolina.

*History Note: Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420;*

*Eff. January 1, 1985;*

*Amended Eff. August 1, 2010.*

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**02 NCAC 52B .0502 HEALTH REGULATIONS FOR  
POULTRY EXHIBITIONS**

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

- (1) All poultry, excluding doves and pigeons, for exhibition in North Carolina shall originate from U.S. pullorum-typhoid clean 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 is 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 shall 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 shall be admitted provided they are from an area that is not under quarantine for an infectious disease 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 shall 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 shall have the requirements in this Rule 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.

*History Note: Authority G.S. 106-540;  
Eff. April 1, 1984;  
Amended Eff. August 1, 2010; October 1, 1993.*

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

- (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 National Poultry Improvement Plan (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) Hatching Eggs, Chicks, or Poults, and any poultry under 16 weeks of age shall:
- (1) Originate from a Pullorum-Typhoid (PT) clean flock and be 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, 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; and

- (2) Originate from flock certified NPIP H5/H7 AI Clean or US AI Clean, with CVI (issued within 5 days of entry) or VS 9-3 NPIP form from state of origin, or be accompanied by records of a negative antigen detection AI test within 21 days prior to entering the state. (If the flock has more than 500 birds in number and is being tested for AI prior to entry, the owner or his agent must test 30 samples per flock and at least 10 per house, with 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 per flock for turkeys). Pre-slaughter AI test records must accompany the flock on an official NPIP-approved laboratory form.

(e) 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 if they originate in counties or areas under quarantine for H5/H7 Avian Influenza. Entry is not allowed for 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 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.

*History Note: Authority G.S. 106-539; 106-540; 106-543;  
Eff. April 1, 1984;  
Amended Eff. August 1, 2010.*

**TITLE 04 – DEPARTMENT OF COMMERCE**



**04 NCAC 02R .0102 LOCATION AND ADDRESS**

The principal office of the North Carolina Alcoholic Beverage Control Commission is located at 3322 Garner Road, Raleigh, North Carolina 27610. The mailing address is 4307 Mail Service Center, Raleigh, North Carolina 27699-4307. The telephone number is (919) 779-0700. The Commission's email address is [contactus@abc.nc.gov](mailto:contactus@abc.nc.gov). The Commission's web site address is [www.ncabc.com](http://www.ncabc.com). This office is open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

*History Note:* Authority G.S. 18B-207;  
*Eff. January 1, 1982;*  
*Amended Eff. August 1, 2010; May 1, 1984.*

**04 NCAC 02R .0402 PETITION FOR ADOPTION OF RULES**

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Commission shall address the petition to the North Carolina Alcoholic Beverage Control Commission, 4307 Mail Service Center, Raleigh, North Carolina 27699-4307.

(b) Contents. The petition shall contain the following information:

- (1) Drafts of proposed rule or amendment, or summary of its contents;
- (2) reasons for the adoption, amendment or repeal of rule;
- (3) citation of authorities showing the legality of the proposed adoption, amendment or repeal of the rule;
- (4) effect of existing rules or orders;
- (5) any data supporting proposal;
- (6) effect of existing rules on existing practices in the area involved, including case factors;
- (7) names and addresses of persons most likely to be affected by the proposal; and
- (8) name and address of each petitioner.

*History Note:* Authority G.S. 18B-207; 150B-20(a);  
*Filed November 24, 1981;*  
*Legislative Delay Eff. December 31, 1981;*  
*Eff. January 12, 1982;*  
*Amended Eff. August 1, 2010; May 1, 1984.*

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**04 NCAC 04 .0101 NAME AND ADDRESS**  
**04 NCAC 04 .0102 PURPOSE**  
**04 NCAC 04 .0103 STRUCTURE**

*History Note:* Authority G.S. 90-210.80;  
*Eff. February 1, 1976;*  
*Amended Eff. June 1, 1982 (Rule .0101);*  
*Repealed Eff. August 1, 2010.*

**04 NCAC 04 .0303 MERGER**  
**04 NCAC 04 .0304 SURPLUS OR RESERVE ACCOUNT**

**04 NCAC 04 .0305 BONDING**

*History Note:* Authority G.S. 90-210.80;  
*Eff. February 1, 1976;*  
*Amended Eff. June 1, 1982 (Rules .0304; .0305);*  
*Repealed Eff. August 1, 2010.*

**04 NCAC 04 .0601 DEFINITIONS**  
**04 NCAC 04 .0602 NOTICE OF N.C. MUTUAL BURIAL ASSOCIATION COMMISSION**  
**04 NCAC 04 .0603 NOTICE TO MEMBERS OF DOMESTIC MUTUAL BURIAL ASSOCIATION**  
**04 NCAC 04 .0604 CONDUCT OF PUBLIC MEETING**  
**04 NCAC 04 .0605 APPROVAL OF ASSUMPTION**  
**04 NCAC 04 .0606 AUTHORITY TO CONTINUE ISSUANCE OF POLICIES**  
**04 NCAC 04 .0607 ISSUANCE OF POLICIES IN EXCESS OF TWO HUNDRED DOLLARS**  
**04 NCAC 04 .0608 REQUIREMENTS OF COMPANIES WRITING POLICIES**

*History Note:* Authority G.S. 90-210.80;  
*Eff. May 1, 1982;*  
*Repealed Eff. August 1, 2010.*

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES****10A NCAC 09 .0102 DEFINITIONS**

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

- (1) "Agency" as used in Section .2200 of this Chapter, means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project. Other training shall be approved if the Division determines that the content of the training offered is substantially equivalent to the BSAC training.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.

- (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Chapter, includes the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel, and drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (10) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (11) "Family Child Care Environment Rating Scale - Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (12) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- (13) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Chapter, using space which is identifiable for each group.
- (14) "Health care professional" means:
  - (a) a physician licensed in North Carolina;
  - (b) a nurse practitioner approved to practice in North Carolina;
  - (c) a licensed physician assistant.
- (15) "Household member" means a person who resides in a family home as evidenced by factors including, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (16) "If weather conditions permit" means:
  - (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://www.idph.state.ia.us/hcci/comm/pdf/weatherwatch.pdf>, and is incorporated by reference and includes subsequent editions and amendments;
  - (b) healthy air quality as forecast by the Department of Environment and Natural Resources' Air Quality Forecasts and Information web page. The Air Quality Color Guide can be found on the Division's web site at <http://xapps.enr.state.nc.us/aq/ForecastCenter> or call 1-888-RU4NCAIR (1-888-784-6224); and
  - (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.
- (17) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to

- evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than 30 months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (18) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development for caregivers of children ages 12 months and younger.
- (19) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.
- (20) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual (published by the NC Community College System Office). These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection or copying at no charge during regular business hours.
- (21) "Owner" means any person with a five percent or greater equity interest in a child care facility, however, stockholders of corporations who own child care facilities are not subject to mandatory criminal history checks pursuant to G.S. 110-90.2 and G.S. 110-91(8) unless they are involved in day-to-day operations of the child care facility.
- (22) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (23) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (24) "Passageway" means a hall or corridor.
- (25) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
- (26) "Preschooler" or "preschool-age child" means any child who does not fit the definition of school-age child in this Rule.
- (27) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (28) "School-age child" means any child who is attending or who has attended, a public or private grade school or kindergarten and meets age requirements as specified in G.S. 115C-364.
- (29) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (30) "Section" means Division of Child Development.
- (31) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.
- (32) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.
- (33) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.
- (34) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

*History Note: Authority G.S. 110-85; 110-88; 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989; Temporary Amendment Eff. January 1, 1996; Amended Eff. August 1, 2010; November 1, 2007; May 1, 2006; May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1, 1998; April 1, 1997.*

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

(a) For activities for children under two years of age the following apply:

- (1) Each center shall have developmentally appropriate toys and activities for each child to promote the child's physical, emotional, intellectual and social well-being including appropriate books, blocks, dolls, pretend play materials, musical toys, sensory toys, and fine motor toys. The following apply:
    - (A) The materials shall be kept in an identifiable space where related equipment and materials are kept in identifiable groupings and must be made available to the children on a daily basis.
    - (B) The materials shall be offered in sufficient quantity to allow all children to use them at some point during the day and to allow for a range of choices with duplicates of the most popular toys;
    - (C) On a daily basis caregivers shall make provisions for the promotion of physical development which shall include varied, developmentally appropriate physical activities. A safe clean, uncluttered area that allows freedom of movement shall be available, both indoors and outdoors, for infants and for toddlers; and
    - (D) Hands-on experiences, including both familiar and new activities, shall be provided to enable the infant or toddler to learn about himself and the world both indoors and outdoors.
  - (b) The center shall provide time and space for sleeping, eating, toileting, diaper changing, and playing according to each child's individual need.
  - (c) The caregivers shall interact in a positive manner with each child every day, including the following ways:
    - (1) Caregivers shall respond promptly to an infant or toddler's physical and emotional needs, especially when indicated by crying through actions such as feeding, diapering, holding, positive touching, smiling, talking and eye contact.
    - (2) The caregiver shall recognize the special difficulties of infant and toddler separations and assist families, infants, and toddlers to make the transition from home to center as gently as possible, such as a phased-in orientation process to allow infants and toddlers to experience limited amounts of time at the center before becoming fully integrated.
    - (3) A caregiver or team of caregivers shall be assigned to each infant or toddler as the primary caregiver(s) who is responsible for care the majority of the time.
    - (4) The caregiver shall make provision for constructive guidance and the setting of limits that the child can understand which foster the infant's or toddler's ability to be self-disciplined, as appropriate to the child's age and development.
  - (5) In drop-in centers, effort shall be made to place an infant or toddler, who uses the center frequently, with the same caregiver.
    - (d) While awake, each child under the age of 12 months shall be given the opportunity each day to play while positioned on his or her stomach.
    - (e) Screen time, including television, videos, video games, and computer usage, is prohibited.
- History Note: Authority G.S. 110-85; 110-91(2),(12); 143B-168.3;*  
*Eff. July 1, 1988;*  
*Amended Eff. August 1, 2010; May 1, 2004; July 1, 1998;*  
*October 1, 1991; January 1, 1991.*
- 10A NCAC 09 .2510 STAFF QUALIFICATIONS**
- (a) The individual who is responsible for ensuring the administration of the program, whether on-site or off-site, shall:
    - (1) Prior to employment, have at least 400 hours of verifiable experience working with school-age children in a licensed child care program or 600 hours of verifiable experience working with school-age children in an unlicensed school-age care or camp setting; or have an undergraduate, graduate, or associate degree, with at least 12 semester hours in school-age care related coursework; and
    - (2) Meet the requirements for a child care administrator in G.S. 110-91(8).
  - (b) At least one individual who is responsible for planning and ensuring the implementation of daily activities for a school-age program (program coordinator) shall:
    - (1) Be at least 18 years old and have a high school diploma or its equivalent prior to employment;
    - (2) Have completed two semester credit hours in child and youth development and two semester credit hours in school-age programming. Each individual who does not meet this requirement shall enroll in coursework within six months after becoming employed and shall complete this coursework within 18 months of enrollment. An individual who meets the staff requirements for administrator or lead teacher shall be considered as meeting the requirements for program coordinator, provided the individual completes Basic School-Age Care (BSAC) training, or its equivalent; and
    - (3) In a part day program be on site when children are in care. For a full day program, the program coordinator must be on site for two thirds of the hours of operation. This includes times when the individual is off site due to illness or vacation.
  - (c) Staff who are responsible for supervising groups of school-age children (group leaders) shall be at least 18 years of age and

have a high school diploma or its equivalent prior to employment, and shall complete the BSAC training, or its equivalent.

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

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

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

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

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

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

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

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

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

*Eff. July 1, 1988;*

*Amended Eff. August 1, 2010; November 1, 2007; July 1, 2000; July 1, 1998; January 1, 1992; September 1, 1990.*

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## 10A NCAC 70K .0201 PERSONNEL

### (a) Staff Qualifications and Functions.

- (1) Executive Director. There shall be an executive director employed for the general management and supervision of the maternity home. 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\\_03100-04099/PDF\\_Files/04077.pdf](http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04077.pdf)). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715.

The executive director shall:

- (A) direct the maternity home's program of care and services in accordance with policies established by the governing board and within license standards;
  - (B) recruit, employ, supervise and discharge staff;
  - (C) assure a training program for staff;
  - (D) prepare the annual budget, supervise expenditures, and operate within the budget established;
  - (E) establish and maintain good working relationships with other human service agencies and represent the agency in the community; and
  - (F) delegate authority to a staff member meeting the qualifications described in Paragraph (a)(1) of this Rule, during his or her absence.
- (2) Professional Services Staff. The maternity home shall have available professional services personnel to assure appropriate services are provided for each resident in accordance with her case plan or out-of-home family services agreement.
  - (3) Social Work Supervisor. Effective July 1, 2010 social work supervisors shall be employed by the maternity home to supervise, evaluate and monitor the work and progress of the social work staff. 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\\_03100-04099/PDF\\_Files/04016.pdf](http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04016.pdf)). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. Social work supervisors shall receive 24 hours of continuing education annually.

- (4) Social Worker. Effective July 1, 2010 social workers shall be employed by the maternity home to provide intake services and social work services to the residents and their families in accordance with the case plan or out-of-home family services agreement. 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\\_03100-04099/PDF\\_Files/04012.pdf](http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04012.pdf)). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.
- (5) Direct Care Staff. All direct care staff shall have a high-school diploma or GED. Direct care staff shall receive 24 hours of continuing education annually.
- (6) Direct Care Supervisory Staff. All direct care supervisory staff shall have a high-school diploma or GED. Direct care supervisory staff shall receive 24 hours of continuing education annually.
- (7) Staff members of the maternity home may maintain dual employment or serve as volunteers with adoption agencies or crisis pregnancy centers as long as the maternity home does not provide services to the clients of the adoption agency or crisis pregnancy center. Staff members of the maternity home may serve on the board of directors of adoption agencies or crisis pregnancy centers as long as the adoption agency or crisis pregnancy center does not provide services to the clients of the maternity home.

(b) Staffing Requirements. There shall be at least one social worker assigned for every 15 residents. 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.	

(c) Direct Care Staff. Direct care staff shall be employed for direct care of maternity home residents (residents include mothers and infants as well as any children or dependents of staff members who live or are cared for in the home). There shall be at least one direct care staff member assigned for every eight residents during waking hours and one direct care staff member for every twelve residents during sleeping hours. Additional direct care staff or other personnel shall be available to assist with emergency situations or special needs of the residents.

(d) Direct Care Supervisory Staff. There shall be at least one direct care supervisor for every 15 direct care staff members.

(e) Volunteers and Interns. If the maternity home uses volunteers or interns to work directly with residents, the requirements of 10A NCAC 70F .0207 apply.

(f) Additional Personnel Requirements. In addition to those requirements specified in 10A NCAC 70F .0207, the following rules are applicable to maternity home programs:

- (1) Health Examinations. All direct care staff, food service staff and anyone serving in the capacity of direct care staff and food service staff shall have a medical examination completed by a physician, physician's assistant, or nurse practitioner, hereafter referred to as "licensed medical provider," within at least 12 months before beginning employment and biennially thereafter. The agency shall maintain documentation that all direct care staff and food service staff or anyone serving in the capacity of direct care staff and food service staff have had a TB skin test or chest x-ray prior to employment unless contraindicated by a licensed medical provider. A medical history form shall be completed by all direct care staff and food service staff. Examinations must include tests necessary to determine that the staff member is able to carry out assigned duties and does not have any communicable disease or condition which poses risk of transmission in the facility. A report of each examination shall be made a part of the employee's personnel file. A medical examination report shall be completed on any adopted children or relative children of direct care staff residing in the maternity home within 12 months prior to the license date. The birth children of direct care staff who reside in the maternity home shall be tested for TB only if one or more of the parents tests positive for TB. There shall be documentation that adopted children or other relative children residing in the maternity home have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. A medical examination and TB test,

if required, shall be completed on any children or relative children of direct care staff who subsequently begin residing in the maternity home. Examinations shall include tests necessary to determine that the children or relative children of staff members who reside in the maternity home do not have any communicable diseases or conditions which pose risk of transmission in the facility. A medical history form shall be completed on any children or relative children of direct care staff who reside in the living unit. Medical examination reports and medical history forms of children of the residents residing the maternity home shall be maintained in the personnel file of their parent or relative.

(2) Staff Development. The maternity home staff shall have a written staff development plan which provides staff training in the following areas:

- (A) medical, physical, and psychological aspects of pregnancy;
- (B) prenatal and postnatal care;
- (C) developmental needs of adolescents and young adults;
- (D) developmental needs of infants and children;
- (E) parenting preparation classes;
- (F) stages of growth in infants;
- (G) day-to-day care of infants;
- (H) disciplinary techniques for infants, children and adolescents;
- (I) education planning;
- (J) job seeking skills;
- (K) locating housing;
- (L) money management;
- (M) food management;
- (N) child care;
- (O) health education;
- (P) stress management;
- (Q) life skills;
- (R) decision making;
- (S) substance abuse;
- (T) pregnancy prevention;
- (U) counseling skills;
- (V) emergency medical care; and
- (W) nutrition and food preparation.

*History Note:* Authority G.S. 131D-10.10; 143B-153;  
*Eff. February 1, 1986;*  
*Amended Eff. June 1, 1990;*  
*RRC Objection Eff. April 15, 1993 Due to Lack of Statutory Authority;*  
*Amended Eff. August 1, 2010; November 1, 2009; October 1, 2008; July 2, 1993.*

**15A NCAC 07H .0104 APPLICATION OF EROSION RATE SETBACK FACTORS**

(a) Development on lots created on or after June 1, 1979 shall utilize the current erosion rate setback factor in the calculation of the development setback pursuant to 15A NCAC 07H .0304. If application of the current erosion rate setback factor in the calculation of the development setback would preclude the placement of permanent buildings, then the erosion rate in effect at the time that the lot was created may be utilized in the calculation of the development setback, provided that the development:

- (1) shall comply with the current erosion rate setback factor to the maximum extent possible;
- (2) is located at the landward most position of the lot without violating local zoning requirements;
- (3) shall extend no further oceanward than the landward-most adjacent building; and
- (4) shall be no more than 2,000 square feet in total floor area.

(b) Development on lots created prior to June 1, 1979 shall comply with the provisions of 15A NCAC 07H .0309(b) and (c).

*History Note:* Authority G.S. 113A-107; 113A-113; 113A-124;  
*Eff. September 15, 1979;*  
*Amended Eff. August 1, 2010; April 1, 2004; April 1, 1997; April 1, 1995; May 1, 1990; November 1, 1988; September 1, 1988.*

**15A NCAC 07H .0208 USE STANDARDS**

(a) General Use Standards

- (1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include utility crossings, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches.
- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
  - (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine

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- (B) Development shall comply with state and federal water and air quality standards.
  - (C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural Resources.
  - (D) Development shall not increase siltation.
  - (E) Development shall not create stagnant water bodies.
  - (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources.
  - (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:

  - (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
  - (B) restore the affected environment; or
  - (C) compensate for the adverse impacts by replacing or providing substitute resources.

(4) Primary nursery areas are those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC).

(5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values.

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

(b) Specific Use Standards

  - (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:
    - (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.
    - (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands.
    - (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material



- be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10).
- (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation.
  - (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.
  - (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters.
  - (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners.
  - (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics.
  - (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
    - (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
    - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
    - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
- (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.
- This Part does not affect restrictions placed on permits issued after March 1, 1991.
- (2) Hydraulic Dredging
    - (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids.
    - (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment, if the material is suitable in accordance with the Rules in this Subchapter except as provided in Part (G) of this Subparagraph.
    - (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands.
    - (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level.
    - (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged.
    - (F) A water control structure shall be installed at the intake end of the effluent pipe.
    - (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule.
    - (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters

- shall be returned to the closed shellfish waters.
- (3) Drainage Ditches
    - (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary.
    - (B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites.
    - (C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies.
    - (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.
  - (4) Nonagricultural Drainage
    - (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water.
    - (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth.
    - (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.
  - (5) Marinas. Marinas are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient

docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:

- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
  - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;
  - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;
  - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
  - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
- (B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require

- dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule.
- (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible.
- (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.
- (E) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development.
- (F) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the state.
- (G) Marina basins shall be designed to promote flushing through the following design criteria:
- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
- (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation.
- (H) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters.
- (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes mooring sites (permanent or temporary); speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.
- (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
- (K) Marinas which require dredging shall provide areas in accordance with Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance dredging, including the ability to remove the dredged material from the marina site.
- (L) Marina design shall comply with all applicable EMC requirements for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d).
- (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services.

- (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters.
- (O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule.
- (P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10).
- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.
- (6) Piers and Docking Facilities.
  - (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur.
  - (B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions do not apply to marinas.
  - (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
  - (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions do not apply to marinas.
  - (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift.
  - (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use.
  - (G) Pier and docking facility length shall be limited by:
    - (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
    - (ii) not extending into the channel portion of the water body; and
    - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation does not apply when the proposed

- pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.
- (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body.
- (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(q) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management.
- (J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (7) Bulkheads
- (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level.
- (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to the resources.
- (C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead.
- (D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:
- (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
- (ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to

- the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
      - (iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners;
      - (iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and
      - (v) the property to be bulkheaded is in a non-oceanfront area.
    - (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.
  - (8) Beach Nourishment
    - (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use consistent with the following:
      - (i) Beaches may be created or maintained in areas where they have historically been found due to natural processes.
      - (ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site.
      - (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.
      - (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC.
      - (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review.
      - (vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.
    - (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control.
    - (C) Material from dredging projects may be used for beach nourishment if:
      - (i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule.
      - (ii) it is allowed to dry prior to being placed on the beach; and
      - (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
    - (D) Beach construction shall comply with state and federal water quality standards.
    - (E) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work.
    - (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time. Permits may be renewed or modified for maintenance work or repeated need for nourishment.
  - (9) Groins
    - (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process.
    - (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent

- property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.
- (C) Groins shall pose no threat to navigation.
  - (D) The height of groins shall not exceed one foot above normal high water or normal water level.
  - (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.
  - (F) "L" and "T" sections shall not be allowed at the end of groins.
  - (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action.
- (10) "Freestanding Moorings".
- (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).
  - (B) Freestanding moorings shall be permitted only:
    - (i) to riparian property owners within their riparian corridors; or
    - (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan.
  - (C) All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking.
  - (D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with
- Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development.
- (E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the state.
  - (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted.
  - (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards.
  - (H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff.
  - (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal.
  - (J) Freestanding moorings associated with commercial shipping, public service or temporary construction/salvage operations may

- be permitted without a public sponsor.
  - (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels, or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access.
  - (L) Freestanding moorings shall not be established in submerged cable/pipe crossing areas or in a manner that interferes with the operations of an access through any bridge.
  - (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s).
  - (N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:
  - (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;
  - (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;
  - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right or public trust usage; and
  - (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.
- (12) "Submerged Lands Mining"
  - (A) Development Standards. Mining of submerged lands shall meet all the following standards:
    - (i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, shall be evaluated for significant adverse impacts and a protection strategy for these natural functions and values provided with the state approval request or permit application;
    - (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
    - (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Land Resources pursuant to G.S. 113A-113(b)(4)(g);
    - (iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC; such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
    - (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and
    - (vi) Mining activities shall not affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.
  - (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to



include measures necessary to insure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:

- (i) Monitoring shall be required of the applicant to ensure compliance with all applicable development standards; and
- (ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.
- (C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule.
- (D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700.
- (E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

*History Note:* Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 9, 1977;

*Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;*

*RRC Objection due to ambiguity Eff. March 21, 1996;*

*Amended Eff. August 1, 2010; June 1, 2010; August 1, 1998; May 1, 1996.*

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

### **CHAPTER 14 – COSMETIC ART EXAMINERS**

#### **21 NCAC 14B .0605 COSMETOLOGIST LICENSE FEE AND STAGGERED LICENSE RENEWAL SCHEDULE**

(a) All cosmetology licenses expiring on and after October 1, 2013 shall pay the renewal fee of thirty-nine dollars (\$39.00), and complete 24 hours of continuing education as required by G.S. 88B-21 to be eligible for license renewal.

(b) Upon renewal of the license expiring October 1, 2010 the Board shall issue a new license with staggered expiration dates. Licensees shall be divided into renewal groups by first digit of license number and shall pay prorated fees for renewal as follows:

License Number (first digit in number)	Staggered Expiration Date	Fees/CE Hours Due
3, 4 or 5	October 1, 2011	\$13/0 hours
6 or 7	October 1, 2012	\$26/12 hours
0, 1, 2, 8 or 9	October 1, 2013	\$39/24 hours

*History Note:* Authority G.S. 88B-20; 88B-21;

*Eff. August 1, 1998;*

*Amended Eff. August 1, 2010.*

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### **CHAPTER 20 – BOARD OF REGISTRATION FOR FORESTERS**

#### **21 NCAC 20 .0103 QUALIFICATIONS FOR REGISTRATION**

(a) An application may be obtained from the Secretary of the Board.

(b) An applicant shall submit an application to the Secretary which shall include:

- (1) Legible official college transcripts, if applicable;
- (2) Five references as required in Rule .0105 of this Section;
- (3) Proof of professional work experience in forestry; and
- (4) Payment of application fee as set out in Rule .0107 of this Section.

(c) For purposes of G.S. 89B-9(a)(1) a forestry curriculum is a curriculum that satisfies the Education Requirements used by the

Society of American Foresters (SAF) to become a Certified Forester.

(d) An applicant who holds a forestry degree from a university outside of the United States may qualify for registration if he/she provides verification to the Board which demonstrates that the degree is equivalent to SAF accreditation standards.

(e) The Board may issue a forester-in-training certificate to an applicant who has completed the education requirement in G.S. 89B-9(a)(1). The certificate is valid for 4 years. The time period shall be extended by the Board in case of hardship beyond the control of the applicant.

*History Note:* Authority G.S. 89B-6; 89B-9;  
*Eff. February 1, 1976;*  
*Amended Eff. May 1, 1989; February 1, 1985;*  
*Temporary Amendment Eff. March 1, 1999;*  
*Amended Eff. August 1, 2010; August 1, 2000.*

**21 NCAC 20 .0104 EXAMINATIONS**

(a) The comprehensive written exam required by G.S. 89B-9(a)(1), called a Level 2 examination, focuses on the practice of forestry in North Carolina and shall be offered twice annually. There is no limit to the number of times that an applicant may attempt the examination.

(b) For applicants not meeting the education requirements in G.S. 89B-9(a)(1), a comprehensive written exam, called the Level 1 examination is required. The exam tests the applicants' knowledge of forestry approximating that obtained through graduation from a four-year curriculum in forestry and focuses on the practice of forestry in North Carolina. The exam shall be offered twice annually. There is no limit to the number of times that an applicant may attempt the examination.

(c) The Board shall notify applicants by certified mail, return receipt requested, not less than 30 days before the examination, as to the time and place of the examination. If the applicant fails to respond at least ten days prior to the date of the exam, it is assumed that the applicant does not plan to take the examination. The applicant's file shall then be considered inactive and no further action shall be initiated by the Board. The application fee shall be forfeited.

(d) The passing grade for registration is 70 percent on any exam. The determination by the Board as to the score on each exam shall be final.

(e) Re-examination fees are forty dollars (\$40.00) per examination.

*History Note:* Authority G.S. 89B-6; 89B-9; 89B-12;  
*Eff. February 1, 1976;*  
*Amended Eff. May 1, 1989; February 1, 1985;*  
*Temporary Amendment Eff. March 1, 1999;*  
*Amended Eff. August 1, 2010; August 1, 2000.*

**21 NCAC 20 .0106 REGISTRATION FEES**

Fees sent to the Board for any segment of the registration process shall be payable to the Secretary, Board of Registration for Foresters. The application fee for registration is fifty dollars (\$50.00), which shall be submitted by the applicant at the time of application. An approved applicant shall submit an additional fee of forty dollars (\$40.00) to receive a certificate of

registration. Annual renewal fee is forty dollars (\$40.00). The Board shall waive renewal fees for Registered Foresters for hardship circumstances, such as military deployment, extended illness, or other similar circumstances, upon written petition by the Registered Forester or Registered Forester's agent for this exemption.

*History Note:* Authority G.S. 89B-6; 89B-10; 89B-11; 93B-15(b);  
*Eff. February 1, 1976;*  
*Amended Eff. February 1, 1990; May 1, 1985;*  
*Temporary Amendment Eff. March 1, 1999;*  
*Amended Eff. August 1, 2010; January 1, 2005; August 1, 2000.*

**21 NCAC 20 .0108 DELINQUENT FEES**

The Board shall notify by mail or email all foresters registered by the Board for the previous year when they become 30 days in arrears in payment of renewal fees for the ensuing year. The notifications shall remind the delinquents of the required penalty fees.

*History Note:* Authority G.S. 89B-6;  
*Eff. February 1, 1976;*  
*Amended Eff. August 1, 2010.*

**21 NCAC 20 .0109 REGISTRATION CARD**

In addition to the certificate prescribed by G.S. 89B-10, upon request and receipt of required fees, the Board shall furnish each registered forester with a card impressed with the seal of the Board indicating that the individual is a registered forester for the period indicated.

*History Note:* Authority G.S. 89B-6;  
*Eff. February 1, 1976;*  
*Amended Eff. August 1, 2010; May 1, 1989; February 1, 1985.*

**21 NCAC 20 .0117 RECIPROCITY**

(a) For residents of North Carolina, within one year of establishing residency for voting purposes in North Carolina, individuals who are legally registered or licensed as foresters in another state, shall submit evidence of such registration or licensing to the Board. A statement from the Board of registration or licensing in the state in which they are legally registered or licensed attesting that they are legally registered or licensed to practice forestry in that state, and indicating the final date on which their registration or license remains valid, shall be accepted by the Board as adequate evidence. This provision does not apply unless the state in which the applicant is registered or licensed observes similar rules of reciprocity in regard to persons registered under the provisions of G.S. 89B.

(b) If the Board determines that the reciprocity applicant is qualified to practice as a registered forester in North Carolina, the Board shall issue a letter conveying this approval.

(c) The fee for obtaining such reciprocity is the same as is charged a North Carolina resident seeking to obtain registration in the state of North Carolina. (See Rule .0106 of this Section.)

*History Note:* Authority G.S. 89B-6; 89B-9;  
*Eff. February 1, 1976;*

*Amended Eff. May 1, 1989; February 1, 1985;  
Temporary Amendment Eff. March 1, 1999;  
Amended Eff. August 1, 2010; August 1, 2000.*

## **21 NCAC 20 .0122 HANDLING OF COMPLAINTS**

(a) The Board, upon receipt of a notarized letter identifying specific complaints of gross negligence, fraud, deceit or flagrant misconduct in the practice of forestry or incompetence by a registered forester, shall follow-up by written correspondence to the accused requesting a response to the accusation. The Board may request the complainant, the accused registrant, or both to personally appear before the Board.

(b) Following a review of the facts and verification of the violation, the Board may choose appropriate action, which may include revocation or suspension of the registered forester status of the individual as outlined in Rule .0106 of this Section.

*History Note: Authority G.S. 89B-2; 89B-6; 89B-13; 89B-15; 150B-3; 150B-38;  
Eff. November 1, 1993;  
Temporary Amendment Eff. March 1, 1999;  
Amended Eff. August 1, 2010; August 1, 2000.*

## **21 NCAC 20 .0123 CONTINUING EDUCATION**

(a) All registered foresters shall attend continuing education courses annually to maintain their registration. Ten CFE (Continuing Forestry Education) credits approved by the Society of American Foresters are required each year, except as outlined in this Rule. CFE's must be SAF category 1, 2, or 3, with at least six being from category 1.

(b) Registered foresters shall verify CFE compliance to the Board with each annual renewal.

(c) Those registered foresters who provide information to the Board that verifies that they are retired from a career in forestry may qualify to continue their registration by earning a minimum of three category 1, 2, or 3 CFE's annually.

(d) The Board shall approve hardship cases, such as military deployment, extended illness or other circumstances that prevent the Registered Forester from obtaining the required CFE's upon request.

*History Note: Authority G.S. 89B-6; 89B-11;  
Temporary Adoption Eff. March 1, 1999;  
Eff. August 1, 2000;  
Amended Eff. August 1, 2010.*

## **21 NCAC 20 .0124 COMPLIANCE WITH ANNUAL REPORTS REQUIREMENTS**

In the event the board's authority to expend funds is suspended pursuant to G.S. 93B-2, the board shall continue to issue and renew licenses and all fees tendered shall be placed in the escrow account maintained by the board for this purpose.

*History Note: Authority G.S. 93B-2;  
Eff. August 1, 2010.*

## **21 NCAC 20 .0126 DECLARATORY RULINGS: AVAILABILITY**

Declaratory rulings pursuant to G.S. 150B-4 shall be issued by the State Board of Registration for Foresters (NCBRF) upon request only on the validity of a rule of the State NCBRF or on the applicability of a rule or order of the NCBRF to stipulated facts. A declaratory ruling will not be issued on a matter requiring an evidentiary proceeding.

*History Note: Authority G.S. 150B-4;  
Eff. August 1, 2010.*

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## **CHAPTER 32 – MEDICAL BOARD**

### **21 NCAC 32B .0101 DEFINITIONS 21 NCAC 32B .0102 DISCARDING APPLICATION MATERIAL**

*History Note: Authority G.S. 90-6;  
Eff. May 1, 1989;  
Amended Eff. July 1, 2004; July 1, 1993; January 1, 1992;  
March 1, 1991;  
Repealed Eff. August 1, 2010.*

### **21 NCAC 32B .0104 CRIMINAL BACKGROUND CHECK**

*History Note: Authority G.S. 90-6; 90-9; 90-11;  
Temporary Adoption Eff. December 1, 2002;  
Eff. August 1, 2004;  
Repealed Eff. August 1, 2010.*

### **21 NCAC 32B .0105 FEDERATION CREDENTIAL VERIFICATION SERVICE PROFILE 21 NCAC 32B .0106 DATA BANK REPORTS**

*History Note: Authority G.S. 90-6; 90-11;  
Eff. October 1, 2006;  
Repealed Eff. August 1, 2010.*

### **21 NCAC 32B .0301 MEDICAL EDUCATION 21 NCAC 32B .0302 ECFMG CERTIFICATION**

*History Note: Authority G.S. 90-6; 90-9; 90-10; 90-13;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1983; October 29, 1979;  
Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985;  
Amended Eff. March 1, 1987; November 1, 1985; May 1, 1985;  
Recodified from 21 NCAC 32B .0201 Eff. April 5, 1989; (Rule .0301);  
Recodified from 21 NCAC 32B .0202 Eff. April 5, 1989; (Rule .0302);  
Amended Eff. July 1, 2004; May 1, 1989;  
Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0304 APPLICATION FORMS**  
**21 NCAC 32B .0305 EXAMINATION BASIS FOR**  
**ENDORSEMENT**  
**21 NCAC 32B .0306 LETTERS OF**  
**RECOMMENDATION**  
**21 NCAC 32B .0307 CERTIFIED PHOTOGRAPH**  
**AND CERTIFICATION OF GRADUATION**  
**21 NCAC 32B .0308 FEE**

*History Note: Authority G.S. 90-8.1; 90-9.1(c); 90-10; 90-13; 90-15;*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1985; December 1, 1984; November 1, 1982;*  
*Recodified from 21 NCAC 32B .0204 Eff. April 5, 1989; (Rule .0304);*  
*Recodified from 21 NCAC 32B .0205 Eff. April 5, 1989; (Rule .0305);*  
*Recodified from 21 NCAC 32B .0206 Eff. April 5, 1989; (Rule .0306);*  
*Recodified from 21 NCAC 32B .0207 Eff. April 5, 1989; (Rule .0307);*  
*Recodified from 21 NCAC 32B .0208 Eff. April 5, 1989; (Rule .0308);*  
*Amended Eff. August 1, 2008; July 1, 2007; July 1, 2004; February 1, 1995; April 1, 1994; January 1, 1992; May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0309 PERSONAL INTERVIEW**

*History Note: Authority G.S. 90-13;*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1985; November 8, 1977;*  
*Recodified from 21 NCAC 32B .0209 Eff. April 5, 1989;*  
*Amended Eff. May 1, 1989;*  
*ARRC Objection Lodged October 19, 1989;*  
*Temporary Amendment Eff. September 5, 1989 for a period of 180 days to expire on March 3, 1990;*  
*Temporary Amendment Eff. February 16, 1990, for a period of 135 days to expire on July 1, 1990;*  
*ARRC Objection Lodged March 15, 1990;*  
*Amended Eff. May 1, 1990;*  
*Temporary Amendment Eff. February 15, 1991 for a period of 180 days to expire on August 15, 1991;*  
*ARRC Objection Lodged February 25, 1991;*  
*Temporary Amendment Expired August 15, 1991;*  
*Amended Eff. July 1, 2004; September 1, 1995; July 1, 1993; September 1, 1991;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0311 ENDORSEMENT RELATIONS**  
**21 NCAC 32B .0312 ROUTINE INQUIRIES**

*History Note: Authority G.S. 90-6; 90-11; 90-13;*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1985;*  
*Recodified from 21 NCAC 32B .0212 Eff. April 5, 1989; (Rule .0312);*

*Recodified from 21 NCAC 32B .0211 Eff. April 5, 1989; (Rule .0311);*  
*Amended Eff. October 1, 2006; July 1, 2004; May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0313 GRADUATE MEDICAL**  
**EDUCATION AND TRAINING**

*History Note: Authority G.S. 90-13;*  
*Eff. November 8, 1977;*  
*Amended Eff. November 1, 1985;*  
*Recodified from 21 NCAC 32B .0213 Eff. April 5, 1989;*  
*Amended Eff. July 1, 2004; May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0314 PASSING EXAM SCORE**

*History Note: Authority G.S. 90-6; 90-10; 90-13;*  
*Eff. January 1, 1983;*  
*Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985;*  
*Amended Eff. November 1, 1985; May 1, 1985;*  
*Recodified from 21 NCAC 32B .0214 Eff. April 5, 1989;*  
*Amended Eff. September 1, 2007; October 1, 2006; July 1, 2004; July 1, 1993; January 1, 1992; May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0315 TEN-YEAR QUALIFICATION**

*History Note: Authority G.S. 90-11; 90-13;*  
*Eff. March 1, 1991;*  
*Amended Eff. July 1, 2004; February 1, 1995; July 1, 1993;*  
*January 1, 1992;*  
*Repealed August 1, 2010.*

**21 NCAC 32B .0401 CREDENTIALS**  
**21 NCAC 32B .0402 TEMPORARY LICENSE FEE**

*History Note: Authority G.S. 90-13; 90-15;*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1985;*  
*Recodified from 21 NCAC 32B .0301 Eff. April 5, 1989 (Rule .0401);*  
*Recodified from 21 NCAC 32B .0302 Eff. April 5, 1989 (Rule .0402);*  
*Amended Eff. April 1, 1994; May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0501 APPLICATION FORM**  
**21 NCAC 32B .0502 CERTIFICATION OF**  
**GRADUATION**  
**21 NCAC 32B .0503 CERTIFIED PHOTOGRAPH**  
**21 NCAC 32B .0504 LETTERS OF**  
**RECOMMENDATION**  
**21 NCAC 32B .0505 APPOINTMENT LETTER**  
**21 NCAC 32B .0506 FEE**  
**21 NCAC 32B .0507 ECFMG CERTIFICATION**

*History Note: Authority G.S. 90-15*

*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1985; December 1, 1984; October 29, 1979;*  
*Recodified from 21 NCAC 32B .0401 Eff. April 5, 1989 (Rule .0501);*  
*Recodified from 21 NCAC 32B .0402 Eff. April 5, 1989 (Rule .0502);*  
*Recodified from 21 NCAC 32B .0403 Eff. April 5, 1989 (Rule .0503);*  
*Recodified from 21 NCAC 32B .0404 Eff. April 5, 1989 (Rule .0504);*  
*Recodified from 21 NCAC 32B .0405 Eff. April 5, 1989 (Rule .0505);*  
*Recodified from 21 NCAC 32B .0406 Eff. April 5, 1989 (Rule .0506);*  
*Recodified from 21 NCAC 32B .0407 Eff. April 5, 1989 (Rule .0507);*  
*Amended Eff. July 1, 2007; May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0508 MEDICAL EDUCATION**

*History Note: Authority G.S. 90-15;*  
*Eff. December 1, 1985;*  
*Recodified from 21 NCAC 32B .0408 Eff. April 5, 1989;*  
*Amended Eff. August 1, 2002; May 1, 1990; May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0603 CERTIFIED PHOTOGRAPH**  
**21 NCAC 32B .0604 LETTERS OF RECOMMENDATION**  
**21 NCAC 32B .0605 DIPLOMA OF PSYCHOLOGICAL MEDICINE**  
**21 NCAC 32B .0606 FEE**  
**21 NCAC 32B .0607 ECFMG CERTIFICATION**  
**21 NCAC 32B .0608 PERSONAL INTERVIEW**

*History Note: Authority G.S. 90-11; 90-12; 90-15;*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1985; December 1, 1984; October 29, 1979;*  
*Recodified from 21 NCAC 32B .0503 Eff. April 5, 1989 (Rule .0603);*  
*Recodified from 21 NCAC 32B .0504 Eff. April 5, 1989 (Rule .0604);*  
*Recodified from 21 NCAC 32B .0505 Eff. April 5, 1989 (Rule .0605);*  
*Recodified from 21 NCAC 32B .0506 Eff. April 5, 1989 (Rule .0606);*  
*Recodified from 21 NCAC 32B .0507 Eff. April 5, 1989 (Rule .0607);*  
*Recodified from 21 NCAC 32B .0508 Eff. April 5, 1989 (Rule .0608);*  
*Amended Eff. July 1, 2004; May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0701 REQUEST FOR THE CERTIFICATE OF REGISTRATION**  
**21 NCAC 32B .0702 MEDICAL LICENSURE**

**21 NCAC 32B .0703 LIMITATION**  
**21 NCAC 32B .0704 DURATION**  
**21 NCAC 32B .0705 PERSONAL INTERVIEW**  
**21 NCAC 32B .0706 FEE FOR VISITING PROFESSORS CERTIFICATE OF REGISTRATION**

*History Note: Authority G.S. 90-12; 90-15;*  
*Eff. February 1, 1976;*  
*Amended Eff. December 1, 1985; November 1, 1985; December 1, 1984;*  
*Recodified from 21 NCAC 32B .0601 Eff. April 5, 1989 (Rule .0701);*  
*Recodified from 21 NCAC 32B .0602 Eff. April 5, 1989 (Rule .0702);*  
*Recodified from 21 NCAC 32B .0603 Eff. April 5, 1989 (Rule .0703);*  
*Recodified from 21 NCAC 32B .0604 Eff. April 5, 1989 (Rule .0704);*  
*Recodified from 21 NCAC 32B .0605 Eff. April 5, 1989 (Rule .0705);*  
*Recodified from 21 NCAC 32B .0606 Eff. April 5, 1989 (Rule .0706);*  
*Amended Eff. July 1, 2004; September 1, 1995; April 1, 1994; May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0707 CERTIFIED PHOTOGRAPH**

*History Note: Authority G.S. 90-12;*  
*Eff. March 1, 1988;*  
*Recodified from 21 NCAC 32B .0607 Eff. April 5, 1989;*  
*Amended Eff. May 1, 1989;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .0901 DEFINITION OF PRACTICE**  
**21 NCAC 32B .0902 QUALIFICATION FOR LICENSURE**

*History Note: Authority G.S. 90-13; 90-15;*  
*Eff. December 1, 1995;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .1101 APPLICATION FORMS**

*History Note: Authority G.S. 90-6; 90-15.1;*  
*Eff. January 1, 2008;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .1102 FEE**  
*History Note: Authority G.S. 90-6; 90-15.1;*  
*Eff. February 5, 2008;*  
*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .1103 PERSONAL INTERVIEW**  
**21 NCAC 32B .1104 ROUTINE INQUIRIES**  
**21 NCAC 32B .1105 CME**

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;*  
*Eff. January 1, 2008;*

*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .1201 APPLICATION FORMS**

**21 NCAC 32B .1202 LETTERS OF RECOMMENDATION**

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;*

*Eff. January 1, 2008;*

*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .1203 FEE**

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;*

*Eff. February 5, 2008;*

*Repealed August 1, 2010.*

**21 NCAC 32B .1204 PERSONAL INTERVIEW**

**21 NCAC 32B .1205 ROUTINE INQUIRIES**

**21 NCAC 32B .1206 ECFMG CERTIFICATION**

*History Note: Authority G.S. 90-6; 90-14; 90-15.1;*

*Eff. January 1, 2008;*

*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .1207 TEN-YEAR QUALIFICATION**

*History Note: Authority G.S. 90-6; 90-10; 90-14; 90-15.1;*

*Eff. February 1, 2008;*

*Repealed Eff. August 1, 2010.*

**21 NCAC 32B .1301 DEFINITIONS**

The following definitions apply to Rules within this Subchapter:

- (1) ABMS - American Board of Medical Specialties
- (2) ACGME – Accreditation Council for Graduate Medical Education
- (3) AMA – American Medical Association
- (4) AMA Physician's Recognition Award – American Medical Association recognition of achievement by physicians who have voluntarily completed programs of continuing medical education.
- (5) AOA – American Osteopathic Association
- (6) AOIA – American Osteopathic Information Association
- (7) Board –The North Carolina Medical Board
- (8) CACMS – Committee for the Accreditation of Canadian Medical Schools
- (8) CAQ – Certificate of Added Qualification conferred by a specialty board recognized by the ABMS, the AOA, CCFP, FRCP or FRCS
- (9) CCFP – Certificat of the College of Family Physicians
- (10) CFPC – College of Family Physicians of Canada
- (11) COCA – Commission on Osteopathic Colleges Accreditation
- (12) CME – Continuing Medical Education
- (13) COMLEX – Comprehensive Osteopathic Medical Licensure Examination

- (14) COMVEX – Comprehensive Osteopathic Medical Variable-Purpose Examination
- (15) ECFMG – Educational Commission for Foreign Medical Graduates
- (16) FCVS – Federation Credential Verification Service
- (17) Fifth Pathway – an avenue for licensure as defined in the AMA's Council on Medical Education Report 1-I-07
- (18) FLEX – Federation Licensing Examination
- (19) FRCP – Fellowship of the Royal College of Physicians of Canada
- (20) FRCS – Fellowship of the Royal College of Surgeons of Canada
- (21) FSMB – Federation of State Medical Boards
- (22) GME – Graduate Medical Education
- (23) HIPDB – Healthcare Integrity and Protection Data Bank
- (24) IMG – International Medical Graduate – a physician who has graduated from a medical or osteopathic school not approved by the LCME, the CACMS or COCA
- (25) LCME – Liaison Commission on Medical Education
- (26) LMCC – Licentiate of the Medical Council of Canada
- (27) MCCQE – Medical Council of Canada Qualifying Examination
- (28) NBME – National Board of Medical Examiners
- (29) NBOME – National Board of Osteopathic Medical Examiners
- (30) NPDB – National Practitioner Data Bank
- (31) RCPSC – Royal College of Physicians and Surgeons of Canada
- (32) SPEX – Special Purpose Examination
- (33) USMLE – United States Medical Licensing Examination

*History Note: Authority G.S. 90-6;*

*Eff. August 1, 2010.*

**21 NCAC 32B .1302 SCOPE OF PRACTICE UNDER PHYSICIAN LICENSE**

A physician holding a Physician License may practice medicine and perform surgery in North Carolina.

*History Note: Authority G.S. 90-1.1;*

*Eff. August 1, 2010.*

**21 NCAC 32B .1303 APPLICATION FOR PHYSICIAN LICENSE**

(a) In order to obtain a Physician License, an applicant shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;

- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. The applicant's date of graduation from medical school shall be written in the designated space, and the school seal shall be stamped on the form; the dean or other official of the applicant's medical school shall sign this form, verifying the information;
- (6) for an applicant who has graduated from a medical or osteopathic school approved by the LCME, the CACMS or COCA, meet the requirements set forth in G.S. 90-9.1;
- (7) for an applicant graduating from a medical school not approved by the LCME, meet the requirements set forth in G.S. 90-9.2;
- (8) provide proof of passage of an examination testing general medical knowledge. In addition to the examinations set forth in G.S. 90-10.1 (a state board licensing examination; NBME; USMLE; FLEX, or their successors), the Board accepts the following examinations (or their successors) for licensure:
  - (A) COMLEX,
  - (B) NBOME, and
  - (C) MCCQE;
- (9) submit proof that the applicant has completed graduate medical education as required by G.S. 90-9.1 or 90-9.2, as follows:
  - (A) A graduate of a medical school approved by LCME, CACMS or COCA shall have satisfactorily completed at least one year of graduate medical education approved by ACGME, CFPC, RCPSC or AOA.
  - (B) A graduate of a medical school not approved by LCME shall have satisfactorily completed three years of graduate medical education approved by ACGME, CFPC, RCPSC or AOA.
  - (C) An applicant may satisfy the graduate medical education requirements of Paragraphs (a) or (b) of this Rule by showing proof of current certification by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA;
- (10) submit a FCVS profile, if an applicant has a completed FCVS profile;
- (11) If a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, shall furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
  - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
  - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (12) submit reports from all relevant state medical or osteopathic boards from which the applicant has ever held a medical or osteopathic license, indicating the status of the applicant's license and whether or not any action has been taken against the license;
- (13) submit an AMA Physician Profile and, if applicant is an osteopathic physician, also submit an AOA Physician Profile;
- (14) if applying on the basis of the USMLE, submit:
  - (A) a transcript from the FSMB showing a score of at least 75 on USMLE Step 1, both portions of Step 2 (clinical knowledge and clinical skills) and Step 3;
  - (B) proof that the applicant has passed each step within three attempts. However, the Board shall waive this requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS or AOA approved specialty board within the past 10 years.
- (15) if applying on the basis of COMLEX, submit:
  - (A) a transcript from the NBOME showing a score of at least 75 on COMLEX;
  - (B) proof that the applicant has passed COMLEX within three attempts. However, the Board shall waive this requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS or AOA approved specialty board within the past 10 years.

- (16) if applying on the basis of any other board-approved examination, submit a transcript showing a passing score;
- (17) submit a NPDB / HIPDB report, dated within 60 days of submission of the application;
- (18) submit a FSMB Board Action Data Report;
- (19) submit two completed fingerprint record cards supplied by the Board;
- (20) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (21) provide two original references from persons with no family or marital relationship to the applicant. These references must be:
  - (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
  - (B) on forms supplied by the Board;
  - (C) dated within six months of the submission of the application; and
  - (D) bearing the original signature of the writer.
- (22) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- (23) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(b) In addition to the requirements of Paragraph (a) of this Rule, the applicant shall submit proof that the applicant has:

- (1) within the past 10 years taken and passed either:
  - (A) an exam listed in G.S. 90-10.1 (a state board licensing examination; NBOME; USMLE; COMLEX; or MCCQE or their successors;
  - (B) SPEX (with a score of 75 or higher); or
  - (C) COMVEX (with a score of 75 or higher); or
- (2) within the past 10 years obtained certification or recertification or CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA; or
- (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or
- (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.

(c) All reports must be submitted directly to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent.

(e) An application must be completed within one year of submission. If not, the applicant shall be charged another

application fee, plus the cost of another criminal background check.

*History note: Authority G.S. 90-8.1; 90-9.1; 90-9.2; 90-13.1;*

*Eff. August 1, 2010.*

## **21 NCAC 32B .1350 REINSTATEMENT OF PHYSICIAN LICENSE**

(a) Reinstatement is for a physician who has held a North Carolina License, but whose license either has been inactive for more than one year, or whose license became inactive as a result of disciplinary action (revocation or suspension) taken by the Board. It also applies to a physician who has surrendered a license prior to charges being filed by the Board.

(b) All applicants for reinstatement shall:

- (1) submit a completed application, attesting under oath that information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (4) If a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, shall furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
  - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
  - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (5) submit reports from all state medical or osteopathic boards from which the applicant has ever held a medical or osteopathic license, indicating the status of the applicant's license and whether or not any action has been taken against the license;
- (6) submit the AMA Physician Profile; and, if applicant is an osteopathic physician, also submit the AOA Physician Profile;



- (7) submit a NPDB/HIPDB report dated within 60 days of the application's submission;
  - (8) submit a FSMB Board Action Data Bank report;
  - (9) submit documentation of CME obtained in the last three years;
  - (10) submit two completed fingerprint cards supplied by the Board;
  - (11) submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
  - (12) provide two original references from persons with no family or material relationship to the applicant. These references must be:
    - (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
    - (B) on forms supplied by the Board;
    - (C) dated within six months of submission of the application; and
    - (D) bearing the original signature of the author.
  - (13) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check;
  - (14) upon request, supply any additional information the Board deems necessary to evaluate the applicant's qualifications.
- (c) In addition to the requirements of Paragraph (b) of this Rule, the applicant shall submit proof that the applicant has:
- (1) within the past 10 years taken and passed either:
    - (A) an exam listed in G.S. 90-10.1 (a state board licensing examination; NBME; NBOME; USMLE; FLEX; COMLEX; or MCCQE or their successors);
    - (B) SPEX (with a score of 75 or higher); or
    - (C) COMVEX (with a score of 75 or higher); or
  - (2) within the past ten years obtained certification or recertification of CAQ by a speciality board recognized by the ABMS, CCFP, FRCP, FRCS or AOA; or
  - (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or
  - (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.
- (d) All reports must be submitted directly to the Board from the primary source, when possible.
- (e) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.
- (f) An application must be complete within one year of submission. If not, the applicant shall be charged another

application fee, plus the cost of another criminal background check.

*History Note: Authority G.S. 90-8.1; 90-9.1; 90-10.1; 90-13.1;*  
*Eff. August 1, 2010.*

## **21 NCAC 32B .1360 REACTIVATION OF PHYSICIAN LICENSE**

(a) Reactivation applies to a physician who has held a physician license in North Carolina, and whose license has been inactive for up to one year except as set out in Rule .1704(e) of this Subchapter. Reactivation is not available to a physician whose license became inactive either while under investigation by the Board or because of disciplinary action by the Board.

- (b) In order to reactivate a Physician License, an applicant shall:
- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
  - (2) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States; (Note: there may be some applicants who are not present in the US and who do not plan to practice physically in the US. Those applicants shall submit a statement to that effect);
  - (3) submit a FSMB Board Action Data Bank report;
  - (4) submit documentation of CME obtained in the last three years;
  - (5) submit two completed fingerprint record cards supplied by the Board;
  - (6) submit a signed consent form allowing search of local, state, and national files for any criminal record;
  - (7) pay to the Board the relevant, non-refundable fee, plus the cost of a criminal background check; and
  - (8) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.
- (c) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

*History Note: Authority G.S. 90-8.1; 90-9.1; 90-12.1A; 90-13.1; 90-14(a)(11a);*  
*Eff. August 1, 2010.*

**21 NCAC 32B .1401 SCOPE OF PRACTICE UNDER RESIDENT'S TRAINING LICENSE**

A physician holding a limited license to practice in a medical education and training program may practice only within the confines of that program and under the supervision of its director.

*History Note: Authority G.S. 90-12.01; Eff. August 1, 2010.*

**21 NCAC 32B .1402 APPLICATION FOR RESIDENT'S TRAINING LICENSE**

(a) In order to obtain a Resident's Training License, an applicant shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (4) submit a recent photograph, at least two inches by two inches, affixed to the Board's Medical Education Certification form. The dean or other official of the applicant's medical school shall certify this as a true likeness of the applicant, and that the applicant has completed at least 130 weeks of medical education. The applicant's date of graduation from medical school shall be written in the designated space, and the school seal shall be stamped over the photograph;
- (5) If the graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, shall furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
  - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
  - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;

- (6) submit an appointment letter from the program director of the GME program or his appointed agent verifying the applicant's appointment and commencement date;
- (7) provide two original references from persons with no family or martial relationship to the applicant. These references must be:
  - (A) from physicians who have observed the applicant's work in a clinical setting;
  - (B) on forms supplied by the Board;
  - (C) dated within six months of the application; and
  - (D) bearing the original signature of the writer;
- (8) submit two completed fingerprint record cards supplied by the Board;
- (9) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (10) pay a non-refundable fee pursuant to G.S. 90-13.1(b), plus the cost of a criminal background check;
- (11) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(b) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

*History Note: Authority G.S. 90-8.1; 90-12.01; 90-13.1; Eff. August 1, 2010.*

**21 NCAC 32B .1601 SCOPE OF PRACTICE UNDER SPECIAL PURPOSE LICENSE**

The Board may limit the physician's scope of practice under a Special Purpose License by geography, term, practice setting, and type of practice.

*History Note: Authority G.S. 90-12.2A; Eff. August 1, 2010.*

**21 NCAC 32B .1602 SPECIAL PURPOSE LICENSE – VISITING INSTRUCTOR**

(a) The Special Purpose License is for physicians who wish to come to North Carolina for a limited time, scope and purpose, such as to demonstrate a new technique, procedure or piece of equipment, or to educate physicians or medical students in an emerging disease or public health issue.

(b) In order to obtain a Special Purpose License, an applicant shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;

- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport.. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) comply with all requirements of G.S. 90-12.2A;
- (6) submit the Board's form, completed by the mentor, showing that the applicant has received an invitation from a medical school, medical practice, hospital, clinic or physician licensed in the state of North Carolina, outlining the need for the applicant to receive a special purpose license and describing the circumstances and timeline under which the applicant will practice medicine in North Carolina;
- (7) submit an AMA Physician Profile and, if applicant is an osteopathic physician, also submit AOA Physician Profile;
- (8) submit an FSMB Board Action Data Bank report;
- (9) submit two completed fingerprint record cards supplied by the Board;
- (10) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (11) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check;
- (12) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(c) All reports must be submitted directly to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of submission. If not, the applicant shall be charged another application fee, plus the cost of another criminal background check.

*History Note:* Authority G.S. 90-8.1; 90-9.1; 90-12.2A; 90-13.1;

*Eff. August 1, 2010.*

**21 NCAC 32B .1701 SCOPE OF PRACTICE UNDER MILITARY LIMITED VOLUNTEER LICENSE**

The holder of a Military Limited Volunteer License may practice medicine and surgery only at clinics that specialize in the treatment of indigent patients, and may not receive any compensation for services rendered, either direct or indirect, monetary, in-kind, or otherwise for the provision of medical services.

*History Note:* Authority G.S. 90-8.1; 90-12.1A;

*Eff. August 1, 2010.*

**21 NCAC 32B .1702 APPLICATION FOR MILITARY LIMITED VOLUNTEER LICENSE**

(a) The Military Limited Volunteer License is available to physicians working in the armed services or Veterans Administration who are not licensed in North Carolina, but who wish to volunteer at civilian indigent clinics.

(b) In order to obtain a Military Limited Volunteer License, an applicant shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) submit proof of an active license from a state medical or osteopathic board indicating the status of the license and whether or not any action has been taken against the license;
- (5) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport.. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (6) provide proof that the application is authorized to treat personnel enlisted in the United States armed services or veterans by submitting a letter signed by the applicant's commanding officer;
- (7) submit a FSMB Board Action Data Bank report;
- (8) submit two completed fingerprint record cards supplied by the Board;
- (9) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (10) pay a non-refundable fee to cover the cost of a criminal background check;
- (11) upon request, supply any additional information the Board deems necessary to

evaluate the applicant's competence and character.

(c) All reports must be submitted directly to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of the date of submission.

*History Note: Authority G.S. 90-8.1; 90-12.1A;  
Eff. August 1, 2010.*

**21 NCAC 32B .1703 SCOPE OF PRACTICE UNDER  
RETIRED LIMITED VOLUNTEER LICENSE**

The holder of a Retired Limited Volunteer License may practice medicine and surgery only at clinics that specialize in the treatment of indigent patients, and may not receive any compensation for services rendered, either direct or indirect, monetary, in-kind, or otherwise for the provision of medical services.

*History Note: Authority G.S. 90-8.1; 90-12.1A;  
Eff. August 1, 2010.*

**21 NCAC 32B .1704 APPLICATION FOR RETIRED  
LIMITED VOLUNTEER LICENSE**

(a) The Retired Limited Volunteer License is available to physicians who have been licensed in North Carolina or another state or jurisdiction, but who wish to volunteer at civilian indigent clinics.

(b) In order to obtain a Retired Limited Volunteer License, an applicant who holds an active license in another state or jurisdiction shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof of an active license from another state medical or osteopathic board indicating the status of the license and whether or not any action has been taken against it;
- (6) submit two completed fingerprint record cards supplied by the Board;

(7) submit a signed consent form allowing a search of local, state and national files for any criminal record;

(8) pay a non-refundable fee to cover the cost of a criminal background check;

(9) submit a FSMB Board Action Data Bank report;

(10) submit documentation of CME obtained in the last three years;

(11) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(12) All materials must be submitted to the Board from the primary source, when possible.

(c) An applicant who holds an active North Carolina physician license may convert that to a Retired Limited Volunteer License by completing the Board's form.

(d) An applicant who has been licensed in North Carolina but has been inactive less than six months may convert that to a Retired Limited Volunteer License by completing the Board's license renewal questions.

(e) An applicant who has been licensed in North Carolina but who has been inactive for more than six months but less than two years must use the reactivation process set forth in 21 NCAC 32B .1360. An applicant who does not have a North Carolina license, but has an inactive license to practice medicine and surgery in another state or jurisdiction, and who has been inactive for more than six months but less than two years must comply with the requirements for reactivation of physician license under 21 NCAC 32B .1360.

(f) A physician who has been inactive for more than two years will be required to complete a reentry program.

(g) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(h) An application must be completed within one year of the date of submission.

*History Note: Authority G.S. 90-8.1; 90-12.1A;  
Eff. August 1, 2010.*

**21 NCAC 32B .1705 LIMITED PHYSICIAN LICENSE  
FOR DISASTERS AND EMERGENCIES**

(a) The Board may, pursuant to G.S. 90-12.5, issue a Limited Physician License for Disasters and Emergencies whenever the Governor of the State of North Carolina has declared a disaster or states of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with state of emergency under G.S. 14-288.12, 14-288.13, or 14-288.14, or to protect the public health, safety or welfare of its citizens under Article 22 of Chapter 130A of the General Statutes, G.S. 160A-174(a) or G.S. 153A-12(a).

(b) In order to obtain a Limited Physician License for Disasters and Emergencies, an applicant shall:

- (1) provide government-issued photo identification;
- (2) provide proof of current licensure to practice medicine in another state or jurisdiction; and

- (3) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application.

(c) The Board may obtain any additional information it deems necessary to evaluate the applicant's competence and character.

(d) The Board may limit the physician's scope of practice as to geography; term; type of practice; and prescribing.

(e) A physician holding a Limited Physician License for Disasters and Emergencies shall not receive any compensation, either direct or indirect, monetary, in-kind, or otherwise for the provision of medical services.

*History Note: Authority G.S. 90-12.5;  
Eff. August 1, 2010.*

**21 NCAC 32B .2001 EXPEDITED APPLICATION  
FOR PHYSICIAN LICENSE**

(a) A specialty board-certified physician who has been licensed in at least one other state, the District of Columbia, U.S. territory or Canadian province for at least five years, has been in active clinical practice the past two years; and who has a clean license application, as defined in Paragraph (c) of this Rule may apply for a license on an expedited basis.

(b) An applicant for an expedited Physician License shall:

- (1) complete the Board's application form, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) on the Board's form, submit a photograph taken within the past year, at least two inches by two inches, certified as a true likeness of the applicant by a notary public;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport.. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;  
(Note: there may be some applicants who are not present in the U.S. and who do not plan to practice physically in the U.S. Those applicants shall submit a statement to that effect);
- (5) provide proof that applicant has held an active license to practice medicine in at least one other state, the District of Columbia, U.S. Territory or Canadian province for at least five years immediately preceding this application;
- (6) provide proof of clinical practice providing patient care for an average of 20 hours or more per week, for at least the last two years;

- (7) provide proof of certification or recertification by an ABMS, CCFP, FRCP, FRCS, or AOA approved specialty board within the past 10 years;
- (8) submit an AMA Physician Profile; and, if applicant is an osteopathic physician, submit an AOA Physician Profile;
- (9) submit a NPDB/HIPDB report dated within 60 days of the applicant's oath;
- (10) submit a FSMB Board Action Data Bank report;
- (11) submit two completed fingerprint record cards supplied by the Board;
- (12) submit a signed consent form allowing a search of local, state and national files to disclose any criminal record;
- (13) pay to the Board a non-refundable fee of three hundred fifty dollars (\$350.00), plus the cost of a criminal background check; and
- (14) upon request, supply any additional information the Board deems necessary to evaluate the applicant's qualifications.

(c) A clean license application means that the physician has none of the following:

- (1) professional liability insurance claim(s) or payment(s);
- (2) criminal record;
- (3) medical condition(s) which could affect the physician's ability to practice safely;
- (4) regulatory board complaint(s), investigation(s), or action(s) (including applicant's withdrawal of a license application);
- (5) adverse action taken by a health care institution;
- (6) investigation(s) or action(s) taken by a federal agency, the U.S. military, medical societies or associations;
- (7) suspension or expulsion from any school, including medical school.
- (8) graduation from any United States or Canadian medical school that is not LCME or CACMS approved; or
- (9) has passed no licensing examination other than Puerto Rico Written Examination/Revalida.

(d) All reports must be submitted directly to the Board from the primary source, when possible.

(e) The application process must be completed within one year of the date on which the application fee is paid. If not, the applicant shall be charged a new applicant fee.

*History Note: Authority G.S. 90-9.1; 90-5; 90-11; 90-13.1;  
Eff. August 1, 2010.*

**21 NCAC 32F .0106 WAIVER FOR LICENSEES  
SERVING ON ACTIVE DUTY IN THE ARMED  
SERVICES OF THE US**

The Board shall waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to the maintenance of licensure by an individual who is:

- (1) currently licensed by and in good standing with the Board;
- (2) serving in the armed forces of the United States or serving in support of such armed forces; and
- (3) serving in a combat zone, or serving with respect to a military contingency operation as defined by 10 U.S.C. 101(a)(13).

*History Note: Authority; G.S. 105-249.2; S.L. 2009-458; Section 7508 of the Internal Revenue Code; 10U.S.C. 101; Eff. August 1, 2010.*

**21 NCAC 32J .0101 APPLICATION FOR  
REINSTATEMENT  
21 NCAC 32J .0102 CONSIDERATION BY BOARD  
21 NCAC 32J .0103 HEARING UPON DENIAL**

*History Note: Authority G.S. 90-14;  
Eff. August 1, 1988;  
Amended Eff. September 1, 1995; May 1, 1989;  
Repealed Eff. August 1, 2010.*

**21 NCAC 32R .0105 WAIVER FOR LICENSEES  
SERVING ON ACTIVE DUTY IN THE ARMED  
SERVICES OF THE US**

The Board shall waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to the maintenance of licensure by an individual who is:

- (1) currently licensed by and in good standing with the Board;
- (2) serving in the armed forces of the United States or serving in support of such armed forces; and
- (3) serving in a combat zone, or serving with respect to a military contingency operation as defined by 10 U.S.C. 101(a)(13).

*History Note: Authority; G.S. 105-249.2; S. L. 2009-458; Section 7508 of the Internal Revenue Code; 10U.S.C. 101; Eff. August 1, 2010.*

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**CHAPTER 46 - BOARD OF PHARMACY**

**21 NCAC 46 .1614 SUSPENSION OF AUTHORITY  
TO EXPEND FUNDS**

In the event that the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses, registrations and permits and collect all fees set forth in G.S. 90-85.24, but all fees tendered shall be

placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

*History Note: Authority G.S. 90-85.6; 90-85.24;  
Eff. August 1, 2010.*

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**CHAPTER 62 – STATE BOARD OF ENVIRONMENTAL  
HEALTH SPECIALIST EXAMINERS**

**21 NCAC 62 .0404 INVESTIGATION OF  
COMPLAINTS DISCIPLINARY ACTION**

A complaint filed with the Board shall be handled as follows:

- (1) A complaint made to the Board shall be in writing.
- (2) The Chair shall appoint two board members to investigate a complaint which may lead to disciplinary action regarding a registered environmental health specialist or registered environmental health specialist intern. An investigation may also be performed by a person hired by the Board to conduct the investigation.
- (3) Disciplinary action taken by the Board may include:
  - (a) Suspension
  - (b) Revocation
- (4) A hearing conducted by the Board shall meet the provisions in Article 3A, G.S. 150B.

Tier 1	Tier 2	Tier 3	Tier 4
\$10,000	\$25,000	\$50,000	\$100,000

*History Note: Authority G.S. 90A-57; 90A-64;  
Eff. February 1, 1976;  
Readopted Eff. December 22, 1978;  
Amended Eff. August 1, 2010; April 1, 1989; February 1, 1983.*

**TITLE 23 –COMMUNITY COLLEGES**

**23 NCAC 02C .0503 DONATED OR LOANED  
PROPERTY**

- (a) A board of trustees may accept property donated to the college for any lawful educational purpose that is consistent with the mission and purpose of the community college system.
- (b) Prior to a board of trustees accepting any property that restricts the use of funds derived from the sale or lease of the property, the college shall submit to the System Office a copy of the document transferring the property for review.
- (c) Any funds derived from the sale or lease of property donated to a college for a specific educational purpose shall be used to accomplish that purpose.
- (d) A board of trustees may permit a private business enterprise that loans or donates instructional equipment to the college to

use the college's facilities to demonstrate the donated or loaned equipment to customers or potential customers of the private business enterprise provided that:

- (1) The board of trustees develop procedures to regulate the use of its facilities for this purpose;
- (2) The procedures must comply with G.S. 115D-15; and
- (3) The lender's or donor's use of the college facilities shall not interfere with the education of students.

*History Note: Authority G.S. 115D-5; 115D-15; 115D-20;  
Temporary Adoption Eff. October 21, 1998;  
Temporary Adoption Expired August 13, 1999;  
Eff. August 1, 2000;  
Amended Eff. August 1, 2010; May 1, 2006.*

**23 NCAC 02C .0506 SPECIAL PURCHASING DELEGATIONS**

(a) For the purposes of this Section, "purchasing delegation" means the maximum authorized dollar limits for purchases of commodities, printing, and services by community colleges.

(b) The State Board of Community Colleges shall not increase a community college's purchasing delegation in any calendar year without the concurrence of the Department of Administration, Division of Purchase and Contract. If the Department of Administration, Division of Purchase and Contract does not respond within 60 days of the State Board of Community Colleges notifying the Department of Administration, Division of Purchase and Contract of a college's request to increase its purchasing delegation, the State Board of Community Colleges may increase a community college's purchasing delegation consistent with Paragraph (d) of this Rule without the concurrence of the Department of Administration, Division of Purchase and Contract.

(c) The maximum purchasing delegation for a community college shall be no greater than one hundred thousand dollars (\$100,000).

(1) Tier Structure:

- (A) Each community college's purchasing delegation shall correspond to the following four-tiered structure:
- (B) Each college is placed on the tier that corresponds to its current delegation. A college may request an increase in delegation only to the next tier; and
- (C) If the State Board approves a college's request for an increase in delegation, the new delegation shall be effective for two years from the effective date of approval. If a college obtains an increased delegation and receives a negative compliance review from the Department of Administration, Division of Purchase and Contract or demonstrates problems managing the increased delegation during the two

year period, the State Board of Community Colleges, in consultation with the Department of Administration, may rescind the new delegation prior to two years depending on the severity of and the college's response to either a negative compliance review or demonstrated problems managing the increased delegation. A college may only request a delegation increase to the next tier after being at the current tier for two years.

(2) Required Documents. When requesting an increase in purchasing delegation, a college must submit the following hard copy items to the System Office's Business and Finance Division:

- (A) Original letter signed by the college President on college letterhead requesting the next tier delegation and the rationale for the request;
- (B) Request for Increase in Purchasing Delegation (Form 490);
- (C) College Internal Purchasing Manual with policy and procedures for all transaction types;
- (D) Copy of a bid posted on the North Carolina Interactive Purchasing System within the 12 months prior to the date the System Office's Business and Finance Division receives the college's requests to increase its purchasing delegation;
- (E) Copy of a posted E-Quote within the 12 months prior to the date System Office's Business and Finance Division receives the college's requests to increase its purchasing delegation;
- (F) Copy of a favorable compliance review report from the Department of Administration, Division of Purchase and Contract. The compliance review report must have been conducted within 12 months prior to the date the college requests an increase in purchasing delegation. If any findings are noted in the compliance review report, the college must provide documentation that the college has corrected all findings by the date the college requests an increase in purchasing delegation.

(d) Evaluation Process. The State Board, acting by and through the System Office's Business and Finance Division, will evaluate the following factors before submitting a recommendation to increase the purchasing delegation to the Department of Administration, Division of Purchase and Contract:

- (1) The college's overall capabilities including:
  - (A) Staff capacity to absorb additional volume and complexity;
  - (B) Experience and training of the procurement staff of the requesting college; and
  - (C) Frequency of procurement staff turnover;
- (2) Purchasing compliance reviews;
- (3) College internal purchasing procedures; and
- (4) Audit reports from the North Carolina Office of the State Auditor.

(e) If the State Board approves a college's request to increase its purchasing delegation, the approval will be effective on the first day of the month following the State Board's approval.

(f) If a college receives an unfavorable compliance review from the Department of Administration, Division of Purchase and Contract or an unfavorable audit from the North Carolina Office of the State Auditor with findings related to purchasing, the State Board may decrease the delegation amount depending upon the severity of and the college's response to an unfavorable audit with findings related to purchasing.

*History Note: Authority G.S. 115D-5; 115D-58.14(b); S.L. 2009-132, s. 1; Eff. August 1, 2010.*

## **TITLE 25 – OFFICE OF STATE PERSONNEL**

### **25 NCAC 01E .1601 PURPOSE**

A supervisor may approve Community Service Leave for employees as follows:

- (1) for parents for child involvement in the schools as defined in 21 NCAC 01E .1602;
- (2) for any employee to volunteer in the schools or in a Community Service Organization as defined in 21 NCAC 01E .1602;
- (3) for any employee to tutor or mentor in the schools as defined in 21 NCAC 01E .1602; or
- (4) for any employee to volunteer in a Public University, Community College or State agency as defined in 21 NCAC 01E .1602 provided that the service is outside of the employee's normal scope of duties and responsibilities and that the employee is not receiving any form of compensation for the services rendered.

*History Note: Authority G.S. 126-4; Eff. April 1, 2001; Amended Eff. August 1, 2010; October 1, 2004.*

### **25 NCAC 01E .1602 DEFINITIONS**

When used in this Section, these terms have the following meaning:

- (1) School - An elementary school, a middle school, a high school, or a child care program

that is authorized to operate under the laws of the State of North Carolina.

- (2) Public University - A constituent institution of the University of North Carolina.
- (3) Community College - An educational institution that is a member of the North Carolina Community College System.
- (4) State Agency - A State government agency that is authorized to operate under the laws of the State of North Carolina.
- (5) Child - A son or daughter who is a biological child, an adopted child, a foster child, a step-child, a legal ward, or a child of an employee standing in loco parentis.
- (6) Community Service Organization - A non-profit, non-partisan community organization which is designated as an IRS Code 501(c)(3) agency, or a human service organization licensed or accredited by the State of North Carolina to serve citizens with special needs including children, youth, and the elderly.

*History Note: Authority G.S. 126-4; Eff. April 1, 2001; Amended Eff. August 1, 2010.*

### **25 NCAC 01E .1604 USES OF COMMUNITY SERVICE LEAVE**

Community service leave may be used for:

- (1) meeting with a teacher or administrator concerning the employee's child;
- (2) attending any function sponsored by the school in which the employee's child is participating. This provision shall only be utilized in conjunction with nonathletic programs that are a part or supplement to the school's academic or artistic program;
- (3) donating time to perform school-approved volunteer work approved by a teacher, school administrator, or program administrator;
- (4) donating time to perform a service for a community service organization. It does not include attendance or participation in an event in which no service is performed;
- (5) performing volunteer work for a public university that is approved by a university administrator or other university official;
- (6) performing volunteer work for a community college that is approved by a community college administrator or other community college official; or
- (7) performing volunteer work for a State agency that is approved by the agency head or his/her designee.

*History Note: Authority G.S. 126-4; Eff. April 1, 2001; Amended Eff. August 1, 2010.*



**25 NCAC 01H .0632      APPLICANT INFORMATION  
AND APPLICATION**

(a) Applicants applying for a state vacancy shall complete and submit a State Application Form (Form PD-107 or its equivalent) to the hiring authority.

(b) In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) shall certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. The knowing and willful failure of a subject person to certify compliance with this Act when submitting an application for consideration, or to

falsely certify compliance, is grounds for dismissal from employment.

(c) Persons eligible for veteran's preference shall submit a DD Form 214, Certificate of Release or Discharge from Active Duty, with the application. The agency shall verify eligibility for veterans' preference.

*History Note:*      Authority G.S. 96-29; 126-4(4); 126-4(6);

*Eff. February 1, 2007;*

*Amended Eff. August 1, 2010; April 1, 2009.*

*This Section contains information for the meeting of the Rules Review Commission on Thursday, September 16, 2010 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jim R. 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**

September 16, 2010      October 21, 2010

November 18, 2010      December 16, 2010

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**AGENDA**

**RULES REVIEW COMMISSION**

**Thursday, September 16, 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. Structural Pest Control Committee – 02 NCAC 34 .0331, .1103 (Bryan)
  - B. Commission for Mental Health – 10A NCAC 27E .0301, .0302, .0303, .0304 (Bryan)
  - C. Board of Funeral Service – 21 NCAC 34B .0311 (DeLuca)
  - D. Board of Funeral Service – 21 NCAC 34D .0203 (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between July 21, 2010 and August 20, 2010
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Commission Business
  - Next meeting: October 21, 2010

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**Commission Review**

**Log of Permanent Rule Filings**

**July 21, 2010 through August 20, 2010**

**MEDICAL CARE COMMISSION**

The rules in Chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.5000); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); supplemental rules for hospitals providing living organ donation transplant services (.5500); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

Licensure Surveys  
Amend/\*

10A NCAC 13B .3106

The rules in Subchapter 13P concern emergency medical services and trauma including definitions (.0100); ems systems (.0200); specialty care transport programs (.0300); medical oversight (.0400); ems personnel (.0500); ems educational institutions (.0600); enforcement (.0700); trauma system definitions (.0800); trauma center standards and approval (.0900); trauma center designation enforcement (.1000); trauma system design (.1100); and recovery and rehabilitation of chemically dependent ems personnel (.1400).

Chemical Addiction or Abuse Treatment Program Requirements  
Adopt/\*

10A NCAC 13P .1401

Provisions for Participation in the Chemical Addiction of...  
Adopt/\*

10A NCAC 13P .1402

Conditions for Restricted Practice with Limited Privileges  
Adopt/\*

10A NCAC 13P .1403

Reinstatement of an Unencumbered EMS Credential  
Adopt/\*

10A NCAC 13P .1404

Failure to Complete the Chemical Addiction or Abuse Treat...  
Adopt/\*

10A NCAC 13P .1405

**HHS - HEALTH SERVICE REGULATION, DIVISION OF**

The rules in Chapter 14 are from the Director of the Division of Health Service Regulation.

The rules in Subchapter 14A concern rulemaking (.0100); contested cases (.0200); and hearings, transfers and discharges (.0300).

Declaratory Rulings  
Amend/\*

10A NCAC 14A .0103

**PUBLIC HEALTH, COMMISSION FOR**

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41C concern occupational health including general provisions (.0100); dusty trades program (.0200); industrial hygiene consultation program (.0300); occupational health nursing consultation program (.0400); asbestos hazard management program (.0600); occupational health surveillance (.0700); lead-based paint hazard management program (.0800); and lead-based paint hazard management program for renovation, repair and painting (.0900).

General  
Adopt/\*

10A NCAC 41C .0901

Certification of Individuals  
Adopt/\*

10A NCAC 41C .0902

Certification of Renovation Firms

10A NCAC 41C .0903

Adopt/*	
<u>Accreditation of Training Courses</u>	10A NCAC 41C .0904
Adopt/*	
<u>Accreditation of Training Providers</u>	10A NCAC 41C .0905
Adopt/*	
<u>Standards for Conducting Lead-Based Paint Renovation Acti...</u>	10A NCAC 41C .0906
Adopt/*	
<u>Standards for Records Retention, Information Distribution...</u>	10A NCAC 41C .0907
Adopt/*	

## **INSURANCE, DEPARTMENT OF**

The rules in Chapter 4 are from the Consumer Services Division including general provisions (.0100); market conduct examination section (.0200); life: accident and health (.0300); property and liability (.0400); and life insurance illustrations (.0500).

<u>Ethical Standards</u>	11 NCAC 04 .0423
Amend/*	

The rules in Chapter 6 are from the Agent Services Division.

The rules in Subchapter 6A cover general provisions (.0100); forms (.0200); examinations (.0300); licensing (.0400); license renewals and cancellations (.0500); license denials (.0600); precicensing education (.0700); continuing education (.0800); and public adjusters (.0900).

<u>General Information</u>	11 NCAC 06A .0201
Amend/*	
<u>Licenses</u>	11 NCAC 06A .0212
Amend/*	
<u>Resident Surplus Lines License Renewal</u>	11 NCAC 06A .0234
Repeal/*	
<u>Rental Car Company License Application</u>	11 NCAC 06A .0238
Repeal/*	
<u>Administration of Examination</u>	11 NCAC 06A .0305
Amend/*	
<u>Licensing of Resident Agent, LTD Representative and Adjuster</u>	11 NCAC 06A .0402
Amend/*	
<u>Licensing of Business Entities</u>	11 NCAC 06A .0413
Repeal/*	
<u>Fingerprints Required for Criminal Record Checks</u>	11 NCAC 06A .0418
Adopt/*	
<u>Renewal of Agent Appts: Licenses/Limited Reps: Company Ad...</u>	11 NCAC 06A .0501
Amend/*	
<u>Failure to Renew License</u>	11 NCAC 06A .0504
Amend/*	
<u>Termination of Appointments for Limited Reps and Company ...</u>	11 NCAC 06A .0505
Amend/*	
<u>Cancellation of Licenses Issued to Individuals</u>	11 NCAC 06A .0506
Amend/*	
<u>Licensee Requirements</u>	11 NCAC 06A .0802
Adopt/*	
<u>Sanctions for Noncompliance</u>	11 NCAC 06A .0811
Amend/*	
<u>Special Cases</u>	11 NCAC 06A .0812
Amend/*	

<u>Definitions</u>	11	NCAC 06A .0901
Repeal/*		
<u>Transactions with Insureds</u>	11	NCAC 06A .0902
Repeal/*		
<u>Relationships with Third Parties</u>	11	NCAC 06A .0903
Repeal/*		
<u>Regulatory Matters</u>	11	NCAC 06A .0904
Repeal/*		
<u>Catastrophic Disasters</u>	11	NCAC 06A .0905
Repeal/*		
<u>Fingerprints Required for Criminal Record Checks</u>	11	NCAC 06A .0906
Adopt/*		

## **HOME INSPECTOR LICENSURE BOARD**

The rules in Chapter 8 are the engineering and building codes including the approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); home inspector continuing education (.1300); Manufactured Housing Board continuing education (.1400); and alternate designs and construction appeals (.1500).

<u>Fee Schedule</u>	11	NCAC 08 .1011
Amend/*		
<u>General Limitations</u>	11	NCAC 08 .1104
Amend/*		
<u>Code of Ethics</u>	11	NCAC 08 .1116
Amend/*		
<u>Per Student Fee</u>	11	NCAC 08 .1332
Amend/*		

## **INSURANCE, DEPARTMENT OF**

The rules in Chapter 13 are from the Agent Services Division - Non-Insurance Entities including general provisions (.0100); insurance premium finance companies (.0300); motor clubs (.0400); and bail bondsmen and runners (.0500).

<u>Definitions</u>	11	NCAC 13 .0101
Repeal/*		
<u>Purpose of Division</u>	11	NCAC 13 .0102
Repeal/*		
<u>Deputy Commissioner</u>	11	NCAC 13 .0103
Repeal/*		
<u>Division Personnel</u>	11	NCAC 13 .0104
Repeal/*		
<u>Field Investigations: Examinations</u>	11	NCAC 13 .0105
Repeal/*		
<u>Renewal of Insurance Premium Finance License</u>	11	NCAC 13 .0304
Repeal/*		
<u>Quarterly Report</u>	11	NCAC 13 .0309
Repeal/*		
<u>Surety Bond</u>	11	NCAC 13 .0405
Amend/*		
<u>Collateral Security Required by Bondsmen</u>	11	NCAC 13 .0512
Amend/*		

<u>Alteration of Affidavit of Surety</u> Amend/*	11	NCAC 13	.0513
<u>Surety Bondsmen Licensing Procedures</u> Repeal/*	11	NCAC 13	.0516
<u>Fingerprints Required for Criminal Record Checks</u> Adopt/*	11	NCAC 13	.0519
<u>Prelicensing Education: Definitions for Bail Bond Prelice...</u> Adopt/*	11	NCAC 13	.0520
<u>Bail Bond Monthly Report</u> Adopt/*	11	NCAC 13	.0521
<u>Continuing Education Requirements</u> Adopt/*	11	NCAC 13	.0522
<u>Qualification for BCEC</u> Adopt/*	11	NCAC 13	.0523
<u>BCEC Extension of Time: Hardship</u> Adopt/*	11	NCAC 13	.0524
<u>Approval of BCEC Courses</u> Adopt/*	11	NCAC 13	.0526
<u>BCEC: Course Advertising</u> Adopt/*	11	NCAC 13	.0527
<u>Sanctions for NCEC Noncompliance by Licensees, Course Pro...</u> Adopt/*	11	NCAC 13	.0528
<u>Issuance of and Continuation BCEC of Provider Approval</u> Adopt/*	11	NCAC 13	.0530
<u>Examinations: Special Accommodations (Americans with Disa...</u> Adopt/*	11	NCAC 13	.0532
<u>Schedule of Examinations</u> Adopt/*	11	NCAC 13	.0533
<u>Certificate of Course Completion</u> Adopt/*	11	NCAC 13	.0534
<u>Examination Authorization Letter</u> Adopt/*	11	NCAC 13	.0535
<u>Responsibility of Applicant at Examination Site</u> Adopt/*	11	NCAC 13	.0536
<u>Administration of Examination</u> Adopt/*	11	NCAC 13	.0537
<u>Bail Bond Prelicensing Education Provider</u> Adopt/*	11	NCAC 13	.0539
<u>Bail Bond Prelicensing Education Courses</u> Adopt/*	11	NCAC 13	.0541
<u>Bail Bond Prelicensing Instructions</u> Adopt/*	11	NCAC 13	.0542

## **PRIVATE PROTECTIVE SERVICES BOARD**

The rules in Chapter 7 are from the 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).

<u>Renewal or Reissue of Licenses and Trainee Permits</u>	12	NCAC 07D .0203
Amend/*		
<u>Reports</u>	12	NCAC 07D .0404
Amend/*		
<u>Renewal or Reissue of Unarmed Security Guard Registration</u>	12	NCAC 07D .0706
Amend/*		
<u>Renewal of Armed Security Guard Firearm Registration Permit</u>	12	NCAC 07D .0806
Amend/*		
<u>Training Requirements for Armed Security Guards</u>	12	NCAC 07D .0807
Amend/*		
<u>Renewal of Firearms Trainer Certificate</u>	12	NCAC 07D .0904
Amend/*		
<u>Renewal of an Unarmed Guard Trainer Certificate</u>	12	NCAC 07D .0911
Amend/*		

## **ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF**

The rules in Chapter 28 are from the NC Aquariums and concern use of North Carolina Aquariums (.0100); scheduling activities for group use (.0200); unauthorized use of facilities, fees (.0300); firearms, fires, and smoking (.0400); conduct, alcoholic beverages, pets and proper dress (.0500); commercial activities, solicitations, etc. (.0600); and preservation of aquarium property (.0700).

<u>Sales of Alcohol or Controlled Substances</u>	15A	NCAC 28 .0502
Amend/*		

## **PHARMACY, BOARD OF**

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Office of the Board</u>	21	NCAC 46 .1204
Repeal/*		

## **ADMINISTRATIVE HEARINGS, OFFICE OF**

The rules in Chapter 3 are from the Hearings Division and cover procedure (.0100), mediated settlement conferences (.0200), and expedited hearing procedures for complex contested cases (.0300).

<u>General</u>	26	NCAC 03 .0101
Amend/*		
<u>Commencement of Contested Case: Notice and Filing Fee</u>	26	NCAC 03 .0103
Amend/*		
<u>Duties of the Administrative Law Judge</u>	26	NCAC 03 .0105
Amend/*		

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

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

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray	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>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)	09 ABC 5421	Brooks	04/19/10	
ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	Brooks	04/19/10	
ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market	09 ABC 5257	Brooks	04/19/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Lee Street)	09 ABC 5422	May	06/09/10	
ABC Commission v. Boulos 2, Inc., T/A Akron Texaco	10 ABC 0027	May	04/21/10	
ABC Commission v. Diversified Investments and Growth, LLC, T/A Petro Mart 6	10 ABC 0576	Webster	07/09/10	
ABC Commission v. Alpha 3 Enterprises LLC, T/A Liquid Room	10 ABC 2659	Lassiter	07/14/10	
ABC Commission v. Taqueria Guadalajara II, Inc, Jaime Fuentes Vice President	10 ABC 3107	Brooks	07/15/10	
<b><u>BOARD OF SOCIAL WORK CERTIFICATION AND LICENSURE</u></b>				
Miriam Deborah Kahn Sichel v. Social Work Certification and Licensure Board	10 BSW 2454	Overby	06/25/10	
<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>				
Tammy S. Barbone v. Crime Victims Compensation Comm.	08 CPS 2667	Brooks	07/16/10	
Christine G. Mroskey v. Crime Victims Compensation	09 CPS 0451	Gray	06/24/10	
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	Overby	03/31/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	Brooks	04/01/10	
Jose H. Geronimo Ramirez v. Victims and Justice Services	09 CPS 6454	May	06/23/10	
Benjamin C. Simmons III, Precision Custom Farming, LLC v. DMV	10 CPS 0419	Elkins	06/29/10	25:04 NCR 515
X&M Trucking, Xavier Artis v. Dept State Highway Patrol, DMV	10 CPS 0855	Lassiter	07/20/10	
AD Gustafson, Inc., Andrew Gustafson v. Secretary of Crime Control	10 CPS 2072	Gray	06/15/10	
McLain, LLC, Phillip McLain v. NC State Highway Patrol	10 CPS 2515	Brooks	07/02/10	
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/hearings/decisions/">http://www.ncoah.com/hearings/decisions/</a>				
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>				
C&W Alternative Family Living Facility, Inc., v. CenterPoint Human Services and DHHS	09 DHR 3377	Brooks	06/16/10	
Ward Drug Co. of Nashville Gary Glisson v. DHHS	09 DHR 3830	Webster	04/29/10	
Mekre Francis v. DHHS, Div. of Health Service Regulation	09 DHR 3935	Gray	05/27/10	
Kid Ventures Inc., d/b/a Health Park Child Development Center v. Div. of Child Development DHHS	09 DHR 4887	Overby	06/22/10	
Kimberly N. Carter (Davis) v. DHHS, Div. of Health Service Regulation	09 DHR 5133	Webster	08/03/10	
A+ Child Development Center LLC, v. DHHS, Division of Child Development	09 DHR 5443	May	04/27/10	
Gail N. Highsmith v. DHHS	09 DHR 5513	Brooks	05/13/10	
Sarah J. Bridges v. DHHS	09 DHR 5583	Brooks	05/27/10	



## CONTESTED CASE DECISIONS

June Rae Crittenden v. Health Care Registry Section, DHHS	09 DHR 6166	Overby	03/29/10
Kelvin Donelle Lewis v. Health Care Personnel Registry , Nurse Aide Registry	09 DHR 6196	Webster	04/05/10
Elizabeth Ann Holt v. DHHS, Division of Health Service Regulation	09 DHR 6347	Brooks	03/31/10
Estate of Nora L. Edwards, Wanda Harrington v. DHHS, Div. of Medical Assistance	09 DHR 6836	Overby	03/16/10
Teresa Dargan Williams v. DHHS, Division of Health Service Regulation	10 DHR 0246	Gray	05/21/10
Samuel and Nita Gaskin v. DHHS	10 DHR 0420	Overby	06/09/10
TLC Adult Group Home, Sonja Hazelwood v. DHHS, Div. of Health Service Regulation	10 DHR 0485	Lassiter	06/11/10
Tamekia Cain v. DHHS, Division of Health Service	10 DHR 0488	Gray	05/20/10
Elizabeth Locke v. DHHS, Div. of Health Service Regulation, Health Care Personnel Registry	10 DHR 0678	Webster	06/17/10
Cassandra Johnson v. Div. of Child Development, DHHS	10 DHR 0683	Brooks	06/29/10
Ryan Bonscot Shearin v. Walter B. Jones Alcohol & Drug Treatment Center	10 DHR 0957	Gray	08/02/10
Group Homes of Forsyth, Inc., Independence Group Home MHL #034-151 v. DHHS, Div. of Health Service Regulation	10 DHR 1165	May	07/16/10
Timothy S. Wilson v. DHHS	10 DHR 1252	Brooks	06/18/10
Felicia J. Stewart v. DHHS, Div. of Health Service Regulation	10 DHR 1348	Lassiter	06/21/10
Phillip D. Hollifield, Administrator of the Estate of Phillip W. Hollifield v. DHHS	10 DHR 1448	Brooks	06/16/10
Elizabeth House Blackwell v. DHHS, Div. of Health Service Regulation	10 DHR 1670	Overby	07/15/10
Patrice Michele Harris-Powell v. DHHS, Div. of Health Service Regulation	10 DHR 2067	Elkins	07/26/10
Community Helps Network, LLC v. Alamance-Caswell Local Management Entity f/k/a Alamance-Caswell MH/DD/SA	10 DHR 2660	Brooks	07/02/10
Michael Parks c/o Fresh Start Residential Services Inc v. Div. of Medical Assistance Program Integrity/BHRS	10 DHR 2661	Overby	07/21/10
Community Support Specialists, Annie Della Kenion v. Dept. of Mental Health, Substance Abuse and Development Disabilities, DHHS	10 DHR 3060	Overby	08/04/10
Positive Connection Community Services, Inc., DHHS	10 DHR 3128	Gray	07/30/10
Peggy's Home Health Care, Inc., DHHS	10 DHR 3309	Gray	07/30/10
Straight Walk Family Services, Inc., DHHS	10 DHR 3411	Gray	07/30/10

### DEPARTMENT OF JUSTICE

Tony Blaine Drake v. Criminal Justice Education and Training Standards Commission	09 DOJ 4151	Lassiter	04/14/10
Daniel Brannon Gray v. Sheriff's Education and Training Standards Commission	09 DOJ 4364	May	03/15/10
Phyllis Ann Johnson v. DOJ, Company Police Program	09 DOJ 5295	Elkins	05/03/10
Joseph Thomas DePrisco v. Criminal Justice Education and Training Standards Commission	09 DOJ 5354	Lassiter	06/01/10
Kenneth Maidene, Jr v. Sheriff's Education and Training Standards Commission	09 DOJ 5650	Overby	04/19/10
Dustin Matthew James v. Sheriffs' Education and Training Standards Commission	09 DOJ 6254	Gray	05/07/10
Phillip Daniel Griffin v. Sheriffs' Education and Training Standards Commission	10 DOJ 0156	Gray	07/21/10
Charles Lovelace Williams v. Sheriffs' Education and Training Standards Commission	10 DOJ 0066	Gray	05/26/10
Anthony Paul Britt v. Sheriffs' Education and Training Standards Commission	10 DOJ 0157	Gray	06/02/10
Wayne Keith Timmons v. Sheriffs' Education and Training Standards Commission	10 DOJ 0158	Gray	05/26/10
Jeffrey Edward Byrd v. Sheriffs' Education and Training Standards Commission	10 DOJ 0389	May	05/26/10
William Lee Walter v. Private Protective Services Board	10 DOJ 0528	Webster	04/22/10
Mark Mauldin v. Criminal Justice Education and Training Standards Commission	10 DOJ 0583	Gray	07/29/10
Steven Daniel Blue v. Private Protective Service Board	10 DOJ 1250	Webster	08/03/10
Brian Scott Bradshaw v. Alarm Systems Licensing Board	10 DOJ 1738	Webster	08/03/10

### DEPARTMENT OF STATE TREASURER

Michael L. Bost Sr., v. Retirement System	09 DST 3781	May	04/15/10
Jane C. Brocius v. State Treasurer Retirement System Division	09 DST 4066	Gray	03/25/10
Russell Ray Rouse v. DOT, Retirement Systems Division	10 DST 0068	Overby	07/21/10

### STATE BOARD OF EDUCATION

Benjamin Franklin Wyche Jr. v. State Board of Education	10 EDC 2449	Overby	07/20/10
Dionne B. Stafford Pursley v. State Board of Education	10 EDC 2685	Overby	07/21/10

### DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Windy Woods, LLC v. DENR, Division of Water Quality	09 EHR 4621	Gray	06/04/10
Bradford M. Kimzey v. DENR, Division of Environmental Health	10 EHR 0876	Overby	06/23/10

### DEPARTMENT OF INSURANCE

Tammy A. Lee v. Blue Cross Blue Shield of NC	09 INS 6817	Overby	05/03/10
Benton E. Miles, Jr., State Health Plan	10 INS 0720	Brooks	06/08/10

### OFFICE OF STATE PERSONNEL

Gwendolyn E. White v. DHHS, Department of Information Resource Management (DIRM) Privacy and Security Office	08 OSP 0991	Webster	06/14/10
Spencer Batchelor v. NCSU Campus Police	09 OSP 0059	Lassiter	03/29/10
Nedra T. Rollins v. NC State University	09 OSP 1536	Overby	06/07/10
Mekre Francis v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Murdoch Developmental Center	09 OSP 2813	Gray	05/27/10
Willie Hubbs v. Broughton Hospital	09 OSP 3326	Brooks	04/19/10
Pamela D. Shoffner v. Agricultural and Technical State University, Mr. Linc Butler, Assistant Vice Chancellor for Human Resources	09 OSP 4432	Brooks	05/19/10
Charolette Hope v. Cumberland County Department of Social Services	09 OSP 4436	Gray	04/15/10

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**CONTESTED CASE DECISIONS**

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Robert L. Hamm v. Department of Correction	09 OSP 5320	May	04/15/10	
Quintino Brooks v. NCCU	09 OSP 5567	Webster	04/28/10	25:03 NCR 379
Dwight Steven Murphy v. DHHS, Div. of Services for the Blind	09 OSP 5924	Webster	05/13/10	
LaCinda L. McKenzie v. O'Berry Center	09 OSP 6785	Lassiter	06/21/10	
Glenn Hodge v. DOT	10 OSP 0229	Lassiter	06/14/10	
Alvin L. Bess v. The County of Cumberland	10 OSP 2517	Overby	06/25/10	
John Anthony McDonald, II v. DHHS, Division of Information Resource Management	10 OSP 2786	Gray	06/24/10	
Cornelia G. Snow v. Wendy Godwin/Longleaf Neuro-Medical Treatment Center	10 OSP 2909	Lassiter	06/29/10	

**OFFICE OF SECRETARY OF STATE**

Jenny S. Thompson v. Department of SOS	09 SOS 2342	Lassiter	03/17/10	
James D. Harrison v. Notary Public Commission	10 SOS 1515	May	06/15/10	

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
09 EHR 4621

WINDY WOODS, LLC,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENT AND NATURAL  
RESOURCES, DIVISION OF WATER  
QUALITY,

Respondent.

DECISION

Filed  
2010 JUN -4 AM 8:51  
Office of  
Administrative Hearings

STATEMENT OF THE CASE

This case involves the appeal of a civil penalty assessment by Respondent Division of Water Quality of the North Carolina Department of Environment and Natural Resources ("Respondent" or "DWQ") against Petitioner Windy Woods, LLC (hereinafter, "Windy Woods" or "Petitioner") in the amount of \$20,512.55 for violations of 15A NCAC 2B .0231(a), 15A NCAC 2B .0231 (b)(1), 15A NCAC 2B.0231 (b)(5), 15A NCAC 2H .0501, and 15A NCAC 2H .0502.

On March 8, 2010, under Rule 56 of the North Carolina Rules of Civil Procedure and Rule .0115 of the Rules of the Office of Administrative Hearings, 26 NCAC 03.0115, the parties filed cross Motions for Summary Judgment. Petitioner filed its Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment ("Petitioner's Memo") on March 10, 2010. Respondent filed its Motion for Summary Judgment ("Respondent's Motion") on March 8, 2010. On March 22, 2010, Petitioner filed Petitioner's Opposition to Respondent's Motion for Summary Judgment and Respondent filed Respondent's Response to Petitioner's Motion for Summary Judgment. On March 29, 2010, Petitioner filed Petitioner's Reply Brief in Support of Its Motion for Summary Judgment and Respondent filed Respondent's Reply to Petitioner's Opposition to Respondent's Motion for Summary Judgment. On March 30, 2010, Respondent filed a substitute reply brief, without objection by Petitioner. On April 19, 2010, Petitioner filed a Further Affidavit of Stephen S. Powell and on May 3, 2010 Respondent filed a Further Affidavit of Chad Coburn.

On Wednesday, April 21, 2010 in Burgaw, North Carolina, the parties presented oral arguments on their respective motions for summary judgment before Administrative Law Judge Beecher R. Gray.

**APPEARANCES**

Gary K. Shipman  
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North Carolina Department of Justice  
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*Attorneys for Respondent*

**ISSUE**

Whether there is any genuine issue of material fact as to whether Respondent in assessing civil penalties against Petitioner on July 2, 2009 for violations of 15A NCAC 2B .0231(a), 15A NCAC 2B.0231 (b)(1), 15A NCAC 2B.0231(b)(5), 15A NCAC 2H.0501, and 15A NCAC 2H.0502 (1) exceeded its authority and jurisdiction, (2) acted erroneously, (3) failed to use proper procedure, (4) acted arbitrarily and capriciously, or (5) failed to act as required by law or rule. N.C.G.S. §150B-23(a).

**STIPULATIONS BY THE PARTIES**

1. Petitioner and Respondent are in agreement on several issues regarding DWQ's enforcement of North Carolina's wetlands standards and 401 certification requirements. Both parties agree that DWQ has the authority to enforce and assess civil penalties for wetland standard violations under 15A NCAC Section .0200 and for certification requirement violations under Section .0500 of the North Carolina Administrative Code. The parties also agree that the State wetlands standards and State 401 certification provisions are limited by their own terms and definitions contained therein. (See Petitioner's Opposition to Respondent's Motion for Summary Judgment, p. 2; Respondent's Motion for Summary Judgment, pp. 5-6).

2. Respondent and Petitioner further agree that, under 15A NCAC 2B.0202(71) the wetlands on Petitioner's property must constitute "waters of the United States" in order for DWQ to assess civil penalties against Petitioner for violations of 15A NCAC 2B .0231(a), 15A NCAC 2B .0231 (b)(1), 15A NCAC 2B.0231 (b)(5), 15A NCAC 2H .0501, and 15A NCAC 2H .0502.

**STATUTES AND RULES**

N.C. General Statutes §§ 143, 143B, and 150B  
N.C. Admin. Code, Title 15A, Chapter 2B  
N.C. Admin. Code, Title 15A, Chapter 2H

Federal Water Pollution Control Act, Sections 401 and 404, 33 U.S.C. §§ 1341, 1344  
Code of Federal Regulations, Title 33, Part 323 (33 CFR §§ 323, 328)  
Code of Federal Regulations, Title 40, Part 230

**AFFIDAVITS AND SUPPORTING MATERIALS SUBMITTED**

(By Petitioner)

1. Brunswick County tax records and parcel information for the Property (available at <http://gis.brunasco.net:8080/EGSV3BWK/RPResult.doc> and <http://gis.brunasco.net/website/brunswickrp2/mapframe.htm> )
2. 07/02/2009 letter from Respondent NCDENR, DWQ and attached Findings and Decisions and Assessment of Civil Penalties.
3. 04/08/2009 cease and desist letter from United States Army Corps of Engineers ("USACE") to Petitioner
4. Respondent's Responses to First Set of Interrogatories and Requests for Production of Documents and First Set of Requests for Admission with Attachment "A"
5. Respondent's Responses to Petitioner's Second Set of Interrogatories and Requests for Production of Documents with Attachment "B"
6. Respondent's Supplemental Documents Produced After 12/07/09.
7. Environmental Protection Agency and Department of Army Guidance Document – "Clean Water Act Jurisdiction following the U.S. Supreme Court's Decision in Rapanos v. United States and Carabell v. United States." United States Army Corps of Engineers, 12/2/08.
8. 1987 Corps of Engineers Wetlands Delineation Manual
9. Interim Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Atlantic and Gulf Coast Plain Region, October 2008.
10. Affidavit of Stephen S. Powell dated March 22, 2010 with following attached Exhibits:
  - A) 06/09/2009 Letter from Steve Powell to Kimberly Garvey, US Army Corps of Engineers
  - B) Local Soils Map with illustrations made by Steve Powell
  - C) Navigation Map [www.saw.usace.army.mil/nav](http://www.saw.usace.army.mil/nav)
  - D) Aerial Map of Windy Woods Property
  - E) Field Notes of Steve Powell
11. Supplemental Affidavit of Stephen S. Powell dated March 29, 2010 with following attached Exhibits:
  - A) Chad Coburn's Handwritten notes from 08/06/2009

12. Further Affidavit of Stephen S. Powell dated April 16, 2010 with following attached Exhibits:

A) Brunswick County Soil Survey Map w/ Steve Powell's colored annotations and highlighting

**AFFIDAVITS AND SUPPORTING MATERIALS SUBMITTED**  
**(By Respondent)**

1. Petitioner's Responses to Respondent North Carolina Department of Environment and Natural Resources, Division of Water Quality's First Requests for Admissions, First Set of Interrogatories, and First Request for Production of Documents
2. Petitioner's Supplemental Responses to Respondent's First Set of Interrogatories
3. Affidavit of Jennifer Frye, Wilmington Regulatory Field Office – USACE
4. Affidavit of Chad Coburn, Senior Environmental Specialist, DWQ, w/ Exhibits
5. Affidavit of Shelton Sullivan, Senior Environmental Specialist, DWQ
6. Affidavit of Jeff Phillips, Director of Engineering Services, Brunswick County
7. Affidavit of Frank Hewitt, lessee of Windy Woods property, w/ exhibits
8. Affidavit of Elrich Hickman, Mosquito Control Services, Brunswick County
9. Letter to USACE, dated December 31, 2009, provided by Petitioner's counsel
10. Report of Petitioner's consultant Steve Powell, emails and maps, provided by Petitioner through discovery

Based upon careful consideration of the parties' motions, memoranda, discovery responses, affidavits, oral argument of counsel, and the pleadings and proceedings in this matter, the undersigned sets out the following findings which, while not necessary under Rule 56 for determination of this matter, are stated for the sake of clarity for reviewing tribunals.

**FINDINGS OF FACT**

1. Petitioner Windy Woods, LLC is a North Carolina limited liability company.
2. Petitioner owns an approximately 92-acre tract of land located in Brunswick County, North Carolina, known by the Brunswick County tax parcel number 1860000903 and bordered by Highway NC 211 to the north, Smithtown Road SE to the west and Sunset Harbor Road to the east (hereinafter, the "Property").

3. Respondent is the State entity responsible for enforcing the State's environmental pollution laws, including rules for water quality standards and classifications for waters of the State.

4. The rules administered by Respondent are codified in Title 15A of the North Carolina Administrative Code, and the specific rules that have been allegedly violated by the Petitioner are those that deal with "Surface Water and Wetland Standards", contained in Subchapter 2B, and the "Procedures for Permits; Approvals", contained in Subchapter 2H.

5. Section 15A NCAC 2B .0231, entitled "Wetland Standards," provides for "water quality standards for all wetlands", with there being designated "standards...used to assure the maintenance or enhancement of the existing uses of wetlands..." 15A NCAC 2B .0231.

6. In particular, these wetland standards provide that "[l]iquids, fill or other solids or dissolved gases may not be present in amounts which may cause adverse impact on existing wetland uses. 15A NCAC 2B .0231(b)(1).

7. In addition, subsection .0231(b)(5) provides that "[h]ydrological conditions necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent adverse impacts on: . . . C. The chemical, nutrient, and dissolved oxygen regime of the wetland; D. The movement of aquatic fauna . . . and F. Water levels or elevations." 15A NCAC 2B .0231(b)(5).

8. Section 15A NCAC 2H .0501 applies to "all regulatory....determinations that affects...wetlands as defined by 15A NCAC 2B .0202. . ." and requires water quality certifications pursuant to Section 401 of the Federal Water Pollution Control Act (33 U.S.C. §1341) (hereinafter, "Clean Water Act" or "CWA") whenever construction or operation of facilities will result in a discharge into navigable waters as described in 33 CFR Part 323. The federal definition of navigable waters includes wetlands as defined at 33 CFR § 328.3 and 40 CFR § 230.3.

9. Specifically, this contested case arises from the July 2, 2009 assessment of civil penalties in the amount of \$20,512.55 by Respondent against Petitioner for certain violations of these wetland standards and certifications rules alleged to have been committed on the Property, as stated in Respondent's Findings and Decisions and Assessment of Civil Penalties, Case No. OP-2009-0005 (hereinafter, the "Civil Penalties Assessment").

10. The \$20,512.55 in civil penalties were comprised of the following:

- \$10,000 for violations of 15A NCAC 2B .0231 (a), (b)(1) and (b)(5) from unauthorized impacts to what Respondent characterizes as "wetlands" from the placement of earthen fill, the excavation of approximately 2712 linear feet of ditches; the side-casting of excavated material into "wetlands" and soil disturbance within the "wetlands;"
- \$10,000 for violations of 15A NCAC 2H .0501 and 15A NCAC 2H .0502 for the placement of earthen fill, the excavation of approximately 2712 linear feet of ditches, the side-casting of excavated material into "wetlands" without first

applying for and securing the issuance of a 401 Water Quality Certification required by Section 401 of the Federal Water Pollution Control Act; and

- \$512.55 for enforcement cost.

11. In order to establish a violation of 15A NCAC 2B .0231(b)(1) or (5) for unauthorized impacts to "wetlands" or a violation of 15A NCAC 2H .0501 and 15A NCAC 2H .0502 for impacting "wetlands" without first obtaining a 401 Water Quality Certification, the impacts must have occurred on "wetlands" as that term is defined in Title 15A of the North Carolina Administrative Code.

12. The term "wetlands" is defined in 15A NCAC 2B .0202(71) as follows:

"Wetlands are 'waters' as defined by G.S. 143-212(6) and are areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands classified as waters of the state are restricted to waters of the United States as defined by 33 CFR 328.3 and 40 CFR 230.3.

13. Thus, before Respondent could exercise jurisdiction so as to form the basis for its Civil Penalties Assessment, the infringing impacts on the Property must have occurred in "wetlands," i.e., in areas that (a) "are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions;" and (b) constitute "waters of the United States" as defined by 33 CFR 328.3 and 40 CFR 230.3, and applicable statutes and case law.

14. Under North Carolina law, the Office of Administrative Hearing's determination of whether Respondent "acted erroneously," (N.C.G.S. 150B-23(a)), in issuing penalties is "limited to the evidence presented or available to the agency" at the time that the decision which forms the basis of the contested case hearing was made. Britthaven, Inc. v. N.C. Dept. of Human Resources, 118 N.C.App. 379, 382, 455 S.E.2d 455 (1995); National Wildlife Federation v. Hanson, 623 F.Supp. 1539, 1544-45 (E.D.N.C., 1985).

15. Here, Respondent's decision to issue civil penalties was made on July 2, 2009—when Respondent issued its Civil Penalties Assessment. The OAH's review is thus limited to the evidence presented or available to Respondent as of this date.

16. The OAH must view critically any "post hoc rationalizations" by Respondent made after its July 2, 2009 decision. Hanson, 623 F.Supp. at 1545.

17. There was no evidence presented or available to Respondent as of July 2, 2009 that the alleged impacts were occurring in wetlands – that is, in areas that constitute "waters of the United States."

18. Petitioner does not dispute that it is the responsibility of the U.S. Army Corps of Engineers (hereinafter, the "USACE") to determine whether particular waters are "waters of the



United States.”

19. The jurisdictional scope of “waters of the United States” as defined by 33 CFR 328.3 and 40 CFR 230.3 was limited and clarified in 2006 by the United States Supreme Court, in its decision of Carabell v. United States and Rapanos v. United States, 547 U.S. 715 (2006) (hereinafter, “Rapanos”).

20. In Rapanos, the Supreme Court addressed where the Federal government can apply the Clean Water Act, specifically by determining whether a wetland or tributary is a “water of the United States.” The justices issued five separate opinions in Rapanos (one plurality opinion, two concurring opinions, and two dissenting opinions), with no single opinion commanding a majority of the Court.

21. Four justices in the plurality opinion, authored by Justice Scalia, interpreted “waters of the United States” as including “relatively permanent, standing or continuously flowing bodies of water” that are connected to traditional navigable waters, as well as wetlands with a continuous surface connection with such water bodies. Rapanos v. U.S., 547 U.S. at 742.

22. Justice Kennedy in his concurrence interpreted “waters of the United States” to encompass wetlands that possess a ‘significant nexus to waters that are or were navigable in fact or could reasonably be so made’. Accordingly, Justice Kennedy opined that wetlands possess the requisite nexus, and thus come within the statutory phrase ‘navigable waters’ if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’ When, in contrast, wetlands effects on water quality are speculative or insubstantial, they fall outside the zone fairly encompassed by the statutory term ‘navigable waters.’” Id. at 780.

23. Justice Kennedy further opined that “[w]hen the Corps seeks to regulate wetlands adjacent to navigable-in-fact waters, it may rely on adjacency to establish its jurisdiction. Absent more specific regulations, however, the Corps must establish a significant nexus on a case-by-case basis when it seeks to regulate wetlands based on adjacency to nonnavigable tributaries.” Id. at 782.

24. Justice Kennedy reasoned that “[g]iven the potential overbreadth of the Corps’ regulations, this showing is necessary to avoid unreasonable applications of the statute. Where an adequate nexus is established for a particular wetland, it may be permissible, as a matter of administrative convenience or necessity, to presume covered status for other comparable wetlands in the region.” Id.

25. When there is no majority opinion in a Supreme Court case, controlling legal principles may be derived from those principles espoused by five or more justices. Marks v. United States, 430 U.S. 118, 97 S.Ct. 990 (1977).

26. In Rapanos, the four justices in the plurality opinion and Justice Kennedy agreed that to establish that certain wetlands adjacent to tributaries/channels come within the jurisdiction of the CWA requires two findings:

First, that the adjacent channel contains a “wate[r] of the United States,” (*i.e.*, a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the “water” ends and the “wetland” begins.” Rapanos, 547

U.S. at 742.

27. Subsequent to Rapanos, the EPA and Department of the Army (DA) published several memoranda and guidebooks recognizing the significant limitations placed upon their jurisdiction by the Supreme Court. The purpose of these guidance documents was to instruct EPA regions, USACE districts and agents in the field to ensure jurisdictional determinations, permitting actions, and other relevant actions were consistent with Rapanos and supported by the administrative record.

28. In particular, on or about June 5, 2007, the EPA and USACE published a memorandum entitled, "Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos vs. United States and Carabell v. United States," (hereinafter "June 2007 Rapanos Guidance").

29. Concurrently with the June 2007 Rapanos Guidance, the USACE also issued an instructional manual to its field agents entitled, "U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook," (hereinafter, "Instructional Guidebook.")

30. On December 2, 2008, after receiving numerous public comments on the June 2007 Rapanos Guidance and based on agencies' experience in implementing Rapanos, the EPA and USACE published a revised guidance memorandum (hereinafter "December 2008 Rapanos Guidance").

31. One of the key differences between the June 2007 and December 2008 Guidances that is important in the instant case is that the December 2008 Guidance changed how to assess flow in tributaries for purposes of determining whether that tributary is relatively permanent. See "Questions and Answers Regarding the Revised Rapanos & Carabell Guidance, (EPA/DA December 2, 2008) at p. 1-2. In particular, the December 2008 Guidance instructed agents that where the downstream limit is not representative of the stream reach as a whole, the flow regime that best characterizes the reach should be used.

32. These guidance documents set forth different categories of water bodies, under the agencies' interpretation of Rapanos, and how to determine whether the agencies could assert jurisdiction over such water bodies as constituting "water of the United States" under the Clean Water Act.

33. Under the guidance documents, the USACE (and therefore, Respondent) could assert jurisdiction over the following waters (without the need for a significant nexus determination):

- Traditional navigable waters
- Wetlands adjacent to traditional navigable waters
- Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year round or have continuous flow at least seasonally (e.g. typically three months)
- Wetlands that directly abut such tributaries.

December 2008 Rapanos Guidance, at p. 1, implementing Rapanos, 547 U.S. at 742-782.

34. For the following waters, the USACE would need to decide jurisdiction based on a fact-specific analysis to determine whether they have a significant nexus with a traditional

navigable water:

- Non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary

Id.

35. The agencies will apply the significant nexus standard as follows:

- A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters
- Significant nexus includes consideration of hydrologic and ecologic factors

Id. at Rapanos, 547 U.S. at 780.

36. In the instant case, Respondent contends that because the purported wetlands on the Property are “directly abutting” a relatively permanent water, there was no need for the USACE (or Respondent) to perform a significant nexus determination. Respondent’s Reply, at p. 24.

37. However, the undisputed facts show that nowhere does the USACE claim that its assertion of jurisdiction falls under the category of wetlands that “directly abut” non-navigable tributaries of TNWs. Rather, the USACE has only claimed (and repeatedly so) that the purported wetlands on the Property were “adjacent to” non-navigable tributaries of TNWs. See Frye Affidavit discussing March 11, 2009 visit; USACE’s Cease and desist letter (Ex. 3 to Petitioner’s Memorandum in Support of Motion for Summary Judgment (“Petitioner’s Memo”).

38. In particular, Respondent presented the Affidavit of Jennifer Frye of the USACE, in which Ms. Frye states that on March 11, 2009, the USACE opened an investigation on the Property concerning unauthorized discharge into waters of the United States, “specifically wetlands adjacent to an unnamed tributary to Mill Creek.” Frye Affidavit, at p. 2, ¶ 1.

39. Ms. Frye also states that following this site visit, she and Ms. Garvey “discussed her findings and based on her notes and documentation to the file (topographical maps; soil survey data, aerial photography),<sup>1</sup> the USACE determined that the subject wetlands are adjacent to tributaries of a waterbody (Mill Creek) . . . Pursuant to 33 CFR 328.3, these wetlands, by definition, are waters of the United States.” Frye Affidavit, at p. 2, ¶ 2.

40. Furthermore, in the April 8, 2009 cease and desist letter, the USACE states that it had received information regarding an unauthorized discharge into “waters of the United States, including wetlands adjacent to an unnamed tributary to Mill Creek, located . . . on Parcel No. 1860000903 in Brunswick County. . . .” USACE’s Cease and desist letter (Ex. 3 to Petitioner’s Memorandum).

<sup>1</sup> Although Petitioner requested such documentation in discovery, Respondent did not produce any topographical maps, soil survey data, aerial photography of the Property or any other documentation from the USACE.

41. Under Rapanos and the implementing guidance documents, wetlands that are adjacent to but that do not directly abut a relatively permanent tributary require a fact-specific significant nexus determination. Rapanos at 782; December 2008 Guidance, p. 1.

42. The undisputed facts show no evidence that the USACE (or Respondent) as of July 2, 2009 had performed a significant nexus determination. For example, there is no data or documentation of the flow characteristics (e.g., volume, duration or frequency of the flow) and functions of the tributary or of chemical and biological characteristics of the purported adjacent wetlands to demonstrate its functions, or of hydrologic and ecologic factors.

43. In any event, even assuming that Respondent meant that the USACE had asserted jurisdiction over the purported wetlands on the Property under the category of wetlands that “directly abut” (rather than are adjacent to) non-navigable tributaries of TNWs, Respondent presented no evidence that in making such a determination the USACE evaluated the relative permanence of the tributary—i.e., whether the tributary typically flows year-round or has continuous flow at least seasonally (e.g., typically three months)—a requirement for jurisdiction under Rapanos.

44. In particular, Respondent points to two jurisdictional determinations made by the USACE that were available to Respondent as of July 2, 2009 when Respondent issued its civil penalties: (1) A purported jurisdictional determination made by USACE on April 8, 2009 in its cease and desist letter that was based on a March 11, 2009 visit to the Property (the 92-acre site) by the USACE; and (2) a July 11, 2008 JD for the separate and distinct 23.8-acre parcel (hereinafter, “23-acre Parcel”).<sup>2</sup>

45. As to the April 8, 2009 cease and desist letter that contained a purported jurisdictional determination (JD) by the USACE regarding the Property (the 92-Acre site), Respondent presents the following evidence:

a. On March 11, 2009, Kim Garvey of the USACE and Stacie Craddock of the EPA conducted a site visit on the Property. According to the April 8, 2009 Cease and Desist letter, Ms. Garvey noted recent soil-discing activities and equipment as well as the excavation of perimeter and interior ditches with associated sidecast material within wetlands. During this visit, Ms. Garvey confirmed that these wetlands are subject to the permit requirements of Section 404 of the Clean Water Act, and noted the presence of unauthorized fill into approximately 12 acres of these wetlands. April 8, 2009 Cease and Desist letter (Ex. 3 to Petitioner’s Memo).

b. According to Ms. Frye, after the March 11, 2009 site visit, Kim Garvey discussed her field notes with Jennifer Frye, and based on Ms. Garvey’s March 11, 2009 field notes and file documentation (topographical maps, soil survey data and aerial photography)<sup>3</sup> “the USACE determined that the subject wetlands are adjacent to tributaries of a water body (Mill Creek) that is currently used in interstate and foreign commerce and susceptible to the ebb and flow of the tide; also known as a Navigable Water of the U.S.”

c. Based on the March 11, 2009 visit, on April 8, 2009, the USACE issued a

<sup>2</sup> Although the Respondent was requested in discovery to explain and produce documentation of all the information it had available to it as of July 2, 2009 in making a determination that there were wetlands on the Property, Respondent made no mention of this prior JD, nor did it produce the documentation until January 2010 after this case was called for trial.

<sup>3</sup> Again, although these USACE materials were requested, none have been produced by Respondent either in discovery or attached to its motion papers.

cease and desist letter for the unauthorized activities on the properties, stating it had “received information regarding an unauthorized discharge of dredged and/or fill material into waters of the United States, including wetlands adjacent to an unnamed tributary to Mill Creek, located along the intersection of Highway 211 and Sunset Harbor Road on Parcel number 1860000903.”

d. A “cease and desist” letter is not enforceable; is not a final agency determination; constitutes nothing more than a preliminary opinion, and someone receiving it is free to ignore it. (*Fairbanks North Star Borough v. U.S. Army Corps of Engineers*, 543 F.3d 586 (9<sup>th</sup> Cir. 2008)).

e. There is nothing in the evidence submitted by Respondent that, either on March 11, 2009, April 8, 2009, or at any time, the USACE evaluated the relative permanence of these tributaries of Mill Creek by showing that such tributary “typically flow[s] year round or has continuous flow at least seasonally (e.g., typically three months)” as required by *Rapanos* and the implementing guidance. For example, there is no data indicating where flow of the tributary was measured, no map indicating where the tributary is located, no measurements or photographs indicating flow.

f. In addition, there is nothing in the evidence submitted by Respondent of any data, documentation, or rationale supporting Kim Garvey’s March 11, 2009 finding that the subject wetlands are adjacent to an “unnamed tributary of Mill Creek.” Respondent has not produced any photos or maps from USACE indicating where the subject wetlands on the Property are in relation to the unnamed tributary.

46. As to the July 11, 2008 jurisdictional determination, Respondent now<sup>4</sup> contends that a JD made on an entirely separate 23.8-acre site owned by Petitioner located south of the Property - which included a statement that the 23.8-acre site is “adjacent to an unnamed tributary to Mill Creek,” and that Mill Creek is a “navigable Water of the U.S.” - somehow establishes that the purported wetlands at issue on this Property (the 92-acre parcel) are adjacent to/abutting an unnamed tributary of a traditional navigable water and that such tributary is relatively permanent.

a. The basis for determination for this July 11, 2008 JD as stated in the “Notification of Jurisdictional Determination” is as follows:

This site exhibits wetland criteria as described in the 1987 Corps Wetland Delineation Manual and is adjacent to an unnamed tributary to Mill Creek, which flows into Mill Creek, a Navigable Water of the U.S. This determination is based on information submitted by Dial Cordy & Associates, Inc. and a site visit by Emily Burton on February 2, 2008.<sup>5</sup>

b. The July 11, 2008 JD attaches a map of the 23-acre site indicating the locations of two “jurisdictional ditches.” (Ex. 4 to Coburn affidavit)

<sup>4</sup> This rationale was not provided in response to Petitioner’s discovery requests in this matter, suggesting that this information was not before the Respondent when it issued its July 2, 2009 civil penalties. The OAH should view such *post-hoc* rationalization with a critical eye. *Hanson*, supra at 1545-46.

<sup>5</sup> See Exhibit 4 to Coburn Affidavit, at p 2

c. Respondent contends that the “unnamed tributary to Mill Creek” mentioned in the 23-acre JD and indicated as a “jurisdictional ditch” on the attached JD map is the same as the north-south ditch that traverses the 92-acre Parcel.

d. In the documentation submitted by Respondent regarding the July 11, 2008 JD, there is nothing about what Ms. Burton did during her February 2, 2008 visit to the 23-acre parcel, much less any documentation to support a determination that the “unnamed tributary to Mill Creek” was a relatively permanent water, i.e., that such tributary “typically flow[s] year round or has continuous flow at least seasonally (e.g., typically three months).”

e. Likewise, the information submitted by Dial Cordy (provided on a pre-Rapanos form dated 11/1/2005) does not involve evaluating the tributary to determine whether it is relatively permanent, i.e., by determining that it had continuous flow at least three months of the year.

f. Instead, Respondent presents the following evidence related to the July 11, 2008 JD: According to Jennifer Frye’s March 8, 2010 affidavit, she and Emily Burton conducted a meeting on February 5, 2008 at the 23-acre Parcel with the project engineer from Coastal Site Design and a representative of Dial Cordy & Associates. The meeting was held to evaluate Dial Cordy’s delineation of waters of the United States and to discuss the proposed project. There is no mention of discussing the relative permanence of the tributary.

g. For example, there is nothing in the evidence submitted by Respondent regarding the July 11, 2008 JD of any data, documentation or rationale given by Ms. Burton, anyone else at USACE, or Respondent to support “flow,” such as flow/gauge data, rainfall data or anecdotal information, in the “unnamed tributary to Mill Creek” on the 23-acre Parcel which is needed to establish the presence of a relatively permanent water.

47. The information available to Respondent as a result of Respondent’s direct efforts to determine whether the affected areas on the Property constitute jurisdictional wetlands is similarly lacking.

48. Respondent presents the following evidence available to it as of July 2, 2009 related to its direct efforts to determine whether the affected areas on the Property constitute jurisdictional wetlands:

a. On February 26, 2009, April 23, 2009 and May 7, 2009 members of the staff of DWQ conducted site visits and observed unauthorized impacts to what DWQ characterizes as “wetlands” as the result of “placement of earthen fill, the excavation of approximately 2712 linear feet of ditches, the side-casting of excavated material into wetlands and soil disturbance within the wetlands.”

b. In particular, on February 26, 2009, Chad Coburn, a Senior Environmental Specialist at DWQ, inspected the Property. Workers from Sitework Solutions of Wilmington, LLC, were using mechanized equipment to remove soil and transport fill material from the east side to the west side of the Property. Mr. Coburn claims to have seen the workers deposit spoil material in a wetland at the corner of Highway 211 and Smithtown Road. Mr. Coburn took augur samples and observed the presence of three wetland indicators, as outlined in the USACE’s 1987 Wetland Delineation Manual: hydric soils, wetland hydrology and hydrophytic vegetation. Mr.



Coburn noted ponding of surface water in some areas, and stated that the site was actively draining southerly through a system of ditches. Mr. Coburn also took some photographs of the ditches on the Property.

c. On April 23, 2009, Chad Coburn visited the Windy Woods Property to determine whether the site had been brought into compliance. One plug was installed in one of the ditches; however, the plug was improperly installed and water was actively draining from the site. Mr. Coburn observed water flowing off of the property through ditches into an unnamed tributary to Mill Creek. Respondent's Responses to 1<sup>st</sup> Set of Interrogatories, Nos. 3 and 5 (Ex. 4 to Petitioner's Memo).

d. On May 7, 2009, Chad Coburn and Shelton Sullivan, Senior Environmental Specialist of DWQ's Central Office in Raleigh, conducted a site visit on the Windy Woods Property. During this inspection, DWQ noted that additional fill had been placed in wetlands despite having instructed the contractors on site to stop the filling activities on February 26, 2009. Mr. Coburn and Mr. Sullivan measured the excavated ditches which were 2712 linear feet. Additional photographs and auger samples were taken to show the presence of three wetland indicators: hydric soils, wetland hydrology and hydrophytic vegetation. (Coburn's Affidavit)

49. There is nothing in the evidence available to Respondent as of July 2, 2009 of any data or rationale given by Mr. Coburn, anyone else at DWQ, or anyone at USACE to establish that the "unnamed tributary to Mill Creek" was relatively permanent in that it typically flow[s] year round or has continuous flow at least seasonally (e.g., typically three months)." There is no data evaluating the flow of the tributary or indicating where such flow was measured to establish a "flow regime that best characterizes the entire tributary," as required by the December 2, 2008 Rapanos Guidance. For example, there is no map or data of the location of the full tributary to the TNW; the average width, depth or side slopes; the number, volume, and duration of flow events, etc. See Instructional Guidebook, at Appendix B (Ex. B to Coburn's Further Affidavit.).

50. Under Rapanos, the USACE generally will not assert jurisdiction over:

- Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent or short duration flow; and
- Ditches (including roadside ditches) excavated wholly in and draining uplands that do not carry a relatively permanent flow of water.

December 2008 Rapanos Guidance, at p. 1 implementing Rapanos, 547 U.S. at 722, 780.

### CONCLUSIONS OF LAW

1. All parties properly are before the Office of Administrative Hearings, and the Office of Administrative Hearings has jurisdiction over the parties.

2. Petitioner has plead facts sufficient to meet its burden of pleading, under N.C. Gen Statute § 150B-23, that the agency named as the Respondent has "deprived the Petitioner of property, has ordered the Petitioner to pay a fine or civil penalty, or otherwise has substantially

prejudiced the Petitioner's rights," since Respondent has ordered Petitioner to pay a civil penalty - namely, \$20,512.55 - for purported violations of the wetland standards codified under 15A NCAC 2B .0231(b)(1) and (5), and the water quality certification rules codified under 15A NCAC 2H .0501 and 15A NCAC 2H .0502.

3. It is Respondent's burden to prove, by the greater weight of the evidence, that Petitioner violated the statute for which it assessed civil penalties—namely, 15A NCAC 2B .0231(b)(1) and (5) and 15A NCAC 2H .0501 and 15A NCAC 2H .0502. Holly Ridge Associates, LLC v. North Carolina Dept. of Environment and Natural Resources, 361 N.C. 531, 539, 648 S.E.2d 830, 836 (2007); see also Town of Wallace v. North Carolina Dept. of Environment and Natural Resources, 160 N.C. App. 49, 55-56, 584 S.E.2d 809, 814-15 (2003).

4. In the instant case, the undisputed facts show that as of July 2, 2009, Respondent had not determined whether the alleged wetlands located on the Property of Petitioner constituted "waters of the United States", a jurisdictional prerequisite to the authority of Respondent to assess civil penalties, at least under the pertinent provisions of 15A NCAC 2B .0202(71) and as the term has been limited by the Supreme Court in Rapanos.

5. Instead, Respondent contends that it relied upon the USACE who allegedly confirmed the presence of wetlands under the jurisdiction of Section 404 of the Clean Water Act in its April 8, 2009 cease and desist letter.

6. Because the April 8, 2009 cease and desist letter from the USACE to Petitioner is merely the agency's preliminary opinion and does not constitute a final agency decision, any reliance by Respondent on the letter or its contents was arbitrary and capricious.

7. Putting aside whether Respondent was entitled to rely on the letter, the undisputed facts show that there is no evidence from USACE's March 11, 2009 visit, its purported April 8, 2009 determination, or any information provided by USACE prior to July 2, 2009 that USACE ever claimed to assert jurisdiction over the purported wetlands on the Property as wetlands that "directly abut" non-navigable tributaries of traditionally navigable waters.

8. Rather, the USACE only claimed to have asserted jurisdiction over the purported wetlands as wetlands that are "adjacent to", but that do not directly abut, a non-navigable tributary. As such, under Rapanos, the USACE was required to make a fact-specific significant-nexus determination. There is no evidence indicating the USACE did so.

9. In addition, the undisputed facts show that the USACE never determined whether the "unnamed tributary" on the Property was relatively permanent—i.e., that it typically flows year-round or has continuous flow at least seasonally (e.g., typically three months), as required by Rapanos and the implementing guidance.

10. The USACE's July 11, 2008 JD regarding the 23.8-acre site is of no consequence, since that JD involved a different claim than the one at issue in this case. Even assuming that the "unnamed tributary to Mill Creek" mentioned in the 23-acre JD and indicated as a "jurisdictional ditch" on the attached JD map is the same as the north-south ditch that traverses the 92-acre Parcel, it is clear that the July 11, 2008 JD did not establish that the tributary was relatively permanent, as required under Rapanos.



11. Noticeably absent from the record in this case is any data, field notes, or other materials from the USACE or Respondent that would support a determination that the ditches where the activities for which Petitioner was assessed civil penalties constitute "waters of the United States."

12. With no evidence indicating that either the USACE or Respondent performed a significant nexus evaluation, there is no evidence to support USACE's having made a determination that the Property contained "waters of the United States."

13. The relevant portions of the Property that are the subject matter of the Civil Penalties Assessments do not constitute "wetlands" under the jurisdiction of Section 404 of the Clean Water Act and as defined in 15A NCAC 02B.0202(71).

14. Thus, the dredging and filling activities of Petitioner did not constitute violations of 15A NCAC 2B .0231 (a), (b)(1) and (b)(5).

15. Likewise, Petitioner was not required to secure the issuance of a 401 Water Quality Certification required by 15A NCAC 2H .0501 and 15A NCAC 2H .0502.

16. The Findings of Fact and Conclusions of Law contained in the Civil Penalties Assessment are not supported by competent evidence in the record.

17. Therefore, Respondent, in its issuance of the civil penalties against Petitioner on July 2, 2009 (a) exceeded its authority and jurisdiction, (b) acted erroneously, (c) failed to use proper procedure, and (d) acted arbitrarily and capriciously. N.C.G.S. §150B-23(a).

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that there is no genuine issue of any material fact that on July 2, 2009 in assessing civil penalties against Petitioner for violations of 15A NCAC 2B .0231 (a), (b)(1) and (b)(5), and 15A NCAC 2H .0501 and 0502, Respondent exceeded its authority and jurisdiction, acted erroneously, and acted arbitrarily and capriciously and Petitioner is entitled to summary judgment as a matter of law. Petitioner's Motion for Summary Judgment is GRANTED and Respondent's Motion Summary Judgment is DENIED. Therefore, the undersigned makes the following:

#### DECISION

Respondent's decision assessing civil penalties against Petitioner in the amount of \$20,512.55 does not comport with the applicable law as established by the U.S. Supreme Court in Rapanos and ensuing regulations and guidelines at both the Federal and State levels and therefore should be, and the same hereby is, REVERSED as erroneous and a failure to act as required by law or rule.

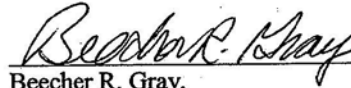
#### NOTICE

The Environmental Management Commission is the agency making the final decision in this contested case and is required to give each party an opportunity to file exceptions to this

decision and to present written arguments to those in the agency who will make the final decision. N.C.G.S. § 150B-36(a).

The Environmental Management Commission is required by N.C. Gen. Stat. § 150B-36(b3) to serve a copy of the final decision on all parties and to the Office of Administrative Hearings.

This, the 04 day of June, 2010.




Beecher R. Gray,  
Administrative Law Judge

A copy of the foregoing was mailed to:

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This the 4th day of June, 2010.

  
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