

NORTH CAROLINA REGISTER

VOLUME 25 • ISSUE 06 • Pages 691 - 748

September 15, 2010

I. IN ADDITION

DENR Correction Notice	691
DENR Public Notice	692
Labor, Dept. of – Notice of Verbatim Adoption	693
Resolution Authorizing the Use of Funds Provided by the U.S. Dept. of Treasury	694 – 705

II. PROPOSED RULES

Administrative Hearings, Office of Administrative Hearings, Office of	735 – 740
Commerce, Department of Alcoholic Beverage Control Commission	706 – 719
Community Colleges Community Colleges, Board of	727 – 731
Occupational Licensing Boards and Commissions Appraisal Board	720 – 727
State Personnel, Office of State Personnel Commission	731 – 735
Treasurer, Department of Department	719 – 720

III. RULES REVIEW COMMISSION	741 – 745
------------------------------------	-----------

IV. CONTESTED CASE DECISIONS

Index to ALJ Decisions	746 – 748
------------------------------	-----------

PUBLISHED BY

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

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

Contact List for Rulemaking Questions or Concerns

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

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

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

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

Rule Review and Legal Issues

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

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

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: 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
Jeffrey 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 th day from publication in the Register
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
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.

This notice is to advise of the typographical error in the following rule that was published in the 25:05 NCR 617. The error, which consisted of omitted text, now shown as struck through text is located in Paragraph (a), and is further located in the fourth header row.

15A NCAC 11 .1105 is proposed for amendment as follows:

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 to a maximum of 40 additional X-ray tubes
Clinics	A	\$ 90.00	\$ 90.00
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
<u>Therapy</u>	<u>T</u>	<u>\$400.00</u>	<u>\$ 50.00</u>
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).

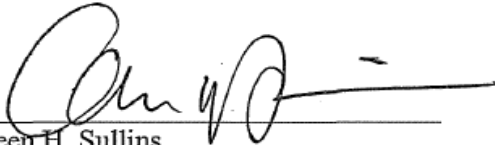
Agency Contact: Jon Granger
 Health Physicist
 NC DENR – Radiation Protection Section
 1645 Mail Service Center
 Raleigh, NC 27699-1645
jon.granger@ncdenr.gov
 (919)571-4141 ext 226

**PUBLIC NOTICE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WATER QUALITY**

The Division of Water Quality received a petition to establish interim maximum allowable concentrations in groundwater for Acrolein, Aldrin, Benzyl Alcohol, Beryllium, sec-Butyl Alcohol, 4-Chlorotoluene, Cobalt, Dibromomethane, Dichloroacetic Acid, 1,2-Dichloroethylene, Picramic Acid, Thallium, Tin, 2,4,5-Trichlorophenol, 2,4,6-Trichlorophenol, Vanadium (excluding vanadium pentoxide), Vinyl Acetate, and Polychlorinated Biphenyls. These IMACs will aid DENR programs in assessing conditions and setting health protective groundwater levels at regulated sites. In accordance with 15A NCAC 02L .0202 (c), the following interim maximum allowable concentrations are hereby established for Class GA and GSA groundwaters effective October 1, 2010.

<u>Substance</u>	<u>Concentration</u>
Acrolein	4 ug/L
Aldrin	0.002 ug/L
Benzyl Alcohol	700 ug/L
Beryllium	4 ug/L
Butyl Alcohol, sec	10,000 ug/L
4-Chlorotoluene	24 ug/L
Cobalt	1 ug/L
Dibromomethane	70 ug/L
Dichloroacetic Acid	0.7 ug/L
1,2-Dichloroethylene, mixed isomers	60 ug/L
Picramic Acid	0.7 ug/L
Polychlorinated Biphenyls	0.09 ug/L
Thallium	0.2 ug/L
Tin	2,000
2,4,5-Trichlorophenol	63 ug/L
2,4,6-Trichlorophenol	4 ug/L
Vanadium (excluding vanadium pentoxide)	0.3 ug/L
Vinyl Acetate	88 ug/L

Action to adopt permanent standards for these substances will be initiated during the 2010-2012 groundwater standard triennial review. For more information or questions, please contact Sandra Moore at Sandra.moore@ncdenr.gov or 919-807-6417 or visit our web site at <http://portal.ncdenr.org/web/wq/ps/csu>.



Coleen H. Sullins
Director, Division of Water Quality

North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0201 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1926 promulgated as of May 17, 2010, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904-Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent the verbatim adoption that is effective August 19, 2010 concerning:

- Safety Standards for Steel Erection
(75 FR 27428 - 27429, May 17, 2010)

The *Federal Register* (FR), as cited above, contain both technical and economic discussions that explain the basis for the change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, NC 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

A. John Hoomani, General Counsel
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, NC 27699-1101

RESOLUTION AUTHORIZING THE USE OF FUNDS PROVIDED BY THE U.S. DEPARTMENT OF THE TREASURY'S HFA HARDEST HIT FUND UNDER THE HOME PROTECTION PROGRAM AND THE EXECUTION OF CONTRACTS NECESSARY FOR THE USE OF FUNDS PROVIDED BY THE U.S. DEPARTMENT OF THE TREASURY'S HFA HARDEST HIT FUND

RESOLUTION 11-4

WHEREAS, the N.C. General Assembly did adopt House Bill 1414 in the 2004 Session and the bill contained a special provision directing the N.C. Housing Finance Agency (the "Agency") to design and implement a Home Protection Pilot Program and Loan Fund (the "Program"); and

WHEREAS, the N.C. General Assembly did adopt subsequent bills that provided for a geographic expansion of the Program and also for additional funding; and

WHEREAS, the Board of Directors authorized the implementation of the Program in Resolution 06-8 and the Agency has successfully managed the Program for the benefit of North Carolina home owners; and

WHEREAS, the U.S. Department of the Treasury ("Treasury") approved an application from the Agency to operate foreclosure prevention programs in North Carolina using funds from their HFA Hardest Hit Fund; and

WHEREAS, the Treasury has indicated that it recognizes the value to home owners of the Program operated by the Agency and Treasury supports leveraging the visibility and capacity of the Program by adding the programs to be financed through the Hardest Hit Fund to the options available to borrowers under the Program so long as certain safeguards are implemented and observed;

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The Board of Directors authorizes the expanded operation of the Program, as previously authorized by Resolution 06-8, and authorizes the use of HFA Hardest-Hit Funds from the Treasury in the manner previously approved by the Treasury to assist borrowers under the Program.

Section 2. The Board of Directors ratifies all existing contracts related to the Program and authorizes execution of any other contracts necessary or convenient to the Program as expanded by this Resolution.

Section 3. The Board of Directors authorizes the Executive Director to take any necessary action to establish uniform guidelines, policies, and procedures under the Program, to enter into all necessary contracts, and to publish any other necessary policies and procedures that are required to fully operate the Program as expanded by this Resolution.

Section 4. This Resolution was adopted August 12, 2010.

NORTH CAROLINA HOUSING FINANCE AGENCY

Public Comment

Agency staff will receive public comments on this expansion to the Home Protection Program from September 15, 2010 through October 15, 2010. Public comments can be submitted to Jennifer Percy at the North Carolina Housing Finance Agency in several ways:

- * Written comments via postal mail: 3508 Bush Street Raleigh NC 27609
- * Written comments via e-mail: jmpercy@nchfa.com

Public Hearing

Oral and public comments related to the expansion of the North Carolina Home Protection Program will be also received in person at a public hearing, on September 23 from 10am-11am in the Board Room of the North Carolina Housing Finance Agency, located at 3508 Bush Street, Raleigh, North Carolina 27609. The Agency, its Board of Directors, and selected local counseling agencies have the ability to make decisions regarding approval, general program operations, and procedures based on the public policy of this program.

**NCHFA Mortgage Payment Program (MPP)
Summary Guidelines**

<p>1. Program Overview</p>	<p>North Carolina has one of the highest unemployment rates in the country with more than 490,000 people out of work as of April 2010. Because unemployed homeowners are not eligible for most loss mitigation programs, NCHFA proposes to use a majority of our HFA Hardest Hit Funds (HHF) to create the Mortgage Payment Program (MPP).</p> <p>This program will provide loans to unemployed homeowners and others, who through no fault of their own, are financially unable to make their mortgage payments and are in danger of losing their homes to foreclosure. Loan proceeds will be used to pay mortgage and mortgage-related expenses (i.e. property taxes, homeowner insurance, homeowner dues) until the homeowner secures employment or completes training for a new career.</p>
<p>2. Program Goals</p>	<p>To assist 5,750 homeowners over the next 3 years. The following types of assistance will be provided:</p> <p><u>Job Search or Short-term Assistance</u> to help homeowners while they look for a new job.</p> <p><u>Job Training or Long-term Assistance</u> to help homeowners while they complete a job training/education program to help secure a new job.</p> <p><u>Reinstatement Only or One-time Assistance</u> to help homeowners who have found a new job but need help to bring their mortgage current.</p>
<p>3. Target Population/Areas</p>	<p>Homeowners who are unemployed, suffered another temporary hardship, and/or reemployed but need help bringing their mortgage current.</p> <p>This Program will be available in all North Carolina counties.</p> <p>NCHFA will provide additional assistance over a longer period of time to eligible homeowners living in targeted or "hardest hit" counties, those with 2009 unemployment rates greater than or equal to 11.3%.</p>
<p>4. Program Allocation (Excluding Administrative Expenses)</p>	<p>\$115,000,000</p>
<p>5. Borrower Eligibility Criteria</p>	<p>Unemployed homeowners, and others, who through no fault of their own, are unable to make their mortgage payments and are at risk of</p>

	<p>a foreclosure. Homeowners will be required to provide a financial hardship affidavit with appropriate documentation on the cause of their hardship. For most homeowners, this will be documentation from the Employment Security Commission (ESC) confirming a job loss and receipt of unemployment benefits. If information from ESC is unavailable a notarized letter from the former employer indicating job loss was not the fault of the borrower will serve as a substitute. Self Employed borrowers will be required to submit prior tax returns to show a loss of income.</p> <p>Employed homeowners who are delinquent because of a prior job loss or other program eligible hardship but who can resume future payments without additional assistance.</p> <p>Satisfactory mortgage payment history prior to the job loss/income loss.</p> <p>Borrowers must meet program underwriting criteria.</p> <p>Eligibility for program assistance will be determined primarily by participating foreclosure prevention partners.</p> <p>Funds will be allocated on a first come/approved, first served basis.</p>
<p>6. Property/Loan Eligibility Criteria</p>	<p>Existing single-family homes or condominiums (attached or detached) including manufactured homes on foundations permanently affixed to real estate owned by the borrower.</p> <p>North Carolina owner-occupied, primary residences only.</p> <p>Combined Loan- to-Value cannot exceed 125%</p> <p>Principal, Interest, Taxes and Insurance >31% of household income after job loss/loss of income.</p>
<p>7. Program Exclusions</p>	<p>Total Unpaid Principal Balances > \$275,000</p> <p>Manufactured homes not considered real property</p> <p>Non-legal U.S. resident</p>

<p>8. Structure of Assistance</p>	<p>10 year, 0% interest, non-recourse, deferred-payment forgivable subordinate loan. A forgiveness clause will reduce the loan amount by 20% a year for every year the borrower stays in the home after five years. At the end of the 10 years the note will be considered satisfied and NCHFA will release the lien securing the note.</p> <p>Loan funds are due and payable if property is sold, refinanced or no longer owner occupied (unless otherwise prohibited under applicable federal law). Loans are repayable only from proceeds to the borrower from a sale or refinance. If the property is sold or refinanced and has not increased in equity to the degree necessary to repay the note, all or a portion of the note will be forgiven.</p> <p>All deferred, subordinate mortgages will be evidenced by a promissory note and secured by a deed of trust on the property. Borrowers will be required to sign and acknowledge via Written Agreement indicating the program guidelines.</p> <p>Any funds returned according to established program guidelines will be recaptured and used to assist additional homeowners through December 31, 2017. After December 31, 2017 the funds will be returned to Treasury.</p>
<p>9. Per Household Assistance</p>	<p>The average loan amount will be \$20,000 per borrower.</p> <p>Targeted Counties (2009 Unemployment Rate \geq 11.3%): Maximum assistance up to \$36,000 and not to exceed 36 months per household</p> <p>Non-Targeted Counties (2009 Unemployment Rate $<$ 11.3%): Maximum assistance up to \$24,000 and not to exceed 24 months per household</p>
<p>10. Duration of Assistance</p>	<p>Targeted Counties (2009 Unemployment Rate \geq 11.3%): Up to 36 months for those in job training/education program Up to 18 months for those in a job search</p> <p>Non-targeted Counties (2009 Unemployment Rate $<$ 11.3%): Up to 24 months for those in job training/education program Up to 12 months for those in a job search</p>
<p>11. Estimated Number of Participating Households</p>	<p>5,750 homeowners over the next 3 years</p> <p>Estimated number served based on average loan amount of \$20,000 per homeowner.</p>

12. Program Inception/ Duration	Program will startup within 45-90 days of Treasury approval and will last up to 3 years.
13. Program Interaction with Other HFA Programs	Borrowers can access more than one of our HHF programs, if needed and appropriate. For example, a borrower can receive MPP assistance while they look for a new job and then receive Second Mortgage Refinance Program or Permanent Loan Modification Program assistance once they secure a new job.
14. Program Interactions with HAMP	<p>The MPP would help borrowers who need more than the 3-6 months of assistance available through the new Home Affordable Unemployment Program (UP), scheduled to be available on July 1, 2010.</p> <p>Borrowers who are eligible for MPP would not be required to participate in UP prior to receiving assistance with MPP.</p> <p>In addition, MPP would also help borrowers who don't qualify for assistance under the new UP because they are more than 3 months behind in mortgage payments and/or they are not currently receiving unemployment (i.e. self employed homeowners).</p> <p>Finally, borrowers can receive HAMP assistance prior to or after receiving Hardest-Hit Fund assistance. For example, a borrower may receive UP assistance for 3-6 months and then receive MPP assistance for several more months, if needed.</p> <p>Once MPP assistance has ended, a borrower may be eligible to receive a loan modification from HAMP, if needed, and eligible.</p>
15. Program Leverage with Other Financial Resources	None

**NCHFA Second Mortgage Refinance Program (SMRP)
Guidelines Summary**

1. Program Overview	<p>Government officials have estimated about 50% of troubled borrowers have a second mortgage. Homeowners are frequently unable to make their second mortgage payment and are in danger of losing their homes to foreclosure. The Second Mortgage Refinance Program (SMRP) will benefit homeowners, who through no fault of their own, are financially unable to make their second mortgage payment because of a prior job loss, reduced income, or other program eligible hardship.</p> <p>This program will provide a more affordable housing expense by refinancing the second mortgage to a 10 year, 0% interest, non-recourse deferred-payment forgivable subordinate loan.</p>
2. Program Goals	<p>To assist 1,000 homeowners facing foreclosure in targeted or "hardest hit" counties, those with 2009 unemployment rates at or above 11.3%.</p> <p>The goal of this program is to extinguish the existing second mortgage and replace it with a 10 year, 0% interest, non-recourse, deferred-payment forgivable subordinate loan. This will reduce the borrower's monthly mortgage payment and in some instances may expedite movement of a qualified applicant into a HAMP first mortgage modification process.</p>
3. Target Population/Areas	<p>Our target population will be homeowners facing foreclosure in counties with a 2009 unemployment rates at or above 11.3%.</p>
4. Program Allocation (Excluding Administrative Expenses)	<p>\$15,000,000</p>
5. Borrower Eligibility Criteria	<p>Eligible homeowners must be those facing foreclosure due to recent unemployment, loss of income, reduction in income, or other demonstrated financial hardships. Homeowners will be required to provide a financial hardship affidavit with appropriate documentation on the cause of their hardship.</p> <p>Satisfactory 1st and 2nd mortgage payment history prior to job loss, reduced income or other program eligible hardship.</p> <p>Borrowers must meet program underwriting criteria.</p> <p>Funds will be allocated on a first come/approved, first served basis.</p>
6. Property/Loan	<p>Existing single-family homes or condominiums (attached or</p>

Eligibility Criteria	<p>detached) including manufactured homes on foundations permanently affixed to real estate owned by the borrower.</p> <p>Owner-occupied, primary residences only.</p> <p>Combined Loan to Value cannot exceed 125%.</p> <p>Properties must be located within North Carolina counties having unemployment rates at or above 11.3% in 2009.</p>
7. Program Exclusions	<p>Total Unpaid Principal Balances > \$275,000</p> <p>Manufactured homes not considered real property.</p> <p>If the homeowner is HAMP eligible and the second mortgage is held by a 2MP servicer.</p> <p>Non-legal U.S. resident</p>
8. Structure of Assistance	<p>10 year, 0% interest, non-recourse, deferred-payment forgivable subordinate loan. A forgiveness clause will reduce the loan amount by 20% a year for every year the borrower stays in the home after five years. At the end of the 10 years the note will be considered satisfied and NCHFA will release the lien securing the note.</p> <p>Loan funds are due and payable if property is sold, refinanced or no longer owner occupied (unless otherwise prohibited under applicable federal law). Loans are repayable only from proceeds to the borrower from a sale or refinance. If the property is sold or refinanced and has not increased in equity to the degree necessary to repay the note, all or a portion of the note will be forgiven.</p> <p>All deferred subordinate mortgages will be evidenced by a promissory note and secured by a deed of trust on the property. Borrowers will be required to sign and acknowledge via Written Agreement indicating the program guidelines and terms prior to refinancing the second mortgage and obtaining a subordinate loan under this program.</p> <p>Any funds returned according to established program guidelines will be recaptured and used to assist additional homeowners through December 31, 2017. After December 31, 2017 the funds will be returned to Treasury.</p>
9. Per Household Assistance	<p>Under this program, eligible borrowers may receive up to \$30,000 plus closing costs as a subordinate loan.</p>

	If \$30,000 is insufficient to extinguish the second mortgage, the Agency will only offer these funds if the second lien holder is willing to take the amount supplied to extinguish the debt without a deficiency judgment.
10. Duration of Assistance	Assistance under SMRP is a one-time payment.
11. Estimated Number of Participating Households	1,000 homeowners
12. Program Inception/ Duration	The program will be available approximately in December 2010/January 2011 and will last up to 3 years.
13. Program Interactions with Other HFA Programs	Homeowners who have participated in the Mortgage Payment Program (MPP) may be eligible to participate in SMRP if the borrower has become reemployed and has a need.
14. Program Interactions with HAMP	Extinguishing the second mortgage may expedite movement of qualified applicants into a HAMP first modification process.
15. Program Leverage with Other Financial Resources	<p>If lender holds the first and second mortgage and the combined loan to value (CLTV) is $\geq 110\%$, the lender will be required to make a minimum 20% match of the second mortgage amount.</p> <p>If lender only holds the second mortgage and the combined loan to value (CLTV) is $\geq 100\%$, the second mortgage lender will be required to make a minimum 20% match of the second mortgage amount.</p>

**NCHFA Permanent Loan Modification Program (PLMP)
Guidelines Summary**

1. Program Overview	The goal of this program is to provide a quick and streamlined method for modifying 1st mortgage loans for homeowners whose mortgages have become unsustainable as the result of a program eligible hardship. The Permanent Loan Modification Program (PLMP) will provide a principal reduction with the added option of a rate decrease and/or term extension by the lender to achieve a monthly payment that does not exceed 31% of gross monthly household income.
2. Program Goals	<p>To assist 440 homeowners facing foreclosure.</p> <p>The goal of the program is to decrease the number of home owners losing their homes to foreclosure. Secondary goals include stabilization of neighborhoods and protecting home values of surrounding properties.</p> <p>This program will provide immediate mortgage payment relief and stable long term mortgage payments for the life of the loan.</p>
3. Target Population/Areas	<p>Homeowners suffering a program eligible financial hardship related to reduction of income or changed employment circumstances.</p> <p>This Program will be available in all North Carolina counties.</p>
4. Program Allocation (Excluding Administrative Expenses)	\$9,000,000
5. Borrower Eligibility Criteria	<p>Eligible homeowners must be those with program eligible financial hardship due to recent unemployment, loss of income, reduction of income, or other demonstrated financial hardships. Homeowners will be required to provide a financial hardship affidavit with appropriate documentation on the cause of their hardship.</p> <p>Satisfactory mortgage payments prior to job loss, reduction in income or other program eligible hardship.</p> <p>Borrowers must meet program underwriting criteria.</p> <p>Funds will be allocated on a first come/approved, first served basis.</p>
6. Property/Loan Eligibility Criteria	Existing single-family homes or condominiums (attached or detached) including manufactured homes on foundations

	<p>permanently affixed to real estate owned by the borrower.</p> <p>North Carolina owner-occupied, primary residences only.</p> <p>Combined Loan to Value cannot exceed 125%.</p>
7. Program Exclusions	<p>Total Unpaid Principal Balances > \$275,000</p> <p>Manufactured homes not considered real property</p> <p>Non-legal U.S. resident</p> <p>The term and rate reduction options will not be available to a homeowner that is eligible for HAMP.</p>
8. Structure of Assistance	<p>10 year, 0% interest, non-recourse, deferred-payment forgivable subordinate loan. A forgiveness clause will reduce the loan amount by 20% a year for every year the borrower stays in the home after five years. At the end of the 10 years the note will be considered satisfied and NCHFA will release the lien securing the note.</p> <p>Loan funds are due and payable to NCHFA if home is sold, refinanced or no longer owner occupied (unless otherwise prohibited under applicable federal law). Loans are repayable only from proceeds to the borrower from a sale or refinance. If the property is sold or refinanced and has not increased in equity to the degree necessary to repay the note, all or a portion of the note will be forgiven.</p> <p>All deferred subordinate mortgages will be evidenced by a promissory note and secured by a deed of trust on the property. Borrowers will be required to sign and acknowledge via Written Agreement indicating the program guidelines and terms prior to modifying their loan and obtaining a subordinate loan under this program.</p> <p>Any funds returned according to established program guidelines will be recaptured and used to assist additional homeowners through December 31, 2017. After December 31, 2017 the funds will be returned to Treasury.</p>
9. Per Household Assistance	Under this program, each eligible borrower may receive up to \$30,000 as a subordinate loan.
10. Duration of Assistance	Assistance under PLMP is a one- time payment.
11. Estimated Number of	We anticipate approximately 440 homeowners will be helped.

Participating Households	
12. Program Inception/ Duration	The program will be available approximately in February 2011 and will last up to 3 years.
13. Program Interactions with Other HFA Programs	Homeowners who have participated in the Mortgage Payment Program (MPP) may be eligible to participate in PLMP if the borrower has become reemployed and has a need.
14. Program Interactions with HAMP	None
15. Program Leverage with Other Financial Resources	We will not require investors to match the contributions that are made with the Hardest Hit Funds for the Permanent Loan Modification Program. However, it is anticipated that certain original first lien providers may consider (where permitted) a reduction in interest income (interest rate reduction) or an extension of loan terms as a result of the loan modification.

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 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Commission intends to amend the rules cited as 04 NCAC 02R .1302, .1305, .1901; 02S .0101-.0102, .0105-.0107, .0212, .0232, .0234-.0235, .0404, .0901-.0903, .1006, .1008, .1101 and repeal the rules cited as 04 NCAC 02S .0209, .0216-.0217.

Proposed Effective Date: January 1, 2011

Public Hearing:

Date: October 14, 2010

Time: 10:00 a.m.

Location: NC ABC Commission's Office, 3322 Garner Road, Raleigh, NC 27610

Reason for Proposed Action: The NC Alcoholic Beverage Control Commission proposes this action will address both the Legislation that has been enacted by the General Assembly previously and needed technical changes.

Procedure by which a person can object to the agency on a proposed rule: Interested persons may present oral or written comments at the Rule-Making Hearing. In addition, the record will be open for receipt of written comments from September 15, 2010, to November 15, 2010. Written comments not presented at the hearing should be directed to Robert Hamilton. The proposed rules are available for public inspection and copies may be obtained at the Commission's office at: 3322 Garner Road, Raleigh, NC 27610.

Comments may be submitted to: Robert A. Hamilton, 4307 Mail Service Center, Raleigh, NC 27699-4307, phone (919)779-0700 x 436, fax (919)661-6165, email bob@adminrule.com

Comment period ends: November 15, 2010

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

Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal Impact:

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

CHAPTER 02 - BOARD OF ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 02R - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

SECTION .1300 - STORAGE AND DISTRIBUTION OF SPIRITUOUS LIQUORS: COMMERCIAL TRANSPORTATION

04 NCAC 02R .1302 STORAGE: DELIVERIES: SECURITY

(a) Storage. Private warehouse contractors performing the receipt, storage and distribution functions ~~will be responsible for:~~ shall:

- (1) ~~Allocating~~ Allocate space in the Commission's warehouse for each item listed on the price list ~~published~~ adopted by the Commission. Space allocated ~~will shall~~ be based on sales ~~volume~~ in terms of the number of days supply within the limitations of space in the warehouse; volume;
- (2) ~~Developing and publishing~~ Develop and publish a delivery schedule ~~to promote efficient distribution~~ of spirituous liquors to all local boards, which ~~shall be~~ are subject to approval of the ~~Commission~~ Commission which are based on sales volume. Orders and shipments over ~~and above~~ the quantity on the approved schedule may be made as ~~mutually~~ mutually agreed between the local boards and the contractor. All orders over the quantity on the schedule ~~will shall~~ be accepted when deemed economically feasible by the contractor.
- (3) ~~Developing and publishing~~ Develop and publish standard operating procedures not covered by these Rules for use by the

contractor and local boards. All procedures published ~~will be~~ are subject to approval of the Commission.

(b) Deliveries and Shipments. The processing of shipments upon receipt by the local boards ~~will~~ shall be as follows:

- (1) ~~An off-loading check sheet will. The driver shall be provided~~ provide the local board representative an Off-Loading Check Sheet, an Invoice Bill(s) of Lading and a Transmittal Sheet with the shipment/shipment. The Off-Loading Check Sheet shall that reflects reflect the items and quantities being delivered in numerical order, and the quantities shall agree with those on the Invoice ~~Bills~~ Bill(s) of Lading. ~~The system used for off-loading shall be such that an accurate count of the merchandise is made and all overages or shortages can be verified by the driver before any exceptions entries are made on the invoices or transmittal sheet~~ Lading and the Transmittal Sheet;
- (2) The system used for off-loading shall be such that an accurate count of the merchandise is made and all overages or shortages can be verified by the driver before any exceptions entries are made on the Transmittal Sheet;
- ~~(2)(3)~~ (3) A statement of account will be provided with each shipment and is the billing document for the bailment fee and the bailment surcharge. If there are no overages, shortages or breakage, the white copy of the statement of account is for the local board's record and the yellow copy shall be attached to the local board's remittance. remittance shall be made as referenced in Subparagraph (10) of this Paragraph; The statement of account number should be entered on the check or check stub;
- ~~(3)(4)~~ (4) If there is an overage which is accepted by the local board, board representative, the local board representative shall line through the number of cases shipped-invoiced and shall write the correct number of cases on the invoice bill of lading should be lined through. Transmittal Sheet. Enter The local board representative shall enter the quantity over over, the by product stock code number in the "remarks" and an explanation in the "comments" block of on the invoice bill of lading. Transmittal Sheet. If the item over is not listed on the invoice bill of lading enter the quantity by code number on the "cases over/short" line of the invoice transmittal sheet. Retain the statement of account and make remittance as indicated in Paragraph (2) of this Rule. Upon return of the invoice bills of lading Transmittal Sheet to the Commission's warehouse, the contractor shall issue a debit adjustment adjustment will be issued with a statement of account for the

~~bailment fee covering the cases over. The debit adjustment will shall have either the original invoice or order number in the customer order number purchase order reference box as a cross reference; reference. Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;~~

~~(4)(5)~~ (5) If there is an overage that is not accepted by a local board, board representative, the local board representative shall enter the quantity, the stock code number and an explanation in the "comments" box on the Transmittal Sheet. enter the quantity by code number on the "cases over/short" line of the invoice transmittal sheet and The driver shall return the merchandise to the contractor's Commission's warehouse;

~~(5)(6)~~ (6) If there is a shortage, line through the number of cases shipped on the invoice bill of lading without obliterating the original figure. the local board representative shall line through the number of cases invoiced and shall write the correct number of cases on the Transmittal Sheet. The local board representative shall enter the quantity under, the stock code number and an explanation in the "comments" box on the Transmittal Sheet. Enter the quantity short by product code number in the "remarks" block of the invoice bill of lading. Return the statement of account with the invoice bills of lading. A credit adjustment will be issued based on the entry in the "remarks" block of the invoice bill of lading with a 900XXX series invoice number. A corrected statement of account will be issued reflecting the original dollar amount, the credited amount and a new total due; Upon return of the Transmittal Sheet to the Commission's warehouse, the contractor shall issue a credit adjustment. Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;

~~(6)(7)~~ (7) Breakage The local board representative shall handle breakage discovered during the unloading process may be handled either as a shortage in shipment [see Paragraph Subparagraph (5) (6) of this Rule] Paragraph with the note in the "remarks" "comments" block of the invoice bill of lading Transmittal Sheet indicating that the case was returned due to breakage; breakage or the case may be retained with the number of bottles broken by code number entered immediately below the "cases over/short" line of the invoice bill of lading and the contractor will pay the local board for the broken bottles. If the breakage involves a case that is an overage not accepted by the local board, board representative, the procedures in Paragraph Subparagraph (4)(5)

of this ~~Rule Paragraph~~ will shall be followed;
followed. Remittance shall be made as
referenced in Subparagraph (10) of this
Paragraph;

- (8) If a local board's shipment includes a shrink-
wrapped pallet(s), the local board shall break
down the pallet(s) and any overage, shortage,
or breakage shall be reported to the warehouse
as follows:
 - (A) The procedures for marking the
Transmittal Sheet Subparagraphs (4),
(5), (6) and (7) of this Paragraph shall
be followed; and
 - (B) The updated Transmittal Sheet shall
be emailed, faxed or postmarked to
the Commission's warehouse within
three days of delivery of the pallet(s).
Remittance shall be made as referenced in
Subparagraph (10) of this Paragraph;
- (9) The local board representative and the driver
shall sign the Transmittal Sheet(s) and the
driver shall return the Transmittal Sheet(s) to
the Commission's warehouse. The local board
representative shall receipt date stamp or sign
the distiller's Invoice Bills of Lading copies
and the driver shall return them to the
Commission's warehouse; and
- (10) The local board shall remit payment to the
party listed in the "Remit to" information listed
on the Invoice Bill(s) of Lading which
includes any Bailment Invoices or Surcharge
Invoices. The local board shall enter the
Invoice Bill of Lading number on each check
or each check stub.

(c) Security Measures. Security of the merchandise during the delivery process shall be as follows:

- (1) The conveyances (trucks and trailers) shall be secured with a lock and serially numbered metal or plastic seal by the contractor. Each local board ~~will~~ shall be issued a key that will unlock all the locks used by the contractor;
- (2) The seal numbers will be entered on the "Seal Nos." line of the invoice transmittal sheet. Extra seals ~~will~~ shall be included in sealed envelopes for resealing the unit when shipments are destined for more than one local board and for the return trip after final delivery;
- (3) The local board ~~supervisor-general manager~~ or his designated representative shall check the seal number on the unit with the number on the invoice transmittal sheet upon arrival of a shipment. If the numbers correspond the unit shall be unlocked by the local board's representative. If the numbers do not correspond the contractor shall be contacted for further instructions; and
- (4) The local ~~boards-boards'~~ boards' general manager shall limit the accessibility of the key to a ~~minimum~~

~~number of three~~ personnel and shall not allow the contractor's driver or his assistant to remove the seal or have the key in his possession at any time.

- (d) Local boards shall not pick up merchandise from the ~~warehouse.~~ Commission's warehouse without prior approval from the Commission's Administrator or his designee.
- (e) Local boards may purchase, exchange, or otherwise obtain spirituous liquor from another local board and transport such beverages as necessary for the operation of its ABC stores. Payment for such transactions shall be satisfied as provided by 04 NCAC 02R .1407.

Authority G.S. 18B-203; 18B-207; 18B-701(1).

04 NCAC 02R .1305 DIRECT SHIPMENTS

- (a) A direct shipment is a shipment of a distiller's spirituous liquors ~~shipped from a the distiller or a warehouse, either within or outside the State, that stores the distiller's product warehouse~~ directly to a local board without passing through the ~~state ABC~~ Commission's warehouse.
- (b) Direct shipments ~~may be~~ are allowed by the Commission in emergency situations or in a situation that is mutually advantageous to local boards, the Commission and the operator of the ~~state ABC~~ Commission's warehouse (for example, commemorative bottles).
- (c) Direct shipment shall have written approval from the Commission. Merchandise authorized to be shipped direct ~~will~~ shall be consigned by the Commission's warehouse to the distiller's account at the state ABC warehouse in care of the local board. The local board shall acknowledge receipt of the merchandise on the shipping documents and forward them to the contractor for processing through the accounting system as though the merchandise were shipped from the Commission's warehouse.

Authority G.S. 18B-109(a); 18B-207; 18B-701(1).

SECTION .1900 - SALES OF LIQUOR TO MIXED BEVERAGES PERMITTEES

04 NCAC 02R .1901 MIXED BEVERAGES TAX STAMP

- (a) Prior to the sale of any container of spirituous liquor to a permittee, the local board shall affix to the container a mixed beverages tax stamp that indicates the following:
 - (1) local board system of sale,
 - (2) permittee's transaction number,
 - (3) permittee's Mixed Beverage Permit number.
- (b) The mixed beverages tax stamp shall be affixed to the original paper labeling of each container, except that in the case of a container bearing no original label the stamp shall be affixed to any conspicuous portion of the container. In no event may the stamp be affixed to the cap or closure of a container. Where a case of one brand has been purchased, the mixed beverages tax stamp shall be affixed to each container in the case and it shall not be sufficient to stamp the exterior of the case.
- (c) For sales of liquor to a guest room cabinet permittee, a local board may affix the mixed beverages tax stamp to any portion of

the container other than the cap or closure. In lieu of affixing the stamp to each container purchased by a guest room cabinet permittee, a local board may choose to give to the guest room cabinet permittee one tax stamp for each container of liquor purchased for resale from a guest room cabinet, as authorized by Rule .1804 of this Subchapter.

(d) Mixed beverage permittees may transport no more than eight liters of opened containers of spirituous liquor without a purchase-transportation permit to and from an ABC Board in the non-passenger area of a motor vehicle for the purpose of replacing mixed beverage tax stamps that are defaced or that have worn out numbers.

Authority G.S. 18B-203(a)(1); 18B-207; 18B-804(b)(8); 18B-807.

SUBCHAPTER 02S - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

SECTION .0100 - DEFINITIONS: PERMIT APPLICATION PROCEDURES

04 NCAC 02S .0101 DEFINITIONS

In addition to the definitions found in Sections 18B-101 and 18B-1000 of the North Carolina General Statutes, the following definitions apply to this Subchapter:

- (1) "Employee" means any person who performs a service for any person holding an ABC permit, regardless of whether that person is compensated for the performance of those services.
- ~~(2) "Premises" means that building or area of a building plus any other property immediately adjacent to it that forms a component or integral part of the business for which the permit is issued. A diagram attached to the investigative report and kept in the permittee's file is prima facie evidence of the premises covered by that permit and for which the permittee and his employees are responsible. Permits shall authorize the sale and possession or consumption of alcoholic beverages only on the premises described in the investigative report and diagram furnished by the investigating agent.~~
- (2) "Intoxicated" means the condition of a person whose mental or physical functioning appears to be presently substantially impaired as a result of the use of alcohol or other substance, such as when the person appears to a reasonable observer to be so far under such influence that:
 - (A) the person's emotions are conspicuously uncontrolled; or
 - (B) the person's intelligence, sense-perceptions, judgment, continuity of thought or of ideas, speech and coordination of volition with

muscular action, or some of these faculties or processes are materially impaired.

- ~~(3) "Original container" means a bottle, can or other alcoholic beverage product container filled by a manufacturer or bottler that has been approved for sale within this State.~~
- ~~(3) "Modified Plan Permits," as used in 04 NCAC 02S .0105 and 04 NCAC 02S .0106, mean on-premise malt beverage permits authorized by elections held pursuant to G.S. 18B-602(a)(4).~~
- ~~(4) "Private club," means a private facility organized and operated by a person, association or corporation solely for a social, recreational, patriotic or fraternal purpose.~~
- ~~(4) "Original container" means a bottle, can or other alcoholic beverage product container filled by a manufacturer or bottler that has been approved for sale within this State.~~
- ~~(5) "Modified Plan Permits," as used in Rules .0105 and .0106 of this Section, mean on-premise malt beverage permits authorized by elections held pursuant to G.S. 18B-602(a)(4).~~
- (5) "Premises" means that building or area of a building plus any other property immediately adjacent to it that forms a component or integral part of the business for which the permit is issued. A diagram attached to the investigative report and kept in the permittee's file is prima facie evidence of the premises covered by that permit and for which the permittee and his employees are responsible. Permits shall authorize the sale and possession or consumption of alcoholic beverages only on the premises described in the investigative report and diagram furnished by the investigating agent.
- ~~(6) "Private dining area" means any area of a restaurant or hotel that is or can be substantially closed off from public view.~~

Authority G.S. 18B-207; 18B-305; 18B-602(a)(4); 18B-1008; 122C-3(18).

04 NCAC 02S .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS

(a) Forms. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission at the following address, or by telephoning the Commission between 8:00 a.m. and 5:00 p.m., Monday through Friday:

North Carolina ABC Commission
3322 Garner Road
P.O. Box 26687

Raleigh, North Carolina 27611-6687

(b) Statutory Requirements. Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.

(c) Separate Permits Required. An applicant operating separate buildings or structures not connected directly with each other or businesses with separate trade names shall obtain and hold separate permits for each building or business for which he wants permits, and he shall pay the appropriate application fees as provided in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit.

(d) Information Required on Application. An applicant for an ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:

- (1) name and address of applicant;
- (2) ~~corporate~~ corporate, limited liability company or partnership name;
- (3) mailing address and location address of business for which permit is desired, and county in which business is located;
- (4) trade name of business;
- (5) name and address of owner of premises;
- (6) applicant's date and place of birth;
- (7) if a ~~corporation~~, corporation or limited liability company, the name and address of agent or employee authorized to serve as process agent (person upon whom legal service of Commission notices or orders can be made);
- (8) if a non-resident, name and address of person appointed as attorney-in-fact by virtue of a duly executed and registered power of attorney; ~~and~~
- (9) a ~~detailed~~ diagram of the premises showing:
 - (A) entrances and exits;
 - (B) storage area for alcoholic beverages; and
 - (C) locations where alcoholic beverages may will be served or ~~consumed~~ consumed;
- (10) ~~In addition, an applicant shall state, under oath, that he that the applicant~~ is the actual and bona fide owner or lessee of the premises for which a permit is sought and shall submit a copy or memorandum of the lease showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or owner;
- (11) that ~~he the applicant~~ intends to carry on the business authorized by the permit himself or under his immediate supervision and direction; and
- (12) that ~~he the applicant~~ is an actual and bona fide resident of the State of North Carolina or, as a non-resident, has appointed, by virtue of a duly executed and ~~registered~~ power of attorney, a resident manager to serve as attorney-in-fact who will manage the business and accept service of process and official Commission notices or orders.

(e) General Restriction; Living Quarters. No permit for the possession, sale or consumption of alcoholic beverages shall be

issued to any establishment when there are living quarters connected directly thereto, and no permittee shall establish or maintain living quarters in or connected to his licensed premises.

(f) General Restriction; Restrooms. No permit for the on-premises possession, sale, or consumption of alcoholic beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. This requirement ~~may shall~~ be waived upon a showing that the permittee will suffer ~~undue~~ financial hardship or the safety of the employees will be jeopardized.

(g) Areas for Sales and Consumption. In determining the areas in which alcoholic beverages ~~may will~~ be sold and consumed, the Commission ~~will shall~~ consider the convenience of the permittee and his patrons, allowing the fullest use of the premises consistent with ~~proper control, the control of the sale and consumption of alcoholic beverages,~~ but will attempt to avoid consumption in areas open to the general public other than patrons.

(h) Temporary Permits for Continuation of Business. ~~In its discretion the~~ The Commission may issue temporary permits to an applicant for the continuation of a business operation that holds current ABC permits when a change in ownership or location of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit application form, all required fees, a lease or other proof of legal ownership or possession of the property on which the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending ABC violations against the business. An applicant for a temporary permit ~~should~~ shall also submit the permits of the prior permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any applicant unless all prior ABC permits issued for the premises have been cancelled by the Commission.

(i) Retail Sales at Public Places Restricted. The sale and delivery of alcoholic beverages by ~~licensed permitted~~ retail outlets located on fair grounds, golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated ~~place that has been approved by the Commission place.~~ No alcoholic beverages, shall be sold, served, or delivered by these outlets outside the enclosed establishment, nor in grandstands, stadiums or bleachers at public gatherings.

As used in this Rule, the term "enclosed establishment" ~~shall include~~ includes a temporary structure or structures constructed and used for the purpose of dispensing food and beverages at ~~special~~ events to be held on fairgrounds, golf courses, ball parks, race tracks, and other similar places.

Sales of alcoholic beverages may be made in ~~seating areas such as~~ box seats only under the following conditions:

- (1) table service of food and non-alcoholic beverages are available to patrons in box seats;
- (2) no alcoholic beverages are delivered to the box seats area until after orders have been taken; and
- (3) box seat areas have been designated as part of the permittee's premises on a diagram submitted by the permittee, and the

Commission has granted written approval of alcoholic beverage sales in these seating areas.

(j) Separate Locations at Airport. If one permittee has more than one location at the terminal of an airport boarding at least 150,000 passengers annually and that permittee leases space from the airport authority, the Commission recognizes that allocation of space is controlled by the airport authority. Therefore, the permittee in such a situation may:

- (1) obtain a single permit for all its locations in the terminal;
- (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- (3) pool the gross receipts from all its locations for determining whether it meets the requirements of G.S. 18B-1000(6) and ~~Rule .0519 of this Subchapter .04 NCAC 02S .0519.~~

(k) Food Businesses. Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines for off-premise consumption, a food business ~~will qualify~~ qualifies for an off-premise fortified wine permit only if it has and maintains an inventory of staple foods worth at least one thousand five hundred dollars (\$1,500) at retail value. Staple foods ~~shall~~ include meat, poultry, fish, bread, cereals, vegetables, fruits, vegetable and fruit juices and dairy products. Staple foods do not include coffee, tea, cocoa, soft drinks, candy, condiments and spices.

Authority 18B-207; 18B-900; 18B-901(d); 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1008.

04 NCAC 02S .0105 SPECIAL REQUIREMENTS FOR RESTAURANTS

(a) Requirements to Qualify for Brownbagging, On-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a restaurant for a Brownbagging, on-premise Fortified Wine or Mixed Beverages Permit, or a Malt Beverages Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), a business shall have an inside dining area set aside for the service of meals that contains seating for at least 36 persons. Food shall be available at all times that alcoholic beverages are being served. After 10:00 P.M., restaurants may offer a partial food menu or prepackaged food in individual servings.

(b) Typical Characteristics. Although a facility need not possess all of the following characteristics to qualify as a restaurant, each is typical of a bona fide restaurant and the Commission ~~may~~ shall consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke the permits listed in Paragraph (a):

- (1) The facility has a printed menu listing full meals with substantial entrees;
- (2) The facility has complete cooking and refrigeration equipment;
- (3) The greatest portion of the food sold is prepared in the facility's own kitchen and prepackaged food is only an incidental part of the sales;
- (4) The greatest portion of the food sold is consumed on the premises;

- (5) There are separate kitchen and service staffs;
- (6) Seating for dining customers is primarily at tables;
- (7) Only a small portion of the premises is devoted to activities unrelated to the service and consumption of food; and
- (8) Sales of food are significantly greater than sales of nonalcoholic beverages, especially nonalcoholic beverages sold as "set-ups."

(c) Requirements for Application. For a restaurant to obtain a permit listed in Paragraph (a), the applicant shall submit to the Commission the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which ~~shall include~~ includes the full names and addresses of all owners, officers, directors, shareholders owning 25 percent or more of the stock, interest holders holding 25 percent or more of the interest, and the manager; if, however, a corporation holds any other ABC permit, application by the manager ~~shall be~~ is sufficient;
- (2) a copy of the restaurant's menu or list of food served;
- (3) photographs of sufficient detail to show the following:
 - (A) entire kitchen, including all equipment;
 - (B) all dining areas, showing seating arrangements, including patios or outdoor areas where alcoholic beverages ~~may~~ will be sold or consumed;
 - (C) bars, counters, mixing stations;
 - (D) locked storage area or areas for storage of alcoholic beverages; and
 - (E) front exterior of premises or if establishment is located in an office building, mall or other larger structure, the main entrance.

Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(6); 18B-1008.

04 NCAC 02S .0106 SPECIAL REQUIREMENTS FOR HOTELS

(a) Requirements to Qualify for Brownbagging, On-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a hotel for a Brownbagging or a Mixed Beverages Permit, or a Malt Beverage Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), an establishment shall have on or closely associated with its premises a ~~full service~~ restaurant providing at least 36 seats. The restaurant may or may not be owned by the same person who owns the hotel. (If the restaurant is owned by a person different from the owner of the hotel, permits shall not be issued to the restaurant unless it qualifies under Rule .0105 of this Section).

(b) For a hotel to obtain one of the permits listed in Paragraph (a), the applicant shall submit to the Commission, the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which ~~shall include~~ includes the full names and addresses of all owners, officers, directors, shareholders owning 25 percent or more of the stock, interest holders holding 25 percent of the interest, and the manager; if, however, a corporation holds any other ABC permit, application by the manager is sufficient;
- (2) a copy of the restaurant's menu or a list of food served; and
- (3) photographs of sufficient detail to show the following:
 - (A) entire kitchen including all equipment;
 - (B) all permanent dining areas, showing seating arrangements, including patio or outdoor areas where alcoholic beverages might be served or consumed;
 - (C) bars, counters and mixing stations;
 - (D) locked storage area or areas; and
 - (E) front exterior of hotel and restaurant.

(c) Locations Where Sales Permitted. Brownbagging by patrons, consumption of alcoholic beverages and sales of mixed beverages are allowed at any time during lawful hours in the restaurant and in any lounge or other place that is customarily open to the general public and that is associated with the restaurant. These lounges and other places need not be directly connected to the restaurant as long as the services of the restaurant are available to the lounge at all times that alcoholic beverages are being served. Sales and consumption of mixed beverages are allowed in banquet rooms, convention rooms, suites and similar places not usually open to the general public only during scheduled events and only to persons attending those events. Portable bars may be used for the sale or mixing of mixed beverages in those rooms.

(d) Diagram of Premises. The diagram of the premises submitted with the application for a permit under this Rule and the diagram ~~approved by~~ submitted to the Commission when the permit is issued shall be marked to indicate which spaces are considered part of the restaurant and lounge or other places associated with the restaurant and customarily open to the general public, and which spaces are considered banquet rooms, convention rooms, meeting rooms, suites, and similar places where mixed beverages are to be sold only during scheduled events.

(e) Managers' Receptions. Hotels operating lodging, restaurant and lounge facilities under one set of ABC permits may offer lodging guests up to two alcoholic beverages per guest per day in the price of the room package under the following conditions:

- (1) The reception or social hour is held on the licensed premises of the hotel;
- (2) The hotel issues a voucher or other proof of guest registration for the beverages that can be

used by the guest to obtain the beverage of his choice;

- (3) Nonalcoholic beverages ~~shall also be~~ are also offered to lodging guests during the function; and
- (4) The hotel ~~must account~~ accounts for the beverages by an internal accounting procedure ~~to insure that insures~~ that the price of each beverage included in the room rate package is the same price as is being charged other patrons in the lounge or restaurant for the same beverage. ~~This procedure must be acceptable to the Commission's Audit Division.~~

(f) Guest Room Cabinet Permits; Application Requirements. Applications for a Guest Room Cabinet permit ~~will~~ shall be accepted only from hotels with Mixed Beverages permits, or from hotels simultaneously applying for Mixed Beverages permits, ~~in the following counties: Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Moore and Wake permits.~~

In addition to the general requirements for permit applications in this Rule and in Rule .0102 of this Section, a hotel applying for a Guest Room Cabinet permit shall submit the following items along with the completed application form and appropriate fee:

- (1) List of lodging rooms by room number in which cabinets will be placed;
- (2) Total number of lodging rooms and total number of rooms set aside that will not have a cabinet;
- (3) Description of cabinets to be installed by the hotel. A manufacturer's brochure describing the cabinet ~~will be~~ is sufficient, or the permittee may submit photographs and a written description of the lock used on the cabinet; and
- (4) Written policies developed by the permittee regarding the procedures that will be implemented by the hotel to:
 - (A) insure no one under 21 is able to obtain a key to the cabinet;
 - (B) control inventory;
 - (C) insure price lists for items sold from cabinets are easily readable;
 - (D) dispose of all opened alcoholic beverage containers sold from cabinets after guest has checked out; and
 - (E) maintain adequate numbers of ice and soft drink vending machines elsewhere on the premises.

Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(4); 18B-1001(13); 18B-1008; S.L. 1991, c. 565, s. 7.

04 NCAC 02S .0107 SPECIAL REQUIREMENTS FOR PRIVATE CLUBS

(a) ~~Definition. A private club is a private facility organized and operated by a person, association or corporation solely for a social, recreational, patriotic or fraternal purpose. Use of the~~

private club's facility shall not be open to the general public but shall be limited to members of the private club and their guests.

(b) Typical Characteristics. Although a private facility need not possess all of the following characteristics to qualify as a private club, each is typical of a ~~bona fide~~ club and the Commission ~~will~~ shall consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke a Brownbagging, Fortified Wine or Mixed Beverages Permit:

- (1) Membership is subject to ~~clearly~~ stated requirements that tend to show a common bond among members;
- (2) Some limit related to the size of the facility is placed on total membership;
- (3) All members ~~may and do~~ are allowed to participate in its organizational affairs, including the selection of officers or directors at reasonably frequent intervals;
- (4) The club operates pursuant to a charter, articles of association, constitution, or similar basic document and has adopted by-laws, copies of which are provided to each member;
- (5) The club has ~~clearly~~ stated objectives of a social, recreational, patriotic or fraternal nature and its activities advance those objectives;
- (6) Membership entitles a person to ~~significant~~ multiple privileges other than the consumption of alcoholic beverages;
- (7) Most members hold full rather than limited memberships;
- (8) Facilities and activities other than those customarily related to the consumption of alcoholic beverages are available to members;
- (9) Some limits are placed on the number of times a guest may use the facility; and
- (10) Guests constitute a relatively small portion of the users of the facility.

(c) Mandatory Requirements. To qualify as a private club, a facility shall meet the following requirements concerning membership:

- (1) collect an annual membership fee separate from any admission or cover charge, no dues from which ~~may~~ shall be more than 30 days past due;
- (2) maintain a written policy on the granting of full and limited memberships;
- (3) require each prospective member to complete a written application that contains questions directly related to the applicant's interest in the social, patriotic, fraternal or recreational purpose of the club, the applicant's qualifications for membership, and the applicant's background;
- (4) retain each completed application, if approved, in the organization's permanent records as long as the individual's membership continues;
- ~~(5) grant no membership sooner than three days after receipt of application;~~
- ~~(6)~~(5) issue written or printed evidence of membership to each member, which evidence

of membership or other reasonably reliable document of identification shall be in the possession of each member present on the licensed premises;

- ~~(7)~~(6) maintain on the premises a current alphabetical roster of all members and their complete addresses; and
- ~~(8)~~(7) maintain and provide to each member a written policy concerning the use of facilities by guests.

(d) Permit Application Procedures. For a private club to obtain a Brownbagging, or Fortified Wine or Mixed Beverages Permit, the applicant shall submit to the Commission the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which ~~shall include~~ includes the full names and addresses of all officers and directors (including those chosen by the membership), and the manager;
- (2) the written policy on granting of full and limited memberships;
- (3) a copy of the membership application form;
- (4) a copy of the membership card or certificate to be issued to members;
- (5) the written policy on use of facilities by guests; and
- (6) the charter, articles of incorporation, constitution, or other basic documents, and the by-laws, if any.

Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(5); 18B-1008.

SECTION .0200 - GENERAL RULES AFFECTING RETAILERS AND BROWNBAGGING PERMITTEES

04 NCAC 02S .0209 USE OF PROFANITY PROHIBITED

~~No permittee or his employees shall use or permit the use by any other person of loud, profane or indecent language.~~

Authority G.S. 18B-207; 18B-1005(a)(6).

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED

(a) No permittee or his employees shall consume alcoholic beverages ~~on the licensed premises~~ except under the following conditions:

- (1) The permittee or employee ~~shall be~~ is off duty for the remainder of that day or night during which he consumes any alcoholic beverage;
- (2) The permittee or employee ~~shall be~~ is out of uniform when uniforms are required to be worn while performing any on duty services; and
- (3) The permittee or employee shall not perform any on duty services of any nature while or after consuming alcoholic beverages.

(b) Notwithstanding Paragraph (a) of this Rule, a malt beverage or wine permittee or its employee who is of legal age and who is responsible for ordering or serving beverage alcohol may sample new malt beverage or wine products as provided by 04 NCAC 02T .0713(b) on the premises. Samples shall not exceed two ounce servings of individual products and the total of the samples shall not exceed eight ounces in one calendar day.

~~(b)(c)~~ (c) No permittee or his agents or employees shall be or become intoxicated on the licensed premises.

Authority G.S. 18B-203(b); 18B-207; 18B-1005(b); 18B-1006(d).

04 NCAC 02S .0216 ENTERTAINERS AND CONDUCT

~~(a) No permittee or his employee shall allow any person to perform acts of or acts that simulate:~~

- ~~(1) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts that are prohibited by law;~~
- ~~(2) the touching, caressing or fondling of the breasts, buttocks, anus, vulva or genitals;~~
- ~~(3) the display of the pubic hair, anus, vulva or genitals.~~

~~(b) No permittee or his employee shall allow any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in Paragraph (a) of this Rule.~~

~~(c) No permittee or his employee shall allow any person who exposes to public view any portion of his pubic hair, vulva, genitals or anus to remain in or upon the licensed premises.~~

Authority G.S. 18B-207; 18B-1005(a)(4),(5),(6).

04 NCAC 02S .0217 VISUAL DISPLAYS

The showing or display of film, still pictures, or electronic or other visual reproductions depicting the following are prohibited on the licensed premises:

- ~~(1) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts that are prohibited by law;~~
- ~~(2) any person being touched, caressed, or fondled on the breast, buttocks, anus, vulva or genitals;~~
- ~~(3) scenes in which a person displays his pubic hair, anus, vulva, or genitals.~~

Authority G.S. 18B-207; 18B-1005(a)(4),(5),(6).

04 NCAC 02S .0232 HAPPY HOURS REGULATED

- (a) An on-premise permittee or his agent shall not:
 - (1) sell more than one drink to a patron for a single price;
 - (2) establish a single price based upon the required purchase of more than one drink; or
 - (3) deliver more than one drink at one time to a patron for his consumption.

This Rule does not prohibit the sale of pitchers of alcoholic beverages to two or more patrons. This Rule also does not

prohibit serving a single carafe or bottle of wine to a single patron.

(b) An on-premise permittee or his agent shall not give away a drink or sell one at a price that is different from the usual or established price charged for the drink for any period of time less than one full business day. Free or reduced drinks under this provision shall be offered to all customers, not just a segment of the population.

(c) For purposes of this Rule, a "drink" contains the amount of alcoholic beverages usually and customarily served to a single patron as a single serving by the permittee. A "drink" may also include two different alcoholic beverages served separately at the same time to a single patron if such "drink" is a customary combination, such as a shot of spirituous liquor with a malt beverage.

~~(d) Exception for Certain Holidays.~~ An on-premise permittee may include alcoholic beverages in a package offering that includes a meal or entertainment ~~if the offered special is made in conjunction with the following holidays: New Year's, Valentines Day, Mother's Day, or Father's Day.~~ entertainment.

(e) The offer of a meal and alcoholic beverage at a single total price is not a violation of this ~~Section~~ Rule so long as the total price reflects the actual price of the alcoholic beverages and not a reduced price.

Authority G.S. 18B-207; 18B-1008.

04 NCAC 02S .0234 PRIVATE CLUBS: GENERAL PROHIBITIONS; GUESTS

~~(a) Neither a private club permittee nor his employee shall: Private club permittees or their employees shall not allow any person who is not a member or a guest of a member to purchase or possess alcoholic beverages on the premises.~~

- ~~(1) allow any person who is not a member or a bona fide guest of a member to be present as a patron on the premises of a private club; or~~
- ~~(2) grant membership to the private club to any person earlier than three days from the receipt of his application for membership.~~

(b) "House" Guests. No private club permittee or his employee shall admit patrons as "house" guests.

(c) Employee Member. An employee who is also a member of the private club shall not admit a patron as his guest while that employee is on duty.

(d) A member shall designate his own guest. If a member accepts a patron as his guest at the behest of the private club mixed beverages permittee or employee, then the Commission shall consider that member to be acting as the permittee's agent.

Authority G.S. 18B-207; 18B-1008.

04 NCAC 02S .0235 PRIVATE CLUBS; RECIPROCAL MEMBERSHIPS

A private club permittee may offer reciprocal memberships to ~~bona fide~~ members of other private clubs under the following conditions:

- (1) Reciprocity ~~may~~ shall extend only to members of private clubs holding Mixed Beverages or

Brownbagging permits issued by the Commission.

- (2) All clubs participating in reciprocal membership arrangements shall enter into a written agreement setting forth the terms of their arrangement, and each club shall adopt rules governing the use of their facilities by reciprocal members. The agreement and rules shall be filed with the Commission and made a part of the permittees' files.
- ~~(3) Private clubs entering into such agreements shall be located in different counties.~~
- ~~(4)(3)~~ A member of another club who is granted a reciprocal membership shall be required to show a valid membership card indicating he is a ~~bona fide~~ member of the reciprocal club each time he enters the facility.

Authority G.S. 18B-207; 18B-1008.

SECTION .0400 - ADDITIONAL REQUIREMENTS FOR BROWNBAGGING PERMITTEES

04 NCAC 02S .0404 RESTAURANTS; HOTELS; DISPLAY; CONTROL OF BEVERAGES

- (a) A restaurant or hotel holding a Brownbagging Permit shall ensure that all fortified wine and liquor is possessed inconspicuously by patrons when they are not in a private dining area.
- (b) Every person possessing fortified wine or spirituous liquor in restaurants and hotels with Brownbagging Permits shall at all times retain control of his alcoholic beverages.

Authority G.S. 18B-207; 18B-1001(7).

SECTION .0900 - WINE AND BEER TASTINGS

04 NCAC 02S .0901 TASTINGS HELD BY RETAILERS FOR CONSUMERS

~~(a) General. A retail wine or malt beverage permittee may conduct tastings of wine or malt ~~beverages,~~ as appropriate beverages for consumers. A tasting ~~may be held on the retailer's premises if he holds the appropriate on premises permit.~~ requires a tasting permit. Tastings shall be conducted in conformity with all ABC laws. Any retailer conducting a wine or malt beverage tasting shall:~~

- ~~(1) Provide training to its employees conducting and supervising any tasting, including:

 - ~~(A) identification of potential underage customers;~~
 - ~~(B) recognition of fictitious identification;~~
 - ~~(C) identification of potentially intoxicated customers; and~~
 - ~~(D) service of correct sample sizes.~~~~
- ~~(2) Prominently display in the area where the tasting is being conducted a sign informing customers that they must be 21 years of age to participate in the tasting.~~

(b) Tastings Assisted by Industry Member. For the purposes of this Rule, "industry member" means any manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages. An industry member may assist with wine or malt beverage tastings for consumers in conjunction with, or on the licensed premises of, a retailer provided that:

- (1) The wine or malt beverage is taken directly from the retailer's existing inventory;
- (2) The industry member makes no payment to or on behalf of the retailer for promoting or advertising the tasting;
- (3) The retailer provides instruction to any participating industry member outlining how the tasting will be conducted prior to the tasting;
- (4) The retailer designates one of its employees to supervise the tasting. The retail supervisor shall:

 - (A) be physically present, actively supervise and be readily available to any participating industry member at all times during the tasting;
 - (B) wear visible identification;
 - (C) physically check-in with any participating industry member at each tasting station at least once per hour;
 - (D) make a final determination on the eligibility of a consumer to participate in a tasting in the event such a question arises;
 - (E) maintain an accurate accounting of all wine or malt beverages purchased for and consumed at the tasting; and
 - (F) dispose of any opened wine or malt beverage containers remaining after the tasting, unless the remaining wine is retained by a wine shop permittee.

(c) Unlawful Inducements Prohibited. No industry member shall require a retailer, and no retailer shall require an industry member, to conduct a wine or malt beverage tasting.

Authority G.S. 18B-207; 18B-1001(15); 18B-1001(18).

04 NCAC 02S .0902 TASTINGS HELD BY INDUSTRY MEMBERS FOR CONSUMERS

Where the legal sale of those beverages is permitted, an industry member may furnish wine or malt beverages for tastings for consumers provided that:

- ~~(1) The tasting is conducted for promotional purposes; and~~
- ~~(2) No alcoholic beverages are sold, no sales or orders are solicited, and no order blanks are placed in or about the premises; premises.~~
- ~~(3) If the tasting is held on the premises of a retail permittee, the industry member may purchase the products to be used from the retailer so long as the purchase price is no higher than the retailer's ordinary retail price;~~

- (4) ~~If wine or beer is furnished by the industry member for a consumer tasting held in conjunction with a retailer, any excess brought to the tasting is removed by the industry member; and~~
- (5) ~~If a tasting is conducted in conjunction with a retailer, the industry member makes no payment to or on behalf of the retailer for promoting and advertising the tasting.~~

Authority G.S. 18B-207; 18B-1107(a)(4); 18B-1109(a)(4); 18B-1116(b).

04 NCAC 02S .0903 TASTINGS HELD BY INDUSTRY MEMBERS FOR RETAIL PERMITTEES: SAMPLES

(a) Samples. An industry member may give samples of ~~wine or wine~~, malt beverages or spirituous liquor to a retail permittee authorized to sell that beverage under the following circumstances:

- (1) The industry member may give the retailer up to three gallons per brand of malt ~~beverages and beverages~~, up to three liters per brand of ~~wine~~; wine and up to 50 milliliters per brand of spirituous liquor; and
- (2) The retailer has not previously purchased those brands from the industry ~~member~~. member within the previous calendar year.

(b) Tastings. ~~The~~ At educational seminars, an industry member may give ~~the retailer a retail permittee~~ samples by the glass of any products he offers for sale. ~~Such a~~ A tasting may be conducted on the industry member's premises or at any other ~~location approved by the Commission for that purpose.~~ location. A tasting under this Paragraph shall not be conducted in conjunction with a meal, a party, or any other social event but shall be for business purposes only.

Authority G.S. 18B-207; 18B-1107(a)(4); 18B-1109(a)(4); 18B-1116(b).

SECTION .1000 - ADVERTISING

04 NCAC 02S .1006 GENERAL PROHIBITIONS

(a) For the purposes of this Rule, the following definitions shall apply:

- (1) "Coupon" means a part of a retail permittee's advertisement that is redeemed by a purchaser to the retail permittee to obtain a discount at the time of sale;
- (2) "Loyalty card, discount card, or membership card" means a card that is issued by a retail permittee to customers that, upon presentation to the retail permittee, provides for the purchaser to receive a loyalty card, discount card, membership card, or coupon discount on a portion of the amount paid by the purchaser for off-premises beer or wine consumption sales at the time of sale; and
- (3) "Rebate" for a retail permittee, means a promise by the retail permittee to return a

portion of the amount paid by the purchaser upon the condition the purchaser completes a rebate form and the purchaser meets the terms and conditions of the rebate form's requirements.

~~(a)(b) Cents-off coupons or coupons offering free alcoholic beverages shall not be used as a method for advertising. Advertising for an alcoholic beverage shall not include a coupon or an offer for a free alcoholic beverage. No person shall advertise by means of a coupon, a rebate or a permittee's loyalty card, discount card or membership card offering a discount off the purchase of a malt beverage or wine, except as provided in this section. A combination of the use of a coupon, a rebate or a permittee's loyalty card, discount card or membership card shall not exceed a total of 25 percent of the advertised retail price of the item.~~

(1) A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise by means of a coupon or a rebate in the following circumstances:

(A) The permittee may provide a coupon or a rebate for use by a customer when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;

(B) The permittee may require a customer to use the permittee's loyalty card, discount card or membership card with the use of a coupon or rebate when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;

(C) No coupons or rebates shall be honored for the purchase of alcohol for any individual below the legal age for purchase of alcohol;

(D) A coupon or rebate shall not provide a discount exceeding 25 percent of the advertised retail price of the item;

(E) A permittee shall not advertise or distribute coupons or rebates in a publication produced for or by a higher education institution; and

(F) In any advertisement displaying a discount coupon or rebate, the permittee shall include the following statement on or about the discount coupon or rebate in a similar font to the discount coupon or rebate, "Drink Responsibly – Be 21."

(2) A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise discounts, coupons and rebates with

the requirement of the use of the permittee's loyalty card, discount card or membership card in the following circumstances:

- (A) The permittee shall require customers to present a loyalty card, discount card or membership card to receive the advertised loyalty card, discount card or membership card discount when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;
- (B) No loyalty card, discount card or membership card shall be honored for the purchase of alcohol for any individual below the legal age for purchase of alcohol;
- (C) A loyalty card, discount card or membership card shall not provide a discount exceeding 25 percent of the advertised retail price of the item;
- (D) A permittee shall not advertise permittee loyalty card, discount card or membership card discounts in a publication produced for or by a higher education institution; and
- (F) In any advertisement displaying a permittee loyalty card, discount card or membership card discount, the permittee shall include the following statement on or about the discount coupon or rebate in a similar font to the discount, "Drink Responsibly – Be 21."

Direct or indirect cooperation shall not occur between a retailer and an industry member in either marketing, redemption or funding of coupons, rebates or loyalty card, discount card or membership card discounts under this Rule. Participation of an industry member in the use of coupons, rebates or loyalty card, discount card or membership card discounts is a violation of G.S. 18B-1116(a)(3).

~~(b)(c)~~ No alcoholic beverages advertising shall be carried in any programs for events or activities in connection with any elementary or secondary schools; nor shall any alcoholic beverages advertising be connected with ~~these events when~~ broadcast over radio or television.

~~(e)(d)~~ No alcoholic beverages advertising ~~shall be~~ is permitted by use of sound trucks.

~~(4)(e)~~ No spirituous liquor advertising shall be displayed upon the picture screen of any theater.

~~(e)(f)~~ Except as otherwise provided in these Rules, no industry member or retailer shall promote an alcoholic beverage product by giving prizes, premiums or merchandise to individuals for which any purchase of alcoholic beverages is required or based on the return of empty containers unless all containers of like products are accepted and considered on an equal basis with the product sold by the promoter.

~~(f)(g)~~ No on-premise permittee or his agent shall advertise any drink promotion prohibited by ~~Rule 2S-.0232-.04 NCAC 02S~~

.0232. This Paragraph includes a ban on all advertisements of "2 for 1," "buy 1 get 1 free," "buy 1 get another for a _____ (nickle, penny, etc.)," and any other similar statement indicating that a patron must buy more than one drink.

Authority G.S. 18B-105(b); 18B-1116(a)(3).

04 NCAC 02S .1008 ADVERTISING OF MALT BEVERAGES, WINE AND MIXED BEVERAGES BY RETAILERS

(a) Interior Advertising.

- (1) Point-of-Sale. Retail malt ~~beverage and beverage,~~ wine and mixed beverage permittees may utilize any amount of point-of-sale advertising for malt ~~beverage and beverage,~~ wine and mixed beverage products offered for sale in the establishment. This advertising may be supplied by the industry member unless it constitutes a fixture or has value other than as advertising material; except that an industry member may give a retailer brand-identified items listed in 4 NCAC 2T .0713(c) of this Chapter 04 NCAC 02T .0713(c) for use as point-of-sale advertising.
- (2) Price Boards. Retail malt ~~beverage and beverage,~~ wine and mixed beverage permittees may display inside price boards showing the brand names and prices of malt ~~beverage and beverage,~~ wine and mixed beverage products offered for sale in the establishment.
- (3) Menus and Beverage Lists. Retail on-premise malt ~~beverage and beverage,~~ wine and mixed beverage permittees may place on the menu and beverage lists the brand names and prices of malt ~~beverage and beverage,~~ wine and mixed beverage products offered for sale in the establishment. ~~Menus and beverage Beverage lists~~ may be supplied by an industry member ~~provided the menu or beverage list is not printed with and may include up to six items from the retailer's food menu, menu but shall not include the name, logo or other identifier of the retail permittee on the advertisement.~~ A table tent shall be considered a beverage list for purposes of this Rule.
- (4) Retail Advertising Specialty Items. Retailer advertising specialty items are items such as trays, coasters, mats, meal checks, paper napkins, glassware, cups, foam scrapers, back bar mats, thermometers and other similar items that bear advertising matter. Advertising specialty items may be provided to a retailer by an industry member as provided in 4 NCAC 2T .0713(b)(8) of this Chapter. 04 NCAC 02T .0713(b)(8).
- (5) Window Displays. Retail malt ~~beverage and beverage,~~ wine and mixed beverage permittees may arrange a reasonable number of unopened

- malt ~~beverage or beverage~~, wine or spirituous liquor products in a window display.
- (6) Location. No point-of-sale advertising, advertising specialty item or price board shall be displayed in a manner designed or intended to advertise malt ~~beverages or beverages~~, wine or mixed beverages on the outside of the establishment.
- (7) T-shirts. A retailer's employees shall not wear alcoholic beverage brand identified t-shirts while working on the retailer's licensed premises.
- (8) Removal of ~~Objectionable~~-Signs. A permittee shall remove any sign, display or advertisement in or about his licensed premises if the Commission finds it is ~~objectionable~~ or contrary to public interest and orders its removal.
- (b) Exterior Advertising.
- (1) Outside signs on the premises.
- (A) Malt Beverages. Retail malt beverage permittees may display the term "beer" or "cold beer" or "draught beer" on a single, non-mechanical outside sign. The letters and figures on the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be attached to the building on the licensed premises.
- (B) Wine. Retail wine permittees may display the term "wine permit-off premise" or "wine permit-on premise" or a substantially equivalent term on a single non-mechanical outside sign. The letters and figures on the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be attached to the building on the licensed premises. Instead of the sign described in this Paragraph, retail wine permittees ~~primarily and~~ substantially engaged in off-premise sales of wine may display the term "Wine Shop" or "Wine and Cheese" or a substantially equivalent term on a single non-mechanical sign. The letters and figures on the sign shall not be more than 18 inches in height and the sign shall be attached to the building on the licensed premises.
- (C) Restriction. ~~Nothing in this Section~~ Retail malt beverage, wine and mixed beverage permittees shall be construed to not allow price advertising or additional signs advertising malt ~~beverages and~~ beverages, wine and mixed beverages on the outside of ~~premises holding retail permits~~ their premises. Outside signs alluding to malt ~~beverages or beverages~~, wine or mixed beverages by slang descriptions such as "brew," "suds," "six-pack," "~~vino~~"-vino" or "booze" or ~~similar terms~~ are prohibited.
- (D) Exceptions; Menus; Trade Names. The placement in a window or on the exterior of the retailer's building of a food menu that also contains a list of alcoholic beverages by brand and price ~~shall not be construed as is not~~ a violation of this Rule. Additional exceptions may be granted by the Commission in the case of corporate names or franchise trade names.
- (E) ~~Mixed Beverages. Retail mixed beverage permittees may display the term "mixed beverages," "all ABC permits," "mixed drinks," "cocktails," or "spirits," on a single non-mechanical, non-neon, or otherwise self-illuminated outside sign. The letters and figures on the sign shall not be more than five inches in height and two inches apart and the sign shall be attached to the building on the licensed premises.~~
- (F) ~~Private Club. A private club shall not display any exterior sign advertising the availability of malt beverages, wine or mixed beverages.~~
- (2) Billboards. Retail permittees shall not advertise malt ~~beverage or beverage~~, wine or mixed beverage products or the availability of alcoholic beverages by means of a billboard or outdoor sign except as provided in this Section. Industry members with retail permits may advertise tastings.
- (3) Aerial Displays. Retail permittees shall not advertise malt ~~beverage or beverage~~, wine or mixed beverage products or the availability of alcoholic beverages by means of an aerial display or an inflatable item that is tethered.
- (c) Removal of ~~Objectionable~~-Signs. A permittee shall remove any sign, display, or advertisement in or about his licensed premises if the Commission finds it is ~~objectionable~~ or contrary to public interest and orders its removal.
- (d) Media Advertising. A retail malt ~~beverage or beverage~~, wine or mixed beverage permittee may advertise price and brand of malt ~~beverage and beverage~~, wine and mixed beverage products offered for sale by means of circular, newspaper, magazine, ~~radio and television~~-radio, television and internet.

Authority G.S. 18B-105; 18B-1116(b).

04 NCAC 02S .1011 ADVERTISING OF SPIRITUOUS LIQUORS

(a) ABC Stores. An ABC store may have one or more outside signs located on the premises for the purpose of identifying the outlet if the sign is not prohibited by local ordinance and it has been approved by the Commission.

(b) Aerial Displays. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of an aerial display or inflatable the brand name or availability of spirituous liquor.

~~(c) Billboards. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of a billboard or sign the brand name or availability of spirituous liquor.~~

~~(d) Broadcasting. No retail permittee shall advertise by radio or television or any transmission to radio or television the brand name or availability of spirituous liquor.~~

~~(e)~~(c) Point-of-Sale. Point-of-sale and advertising specialties for spirituous liquor may be used in ABC stores but not in retail establishments holding permits issued by the Commission. Advertising used in ABC stores shall conform to the provisions of Rule .1005 of this Section, and in addition shall not:

- (1) incorporate the use of any present or former athlete or athletic team; or
- (2) refer to the availability of or offer any alcoholic beverages by ~~mail~~; or mail.
- ~~(3) utilize case card loaders.~~

All point-of-sale advertising material, advertising specialties, and recipes, booklets or brochures intended for use and display in ABC stores shall first be submitted to the Commission for approval prior to their display in an ABC store.

Authority G.S. 18B-105; 18B-207; 18B-801.

TITLE 20 – DEPARTMENT OF TREASURER

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of State Treasurer intends to amend the rules cited as 20 NCAC 03 .0112; 09 .0602.

Proposed Effective Date: January 1, 2011

Public Hearing:

Date: September 30, 2010

Time: 2:00 p.m.

Location: 4505 Fair Meadow Lane, Raleigh, NC 27607

Reason for Proposed Action: The Department of State Treasurer seeks to raise the fees charged for services rendered in issuing and administering public debt. The proposed fee increase is expected to generate approximately \$1,100,000 in additional revenue, which will be used to pay for technology upgrades in the department. The Department seeks the fee increase only after having tried to secure funding through the appropriation process for the last several years.

Procedure by which a person can object to the agency on a proposed rule: Persons wishing to object to the rule may do so in writing by mail or email sent to the address included in this notice.

Comments may be submitted to: Andrew Holton, 325 N. Salisbury Street, Raleigh, NC 27603, email andrew.holton@nctreasurer.com.

Comment period ends: November 15, 2010

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal Impact: A copy of the fiscal note can be obtained from the agency.

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

Fiscal Note posted at:

http://www.osbm.state.nc.us/files/pdf_files/DST08102010.pdf

CHAPTER 03 - LOCAL GOVERNMENT COMMISSION

SECTION .0100 - GENERAL PROVISIONS

20 NCAC 03 .0112 FEES

(a) Up to the amount listed below, ~~the~~ the following fees shall be charged for services rendered or to be rendered for each category of bonds and notes set forth:

- (1) Bonds sold pursuant to G.S. 159D, Article 2 \$5,000.00 \$12,500.00
- (2) Bonds sold pursuant to G.S. 131A \$3,500.00 \$8,750.00
- (3) Bonds sold pursuant to G.S. 159B \$5,000.00 \$12,500.00
- (4) Bonds sold pursuant to G.S. 159C \$2,500.00 \$6,125.00
(Except for bonds for industrial development or pollution control for which the fee shall be ~~\$1,000.00~~ \$2,500.00.)
- (5) Bonds sold for Industrial Facilities and Pollution Control projects, pursuant

- to G.S. 159D, Article 1 (per participant)
~~\$1,000.00~~ \$2,500.00
- (6) All other bonds sold pursuant to G.S. 159D
~~\$1,000.00~~ \$2,500.00
- (7) Bonds sold pursuant to G.S. 159I
~~\$5,000.00~~ \$12,500.00
- (8) All notes issued in anticipation of issuance of a bond for which a fee is set forth herein
~~\$500.00~~ \$1,250.00
- (9) Revenue bonds sold pursuant to G.S. 159, Article 5 and all other approvals and issues of debt receiving Local Government Commission approval, other than general obligation bonds.
~~\$5,000.00~~ \$12,500.00

Authority G.S. 159D-39(17).

TITLE 21 – DEPARTMENT OF OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 57 – APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Appraisal Board intends to amend the rules cited as 21 NCAC 57A .0204, .0206, .0405.

Proposed Effective Date: July 1, 2011

Public Hearing:

Date: November 9, 2010

Time: 9:00 a.m.

Location: 5830 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action: 1. Appraisers are currently required to take a USPAP update course every two years, but many appraisers wait until the end of the two years to take the course. This change requires them to take the update course no later than 5 months after the effective date. 2. Appraisers are sending in reinstatement applications at the end of the renewal cycle, and staff cannot process the applications in such a short period of time. 3. Current rules state that appraisals must be transmitted in an unalterable format, which is not practical.

Procedure by which a person can object to the agency on a proposed rule: Attend the public hearing or submit comments by fax, email or regular mail to Roberta Ouellete, the agency's rule-making coordinator, by the end of the comment period.

Comments may be submitted to: Roberta Ouellete, Appraisal Board, 5830 Six Forks Road, Raleigh, NC 27609, phone (919)870-4854, fax (919)870-4859, email Roberta@ncab.org

Comment period ends: November 15, 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:

(b) In addition to the fees set forth in this Rule, all travel and subsistence and all other expenses, including telephone and postage, incurred shall be for the account of the issuer. When paid by the state, they shall be billed to the issuer.

(c) In addition to expenses pursuant to Paragraph (b) of this Rule, the following fees shall be charged for the services set forth herein:

- (1) Approvals to counties pursuant to G.S. 105-487(c) ~~\$250.00~~ \$625.00
- (2) Approvals to municipalities pursuant to G.S. 105-487(c) ~~\$250.00~~ \$625.00
- (3) Approvals of installment purchase contracts under G.S. 160A-20 where no public offering is proposed ~~\$500.00~~ \$1,250.00
- (4) Approvals of installment purchase contracts under G.S. 160A-20 where a public offering, including but not limited to certificates of participation, is proposed ~~\$5,000.00~~ \$12,500.00

Authority G.S. 159-3(f); 159-6.

CHAPTER 09 - EDUCATIONAL FACILITIES FINANCE AGENCY

SECTION .0600 - FEES

20 NCAC 09 .0602 FEES AND EXPENSES

(a) A non-refundable application fee shall be required of ~~05 percent. one~~ 0.10 percent (~~five hundredths~~ one tenth of one percent) of the par amount of the issue with a minimum fee of two thousand dollars (\$2,000), plus any and all fees charged by the Local Government Commission.

(b) An annual fee of ~~five hundred~~ one thousand dollars (~~\$500~~ \$1,000) per year shall be required.

(c) In addition to the fee set forth in this Rule, all travel and subsistence incurred, and all material amounts of other expenses, e.g. telephone and postage when paid by the state, shall be billed to the institution.

(d) The agency will not incur extraordinary expenses without prior agreement of the applicant to reimburse the agency for all related costs.

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

SUBCHAPTER 57A - REGISTRATION LICENSING, CERTIFICATION AND PRACTICE

SECTION .0200 - TRAINEE REGISTRATION, APPRAISER LICENSING AND CERTIFICATION

21 NCAC 57A .0204 CONTINUING EDUCATION

(a) All registered trainees, real estate appraiser licensees and certificate holders shall, upon the renewal of their registration, license or certificate in every odd-numbered year, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Trainees and appraisers who initially registered with the Board after January 1 of an odd numbered year are not required to show continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, licensee and certificate holder who must complete continuing education pursuant to .0204(a) must complete 28 hours of continuing education before June 1 of every odd numbered year. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes, at schools approved by the Board to offer such courses. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of licensed residential, certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification shall not be applied toward the continuing education requirement. Trainees, licensees and certificate holders shall not take the same continuing education course more than once during the two year continuing education cycle.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, license or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to .0204(a) must, as part of the 28 hours of continuing education required in .0204(b) of this Section, complete the seven hour National USPAP update course, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its ~~equivalent, prior to June 1 of every~~

~~odd-numbered year equivalent.~~ USPAP is updated every other even numbered year, and each trainee, licensee and certificate holder shall take the most recent USPAP update course prior to June 1 of every even numbered year.

(e) A licensee who elects to take approved continuing education courses in excess of the requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a certificate of course completion to each trainee, licensee and certificate holder satisfactorily completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 15 of each year. In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having satisfied the continuing education requirement is not provided, the registration, license or certificate shall expire and the trainee, licensee or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) as set out in G.S. 93E-1-8(d) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. Up to 14 hours of continuing education credit may be granted in each continuing education cycle for participation in appraisal education activities. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit shall be deemed to have taken an equivalent course and shall not be subject to the fee prescribed in G.S. 93E-1-8 (d), provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every two years, regardless of how often he teaches the course. Requests for equivalent approval for continuing education credit must be received before June 15 of an odd-numbered year to be credited towards the continuing education requirement for that odd-numbered year. Equivalent approval shall be granted only for courses that are 7 hours or longer, and will only be granted for a minimum of 7 hours.

(h) A trainee, licensee or certificate holder may receive continuing education credit by taking any of the Board-approved precertification courses, other than Basic Appraisal Principles and Basic Appraisal Procedures, or their approved equivalents. These courses cannot be used for both continuing education credit and for credit for licensing purposes. Trainee, licensees and certificate holders who wish to use a precertification course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A trainee, licensee or certificate holder who resides in another state and is currently licensed by the appraiser certification board of that state may satisfy the requirements of this section by providing a current letter of good standing from the resident state showing that the licensee has met all continuing education requirements in the resident state. A trainee, licensee or certificate holder who became licensed in North Carolina by reciprocity and now resides in North Carolina may renew by letter of good standing for his or her first renewal as a resident of North Carolina only if the trainee or appraiser moved to North Carolina on or after January 1 of an odd numbered year. If a trainee or appraiser was a resident of this state before January 1 of an odd-numbered year, the trainee or appraiser must comply with the requirements of this section regardless of how the registration, license or certificate was obtained.

(j) A trainee, licensee or certificate holder who returns from active military duty on or after February 1 of an odd-numbered year will be allowed to renew his or her registration, license or certificate in that odd-numbered year even if the required continuing education is not completed before June 1 of that year. All required continuing education must be completed within 180 days of when the trainee, licensee or certificate holder returns from active duty. Failure to complete the required continuing education within 180 days will be grounds for revocation. This rule applies to an individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

Authority G.S. 93E-1-7(a); 93E-1-10.

21 NCAC 57A .0206 EXPIRED REGISTRATION, LICENSE OR CERTIFICATE

(a) Expired registrations, licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Board of the renewal and late filing fees as set out in G.S. 93E-1-7 and provision of proof of having obtained the continuing education that would have been required had the registration, license or certificate been continuously renewed.

(b) If a registration or certificate has been expired for more than 12 months, but less than 24 months, an applicant may apply for reinstatement. In order to be considered for reinstatement, the applicant must pay the filing fee as set out in G.S. 93E-1-7 and include in the application proof that the applicant has obtained the continuing education that would have been required had the registration or certificate been continuously renewed. In addition, the Board may consider whether the applicant for reinstatement has any prior or current disciplinary actions, and may examine the applicant's fitness for registration or

certification before granting the request for reinstatement. A completed application for reinstatement must be received by June 1 of the second 12 months or it will not be accepted.

(c) An application for reinstatement shall not be granted if the registration or certificate has been expired for more than 24 months.

(d) Reinstatement is effective the date it is issued by the Board. It is not retroactive.

(e) A trainee or appraiser whose registration or certification has expired and who is returning from active military duty will be allowed to renew his or her registration or certificate when the trainee or appraiser returns from active duty without payment of a late filing fee as long as the trainee or certificate holder renews the registration or certificate within 180 days of when the trainee or certificate holder returns from active duty.

(f) A license holder whose license has been expired for more than 12 months may not apply for reinstatement.

Authority G.S. 93E-1-6(b); 93E-1-7; 93E-1-10.

21 NCAC 57A .0405 APPRAISAL REPORTS

(a) Each written appraisal report prepared by or under the supervision of a licensed or certified real estate appraiser shall bear the signature of the licensed or certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "licensed residential real estate appraiser," "certified residential real estate appraiser," or "certified general real estate appraiser," as applicable. Each such appraisal report shall also indicate whether or not the licensed or certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance. Such identification must be placed in the body of the report. Appraisers shall personally affix their signature to their appraisal reports and shall not allow any other person or entity to affix their signature. Trainees are not required to affix their signatures to appraisal reports, but if they do so, they must personally affix their signature and shall not allow any other person or entity to affix their signature. Trainees and appraisers shall sign their reports with the same name and in the same manner as it printed on their pocket cards.

(b) Every licensed and certified real estate appraiser shall affix or stamp to all appraisal reports a seal which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "licensed residential real estate appraiser", a "certified residential real estate appraiser", or as a "certified general real estate appraiser", as applicable. The seal must be legible, must conform to the seal authorized by the Board at time of initial licensure or certification, and must be a minimum of 1 inch in diameter. Appraisers shall personally affix their seal to their appraisal reports and shall not allow any other person or entity to affix their seal. Registered trainees are prohibited from using a seal on appraisal reports.

(c) A licensed or certified real estate appraiser who signs an appraisal report prepared by another person, in any capacity, shall be responsible for the content and conclusions of the report.

(d) A written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

(e) Appraisers shall keep a log of all appraisals performed. The log shall contain, at a minimum, the appraiser's license or certificate number, the street address of the subject property, the date the report was signed, the name of anyone assisting in the preparation of the report and the name of the client. These logs shall be updated at least every 30 days.

(f) Any appraiser who signs an appraisal report is entitled to make or retain a copy of that appraisal report, as long as the copy is made at the time the report is prepared. Any appraiser who signs an appraisal report must be given a copy of the appraisal report and the work file upon request for the purpose of submission of the report and work file to the Appraisal Board, compliance with due process of law, such as a subpoena, submission to a peer review committee, or in accordance with retrieval arrangements made by the appraiser and the person or entity retaining the report and work file.

(g) Appraisal reports transmitted electronically to clients shall be sent in a secure and unalterable format, such as Adobe PDF.

Authority G.S. 93E-1-10.

CHAPTER 57 – APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Appraisal Board intends to adopt the rules cited as 21 NCAC 57A .0410; 57D .0101-.0102, .0201-.0204, .0301-.0312, .0401-.0402, amend the rules cited as 21 NCAC 57C .0101.

Proposed Effective Date: January 1, 2011

Public Hearing:

Date: November 9, 2010

Time: 9:00 a.m.

Location: 5830 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 57C .0101 - Session Law 2010-141 was signed by the Governor on July 22, 2010. This legislation enacts Chapter 93E-2 of the Appraisers Act to give the Appraisal Board regulatory authority over Appraisal Management Companies. Registration for such companies will become mandatory as of January 1, 2011. This proposed rule would add appraisal management companies to the existing rule regarding complaints.

21 NCAC 57A .0410, 57D .0101-.0102, .0201-.0204, .0301-.0312, .0401-.0402 – Session Law 2010-141 was signed by the Governor on July 22, 2010. This legislation enacts Chapter 93E-2 of the Appraisers Act to give the Appraisal Board regulatory authority over Appraisal Management Companies. Registration for such companies will become mandatory as of January 1, 2011. These proposed rules implement the registration and renewal process for such companies. They also establish fees in accordance with the legislation.

Procedure by which a person can object to the agency on a proposed rule: Attend the public hearing or submit comments by fax, email or regular mail to Roberta Ouellette, the agency's rule-making coordinator, by the end of the comment period.

Comments may be submitted to: Roberta Ouellette, Appraisal Board, 5830 Six Forks Road, Raleigh, NC 27609, phone (919)870-4854, fax (919)870-4859, email Roberta@ncab.org

Comment period ends: November 15, 2010

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

Fiscal Impact:

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

SUBCHAPTER 57A - REGISTRATION LICENSING, CERTIFICATION AND PRACTICE

SECTION .0400 – GENERAL APPRAISAL PRACTICE

21 NCAC 57A .0410 APPRAISAL MANAGEMENT COMPANIES

An appraiser who performs an appraisal for an appraisal management company shall assure that the company is properly registered with the North Carolina Appraisal Board pursuant to G.S. 93E-2-3 before accepting the assignment.

Authority G.S. 93E-2-1, 93E-2-3; 93E-2-4(a).

SUBCHAPTER 57C - ADMINISTRATIVE LAW PROCEDURES

SECTION .0100 - APPRAISAL BOARD HEARINGS

21 NCAC 57C .0101 FORM OF COMPLAINTS AND OTHER PLEADINGS

(a) There shall be no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the trainee, appraiser or appraisal management company trainee or licensed

~~or certified appraiser~~ and shall reasonably apprise the Board of the facts which form the basis of the complaint.

(b) When investigating a complaint, the scope of the investigation shall not be limited to the persons or transactions described or alleged in the complaint.

(c) Persons who make complaints are not parties to contested cases heard by the Board, but may be witnesses in the cases.

(d) There shall be no specific form required for answers, motions or other pleadings relating to contested cases before the Board, except they shall be in writing. To be sufficient, the document must identify the case to which it refers and reasonably apprise the Board of the matters it alleges, answers, or requests. In lieu of submission in writing, motions, requests and other pleadings may be made on the record during the course of the hearing before the Board.

(e) During the course of an investigation of a licensee, the Board, through its legal counsel or staff, may send a trainee, appraiser or appraisal management company~~trainee or appraiser~~ one or more Letters of Inquiry requesting trainee, appraiser or appraisal management company~~trainee or appraiser~~ to respond. The initial Letter of Inquiry, or attachments thereto, shall set forth the subject matter being investigated. Upon receipt of a Letter of Inquiry, the trainee, appraiser or appraisal management company~~trainee or appraiser~~ shall respond within 14 30 calendar days. ~~Trainees and appraisers shall include with their written response~~ The response shall include copies of all documents requested in a Letter of Inquiry.

(f) Hearings in contested cases before the Board shall be governed by the provisions of Article 3A of Chapter 150B of the General Statutes.

Authority G.S. 93E-1-10; 93E-2-3; 93E-2-8.

SUBCHAPTER 57D – APPRAISAL MANAGEMENT COMPANIES

SECTION .0100 – APPLICATION FOR APPRAISAL MANAGEMENT REGISTRATION

21 NCAC 57D .0101 FORM

An appraisal management company that wishes to file an application for an appraisal management company certificate of registration may obtain the required form upon request to the Board. The form calls for information such as:

- (1) the legal name of the applicant;
- (2) the name under which the applicant will do business in North Carolina;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the applicant's NC Secretary of State Identification Number if required to be registered with the Office of the NC Secretary of State;
- (6) a completed application for approval of the compliance manager;
- (7) any past criminal conviction of and any pending criminal charge against any person or entity that owns ten percent or more of the appraisal management company;

(8) any past revocation, suspension or denial of an appraisal license of any person or entity that owns 10 percent or more of the appraisal management company;

(9) if a general partnership, a full description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;

(10) if a business entity other than a corporation, limited liability company or partnership, a full description of the organization of the applicant entity, including a copy of its organizational documents;

(11) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and

(12) any other information required by this Rule.

Incomplete applications shall not be acted upon by the Board.

Authority G.S. 93E-2-4.

21 NCAC 57D .0102 FILING AND FEES

(a) Each application for registration shall be accompanied by the required application fee. The Board may reject and return to the applicant any application which is incomplete or not accompanied by the required fee or fees. Application fees accompanying complete applications are not refundable.

(b) The application fee shall be thirty-five hundred dollars (\$3,500).

(c) Payment of application fees shall be made by certified check, bank check or money order payable to the North Carolina Appraisal Board.

Authority G.S. 93E-2-3; 93E-2-4; 93E-2-6.

SECTION .0200 – APPRAISAL MANAGEMENT COMPANY REGISTRATION

21 NCAC 57D .0201 FITNESS FOR REGISTRATION

(a) The Appraisal Board shall consider the fitness for registration of each applicant. When the fitness of an applicant is in question, action by the Board shall be deferred until the applicant has affirmatively demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.

(b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his or her fitness for registration at a hearing before the Board.

(c) The inquiry into fitness for registration may include consideration of whether the applicant has had any disciplinary action taken against any professional license in North Carolina or any other state, and/or whether the applicant has committed or done any act which would be grounds under the provisions hereinafter set forth for disciplinary action including the suspension or revocation of registration, and/or whether the applicant has been convicted of or pleaded guilty to any criminal act, and/or whether any such actions or charges are pending.

(d) All applicants shall obtain a criminal records check from Carolina Investigative Research, Inc., an agency designated by the Appraisal Board to provide criminal record reports. This records check must have been performed within 60 days of the date the completed application for registration is received by the Board. Applicants shall pay the designated reporting service for the cost of these reports.

(e) Notice to the applicant that its competency or fitness for registration is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time constitutes a waiver of the applicant's right to a hearing on its application for registration, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for registration.

(f) For the purposes of this Section, "applicant" shall mean any person owning 10 percent or more of the appraisal management company.

Authority G.S. 93E-2-3; 93E-2-4; 93E-2-11.

21 NCAC 57D .0202 REGISTRATION RENEWAL

(a) All registrations expire on June 30, 2012 and every June 30 of each year thereafter unless renewed before that time.

(b) A holder of an appraisal management company registration desiring the renewal of such registration shall apply in writing upon the form provided by the Board and shall forward the renewal fee. The renewal fee shall be two thousand dollars (\$2000). Forms are available upon request to the Board. The renewal fee is not refundable under any circumstances.

(c) Any company who acts or holds itself out as a registered appraisal management company while its appraisal management company registration is expired shall be subject to disciplinary action and penalties as prescribed in G.S. 93E-2-8 and G.S. 93E-2-10.

Authority G.S. 93E-2-3; 93E-2-6.

21 NCAC 57D .0203 EXPIRED REGISTRATION

(a) Expired registrations may be reinstated within six months after expiration upon proper application and payment to the Board of the renewal fee of two thousand dollars (\$2,000) and the late filing fee of twenty dollars (\$20.00) for each month or part thereof that the registration is lapsed, not to exceed one hundred twenty dollars (\$120.00).

(b) Reinstatement is not retroactive.

Authority G.S. 93E-2-3; 93E-2-6.

21 NCAC 57D .0204 PAYMENT OF FEES TO THE BOARD

Checks given the Board in payment of fees that are returned unpaid shall be cause for registration denial, suspension or revocation.

Authority G.S. 93E-2-3; 93E-2-8(a)(7).

SECTION .0300 – APPRAISAL MANAGEMENT COMPANY PROCEDURES

21 NCAC 57D .0301 USE OF TITLES

A real estate appraisal management company shall utilize the term "appraisal management company" or "AMC" when acting as an appraisal management company.

Authority G.S. 93E-2-3.

21 NCAC 57D .0302 CHANGE OF NAME OR CONTACT INFORMATION

Appraisal management companies shall notify the Board in writing of each change of trade name, business address, telephone number, or email address within 10 days of said change. The address shall be sufficiently descriptive to enable the Board to electronically correspond with and physically locate the appraisal management company.

Authority G.S. 93E-2-3; 93E-2-9.

21 NCAC 57D .0303 COMPLIANCE MANAGER

(a) A compliance manager shall be designated with the Board for each appraisal management company. The compliance manager shall be a certified real estate appraiser certified under Article I of this chapter or in another state.

(b) An appraisal management company shall file an application with the Board for approval of the designated compliance manager. This application shall provide the Board with information such as the compliance manager's name, mailing and physical address, and phone and email contact information, and shall be signed by the designated compliance manager.

(c) The designated compliance manager shall obtain a criminal records check from Carolina Investigative Research, Inc., an agency designated by the Board to provide criminal record reports. This records check must have been performed within 60 days of the date the completed application is received by the Board. Applicants shall pay the designated reporting service for the cost of these reports. The criminal records check results must be attached to the application for approval as a compliance manager.

(d) The designated compliance manager shall be responsible for:

- (1) the proper notification to the Board of any change of trade name or contact information of the appraisal management company and the registration of any assumed business name adopted by the appraisal management company for its use;
- (2) the proper retention and maintenance of records relating to appraisals conducted by or on behalf of the appraisal management company;
- (3) the maintenance of a record of all appraisers in North Carolina who perform appraisals for the appraisal management company, including a log of payments to appraisers; and

(4) the proper conduct of advertising of appraisal management services by or in the name of the appraisal management company;

(e) If an appraisal management company intends to change its compliance manager, it must submit an application for approval of the new compliance manager at least 10 business days before the effective date of the change.

Authority G.S. 93E-2-3; 93E-2-4(b); 93E-2-5.

21 NCAC 57D .0304 APPRAISER QUALIFICATIONS

An appraisal management company shall assure that any appraiser being added to its appraiser panel to appraise properties in North Carolina holds a license in good standing in this State pursuant to the North Carolina Appraisers Act. The appraisal management company shall verify the status of the appraiser by contacting the North Carolina Appraisal Board or by utilizing the National Registry of the Appraisal Subcommittee.

Authority G.S. 93E-2-3; 93E-2-4(f).

21 NCAC 57D .0305 APPRAISER COMPETENCY

Before an appraiser is added to a panel, an appraisal management company shall require the appraiser to declare in writing the appraiser's areas of geographic competency, the types of properties the appraiser is competent to appraise, and the methodologies the appraiser is competent to perform. The appraisal management company shall require the appraiser to update this information at least annually, and shall keep copies of all such declarations for a period of five years from the date they are submitted.

Authority G.S. 93E-2-3; 93E-2-4(b).

21 NCAC 57D .0306 APPRAISAL REVIEW

An appraisal management company shall review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company to validate that the real estate appraisal services are being conducted in accordance with USPAP. An appraisal management company is not required to review all appraisals performed by each appraiser, but may chose a representative sample of each appraiser's reports. At a minimum, an appraisal management company must review each appraiser's work at least once a year, and shall keep records of such reviews for a period of five years from the date they are done.

Authority G.S. 93E-2-3; 93E-2-4(b); 93E-2-9.

21 NCAC 57D .0307 RECORDS

(a) An appraisal management company shall maintain a record of each request it receives for its services in North Carolina. If an appraisal is ordered, the record shall include the name of the appraiser who performs the appraisal, the physical address or legal identification of the subject property, the name of the appraisal management company's client for the appraisal, and the amount paid to the appraiser.

(b) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, phone and email contact information, and whether the registration was granted or refused.

(c) A registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company. Such records may be maintained in electronic form. All records shall be preserved for five years.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall file a correcting amendment to the information contained in the document to the Board within 10 days of the change.

Authority G.S. 93E-2-3; 93E-2-9.

21 NCAC 57D .0308 PRODUCTION OF RECORDS

If an appraisal management company is requested to produce books and records to the Appraisal Board, the appraisal management company shall produce those records so that they may be viewed in the Appraisal Board's office in Raleigh, North Carolina. Books and records shall be produced in writing, by computer disc or by electronic delivery. If the appraisal management company is unable to comply, the company shall pay all costs associated with viewing the records in another location.

Authority G.S. 93E-2-3; 93E-2-8.

21 NCAC 57D .0309 COMPLAINTS AGAINST APPRAISERS

If an appraisal management company has a good faith belief that a real estate appraiser licensed in this State has violated applicable law or the Uniform Standards of Professional Appraisal Practice, or engaged in unethical conduct, it shall file a complaint with the Board. The complaint shall be filed within 90 days of the date the appraisal is submitted to the appraisal management company.

Authority G.S. 93E-2-3; 93E-2-4 (c).

21 NCAC 57D .0310 PAYMENT OF FEES TO APPRAISERS

If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal, the appraisal management company shall notify the appraiser in writing of the reason for nonpayment. Such notice shall be sent to the appraiser within 30 days after the date the appraiser transmits the appraisal to the appraisal management company. The notice shall be sent by registered mail, return receipt requested, to the appraiser's business address contained in the records of the Appraisal Board. The notice shall state the address of the subject property of the appraisal, the name of the appraiser(s) signing the report, and the reason why the fee shall not be paid. The notice shall also notify the appraiser of any dispute resolution process that the appraisal management company may have in place.

Authority G.S. 93E-2-3; 93E-2-4(d).

21 NCAC 57D .0311 REMOVAL OF AN APPRAISER FROM AN APPRAISER PANEL

If an appraisal management company decides to remove an appraiser from its list of qualified appraisers, the appraisal management company shall notify the appraiser in writing of the reason for removal. Such notice shall be sent to the appraiser by registered mail, return receipt requested, to the appraiser's address business address contained in the records of the Appraisal Board. The notice shall include a description of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior, or of any violation of the Uniform Standards of Professional Appraisal Practice or state licensing standards. It shall also notify the appraiser of any dispute resolution process that the appraisal management company may have in place through which the appraiser may dispute the removal.

Authority G.S. 93E-2-3; 93E-2-7(a).

21 NCAC 57D .0312 REQUESTING ADDITIONAL INFORMATION FROM AN APPRAISER

An appraisal management company may request that a real estate appraiser who performs an appraisal for the appraisal management company consider additional appropriate property information, provide further detail, substantiation, or explanation for the appraiser's value conclusion, or to correct errors in an appraisal report. Such request must be sent to the appraiser in writing or by electronic means within 30 days of the date the appraisal is transmitted by the appraiser to the appraisal management company.

Authority G.S. 93E-2-3; 93E-2-7.

SECTION .0400 – APPRAISAL MANAGEMENT COMPANY GENERAL PRACTICES

21 NCAC 57D .0401 BUSINESS PRACTICES

An appraisal management company may not:

- (1) prohibit an appraiser from stating on an appraisal the fee the appraiser was paid by the company for the appraisal;
- (2) prohibit an appraiser from stating on an appraisal the appraiser's primary business address; or
- (3) prohibit an appraiser from informing a property owner, lender, or any other person or entity the appraiser's primary business address.

Authority G.S. 93E-2-3; 93E-7.

21 NCAC 57D .0402 AMOUNT OF COMPENSATION

(a) An appraisal management company shall compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.

(b) Appraisal management company fees shall not exceed what is customary and reasonable for such services provided in the market area of the property being appraised.

(c) Management fees charged by an appraisal management company shall be for actual services related to the ordering, processing or reviewing of appraisals.

Authority G.S. 93E-2-3; 93E-2-7.

TITLE 23 – COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Community Colleges intends to amend the rule cited as 23 NCAC 02C .0301.

Proposed Effective Date: February 1, 2011

Public Hearing:

Date: November 15, 2010

Time: 11:00 a.m. – 1:00 p.m.

Location: NC Community College System Office, State Board Room, Caswell Building, 200 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action: *The State Board of Community Colleges seeks to establish a policy that allows community colleges to deny admission to applicants who pose a health or safety risk to themselves or others at the time the applicant seeks admission.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections shall be addressed to President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5011 within the comment period and must be post marked by 11:59p.m. on the last day of the comment period.*

Comments may be submitted to: *Q. Shanté Martin, 200 W. Jones Street, MSC 5001, Raleigh, NC 27699-5001, phone (919)807-6961, fax (919)807-7171, email publiccomments@nccommunitycolleges.edu*

Comment period ends: November 15, 2010

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal Impact:

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

CHAPTER 02 - COMMUNITY COLLEGES

SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0300 - STUDENTS

23 NCAC 02C .0301 ADMISSION TO COLLEGES

(a) Each college shall maintain an open-door admission policy to all applicants who are legal residents of the United States and who are either high school graduates or are at least 18 years of age. Student admission processing and placement determination shall be performed by the officials of each college. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older. Provisions with respect to admission of minors are set forth in Rule .0305 of this Section.

(b) For the purposes of this Section, "undocumented immigrant" means any immigrant who is not lawfully present in the United States. Community colleges shall admit undocumented immigrants under the following conditions:

- (1) Community colleges shall admit an undocumented immigrant only if he or she attended and graduated from a United States public high school, private high school, or home school that operates in compliance with State or local law;
- (2) When determining who is an undocumented immigrant, community colleges shall use federal immigration classifications;
- (3) Undocumented immigrants admitted under Subparagraph (b)(1) of this Rule must comply with all federal and state laws concerning financial aid;
- (4) An undocumented immigrant admitted under Subparagraph (b)(1) of this Rule shall not be considered a North Carolina resident for tuition purposes. All undocumented immigrants admitted under Subparagraph (b)(1) of this Rule must be charged out of state tuition whether or not they reside in North Carolina;
- (5) When considering whether to admit an undocumented immigrant into a specific program of study, community colleges shall take into account that federal law prohibits states from granting professional licenses to undocumented immigrants; and
- (6) Students lawfully present in the United States shall have priority over any undocumented

immigrant in any class or program of study when capacity limitations exist.

(c) Boards of trustees may adopt policies regulating admission and graduation of students enrolled in courses mandated under G.S. 17C, North Carolina Criminal Justice Education and Training Standards Commission, or G.S. 17E, North Carolina Sheriffs' Education and Training Standards Commission. These policies may limit enrollment to law enforcement officers or persons sponsored by law enforcement agencies and may require a student to maintain sponsorship by a law enforcement agency until completion of the program. Policies adopted pursuant to this Paragraph shall be published and made available to students and prospective students.

(d) Any college suspending or expelling a student for non-academic disciplinary purposes shall record the suspension or expulsion in the student's educational record. Upon receipt of a written request signed by the student and subject to all applicable privacy laws, each college shall, in accordance with the student's request, inform other colleges and universities of the term and circumstances of the student's non-academic disciplinary suspension or expulsion, if any. Boards of trustees may adopt policies refusing admission to any applicant during any period of time that the student is suspended or expelled from any other educational entity.

(e) Boards of trustees may adopt policies refusing admission to any applicant if it is necessary to protect the health or safety of the applicant or other individuals. When making a health and safety determination, colleges may refuse admission to an applicant when there is an articulable, imminent, and significant threat to the applicant or other individuals. Colleges refusing admission on the basis of a health or safety threat shall document the following:

- (1) Detailed facts supporting the rationale for denying admission;
- (2) The time period within which the refusal to admit shall be applicable and the supporting rationale for the designated time period; and
- (3) The conditions upon which the applicant that is refused would be eligible to be admitted.

Authority G.S. 115D-1; 115D-5; 115D-20.

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Community Colleges intends to amend the rule cited as 23 NCAC 02D .0202.

Proposed Effective Date: February 1, 2011

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): To demand a public hearing please send the written demand to Q. Shanté Martin, NC Community College System, 200 West Jones Street, MSC 5001, Raleigh, NC 27699-5001 or by e-mailing the demand to martins@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.

Reason for Proposed Action: "Tuition and Fees for Curriculum Programs" is proposed for amendment to comply with Senate Bill 897/Session Law 2010-31, s. 8.6.

Procedure by which a person can object to the agency on a proposed rule: Written objections shall be addressed to President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5011 within the comment period and must be post marked by 11:59p.m. on the last day of the comment period.

Comments may be submitted to: Q. Shanté Martin, 200 W. Jones Street, MSC 5001, Raleigh, NC 27699-5001, phone (919)807-6961, fax (919)807-7171, email publiccomments@nccommunitycolleges.edu

Comment period ends: November 15, 2010

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

Fiscal Impact:

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

CHAPTER 02 - COMMUNITY COLLEGES

**SUBCHAPTER 02D - COMMUNITY COLLEGES:
FISCAL AFFAIRS**

SECTION .0200 - STANDARD STUDENT FEES

23 NCAC 02D .0202 TUITION AND FEES FOR CURRICULUM PROGRAMS

(a) Tuition:

- (1) Student Residence Classification. The classification of students for tuition purposes shall be made pursuant to G.S. 115B-2, 115D-39, 116-143.1, 116-143.3, and 116-143.5.
- (2) Tuition Rates In-State:
 - (A) A general and uniform tuition rate is established by the State Board as set by the Legislature for full-time

curriculum students per semester or term for North Carolina residents.

(B) A North Carolina resident who is a part-time student shall pay a per credit hour rate for curriculum instruction, as established by the State Board, for any semester or term as set by the Legislature.

(3) Learning Laboratory. No tuition fees charged.
(4) Tuition Creditable Upon Transfer of Student.

When a student has paid the required tuition at a college and is given permission to transfer to another college within the system during the academic semester for which the tuition was paid, the college from which the student transfers shall issue to him a statement certifying the amounts of tuition that have been paid, and the college to which he is transferring shall accept such certificate in lieu of requiring payment again. [Also, see 23 NCAC 02D .0323(b)(2) which provides information regarding reporting student hours in membership.]

(5) Tuition Student Enrolled in More Than One College. Where a student desires to enroll for the same semester at two or more colleges of the system, the total amount of tuition and fees may be paid to the student's "home" college. "Home" college is defined as the college which the student initially registers for classes. The "home" college shall, in that case, assume responsibility for arranging with the other college or colleges for enrolling the student in appropriate classes without further charge. Such arrangement shall be made by exchange of letters between the colleges involved. Student membership hours for instruction received shall be reported by the college in which the respective instruction occurred.

(6) Tuition Rates Out-of-State:

(A) Any full-time curriculum student who is an out-of-state resident shall pay tuition fees as established by the State Board for each semester or term as set by the Legislature.

(B) An out-of-state resident who is a part-time student shall pay a per credit hour rate for curriculum instruction as established by the State Board as set by the Legislature.

(7) Tuition Waivers:

(A) Individuals in the categories set forth in G.S. 115D-5(b) shall be exempt from tuition for specialized training courses only, unless otherwise permitted under this Rule.

(B) College Staff Members. Full-time college staff members employed for a 9, 10, 11, or 12 month term may

enroll in one curriculum or extension course per semester, as well as the summer term, in the system without payment of tuition or registration fee.

- (C) Basic Law Enforcement Training Program (BLET) for law enforcement officers. All law enforcement officers employed by a municipal, county, state, or federal law enforcement agency when taking courses in a state-mandated BLET training program, are exempt from tuition payment. Also, trainees shall be exempt from BLET class tuition if a letter of sponsorship from a state, county, or municipal law enforcement agency is on file at the college.
- (D) Individuals meeting the criteria set forth in G.S. 115B-2 shall not be charged tuition.
- (E) High school students taking courses pursuant to Paragraph (c) (concurrent enrollment) and Paragraph (e) (cooperative high school programs) of 23 NCAC 02C .0305 of this Chapter shall not be charged tuition.
- (F) Patients in state alcoholic rehabilitation centers shall not be charged tuition.
- (G) Juveniles committed to the Department of Juvenile Justice and Delinquency Prevention shall not be charged tuition.
- (H) Prison inmates shall not be charged tuition.

(b) Pre-Enrollment Deposit. The local board of trustees may establish a pre-enrollment deposit up to a maximum of fifteen dollars (\$15.00). The pre-enrollment deposit, if established, shall be required only when a prospective student has made application for admission and has been accepted. This advance payment is not refundable unless the class(es) fails to materialize or a refund is required by the death of the student. This advance payment shall be deposited to the State Treasurer and credited against the full tuition due from the student during the regular registration period. For the purposes of this Rule, any tuition refund granted shall not include the pre-enrollment deposit of the student unless a refund is granted when a class fails to materialize or because of the student's death.

(c) Late Enrollment Fee. A late enrollment fee up to five dollars (\$5.00) may be charged curriculum students registering after the specific closing date of registration, with such fees becoming state funds.

~~(d) Tuition Refunds. Refunds: Each college shall allow a 100 percent tuition refund up to and including the drop/add date for each college. Each college shall allow a 75 percent tuition refund from the date after the drop/add date up to and including the census date of the course. Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was~~

~~attending), all tuition and fees for that semester shall be refunded to the estate of the deceased, upon request by the deceased's estate within 90 days of the student's death.~~

(1) A refund shall not be made except under the following circumstances:

(A) A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) of the academic semester or term as noted in the college calendar. Also, a student is eligible for a 100 percent refund if the class in which the student is officially registered is cancelled due to insufficient enrollment.

(B) A 75 percent refund shall be made if the student officially withdraws from the class(es) prior to or on the official 10 percent point of the semester.

(C) For classes beginning at times other than the first week (seven calendar days) of the semester a 100 percent refund shall be made if the student officially withdraws from the class prior to the first class meeting. A 75 percent refund shall be made if the student officially withdraws from the class prior to or on the 10 percent point of the class.

(D) A 100 percent refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75 percent refund shall be made if the student officially withdraws from a contact hour class on or before the 10th calendar day of the class.

(2) To comply with applicable federal regulations regarding refunds, federal regulations supersede the state refund regulations stated in this Rule.

(3) Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester may be refunded to the estate of the deceased.

(4) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt local refund policies.

(e) Military Tuition Refund. Upon request of the student, each college shall:

(1) Grant a full refund of tuition and fees to military reserve and National Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations

then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and

- (2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

(f) ~~Additional Rules for Tuition Refunds:~~

- (1) ~~As used in Paragraph (d) of this Rule, the term "census date" is defined as the official 10 percent point of any semester, term, or course as noted in the college calendar.~~
- (2) ~~To comply with applicable federal regulations regarding refunds, federal regulations shall supersede the state refund regulations provided in this Rule to the extent the federal regulations and state regulations are contradictory.~~

Authority G.S. 115D-5; 115D-39; 116-143.1; P.L. 93-508; S.L. 1995, c. 625; S.L. 2010-31, s. 8.6.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01E .1302, .1305; 01J .0603, .0613.

Proposed Effective Date: January 1, 2011

Public Hearing:

Date: November 16, 2010

Time: 10:00 a.m.

Location: Office of State Personnel, Administration Building, 3rd Floor, 121 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action:

25 NCAC 01E .1302, .1305 - The 2010 General Assembly passed House Bill 213 which adds a provision to G.S. 126-8.3 that requires the State Personnel Commission to adopt rules and policies to expand the Voluntary Shared Leave Policy. This provision allows an employee at a State agency to donate sick leave to a nonfamily member employee of another State agency. The maximum that can be donated is five days and the combined total donated to a recipient cannot exceed 20 days.

25 NCAC 01J .0603, .0613 - The 2010 General Assembly passed House Bill 961 which, among other things, strengthened transparency of government through increasing and clarifying accessibility to legislative records and other public records. Section 18(a) of this bill amended G.S. 126-23 to make public the following items that were previously considered confidential:

- (1) Date and amount of each increase or decrease on salary, (2) date and type of each promotion, demotion, transfer, suspension, separation or other change, (3) date and general description of

the reasons for each promotion, and (4) date and type of each dismissal, suspension, or demotion for disciplinary reasons. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting for the specific acts or omissions that are the basis of the dismissal. This rule explains how to mesh the statutory requirement that the dismissal letter be public with the reality that the final dismissal letter might not contain the same reasons as originally used. It also provides a process that contemplates that the employee might in fact be reinstated as a result of the internal appeals process and not even be dismissed as a final agency action.

Procedure by which a person can object to the agency on a proposed rule: A person may object to these proposed rules by one of the following methods: 1. A written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. 2. An e-mail to peggy.oliver@osp.nc.gov. 3. A telephone call to Peggy Oliver at (919)807-4832.

Comments may be submitted to: Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919)807-4832, fax (919)715-9750, email peggy.oliver@osp.nc.gov

Comment period ends: November 15, 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 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

25 NCAC 01E .1302 POLICY

(a) In cases of a prolonged medical condition an employee may apply for or be nominated to become a recipient of leave transferred from the vacation leave account of another ~~employee~~ employee, or from the sick leave or vacation account of an immediate family member as defined in ~~Section .0300, Section .0317 of this Rule. Subchapter, or from the sick leave account of a non-family member as provided in Rule .1305 of this Rule.~~ For purposes of this Rule, prolonged medical condition means medical condition that is likely to require an employee's absence from duty for a period of at least 20 consecutive workdays. If an employee has had previous random absences for the same condition that has caused excessive absences, or if the employee has had a previous, but different, prolonged medical condition within the last 12 months, the agency may make an exception to the 20 day period.

(b) An employee who receives benefits from the Disability Income Plan of North Carolina (DIPNC) is not eligible to participate in the shared leave program. Shared leave, however, may be used during the required waiting period and following the waiting period provided DIPNC benefits have not begun.

(c) Participation in this program shall be limited to 1,040 hours, (prorated for part-time employees), either continuously or, if for the same condition, on a recurring basis. However, management may grant employees continuation in the program, month by month, for a maximum of 2,080 hours, if management would have otherwise granted leave without pay.

(d) An employee on workers' compensation leave who is drawing temporary total disability compensation may be eligible to participate in this program. Use of donated leave under the workers' compensation program shall be limited to use with the supplemental leave schedule as described in 25 NCAC 01E .0707.

(e) The employee shall exhaust all available leave before using donated leave.

(f) Non-qualifying conditions: This leave does not apply to short-term or sporadic conditions or illnesses that are common, expected or anticipated. This includes such things as sporadic, short-term recurrences of chronic allergies or conditions; short-term absences due to contagious diseases; or short-term, recurring medical or therapeutic treatments. These examples are illustrative, not all inclusive. Each case must be examined and decided based on its conformity to the intent of this Rule and must be applied consistently and equitably.

Authority G.S. 126-4.

25 NCAC 01E .1305 DONOR GUIDELINES

(a) An immediate family member donor of any State agency, public school system or community college may ~~contribute~~ donate vacation leave or bonus leave or sick leave to another immediate family member in any State agency, public school or community college. A non-family member donor may ~~contribute~~ donate vacation or bonus leave to another employee in any State agency. A non-family member donor may donate sick leave to another employee in any State agency in accordance with the provisions of Paragraph (b) of this Rule. A non-family member donor may ~~also share donate~~ also share vacation or bonus leave ~~with~~ with a coworker's immediate family who is an employee in a public school or a community college. The

employee and coworker must be in the same agency. Immediate family is defined in 25 NCAC 01E .0317 DEFINITIONS.

(b) A non-family member employee of a State agency may donate up to five days of sick leave to a nonfamily member employee of a State agency. The combined total of sick leave donated to a recipient from a nonfamily member donor shall not exceed 20 days per year. Donated sick leave shall not be used for retirement purposes. Employees who donate sick leave shall be notified in writing of the State retirement credit consequences of donating sick leave.

~~(b)(c)~~ (c) The minimum amount of sick leave or vacation leave to be donated is four hours. An employee family member donating sick leave to a qualified family member under the Voluntary Shared Leave program may donate up to a maximum of 1040 hours but may not reduce the sick leave account below 40 hours.

~~(c)(d)~~ (d) The maximum amount of vacation leave allowed to be donated by one individual is the amount of the individual's annual accrual rate. However, the amount donated shall not reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate. Bonus leave may be donated without regard to this limitation.

~~(d)(e)~~ (e) An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating may not receive remuneration for the leave donated.

Authority G.S. 126-4.

SUBCHAPTER 01J - EMPLOYEE RELATIONS

**SECTION .0600 - DISCIPLINARY ACTION:
SUSPENSION AND DISMISSAL**

25 NCAC 01J .0603 APPEALS

(a) A career employee who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his department/university grievance procedure. If an employee does not appeal his dismissal through the agency grievance procedure within 15 days, the initial letter of dismissal setting forth the specific acts or omissions that are the basis of the dismissal shall become the agency's final agency decision. If an employee appeals his dismissal through the agency grievance procedure, then the initial dismissal letter shall not constitute the final agency decision, but the final agency decision shall be the decision made at the conclusion of the employee's appeal through the agency grievance procedure. Grievances which do not allege discrimination, a violation of G.S. 126-7.1(a) or (c), a violation of G.S. 126-82, or that do not allege a denial of employment or promotion in violation of G.S. 126-14.2 must follow the department or university grievance procedure. An appeal to the State Personnel Commission of a final

departmental or university decision must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to the agency or department, within 30 calendar days of the alleged harassing action, and the agency or department must be given 60 calendar days in which to take remedial action, if any, unless the department or agency has waived the 60-day period, and the employee has acknowledged such waiver. The acknowledgement and waiver shall be in writing. An appeal to the State Personnel Commission of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of notification of the remedial action, if any, taken by the agency.

(b) Grievances which allege discrimination not including unlawful workplace harassment may, at the election of the employee, proceed through the department or university procedure or proceed directly to the State Personnel Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.

(c) Grievances which allege a violation of G.S. 126-14.2 must be filed with the Civil Rights Division of the OAH within 30 calendar days after the employee or applicant receives written notice that the position in question has been filled. The employee or applicant must file a petition for a contested case hearing pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B within 15 days of the initial determination by the OAH Civil Rights Division that there has been a violation of G.S. 126-14.2.

(d) Grievances filed on an untimely basis (see G.S. 126-14.4, 126-35, 126-36 and 126-38) must be dismissed. Allegations of discrimination raised more than 30 calendar days after receipt of notice of the occurrence of the alleged discriminatory act must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after notification of the remedial action, if any, taken by the agency must be dismissed.

Authority G.S. 126-1A; 126-35; 126-36; 126-38; 150B, Article 3; 150B-23.

25 NCAC 01J .0613 PROCEDURAL REQUIREMENTS

The following procedural requirements shall be followed to issue disciplinary action under this Section:

- (1) WRITTEN WARNING - to issue a written warning to an employee, a supervisor shall issue the employee a written warning, detailing the matters referenced in Rule .0610(a)(1) - (5) of this Section and including any applicable appeal rights.
- (2) DISCIPLINARY SUSPENSION WITHOUT PAY - to place an employee on disciplinary

suspension without pay, a supervisor shall comply with the following procedural requirements:

- (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action. In matters of grossly inefficient job performance or unacceptable personal conduct there are no pre-conditions so an employee may be suspended without pay for a current incident of grossly inefficient performance or unacceptable misconduct;
 - (b) Schedule and conduct a pre-suspension conference. Advance oral or written notice of the appropriate pre-disciplinary conference shall be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
 - (c) Furnish the employee a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension;
 - (d) Advise the employee of any applicable appeal rights in the document effecting the suspension.
- (3) DEMOTION - to demote an employee, a supervisor shall comply with the following procedural requirements:
- (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action.
 - (b) In matters of grossly inefficient job performance or unacceptable personal conduct, there is no requirement for previous disciplinary action, so an employee may be demoted for a current incident of grossly inefficient job performance or unacceptable personal conduct without any prior disciplinary action;
 - (c) Advance oral or written notice of the appropriate pre-disciplinary conference shall be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances.
 - (d) An employee who is demoted shall receive written notice of the specific acts or omissions that are the reasons for the demotion;

- (e) An employee shall be advised of how and to what extent the demotion will affect the employee's salary rate or pay grade; and
 - (f) The employee shall also be advised of any applicable appeal rights in the document effecting the demotion.
- (4) DISMISSAL - Before an employee may be dismissed, a supervisor shall comply with the following procedural requirements:
- (a) The Supervisor recommending dismissal shall discuss the recommendation with appropriate agency management and receive management's authorization to hold a pre-dismissal conference with the employee. The person conducting the pre-dismissal conference shall have the authority to recommend or to decide what, if any disciplinary action shall be imposed on the employee.
 - (b) The Supervisor or designated management representative shall schedule a pre-dismissal conference with the employee.
 - (c) Advance written notice of the pre-dismissal conference shall be given to the employee of the time, location, and the issue for which dismissal has been recommended. The amount of advance notice shall be as much as is practical under the circumstances.
 - (d) The Supervisor or designated management representative shall conduct a pre-dismissal conference with the employee, limiting attendance to the employee and the person conducting the conference; a second management representative may be present at management's discretion. The purpose of the pre-dismissal conference shall be to review the recommendation for dismissal with the affected employee and to listen to and to consider any information put forth by the employee, in order to insure that a dismissal decision is sound and not based on misinformation or mistake. Security personnel may be present when, in the discretion of the person conducting the conference, a need for security exists. No attorneys representing either side may attend the conference.
 - (e) In the conference, the Supervisor shall give the employee oral or written notice of the recommendation for dismissal, including specific

reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, to refute information supporting the recommended dismissal action and to offer information or arguments in support of the employee's position. Every effort shall be made by the Supervisor or the designated management representative to assure that the employee has had a full opportunity to set forth any available information in opposition to the recommendation to dismiss prior to the end of the conference. This opportunity shall not include the right to present witnesses.

(f) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights shall be issued to the employee in person or by certified mail, return receipt requested, to the last known address of the employee. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should not be communicated to the employee in accordance with this Paragraph, prior to the beginning of the next business day following the conclusion of the pre-dismissal conference or after the end of the second business day following the completion of the pre-dismissal conference.

(g) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. A career employee who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of his dismissal. Instead of providing up to two weeks' working notice and at the discretion of management, an employee may be given up to two

weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal.

(h) If an employee is dismissed and appeals his dismissal through the agency grievance procedure, the final agency decision shall set forth the specific acts or omissions that are the basis of the employee's dismissal. In addition, the employee shall be informed in the final agency decision letter that the final agency decision letter is a public record and that the agency is required by law to release it pursuant to any public record requests.

Authority G.S. 126-4; 126-35.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend the rules cited as 26 NCAC 02C .0102-.0103, .0105, .0108, .0110, .0306, .0308, .0402, .0405-.0406, .0502, .0602, .0702 and repeal the rule cited as 26 NCAC 02C .0104.

Proposed Effective Date: January 1, 2011

Public Hearing:

Date: November 15, 2010

Time: 9:00 a.m.

Location: 1711 New Hope Church Road, Raleigh, NC 27609

Reason for Proposed Action: *To eliminate unnecessary paper; expand acceptable electronic versions of rules and documents; specify the format of the electronic version; and clarify and simplify format requirements.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections should be sent to Gene Cella, OAH General Counsel, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609 and received no later than November 15, 2010. The objection letter should clearly state which rule the objection is to and the reason for the objection.*

Comments may be submitted to: *Gene Cella, General Counsel, 1711 New Hope Church Road, Raleigh, NC 27609, phone (919)431-3000, fax (919)431-3104, email gene.cella@oah.nc.gov*

Comment period ends: November 15, 2010

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

Fiscal Impact:

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

CHAPTER 02 - RULES DIVISION

SUBCHAPTER 02C - SUBMISSION PROCEDURES FOR RULES AND OTHER DOCUMENTS TO BE PUBLISHED IN THE NORTH CAROLINA REGISTER AND THE NORTH CAROLINA ADMINISTRATIVE CODE

SECTION .0100 - GENERAL

26 NCAC 02C .0102 DEFINITIONS

The following definitions shall apply throughout this Chapter and to all forms prescribed pursuant to this Chapter unless the context indicates otherwise:

- (1) "Action" means the adoption, amendment, or repeal of a rule.
- (2) "Adoption" means a new rule with a new rule number.
- (3) "Adoption by agency" means the date that an agency takes final action on a rule.
- (4) "Amendment" means an existing rule with a deletion, addition or other change to that existing rule.
- (5) "Citation" means a reference to a rule by Title, Chapter or Subchapter, and Section or Rule number.
- (6) "Code" means the North Carolina Administrative Code.
- (7) "Commission" means the Rules Review Commission.
- (8) "Form" means an original form template provided by OAH and completed by the

~~submitting agency. OAH; a computer generated form from the OAH website, or from a CD or a diskette provided by OAH; a legible photocopy of an original OAH form; or an agency generated form identical to the OAH form.~~

- (9) "OAH" means the Codifier of Rules at the Office of Administrative Hearings.
- (10) "Original" means a copy of the document marked or stamped as such.
- (11) "Publication" includes publication on the OAH website or in the Register or entry into the Code.
- (12) "Register" means the North Carolina Register.
- (13) "Repeal" means the deletion of the entire text of a rule. When a rule is repealed, that rule number shall not be used again. The number, rule name, and final history note ~~shall~~ remain in the Code permanently for publication and reference purposes.

Authority G.S. 150B-21.17; 150B-21.18.

26 NCAC 02C .0103 ORIGINAL AND DUPLICATE COPY

- (a) An agency shall submit an original and one copy of any document and form for publication in the Register or ~~Code. Code or on the OAH website.~~
- (b) An agency shall include an additional copy of the rule with any rule that is submitted to the Commission.
- (c) An agency shall permanently mark or stamp the original rule and form as original and date it at the time of marking or stamping.
- (d) An agency shall submit documents in the following ~~manner; order:~~
 - (1) the original submission form;
 - (2) the original of the rule;
 - (3) ~~the a~~ copy of the submission form;
 - (4) ~~the copy, highlighted if required by Rule .0405 of this Subchapter; a copy of the rule; and~~
 - (5) ~~the agency return copy of the submission form and envelope, if any;~~
 - (6) ~~the agency return copy of the rule, if any; and~~
 - (7)(5) ~~the a~~ copy of the rule for ~~RRC, if any. RRC if~~ the rule is subject to review by RRC.

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0104 RETURN COPY

~~If an agency desires a returned copy of any document submitted to OAH, the agency shall submit an additional copy permanently marked as the agency's return copy and a self addressed envelope with sufficient postage affixed for U.S. mail or state government interoffice delivery.~~

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0105 ELECTRONIC VERSION

- (a) ~~The electronic version must be a 3 1/2 inch (1.44 Mb) high density diskette or CD compatible with or convertible to the most recent version of Microsoft Word. The filed electronic version must identify the name of the document to be retrieved and the software used. OAH shall refuse to accept for publication any document in which the electronic version is not compatible with or convertible to the most recent version of Microsoft Word.~~
- (b) ~~The diskette or CD may contain multiple rules filed at the same time. Each rule must be saved as a separate document.~~
- (c) ~~An electronic version is not required if an agency that is unable to provide an electronic version that is compatible with or convertible to the most recent version of Microsoft Word submits a written statement to the Codifier of Rules to that effect. This statement must be signed by the agency head or rule-making coordinator.~~

(a) Any electronic version required to be submitted must be compatible with Microsoft Word 2007. OAH shall not accept for publication any file in which the electronic version does not comply with this requirement. OAH no longer accepts floppy disks.

(b) The electronic version must be labeled with the date and name of each file.

(c) The electronic version may contain multiple rules or other documents filed at the same time. Each rule must be saved as a separate file except repealed rules that are combined as set out in Rule .0406(b) of this Subchapter must be a single file. The name of the file must be the official rule citation.

(d) The electronic version must be received no later than the business day that the rule or document and its form are delivered to OAH.

(e) Electronic versions submitted by email shall be sent to oah.rules@oah.nc.gov.

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0108 GENERAL FORMAT INSTRUCTIONS

An agency shall format each rule submitted to OAH for publication in the Register or Code as follows:

- (1) Paper Specifications:
 - (a) 8½ by 11 inch plain white paper; ~~paper, 16 to 32 lb.;~~
 - (b) one side of the sheet only;
 - (c) black ink;
 - (d) 10 point font size;
 - (e) portrait print (8½ x 11);(8½ x 11); no ~~landscape printing (11 x 8½);~~
 - (f) numbered lines on the left margin with each page starting with line 1;
 - (g) 1.5 line spacing;
 - (h) page numbers centered at the bottom of the page for each rule that has more than one page of text; and
 - (i) no staples.
- (2) Tab and Margin Settings:

- (a) tab settings for all rules shall be set relative from the left margin at increments of ~~5;0.5; and~~
- (b) text shall be with a one inch margin on all sides.
- (3) The Introductory Statement shall start on page 1, line 1 of each rule.
- (4) When a new chapter, subchapter, or section of rules is adopted, the Chapter, Subchapter, and Section names shall be provided in bold print with the first rule following the introductory statement. One line shall be skipped between the introductory statement and each chapter, subchapter, and section name.
- (5) One line shall be skipped before starting the line that provides the rule citation and rule name. The first digit of the title number shall be placed in position 1. One tab shall be between the rule number and rule name. The rule name shall be in capital letters and the rule number and name shall be in bold print.
- (6) Body of the Rule:
 - (a) the body of the rule shall start on the line immediately following the rule name with the following markings:
 - (i) adoptions - new text shall be underlined;
 - (ii) amendments - any text to be deleted shall be struck through and new text shall be underlined; and
 - (iii) repeals - text of the rule shall not be included;
 - (b) there shall be no lines skipped in the body of the rule except before and in tables;
 - ~~(c)~~ (d) the document shall not have automatic numbering or lettering of paragraphs or lists;
 - ~~(e)~~ (d) the first level of text shall be flush left and with two spaces after the closing parenthesis if the paragraph is identified by a letter;
 - ~~(d)~~ (e) the second level of text shall start with one tab and one hanging indent after the closing parenthesis;
 - ~~(e)~~ (f) the third level of text shall start with two tabs and one hanging indent after the closing parenthesis;
 - ~~(f)~~ (g) the fourth level of text shall start with three tabs and one hanging indent after the closing parenthesis;
 - ~~(g)~~ (h) the fifth level of text shall start with four tabs and one hanging indent after the closing parenthesis; and
 - ~~(h)~~ (i) the sixth level of text shall start with five tabs and one hanging indent after the closing parenthesis.
- (7) The smallest unit of text to be struck through or underlined shall be an entire word with any punctuation that is part of the word or block of characters separated from other text by a space on each side. Punctuation shall be considered part of the word when there ~~are no spaces is no space~~ between the punctuation and the word. ~~When underlining or striking through text:~~
 - ~~(a) when a word is deleted, the punctuation shall also be struck through with the previous word; and~~
 - ~~(b) when punctuation is added, the existing word shall be struck through and followed by the word and punctuation underlined.~~

~~The smallest unit of text to be struck through or underlined shall be an entire word or block of characters separated from other text by spaces.~~
- ~~(8)~~ Charts or Tables shall be in a format that is accommodated by the most recent version of Microsoft Word.
- ~~(9)~~ (8) History Note Specifications:
 - (a) shall be in italic font;
 - (b) shall start on the second line following the body of the rule;
 - (c) the first line of the History Note shall start in the first position; all lines following shall be two tabs;
 - (d) the first line shall start with the words "History Note:", followed by one tab and the word "Authority". The agency shall then cite the authority(ies) in numerical order for that rule;
 - (e) the effective date of the original adoption of the rule shall be the next line following the authority. The abbreviation "Eff." shall be followed by this date;
 - (f) on the line following the "Eff." date, the amended dates shall be preceded with the words "Amended Eff." and the dates shall be listed in chronological order, with the most recent amended date listed first;
 - (g) a temporary rule shall be listed as a separate item in the history note with the following words: "Temporary (Adoption, Amendment, or Repeal) Eff. (date)";
 - (h) an emergency rule shall be listed as a separate item in the history note with the following words: "Emergency (Adoption, Amendment, or Repeal) Eff. (date)";
 - (i) the repealed date of a rule shall be the last line of the history note and start

- with the words "Repealed Eff." followed by the date;
- (j) all items in the history note shall be separated by semicolons with the last line ending with a period;
- (k) all history of a rule shall be in chronological order following the authority for the rule; and
- (l) all dates in the history note shall be complete with the month spelled out, and shall not contain any abbreviations.
- ~~(10)~~(9) Numbers within the text shall be as follows:
 - (a) numbers from one to nine shall be spelled out;
 - (b) figures shall be used for numbers over nine; and
 - (c) if a phrase contains two numbers, only one of which is over nine, figures shall represent both.
- ~~(11)~~(10) Monetary figures within the text shall be spelled out followed by the numerical figure in parenthesis. Decimal and zeros shall be used only for even dollar amounts of sums less than one thousand dollars (\$1,000).

Note: Examples of proper formatting can be found on the OAH website located at www.ncoah.com/rules.

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0110 ILLUSTRATIONS/NOTES

An agency may include material in the text of a rule which is ~~not a substantive portion of the rule but is~~ an illustration of something in the rule. Illustrations shall be merely examples or clarifications which, when not read, do not change the meaning of the rule. The material which is meant only as an illustration shall be set aside by preceding it with the word "Note:".

Authority G.S. 150B-21.18; 150B-21.19; 150B-21.20.

SECTION .0300 - THE NORTH CAROLINA REGISTER

26 NCAC 02C .0306 PUBLICATION OF NOTICE OF TEXT

- (a) The agency shall submit its Notice of Text on an OAH Notice of Text form. If the information contained in the notice exceeds the space provided on the form, the agency shall also submit an electronic version of the information.
- (b) All rules submitted for publication by an agency at the same time, with the same proposed effective date, and with the same public hearing date and location if a hearing is scheduled, shall be listed on a single form.
- (c) The agency shall submit the text of the proposed rule and an electronic ~~version~~version of the rule (Rule .0105 of this Subchapter).
- (d) A rule proposed to be adopted or amended shall meet the following requirements:

- (1) The rule shall contain an introductory statement immediately preceding the text. The statement shall contain the rule citation and the action proposed to be taken.
- (2) Following the introductory statement, the rule number, name, text and history note shall be in the form specified in Rule 26 NCAC 02C ~~.0108; .0108.~~
 - ~~(A) any text to be deleted from an existing rule shall be indicated by strikeout marks;~~
 - ~~(B) any new or added text shall be underlined; and~~
 - ~~(C) punctuation shall be considered a part of the previous word, such as:

 - ~~(i) when the previous word is deleted, the punctuation shall also be struck through with the previous word; and~~
 - ~~(ii) when punctuation is added after an existing word, the existing word shall be struck through and followed by the word and punctuation underlined.~~~~

~~The smallest unit of text to be struck through or underlined shall be an entire word or block of characters separated from other text by spaces.~~

- (e) A rule proposed to be repealed shall meet the following requirements:

- (1) The rule shall contain an introductory statement. The statement shall contain the rule citation and the action proposed to be taken.
- (2) Following the introductory statement, the rule shall contain the number and rule name of the rule proposed to be repealed.
- (3) A history note shall follow the rule number and name.

Authority G.S. 150B-21.17.

26 NCAC 02C .0308 ELECTRONIC FILING

- (a) An agency may file rules and other documents for publication in the Register by ~~electronic mail~~electronic mail. ~~The electronic mail email. The email shall include an attached document(s) that is compatible with or convertible to the most recent version of Microsoft Word prepared and sent as set out in Rule .0105 of this Subchapter.~~
- ~~(b) Electronic mail with attachment(s) shall be sent by electronic transmission to: oah.rules@oah.nc.gov.~~ The agency shall simultaneously send a facsimile (fax) copy of the attachment(s).
- (c) Electronic submission shall be deemed submitted for publication pursuant to 26 NCAC 02C .0302 on the business day when both the ~~electronic mail~~email with attachment(s) and the faxed copy are received.

Authority G.S. 150B-21.17.

**SECTION .0400 - NORTH CAROLINA
ADMINISTRATIVE CODE**

**26 NCAC 02C .0402 PUBLICATION OF A
PERMANENT RULE**

An agency must submit a permanent rule for publication in the Code with the following:

- (1) An original submission form and copy (Rule .0403 of this Section).
- (2) If applicable, a letter delegating authority for the signature on the submission form (Rule .0113 of this Subchapter).
- (3) An original and copies of the permanent rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter containing:
 - (a) an introductory statement (Rule .0404 of this Section);
 - (b) the body of the rule (Rule .0405 of this Section);
 - (c) any changes in the rule (Rule .0405 of this Section);
 - (d) the history note (Rule .0406 of this Section).
- ~~(4) A return copy, if desired (Rule .0104 of this Subchapter).~~
- ~~(5)~~(4) An electronic version of the rule prepared in accordance with Rule .0105 of this Subchapter.

Authority G.S. 150B-21.19.

26 NCAC 02C .0405 BODY OF THE RULE

(a) ~~The An~~ agency shall prepare for publication in the Code any permanent rule not published in the Register or that does not differ in any way from the proposed rule published in the Register according to the general format instructions in Rule .0108 of this Subchapter.

(b) If a permanent rule differs in any way from the proposed rule published in the Register, the following ~~shall apply~~ applies:

- (1) An agency shall identify changes in an adopted rule by striking through deleted portions, and underlining added portions. The unchanged text shall not be underlined.
- (2) An agency shall identify changes in an amended rule as follows:
 - (A) when text has been added, the text added shall be underlined and ~~highlighted; highlighted on a copy of the rule;~~
 - (B) when existing text has been deleted, the text deleted shall be struck through and ~~highlighted; highlighted on a copy of the rule;~~
 - (C) when text that was proposed to be deleted has been restored, the restored text shall be highlighted, but not

- (D) when text that was proposed to be added has been deleted, the deleted proposed text shall ~~not be shown, but an open bracket with five highlighted spaces and a closed bracket shall be inserted where the proposed text is omitted; and enclosed in brackets, struck through and highlighted; and~~
- (E) when text is required to be highlighted, the highlighting shall be by highlight marker or shall be computer generated. The text shall ~~clearly show through the highlight~~ highlight and be clear and legible when reproduced.
- (3) If the agency repeals a rule originally noticed to be amended, then the agency shall submit the rule as a permanent repeal.

Authority G.S. 150B-21.19.

26 NCAC 02C .0406 HISTORY NOTE

(a) ~~The An~~ agency shall include a history note for each rule submitted to OAH for publication in the Code, containing the following information:

- (1) the authority for the rule;
- (2) the effective date of the adoption of the rule;
- (3) the effective date of the ~~four most recent~~ amendments to the ~~rule; rule including the proposed amendment listed in chronological order with the proposed amendment first;~~
- (4) the effective date of the repeal; and
- (5) any other history references pertaining to the rule.

(b) Notwithstanding Paragraph (a) of this Rule, the agency shall combine repealed rules with a single history note if the rules are consecutive numerically in the same section and the effective dates and repealed dates are identical. The agency shall combine authority cites and any other dates.

Authority G.S. 150B-21.19.

SECTION .0500 - TEMPORARY RULES

**26 NCAC 02C .0502 PUBLICATION OF A
TEMPORARY RULE**

An agency shall submit each temporary rule for publication in the Code with the following:

- (1) An original Temporary Rulemaking Findings of Need form and copies (Rule .0503 of this Section).
- (2) If applicable, a letter delegating the authority for the signature on the form (Rule .0113 of this Subchapter).
- (3) An original and copies of the temporary rule (Rule .0103 of this Subchapter) prepared in

accordance with Rule .0108 of this Subchapter, containing:

- (a) an introductory statement (Rule .0404 of this Subchapter);
- (b) the body of the rule (Rule .0405 of this Subchapter);
- (c) the history note (Rule .0406 of this Subchapter).

~~(4) An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).~~

~~(5)(4)~~ An electronic version of the rule (Rule .0105 of this Subchapter).

~~(5)(4)~~ An electronic version of the rule (Rule .0105 of this Subchapter).

~~(6)(5)~~ A copy of any document supporting the reason for the emergency rule pursuant to G.S. 150B-21.1A(a). The agency shall highlight the information in the document that is pertinent to the need for the emergency rule.

Authority G.S. 150B-21.19.

Authority G.S. 150B-21.19.

SECTION .0600 - EMERGENCY RULES

26 NCAC 02C .0602 PUBLICATION OF AN EMERGENCY RULE

An agency shall submit an emergency rule for review by OAH and publication in the Register and the Code with the following:

- (1) An original Emergency Rule Findings of Need form and copy (Rule .0603 of this Section).
- (2) If applicable, a letter delegating the authority for the signature on the form (Rule .0113 of this Subchapter).
- (3) An original and copies of the emergency rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:
 - (a) an introductory statement (Rule .0404 of this Subchapter);
 - (b) the body of the rule (Rule .0405 of this Subchapter);
 - (c) the history note (Rule .0406 of this Subchapter).

~~(4) An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).~~

SECTION .0700 – PUBLICATION ON THE OAH WEBSITE

26 NCAC 02C .0702 PUBLICATION OF A RULE ON THE OAH WEBSITE

An agency shall submit a rule to be published on the OAH website with the following:

- (1) An original Publication on the OAH Website form and copy (Rule .0703 of this Section).
- (2) If applicable, a letter delegating authority for the signature on the form (Rule .0113 of this Subchapter).
- (3) An original and copies of the rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:
 - (a) an introductory statement (Rule .0404 of this Subchapter);
 - (b) the body of the rule (Rule .0405 of this Subchapter);
 - (c) the history note (Rule .0406 of this Subchapter).

~~(4) An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).~~

~~(5)(4)~~ An electronic version of the rule (Rule .0105 of this Subchapter).

Authority G.S. 150B-21.19.

This Section contains information for the meeting of the Rules Review Commission on Thursday August 19, 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 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburk - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Ralph A. Walker
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn
Curtis Venable

COMMISSION COUNSEL

Joe DeLuca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

September 16, 2010 October 21, 2010
November 18, 2010 December 16, 2010

RULES REVIEW COMMISSION

August 19, 2010

MINUTES

The Rules Review Commission met on Thursday, August 19, 2010, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, Clarence Horton, John Lewis, Dan McLawhorn, and Curtis Venable.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Tammara Chalmers, Julie Edwards and Dana Vojtko.

The following people were among those attending the meeting:

Jennifer Chrisohon	Department of Labor
Sara Koch	Board of Registration for Foresters
John Barkley	Department of Justice for DENR, CPH
Bart Campbell	Department of Environment and Natural Resources
Floyd Boyer	Respiratory Care Board
Karen Waddell	Department of Insurance
Lynda Elliott	Board of Cosmetic Art Examiners
Steven McKeand	Board of Registration for Foresters
Kristi Nixon	Department of Environment and Natural Resources
Rich Gannon	Department of Environment and Natural Resources
Adriene Weaver	Department of Environment and Natural Resources
Jim Stanfill	Department of Environment and Natural Resources
Lauren Thompson	Department of Insurance
Joelle Burleson	DENR/Division of Air Quality
Patrick Knowlson	DENR/Division of Air Quality
Anca Grozav	Office of State Budget and Management
Steve Dirksen	Board of Funeral Service
Kelly Williams	DENR/Ecosystem Enhancement Program
Larry Such	Board of Registration for Foresters

Suzanne Klimek	DENR/Ecosystem Enhancement Program
Nancy Pate	Department of Environment and Natural Resources
Betsy Foard	Wildlife Resources Commission
Susan Magas	Board of Electrolysis Examiners
Margaret Wingate	Board of Electrolysis Examiners

APPROVAL OF MINUTES

The meeting was called to order at 9:08 a.m. with Ms. Hayman presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the July 15, 2010 meeting. There were none and the minutes were approved as distributed.

The Chairman introduced Ashley Reger, an extern from the Campbell University School of Law.

FOLLOW-UP MATTERS

02 NCAC 34 .0331, .1103 – Structural Pest Control Commission. No rewritten rules have been submitted and no action was taken.

10A NCAC 27E .0301, .0302, .0303, .0304. No rewritten rules have been submitted and no action was taken.

15A NCAC 18A .2633 – Commission for Public Health. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 14I .0401 – Board of Cosmetic Art Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 20 .0115, .0125 – Board of Registration for Foresters. The Commission approved the rewritten rules submitted by the agency.

Prior to the review of Rule 21 NCAC 34A .0203 from the Board of Funeral Service, Commissioner Gray recused himself and did not participate in any discussion or vote concerning this rule because an attorney in his firm occasionally advises the Board during its administrative hearings.

21 NCAC 34A .0203 – Board of Funeral Service. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 34B .0311 – Board of Funeral Service. No rewritten rule has been submitted and no action was taken.

21 NCAC 34D .0203 – Board of Funeral Service. No rewritten rule has been submitted and no action was taken.

Prior to the review of the rule from the Board of Examiners for Speech and Language Pathologists and Audiologists, Commissioner McLawhorn recused himself and did not participate in any discussion or vote concerning this rule because his sister is a licensee of the Board.

21 NCAC 64 .0219 – Board of Examiners for Speech and Language Pathologists and Audiologists. The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

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

Department of Insurance

All permanent rules were approved unanimously with the following exceptions:

11 NCAC 05A .0503 – The Commissioners believed this rule would more properly express the contents implied by the rule's title if Item (5) of the rule were moved to 11 NCAC 05A .0507. The agency agreed to make the corresponding change to each of the rules. The changes were subsequently received.

Department of Labor

13 NCAC 07F .0901 was approved unanimously contingent on receiving a technical change. The change was subsequently received.

Environmental Management Commission

All permanent rules were approved unanimously.

Wildlife Resources Commission

All permanent rules were approved unanimously.

Board of Electrolysis Examiners

21 NCAC 19 .0202 - The Commission objected to this rule based on lack of statutory authority. Margaret Wingate represented the Board and requested that the Commission not object to this rule. Commissioners Crisp, Gray, Horton, Lewis, McLawhorn, and Venable voted in favor of the motion to object. Commissioner Funderburk voted against the motion.

In (d) line 26 there is no authority cited to require that an out-of-state licensed electrologist have been in practice for five years. In fact the relevant authority, G.S. 88A-10(a1)(2) contradicts the proposed amendment and simply requires that the applicant “for at least one year prior to the date of application ... was engaged in the practice of electrology in a state that does not license electrologists.” In (f)(1) there is no authority cited to require completion of 40 hours of a certification course. The relevant statute, G.S. 88A-11.1(a)(2) requires “a minimum 30-hour laser ... treatment certification course.” There is no authority cited for the Board to add hours to a statutory requirement.

The Commission granted the Board’s Request for Waiver of Rule 26 NCAC 05 .0108(a) and approved re-written rule 21 NCAC 19 .0202.

Respiratory Care Board

All permanent rules were approved unanimously.

Building Code Council

All permanent rules were approved unanimously.

TEMPORARY RULES

No Temporary Rules were filed for review.

COMMISSION PROCEDURES AND OTHER BUSINESS

The public hearing for the adoption of RRC rule 26 NCAC 05 .0113 will be the first item on the agenda for the September 16, 2010 meeting.

The meeting adjourned at 10:08 a.m.

The next scheduled meeting of the Commission is Thursday, September 16 at 9:00 a.m.

Respectfully Submitted,

Dana Vojtko
Publications Coordinator

LIST OF APPROVED PERMANENT RULES
August 19, 2010 Meeting

INSURANCE, DEPARTMENT OF

<u>Definitions</u>	11	NCAC 05A .0101
<u>Eligible Members</u>	11	NCAC 05A .0301
<u>Certification of Eligibility</u>	11	NCAC 05A .0302
<u>Administration of Firefighters' Relief Fund</u>	11	NCAC 05A .0303
<u>Drills and Meeting Requirements</u>	11	NCAC 05A .0505
<u>Records and Documents</u>	11	NCAC 05A .0507

<u>Requirements</u>	11 NCAC 05A .0603
<u>Requirements for Units Required to Match Grants</u>	11 NCAC 05A .0703
LABOR, DEPARTMENT OF	
<u>Scope</u>	13 NCAC 07F .0901
ENVIRONMENTAL MANAGEMENT COMMISSION	
<u>Nutrient Offset Payments</u>	15A NCAC 02B .0240
<u>Nutrient Offset Payment Rates for the NC Ecosystem Enhanc...</u>	15A NCAC 02B .0274
<u>Catawba River Basin</u>	15A NCAC 02B .0308
<u>Prevention of Significant Deterioration</u>	15A NCAC 02D .0530
<u>Sources In Nonattainment Areas</u>	15A NCAC 02D .0531
<u>Applicability</u>	15A NCAC 02D .0902
<u>Compliance Schedules for Sources In Nonattainment Areas</u>	15A NCAC 02D .0909
<u>Automobile and Light Duty Truck Manufacturing</u>	15A NCAC 02D .0917
<u>Paper Coatings</u>	15A NCAC 02D .0920
<u>Fabric and Vinyl Coating</u>	15A NCAC 02D .0921
<u>Metal Furniture Coatings</u>	15A NCAC 02D .0922
<u>Surface Coating of Large Appliance Parts</u>	15A NCAC 02D .0923
<u>Coating of Miscellaneous Metal Parts and Products</u>	15A NCAC 02D .0934
<u>Factory Surface Coating of Flat Wood Paneling</u>	15A NCAC 02D .0935
<u>Graphic Arts</u>	15A NCAC 02D .0936
<u>Miscellaneous Volatile Organic Compound Emissions</u>	15A NCAC 02D .0951
<u>Petition for Alternative Controls for RACT</u>	15A NCAC 02D .0952
<u>Offset Lithographic Printing and Letterpress Printing</u>	15A NCAC 02D .0961
<u>Industrial Cleaning Solvents</u>	15A NCAC 02D .0962
<u>Fiberglass Boat Manufacturing Materials</u>	15A NCAC 02D .0963
<u>Miscellaneous Industrial Adhesives</u>	15A NCAC 02D .0964
<u>Flexible Package Printing</u>	15A NCAC 02D .0965
<u>Paper, Film and Foil Coatings</u>	15A NCAC 02D .0966
<u>Miscellaneous Metal and Plastic Parts Coatings</u>	15A NCAC 02D .0967
<u>Automobile and Light Duty Truck Assembly Coatings</u>	15A NCAC 02D .0968
<u>Permits Requiring Public Participation</u>	15A NCAC 02Q .0306
WILDLIFE RESOURCES COMMISSION	
<u>Beaufort County</u>	15A NCAC 10F .0303
<u>Carteret County</u>	15A NCAC 10F .0330
<u>Pitt County</u>	15A NCAC 10F .0354
PUBLIC HEALTH, COMMISSION FOR	
<u>Premises: Miscellaneous Vermin Control</u>	15A NCAC 18A .2633
COSMETIC ART EXAMINERS, BOARD OF	
<u>Application/Licensure/Individuals Who Have Been Convicted...</u>	21 NCAC 14I .0401

ELECTROLYSIS EXAMINERS, BOARD OF

<u>Address</u>	21	NCAC 19	.0101
<u>Definitions</u>	21	NCAC 19	.0103
<u>Advertising</u>	21	NCAC 19	.0104
<u>Fees</u>	21	NCAC 19	.0201
<u>Application for Licensure</u>	21	NCAC 19	.0202
<u>Application for Renewal Reinstatement or Reactivation of ...</u>	21	NCAC 19	.0204
<u>Offices</u>	21	NCAC 19	.0403
<u>Supervising Physician</u>	21	NCAC 19	.0501

FORESTERS, BOARD OF REGISTRATION FOR

<u>Code of Ethics</u>	21	NCAC 20	.0115
<u>Petition for Rule-Making--Declaratory Rulings</u>	21	NCAC 20	.0125

FUNERAL SERVICE, BOARD OF

<u>Report to General Assembly</u>	21	NCAC 34A	.0203
-----------------------------------	----	----------	-------

RESPIRATORY CARE BOARD

<u>Definitions</u>	21	NCAC 61	.0103
<u>License Renewal</u>	21	NCAC 61	.0302
<u>Continuing Duty to Report</u>	21	NCAC 61	.0308
<u>Continuing Education Requirements</u>	21	NCAC 61	.0401

SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

<u>Remote Location Telepractice</u>	21	NCAC 64	.0219
-------------------------------------	----	---------	-------

BUILDING CODE COUNCIL

<u>NC Fire Code - Financial Responsibility</u>	3301.2.4
<u>NC Fire Code - Corridor Installations</u>	3405.5.1
<u>NC Plumbing Code - Shower Waste Outlet</u>	417.3
<u>NC Residential Code - Ceiling Joist Rafter Connections</u>	R802.3.1

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

**Chief Administrative Law Judge
JULIAN MANN, III**

**Senior Administrative Law Judge
FRED G. MORRISON JR.**

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
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 Guildford 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. Startown Lounge, Inc. T/A 5 O'clock Somewhere	10 ABC 0153	Gray	06/25/10	
ABC Commission v. Diversified Investments and Growth, LLC, T/A Petro Mart 6	10 ABC 0576	Webster	07/09/10	
ABC Commission v. Scooby's Bar & Restaurant, Sherri Lynn Bridgeman	10 ABC 2512	Gray	08/02/10	
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	
<u>BOARD OF SOCIAL WORK CERTIFICATION AND LICENSURE</u>				
Miriam Deborah Kahn Sichel v. Social Work Certification and Licensure Board	10 BSW 2454	Overby	06/25/10	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>				
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	
William Pickard Trucking, Inc., William Pickard v. Dept. of Crime Control and Public Safety, State Highway Patrol	09 CPS 4692	Brooks	06/09/10	
California Overland Ltd., NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 5225	Overby	05/12/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	Brooks	04/01/10	
Marius A. Christian v. State Highway Patrol	09 CPS 6368	Overby	08/13/10	
Jose H. Geronimo Ramirez v. Victims and Justice Services	09 CPS 6454	May	06/23/10	
David Leon Darby v. Division of Crime Control and Public Safety	09 CPS 6703	Overby	08/17/10	
Selective Clearing and Grading, Inc., Danny Creech, Lynn Creech v. Crime Control and Public Safety	09 CPS 6726	Gray	07/29/10	
Harry L. Foy Jr., Department of Crime Control and Public Safety, Div. of State Highway Patrol Motor Carrier Enforcement Section	09 CPS 6728	Overby	08/17/10	
James M. Abdella v. Department of Crime Control and Public Safety v. Motor Carrier Enforcement Div	09 CPS 6740	Overby	08/18/10	
AD Gustafson Inc., Andrew Gustafson v. State Highway Patrol	10 CPS 0071	Lassiter	07/30/10	
Benjamin C. Simmons III, Precision Custom Farming, LLC v. DMV	10 CPS 0419	Elkins	06/29/10	25:04 NCR 515
Keon J. Jones v. Victims Compensation Commission	10 CPS 0848	Webster	07/26/10	
X&M Trucking, Xavier Artis v. Dept State Highway Patrol, DMV	10 CPS 0855	Lassiter	07/20/10	

CONTESTED CASE DECISIONS

AD Gustafson, Inc., Andrew Gustafson v. Secretary of Crime Control	10 CPS 2072	Gray	06/15/10
Michael A. Rossi Sr., v. Dept. of Crime Control and Public Safety, Div. of Victims Compensation Services	10 CPS 2478	Lassiter	08/30/10
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: <http://www.ncoah.com/hearings/decisions/>

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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
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

CONTESTED CASE DECISIONS

Windy Woods, LLC v. DENR, Division of Water Quality	09 EHR 4621	Gray	06/04/10	25:05 NCR 674
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	25:04 NCR 519
Spencer Batchelor v. NCSU Campus Police	09 OSP 0059	Lassiter	03/29/10	25:03 NCR 358
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	25:03 NCR 372
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	
Charolettee Hope v. Cumberland County Department of Social Services	09 OSP 4436	Gray	04/15/10	
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	