

# ***NORTH CAROLINA REGISTER***

**VOLUME 25 • ISSUE 09 • Pages 1054 - 1159**

**November 1, 2010**

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## **Contact List for Rulemaking Questions or Concerns**

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

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

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Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919) 807-4740

NC Association of County Commissioners  
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### **Governor's Review**

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

Joint Legislative Administrative Procedure Oversight Committee  
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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2010 – December 2010

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
24:14	01/15/10	12/22/09	01/30/10	03/16/10	03/22/10	05/01/10	05/12/10	10/12/10
24:15	02/01/10	01/08/10	02/16/10	04/05/10	04/20/10	06/01/10	01/26/11	10/29/10
24:16	02/15/10	01/25/10	03/02/10	04/16/10	04/20/10	06/01/10	01/26/11	11/12/10
24:17	03/01/10	02/08/10	03/16/10	04/30/10	05/20/10	07/01/10	01/26/11	11/26/10
24:18	03/15/10	02/22/10	03/30/10	05/14/10	05/20/10	07/01/10	01/26/11	12/10/10
24:19	04/01/10	03/11/10	04/16/10	06/01/10	06/21/10	08/01/10	01/26/11	12/27/10
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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.



**EXECUTIVE ORDER NO. 65**

**GOVERNOR'S EDUCATION TRANSFORMATION COMMISSION**

**WHEREAS**, I have established the Career and College – *Ready, Set, Go!* Initiative (CC-RSG) which focuses on my education goal that every student will graduate ready for a career, college or technical training; and

**WHEREAS**, strong and collaborative relationships between the Governor's Office, the State Board of Education, the Department of Public Instruction (NCDPI), higher education, and local school districts are necessary for the successful implementation of CC-SRG; and

**WHEREAS**, the Governor's Office has received funding from the federal Race to the Top grant (RttT), and such funding is key to accomplishing the goals of CC-RSG; and

**WHEREAS**, it is important for me and the State Board of Education to provide oversight for North Carolina's RttT plan and for the implementation of CC-RSG by the Department of Public Instruction.

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

**Section 1.     Establishment**

The Governor's Education Transformation Commission (hereinafter the "Commission") is hereby established.

**Section 2.     Membership**

The Commission shall be composed of up to 26 members appointed by the Governor to serve at her pleasure for terms of two years. Commission members may be reappointed for successive terms. The persons appointed to the Commission may include representatives from educational organizations and institutions, information technology providers, nonprofits, business entities, and state and local government agencies. The Governor shall appoint a Chair of the Commission from the membership of the Commission.

**Section 3. Duties**

The Commission shall have the following duties:

- a. Make recommendations to the Governor regarding (1) the strategic direction on all aspects of the RttT to support the implementation of CC-RSG; (2) communication and marketing for the RttT and CC-RSG in local communities and across the state; (3) ensuring continuous alignment between the Governor's CC-RSG Initiative and other state transformational plans; and (4) the revision of existing state policies, rules, or regulations that may inhibit North Carolina from achieving the targets outlined in the CC-RSG.
- b. Participate with the RttT coordinators and partners to develop and implement programs.
- c. Provide advice to the Governor regarding other issues, changes or modifications needed to help the Governor reach her goal that every student will graduate ready for a career, college or technical training.

**Section 4. Meetings**

The Commission shall meet as often as called by the Chair to carry out its work. A simple majority of the Commission shall constitute a quorum for the purpose of transacting the business of the Commission.

**Section 5. Administration**

The Office of the Governor and the State Board of Education may provide staff for the Commission as necessary and as determined by the Governor, upon the request of the Commission.

**Section 6. Budget**

The Office of the Governor may use up to \$30,000 from the RttT grant to support the work of the Commission and its members.

**Section 7. Effect and Duration**

This Executive Order is effective immediately. It supersedes and replaces all other Executive Orders on this subject. It shall remain in effect until September 27, 2014, pursuant to N.C. Gen. Stat. § 147-16.2, unless earlier rescinded.

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



Beverly Eaves Perdue  
Governor

ATTEST:



**EXECUTIVE ORDER NO. 66**

**PROCLAMATION OF A STATE OF EMERGENCY  
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA  
DUE TO TROPICAL STORM NICOLE**

Pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina:

**Section 1.**

I declare that a state of emergency exists in the State due to the approach of Tropical Storm Nicole.

**Section 2.**

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

**Section 3.**

I delegate to Reuben F. Young, Secretary of Crime Control and Public Safety, or his designee, all power and authority granted to me and required of me by Article 1 of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

**Section 4.**

Further, Secretary Young, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G. S. § 143B-476.



**Section 5.**

I further direct Secretary Young to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

**Section 6.**

I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

**Section 7.**

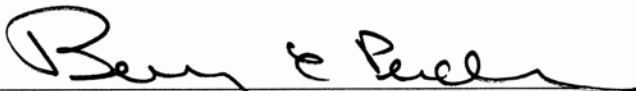
This order is adopted pursuant to my powers under Article 1 of Chapter 166A of the General Statutes and not under my authority under Article 36A of Chapter 14 of the General Statutes. It does not trigger the limitations on weapons in G.S. § 14-288.7 or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages.

**Section 8.**

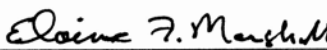
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall *by and through*  
Secretary of State *Rodney S. Medlock*  
*Chief Deputy Secretary of State*



BEVERLY EAVES PERDUE  
GOVERNOR

EXECUTIVE ORDER NO. 67

AMENDING EXECUTIVE ORDER NO. 10, ETHICAL STANDARDS FOR  
THE STATE HEALTH COORDINATING COUNCIL

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

Executive Order 10, *Ethical Standards for the State Health Coordinating Council*, issued March 3, 2009, is hereby amended as follows:

3. Members of the SHCC are expected to and should confer with DHHS on any matters that come before them in the development of the SMFP. No member of the SHCC, however, may confer with any DHHS employee regarding any proposed provision of the SMFP or any proposed or pending certificate of need application in which the member has a direct, conflicting professional, institutional or financial interest, except in public meetings conducted by DHHS or the SHHC.

Except as amended herein, Executive Order 10 remains in full force and effect. Executive Order 10, as amended herein, is effective until rescinded in writing. This Order is effective immediately.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 4th day of October in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.



Beverly Eaves Perdue  
Governor

ATTEST:

Elaine F. Marshall *by and through*  
Secretary of State

*Redney S. Maddox*  
*Chief Deputy Secretary of State*



**BEVERLY EAVES PERDUE**  
GOVERNOR

**EXECUTIVE ORDER NO. 68**  
**PROCLAMATION OF A STATE OF DISASTER**  
**FOR THE CITY OF SALUDA**

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, N.C.G.S. § 166A-6, authorizes the issuance of a proclamation defining an area subject to a state of disaster and categorizing the disaster as a Type I, Type II or Type III disaster; and

**WHEREAS**, on February 5, 2010, an ice storm passed through Polk County and the City of Saluda North Carolina which resulted in widespread and severe damage including, but not limited to, property damage, downed trees and power lines, and road blockages; and

**WHEREAS**, on February 5, 2010, the City of Saluda in Polk County, North Carolina proclaimed the existence of a state of emergency; and

**WHEREAS**, I have determined that a state of a disaster, as defined in N.C.G.S. §166A-6, existed in the State of North Carolina, specifically in the City of Saluda; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-6, the criteria for a Type I disaster are met if: (1) the Secretary of Crime Control and Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) the City of Saluda has declared a local state of emergency pursuant to N.C.G.S. § 166A-8; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123, or has met or exceeded the State infrastructure criteria set out in N.C.G.S. § 166A-6.01(b)(2)(a); and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-6A, if a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

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

**Section 1.**

Pursuant to N.C.G.S. § 166A-6, a Type I state of disaster is hereby declared for the City of Saluda.

**Section 2.**

I authorize state disaster assistance in the form of public assistance grants to eligible entities located within the disaster area that meet the terms and conditions under N.C.G.S. § 166A-6.01(b)(2)(c) for costs incurred for the following purposes only:

- a. Debris clearance.
- b. Emergency protective measures.
- c. Repairs to roads and bridges.

**Section 3.**

I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this proclamation.

**Section 4.**

This Type I Disaster Declaration shall expire 30 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 4th day of October in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.



Beverly Eaves Perdue  
Governor

ATTEST:

Elaine F. Marshall  
Secretary of State

by and through  
Rodney S. Maddox  
Chief Deputy Secretary  
of State



**EXECUTIVE ORDER NO. 69**

**GOVERNOR'S GANG TASK FORCE**

**WHEREAS**, the North Carolina Street Gang Suppression Act, Article 13A of Chapter 14 of the North Carolina General Statutes, defines and criminalizes gang activity; and

**WHEREAS**, in December 2009, the North Carolina GangNET database identified 898 validated gangs and 13,699 validated gang members and associates in 52 counties across North Carolina; and

**WHEREAS**, the Executive Organization Act of 1973 established the Governor's Crime Commission; and

**WHEREAS**, the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets, which accompanied North Carolina Session Law 2009-451, appropriated \$200,000 in funding from the American Reinvestment and Recovery Act to establish a statewide gang task force within the Governor's Crime Commission.

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

**Section 1. Establishment**

The Governor's Gang Task Force (hereinafter the "Task Force") is hereby established to enhance anti-gang law enforcement efforts and develop gang prevention policies in North Carolina.

**Section 2. Membership**

- a. Task Force members shall be appointed by the Governor and shall serve at the pleasure of the Governor. The Task Force shall consist of at least 25 members, but no more than 40 members. The Governor shall appoint a Chair and a Vice Chair of the Task Force.
- b. The Governor's appointees will include the following persons or their designees:
  1. Chair of the Governor's Crime Commission.
  2. Secretary of the Department of Crime Control and Public Safety.
  3. Secretary of the Department of Correction.
  4. Secretary of the Department of Juvenile Justice and Delinquency Prevention.
  5. Attorney General.

6. Director of the State Bureau of Investigation.
  7. A representative of the Department of Public Instruction.
  8. Chair of the GangNet Steering Committee.
  9. A representative of the North Carolina Gang Association.
  10. The Governor's Policy Director.
  11. A district court judge.
  12. A superior court judge.
  13. A district attorney.
  14. An elected official representing the state's local governments.
  15. Representatives of local law enforcement agencies, representing both sheriff and police departments in both rural and metropolitan areas.
  16. School board members, representing both rural and metropolitan areas.
  17. Representatives of non-profit religious or community groups.
  18. A member of the North Carolina State Senate.
  19. A member of the North Carolina House of Representatives.
  20. An academic who has conducted research on gangs and gang activity.
- c. The following federal agencies are invited to participate in the Task Force:
1. A representative of the Federal Bureau of Investigation.
  2. Representatives of the United States Attorney's Offices for the Eastern, Middle, and Western Districts of North Carolina.

### **Section 3. Duties**

The Task Force shall have the following duties:

- a. Develop a comprehensive plan to ensure a well-coordinated, statewide enforcement program. The program should increase the flow of gang-related information among various law enforcement agencies, correctional institutions, and the judicial system.
- b. Investigate and identify current and emerging gang issues.
- c. Investigate and identify policy changes to better prevent, mitigate, and address gang activity.
- d. Recommend legislative and executive action necessary to implement a comprehensive, coordinated plan and to make identified policy changes.

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

### **Section 4. Meetings**

- a. The Task Force shall meet at least quarterly.
- b. Meetings shall be held upon the call of the Governor or the Task Force Chair.
- c. A majority of the Task Force shall constitute a quorum for the transaction of business.

**Section 5. Administration**

- a. The Task Force shall be housed within the Department of Crime Control and Public Safety, under the Division of the Governor's Crime Commission.
- b. The Task Force shall be a separate entity from the Governor's Crime Commission. The Governor's Crime Commission shall create a new committee on gang prevention, which shall work with the Task Force staff to implement policy priorities identified by the Task Force.
- c. The Governor's Crime Commission shall hire two staff members for the Task Force. Salaries and expenses of Task Force staff shall be paid with funding from the American Reinvestment and Recovery Act and provided through the federal Byrne Justice Assistance Grant Program.
- d. Task Force staff shall organize all Task Force meetings, prepare reports on behalf of the Task Force, identifying current and emerging gang issues, assist with gang-related grants, and work with the gang prevention committee of the Governor's Crime Commission.
- e. No per diem allowance shall be paid to members of the Task Force. Members of the Task Force may receive necessary travel and subsistence expenses in accordance with State law and the policies and regulations of the Office of State Budget and Management.

**Section 6. Implementation and Duration**

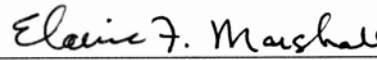
This Executive Order is effective immediately. It supersedes and replaces all other executive orders on this subject. It shall remain in effect until June 30, 2012, pursuant to N.C. Gen. Stat. § 147-16.2, or unless earlier rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 4th day of October in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall *by and through*  
Secretary of State *Richard B. Moller*  
*Chief Deputy Secretary*  
*of State*



**DEPARTMENT OF ENVIRONMENTAL AND NATURAL RESOURCES**

**DIVISION OF WASTE MANAGEMENT**

**NOTICE OF EXTENDED COMMENT PERIOD**

Notice is hereby given that the end of the comment period for the proposed rules 15A NCAC 13B .0101, .0563, .1604, .1626, .1632-.1635, .1637 originally published in the N.C. Register on August 16, 2010 in Volume 25 Issue 4 Page 465 and previously extended until November 1, 2010 will now be extended until January 31, 2011.

**Procedure by which a person can object to the agency on a proposed rule:** Persons may submit written objections to the proposed rule by contacting: Ellen Lorscheider, DENR Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646, fax (919)733-4810; or email [ellen.lorscheider@ncdenr.gov](mailto:ellen.lorscheider@ncdenr.gov).

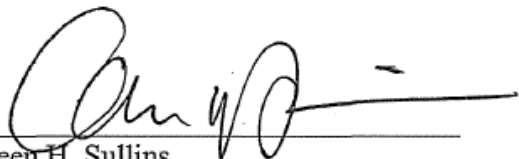
**Comments may be submitted to:** Ellen Lorscheider, Planning and Programs Branch Head, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919)508-8400, fax (919)733-4810, email [ellen.lorscheider@ncdenr.gov](mailto:ellen.lorscheider@ncdenr.gov)

**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 Acetochlor, Acetochlor ESA, Acetochlor OXA, Methyl Isobutyl Ketone, Perchlorate and Perchlorate Salts. 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 December 1, 2010.

<u>Substance</u>	<u>Concentration</u>
Acetochlor	100 ug/L
Acetochlor ESA	1000 ug/L
Acetochlor OXA	1000 ug/L
Methyl Isobutyl Ketone	100 ug/L
Perchlorate and Perchlorate Salts	2 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](mailto: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

**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 07 – DEPARTMENT OF CULTURAL RESOURCES

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Department of Cultural Resources intends to adopt the rules cited as 07 NCAC 02G .0101-.0102, 02H .0101-.0106, .0201-.0203, .0301-.0307, 02I .0101, .0201-.0202, .0301-.0308, 02J .0101-.0103 and repeal the rules cited as 07 NCAC 02A .0101-.0102, .0201, 02B .0101-.0102, .0201, .0203, 02C .0101-.0105, .0201-.0202, .0204-.0205, .0301-.0302, .0501-.0504, 02D .0101-.0115, .0301-.0307, 02E .0101, .0201-.0208, .0301-.0302, .0304, .0401-.0403, 02F .0101-.0103.

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

### Public Hearing:

**Date:** January 24, 2011

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

**Location:** Archives and History/State Library Building, 109 E. Jones Street, Raleigh, NC 3<sup>rd</sup> floor Conference Room

**Reason for Proposed Action:** The proposed action is necessary in order for the Department of Cultural Resources to update the Administrative Code provisions relevant to the State Library of North Carolina, last revised in 1989. In the interim the institutions changed its name from the North Carolina State Library to the State Library of North Carolina and expanded and modernized its services. Technical corrections are part of those changes but, more importantly, the State Library gained new statutory authority for the organization and administration of regional libraries.

**Procedure by which a person can object to the agency on a proposed rule:** Objections may be submitted in writing to Mary Boone during the comment period. Additional objections may be made verbally and in writing at the public hearing.

**Comments may be submitted to:** Mary Boone, Department of Cultural Resources, 4640 Mail Service Center, Raleigh, NC 27699-4610, phone (919)807-7410, fax (919)733-8748, email mary.boone@ncdcr.gov

**Comment period ends:** February 1, 2011

**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** 07 NCAC 02G .0101-.0102, 02H .0101-.0106, .0201-.0203, .0301-.0307, 02I .0101, .0201-.0202, .0301-.0308, 02J .0101-.0103

☐ **Local**

☐ **Substantial Economic Impact** (≥\$3,000,000)

☒ **None** 07 NCAC 02A .0101-.0102, .0201, 02B .0101-.0102, .0201, .0203, 02C .0101-.0105, .0201-.0202, .0204-.0205, .0301-.0302, .0501-.0504, 02D .0101-.0115, .0301-.0307, 02E .0101, .0201-.0208, .0301-.0302, .0304, .0401-.0403, 02F .0101-.0103

### Fiscal Note posted at

[http://www.osbm.state.nc.us/files/pdf\\_files/DCR10212010.pdf](http://www.osbm.state.nc.us/files/pdf_files/DCR10212010.pdf)

## CHAPTER 02 - DIVISION OF STATE LIBRARY

### SUBCHAPTER 02A - DIVISIONAL RULES

### SECTION .0100 - RULES OF ORGANIZATION

#### 07 NCAC 02A .0101 DIVISION OF STATE LIBRARY

~~(a) Location. The Special Services Section of the state library is located at 1811 North Boulevard, Raleigh, North Carolina 27635. Other sections and the administrative offices are located at 109 East Jones Street, Raleigh, North Carolina 27611.~~

~~(b) Purpose. The Division of State Library provides resources, services and programs to function as an information distribution system and a resource center for state government and the people of North Carolina and thereby promote knowledge, education, commerce and business in the state. The state library is responsible for assisting in the development and provision of library and information services in general.~~

Authority G.S. 125-1; 125-2; 143B-10.

#### 07 NCAC 02A .0102 LIBRARY SERVICES AND CONSTRUCTION ACT ADVISORY COUNCIL

~~(a) Responsibilities, functions and membership of the Library Services and Construction Act Advisory Council are as provided for by federal law and regulations.~~

~~(b) Members shall be appointed for a term of two years by the Secretary of the Department of Cultural Resources, following the federal guidelines concerning membership, from a list of suggested names submitted by the state librarian and the coordinator of federal programs in the state library.~~

~~(c) A council chairman shall be appointed by the Secretary of the Department of Cultural Resources to serve for a two year term of office.~~

~~(d) Meetings of the council shall be called by the chairman or the state librarian, as required to fulfill necessary functions and responsibilities.~~

*Authority G.S. 125-8; 143B-10; 20 U.S. Code 16; 34 C.F.R. 770.4.*

## **SECTION .0200 - DELEGATED AUTHORITY**

### **07 NCAC 02A .0201 PURCHASE AND CONTRACT**

~~(a) Insofar as the state library exercises some discretionary authority in the selection and purchase of library materials and services, such as books, periodicals, films, maps, microforms, microfilming, binding and electronic networking, it is the policy of the Division to submit annually its anticipated volume of purchases of generally available materials or services for bids to reputable vendors. The bidding and selection processes shall follow the policies and procedures of the Division of Purchase and Contract of the Department of Administration. Vendors shall be selected on the basis of service, compliance with standard procedures and quality and size of discount or other cost-reducing factors. The state library shall then exercise its authority to purchase specific library materials and services from the vendors selected.~~

~~(b) It shall also be the policy of the state library to participate in specific national, regionwide and statewide cooperative networking, established for the sharing of materials and services, and to deal with sole source vendors for certain materials and services where necessary, especially electronic cataloging and interlibrary loan services.~~

*Authority G.S. 125-2; 143B-10.*

## **SUBCHAPTER 02B - TECHNICAL SERVICES**

### **SECTION .0100 - STATE PUBLICATIONS CLEARINGHOUSE**

#### **07 NCAC 02B .0101 SERVICES**

~~The state publications clearinghouse acquires and catalogs publications from state agencies, arranges for the production of microfiche copies and distributes paper and microfiche copies of the publications to depository libraries throughout the state. The publications themselves are also referred to as "documents".~~

*Authority G.S. 125-2; 125-11; 143B-10.*

#### **07 NCAC 02B .0102 DOCUMENTS CHECKLIST**

~~The clearinghouse is responsible for publishing a periodic checklist of state publications and for making each issue of that checklist available to libraries in the state upon request.~~

*Authority G.S. 125-2; 125-11; 143B-10.*

## **SECTION .0200 - LIBRARY SERVICES TO STATE AGENCIES**

### **07 NCAC 02B .0201 REQUESTS FOR SERVICES**

~~Any state agency may apply for library assistance by written request to the state librarian. The state librarian will approve such a request based on available staff and facilities.~~

*Authority G.S. 125-2; 143B-10.*

### **07 NCAC 02B .0203 SERVICES**

~~The staff of the technical services section will perform classification, cataloging and processing for selected agency libraries on a priority basis. The staff will provide consultation, educational services and supervision of filing for participating agencies. A librarian in the section will consult with other state agencies requesting service on problems and projects requiring professional library knowledge as time permits and as approved by the state librarian.~~

*Authority G.S. 125-2; 143B-10.*

## **SUBCHAPTER 02C - INFORMATION SERVICES**

### **SECTION .0100 - CIRCULATION AND REFERENCE**

#### **07 NCAC 02C .0101 READING ROOM**

~~The reading room of the Division of State Library is open from 8:00 a.m. to 5:30 p.m., Monday through Friday, except state holidays. The reading room collections consist of the reference collection, the index collection, periodicals, newspapers and the other library material in the reading room.~~

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 02C .0102 CIRCULATION OF LIBRARY MATERIALS**

~~(a) Materials from the circulating collections of the state library may be borrowed for use outside the reading room by state employees. Non state employees may borrow materials from the library through interlibrary loan at their local libraries, or they may use the material within the state library.~~

~~(b) Certain materials are designated non circulating and cannot be used outside the library. The non circulating collection consists of the main reference collection, documents reference collection, rare book collection, genealogy collection, North Carolina vertical file material, newspapers not on microfilm, periodicals and desk copies. The circulating collections consist of the main book collection, main documents collection, newspapers on microfilm, North Carolina census on microfilm, genealogy core collection and the Works Progress Administration cemetery index.~~

~~(c) The state librarian may give authorization for materials to be loaned from the library's collections to reprint publishers or microform publishers in order that these publishers may duplicate the materials and make them available for sale. In such cases, it is the responsibility of the publishers to ensure that~~

~~copyright restrictions are being observed and that the state library is not responsible for any copyright violations.~~

~~(d) If any borrower loses or damages library material charged in the borrower's name, the borrower will be responsible for the cost of replacing the material. Library borrowing privileges may be withheld until payment is made.~~

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 02C .0103 PHOTOCOPYING**

~~Photocopying services are available to the public and state employees at a cost determined by the cost of equipment, supplies and staff time required for copying. The library staff will not photocopy material in violation of copyright restrictions.~~

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 02C .0104 REFERENCE SERVICES**

~~The state library staff will provide instruction to patrons concerning the use of the library's facilities. The primary duties of the staff are to provide information and reference services for state employees and to select and maintain materials for the library's collection. Reference and information services will be provided for non-state employees as time permits.~~

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 02C .0105 BIBLIOGRAPHIES**

~~The information services section staff compiles and distributes bibliographies on selected subjects at the request of state agencies and employees as time, materials, and staff permit. Completed bibliographies are available on request at the circulation desk in the State Library reading room.~~

*Authority G.S. 125-2; 143B-10.*

### **SECTION .0200 - SELECTION AND ACQUISITION OF LIBRARY MATERIALS**

#### **07 NCAC 02C .0201 SELECTION POLICY**

~~Material to be added to the state library collection will be recommended by the library staff. The ultimate responsibility for selection is assumed by the state librarian. Materials acquired by the state library comply with the state library collection development guidelines, copies of which are available from library staff in the information services section.~~

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 02C .0202 RECOMMENDATIONS**

~~Any citizen of the state may recommend an item for purchase by the library. The recommendation must be submitted to the Chief of the Information Services Section of the state library. Recommendations will be considered on the basis of criteria listed in the state library collection development guidelines, along with all other recommendations.~~

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 02C .0204 GIFTS**

~~Gifts are accepted with the understanding that the state library reserves the privilege of deciding whether the donated material should be added to the collection. If a gift is not added, the state library will exercise the right to offer it to another library or otherwise dispose of the item. No restrictions on the state library's use of the gift material may be made by the donor and, once donated, the item may not be reclaimed. Gift items will be added to the state library's collection using the same criteria as are used in the purchase of material.~~

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 02C .0205 COMPLAINTS CONCERNING A TITLE IN THE COLLECTION**

~~When a complaint is received concerning an item owned by the Division of State Library, the following procedure will be adhered to:~~

- ~~(1) A request for re evaluation form will be completed by the individual and filed with the state librarian;~~
- ~~(2) An ad hoc committee of state library staff members will be appointed by the state librarian to review the item that is the subject of the complaint;~~
- ~~(3) After a thorough review, the committee will recommend a course of action, determined by a majority vote, to the state librarian;~~
- ~~(4) The state librarian and the Secretary of the Department of Cultural Resources will make the final decision as to withdrawal or retention of the item.~~

*Authority G.S. 125-2; 143B-10.*

### **SECTION .0300 - GENEALOGICAL SERVICES**

#### **07 NCAC 02C .0301 THE COLLECTION**

~~The collection of the Genealogical Services Branch includes published materials basic to genealogical research in the colonial and federal periods of the original 13 states. Complete files of major genealogical periodicals are held. Microfilmed holdings include the McCubbins collection of materials on Rowan County, North Carolina, with card file index, and complete census schedules of population for the states east of the Mississippi River. The effective research range of the collection is increased by the resources of the general collection and by the extensive holdings of federal and North Carolina state documents.~~

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 02C .0302 SERVICES TO INDIVIDUALS**

- ~~(a) Patrons who visit the Genealogical Services Branch will be assisted in familiarizing themselves with the content, arrangement and special features of the genealogical collection and in the use of finding aids and special North Carolina titles.~~
- ~~(b) Persons seeking information by mail should write concisely and ask specific questions. Letters should include such~~

~~information as the family name with acceptable variant spellings, personal names when known, specific or probable places and dates of residence, probable religious affiliation and presumed nation of origin. An inquiry about a book or article should give an exact and complete citation when possible. Patrons should state whether or not they are prepared to pay for photocopied materials and should enclose a legal sized, self-addressed envelope with each inquiry.~~

*Authority G.S. 125-2; 143B-10.*

## **SECTION .0500 - INTERLIBRARY SERVICES**

### **07 NCAC 02C .0501 INTERLIBRARY LOANS**

~~Interlibrary loan procedures and rules are established in the Interlibrary Loan Code for North Carolina Libraries, approved by the Executive Board of the North Carolina Library Association. This code is adopted by reference under G.S. 150B-14(e). Copies of this code are available for inspection in the state library and may be obtained by writing to the State Library, Raleigh, North Carolina 27611.~~

*Authority G.S. 125-2; 125-12; 143B-10.*

### **07 NCAC 02C .0502 IN-WATS SERVICES**

~~IN WATS is a full time, toll free reference, interlibrary loan and information telephone service for North Carolina libraries. IN WATS reference services are available for all types of library patrons and requests, with the exception of heraldry and genealogical research, which cannot be undertaken by IN WATS librarians.~~

*Authority G.S. 125-2; 143B-10.*

### **07 NCAC 02C .0503 ELIGIBILITY FOR IN-WATS**

~~(a) Eligible to participate in the IN WATS program are all public libraries, private libraries, institutional, college, and university libraries, technical institute libraries, community college libraries, industrial libraries and local and state government libraries in North Carolina. Participating libraries must:~~

- ~~(1) have a telephone and a specified person or persons whom the IN WATS staff can contact during regular office hours; and~~
- ~~(2) agree to the Interlibrary Loan Code for North Carolina Libraries.~~

~~(b) Librarians from eligible libraries may obtain the IN WATS telephone number and initiate IN WATS services by writing the Chief of Information Services Section of the State Library.~~

*Authority G.S. 125-2; 143B-10.*

### **07 NCAC 02C .0504 IN-WATS PROCEDURE MANUAL**

~~Procedures for submitting requests to IN WATS are outlined in the North Carolina State Library Interlibrary Services Manual available free to North Carolina libraries.~~

*Authority G.S. 125-2; 143B-10.*

## **SUBCHAPTER 02D - SPECIAL SERVICES**

### **SECTION .0100 - LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED**

#### **07 NCAC 02D .0101 ELIGIBILITY**

~~(a) General. Eligibility for the services of the library for the blind and physically handicapped is determined by the federal guidelines in 36 C.F.R. 701.10 and is applied to all applicants.~~

~~(b) Eligibility Criteria. The following persons are eligible for loan service:~~

- ~~(1) persons whose visual acuity is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance not greater than 20 degrees;~~
- ~~(2) persons whose visual disability, with correction and regardless of optical measurement, is certified as preventing the reading of standard printed material;~~
- ~~(3) persons certified as unable to read or unable to use standard printed material as a result of physical limitations; or~~
- ~~(4) persons certified as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.~~

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 02D .0102 APPLICATION**

~~(a) Application forms are furnished by the library for the blind and physically handicapped. The forms ask for such information as name, address, date of birth, education, type of disability, items an applicant wishes to borrow, and machinery that will be necessary.~~

~~(b) Each applicant must be certified as eligible and meeting requirements by competent authority. In cases of blindness, visual disability or physical limitations, "competent authority" is defined to include doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, physical therapists and professional staff of hospitals, institutions and public or welfare agencies, such as social workers, case workers, counselors, rehabilitation teachers and school superintendents. In the absence of any of these, certification of eligibility may be made by professional librarians or any person whose competence under specific circumstances is acceptable to the Library of Congress. In the case of reading disability from organic dysfunction, "competent authority" is defined as doctors of medicine who may consult with colleagues in associated disciplines.~~

~~(c) For an application, write the North Carolina Library for the Blind and Physically Handicapped, 1811 North Boulevard, Raleigh, N.C. 27635.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0103 NEW READERS**

~~(a) The library will begin service to each new library patron within three days after an application has been approved, subject to the availability of equipment and materials.~~  
~~(b) Material sent to each new library patron includes an introductory letter, a magazine list, a reader's interest form and at least one book. Users of recorded or braille materials also receive a recent edition of Talking Book Topics, or Braille Book Review, and the last Library of Congress annual catalog.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0104 SELECTION**

~~(a) Each library patron is informed of materials and equipment available for loan and may make specific requests or indicate a general area of interest.~~  
~~(b) If all material requested has been sent to the library patron and the library has not received any new request, the reader will be informed of this by letter.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0105 CIRCULATION OF MATERIALS**

~~There is no limit on the number of books a library patron may borrow at any given time, provided the books are returned within the specified 45 day borrowing period. Overdue notices are sent when books are not returned within the borrowing period. There is not a specified borrowing period for a magazine, but a new issue will not be sent until the previous one has been returned.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0106 SUSPENSION OF SERVICES**

~~The following practices by any library patron may result in the suspension of library services: repeated failure to return materials within the borrowing period; failure to use the library services for a 12 month period; willful and negligent damage to equipment or materials; unauthorized use of materials or equipment, such as loan to an ineligible person or modification of equipment; or repeated abusive verbal attacks or behavior toward library staff that is offensive or threatening.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0107 BRAILLIST**

~~(a) Any brailist who is certified by the Library of Congress may volunteer his services to the library. Volunteers receive no pay for their productions and must provide their own braille machine.~~  
~~(b) Any interested person should contact the Library for the Blind and Physically Handicapped.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0108 TAPING VOLUNTEERS**

~~(a) Volunteers who read books or other materials aloud onto tapes receive no pay from the library for their productions.~~  
~~(b) Taping volunteers go through a training and testing period under the supervision of library staff.~~

~~(c) Interested person should contact the Library for the Blind and Physically Handicapped.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0109 COPYRIGHT**

~~No volunteer produced title for inclusion in the general collection of the library will be reproduced in any medium without copyright approval, if such approval is necessary.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0110 REQUEST/LIBRARY PATRONS/REPRODUCE MATERIALS: SPECIAL FORMATS**

~~The library, when possible, will reproduce in braille or cassette materials requested by library patrons for their personal use. The library, however, reserves the right to refuse or delay these requests for the following reasons:~~

- ~~(1) lack of volunteer time available;~~
- ~~(2) length or difficulty of the material to be reproduced;~~
- ~~(3) any other reason deemed sufficient by the head of the Library for the Blind and Physically Handicapped.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0111 SMALL COLLECTIONS**

~~(a) The library will furnish circulating collections to libraries, hospitals, rest homes, and other institutions serving eligible visually and physically handicapped persons. These collections can include recorded, brailled and large print materials. The number of books furnished by the library will depend on the needs of the institution taking into account the number of people served, the rate of circulation and the availability of stock at the library.~~

~~(b) Books in these collections may be borrowed for up to 120 days from the date sent. They may be exchanged for other titles at any time during the loan period.~~

~~(c) The library will consider it just cause to remove a deposit collection from an institution for the following reasons:~~

- ~~(1) failure to exchange or return books within the 120 day borrowing period;~~
- ~~(2) unauthorized use of materials or equipment;~~
- ~~(3) consistent return of materials or equipment in mutilated or damaged condition; or~~
- ~~(4) any other reason deemed sufficient by the head of the Library for the Blind and Physically Handicapped.~~

~~(d) Institutions also may borrow sound reproducing equipment and attachments from the library when there is sufficient stock to meet these requests. These machines may be kept by the institutions as long as the institutions continue to borrow reading materials from the library.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0112 CATALOGS**

~~Catalogs produced by the Library of Congress and by the North Carolina Library for the Blind and Physically Handicapped are available to library patrons, those involved in library services to the blind and physically handicapped, and to other interested parties. Priority in filling requests for catalogs will be assigned in the order stated in the previous sentence if availability is limited.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0113 SCOPE OF THE COLLECTION**

~~(a) The Library for the Blind and Physically Handicapped performs the functions of a public library. Its collection consists of recreational and general informational materials. The library does not supply textbooks or specialized scholarly and esoteric materials.~~

~~(b) Library patrons requesting textbooks or specialized scholarly and esoteric materials will be referred to the appropriate agency or, when possible, the library will attempt to procure these materials on interlibrary loan. Library patrons may request materials on interlibrary loan by telephoning or writing the library.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0114 MATERIALS SELECTION POLICY**

~~(a) Titles selected and produced by the Library of Congress for network distribution will be included in the collection of the North Carolina's Library for the Blind and Physically Handicapped. The responsibility for the selection of these titles rests with the Library of Congress.~~

~~(b) In addition to materials received from the Library of Congress, the North Carolina library will add books and magazines in disc, cassette tape, braille and large print formats through purchase, donation and volunteer production. The staff of the Library for the Blind and Physically Handicapped will make recommendations for the addition of these materials to the collection. The ultimate responsibility for selection is assumed by the state librarian. Materials which are acquired should meet high standards of quality in content, expression and form. Factors to be considered in evaluation of an item include:~~

- ~~(1) availability of the item from an alternate source;~~
- ~~(2) whether an item is about or set in North Carolina or written by a North Carolinian;~~
- ~~(3) reader interest and demand;~~
- ~~(4) suitability of format for production and inclusion in the collection.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0115 RECOMMENDATIONS**

~~Any citizen of the state may recommend an item for purchase by the library. The recommendation must be submitted to the Chief of the Special Services Section of the State Library. Recommendations will be considered on the basis of criteria listed in the state library's collection development guidelines,~~

~~copies of which are available from the Special Services Section Chief.~~

*Authority G.S. 125-2; 143B-10.*

**SECTION .0300 - AUDIOVISUAL SERVICES**

**07 NCAC 02D .0301 LOAN OF MATERIALS**

~~(a) The Audiovisual Services Branch of the Special Services Section maintains a diverse collection of films, videocassettes and slides which are available for loan on a tightly planned schedule to state government agencies and to local public libraries.~~

~~(b) Participating libraries and agencies must make audiovisual materials available without charge to all borrowers, except for the cost of return postage via the United States Postal Service "library rate."~~

~~(c) Participating libraries and agencies must give audiovisual materials borrowers access to a copy of policies and regulations concerning material use as stipulated by the state library's film service agreement.~~

~~(d) For film use, participating libraries and agencies must make certain that the borrower has access to a 16mm sound projector in good repair, that the film channel and gate are cleaned before each showing and that a trained projectionist will operate the projector.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0302 REQUESTS AND SCHEDULING**

~~(a) All booking requests must be received at the Audiovisual Services Branch of the Special Services Section of the State Library not less than three weeks before the requested date of use.~~

~~(b) Each borrower may request a maximum of three film titles for each date of use.~~

~~(c) Materials may be requested for the specific date they are to be used. If they can be used on dates other than those specified as the first choice, those dates should also be specified on the request form. The maximum booking period is one week.~~

~~(d) The Audiovisual Services Branch must be notified of cancellations as soon as possible and no later than six days before the materials are to be mailed from the branch.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0303 RETURN OF MATERIALS**

~~(a) Materials must be sent back to the Audiovisual Services Branch the day after their use, unless this day falls on a Saturday, a Sunday, or a holiday. In this case, the materials must be mailed or otherwise delivered the following Monday or the day after the holiday.~~

~~(b) At the time materials are picked up, participating libraries and agencies must notify each borrower of the specific date and time the materials are to be returned to the library or agency.~~

*Authority G.S. 125-2; 143B-10.*



**07 NCAC 02D .0304 LATE OR DAMAGED FILM**

~~(a) Late materials must be mailed to the Audiovisual Services Branch via "special delivery" and the branch must be notified by telephone when materials are being returned late. The state library must be reimbursed for postage charged by the United States Postal Service when late materials must be sent via "special delivery" to the next borrower.~~

~~(b) A fine specified in the state library's film service agreement is due for each day a film is overdue. The borrowing library or agency must send payment no later than one month after receiving an overdue notice and enclose the notice with the payment.~~

~~(c) Borrowers must be instructed not to repair damaged film by any method, and to return film which has been damaged immediately to the library or agency. Damaged film must be returned unrepai red and without removing damaged footage to the film services branch.~~

~~(d) Participating libraries and agencies must reimburse the state library for the cost or value of replacement footage or replacement film, as determined by the Audiovisual Services Branch, when materials are lost or damaged by borrowers. These libraries and agencies must send reimbursement to the state library no later than one month after receiving a statement of the amount due.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0305 FILM SERVICE AGREEMENT**

~~Participating libraries and agencies must complete and sign a state library film service agreement, which lists rules regarding the use of films. The agreement must identify the following:~~

- ~~(1) when the library or agency is open;~~
- ~~(2) system libraries or divisions included in the agreement, and their relationship to the Audiovisual Services Branch;~~
- ~~(3) staff in charge of film service; and~~
- ~~(4) a preferred method of transferring film.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0306 MATERIALS SELECTION POLICY**

~~Material to be added to the audiovisual services collection will be recommended by the library staff. The ultimate responsibility for selection is assumed by the state librarian. Materials which are acquired should meet high standards of quality in content and presentation. Factors to be considered in acquiring materials are listed in the state library's collection development guidelines, copies of which are available from the Special Services Section Chief.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02D .0307 RECOMMENDATIONS**

~~Any citizen of the state may recommend audiovisual materials for purchase by the library. The recommendation must be submitted to the Special Services Section Chief of the State Library. Recommendations will be considered on the basis of the factors listed in the state library's collection development~~

~~guidelines, copies of which are available from the Special Services Section Chief.~~

*Authority G.S. 125-2; 143B-10.*

**SUBCHAPTER 02E - LIBRARY DEVELOPMENT SERVICES**

**SECTION .0100 - CONSULTING AND DEVELOPMENTAL SERVICES**

**07 NCAC 02E .0101 CONSULTANTS**

~~The Library Development Services Section of the State Library offers consulting services upon request by librarians and local officials. Professional staff members are available to:~~

- ~~(1) advise on details of library establishment and management, and selection of materials, programs and services;~~
- ~~(2) help plan new facilities;~~
- ~~(3) provide workshops and in service training for employees and trustees;~~
- ~~(4) promote cooperative efforts among neighboring libraries;~~
- ~~(5) assist in establishing regional library systems between cooperating libraries;~~
- ~~(6) coordinate statewide programs and activities for children, young adults and adults;~~
- ~~(7) compile and distribute newsletters, reports and other publications relevant to libraries.~~

*Authority G.S. 125-2; 143B-10.*

**SECTION .0200 - ORGANIZATION OF REGIONAL LIBRARIES**

**07 NCAC 02E .0201 REGIONAL LIBRARIES**

~~(a) Regional libraries are public library systems serving more than one county. They are organized to provide more adequate service than could be provided by separately operated libraries. Under a single administrative system, the member libraries will have the services of professional librarians who specialize in services to various age groups and in special types of service. A multicounty system can provide improved in service training opportunities for nonprofessional staff members. By increasing the number of people served, the per capita cost of quality service is lower than for small populations.~~

~~(b) The Department of Cultural Resources requires that a regional library be composed of three or more counties or of two counties with a total of at least 100,000 population. The department recommends that there be at least 50,000 population in each library system.~~

~~(c) All new regional libraries which wish to participate in state aid to public libraries grants must have the agreement establishing the regional library, a plan of service and a preliminary budget approved by the Secretary of the Department of Cultural Resources. Notice of intention to form a regional library on July 1 should be given to the Division of State Library by January of that year.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02E .0202 BOARD OF TRUSTEES**

~~(a) The board of trustees is the governing body of a regional library. It is composed of not more than 15 members. Each county must have representation on the board in proportions determined equitable by all participating counties. Regional board members are appointed from members of local boards where they exist.~~

~~(b) Terms of officers and members are to be limited and staggered to assure continuity as well as change. No individual member will be appointed to more than two consecutive terms, and no single term shall be longer than six years.~~

~~(c) Any trustee missing three consecutive board meetings is considered to have resigned and will be replaced.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02E .0203 POWER OF BOARD**

~~The agreement establishing a regional library should include the following powers delegated to the board of trustees by the county governments:~~

- ~~(1) to adopt such bylaws and rules for its own guidance and policies for the government of the library as may be necessary and in conformity with the law;~~
- ~~(2) to appoint the regional director and delegate executive powers to him;~~
- ~~(3) to adopt an annual budget for the regional library in line with the needs of each unit and of the library as a whole, taking into consideration the grants set forth in the rules for the allocation of state aid to public libraries, and to present the local budget for approval to each participating local governmental unit;~~
- ~~(4) to make recommendations to the governing bodies of the participating units concerning the construction and improvement of physical facilities of the libraries in the region;~~
- ~~(5) to report regularly to the participating local governmental units and report annually to the Division of State Library.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02E .0204 DIRECTOR**

~~(a) The director of a regional library is appointed by the board of trustees and is the administrative head of the regional library. The director is required to have a valid North Carolina Public Librarian Certificate and to have had successful experience as a public librarian or administrator, confirmed by written reference from former employers.~~

~~(b) The director is responsible for the supervision of all employees of the regional library and may, with the approval of the board of trustees, select new employees and dismiss unsatisfactory employees in line with the personnel policies of the regional library.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02E .0205 TERMINATION**

~~A county may withdraw from a regional library after six months' notice prior to the end of the fiscal year.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02E .0206 FINANCE**

~~(a) All finances of a regional library must be handled under the same provisions as units of local government (G.S. 159, Article 3). It usually will be more acceptable to the cooperating units of local government to have finances handled by either the regional library's finance officer, the local governments' finance officers or both. Where a large local government has the staff and computer facilities to take on an extra account, it may be more economical to have this local government handle the regional library's finances. Either way, the library account must be handled so that a separate audit can be made.~~

~~(b) Budgets presented to units of local government should show items to be paid for from local funds. The total amount may be shown as a single item in local governments' accounts since the budget for the regional library will show the breakdown of revenue and expenditures.~~

~~(c) All funds are paid into a central account either monthly or quarterly as agreed to in the agreement establishing the regional library. Funds must be kept in state or federally regulated banks in the manner prescribed by G.S. 159, Article 3. Local money will be used only for local services except when region wide services costs have budget approval by the local government. State funds must be used only for region wide services.~~

~~(d) The director is responsible for all expenditures, which must be made in accordance with the budget and amendments to the budget adopted by the regional library board.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02E .0207 PROPERTY**

~~(a) All real property used by a regional library will be owned by the units of local government which purchased or otherwise obtained it. If more than one unit of local government contributes to its acquisition, the terms of the acquisition agreement will include the manner of disposition and the equitable division of receipts therefrom.~~

~~(b) Books, vehicles, equipment and other personal property purchased with state funds shall be owned by the regional library. If one county withdraws, but the regional library is not dissolved, the withdrawing county loses any rights to personal property owned by the regional library.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02E .0208 OTHER PROVISIONS / AGREEMENT ESTABLISHING / REGIONAL LIBRARY**

~~An agreement establishing a regional library should provide for its amendment, either to change provisions or to add new counties. Provision for the termination of the agreement or the withdrawal of a unit of local government also should be included.~~

*Authority G.S. 125-2; 143B-10.*

## **SECTION .0300 – ALLOCATION OF STATE AID TO PUBLIC LIBRARY SYSTEMS**

### **07 NCAC 02E .0301 QUALIFICATIONS FOR GRANT ELIGIBILITY**

~~Libraries requesting funding from the Aid to Public Libraries Fund shall submit annually to the State Library of North Carolina an application for State Aid and supporting documentation including financial and statistical reports and shall meet the following eligibility requirements:~~

- ~~(1) Be established consistent with the provisions of Article 14, Chapter 153A of the North Carolina General Statutes.~~
- ~~(2) Provide library services in compliance with applicable State and Federal law to all residents of the political subdivision(s) supporting the library. Public library services shall be provided from at least one designated facility with a catalogued collection that is open to the public a minimum of 40 hours per week.~~
- ~~(3) Employ a full time library director having or eligible for North Carolina public librarian certification. Full time means working a minimum of 35 hours per week.~~
- ~~(4) Secure operational funds from local government sources at least equal to the average amount budgeted and available for expenditure for the previous three years. A grant to a local library system from the Aid to Public Libraries Fund shall not be terminated but shall be reduced proportionately by the Department if the amount budgeted and available for expenditure by local government is below the average of the previous three fiscal years. State funds shall not replace local funds budgeted and available for expenditure for public library operations.~~
- ~~(5) Secure aggregate operational funds from local sources at least equaling state aid.~~
- ~~(6) Expend funds as authorized in the budget adopted by the Board of Trustees of a Regional Library, a County, or a Municipality. Any library having an unencumbered operational balance of more than 17 percent of the previous year's operating receipts shall have the difference deducted from its state allocation.~~
- ~~(7) Pay salaries for professional positions funded from the Aid to Public Libraries Fund at least at the minimum rate of a salary grade of 69 as established by the Office of State Personnel.~~
- ~~(8) Provide to the State Library of North Carolina an annual audit of the political subdivision(s) funding the library consistent with generally accepted accounting principles.~~

- ~~(9) Submit annually to the State Library of North Carolina a copy of the bylaws of the library system's Board(s) of Trustees.~~
- ~~(10) Submit annually a current long range plan of service to the State Library of North Carolina. A long range plan of service is a plan of at least five years. Upon request, submit an assessment of a community's library needs to the State Library of North Carolina.~~
- ~~(11) Submit a copy of the agreement establishing the library system, if composed of more than one local governmental unit.~~
- ~~(12) Meet the following stipulations when establishing a new library or re-establishing eligibility for the Aid to Public Libraries Fund:~~
  - ~~(a) meet all qualifications for the state aid to public libraries program on July 1 of the year prior to the fiscal year that the library plans to receive state aid;~~
  - ~~(b) continue to meet all qualifications for the state aid to public libraries program from July 1 to June 30 of that year, which shall be known as the demonstration year;~~
  - ~~(c) file a full application for state aid by the June 30 deadline at the close of the demonstration year in order to receive state aid in the next fiscal year.~~

*Authority G.S. 125-7; 143B-10.*

### **07 NCAC 02E .0302 STATE AID GRANTS**

~~All grants are contingent upon appropriations budgeted by the General Assembly. Eligible county, regional and municipal libraries will receive the grants subject to the approval of the Secretary of the Department of Cultural Resources.~~

*Authority G.S. 125-7; 143B-10.*

### **07 NCAC 02E .0304 LIMITATIONS ON AID**

~~Special grants may be used only for the purpose for which granted. Basic and per capita equalization grants may be used for materials, salaries, equipment, and operating costs.~~

*Authority G.S. 125-7; 143B-10.*

## **SECTION .0400 - STATE INSTITUTIONS ELIGIBLE FOR FUNDS**

### **07 NCAC 02E .0401 STATE INSTITUTION DEFINED**

~~For the purpose of receiving state or federal grants for establishment or improvement of library services to residents of state institutions, an institution will be considered a state institution if 51 percent or more of its funding comes from monies appropriated by the General Assembly.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02E .0402 FUNDS FOR INSTITUTIONS**

~~(a) Institutions are eligible for funding from state appropriations or from the federal Library Services and Construction Act grants. State or federal funds may be used for the purchase of books, magazines, audiovisual materials or other types of library materials.~~

~~(b) An institution applying for a grant for state or federal funds must do so in writing, specifying which types of materials it wishes to purchase and the approximate cost. All expenditures of these funds must have prior approval of the state library.~~

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02E .0403 ELIGIBILITY**

~~Institutions which meet the following criteria will be eligible for state or federal funding:~~

- ~~(1) those with adequate space for library facilities and services;~~
- ~~(2) those with adequate staff to supervise library services.~~

*Authority G.S. 125-2; 143B-10.*

**SUBCHAPTER 02F - NORTH CAROLINA PUBLIC LIBRARIAN CERTIFICATION COMMISSION**

**07 NCAC 02F .0101 PURPOSE OF THE COMMISSION**

~~(a) The North Carolina Public Librarian Certification Commission protects the public interest by setting minimum standards for certification for public librarians to accomplish the following purposes:~~

- ~~(1) Guarantee the best possible public library service for all North Carolinians;~~
- ~~(2) Protect and maintain public library resources;~~
- ~~(3) Assure professional management and administration of library programs; and~~
- ~~(4) Provide certified professionals to meet the Department of Cultural Resources' personnel requirements for state and other aid administered by the Division of State Library.~~

~~(b) The Commission reviews applications and certifies those librarians who meet the certification requirements enumerated in Rule .0002 of this Subchapter.~~

*Authority G.S. 143B-67.*

**07 NCAC 02F .0102 FULL CERTIFICATION**

~~(a) The North Carolina Public Librarian Certification Commission issues public librarian certificates to applicants who have received graduate degrees in library and information science from American Library Association accredited programs or from regionally accredited programs of higher education in North Carolina.~~

~~(b) Coursework must include the following core courses: cataloging, reference collection management, technology, and management.~~

~~(c) Courses specifically designed for school, media center, academic, or special librarianship, must also reflect general~~

~~principles of librarianship in order to fulfill the requirements for public librarian certification.~~

*Authority G.S. 143B-67.*

**07 NCAC 02F .0103 APPLICATION PROCEDURE FOR PUBLIC LIBRARIAN CERTIFICATION**

~~A completed application form for public librarian certification should be sent to the Library Development Section of the Division of State Library at the address in Subchapter 2A Rule .0101 and must be accompanied by an official transcript which contains the date of conferral of the degree.~~

*Authority G.S. 143B-67.*

**SUBCHAPTER 02G - STATE LIBRARY OF NORTH CAROLINA**

**SECTION .0100 – DIVISIONAL RULES**

**07 NCAC 02G .0101 SCOPE OF RULES**

The rules in this Subchapter apply to the State Library of North Carolina, a division of the North Carolina Department of Cultural Resources, which serves as the principal library of State government.

*Authority G.S. 125-1; 125-2; 143B-10.*

**07 NCAC 02G .0102 ELIGIBILITY FOR STATE LIBRARY SERVICES**

A public library must be legally established as specified in 07 NCAC 02I .0202 to be eligible for State and Federally funded programs administered by the State Library of North Carolina.

*Authority G.S. 125-2; 125-7; 125-8; 143B-1009.*

**SUBCHAPTER 02H - LIBRARY SERVICES**

**SECTION .0100 – GOVERNMENT AND HERITAGE LIBRARY**

**07 NCAC 02H .0101 SCOPE OF RULES**

The rules in this Subchapter apply to the Government and Heritage Library, a section of the State Library of North Carolina.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02H .0102 LIBRARY COLLECTIONS**

(a) The State Librarian shall determine the scope and focus of the Library's collections. Library staff and users may recommend materials for Library collections. Materials acquired or added to collections in any format must comply with the Library collection management procedures.

(b) The Library shall collect and maintain resource collections in all relevant formats as budgets permit, including current and historical print and digital books, periodicals, newspapers, maps, state and federal documents, family histories, indexes, and bibliographies; historical newspapers, census reports, and

primary source materials on microfilm; audiovisual materials in analog and digital formats and media; and online databases.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02H .0103 ACCESS AND CIRCULATION**

(a) Access and use of the Library's resource collections varies according to user profile, resource format, and circulation status of materials, as determined by the State Librarian.

(b) The Library shall provide State employees and the general public online access to digital resources in its collections using search and retrieval technologies that are accessible and usable by all.

(c) Certain printed materials in the Library's collections are designated non-circulating and shall not be used outside the Library. Non-circulating items include general reference materials, permanent depository copies of State documents, rare books, vertical file materials, periodicals, print newspapers, and the genealogy reference collection.

(d) State employees may borrow materials from the Library's circulating print, microform, and audiovisual collections for use outside the library. Non-State employees may borrow print, microform, and audiovisual materials from the Library through interlibrary loan at their local libraries, or they can use the material within the State Library.

(e) If any borrower loses or damages Library material charged in the borrower's name, the borrower is responsible for the cost of replacing the material. Library borrowing privileges shall be withheld until payment is made.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02H .0104 REPRODUCTION SERVICES**

The Library shall provide for the reproduction of library content in compliance with U.S. copyright law. State employees and members of the general public may photocopy or request digital reproduction of Library content at a cost fixed by the Library based on cost of equipment, supplies, and staff time. Photocopying equipment shall be available for use by library users. Library staff shall provide digital reproduction services.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02H .0105 INFORMATION, REFERENCE AND RESEARCH SERVICES**

(a) State Library staff shall provide reference and research services for State employees to facilitate access to information and resources that address the business needs of State government.

(b) State Library staff shall provide information, reference services, and access to Library resources for the general public seeking information by or about North Carolina or conducting research related to North Carolina government, people, places, history, culture, statistical data, or genealogy.

(c) State Library staff shall provide instruction to state employees and the general public concerning the use of the Library's facilities and information tools and resources. Library staff shall develop and conduct informational and instructional programs related to information resources and library research.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02H .0106 SERVICES FOR STATE AGENCIES**

(a) State Library staff shall consult with State agencies requesting assistance with projects, programs, or situations requiring professional library knowledge and expertise. Library staff may consult on issues related to cataloging, classification, metadata, access, digitization, digital information management, and preservation of print and digital resources, based on staff availability and consideration of higher priority work, and as approved by the State Librarian.

(b) Cataloging staff shall perform classification, cataloging, and processing of library materials and resources for state government agencies on a priority basis. Before services are provided, the Library and the recipient State agency shall sign a memorandum of understanding that specifies the responsibilities and relationship between the two agencies and any costs required for library systems access and technologies.

*Authority G.S. 125-2; 143B-10.*

**SECTION .0200 – STATE DEPOSITORY LIBRARY SYSTEM**

**07 NCAC 02H .0201 SCOPE OF RULES**

The rules in this Section, apply to the State Depository Library System and the North Carolina State Publications Clearinghouse, as administered by the State Library of North Carolina.

*Authority G.S. 125-2; 125-9; 143B-10.*

**07 NCAC 02H .0202 PRINTED DOCUMENT FORMATS DEFINED**

As used in this Section, the term "format" is used to describe the medium used to publish and distribute State publication content, including tangible media such as paper, film, tape and electronic media such as digital files, websites, and data streams.

*Authority G.S. 125-2; 125-11; 143B-10.*

**07 NCAC 02H .0203 DEPOSITORY REQUIREMENTS FOR STATE AGENCIES**

(a) State agencies in the executive, legislative, and judicial branches of State government and State-funded boards, commissions, and institutions shall submit all State publications that meet the depository qualifications defined in the G.S. 125-11.6(2) and 125-11.6(4) and the State Library's *Handbook for State Agencies* to the North Carolina State Publications Clearinghouse for the permanent depository collection, distribution to depository libraries, and public access.

(b) State agencies in the executive, legislative, and judicial branches of State government and State-funded boards, commissions, and institutions shall submit 10 copies of qualified publications as defined in G.S. 125-11.6(2) and 125-11.6(4) in tangible formats to the North Carolina State Publications Clearinghouse and one copy of publications published or

distributed in electronic formats to the North Carolina State Publications Clearinghouse.

*Authority G.S. 125-2; 143B-10.*

## **SECTION .0300 – LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED**

### **07 NCAC 02H .0301 SCOPE OF RULES**

The rules in Section, apply to the Library for the Blind and Physically Handicapped, a section of the State Library of North Carolina.

*Authority G.S. 125-2; 143B-10.*

### **07 NCAC 02H .0302 ELIGIBILITY**

(a) Eligibility for the services of the Library for the Blind and Physically Handicapped is determined by the Federal guidelines in 36 C.F.R. 701.10 and is applied to all applicants.

(b) The following persons are eligible for loan service:

- (1) persons whose visual acuity is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field subtends an angular distance not greater than 20 degrees;
- (2) persons whose visual disability, with correction and regardless of optical measurement, is certified as preventing the reading of standard printed material;
- (3) persons certified in accordance with 36 C.F.R. 701.10 as unable to read or unable to use standard printed material as a result of physical limitations; or
- (4) persons certified in accordance with 36 C.F.R. 701.10 as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

*Authority G.S. 125-2; 143B-10.*

### **07 NCAC 02H .0303 APPLICATION**

All users must complete an official application form and be certified as eligible and meeting requirements established by the Library of Congress.

*Authority G.S. 125-2; 143B-10.*

### **07 NCAC 02H .0304 LIBRARY COLLECTIONS**

(a) The Library shall perform the functions of a public library. Its collection consists of recreational and general informational materials selected and produced by the Library of Congress for network distribution and additional materials selected by the Library.

(b) The Library reproduces titles in Braille and audio formats in compliance with U.S. copyright law.

*Authority G.S. 125-2; 143B-10.*

### **07 NCAC 02H .0305 CIRCULATION**

(a) The Library shall provide materials and playback equipment according to the Library of Congress lending policies and the Library's circulation procedures.

(b) The Library shall furnish deposit collections to libraries, hospitals, rest homes, and other institutions serving eligible visually and physically handicapped persons according to the library circulation policy.

(c) The following practices by any Library patron shall result in the suspension of Library services:

- (1) repeated failure to return materials within the borrowing period;
- (2) willful and negligent damage to equipment or materials;
- (3) unauthorized use of materials or equipment, such as loan to an ineligible person or modification of equipment; or
- (4) repeated abusive verbal attacks or behavior toward library staff that is offensive or threatening.

*Authority G.S. 125-2; 143B-10.*

### **07 NCAC 02H .0306 REPRODUCTION SERVICES**

The Library shall reproduce in Braille or audio recording materials requested by Library patrons for their personal use as approved by the Regional Librarian and based on staff availability and consideration of higher priority work.

*Authority G.S. 125-2; 143B-10.*

### **07 NCAC 02H .0307 VOLUNTEERS**

(a) Any interested person may request to volunteer his services to the Library. Volunteers shall receive no pay for their services and must go through a training and testing period under the supervision of Library staff.

(b) Any brailist who is certified by the Library of Congress may request to volunteer his services to the Library. Volunteers must provide their own braille machine.

*Authority G.S. 125-2; 143B-10.*

## **SUBCHAPTER 02I - LIBRARY DEVELOPMENT**

### **SECTION .0100 - ORGANIZATIONAL RULES**

#### **07 NCAC 02I .0101 SCOPE OF RULES**

The rules in this Subchapter apply to the Library Development Section of the State Library of North Carolina.

*Authority G.S. 125-2; 125-7; 125-8; 143B-10.*

### **SECTION .0200 - STATE AID TO PUBLIC LIBRARIES**

#### **07 NCAC 02I .0201 QUALIFICATIONS FOR GRANT ELIGIBILITY**

Libraries requesting funding from the Aid to Public Libraries Fund shall submit annually to the State Library of North Carolina an application for State Aid and supporting

documentation including financial and statistical reports and shall meet the following eligibility requirements:

- (1) Be established consistent with the provisions of Article 14, Chapter 153A of the North Carolina General Statutes;
- (2) Provide library services in compliance with applicable State and Federal law to all residents of the political subdivision(s) supporting the library. Public library services shall be provided from at least one designated facility with a cataloged collection that is open to the public a minimum of 40 hours per week;
- (3) Employ a full-time library director having or eligible for North Carolina public librarian certification. Full-time means working a minimum of 35 hours per week;
- (4) Secure operational funds from local government sources at least equal to the average amount budgeted and available for expenditure for the previous three years. A grant to a local library system from the Aid to Public Libraries Fund shall not be terminated but shall be reduced proportionately by the Department if the amount budgeted and available for expenditure by local government is below the average of the previous three fiscal years. State funds shall not replace local funds budgeted and available for expenditure for public library operations;
- (5) Secure aggregate operational funds from local sources which are at least equal to state aid;
- (6) Expend funds as authorized in the budget adopted by the Board of Trustees of a Regional Library, a County, or a Municipality. Any library having an unencumbered operational balance of more than 17 percent of the previous year's operating receipts shall have the difference deducted from its state allocation;
- (7) Pay salaries for professional positions funded from the Aid to Public Libraries Fund at least at the minimum rate of a salary grade of 69 as established by the Office of State Personnel;
- (8) Provide to the State Library of North Carolina an annual audit of the political subdivision(s) funding the library consistent with generally accepted accounting principles;
- (9) Submit annually to the State Library of North Carolina a copy of the bylaws of the library system's Board(s) of Trustees;
- (10) Submit annually a current long-range plan of service to the State Library of North Carolina. A long-range plan of service is a plan of at least five years. Upon request, the library shall submit an assessment of a community's library needs to the State Library of North Carolina;
- (11) Submit a copy of the agreement establishing the library system, if composed of more than one local governmental unit; and

- (12) Meet the following stipulations when establishing a new library or re-establishing eligibility for the Aid to Public Libraries Fund:
  - (a) meet all requirements of this Section on July 1 of the year prior to the fiscal year that the library plans to receive state aid;
  - (b) continue to meet all requirements of this Section from July 1 to June 30 of that year, which shall be known as the demonstration year; and
  - (c) file a full application for state aid by the June 30 deadline at the close of the demonstration year in order to receive state aid in the next fiscal year.

*Authority G.S. 125-7; 143B-10.*

#### **07 NCAC 021 .0202 STATE AID GRANTS**

All grants are contingent upon appropriations budgeted by the General Assembly. Eligible county, regional, and municipal library systems shall receive grants subject to the approval of the Secretary of the Department of Cultural Resources. Block and per capita income equalization grants may be used for materials, salaries, equipment, and operating costs.

*Authority G.S. 125-7; 143B-10.*

### **SECTION .0300 - ORGANIZATION OF REGIONAL LIBRARIES**

#### **07 NCAC 021 .0301 REGIONAL LIBRARIES**

As used in this Section, a regional library is a public library system that:

- (1) serves two or more contiguous counties;
- (2) is established by a regional agreement under a single administrative system;
- (3) is governed by a regional library board of trustees;
- (4) operates under the direction of a certified library director; and
- (5) has finances administered by a person or firm reporting to the library director and the regional library board of trustees.

*Authority G.S. 125-2; 143B-10.*

#### **07 NCAC 021 .0302 REGIONAL AGREEMENT**

An agreement establishing a regional library shall contain:

- (1) the structure of the regional library board of trustees;
- (2) the powers and duties of the regional board;
- (3) the financial structure of the regional library;
- (4) the terms of property ownership and any conditions of joint ownership including property rights in the event of withdrawal from or dissolution of the regional library;
- (5) provisions for amendment;

- (6) provisions for withdrawal by a member county or dissolution of the regional library; and
- (7) provisions for termination of the regional agreement.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02I .0303 REGIONAL LIBRARY BOARD OF TRUSTEES**

- (a) The regional library board of trustees shall be the governing body of a regional library. It shall be composed of not more than 15 members as stipulated in the regional agreement. Each participating local governmental unit shall have representation on the board in proportions determined to be equitable by all participating local governmental units as stipulated in the regional agreement. Members of the regional library board shall be appointed as specified in the regional agreement.
- (b) Terms of officers and members shall be limited and staggered to assure continuity as well as change. No individual member shall be appointed to more than two consecutive terms, and no single term shall be longer than six years.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02I .0304 POWERS AND DUTIES OF THE REGIONAL LIBRARY BOARD**

The agreement establishing a regional library shall include the following powers delegated to the regional library board of trustees by the participating local governmental units:

- (1) to adopt such bylaws and rules for its own governance as may be necessary and in conformity with the law;
- (2) to adopt policies for the regional library system's administration and operation;
- (3) to appoint the regional library director and delegate to that person executive powers;
- (4) to adopt an annual budget for the regional library;
- (5) to appoint a regional library finance officer to ensure expenditure of funds consistent with the budget adopted by the regional library board;
- (6) to assure compliance with all applicable State and Federal law and eligibility requirements for the receipt of State and Federal funds;
- (7) to make recommendations to the governing bodies of the participating local governmental units concerning the construction and improvement of physical facilities of the libraries in the region;
- (8) to report to the participating local governmental units; and
- (9) to provide to the State Library of North Carolina an annual audit of the regional library system consistent with generally accepted accounting principles.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02I .0305 DIRECTOR**

The director of a regional library shall be appointed by the regional library system board of trustees and is responsible for the administration of the regional library consistent with the policies adopted by the board. The director shall have a valid North Carolina Public Librarian Certificate.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02I .0306 FINANCE**

- (a) All finances of a regional library shall be administered under the same provisions as units of local government (G.S. Chapter 159, The Local Government Finance Act) and shall be subject to an independent audit.
- (b) State funds shall be administered by the regional library and shall be expended throughout the region as described in 07 NCAC 02I .0202.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02I .0307 ESTABLISHMENT OF A REGIONAL LIBRARY**

A regional library meeting the definition in 07 NCAC 02I .0301 may be established according to the following schedule:

- (1) On or before July 1 of the fiscal year prior to the establishment of the regional library, a representative of the participating local governmental units shall submit to the State Library of North Carolina a written notification of intent to form a regional library and establish eligibility for grants to public libraries.
- (2) On or before January 31 of the fiscal year prior to the establishment of the regional library, the representative shall submit to the State Library of North Carolina a copy of the agreement establishing the regional library consistent with 07 NCAC 02I .0302.
- (3) On or before June 1 of the fiscal year prior to the establishment of the regional library, the representative shall submit to the State Library of North Carolina a long-range plan of service and a proposed budget and shall provide evidence of eligibility to receive grants to public libraries according to 07 NCAC 02I .0201.

*Authority G.S. 125-2; 143B-10.*

**07 NCAC 02I .0308 WITHDRAWAL FROM OR DISSOLUTION OF A REGIONAL LIBRARY**

- (a) A county proposing to withdraw from a regional library shall give written notice on or before July 1 to the regional library board, the other participating local governmental units, and the State Library of North Carolina. The withdrawal shall be effective on the following June 30.
- (b) The withdrawing county shall establish eligibility for grants to public libraries according to 07 NCAC 02I .0201 on or before the effective date of withdrawal.



(c) Capital expenditures by the withdrawing county that are necessitated by the withdrawal may not replace support for operating costs in establishing eligibility to receive grants to public libraries according to 07 NCAC 02I .0201.

(d) If withdrawal of a county results in the dissolution of the regional library, the remaining county must also establish eligibility to receive grants to public libraries according to 07 NCAC 02I .0201 by the effective date of withdrawal.

*Authority G.S. 125-2; 143B-10.*

## **SUBCHAPTER 02J - NORTH CAROLINA PUBLIC LIBRARIAN CERTIFICATION COMMISSION**

### **SECTION .0100 - COMMISSION RULES**

#### **07 NCAC 02J .0101 PURPOSE OF THE COMMISSION**

(a) The North Carolina Public Librarian Certification Commission sets minimum standards for certification for public librarians to accomplish the following purposes:

- (1) Guarantee the best possible public library service for all North Carolinians;
- (2) Protect and maintain public library resources;
- (3) Assure professional management and administration of library programs; and
- (4) Provide certified professionals to meet the Department of Cultural Resources' personnel requirements for State and other aid administered by the State Library of North Carolina.

(b) The Commission shall review applications and certify those librarians who meet the certification requirements enumerated in Rule .0102 of this Subchapter.

*Authority G.S. 143B-67.*

#### **07 NCAC 02J .0102 FULL CERTIFICATION**

(a) The North Carolina Public Librarian Certification Commission shall issue public librarian certificates to applicants who have received graduate degrees in library and information science from programs accredited by the American Library Association or from regionally-accredited programs of higher education in North Carolina.

(b) Coursework must include the following core courses:

- (1) cataloging,
- (2) reference,
- (3) collection development, and
- (4) library management.

(c) Courses specifically designed for school, media center, academic, or special librarianship, must reflect general principles of librarianship.

*Authority G.S. 143B-67.*

#### **07 NCAC 02J .0103 APPLICATION PROCEDURE FOR PUBLIC LIBRARIAN CERTIFICATION**

Applicants shall send a completed application form for public librarian certification, accompanied by an official transcript

which contains the date of conferral of the degree, to the Library Development Section of the State Library of North Carolina.

*Authority G.S. 143B-67.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Cultural Resources intends to adopt the rules cited as 07 NCAC 13 .0101, .0201-.0202, .0301-.0313, .0401-.0402 and repeal the rules cited as 07 NCAC 04R .0203-.0204, .0702-.0718, .0801-.0808, .1002-.1013.*

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

#### **Public Hearing:**

**Date:** January 24, 2011

**Time:** 11:00 a.m.

**Location:** Archives and History Building, 109 E. Jones Street, Raleigh, 3<sup>rd</sup> floor conference room

**Reason for Proposed Action:** *The proposed action is necessary in order for the Department of Cultural Resources to update the Administrative Code provisions relevant to the Office of State Archaeology, last revised in 1989. Since that time the OSA, formerly part of the Historic Preservation Office, has become a free-standing unit within the Department. Technical corrections are part of those changes but, more importantly, the Office gained new statutory authority for the permitting of, and background checks upon, applicants for archaeological permits on state lands and in state waters.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be submitted in writing to Jeffrey J. Crow, 4610 Mail Service Center, Raleigh, NC 27699-4610, phone (919)807-7280, fax (919)733-8807, email jeff.crow@ncdcr.gov during the comment period. Additional objections may be made verbally and in writing at the public hearing.*

**Comments may be submitted to:** *Jeffrey J. Crow, 4610 Mail Service Center, Raleigh, NC 27699-4610, phone (919)807-7280, fax (919)733-8807, email jeff.crow@ncdcr.gov.*

**Comment period ends:** February 1, 2011

**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** 07 NCAC 13 .0101, .0201-.0202, .0301-.0313, .0401-.0402
- ☐ **Local**
- ☐ **Substantial Economic Impact** ( $\geq$ \$3,000,000)
- ☒ **None** 07 NCAC 04R .0203-.0204, .0702-.0718, .0801-.0808, .1002-.1013.

**CHAPTER 04 - DIVISION OF ARCHIVES AND HISTORY**

**SUBCHAPTER 04R - ARCHAEOLOGY AND HISTORIC PRESERVATION SECTION**

**SECTION .0200 - ENVIRONMENTAL REVIEW**

**07 NCAC 04R .0203 ARCHAEOLOGICAL REVIEW**

(a) ~~Projects are reviewed for archaeological concerns whenever ground disturbing activity is involved. Examples of ground disturbance include, but are not limited to, construction of dikes, clearing and grubbing of forests, subsurface alterations around standing structures, borrow pits, trenching for water and sewer lines, utility line construction or improvements requiring excavation; construction, widening or improvements of highways; and airport expansions, bridge replacements, housing developments, boat basins and channels, and placement of fill or spoil dirt.~~

(b) ~~Evaluation of potential effects on archaeological resources is made by staff archaeologists, taking into consideration known site locations, historical maps and documents, results of previous surveys in the area or similar areas, past and present land uses, the area's topography and hydrology, predictive models of archaeological site locations, and type and extent of proposed land modification activities.~~

(c) ~~After staff evaluation, recommendations are made by the SHPO within the state or federally mandated deadline for review comments:~~

- (1) ~~Clearance. If it is determined that the project area is unlikely to contain significant archaeological remains, the written response is no comment.~~
- (2) ~~Archaeological Survey Recommended. If it is determined that the project area is likely to contain significant archaeological sites and there is no record of systematic archaeological surveys in the project area, an archaeological survey is recommended prior to any ground disturbing activity to determine the presence and significance of archaeological sites that may be damaged or destroyed by the proposed action.~~
- (3) ~~Testing Recommended. If a known site is within the project boundaries, archaeological testing is recommended to determine its significance.~~

(4) ~~Survey and Testing Recommended. If a project area contains known sites but has not been completely surveyed, testing of the sites and a survey of the remaining project area are recommended.~~

(5) ~~Avoidance. If archaeological sites listed in or determined eligible for inclusion in the National Register of Historic Places are located in the project area, avoidance by adjustment of the project plans is recommended. New project locations are subject to the review process.~~

(d) ~~All archaeological reports submitted to the SHPO in compliance with federal and state historic preservation legislation are reviewed by the Archaeology Branch using standards established by the Department of Cultural Resources outlined in "Guidelines for the Preparation of Reports of Archaeological Surveys and Evaluations". The guidelines:~~

- (1) ~~ensure compliance with pertinent legislation;~~
- (2) ~~ensure fulfillment of contract sponsor needs with regard to archaeology; and~~
- (3) ~~permit the effective and speedy review of compliance surveys and evaluation reports.~~

~~Reports submitted for review which do not satisfy the requirements defined in the guidelines are considered incomplete and returned for revision and resubmission. Copies of the guidelines are available from the Archaeology and Historic Preservation Section.~~

(e) ~~When an archaeological survey report indicates that a site within a project's area of environmental impact is eligible for inclusion in the National Register of Historic Places, the procedures outlined at 36 CFR 800.5 .6 (regulations of the Advisory Council on Historic Preservation) are followed.~~

*Authority G.S. 113-229(e); 113A-4(2); 113A-107(d); 121-4(13); 121-12(a); 136-42.1.*

**07 NCAC 04R .0204 UNDERWATER ARCHAEOLOGICAL REVIEW**

(a) ~~Water related construction activities are defined as major or minor according to the extent of bottom disturbance. Major bottom disturbing activities include, but are not limited to, new or maintenance dredging, extensive bulkheading, jetty or mooring construction, subaqueous power and water line installation, bridge construction, and the dredging of temporary channels. Minor bottom disturbing activities include, but are not limited to, construction of private piers, bulkheads, and docks, and minor dredging.~~

(b) ~~Prospective construction projects affecting submerged lands are reviewed by the Underwater Archaeology Unit taking into consideration the project area's potential for submerged cultural resources and whether major or minor bottom disturbance is planned.~~

(c) ~~After staff review, recommendations are made by the SHPO in terms of the bottom disturbance involved and the project area's potential for submerged cultural resources.~~

- (1) ~~If major bottom disturbance is to take place in a project area with high or moderate potential, project specific documentary research~~

~~followed by appropriate archaeological investigation is recommended prior to project construction.~~

~~(2) If major bottom disturbance is to take place in an area with low potential, no documentary or archaeological investigation is required. It is recommended that the SHPO be notified should submerged cultural resources be encountered during construction.~~

~~(3) If minor bottom disturbance is to take place, documentary and archaeological investigation is only recommended in areas with a high potential for any known submerged cultural resources.~~

~~(d) Maps and research files enable the Underwater Archaeology Unit to determine the potential for submerged cultural resources within a project area. Criteria used to establish high, moderate, and low potential areas are as follows:~~

~~(1) "High potential area" means:~~

~~(A) A known archaeological site or charted wreck of historic age is present; or~~

~~(B) Historical research indicates the project lies in an area with an active maritime history, documented vessel losses or known hazards to navigation. Harbors, major shipping lanes, inlets and shoals are examples of high potential areas.~~

~~(2) "Moderate potential area" means:~~

~~(A) No known archaeological sites or charted wrecks are present and documentary research indicates that only marginal maritime activities have taken place; or~~

~~(B) Bottom lands have been partially disturbed, lessening the likelihood that significant cultural resources exist.~~

~~(3) "Low potential area" means:~~

~~(A) No known archaeological site or charted wrecks are present and documentary research indicates that little or no maritime activities have taken place historically; or~~

~~(B) Bottom lands have been previously disturbed to the extent that no intact significant cultural resources are likely to exist.~~

~~(e) Reports of documentary research or archaeological investigations are reviewed under the requirements as established by the Department of Cultural Resources defined in "Guidelines for the Preparation of Reports of Archaeological Surveys and Evaluations," available from the Archaeology and Historic Preservation Section. Reports submitted for review which do not satisfy the requirements are considered incomplete and returned for revision and resubmission.~~

*Authority G.S. 121-22 through 121-28; 143B-62(2)g; 16 U.S.C. 470; 36 C.F.R. 800.*

## 07 NCAC 04R .0702 DEFINITIONS

The definitions of G.S. 70-12 apply in this Section. In addition the following terms are defined:

~~(1) "Emergency archaeological investigation" means any surface collection, subsurface test, excavation, or other activity that results in the disturbance or removal of archaeological resources undertaken because of:~~

~~(a) the accidental discovery of archaeological resources during construction or other ground disturbing activities; or~~

~~(b) immediate danger of damage or destruction to archaeological resources due to vandalism, erosion, or other causes.~~

~~(2) "Interim progress report" means a brief summary of archaeological work accomplished during the reporting period.~~

~~(3) "Land controlling agency" means the state agency with management responsibilities for state land.~~

~~(4) "Permit" means authorization under law to conduct archaeological investigation on state lands.~~

~~(5) "Preliminary field report" means a brief summary of the results of the fieldwork undertaken during the permit period, including, but not limited to:~~

~~(a) a map showing the area of the permit location;~~

~~(b) a brief summary of the purpose, methods, and results; and~~

~~(c) recommendations concerning future work at the site or sites.~~

~~(6) "Report" means a formal written account of the goals, methods, and results of archaeological investigations conducted under the terms of a permit.~~

~~(a) A draft report is subject to review and comment by the Secretary of the Department of Administration or his designee, the Secretary of the Department of Cultural Resources or his designee, and the head of the land controlling agency or his designee.~~

~~(b) A final report is complete and incorporates the comments resulting from review of the draft.~~

~~(7) "Risk of harm" means any disclosure of the nature or location of any archaeological resource that results, or may result, in the loss or destruction of archaeological context, or archaeological information.~~

*Authority G.S. 70-12; 70-14.*

**07 NCAC 04R .0703      ARCHAEOLOGICAL INVESTIGATIONS ON STATE LANDS**

~~(a) Permits are required for persons wishing to conduct archeological investigations on state lands. Permits are issued by the Secretary of the Department of Administration or his designee. The mailing address is:~~

~~Department of Administration  
Administration Building  
116 West Jones Street  
Raleigh, N. C. 27611~~

~~(b) Two types of permits shall be issued:~~

- ~~(1) General Permits shall be issued to those land controlling agencies that employ qualified archaeologists on a full time permanent basis to conduct archaeological investigations on state lands directly under the agency's control.~~
- ~~(2) All other permits shall be Specific Permits.~~

*Authority G.S. 70-13; 70-15(a).*

**07 NCAC 04R .0704      EMERGENCY ARCHAEOLOGICAL INVESTIGATIONS**

~~(a) A Specific Permit is not required for emergency archaeological investigations on state lands if the person conducting the investigation meets the minimum qualifications stated in Rule .0706 of this Section and the land controlling agency has notified the Secretary of the Department of Administration or his designee and the Secretary of the Department of Cultural Resources or his designee. Reporting requirements for emergency archaeological investigations are the same as those specified in Rule .0712 of this Section unless the investigations are conducted under a General Permit. General Permit reporting requirements are specified in Rule .0713 of this Section.~~

~~(b) A permittee may conduct emergency archaeological investigations beyond the terms of an existing Specific Permit. However, terms of the Specific Permit shall remain in effect, including those terms pertaining to reporting schedules.~~

~~(c) A General Permit allows emergency archaeological investigations to be conducted by the principal investigator in whose name it was issued, and only on those state lands directly under the control of the land controlling agency by whom the principal investigator is employed. Terms of the General Permit will remain in effect, including terms pertaining to reporting schedules.~~

*Authority G.S. 70-14.*

**07 NCAC 04R .0705      APPLICATION FOR ARCHAEOLOGICAL PERMITS**

~~(a) Persons wishing to apply for a permit to conduct archaeological investigations on state lands shall obtain application forms from the office of the Secretary of the Department of Administration and submit completed permit applications to the same office. After receiving an application, that office will forward copies to the State Property Office, Department of Administration; the Secretary of the Department of Cultural Resources or his designee; and the appropriate land controlling agency.~~

~~(b) Applications for Specific Permits must be submitted to the Secretary of the Department of Administration or his designee at least 30 days prior to the proposed starting date of the archaeological investigations. Each Specific Permit application shall include:~~

- ~~(1) a written description of the location of the proposed investigations, including the county and township;~~
- ~~(2) a 1: 24,000 or larger scale map clearly depicting the location of the proposed investigations;~~
- ~~(3) a description of the exact nature, objectives and scope of the proposed investigations, including the methods to be employed and the requirements for vegetation clearing;~~
- ~~(4) the schedule for the investigations, including hours of the day and days of the week, as well as beginning and completion dates. The schedule shall include 60 days for review and comment of the draft report by the Secretary of the Department of Cultural Resources or his designee and the land controlling agency and a maximum of 30 days for response, revisions and submittal of the final report by the applicant;~~
- ~~(5) the name, address, telephone number, institutional affiliation, if any, and qualifications of the principal investigator;~~
- ~~(6) the name, address, telephone number, and qualifications of the field director, if different from the principal investigator;~~
- ~~(7) the approximate number of people proposed to carry out the investigations;~~
- ~~(8) evidence of the applicant's capability to initiate, conduct and complete the proposed investigations;~~
- ~~(9) written criteria for evaluation of requests for access to records and artifacts at the facility where the records and artifacts are to be curated;~~
- ~~(10) the location proposed for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigations;~~
- ~~(11) written concurrence from the land controlling agency regarding the applicant's proposed curatorial arrangements;~~
- ~~(12) facilities and plans for stabilization and preservation of perishable or unstable artifacts;~~
- ~~(13) the person or position in the institution or agency with responsibility for curation of artifacts, records, and other documentation or information who will determine access to this material;~~
- ~~(14) a description of the type and timing of all access needs on state property, vehicular or otherwise, required to conduct the investigations;~~

- (15) ~~a description of how the project will be coordinated with the site specific land manager, including the applicant's documentation that initial contact has been made and the name of the specific person contacted;~~
- (16) ~~a description of the provisions to be made to secure the permit area to assure the safety of incidental non-project personnel who may visit the permit area during and after project hours;~~
- (17) ~~an indication of the length of time each excavation unit will be open and a description of a schedule for reclaiming all areas disturbed by any aspect of the archaeological investigations; and~~
- (18) ~~the applicant's plans, if any, for dissemination of the results of the investigations in addition to the reporting requirements noted in Rule .0712 of this Section.~~

If additional information is required from the applicant by the land controlling agency during review of the Specific Permit application, the land controlling agency will contact the applicant directly. The information obtained will be added to the application or permit file.

(c) ~~A land controlling agency may be issued a General Permit to conduct archaeological investigations and emergency archaeological investigations on land directly controlled by that agency. Each General Permit application for a land controlling agency shall include:~~

- (1) ~~a written description of the lands controlled by the agency, including the county and township;~~
- (2) ~~a general description of the nature and objectives of potential investigations;~~
- (3) ~~the name, address, telephone number, and qualifications of the principal investigator;~~
- (4) ~~evidence that the requirements of Rule .0706 of this Section are met;~~
- (5) ~~written criteria for evaluation of requests for access to records and artifacts at the facility where the records and artifacts are to be curated;~~
- (6) ~~the location proposed for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigations;~~
- (7) ~~facilities and plans for stabilization and preservation of perishable or unstable artifacts;~~
- (8) ~~the person or position in the institution or agency with responsibility for curation of artifacts, records, and other documentation or information who will determine access to this material; and~~
- (9) ~~The principal investigator's plans, if any, for dissemination of the results of the investigation in addition to the reporting requirements in Rule .0713 of this Section.~~

*Authority G.S. 70-13(a),(b); 70-14.*

## **07 NCAC 04R .0706 QUALIFICATIONS FOR PERMITS**

~~Applicants for Specific or General Permits to conduct archaeological investigations must be qualified, as evidenced by training, education and experience, possess demonstrable competence in theoretical and methodological design, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the investigations proposed, and meet the following minimum qualifications:~~

- (1) ~~Have a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history or another related field with a specialization in archaeology; and~~
- (2) ~~Have a minimum of one year's experience in conducting basic archaeological field research.~~

*Authority G.S. 70-13(b); 70-14.*

## **07 NCAC 04R .0707 ISSUANCE OF PERMITS**

(a) ~~The Secretary of the Department of Administration or his designee, after consultation with the Secretary of the Department of Cultural Resources or his designee and the land controlling agency, has decision-making authority concerning the issuance of a Specific Permit. The Specific Permit will be issued or denied within 30 days after submission of the completed application.~~

(b) ~~Specific Permits will not be issued to persons who have conducted emergency archaeological investigations until receipt and acceptance of a final report pursuant to Rules .0712 and .0714 of this Section.~~

(c) ~~General Permits will be issued to a land controlling agency within 30 days following submission of the completed application provided the terms and requirements of these rules pertaining to General Permits are fulfilled.~~

*Authority G.S. 70-13(b); 70-14.*

## **07 NCAC 04R .0708 TIME LIMITS OF PERMITS**

(a) ~~The Secretary of the Department of Administration or his designee will issue General Permits for five years from the date of issuance. Specific Permits shall be for an appropriate period not to exceed three years.~~

(b) ~~A permittee may apply for permit renewal by following procedures under Rule .0705 of this Section.~~

(c) ~~The Secretary of the Department of Administration or his designee, after consultation with the Secretary of the Department of Cultural Resources or his designee, and the head of the land controlling agency or his designee, may extend Specific Permits for up to six months, renew Specific Permits for up to three additional years, or renew General Permits for a period of five years, after review of extension requests or renewal applications and evaluation of past performance of the applicant.~~

(d) ~~The Secretary of the Department of Administration or his designee may extend a Specific Permit only once, but may renew a Specific Permit any number of times.~~

(e) ~~The Secretary of the Department of Administration or his designee, in consultation with the Secretary of the Department of Cultural Resources or his designee and the land controlling~~

~~agency, shall review, at least annually, the permittee's performance under any permit issued for a period greater than one year:~~

- ~~(1) For Specific Permits, the review is made through interim reports submitted by the permittee or through inspections at the locations of the investigations.~~
- ~~(2) For General Permits, the review is made through annual reports prepared by the land controlling agency's principal investigator.~~

*Authority G.S. 70-14.*

**07 NCAC 04R .0709 TERMS AND CONDITIONS OF PERMITS**

~~(a) In all permits, the Secretary of the Department of Administration or his designee shall specify:~~

- ~~(1) the exact nature and extent of the investigations allowed under the permit, including the time, duration, scope, location, and purpose of the investigations;~~
- ~~(2) the name of the individual responsible for conducting the investigations and, if different, the name of the individual responsible for carrying out the terms and conditions of the permit;~~
- ~~(3) the name of the land controlling agency, university, museum or other scientific or educational institution in which any collected materials and data will be deposited; and~~
- ~~(4) the reporting requirements and schedule according to Rules .0712 or .0713 of this Section.~~

~~(b) The Secretary of the Department of Administration or his designee may specify terms and conditions necessary to ensure public safety and to protect other resources, both natural and cultural, to safeguard other legitimate land uses, and to limit activities incidental to investigations authorized under a permit.~~

~~(c) State officials from the Department of Administration, Department of Cultural Resources, the land controlling agency and any other agencies involved in consultation or approval of a permit may make inspections at the permit location as necessary to ensure that the terms and conditions of the permit are being fulfilled.~~

~~(d) After receipt of an approved permit, the permittee must notify the Secretary of the Department of Administration or his designee in writing within 15 days of his acceptance of the terms and conditions of the permit.~~

~~(e) The permittee will be responsible for securing the project area and will hold the Department of Administration, the Department of Cultural Resources and the land controlling agency harmless for any and all claims arising out of the project.~~

~~(f) The Department of Administration, the Department of Cultural Resources, and the land controlling agency will be held harmless for any trespass of or damage to adjacent private property caused by the permittee under the permit.~~

~~(g) The permittee shall sign a waiver of all claims against the Department of Administration, the Department of Cultural Resources, and the land controlling agency.~~

~~(h) The permittee will be held responsible for any damage to state property resulting from the permitted investigations.~~

~~(i) The permittee shall submit evidence of liability insurance upon acceptance of the terms and conditions of a permit.~~

~~(j) Archaeological investigations conducted under the auspices of a permit shall comply with all applicable state, federal, or local regulations and the rules and regulations of the land controlling agency. All such investigations shall conform with the management plans and operation practices of the land controlling agency.~~

~~(k) All physical access to state owned lands during permitted investigations shall be controlled by and coordinated with the land controlling agency and the site specific land manager.~~

~~(l) All project lands will be restored to their pre-project condition by the permittee by the conclusion of the field investigations.~~

~~(m) The land controlling agency shall report simultaneously in writing to the Secretary of the Department of Administration and the Secretary of the Department of Cultural Resources any change in the status of either the principal investigator or the field director for which a General Permit was issued within ten days of that change.~~

*Authority G.S. 70-13(c); 70-14.*

**07 NCAC 04R .0710 PERMIT DENIAL: SUSPENSION AND REVOCATION**

~~(a) A permit shall be denied if the Department of Administration, in consultation with the Department of Cultural Resources and the land controlling agency, finds that:~~

- ~~(1) the proposed investigations would represent a significant adverse effect to a unique or fragile natural resource;~~
- ~~(2) the proposed investigations would interfere with the operation and management of an area;~~
- ~~(3) the proposed investigations would pose a threat to the safety of visitors to an area;~~
- ~~(4) the criteria set forth in G.S. 70-13(b)(1) through G.S. 70-13(b)(7) have not been met by the applicant;~~
- ~~(5) the applicant, pursuant to a previous permit, has not met the purposes of the law as set forth in G.S. 70-11(b) or G.S. 70-18; or~~
- ~~(6) the applicant has not completed the terms and conditions of a previous permit.~~

~~(b) A permit may be suspended or revoked if the Department of Administration, in consultation with the Department of Cultural Resources and the land controlling agency, finds that:~~

- ~~(1) the terms and conditions of the permit have been or are being violated; or~~
- ~~(2) the confidentiality of information relating to the nature and location of the archaeological resources is not maintained in accordance with the provisions of G.S. 70-18.~~

*Authority G.S. 70-13(b),(e); 70-14.*

**07 NCAC 04R .0711 APPEALS RELATING TO PERMITS**

Any person may appeal permit issuance, denial, suspension or revocation through appeals procedures established in Article 3 of G.S. 150B.

*Authority G.S. 70-14; 150B-23 through 150B-37.*

**07 NCAC 04R .0712 REPORTING REQUIREMENTS FOR SPECIFIC PERMITS**

(a) Reports are required for all archaeological investigations conducted under Specific Permits. All reports are to be submitted simultaneously to the Secretary of the Department of Administration, the Secretary of the Department of Cultural Resources and the head of the land-controlling agency.

(b) The permittee must submit a preliminary field report within 60 days after completion of the on site archaeological investigation. Preliminary field reports resulting from emergency archaeological investigations shall specify a date for submission of the draft report.

(c) The permittee must submit draft reports according to the schedule established in the permit or, in the case of emergency archaeological investigations, by the date specified in the preliminary field report. Draft reports submitted for emergency archaeological investigations shall include, but not be limited to, information on storage and curation of artifacts, records and other data in accordance with the specifications in Rule .0705(b)(9) (13) of this Section.

(d) The permittee must submit final reports no later than 90 days after submission of the draft report.

(e) If the specified submission date for a draft report resulting from emergency archaeological investigations extends beyond one year from the date of submission of the preliminary field report, interim progress reports shall be submitted at least annually.

(f) Upon request, the permittee or the principal investigator, in the case of emergency archaeological investigations, shall provide in the final report information concerning:

- (1) the permanent physical location of artifacts, records, and all other documentation;
- (2) an itemized list of all recovered archaeological resources by type, variety, material or other appropriate description, and a list of accession numbers or other permanent identifiers applied to the recovered resources; and
- (3) an itemized list of records, photographs and other documents, and a list of accession numbers or other permanent identifiers applied to the records and data.

*Authority G.S. 70-13(c); 70-14.*

**07 NCAC 04R .0713 REPORTING REQUIREMENTS FOR GENERAL PERMITS**

(a) Reports of archaeological investigations conducted under the terms of a General Permit shall be submitted simultaneously to the Secretary of the Department of Administration and the Secretary of the Department of Cultural Resources.

(b) The principal investigator will submit a summary of the results of all archaeological investigations as part of the annual report required under the terms of Rule .0708(c)(2) of this Section.

(c) Final reports concerning archaeological investigations and emergency archaeological investigations shall be submitted by the end of the calendar year that immediately follows the year in which the archaeological investigations were conducted.

(d) The principal investigator, in consultation with the Secretary of the Department of Administration or his designee and the Secretary of the Department of Cultural Resources or his designee, may delay the submission of a final report until an agreed upon date.

(e) The principal investigator shall:

- (1) provide information concerning the permanent physical location of artifacts, records, and all other documentation for all archaeological investigations;
- (2) maintain an itemized list of all recovered archaeological resources by type, variety, material or other appropriate description, and a list of accession numbers or other permanent identifiers applied to the recovered resources; and
- (3) maintain an itemized list of records, photographs and other documents, and a list of accession numbers or other permanent identifiers applied to the records and data.

(f) As a condition of renewing a General Permit, the Secretary of the Department of Cultural Resources or his designee may require an inspection of the record and resource repository or management system.

*Authority G.S. 70-13(c); 70-14.*

**07 NCAC 04R .0714 REPORT REVIEW FOR SPECIFIC PERMITS**

(a) The Secretary of the Department of Cultural Resources or his designee and the land-controlling agency shall review all draft and final reports for Specific Permits to ensure that the investigations serve the public interest and the reports meet professional standards. The Secretary of the Department of Cultural Resources or his designee may request revisions of the draft or final reports. Terms and conditions of a Specific Permit are considered satisfied only after revisions have been completed and the report accepted.

(b) The Secretary of the Department of Cultural Resources or his designee and the land-controlling agency have 60 days after receipt to review and comment on draft reports and return written comments to the Secretary of the Department of Administration or his designee and the permittee.

(c) The permittee has 30 days to revise the draft report before submission of the final report.

*Authority G.S. 70-13(c); 70-14.*

**07 NCAC 04R .0715 REPORT REVIEW FOR GENERAL PERMITS**

(a) The Secretary of the Department of Cultural Resources or his designee shall review the final reports for General Permits to

~~ensure that the reports meet professional standards. The Secretary of the Department of Cultural Resources or his designee may request revisions of the final report to ensure professional standards are maintained.~~

~~(b) The Secretary of the Department of Cultural Resources or his designee has 30 days after receipt to review and comment on reports and return written comments to the Secretary of the Department of Administration or his designee, the land controlling agency and the principal investigator.~~

~~(c) The principal investigator has 30 days to revise the final report.~~

*Authority G.S. 70-13(c); 70-14.*

**07 NCAC 04R .0716 CUSTODY OF RESOURCES UNDER THE TERMS OF A SPECIFIC PERMIT**

~~(a) The archaeological resources and associated records and data which are collected, excavated or removed from state lands under the terms of a Specific Permit shall remain the property of the State of North Carolina. The location of all records, artifacts, or other materials cannot be changed from that approved in the permit without prior approval of the Secretary of the Department of Cultural Resources or his designee and the land controlling agency. This restriction does not apply to temporary removal and relocation of artifacts or records for the purposes of scientific, historical, or educational research, nor for purposes of public display or education, so long as the artifacts or records remain under the direct control of and within the physical boundaries of the museum, university, or scientific or educational institution approved in the permittee's application.~~

~~(b) All records and artifacts must be accessible for scientific, historical, or educational research, if access does not compromise the confidentiality of the nature and location of any archaeological resources or pose a risk of harm to the resources or site. Access shall be determined by that person identified in Rule .0705(b)(13) of this Section.~~

~~(c) Transfers or loans of records and artifacts between universities, museums, and scientific or educational institutions must be approved by the Secretary of the Department of Cultural Resources or his designee and the land controlling agency and must be preceded by demonstration that the receiving institution conforms to the conditions in this Rule. In addition, the Secretary must have been provided the information outlined in Rule .0712(f) of this Section.~~

*Authority G.S. 70-14.*

**07 NCAC 04R .0717 CUSTODY/ARCHAEOLOGICAL RESOURCES UNDER/TERMS: GENERAL PERMIT**

~~(a) Under the terms of a General Permit, the location of all records, artifacts or other materials cannot be changed from that approved in the permit without prior approval of the Secretary of the Department of Cultural Resources or his designee. This restriction does not apply to temporary removal and relocation of artifacts and records for the purposes of scientific, historical, or educational research, nor for purposes of public display or education, so long as the artifacts or records remain under the direct control of the principal investigator or the land controlling agency.~~

~~(b) All records and artifacts must be accessible for scientific, historical, or educational research, if access does not compromise the confidentiality of the nature and location of any archaeological resources or pose a risk of harm to the resources or site. Access shall be determined by that person identified in Rule .0705(c)(8) of this Section.~~

~~(c) Transfers or loans of records and artifacts between land controlling agencies, universities, museums, and scientific or educational institutions must be approved by the Secretary of the Department of Cultural Resources or his designee and must be preceded by demonstration that the receiving institution conforms to the conditions in this Rule. In addition, the Secretary must have been provided the information outlined in Rule .0713(e) of this Section. This condition does not apply to the movement of artifacts within a land controlling agency, as long the artifacts remain under the direct control of the principal investigator and the land controlling agency.~~

*Authority G.S. 70-14.*

**07 NCAC 04R .0718 CONFIDENTIALITY**

~~Information concerning archaeological resources that is maintained by the Department of Cultural Resources has restricted distribution. Access to records, artifacts, or other materials may be denied if it is determined that access constitutes a risk of harm.~~

*Authority G.S. 70-14; 70-18.*

**SECTION .0800 – ARCHAEOLOGY SERVICES**

**07 NCAC 04R .0801 OPERATING HOURS**

~~The Office of State Archaeology, or OSA offices, as well as any regional offices and facilities, are open between 8:00 a.m. and 5:00 p.m., Monday through Friday, except on state holidays. These hours may be extended to accommodate public education programs. Visitors under the age of 12 must be accompanied by an adult unless prior arrangements have been made. Pets are not allowed in the facilities. Visitors are not allowed in the offices after hours unless accompanied by, or arrangements have been made with, a member of the staff. Access to areas may be restricted for reasons of safety and security.~~

*Authority G.S. 121-5(b); 121-8(b),(f).*

**07 NCAC 04R .0802 LOAN OF ARTIFACTS**

~~(a) Artifacts possessed by the Division of Archives and History shall not be loaned for uses other than museum purposes, research purposes, or non-museum public display by local, state, or federal agencies or institutions where the use is intended for public education.~~

~~(b) Loaned artifacts, specimens, documents, and records shall remain in the condition in which they were delivered. The borrower shall insure the articles against loss or damage. The artifacts must be protectively packaged. The artifacts remain the property of the Division of Archives and History and can be withdrawn with 15 days notice upon presentation of a written communication by the lender or its duly authorized representative.~~



~~(c) Written authorization must be issued by the Office of State Archaeology to permit photography or duplication of any artifact of any kind. An acknowledgment credit shall identify each artifact image with the Office of State Archaeology, North Carolina Division of Archives and History.~~

~~(d) All requests for loans of artifacts shall be submitted in writing to the State Archaeologist at least 30 days in advance of the requested loan period.~~

~~(e) A written contract between the borrower and the Division of Archives and History containing the period and conditions of the loan shall be signed prior to the lending of any artifact.~~

*Authority G.S. 121-2(8); 121-5(d).*

**07 NCAC 04R .0803 CURATION OF  
ARCHAEOLOGICAL COLLECTIONS**

~~(a) All requests to temporarily or permanently store collections at OSA curation facilities shall be submitted in writing to the State Archaeologist.~~

~~(b) Decisions on the acceptance of collections will be made in writing by the State Archaeologist, in consultation with the division director and other division staff members.~~

~~(c) Requests may be approved or denied, depending on available storage space, condition of the materials, and payment of applicable fees.~~

~~(d) Fees may be charged for curation and conservation services in the amount of two hundred dollars (\$200.00) per cubic foot of materials, and the revenue arising from these services shall be used to support the activities of the OSA's curation facilities. Fees may be increased on a biennial basis, adjusted pursuant to the rate of inflation established by the Consumer Price Index.~~

~~(e) Charges for the conservation, stabilization, analysis, inventory, repackaging, or other treatment of materials may be negotiated on a case by case basis, and set forth in service contracts mutually agreed upon between the OSA and a requesting party, if materials exceed the two hundred dollar (\$200.00) per cubic foot curation fee.~~

*Authority G.S. 121-4(14); 121-8(b),(f).*

**07 NCAC 04R .0804 DEACCESSIONS**

~~(a) An accessioned archaeological artifact owned by the Division of Archives and History may not be deaccessioned until it has been certified to have no further value for scientific research and reference purposes by the North Carolina Historical Commission.~~

~~(b) For an artifact to be deaccessioned, an Artifact Disposal Form giving artifact provenance, condition, and reason for disposal must be approved by the Director, Division of Archives and History, the State Archaeologist, and the Historical Commission.~~

*Authority G.S. 121-8(b),(f); 132-1(a); 132-3(a).*

**07 NCAC 04R .0805 ACCESS TO  
ARCHAEOLOGICAL COLLECTIONS**

~~Collections of artifacts, photographs, field notes, records, or other data are accessible for examination and study during regular business hours, Tuesday through Thursday. Requests for~~

~~access should be made in writing to the State Archaeologist at least two weeks in advance, stating as specifically as possible which portions of the collections are to be studied. Unless such access would create a risk of harm to such resources or to the site at which the resources are located, collections shall be examined within branch facilities.~~

*Authority G.S. 70-18; 121-8(b),(f); 132-1(a); 132-2; 132-9.*

**07 NCAC 04R .0806 ARCHAEOLOGICAL SITE  
FILES**

~~(a) Access to archaeological site files and other information relating to the location or nature of archaeological resources shall be granted to persons in the following categories:~~

~~(1) — qualified archaeologists who are conducting scientific research or compiling information for use in preservation and planning studies. Qualified archaeologist means a person with:~~

~~(A) — a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history or another related field with a specialization in archaeology;~~

~~(B) — a minimum of one year's experience in conducting basic archaeological field research; and~~

~~(C) — demonstrable competence in theoretical and methodological design and in collecting, handling, analyzing, evaluating, and reporting archaeological data.~~

~~(2) — authorized representatives of federal, state, or local agencies or institutions which make planning decisions regarding archaeological resources.~~

~~(b) Persons having access to the archaeological site files must give written assurance that the confidentiality of the information shall be maintained.~~

~~(c) Persons desiring to review site files shall give at least 24 hours advance notice to the State Archaeologist.~~

*Authority G.S. 70-18; 121-8(b),(d),(e),(f); 132-1(a); 132-2; 132-9.*

**07 NCAC 04R .0807 PUBLIC ACCESS TO  
EXCAVATIONS**

~~The public is welcome to visit excavations and at times may participate, but these visitation times as well as access to specific areas on sites must be regulated. Such restrictions shall be posted on the site.~~

*Authority G.S. 121-4(9); 143B-62(2)d.*

**07 NCAC 04R .0808 ARCHAEOLOGICAL SURVEY  
AND EVALUATION REPORT GUIDELINES**

~~Guidelines established for the evaluation of archaeological survey reports resulting from investigations conducted in compliance with state and federal regulations are available free of charge from:~~

~~Chief Archaeologist~~

Archaeology and Historic Preservation Section  
Division of Archives and History  
109 East Jones Street  
Raleigh, North Carolina 27611

*Authority G.S. 143B-62(2)(g).*

**07 NCAC 04R .1002 DEFINITIONS**

(a) ~~"Abandoned shipwrecks" shall mean sunken ships, boats, and watercraft and their associated cargoes, tackle, and materials.~~

(b) ~~"Underwater archaeological artifacts" shall mean those materials showing human workmanship or modification or having been used or intended to be used or consumed by humans, including relics, monuments, tools and fittings, utensils, instruments, weapons, ammunition, and treasure trove and precious materials including gold, silver, bullion, jewelry, pottery, ceramic, and similar or related materials.~~

*Authority G.S. 121-22; 121-23; 121-25.*

**07 NCAC 04R .1003 DEPARTMENT AUTHORIZED TO GRANT PERMITS AND LICENSES**

~~(a) The Department of Cultural Resources may grant permits for the exploration, recovery or salvage of abandoned shipwrecks and of underwater archaeological artifacts in given areas of state-owned bottoms of navigable waters. No exploration, recovery, or salvage operation on state-owned bottoms of navigable waters during which abandoned shipwrecks or underwater archaeological artifacts may be removed, displaced, or destroyed shall be conducted by any person, firm, corporation, institution or agency without having first received the appropriate permit or license from the Department. After issuance no permit, or any part thereof, shall be assigned or sublet.~~

~~(b) Obtain application forms from and submit completed permit applications to:~~

Underwater Archaeology Unit  
Division of Archives and History  
P.O. Box 58  
Kure Beach, North Carolina 28449

*Authority G.S. 121-23; 121-25.*

**07 NCAC 04R .1004 EXCEPTIONS**

~~No permit is required for employees of the Department of Cultural Resources for exploration, recovery or salvage operations being conducted as part of the official responsibilities of the Department.~~

*Authority G.S. 121-24.*

**07 NCAC 04R .1005 PERMIT FOR EXPLORATION: RECOVERY OR SALVAGE**

~~(a) An exploration, recovery or salvage permit will be issued providing:~~

(1) ~~the applicant has adequate funds, equipment, and facilities to undertake and complete the operation, is capable of providing supervision~~

~~of all phases of the operation and has demonstrated the ability to carry out acceptable exploration, recovery or salvage projects;~~

~~(2) the proposed activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;~~

~~(3) the proposed activity employs accepted techniques of survey, excavation, recovery, recording, preservation, and analysis used in exploration, recovery and salvage projects; and~~

~~(4) the underwater archaeological artifacts recovered during the proposed project will be properly conserved and these artifacts and copies of associated archaeological records and data will be curated in an acceptable manner.~~

~~(b) The Department of Cultural Resources shall have decision making authority concerning the issuance of a permit. A permit shall be issued or denied within 30 days of the acceptance by the Department of a completed application. Major inadequacies, such as unacceptable goals, objectives, methodologies or techniques, or the lack of sufficient funding or professional staff, shall be reasons for permit denial and will be clearly spelled out in the denial notice.~~

*Authority G.S. 121-23; 121-25.*

**07 NCAC 04R .1006 TERMS AND CONDITIONS OF PERMITS**

~~(a) An underwater archaeological permit will contain all conditions governing that particular exploration, recovery or salvage project. Should these conditions conflict with the terms of the application, these permit conditions shall take precedence.~~

~~(b) A permit will normally be granted for a period of one year and may be renewed after review of an extension request and evaluation of past performance.~~

~~(c) The permittee agrees to submit for review to the department a draft report, detailing project activities and results within 120 days after completion of the fieldwork, and a final report 60 days after department approval of the draft.~~

~~(d) The permittee agrees to keep a daily log of all project activities including the types of equipment used, site conditions, and other project specific data and to provide copies to the Department upon request.~~

~~(e) The permittee is responsible to the Department for accuracy and validity of the data contained in the final report submitted to the Department. The report and copies of requested data will become part of the permanent data on file with the Department.~~

~~(f) The Department reserves the right to have a designated agent present during activities carried out under the terms of the permit.~~

~~(g) The Department is not liable or responsible for any accident or injury to any person or the loss or damage to any equipment connected with the permit.~~

~~(h) Failure to diligently pursue the work after it has been started, or to comply with any of the provisions of the permit or of these requirements, may result in revocation of the permit.~~

*Authority G.S. 121-23; 121-25.*

**07 NCAC 04R .1007 APPEALS RELATING TO PERMITS**

Any person may appeal permit issuance, denial, suspension or revocation through appeals procedures established in Article 3 of G.S. 150B.

*Authority G.S. 121-23; 121-25; 150B.*

**07 NCAC 04R .1008 OWNERSHIP AND DIVISION OF RECOVERED ITEMS**

All abandoned shipwrecks and underwater archaeological artifacts recovered in the waters of the State of North Carolina shall belong to the State of North Carolina. Such underwater archaeological artifacts as are recovered under proper permit may be granted, in whole or in part, to the permittee as proper compensation for his efforts in recovering such objects and the title to and ownership of these objects then is transferred to that permittee. Determination of which of the recovered objects will be granted to the permittee will be made by the Department acting in the best interests of the state and giving due consideration to the fair treatment of the permittee. The terms of the division are to be expressed as a percentage, and the percentage of the state's share and the percentage of permittee's share shall be stated on the permit at the time of its issuance. All recovered artifacts shall be placed and retained in safekeeping. The place or places of safekeeping shall be approved by the secretary or a duly authorized agent of the Department. At the time of the division of items that have been recovered by those having permits for salvage with the Department there shall be present such member or members of the staff of the Department of Cultural Resources as the Secretary of the Department of Cultural Resources shall deem necessary and appropriate.

*Authority G.S. 121-23; 121-25.*

**07 NCAC 04R .1009 PROTECTED AREAS**

The Department may designate certain abandoned shipwrecks or underwater archaeological artifacts as areas of primary scientific, archaeological or historical value. No permit for recovery or salvage of these abandoned shipwrecks or underwater archaeological artifacts will be issued unless the proposed project is consistent with the Department's management plan for these areas and unless all recovered artifacts are kept as an intact collection in an appropriate repository.

*Authority G.S. 121-23; 121-25.*

**07 NCAC 04R .1010 SPECIAL AREAS FOR SPORT AND HOBBY OPERATIONS**

The Department may designate certain limited areas of state owned bottoms for the exclusive purpose of sport and hobby exploration and recovery under a short term sport and hobby permit if it deems this to be in the best interest of the state. Short term sport and hobby permits may be issued only for those abandoned shipwrecks and underwater archaeological artifacts which are specified in writing by the Secretary of the Department of Cultural Resources. Commercial salvagers,

firms, corporations, and individuals seeking to recover and sell underwater archaeological materials, or otherwise make monetary profit with them, shall not be issued a short term sport and hobby permit. All or any part of the materials recovered under the short term sport and hobby permit may be awarded by the Department to the finder after inspection and study by the Archaeology Branch.

*Authority G.S. 121-23; 121-25.*

**07 NCAC 04R .1011 REPORTING REQUIREMENTS**

These guidelines for exploration, recovery and salvage projects ensure thorough and consistent data collection and reporting for projects conducted on the state's abandoned shipwrecks and underwater archaeological artifacts. Submission of a draft report for the Department's review and comment enables the permittee to foresee and correct inadequacies prior to the completion of the final report. The permittee shall address the following areas to assure final acceptance:

- (1) a concise description of goals of the study and general approach of the investigation;
- (2) an overview of the prehistory and history of the general area of the project and specific information relative to the designated project area;
- (3) a concise and specific location of the project area, to include maps that accurately indicate the boundaries of the area identifying nearby landmarks and permanent benchmarks employed in establishing positioning and survey data;
- (4) a brief and concise description of the project area to include environmental information such as water depth, visibility currents, bottom composition and contours, and vegetation;
- (5) a complete description of the work conducted including exploration or recovery projects (research methods, data collection techniques, etc.) and a complete description of the equipment utilized to conduct the investigation;
- (6) a description of the findings, observations and data generated by project activities;
- (7) a detailed description of all archaeological resources within the boundaries of the project area. The archaeological resources shall be precisely located on maps to be submitted to the Department with the draft report;
- (8) a comprehensive statement detailing the conclusions drawn from observations, findings and data generated by project activities;
- (9) a statement of recommendations with regard to continued investigation and management of archaeological resources.

*Authority G.S. 121-23; 121-25.*

**07 NCAC 04R .1012 REPORT REVIEW**

~~(a) The Department shall review all draft and final reports resulting from underwater archaeological permit activities. The Department may request revisions of the draft or final reports. Terms and conditions of the permit are considered satisfied only after revisions have been completed and the final report accepted.~~

~~(b) The Department has 60 days after receipt to review and comment on all reports and return written comments to the permittee.~~

*Authority G.S. 121-23; 121-25.*

**07 NCAC 04R .1013 TERMINATION OF PERMIT**

~~Notification of permit termination will be sent to the permittee upon acceptable completion of all terms of the permit or upon permit expiration.~~

*Authority G.S. 121-23; 121-25.*

**CHAPTER 13 - OFFICE OF STATE ARCHAEOLOGY**

**SECTION .0100 - DEFINITIONS**

**07 NCAC 13 .0101 DEFINITIONS**

The following definitions apply to this Subchapter unless otherwise indicated:

- (1) "Abandoned shipwrecks" means sunken ships, boats, and watercraft and their associated cargoes, tackle, and materials.
- (2) "Applicant" means a person or entity applying for a permit or license to conduct any archaeological investigations on State lands, or any type of exploration, recovery, or salvage operations of any part of a derelict vessel or its contents, or any archaeological site.
- (3) "Emergency archaeological investigation" means any surface collection, subsurface test, excavation, or other activity that results in the disturbance or removal of archaeological resources undertaken due to:
  - (a) the accidental discovery of archaeological resources during construction or other ground disturbing activities; or
  - (b) imminent danger of damage or destruction to archaeological resources due to vandalism, erosion, or other causes.
- (4) "Ground disturbance" includes construction of dikes, clearing and grubbing of forests, subsurface alterations around standing structures, borrow pits, trenching for water and sewer lines, utility line construction or improvements requiring excavation; construction, widening or improvements of highways; and airport expansions, bridge replacements, housing developments, boat

basins and channels, and placement of fill or spoil dirt.

- (5) "Land controlling agency" means a state agency with management responsibilities for state land.
- (6) "Permit" means written authorization under law to conduct archaeological investigation on state lands.
- (7) "Protected Area" means an area identified by the Department of Cultural Resources as having scientific, archaeological or historical value, as measured by criteria used for listing resources in the National Register of Historic Places.
- (8) "Qualified archaeologist" means a person with:
  - (a) a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history or another related field with a specialization in archaeology;
  - (b) a minimum of one year's experience in conducting archaeological field research; and
  - (c) demonstrable competence in theoretical and methodological design and in collecting, handling, analyzing, evaluating, and reporting archaeological data.
- (9) "Risk of harm" means any disclosure of the nature or location of any archaeological resource that results, or may result in, the loss or destruction of archaeological context or information.
- (10) "State Archaeologist" means the head of the Archaeology Section (Office of State Archaeology), Office of Archives and History, Department of Cultural Resources.
- (11) "State lands" as defined in G.S. 70-12 includes all land and interests therein, title to which is vested in the State of North Carolina, or in any State Agency, or in the State to the use of any agency, including vacant and unappropriated lands, swamplands, submerged lands, lands acquired by the State by virtue of being sold for taxes, escheated lands, and acquired lands.
- (12) "Archaeological artifacts" means those materials showing human workmanship or modification or having been used or intended to be used or consumed by humans, including relics, monuments, tools and fittings, utensils, instruments, weapons, ammunition, and treasure trove and precious materials including gold, silver, bullion, jewelry, pottery, ceramic, and similar or related materials.

*Authority G.S. 70-12; 70-14.*

**SECTION .0200 - ENVIRONMENTAL REVIEW**

**07 NCAC 13 .0201      ARCHAEOLOGICAL REVIEW**

(a) Projects that involve state or federal agency funding, permits or legal oversight shall be reviewed by professional staff of the Office of State Archaeology, acting on behalf of the State Historic Preservation Officer, for archaeological concerns whenever ground disturbing activity is involved. Examples of ground disturbance include construction of dikes, clearing and grubbing of forests, subsurface alterations around standing structures, borrow pits, trenching for water and sewer lines, utility line construction or improvements requiring excavation; construction, widening or improvements of highways; and airport expansions, bridge replacements, housing developments, boat basins and channels, and placement of fill or spoil dirt.

(b) Evaluation of potential effects on archaeological resources shall be made by staff archaeologists, taking into consideration known site locations previously recorded in the statewide inventory maintained by the Office of State Archaeology, historical maps and documents, results of previous surveys in the area or similar areas, past and present land uses, the area's topography and hydrology, predictive models of archaeological site locations, and type and extent of proposed land modification activities.

(c) After staff evaluation, recommendations shall be made by the State Historic Preservation Office (SHPO) to the applicant government agency within the state or federally mandated deadlines imposed by the State Clearinghouse or in federal regulations for review comments:

- (1) Clearance. If it is determined that the project area is unlikely to contain significant (as defined by criteria used to determine eligibility for inclusion in the National Register of Historic Places) archaeological remains, the written response shall be no comment.
- (2) Archaeological Survey Recommended. If it is determined that the project area is likely to contain significant archaeological sites and there is no record of systematic archaeological surveys in the project area, an archaeological survey shall be recommended prior to any ground disturbing activity to determine the presence and significance of archaeological sites that may be damaged or destroyed by the proposed action.
- (3) Testing Recommended. If a known site is within the project boundaries, archaeological testing shall be recommended to determine its significance.
- (4) Survey and Testing Recommended. If a project area contains known sites but has not been completely surveyed, testing of the sites and a survey of the remaining project area may be recommended.
- (5) Avoidance. If archaeological sites listed in or determined eligible for inclusion in the National Register of Historic Places are located in the project area, avoidance by adjustment of the project plans shall be recommended. Significant sites that cannot be avoided may be recommended for mitigative

data recovery, through archaeological excavations, analysis and reporting, to offset the loss of the archaeological, historical and scientific information contained in the site(s). New project locations are subject to the review process.

(d) All archaeological reports submitted to the SHPO in compliance with federal and state historic preservation legislation shall be reviewed by the Office of State Archaeology using standards established by the Department of Cultural Resources. The guidelines:

- (1) ensure compliance with pertinent legislation;
- (2) ensure fulfillment of contract sponsor needs with regard to archaeology; and
- (3) permit the effective and speedy review of compliance surveys and evaluation reports.

Reports submitted for review which do not satisfy the requirements defined in the guidelines are considered incomplete and shall be returned for revision and resubmission. Copies of the guidelines are available from the Office of State Archaeology.

(e) When an archaeological survey report indicates that a site within a project's area of environmental impact is eligible for inclusion in the National Register of Historic Places, the procedures outlined at 36 CFR 800.5-6 (regulations of the Advisory Council on Historic Preservation) shall be followed.

*Authority G.S. 113-229(e); 113A-4(2); 121-4(13); 121-12(a); 136-42.1; 143B-62(1)f.(3); E.O. XVI (1976); 16 U.S.C. 470; 16 U.S.C. 1451 et. seq.; 42 U.S.C. 4321; 15 C.F.R. 923; 36 C.F.R. 69; 36 C.F.R. 800.*

**07 NCAC 13 .0202      UNDERWATER  
ARCHAEOLOGICAL REVIEW**

(a) Water related construction activities are defined as major or minor according to the extent of bottom disturbance. Major bottom disturbing activities include new or maintenance dredging, extensive bulkheading, jetty or mooring construction, subaqueous power and water line installation, bridge construction, and the dredging of temporary channels. Minor bottom disturbing activities include construction of private piers, bulkheads, and docks, and minor dredging.

(b) Prospective construction projects affecting submerged lands shall be reviewed by the Underwater Archaeology Unit taking into consideration the project area's potential for submerged cultural resources and whether major or minor bottom disturbance is planned.

(c) After staff review, recommendations shall be made by the SHPO in terms of the bottom disturbance involved and the project area's potential for submerged cultural resources.

- (1) If major bottom disturbance is to take place in a project area with high or moderate potential, project specific documentary research followed by appropriate archaeological investigation shall be recommended prior to project construction.
- (2) If major bottom disturbance is to take place in an area with low potential, no documentary or archaeological investigation is required.

- (3) If minor bottom disturbance is to take place, documentary and archaeological investigation shall be only recommended in areas with a high potential for any known submerged cultural resources.

(d) Maps and research files enable the Underwater Archaeology Unit to determine the potential for submerged cultural resources within a project area. Criteria used to establish high, moderate, and low potential areas are as follows:

- (1) "High potential area" means:
- (A) A known archaeological site or charted wreck of historic age is present; or
  - (B) Historical research indicates the project lies in an area with an active maritime history, documented vessel losses, or known hazards to navigation. Harbors, major shipping lanes, and inlets and shoals are examples of high potential areas.
- (2) "Moderate potential area" means:
- (A) No known archaeological sites or charted wrecks are present and documentary research indicates that only marginal maritime activities have taken place; or
  - (B) Bottom lands have been partially disturbed, lessening the likelihood that significant cultural resources exist.
- (3) "Low potential area" means:
- (A) No known archaeological site or charted wrecks are present and documentary research indicates that little or no maritime activities have taken place historically; or
  - (B) Bottom lands have been previously disturbed to the extent that no intact significant cultural resources are likely to exist.

(e) Reports of documentary research or archaeological investigations are reviewed by professional archaeology staff of the Office of State Archaeology under the requirements as established by the Department of Cultural Resources defined in "Guidelines for the Preparation of Reports of Archaeological Surveys and Evaluations," available from the Office of State Archaeology. Reports submitted for review that do not satisfy the requirements are incomplete and shall be returned for revision and resubmission.

*Authority G.S. 121-22 through 121-28; 143B-62(2)g; 16 U.S.C. 470; 36 C.F.R. 800.*

## **SECTION .0300 - ARCHAEOLOGICAL RESOURCES PROTECTION ACT**

### **07 NCAC 13 .0301 DEFINITIONS**

The definitions of G.S. 70-12 apply in this Section, in addition to the definitions of 07 NCAC 13 .0101.

*Authority G.S. 70-12; 70-13.1; 70-14; 121-22; 121-23; 121-25; 121-25.1; 146-64.*

### **07 NCAC 13 .0302 ARCHAEOLOGICAL INVESTIGATIONS ON STATE LANDS - PERMITS**

(a) Permits are required for persons wishing to conduct archeological investigations on State lands. Upon consultation with the Department of Administration, the State Archaeologist, as designee of the Secretary of the Department of Cultural Resources, may grant permits for those persons wishing to conduct archaeological investigations on State lands, including the exploration, recovery or salvage of abandoned shipwrecks, and of underwater archaeological artifacts in given areas of state-owned bottoms of navigable waters. No exploration, recovery, or salvage operation on state-owned bottoms of navigable waters during which abandoned shipwrecks or underwater archaeological artifacts may be removed, displaced, or destroyed shall be conducted by any person, firm, corporation, institution or agency without having first received a permit from the Department. After issuance no permit, or any part thereof, shall be assigned or sublet.

(b) Permits shall be either General or Specific, as follows:

- (1) General Permits shall be issued to those land controlling agencies that employ qualified archaeologists on a full time permanent basis to conduct archaeological investigations on state lands directly under the agency's control; and
- (2) All other permits shall be Specific Permits.

(c) No permit is required for employees of the Department of Cultural Resources for investigations being conducted as part of the official responsibilities of the Department.

*Authority G.S. 70-13; 70-15(a); 121-4; 121-24.*

### **07 NCAC 13 .0303 APPLICATION FOR ARCHAEOLOGICAL PERMITS**

(a) A General Permit may be issued to a land controlling agency to conduct archaeological investigations and emergency archeological investigations on land directly controlled by that agency. Each General Permit application for a land controlling agency shall include:

- (1) a written description of the lands controlled by the agency, including the county and township;
- (2) a general description of the nature and objectives of potential investigations;
- (3) the name, address, telephone number, and qualifications of the principal investigator;
- (4) evidence that the requirements of Rule .0304 of this Section are met;
- (5) written criteria for evaluation of requests for access to records and artifacts at the facility where the records and artifacts are to be curated;
- (6) the facility identified for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigations;

- (7) facilities and plans for stabilization and preservation of perishable or unstable artifacts;
- (8) the person or position in the institution or agency with responsibility for curation of artifacts, records, and other documentation or information who shall determine access to this material; and
- (9) The principal investigator's plans, if any, for dissemination of the results of the investigation in addition to the reporting requirements in Rule .0311 of this Section.

(b) Applications for Specific Permits shall be submitted to the State Archaeologist at least 30 days prior to the proposed starting date of the archaeological investigations. Each Specific Permit application shall include:

- (1) a written description of the location of the proposed investigations, including the county and township;
- (2) a 1:24,000 or larger scale map depicting the location of the proposed investigations;
- (3) a description of the nature, objectives and scope of the proposed investigations, including the methods to be employed and the requirements for vegetation clearing;
- (4) the schedule for the investigations, including hours of the day and days of the week, as well as beginning and completion dates. The schedule shall include 60 days for review and comment of the draft report by the State Archaeologist and the land controlling agency and a maximum of 30 days for response, revisions and submittal of the final report by the applicant;
- (5) the name, address, telephone number, institutional affiliation (if any) and qualifications of the principal investigator;
- (6) the name, address, telephone number, and qualifications of the field director, if different from the principal investigator;
- (7) the approximate number of people proposed to carry out the investigations;
- (8) evidence of the applicant's capability to initiate, conduct and complete the proposed investigations;
- (9) written criteria for evaluation of requests for access to records and artifacts at the facility where the records and artifacts are to be curated;
- (10) the facility identified for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigations;
- (11) written concurrence from the land controlling agency regarding the applicant's proposed curatorial arrangements;
- (12) facilities and plans for stabilization and preservation of perishable or unstable artifacts;
- (13) the person or position in the institution or agency with responsibility for curation of

artifacts, records, and other documentation or information who shall determine access to this material;

- (14) a description of the type and timing of all access needs on state property, vehicular or otherwise, required to conduct the investigations;
- (15) a description of how the project shall be coordinated with the site specific land manager, including the applicant's documentation that initial contact has been made and the name of the specific person contacted;
- (16) a description of the provisions to be made to secure the permit area to assure the safety of non-project personnel who may visit the permit area during and after project hours;
- (17) an indication of the length of time each excavation unit shall be open and a description of a schedule for reclaiming all areas disturbed by any aspect of the archaeological investigations; and
- (18) any plan for dissemination of the results of the investigations in addition to the reporting requirements noted in Rule .0312 of this Section.

*Authority G.S. 70-13(a),(b); 70-14.*

#### **07 NCAC 13 .0304 REQUIREMENTS FOR AND ISSUANCE OF PERMITS**

(a) Applicants for permits to conduct archaeological investigations shall:

- (1) have a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history or another related field with a specialization in archaeology;
- (2) have a minimum of one year's experience in conducting basic archaeological field research;
- (3) have obtained and submitted for review by the State Archaeologist a criminal history record check by the State Bureau of Investigation as set forth in G.S. 70-13.1;
- (4) have funds, equipment, and facilities to undertake and complete the operation, provide supervision of all phases of the operation, and demonstrate the ability to carry out acceptable investigations that meet current professional standards, including those promulgated by the National Park Service, Society for American Archaeology, and other professional archaeology organizations;
- (5) undertake the proposed activity for the purpose of furthering archaeological knowledge in the public interest;
- (6) employ accepted techniques of survey, excavation, recovery, recording, preservation, and analysis used in investigations including those promulgated by the National Park

Service, Society for American Archaeology, and other professional archaeology organizations;

- (7) properly conserve the archaeological artifacts recovered during the proposed project, and ensure that those artifacts and all original archaeological records and data associated with the undertaking shall be properly conserved and curated in an acceptable manner; at a minimum, artifacts and associated records shall be conserved and maintained according to standards and guidelines issued by the State Archaeologist, or by the National Park Service (36 CFR 79, Curation of Federally Owned and Administered Archaeological Collections), and
- (8) any other qualification deemed necessary by the State Archaeologist, including documented expertise in subfields of archaeology (prehistory, history, maritime, forensic), professional publications, and evidence of successful completion of similar investigations in North Carolina or in the southeastern United States.

(b) General Permits shall be issued to a land controlling agency within 30 days following submission of the completed application provided the terms and requirements of the rules in this Chapter pertaining to General Permits are fulfilled.

(c) The State Archaeologist, in consultation with the Department of Administration, and the land controlling agency, shall have decision-making authority concerning the issuance of a Specific Permit. The Specific Permit shall be issued or denied within 30 days after submission of the completed application.

(d) Specific Permits shall not be issued to persons who have conducted emergency archaeological investigations until receipt and acceptance of a final report pursuant to Rule .0312 of this Section.

*Authority G.S. 70-13(b); 70-14.*

#### **07 NCAC 13 .0305 DURATION, EXTENSION AND RENEWAL OF PERMITS**

(a) Permits shall be renewed or extended pursuant to the procedures set forth in Rule .0304 of this Section.

(b) General Permits are valid for a period of five years from the date of issuance. General Permits may be renewed for a period of five years, after review of extension requests or renewal applications and evaluation of past performance of the applicant.

(c) Specific Permits shall be issued for a period not to exceed three years. Specific Permits may be extended for up to six months or renewed for up to three additional years. Specific Permits may be extended only once, but may be renewed any number of times.

*Authority G.S. 70-14.*

#### **07 NCAC 13 .0306 TERMS AND CONDITIONS OF PERMITS**

(a) All permits shall specify:

- (1) the exact nature and extent of the investigations allowed under the permit, including the time, duration, scope, location, and purpose of the investigations;
- (2) the name of the individual responsible for conducting the investigations and, if different, the name of the individual responsible for carrying out the terms and conditions of the permit;
- (3) the name of the land controlling agency, university, museum or other scientific or educational institution in which any collected materials and data shall be deposited; and
- (4) the reporting requirements and schedule.

(b) All permits shall specify terms and conditions necessary to ensure public safety and to protect resources, natural and cultural, to safeguard legitimate land uses, and to limit activities incidental to investigations authorized under a permit.

(c) Any agency involved in consultation or approval of a permit under this Section may make inspections at the location specified in the permit as necessary to ensure that the terms and conditions of the permit are being fulfilled.

(d) The permittee shall secure the project area and shall hold the State harmless for claims arising out of the project, including any claims of trespass of or damage to adjacent private property caused by the permittee under the permit. The permittee shall also:

- (1) sign a waiver of claims against the State;
- (2) be held responsible for damage to State property resulting from the permitted investigations; and
- (3) submit evidence of liability insurance upon acceptance of the terms and conditions of a permit.

(e) Archaeological investigations conducted under a permit shall comply with all applicable state, federal, or local regulations and the rules and regulations of the land controlling agency, including management plans and operation practices of the land controlling agency.

(f) All access to state-owned lands during permitted investigations shall be controlled by and coordinated with the land controlling agency and the site specific land manager.

(g) All project lands shall be restored to their pre-project condition by the permittee by the conclusion of the field investigations.

*Authority G.S. 70-13(c); 70-14.*

#### **07 NCAC 13 .0307 PERMIT DENIAL, SUSPENSION AND REVOCATION**

(a) A permit may be denied if the State Archaeologist, in consultation with the Department of Administration, finds that:

- (1) the proposed investigation would represent an adverse effect (loss or destruction) to a unique or fragile natural resource;
- (2) the proposed investigation would interfere with the operation and management of an area;
- (3) the proposed investigation would pose a threat to public safety;



- (4) the applicant has not completed the terms and conditions of a previous permit;
- (5) the results of the required criminal history record check reveal one or more convictions listed in G.S. 70-13.1 or G.S. 125-25.1.

(b) A permit may be suspended or revoked if the State Archaeologist, in consultation with the Department of Administration, finds that:

- (1) the terms and conditions of the permit have been or are being violated;
- (2) the permit applicant is convicted of a crime, as enumerated in G.S. 70-13.1 or G.S. 125-25.1;
- (3) the permit holder fails to comply with the rules in this Chapter or applicable State or federal laws; or
- (4) the confidentiality of information relating to the nature and location of the archaeological resources is not maintained in accordance with the provisions of G.S. 70-18.

*Authority G.S. 70-13(b), (e); 70-13.1; 70-14; 121-25.1.*

#### **07 NCAC 13 .0308 APPEALS RELATING TO PERMITS**

Any applicant or permittee may appeal the denial, suspension or revocation under the procedures established in Article 3 of Chapter 150B of the North Carolina General Statutes.

*Authority G.S. 70-14; 150B-23 through 150B-37.*

#### **07 NCAC 13 .0309 EMERGENCY ARCHAEOLOGICAL INVESTIGATIONS**

(a) No Specific Permit is required for emergency archaeological investigations on State lands if the person conducting the investigation meets the qualifications of Rule .0304 of this Section and the land controlling agency has notified the Department of Administration and the State Archaeologist. Reporting requirements for emergency archaeological investigations are the same as those specified in Rule .0312.

(b) All artifacts and associated records recovered during emergency archaeological investigations remain property of the State of North Carolina and shall be maintained in a repository approved by the State Archaeologist. Facilities where state-owned collections are maintained should meet federal curation standards (36 CFR 79).

*Authority G.S. 70-14.*

#### **07 NCAC 13 .0310 PROTECTED AREAS**

The Department may issue permits for the archaeological investigation of sites designated as protected areas. All artifacts and associated records recovered from protected areas remain property of the State of North Carolina and shall be maintained in a repository approved by the State Archaeologist, following federal curation standards (36 CFR 79).

*Authority G.S. 121-23; 121-25.*

#### **07 NCAC 13 .0311 REPORTING REQUIREMENTS FOR GENERAL PERMITS; REVIEW**

(a) Reports of archaeological investigations conducted under the terms of a General Permit shall be submitted to the State Archaeologist.

(b) The principal investigator shall submit a summary of the results of all archaeological investigations as part of the annual report required under the terms of Rule .0305(c)(1) of this Section.

(c) The land controlling agency shall simultaneously report in writing to the Secretary of the Department of Administration and State Archaeologist any change in the status of either the principal investigator or the field director for which a General Permit was issued within 10 days of that change.

(d) Final reports concerning archaeological investigations and emergency archaeological investigations shall be submitted by the end of the calendar year that immediately follows the year in which the archaeological investigations were conducted.

(e) The principal investigator, in consultation with the State Archaeologist, may delay the submission of a final report until an agreed upon date determined through consultation with the land-controlling agency. Delays may be approved, depending on factors including unavoidable environmental conditions, changes in project specifications by the project sponsor, or unforeseen discoveries of complex or fragile archaeological materials, including human remains.

(f) The principal investigator shall:

- (1) provide information concerning the permanent physical location of artifacts, records, and all other documentation for all archaeological investigations;
- (2) maintain an itemized list of all recovered archaeological resources by type, variety, material or other description, and a list of accession numbers or other permanent identifiers applied to the recovered resources; and
- (3) maintain an itemized list of records, photographs and other documents, and a list of accession numbers or other permanent identifiers applied to the records and data.

(g) The State Archaeologist, in consultation with the Department of Administration and head of the land controlling agency or his or her designee, shall review at least once a year the permittee's performance under any General Permit issued for a period greater than one year. The State Archaeologist shall review the final reports for General Permits to ensure that the reports meet professional standards. The State Archaeologist may request revisions of the final report to ensure professional standards are maintained.

(h) The State Archaeologist has 60 days after receipt to review and comment on reports and return written comments to the land controlling agency and the principal investigator.

(i) The principal investigator shall revise and submit the final report within 30 days of receipt of review and comments by the State Archaeologist.

*Authority G.S. 70-13(c); 70-14.*

**07 NCAC 13 .0312      REPORTING REQUIREMENTS  
FOR SPECIFIC PERMITS; REVIEW**

(a) Reports are required for all archaeological investigations conducted under Specific Permits. Reports shall be submitted to the State Archaeologist and the head of the land controlling agency.

(b) The permittee shall maintain a daily log of all project activities, including the types of equipment used and site conditions, and provide copies to the State Archaeologist upon request.

(c) The permittee shall submit a preliminary field report within 60 days after completion of the on-site archaeological investigation. Preliminary field reports resulting from emergency archaeological investigations shall specify a date for submission of the draft report.

(d) The permittee shall submit draft reports according to the schedule established in the permit or, in the case of emergency archaeological investigations, by the date specified in the preliminary field report. Draft reports submitted for emergency archaeological investigations shall include information on storage and curation of artifacts, records and other data in accordance with the specifications in Rule .0303(b)(9) through (13) of this Section.

(e) The permittee shall submit final reports no later than 90 days after submission of the draft report.

(f) If the specified submission date for a draft report resulting from emergency archaeological investigations extends beyond one year from the date of submission of the preliminary field report, interim progress reports shall be submitted at least annually.

(g) Upon request by the State Archaeologist, the permittee or the principal investigator, in the case of emergency archaeological investigations, shall provide in the final report information concerning:

- (1) the permanent physical location of artifacts, records, and all other documentation;
- (2) an itemized list of all recovered archaeological resources by type, variety, material or other description, and a list of accession numbers or other permanent identifiers applied to the recovered resources; and
- (3) an itemized list of records, photographs and other documents, and a list of accession numbers or other permanent identifiers applied to the records and data.

(h) The permittee is responsible to the Department of Cultural Resources for accuracy and validity of the data contained in the final report submitted to that Department. The report and copies of requested data become part of the permanent data on file with the Department of Cultural Resources.

(i) The State Archaeologist, in consultation with the Department of Administration and head of the land controlling agency or his or her designee, shall review at least once a year the permittee's performance under any Specific Permit issued for a period greater than one year. Review shall be made through interim reports submitted by the permittee or through inspections at the locations of the investigations.

(j) The State Archaeologist and the land controlling agency shall review all draft and final reports for Specific Permits to

ensure that the investigations serve the public interest and the reports meet professional standards. The State Archaeologist may request revisions of the draft or final reports. Terms and conditions of a Specific Permit are considered satisfied only after revisions have been completed and the report accepted.

(k) The State Archaeologist and the land controlling agency have 60 days after receipt to review and comment on draft reports and return written comments to the permittee.

(l) The permittee shall revise and submit the final report within 30 days of receipt of review and comments by the State Archaeologist.

*Authority G.S. 70-13(c); 70-14.*

**07 NCAC 13 .0313      CUSTODY OF RESOURCES  
UNDER TERMS OF PERMITS**

(a) The archaeological resources and related records and data that are collected, excavated or removed from State lands remain the property of the State of North Carolina.

(b) All abandoned shipwrecks and underwater archaeological artifacts recovered in the waters of the State of North Carolina are the property of the State of North Carolina.

(c) The location of all records, artifacts or other materials shall not be changed from that approved in the permit without prior approval of the State Archaeologist and, in the case of Specific Permits, the land controlling agency. This restriction does not apply to temporary removal and relocation of artifacts or records for the purposes of scientific, historical, or educational research, nor does the restriction apply for purposes of public display or education, so long as the artifacts or records remain:

- (1) In the case of General Permits, under the direct custody or control of the principal investigator or the land controlling agency; or
- (2) In the case of Specific Permits, under the direct custody or control of the museum, university, or scientific or educational institution approved in the permittee's application.

(d) Transfers or loans of records and artifacts between universities, museums, and scientific or educational institutions must be approved by the State Archaeologist and shall be preceded by demonstration that the receiving institution conforms to the conditions in this Rule. In addition, the State Archaeologist shall have been provided the information outlined in Rule .0303(a), in the case of General Permits, and Rule .0303(b) of this Section in the case of Specific Permits. However, in the case of General Permits, this condition shall not apply to the movement of artifacts within a land controlling agency, so long as the artifacts remain under the direct control of the principal investigator and the land controlling agency.

(e) All records and artifacts shall be accessible for scientific, historical, or educational research, if access does not compromise the confidentiality of the nature and location of any archaeological resources or pose a risk of harm to the resources or site. Access shall be determined by that person identified in Rule .0311 of this Section, in the case of General Permits, and Rule .0312 of this Section in the case of Specific Permits.

*Authority G.S. 70-14.*

SECTION .0400 – ARCHAEOLOGY SERVICES

07 NCAC 13 .0401 DISPOSITION OF ARTIFACTS;  
LOANS

(a) Archaeological artifacts and related records that are public records pursuant to G.S. 132-1(a) are subject to the requirements of G.S. 121-5 and Chapter 132 of the North Carolina General Statutes.

(b) Accessioned archaeological artifacts that are owned by the State of North Carolina, are in the custody of the Office of Archives and History, and are not public records pursuant to G.S. 132-1(a), shall not be deaccessioned unless they have been certified by the North Carolina Historical Commission to have no further value for scientific research and reference purposes.

(c) Artifacts in the custody of the Office of Archives and History shall not be loaned for uses other than museum purposes, research purposes, or non-museum public display by local, state, or federal agencies or institutions where the use is intended for public education.

(d) Loaned artifacts, specimens, documents, and records shall remain in the condition in which they were delivered. The borrower shall insure the articles against loss or damage. The artifacts shall be protectively packaged. The artifacts remain the property of the State of North Carolina and may be removed within 10 days written notice to the borrower.

(e) Written authorization may be granted by the Office of State Archaeology to permit photography or duplication of any artifact of any kind. An acknowledgment credit shall identify each artifact image with the State Archaeologist in the North Carolina Office of Archives and History.

(f) All requests for loans of artifacts and related records shall be submitted in writing to the State Archaeologist at least 30 days in advance of the requested loan period.

(g) A written contract between the borrower and the Office of Archives and History containing the period and conditions of the loan shall be signed prior to the lending of any artifact.

Authority G.S. 121-5; 132-1.

07 NCAC 13 .0402 CURATION OF  
ARCHAEOLOGICAL COLLECTIONS

(a) All requests to temporarily or permanently store collections at the Office of State Archaeology curation facilities shall be submitted in writing to the State Archaeologist.

(b) Decisions on the acceptance of collections shall be made in writing by the State Archaeologist, in consultation with the division director and other division staff members.

(c) Requests may be approved or denied, depending on available storage space, condition of the materials, and payment of applicable fees, as determined by the State Archaeologist.

(d) Fees may be charged for curation and conservation services subject to the approval of the North Carolina Historical Commission.

Authority G.S. 121-4(14); 121-8(b), (f).

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Cultural Resources intends to amend the rule cited as 07 NCAC 04S .0103.*

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

**Public Hearing:**

**Date:** January 24, 2011

**Time:** 12:00 p.m.

**Location:** Archives and History Building, 109 E. Jones Street, Raleigh, NC 3<sup>rd</sup> floor conference room

**Reason for Proposed Action:** *The proposed action is necessary in order for the Department of Cultural Resources to revise the fee structure for visitors to Tryon Palace Historic Sites and Gardens, which was last revised in 2000. In conjunction with the tricentennial of New Bern, Tryon Palace is opening a \$60 million History Education Center, substantially altering the visitor experience and the alternatives available to individuals, families, and students.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be submitted in writing to Jeffrey J. Crow, during the comment period. Additional objections may be made verbally and in writing at the public hearing.*

**Comments may be submitted to:** Jeffrey J. Crow, NC Department of Cultural Resources 4610 Mail Service Center, Raleigh, NC 27699-4610, phone (919)807-7280, fax (919)733-8807, email jeff.crow@ncdcr.gov

**Comment period ends:** February 1, 2011

**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 04S - TRYON PALACE

**SECTION .0100 - TRYON PALACE**

**07 NCAC 04S .0103      ADMISSION PRICES**

Admission prices are:

- ~~(1) General admission ticket to all museum buildings and gardens, adults fifteen dollars (\$15.00); students through high school six dollars (\$6.00);~~
- ~~(2) General admission ticket to all museum buildings and gardens, groups of 20 or more arranged in advance, adults twelve dollars (\$12.00); students through high school five dollars (\$5.00);~~
- ~~(3) General admission ticket to all museum buildings and gardens, military, AAA, and college student discount, twelve dollars (\$12.00);~~
- ~~(4) Palace ticket only, groups of 20 or more arranged in advance, adults ten dollars (\$10.00); students through high school three dollars (\$3.00);~~
- ~~(5) Gardens and crafts ticket only, including Stables, Kitchen Office, and Blacksmith Shop, adults eight dollars (\$8.00); students through high school three dollars (\$3.00);~~
- ~~(6) Special events, workshops, and lectures, adults four dollars (\$4.00); students through high school two dollars (\$2.00);~~
- ~~(7) Academy ticket only, adults two dollars (\$2.00); students through high school one dollar (\$1.00);~~
- ~~(8) Annual pass for unlimited access to all museum buildings, gardens, special tours, lectures, and workshops (except Decorative Arts Symposium); adults forty dollars (\$40.00); students through high school twenty dollars (\$20.00); and~~
- ~~(9) No charge for children under six.~~

(a) Visitors to Tryon Palace shall choose from among the following set of options:

- (1) Time Travelers Pass which costs twenty dollars (\$20.00) for adults and ten dollars (\$10.00) for children in grades 1 through 12 and admits the ticketholders to all attractions at Tryon Palace including Palace and Gardens, Museums and Historic Houses; or
- (2) Governor's Pass which costs fifteen dollars (\$15.00) for adults and eight dollars (\$8.00) for children in grades 1 through 12 and admits the ticketholders to the Palace, Gardens, and all House Museums; or
- (3) Gardens and Galleries Pass which costs fifteen dollars (\$15.00) for adults and eight dollars (\$8.00) for students grades 1 through 12 and admits ticket holders to all museum galleries along with all Gardens.

(b) Children below the first grade are admitted free.

(c) Discounts on tickets are available for pre-booked group tours of 10 or more participants, AAA members, senior citizens

62 and older, active duty military personnel, and full-time college students. The discounted adult and student Time Traveler's Pass are fifteen dollars (\$15.00) and six dollars (\$6.00) respectively. The discounted Governor's Pass and Gardens and Galleries Pass for adults and students are twelve dollars (\$12.00) and four dollars (\$4.00) respectively.

(d) Families with three or more children grades 1 through 12 are charged for only two children and the others are admitted with a complimentary pass.

(e) All ticket holders may pay an additional two dollars (\$2.00) for adults and one dollar (\$1.00) for student grades 1 through 12 to extend the ticket for a second day within a seven day period.

(f) A Special Event Ticket which costs six (\$6.00) for adults and three for students in grades 1 through 12 is available for lectures, performances, and fee-based living history programs.

(g) Fees for Special Exhibitions, Programs, and Performances supported partially or totally by gate receipts will be based on the amount of receipts required to fund the costs of the exhibition, program, or performance calculated per attendee.

(h) Current members of the Tryon Palace Council of Friends are admitted free to daily tours and programs when they display their current membership card.

*Authority G.S. 121-4(8); 143B-10(j).*

**TITLE 11 – DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commissioner of Insurance intends to amend the rule cited as 11 NCAC 01 .0301.*

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

**Public Hearing:**

**Date:** *December 3, 2010*

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

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

**Reason for Proposed Action:** *To conform with G.S. 150B-4.*

**Procedure by which a person can object to the agency on a proposed rule:** *The Department of Insurance will accept written objections to this rule until the expiration of the comment period on January 3, 2011.*

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

**Comment period ends:** *January 3, 2011*

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

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

**Fiscal Impact:**

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

**CHAPTER 01 - DEPARTMENTAL RULES**

**SECTION .0300 - DECLARATORY RULINGS**

**11 NCAC 01 .0301 DECLARATORY RULINGS:  
GENERAL INFORMATION**

(a) Declaratory rulings pursuant to G.S. 150B-4 will be issued by the Department ~~only on~~ only:

- (1) as to the validity of a rule adopted by of the Department or Department; or  
(2) as to the applicability of a statute administered by the Department, or of a rule adopted by the Department, or of an order of issued by the Department to stipulated facts; a given set of facts.

(b) A declaratory ruling will not be issued on a matter requiring an evidentiary proceeding.

*Authority G.S. 58-2-40(1); 150B-4.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10A .1201.*

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

**Public Hearing:**

**Date:** December 7, 2010

**Time:** 7 p.m.

**Location:** Burke County Courthouse, 201 South Green Street, Morganton, NC 28655

**Date:** December 8, 2010

**Time:** 7 p.m.

**Location:** N.C. Wildlife Resources Commission, Auditorium 1751 Varsity Drive, Raleigh, NC 27606

**Date:** December 9, 2010

**Time:** 7 p.m.

**Location:** Craven County Courthouse, 302 Broad Street, New Bern, NC 28563

**Reason for Proposed Action:** Adoption of this rule will implement the provision of G.S. 113-306(f) which authorizes the Wildlife Commission to promulgate rules that will permit it to deal with a wildlife disease emergency in consultation with the Governor and other State agencies to quickly respond to such threat.

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

**Comments may be submitted to:** Kate Pipkin, Wildlife Resources Commission, 1722 Mail Service Center, Raleigh, NC 27699-1722, phone (919)707-0065

**Comment period ends:** January 3, 2011

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

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

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

**Fiscal Note posted at**

[http://www.osbm.state.nc.us/files/pdf\\_files/DENR09272010.pdf](http://www.osbm.state.nc.us/files/pdf_files/DENR09272010.pdf)

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER  
SAFETY**

**SUBCHAPTER 10A - WILDLIFE RESOURCES  
COMMISSION**

**15A NCAC 10A .1201 EMERGENCY POWERS**

(a) Upon a finding by the Wildlife Resources Commission that a wildlife disease threatens irreparable injury to wildlife or to the public, the Executive Director shall develop an emergency response plan in consultation with the Governor's office and the State Veterinarian. The plan may prescribe one or more of the following actions:

- (1) shorten or lengthen harvest seasons;
- (2) prohibit transport of wildlife resources or parts thereof;
- (3) prohibit possession of wildlife resources;
- (4) confiscate wildlife resources;
- (5) revoke licenses or permits;
- (6) expand or restrict daily bag limits, daily creel limits, and possession limits;
- (7) establish mandatory wildlife check stations;
- (8) restrict public access to game lands;
- (9) charge a laboratory processing fee to the public for volunteer samples;
- (10) prohibit supplemental feeding/baiting of wildlife;
- (11) prohibit any other activities that aid in the transmission or movement of the disease as determined by the best available science regarding the disease threat;
- (12) implement any other activities necessary to reduce infection opportunities; and
- (13) implement any other requirements necessary to assist in the detection and isolation of the disease.

(b) The Commission shall inform the public of the actions in the response plan through press releases, postings on the Wildlife Commission web site, letters sent to representatives of sportsmen's groups or others constituents likely to be directly affected, and by employee outreach.

(c) The emergency response plan shall not extend for more than 90 days after the Commission's determination that a disease outbreak has occurred, unless a temporary rule is adopted by the Commission in accordance with G.S. 150B-21.1 to replace the emergency powers contained therein. If a temporary rule is adopted prior to the expiration of the 90 days, the emergency powers invoked in the emergency response plan shall continue in effect until either a permanent rule to replace the temporary rule becomes effective or the temporary rule expires as provided by G.S. 150B-21.1(d).

*Authority G.S. 113-134; 113-306(f).*

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

**CHAPTER 36 – BOARD OF NURSING**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0809.*

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

**Public Hearing:**

**Date:** January 21, 2011

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

**Location:** NC Board of Nursing, 4516 Lake Boone Trail, Raleigh, NC 27607

**Reason for Proposed Action:** *The Board of Nursing and the Medical Board received a request from practicing physicians regarding a discrepancy between the NP and PA prescribing authority for Schedule III drugs. The change in the rule will bring the NP rule in compliance with the PA rules for continuity of patient care.*

**Procedure by which a person can object to the agency on a proposed rule:** *Persons may submit objections to this rule by contacting Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602; fax (919) 781-9461; email jeans@ncbon.com.*

**Comments may be submitted to:** *Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602; phone (919) 782-3211, Ext. 252; fax (919) 781-9461; email jeans@ncbon.com*

**Comment period ends:** January 21, 2011

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

**Fiscal Impact:**

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

**SECTION .0800 - APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS**

**21 NCAC 36 .0809 PRESCRIBING AUTHORITY**

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall

- be included in the collaborative practice agreement as outlined in Rule .0810(b) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
- (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
  - (B) dosage units for schedules II, IIN, III, and IIIN are limited to a 30 day supply; and
  - (C) ~~the prescription or order for schedules II, IIN, III, and IIIN may not be refilled.~~ the supervising physician(s) must possess the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.
- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
- (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
  - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (4) Refills may be issued for a period not to exceed one year. ~~year except for schedules II, IIN, III, and IIIN, which may not be refilled.~~
- (5) Each prescription shall be noted on the patient's chart and include the following information:
- (A) medication and dosage;
  - (B) amount prescribed;
  - (C) directions for use;
  - (D) number of refills; and
  - (E) signature of nurse practitioner.
- (6) Prescription Format:
- (A) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval number;
  - (B) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled

substance is prescribed as defined in Subparagraph (b)(2) of this Rule.

- (c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 36 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.

*Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(b)(14).*

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## **CHAPTER 68 - SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Substance Abuse Professional Practice Board intends to adopt the rules cited as 21 NCAC 68 .0225-.0226 and amend the rules cited as 21 NCAC 68 .0101, .0204, .0208, .0214, .0217, .0601-.0606, .0610-.0611, .0615, .0620.*

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

**Public Hearing:**

**Date:** *November 23, 2010*

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

**Location:** *11 Glenwood Avenue, Suite A, Raleigh, NC 27603*

**Reason for Proposed Action:** *Enactment of S.L. 2005-431 and S.L. 2008-130. Changes in policies by the IC & RC/AODA, Inc. Revised rules provide more detailed information and descriptions.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person may submit comments to the Board either orally or in writing at the Public Hearing. All other written comments must be received by the Board no later than 5:00 p.m. January 3, 2011. Written comments should be mailed to: Ms. Anna Misenheimer, NC Substance Abuse Professional Practice Board, P.O. Box 10126, Raleigh, NC 27605.*

**Comments may be submitted to:** *Anna Misenheimer, Executive Director, 11 Glenwood Avenue, Suite A, Raleigh, NC 27603; email anna@recanc.com*

**Comment period ends:** *January 3, 2011*

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

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

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

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

**Fiscal Note posted at**

[http://www.osbm.state.nc.us/files/files\\_pdf/Board09292010.pdf](http://www.osbm.state.nc.us/files/files_pdf/Board09292010.pdf)

## SECTION .0100 - GENERAL

### 21 NCAC 68 .0101 DEFINITIONS

As used in the General Statutes or this Chapter, the following terms have the following meaning:

- (1) "Applicant" means a person who submits documentation seeking Board status for registration or certification.
- (2) "Application packet" means a set of instructions and forms required by the Board for registration.
- (3) "Approved Supervisor" means a supervisor as set out in G.S. 90-113.31. This is a person who fulfills or is in the process of fulfilling the requirements for this Board designation pursuant to Rule .0211 of this Chapter by completing its academic, didactic and experiential requirements.
- (4) "Assessment" means identifying and evaluating an individual's strengths, weaknesses, problems and needs for the development of a treatment or service plan for alcohol, tobacco and drug abuse.
- (5) "Clinical Supervision" means clinical oversight required for all credentials with a minimum of 50 percent clinical supervision that shall accrue in person, face-to-face, while in the proximity of the same room whereas the balance of this requirement may be fulfilled electronically, face-to-face, if performed in real time.
- ~~(5)~~(6) "Clinical Supervision Specific Education" means training that directly covers the aspects of clinical supervision of a substance abuse professional or any of the 12 core functions in their clinical application.
- ~~(7)~~ "Client" means an individual who is in receipt of substance abuse counseling.
- ~~(6)~~(8) "Complainant" means a person who has filed a complaint pursuant to these Rules.
- ~~(7)~~(9) "Consultation" means a meeting for discussion, decision-making and planning with other service providers for the purpose of providing substance abuse services.
- ~~(8)~~(10) "Crisis" means a decisive, crucial event either directly or indirectly related to alcohol or drug use, in the course of treatment that threatens to compromise or destroy the rehabilitation effort.
- ~~(9)~~(11) "Deemed Status Group" means those persons who are credentialed as a clinical addictions specialist because of their membership in a deemed status discipline.
- ~~(40)~~(12) "Education" means a service which is designed to inform and teach various groups; including clients, families, schools, businesses, churches, industries, civic and other community groups about the nature of substance abuse disorders and about available community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life's problems.
- ~~(44)~~(13) "Full Time" means 2,000 hours per year.
- ~~(42)~~(14) "General Professional Skill Building" means education provided to enhance general skills of a substance abuse professional.
- (15) "Hearing panel" means a body composed of members of a committee designated by the chairperson of the committee to conduct an informal hearing to determine that the applicant meets the standards required to be awarded or maintained for a credential.
- ~~(43)~~(16) "Impairment" means a mental illness, substance abuse or chemical dependency, physical illness, or aging problem.
- ~~(44)~~(17) "Letter of Reference" means a letter that recommends a person for certification.
- ~~(45)~~(18) "Membership In Good Standing" means a member's certification is not in a state of revocation, lapse, or suspension. However, an individual whose certification is suspended and the suspension is stayed is a member in good standing during the period of the stay.
- ~~(46)~~(19) "Passing score" means the score set by the entity administering the exam.
- (20) "Person served" means an individual who is not a client but is in receipt of substance abuse prevention counseling.
- (21) "Personal service" means the actual delivery of a document into the hands of the person to whom it is intended.
- ~~(47)~~(22) "President" means the President of the Board.
- ~~(48)~~(23) "Prevention Consultation" means a service provided to other mental health, human service, and community planning/development organizations or to individual practitioners in other organizations to assist in the development of insights and skills of the practitioner necessary for prevention.



- ~~(19)~~(24) "Prevention performance domains" means areas of professional activities to include:
- (a) planning and evaluations;
  - (b) education and skill development;
  - (c) community organization;
  - (d) public and organizational policy; and
  - (e) professional growth and responsibility.
- ~~(20)~~(25) "Referral" means identifying the needs of an individual that cannot be met by the counselor or agency and assisting the individual in utilizing the support systems and community resources available.
- ~~(21)~~(26) "Rehabilitation" means re-establishing the functioning needed for professional competency.
- ~~(22)~~(27) "Reinstatement" means an action where the Board restores certification or registration to an applicant after the applicant completes the requirements imposed by the Board.
- ~~(23)~~(28) "Relapse" means the return to the pattern of substance abuse as well as the process during which indicators appear prior to the person's resumption of substance abuse or a re-appearance or exacerbation of physical, psychological or emotional symptoms of impairment.
- ~~(24)~~(29) "Renewal" means an action by the Board granting a substance abuse professional a consecutive certification or registration based upon the completion of requirements for renewal as prescribed by the Board.
- ~~(25)~~(30) "Revival" means an action by the Board granting a substance abuse professional a certification or registration following a lapse of certification or registration wherein the professional must also meet the requirements for renewal as prescribed by the Board.
- ~~(26)~~(31) "Reprimand" means a written warning from the Board to a person making application for certification by the Board or certified by the Board.
- ~~(27)~~(32) "Respondent" means a person who is making application for certification by the Board or is certified by the Board against whom a complaint has been filed.
- ~~(28)~~(33) "Sexual activity" means:
- (a) Contact between the penis and the vulva or the penis and the anus;
  - (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or
  - (c) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

- ~~(34)~~ "Sexual Contact" means the intentional touching, either directly or indirectly, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- ~~(34)~~ "Sexual contact" means any of the following actions:
- (a) Vaginal intercourse, cunnilingus, fellatio, or anal intercourse, if initiated, agreed to, or not resisted by the substance abuse professional.
  - (b) Kissing or the intentional touching of the other's lips, genital area, groin, inner thigh, buttocks, breasts, or any other body parts, as well as the clothing covering any of these body parts for the purpose of sexual stimulation or gratification of either the substance abuse professional or the client if initiated, agreed to, or not resisted by the substance abuse professional.
- ~~(30)~~(35) "Substance Abuse Counseling Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the 12 core functions (Rule .0204 of this Chapter) as documented by a job description and supervisors evaluation.
- ~~(31)~~(36) "Substance Abuse Prevention Consultant Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the prevention domains referenced by Rule .0206 of this Chapter and as documented by a job description and supervisor's evaluation.
- ~~(32)~~(37) "Substance Abuse Specific" means education focused upon alcohol and other drugs and the substance abusing population and is provided for a substance abuse professional by one whose education and experience is in the field of alcohol and other drugs.
- ~~(33)~~(38) "Supervised Practice" means supervision of the applicant in the knowledge and skills related to substance abuse professionals.
- ~~(34)~~(39) "Suspension" means a loss of certification or the privilege of making application for certification.

*Authority G.S. 90-113.30; 90-113.33; 90-113.40; 90-113.41; 90-113.41A.*

## SECTION .0200 - CERTIFICATION

**21 NCAC 68 .0204 SUPERVISED PRACTICUM FOR CERTIFIED SUBSTANCE ABUSE COUNSELOR AND LICENSED CLINICAL ADDICTIONS SPECIALIST**

(a) All applicants for the Certified Substance Abuse Counselor or the Licensed Clinical Addictions Specialist credential shall complete a 300 hour supervised practicum supervised by an applicant supervisor and the practicum shall cover all ~~twelve~~ core functions of Counseling. Verification of at least ten hours of this supervised practicum shall be made in each of the core functions of this Rule. These 120 hours of the supervised practicum shall be divided into one hour of supervision for every 10 hours of practice in each one of the 12 core functions. These core functions are:

- (1) Screening to determine a client is appropriate and eligible for admission to a particular program;
- (2) Intake to provide the administrative and initial assessment procedures for admission to a program;
- (3) Orientation of the client to the general nature and goals of the program, rules governing client conduct, notice of the hours during which services are available, treatment costs to be borne by the client, if any, and client's rights;
- (4) An assessment to identify and evaluate for the purpose of the development of a treatment plan an individual's strengths, weaknesses, problems and needs;
- (5) The treatment planning process whereby the counselor and client identify and rank problems needing resolution, establish agreed upon immediate and long term goals, and decide on a treatment process and the resources to be utilized;
- (6) Counseling to assist individuals, families, or groups in achieving ~~objectives~~ goals through exploration of a problem and its ramifications, examination of attitudes and feelings, consideration of alternative solutions, and making decisions;
- (7) Case management activities which bring services, agencies, resources or people together within a planned framework of action toward the achievement of established goals;
- (8) Providing those crisis intervention services which respond to an alcohol or other drug abuser's needs during acute emotional and physical distress;
- (9) Provision of client education information to individuals and groups describing alcohol and other drug abuse and the available services and resources;
- (10) Referring the client whose needs cannot be met by the counselor or agency to other support systems and community resources available;
- (11) Charting the results of the assessment and treatment plan while writing reports, progress

notes, discharge summaries and other client-related data necessary for the compilation of necessary reports and recordkeeping; and  
(12) Consultation with substance abuse and other professionals to assure comprehensive, quality care for the client.

(b) The remaining 180 hours of this supervised practicum shall be in the core function areas.

(c) Upon completion of the 300 hours, the supervisor shall complete an evaluation form reviewing the Substance Abuse Counselor's or Clinical Addictions Specialist's professional development and provide it to the Board, documenting the 300 hours of practice, including 30 hours of supervision on a form provided by the Board.

(d) Pursuant to G.S. 90-113.40(a)(7), this supervised practicum may be completed as part of an academic course of study in a regionally accredited college or university or it may be developed in the work setting as long as it is supervised by an applicant supervisor.

(e) Pursuant to G.S. 90-113.40(c)(1), the 300 hours of supervised practical training provided by an applicant supervisor shall be completed as part of the required two years postgraduate supervised substance abuse counseling experience.

*Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.39; 90-113.40.*

**21 NCAC 68 .0208 CONTINUING EDUCATION REQUIRED FOR COUNSELOR, CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL AND PREVENTION CONSULTANT RE-CREDENTIALING**

(a) In order to be re-credentialed, a substance abuse professional shall:

- (1) Comply with the following:
  - (A) No more than 25 percent may be in-service education, received within your organization by staff of the same employment.
  - (B) No more than 25 percent of workshop presentation with one hour of presentation translating to one hour of education. Workshop presentation shall be a part of an event pre-approved by the Board as set out in these Rules.
  - (C) An applicant shall include documentation of each event submitted.
  - (D) All applicants shall include three hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education, three hours of professional ethics training and education and three hours of ~~nicotine dependence training and education for each re-credentialing~~ to be selected from the list appearing in Rule 21 NCAC 68

- .0205(2)(e)(i) through ~~(v)~~ (v) for each re-credentialing.
- (E) No more than 50 percent self-study, self-study, approved by the Board as set out in these Rules.
- (2) Submit the following:
- (A) A completed application form with continuing education documented;
- (B) A non-refundable one hundred twenty-five dollar (\$125.00) recertification fee; and
- (C) A signed and dated statement that the applicant ~~will~~ shall follow the substance abuse professional's code of conduct.

(b) Each credentialed Counselor, Criminal Justice Addictions Professional and Prevention Consultant shall receive 60 hours of Board approved, as set out in these Rules, education during the current re-credentialing period that shall be documented. No more than 25 percent may be in-service education. A minimum of 30 hours shall be substance abuse specific (SAS). The education may include a combination of hours including attending and conducting workshops.

(c) To be re-credentialed, a Criminal Justice Addictions Professional and a Certified Substance Abuse Counselor shall submit a post-certification supervision contract signed by a Practice Supervisor and supervisee. The supervision required by this Rule shall be provided by the Practice Supervisor and set forth as follows:

- (1) The first 4,000 hours of practice supervision shall be performed at the rate of one hour for every 40 hours of practice;
- (2) The second 4,000 hours of practice supervision shall be performed at the rate of one hour for every 80 hours of practice;
- (3) All subsequent practice supervision shall be performed at the rate of one hour for every 160 hours of practice.

*Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.38; 90-113.39.*

#### **21 NCAC 68 .0214 UNIVERSITY SUBSTANCE ABUSE SPECIALTY CURRICULA**

(a) The Standards Committee shall be notified by a school of its intent to provide a "Substance Abuse Specialty" curricula.

(b) Upon notification of the school's intent to provide a substance abuse specialty curriculum, the Board shall inform the school that the following information shall be needed from the applicant school:

- (1) Curricula description including number of hours of substance abuse specific credits;
- (2) Information as to how the educational requirements for substance abuse specialty shall be met within the curricula pursuant to G.S. 90-113.41A(a)(2) a.-k.;
- (3) The names and resume of any faculty who shall be teaching the substance abuse curricula;

- (4) The name of the school in which the substance abuse curricula shall be housed and organizational contact information; and
- (5) Specific guidelines and information on the field experience that shall be required of students including current substance abuse specific field placements and supervision.

(c) The Standards Committee shall review curricula to determine if the proposal meets educational, hour, substance abuse specific and supervised experience qualifications.

(d) The Curricula Review Subcommittee of the Standards Committee shall present recommendations to the Board.

(e) The Board shall notify the school of the status of its request and any recommendation.

(f) The curricula shall be submitted for review every three years. Application for extension of the curricula shall be made 90 days prior to the current expiration date.

(g) Individuals applying who have completed a curriculum from a school meeting the criteria set forth in Subparagraphs (b)(1) through (b)(5) shall submit an official masters or more advanced degree transcript from the university or college.

*Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.*

#### **21 NCAC 68 .0217 SUPERVISED PRACTICUM FOR CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL CERTIFICATION**

(a) All applicants for the Criminal Justice Addictions Professional Certification shall complete 300 hours supervised practicum. The applicant supervisor shall:

- (1) Train the Criminal Justice Addictions Professional and cover all criminal justice performance domains as set out in G.S. ~~90-113.31(B)(6);~~ 90-113B(6);
- (2) Submit verification that at least 10 hours of supervised practice was provided in each of the performance domains; and
- (3) Provide verification of at least one hour of supervision for every 10 hours of practice in each one of the performance domains on a supervisor evaluation form provided by the Board.

(b) The remaining hours of the supervised practicum shall be in any of the performance domains.

(c) Upon completion of 300 hours, the applicant supervisor shall:

- (1) Complete an evaluation form reviewing Criminal Justice Addictions Professional's development as a professional;
- (2) Document the 300 hours of practice to include 30 hours of supervision by the applicant supervisor; and
- (3) Submit this information to the Board on a form provided by the Board.

(d) The supervised practicum may be completed as part of an academic course of study in a regionally accredited college or university or it may be developed in the work setting as long as it is supervised by an applicant supervisor. The supervised practicum shall take place within a criminal justice addiction

professional setting to include a workplace for law enforcement, the judiciary, or corrections.

*Authority G.S. 90-113.31A; 90-113.31B(6); 90-113.40; 90-113.40B.*

**21 NCAC 68 .0225       SUSPENSION OF AUTHORITY  
AND ESCROW OF FUNDS**

The Board shall file the annual reports set forth in G.S. 93B-2 no later than October 31 of each year. In the event the Board fails to file the reports as required by G.S. 93B-2 and the Board's authority to expend any funds is suspended until such time as the Board files the required reports, the Board shall deposit any fees or funds received during the period of suspension into an escrow account established by the Board solely for this purpose.

*Authority G.S. 90-113.30; 90-113.33; 93B-2.*

**21 NCAC 68. 0226       ARMED SERVICES  
CREDENTIAL**

Upon receipt of a written request by or on behalf of a credentialed substance abuse professional who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249 authorizes an extension of time to file a tax return, the Board shall postpone renewal fees, renewal application deadlines, continuing education requirements and any other requirements or conditions related to the maintenance of the credential issued by the Board or to the renewal thereof for the same period of time as the extended period of time to file a tax return that is granted pursuant to G.S. 93B-15.

*Authority G.S. 90-113.30; 90-113.33; 93B-15.*

**SECTION .0600 - GROUNDS FOR DISCIPLINE AND  
DISCIPLINARY PROCEDURES**

**21 NCAC 68 .0601       GROUNDS FOR  
PROFESSIONAL DISCIPLINE**

Violation of these principles shall be deemed The following are grounds for discipline:

- (1) Fraud or Misrepresentation in Procuring or Maintaining ~~Certification~~ a credential.
  - (a) ~~Acts such~~ Acting as to practice, attempt to practice, or to supervise others while representing oneself to be a ~~certified~~ credentialed substance abuse professional without being duly ~~certified; credentialed;~~
  - (b) ~~False representation of~~ Falsely representing material fact to procure or maintain ~~certification, a credential,~~ whether by word or conduct;
  - (c) ~~Concealment of~~ Concealing requested information contained in the application;
  - (d) Attempting to file or filing any false or forged diploma, certificate,

affidavit, transcript, identification or qualification;

- (e) Submitting material which is not the work product of the applicant;
  - (f) Knowingly assisting another to procure or maintain ~~certification his~~ or her credential on the basis of fraud; or
  - (g) ~~Aid, abet, or assist~~ Assisting any ~~uncertified uncredentialed~~ person to practice as a ~~certified~~ credentialed substance abuse professional in violation of this code.
- (2) Fraud or Misrepresentation to the Public.
    - (a) Knowingly make misleading, deceptive, false, or fraudulent misrepresentations in the practice of the profession; or
    - (b) Advertising or holding oneself out to the public to provide professional services for which he or she is not credentialed; or
    - ~~(b)(c)~~ Pursue ~~Pursuing~~ an illegal practice as set forth in G.S. 90-113.43.
  - (3) Knowingly make misleading, deceptive, false, or fraudulent representations to the Board.
  - ~~(3)(4)~~ Exploitation of Client or Recipient Relationships, a relationship with client or person served.
    - (a) Entering into a professional relationship in violation of Rule .0509 of this Chapter;
    - (b) Participating in or soliciting ~~sexual activity or sexual contact~~ exploitation with a current or former client or client of one's agency in violation of Rule .0509 of this Chapter;
    - (c) Entering into personal financial arrangements with a client or person served recipient which make an improper use of the client or recipient, in violation of Rule .0511 or any other rule.
  - ~~(4)(5)~~ Illegal Acts of or Practices.
    - (a) Violation of Federal or State confidentiality statutes;
    - (b) Conviction ~~of~~ for violating any controlled substances law, ~~until proof of rehabilitation is established to the Board's satisfaction;~~ law or any driving while impaired law; or
    - (c) Being ~~any~~ an accessory to or participating in dishonesty, fraud, misrepresentation or any other illegal act involving a client or ~~recipient.~~ person served.
  - ~~(5)(6)~~ Professional Incompetency or Failure to Meet Standards of Practice.

- (a) Failure to follow the standards of skill and competence possessed and applied by professional peers certified in this State acting in the same or similar circumstances;
- (b) Practicing outside his or her scope of practice;
- ~~(b)(c)~~ Use of drugs or alcoholic beverages including alcohol to the extent that professional competency is ~~affected, until proof of rehabilitation can be established;~~ affected or that the professional suffers impairment;
- ~~(c)(d)~~ Refusal to seek treatment for chemical dependency or mental health problems which impair professional performance; or
- ~~(d)(e)~~ Engaging in conduct that an ordinary, reasonable, and prudent person could foresee would result in harm or injury to the public.
- ~~(6)(7)~~ The following are prohibited governing professional relationships: In professional relationships, the following are prohibited:
  - (a) ~~Offering~~ Knowingly offering professional services to a client ~~or other service recipient~~ in a professional relationship with another substance abuse professional except with the knowledge of the other professional or after the termination of the ~~client or recipient's~~ client's relationship ~~with~~ by the other professional;
  - (b) Sending or receiving any ~~commission or rebate or any other form of~~ remuneration for referral of clients or ~~recipients~~ persons served for professional substance abuse services from the professional to whom the referral was made;
  - (c) Accepting from or charging the client a fee for a ~~referral only when no other services are provided;~~ referral to another substance abuse professional;
  - (d) Accepting or charging a fee when no substance abuse professional services are actually provided; except actual costs for copies and administrative services may be recovered; or
  - ~~(e)~~ Accepting a gratuity or any other gift other than a one time gift having a value of less than twenty five dollars (\$25.00) for professional work with a person who is receiving the services through the professional's employer; or
  - ~~(f)(e)~~ Failing to cooperate with the investigations and proceedings of any

professional ethics committee unless the failure is within the exercise of the professional's constitutional rights.

*Authority G.S. 90-113.33; 90-113.37; 90-113.39; 90-113.40; 90-113.42; 90-113.43; 90-113.44; 90-113.45; 90-338.*

## **21 NCAC 68 .0602 COMPLAINT PROCEDURES**

(a) Initiation. Any individual with personal knowledge that any person has violated the Code of Ethics, any other rules of the Board, or G.S. 90, Article 5C; 5C may file a complaint against the substance abuse professional by submitting a written complaint.

(b) Form. The complaint shall be in writing, stating the nature of the alleged offense and signed by the complainant. The complaint shall include:

- (1) The name, address, and telephone number of the complainant;
- (2) ~~The name, address, and telephone number~~ name and address of the person against whom the complaint is made;
- (3) A statement of the facts ~~which that clearly and accurately~~ describes the allegations against the person.

(c) The complaint shall be investigated as set out in Rule .0603 of this Section.

(d) Following an investigation of the complaint, the Ethics Chairperson shall try to reach a settlement through informal procedures.

~~(d)(e)~~ Once the Ethics Committee concludes there is a sufficient basis to schedule a disciplinary hearing before the Board, the Committee Chairperson shall notify the person against whom the complaint is made. The notice to the respondent shall include the following:

- (1) State the section(s) of the Code of Ethics, other rules of the Board, or G.S. 90, Article 5C which the complaint alleges has been violated;
- ~~(2) A copy of the complaint;~~
- ~~(3)(2)~~ Direct that the respondent reply in writing and by certified mail within ~~30~~ 15 days of receipt of this notice;
- ~~(4)(3)~~ Inform the respondent that failure to respond in writing within ~~30~~ 15 days may result in revocation of certification-credential.

~~(e)(f)~~ Notice Whenever practicable, notice shall be given ~~personally by personal service~~ or by certified ~~mail.~~ mail at the last known address of the Respondent. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(g) If ~~giving of~~ notice cannot be ~~accomplished~~ given either ~~personally by personal service~~ or by certified mail, a notice that a complaint has been brought against the respondent shall then be given by publication. A party that cannot with due diligence be served by personal delivery or certified mail may be given notice to respond to a complaint by publication. Service of notice by publication shall consist of publishing a notice by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance

with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county of respondent's last address provided to the Board by the respondent. There shall be mailed to the party at or immediately prior to the first publication a copy of the notice to respond by publication to the respondent's last known address. Upon completion of such service there shall be filed with the Board by the Ethics Committee Chairperson an affidavit showing the publication and mailing substantially in accordance with the requirement of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served. The notice shall include a statement by the Board that a complaint has been made against the respondent that is scheduled to be heard by the Board within 90 days. The notice shall inform respondent that respondent shall be given 30 days from the date of the last date of publication in which to respond to the service by publication for the purpose of notifying the Board of respondent's whereabouts. Response shall be made in writing to the Board at the address provided by the Board in its notice. If respondent provides the Board with information whereby respondent can be served by the deadline specific in the notice, the Board shall provide notice either personally or by certified mail as provided in Paragraph (d) of this Rule. Failure of respondent notified by publication of a complaint brought by the Board shall be treated as a failure of respondent to reply to the charges.

~~(f)(h)~~ Failure of the respondent to reply to the charges, including each specific allegation, may be considered an admission of the facts contained in the allegation(s).

*Authority G.S. 90-113.30; 90-113.33; 90-113.44; 113.45.*

## **21 NCAC 68 .0603 INVESTIGATION OF COMPLAINT**

(a) The Ethics Committee Chairperson, in consultation with the ~~President Executive Director or his or her designee~~ and legal counsel, shall investigate the allegations in the complaint. The Chairperson may appoint any person(s) or name a subcommittee to serve as the investigating entity ~~and~~ to prepare an investigative report.

(b) The investigating entity may contact the complainant and person against whom the complaint is made.

(c) Upon completion of the investigation, the Ethics Committee Chairperson in consultation with the investigating entity may determine that:

- (1) The complaint is without merit. The Chairperson shall notify the complainant that the complaint is ~~dismissed~~. dismissed and may notify the respondent of the dismissal; The Chairperson shall also notify the complainant of the procedure for appeal of the dismissal.
- (2) Upon completion of an investigation wherein the complaint is not dismissed, ~~the investigating entity shall make a written report to the Ethics Committee. Committee Chairperson may:~~
  - (A) Offer an informal resolution;

- (B) Schedule a meeting with the Respondent;
- (C) Refer the report to the Ethics Committee or its Hearing Panel or
- (D) Schedule a hearing before the Board; or
- (E) The Chairperson may take a voluntary dismissal of the case where the respondent relinquishes his or her credential for an agreed upon period of time.

(d) ~~Those The~~ Ethics Committee members or its subcommittee who serve on the Board shall review ~~the a~~ report referred by the Ethics Chairperson and may take any of the following actions:

- (1) ~~Schedule a meeting with the respondent whereby the dispute may be settled through informal procedures; Dismiss the complaint;~~
- (2) ~~Schedule a disciplinary hearing before the Board; Remand the matter to the investigating entity in order to obtain additional evidence sufficient upon which to base a decision;~~
- (3) ~~Dismiss the complaint; and Make a written offer of informal resolution;~~
- (4) Schedule a meeting with the respondent whereby the dispute may be settled through informal procedures; or
- ~~(4)(5) Remand the matter to the investigating entity in order to obtain additional evidence sufficient upon which to base a decision. Schedule a disciplinary hearing before the Board.~~

*Authority G.S. 90-113.33; 90-113.34; 90-113.44.*

## **21 NCAC 68 .0604 HEARING BEFORE BOARD**

(a) A hearing shall be initiated:

- (1) At the call of the Ethics Chairperson, Ethics Committee or Ethics Hearing Panel in the case of a complaint against a ~~certified-credentialed~~ professional; or
- (2) By any person pursuant to G.S. 150B, Article 3A on appeal of an agency decision.

(b) The hearing shall be conducted ~~in a fair and impartial manner~~, pursuant to G.S. 150B, Article 3A.

*Authority G.S. 90-113.30; 90-113.33; 90-113.44; 90-113.45.*

## **21 NCAC 68 .0605 METHOD OF DISCIPLINE**

~~(a) Certification may be suspended, revoked or denied by a finding that grounds for disciplinary action as set out in G.S. 90-113.44 exist.~~

(b) The Board may impose the following disciplinary sanctions:

- ~~(1) Revocation of certification;~~
- ~~(2) Suspension of certification until further order of the Board or for a specified period of time;~~
- ~~(3) Reprimand;~~
- ~~(4) Denial of certification; or~~
- ~~(5) Other sanctions which may be deemed appropriate by the Board, including probation~~

~~in which specific terms and conditions may be imposed such as psychological counseling, testing, or supervision.~~

(a) In the course of the disciplinary investigation or hearing the Board may:

- (1) Deny a credential;
- (2) Revoke a credential;
- (3) Suspend a credential until further order of the Board or for a specified period of time;
- (4) Admonish, reprimand, or censure the Respondent; or
- (5) Take other actions not to be considered a disciplinary action, including a letter of caution or letter of warning with the consent of the Respondent.

(b) Disciplinary or other actions by the Board with the Respondent's consent may be stayed for an additional period of time while the Respondent satisfies all of the conditions of the consent order based on the Respondent's failure to complete the order for reasons outside the Respondent's control.

*Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.37; 90-113.43; 90-113.44; 90-113.45.*

#### **21 NCAC 68 .0606 EFFECT OF ACTIONS OF COURT OR OF OTHER PROFESSIONAL GROUPS**

(a) ~~If a person certified~~ credentialed or applying for ~~certification by a credential from~~ the Board has been disciplined by another professional organization or convicted of a felony or a ~~misdemeanor~~ misdemeanor, ~~and that discipline or conviction relates to his qualifications or functions as a substance abuse professional,~~ the Ethics Committee or the Board may take this prior record into consideration when imposing disciplinary sanctions.

(b) When such prior discipline ~~or conviction~~ is discovered, it shall be referred to the Ethics Committee and shall be treated by the Ethics Committee in the same manner as a complaint.

(c) Such prior discipline or conviction as described in Paragraph (a) of this Rule shall be presumed to be correct and appropriate. In order to overcome this presumption, the respondent ~~must shall~~ prove to the Committee's or the Board's satisfaction at least one of the following:

- (1) The process was so flawed that the finding of the court, organization or board is without basis; or
- (2) ~~The~~ Following an investigation by the Board, the disciplinary action by the court, organization or board does not bear a reasonable relation to the conduct complained of resulting in undue punishment.

(d) ~~Registrants and certified professionals shall notify the Board within 30 days from the date of any conviction or finding of guilt, or pleading of nolo contendere for all criminal convictions. This reporting shall include DWI convictions but exclude all other traffic convictions pursuant to G.S. 20-~~

(e) ~~Failure to report these criminal convictions shall be considered a violation of the Ethical Principles of Conduct.~~

*Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.43; 90-113.44; 90-113.45.*

#### **21 NCAC 68 .0610 AWARDING THE CREDENTIAL FOLLOWING DENIAL**

(a) Upon a showing that there are circumstances that could establish a basis for reinstatement ~~or certification or otherwise awarding a credential~~ following its denial, ~~it shall be within the discretion of the Board to~~ may grant such permission.

(b) A request for reinstatement ~~or certification or otherwise awarding the credential~~ following its denial shall be initiated by the respondent.

(c) A letter of application for reinstatement ~~or certification or otherwise awarding the credential~~ following its denial shall present facts which, if established, shall be sufficient to enable the Board to determine that the basis for the sanction no longer exists.

(d) To determine that ~~the basis for the sanction no longer exists~~ there is a basis ~~reinstating or awarding a credential~~, the Board may consider:

- (1) The nature of the ~~offense~~, offense;
- (2) The severity of the ~~offense~~, offense;
- (3) Any resulting harm or injury to the public and its ~~extent~~, extent;
- (4) The length of time since the punishment was ~~imposed~~, imposed;
- (5) Restitution ~~made~~, and made; and
- (6) Any other factor the Board considers relevant.

*Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.39; 90-113.40; 90-113.44; 90-113.45.*

#### **21 NCAC 68 .0611 PROOF OF REHABILITATION**

(a) As used in G.S. 90-113.44 and elsewhere, rehabilitation ~~must shall~~ be sustained and continuous for at least six months.

(b) ~~Upon consideration of the evidence evaluated as set forth in Paragraph (c) of this Rule, the required rehabilitation may be extended pursuant to the treatment recommendations as approved by the Board.~~

(c) Evidence for consideration shall include:

- (1) Documentation of treatment history including all assessments, evaluations, treatment, counseling, and group experiences;
- (2) Complete criminal record;
- (3) A comprehensive biopsychosocial and medical assessment that includes evidence of physical, mental, psychological and social functioning;
- (4) Medical diagnosis and treatment history and functioning prognosis; ~~and~~
- (5) ~~History of relapse.~~ Relapse; and
- (6) Whether or not the respondent cooperated with the Board's investigation, to include self-reporting the violation.

*Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.*

#### **21 NCAC 68 .0615 INFORMAL PROCEEDINGS**

(a) In addition to formal hearings pursuant to G.S. 90-113.33 and G.S. 90-113.34, the Board may conduct informal

proceedings in order to settle ~~on an informal basis~~ certain matters of dispute. A substance abuse professional practicing pursuant to a ~~certification~~ credential or other authority granted by the Board may be invited to attend a meeting with the Board or a committee of the Board on an informal basis to discuss matters as the Board may advise in its communication to the ~~person inviting him or her to attend such meeting, person.~~ No public record of such proceeding shall be made nor shall any individual be placed under oath to give testimony. ~~Matters~~ Information discussed by a person ~~appearing informally in an informal hearing~~ before the Board ~~may, however, may be used against such person used~~ in a formal hearing against the Respondent if a formal hearing is subsequently initiated.

~~(e)(b)~~ Attendance at such an informal meeting is not required and is at the discretion of the person so invited. A person invited to attend an informal meeting shall be entitled to have counsel ~~present at such meeting, present.~~

~~(b)(c)~~ As a result of such informal meeting, the Board may ~~recommend that actions be taken by a person, may offer a person the opportunity to enter into a consent order, may institute a formal public hearing concerning a person, or may take other public or non-public action as the Board may deem appropriate in each case, recommend:~~

- (1) Actions be taken by a person;
- (2) The person be offered the opportunity to enter into a consent order;
- (3) That it institute a formal public hearing concerning a person; or
- (4) That it take other public or non-public action as the Board may deem appropriate in each case.

Authority G.S. 150B-22; 150B-38(h).

## **21 NCAC 68 .0620 PUBLICATION OF ETHICS SANCTIONS**

~~(a) All ethics complaint sanctions may be reported by the Board in its newsletter.~~

~~(b)~~ Sanctions of censure, suspension or revocation of certification a credential shall be published by the Board as soon as it is practicable.

Authority G.S. 90-113.30; 90-113.33; 90-113.42; 90-113.43; 90-113.44.

## **TITLE 30 – STATE ETHICS COMMISSION**

*Notice* is hereby given in accordance with G.S. 120C-101 that the State Ethics Commission intends to adopt the rules cited as 30 NCAC 01 .0101-.0105; 02 .0101-.0103; 03 (Reserved); 04 (Reserved); 05A .0101-.0107, 05B .0101-.0104; 06 (Reserved); 07A .0101; 07B .0101-.0103, 07C .0101; 08 (Reserved); 09A .0101-.0102, 09B .0101-.0103; 10A (Reserved), 10B (Reserved), 10C .0101-.0103, .0200 (Reserved), 10C .0301.

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

### **Public Hearing:**

**Date:** November 19, 2010

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

**Location:** Office of Administrative Hearings, Rules Review Commission Room, 1711 New Hope Church Road, Raleigh, NC

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

**30 NCAC 01 .0101-.0105** – to adopt general procedures governing the Commission

**30 NCAC 02 .0101-.0103** – to adopt criteria and procedures for designating covered (non-advisory) boards

**30 NCAC 05A .0101-.0107** – to adopt filing procedures for Statements of Economic Interest

**30 NCAC 05B .0101-.0104** – to adopt rules pertaining to the contents of Statements of Economic Interest

**30 NCAC 07A .0101** – to adopt a definition of "interested person"

**30 NCAC 07B .0101-.0103** – to adopt rules governing the acceptance of food and beverage for immediate consumption under the gift ban exception of G.S. 138A-32(e)(1)

**30 NCAC 07C .0101** – to adopt criteria for the educational meeting gift ban exception in G.S. 138A-32(e)(3)(i)

**30 NCAC 09A .0101-.0102** – to adopt procedures governing the filing of complaints under G.S. 138A-12

**30 NCAC 09B .0101-.0103** – to adopt complaint inquiry and probable cause finding procedures

**30 NCAC 10C .0101** – to adopt a rule on calculating the value of reportable expenditures

**30 NCAC 10C .0102-.0103** – to adopt rules governing the date a reportable expenditure is made, for the benefit of, at the request of, or on behalf of a designated individual or immediate family member and when those reportable expenditures must be reported

**30 NCAC 10C .0301** – to adopt criteria for when a lobbyist's estimate is "reasonably allocated"

**Comments may be submitted to:** Mary Shuping, 1324 Mail Service Center, Raleigh, NC 27699-1324, phone (919)715-2071, fax (919)715-1644, email mary.shuping@doa.nc.gov

The State Ethics Commission is exempt from Article 2A of Chapter 150B of the General Statutes (see G.S. 150B-1(d)(16)) for rules adopted pursuant to Chapter 138A (State Government Ethics Act) and Chapter 120C (Lobbying Law). However, G.S. 120C-101(c) requires the Commission to provide a notice and opportunity for written comments and hold a least one public hearing prior to adopting any rules under the Commission's authority for Chapter 120C. The Commission has elected to follow this same process for rules it adopts pursuant to Chapter 138A.

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

## **CHAPTER 01 - GENERAL**

### **30 NCAC 01 .0101 SCOPE**

The rules in this Title execute the authority granted to the State Ethics Commission ("Commission") pursuant to Chapter 138A,



State Government Ethics Act, and Chapter 120C, Lobbying, of the North Carolina General Statutes.

Authority G.S. 120C-101(a); 138A-10(a)(2); 138A-10(a)(10).

**30 NCAC 01 .0102 LOCATION AND CONTACT INFORMATION**

The State Ethics Commission is located at 424 N. Blount St., Raleigh, NC 27601-1010. The mailing address is 1324 Mail Service Center, Raleigh, NC 27699-1324. The Commission's telephone number is (919) 715-2071. The Commission's e-mail address is [ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov).

Authority G.S. 138A-9; 138A-10(a)(2); 138A-10(a)(10).

**30 NCAC 01 .0103 OFFICE HOURS**

The State Ethics Commission office shall be staffed from at least 9:00 a.m. until 5:00 p.m., Monday through Friday. The Commission follows the State Government Holiday Schedule.

Authority G.S. 138A-9; 138A-10(a)(2); 138A-10(a)(10).

**30 NCAC 01 .0104 CALCULATION OF TIME PERIODS**

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, including rules, orders or statutes respecting publication of notices, the day of the act, event, default or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a State legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and State legal holidays shall be excluded in the computation.

Authority G.S. 138A-10(a)(2); 138A-10(a)(10).

**30 NCAC 01 .0105 PUBLIC RECORD REQUESTS**

(a) All requests for public records, including Statements of Economic Interest, should be in writing.

(b) All requests will be processed as promptly as reasonably possible, generally on a first-come, first-served basis.

(c) There shall be no cost for copies of public records of 20 pages or less. For more than 20 pages, the fee shall be ten cents (.10) per page.

(d) For information contained on a compact disc ("CD"), the cost shall be two dollars (\$2.00) per compact disc.

Authority G.S. 132-6(a); 138A-10(a)(2); 138A-10(a)(10).

**CHAPTER 02 - COVERED PERSONS AND BOARDS**

**30 NCAC 02 .0101 NON-ADVISORY BOARDS**

A board as defined in G.S. 138A-3(1c) that is authorized to perform any of the following functions shall generally be deemed a non-advisory board:

- (1) Allocate, spend, award, or invest public money where the expenditures do not relate solely to the internal operations of the boards;
- (2) Issue, renew, deny, revoke or suspend licenses;
- (3) Adopt rules, regulations, standards, or criteria affecting those outside of the board or commission;
- (4) Enter into or approve contracts involving public money; or
- (5) Set policy governing operation of an agency or institution.

Authority G.S. 138A-3(1c); 138A-10(a)(2); 138A-10(a)(10).

**30 NCAC 02 .0102 NOTIFICATION OF STAFF RECOMMENDATION TO COMMISSION**

The Commission staff shall notify a board of staff's initial coverage recommendation to the Commission at least 60 days prior to the Commission meeting at which the matter will be considered.

Authority G.S. 138A-3(1c); 138A-10(a)(2); 138A-10(a)(10).

**30 NCAC 02 .0103 RIGHT TO CONTEST RECOMMENDATION**

(a) A board proposed to be covered may contest staff's initial recommendation. If the board elects to contest the coverage recommendation, the board shall respond in writing and submit any materials in support of the board's position within 45 days of receipt of the initial coverage recommendation. If the board has timely responded to the initial notice, the board shall also have the right to be heard at the Commission meeting at which the matter will be considered.

(b) The Executive Director may extend the deadline in Paragraph (a) of this Rule upon good cause shown.

Authority G.S. 138A-3(1c); 138A-10(a)(2); 138A-10(a)(10).

**CHAPTER 03 - ETHICS LIAISONS (RESERVED)**

**CHAPTER 04 - AGENCY HEADS (RESERVED)**

**CHAPTER 05 - STATEMENTS OF ECONOMIC INTEREST**

**SUBCHAPTER 05A - FILING**

**30 NCAC 05A .0101 MANDATORY USE OF COMMISSION FORMS**

The Commission's most current forms shall be used to file all Statements of Economic Interest ("SEI").

Authority G.S. 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-22(g).

**30 NCAC 05A .0102 SIGNATURE VERIFIES  
INFORMATION IS TRUE**

An individual's signature on a document constitutes that person's verification that all information entered on the Statement of Economic Interest is true and complete.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-22; 138A-24(c).*

**30 NCAC 05A .0103 ELECTRONIC SIGNATURE**

Signers of electronic documents may use any form of electronic signature permissible under G.S. 66-312(9), except that it shall not be a sound.

*Authority G.S. 66-312(9); 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-22.*

**30 NCAC 05A .0104 GENERAL SUBMISSION  
LOCATIONS AND METHODS**

(a) Statements of Economic Interest shall be filed using one of the following methods:

- (1) Electronically via the Commission's website.
- (2) United States mail addressed to: State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324.
- (3) Designated delivery service authorized by G.S. 1A-1, Rule 4, addressed to: State Ethics Commission, 424 N. Blount St., Raleigh, NC 27601-1010.
- (4) Hand-delivery during regular business hours to the Commission's offices at 424 N. Blount St., Raleigh, NC 27601-1010.

(b) Statements of Economic Interest shall not be filed by methods other than authorized by this rule, including scanning, e-mailing, or facsimile transmission.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-22.*

**30 NCAC 05A .0105 INCOMPLETE FORMS**

Incomplete Statements of Economic Interests shall not be considered timely filed for the purpose of G.S. 138A-22.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-22; 138A-24(c).*

**30 NCAC 05A .0106 PROOF OF SUBMISSION**

A person may obtain proof of submission of a filing to the Commission by:

- (1) Any means acceptable pursuant to G.S. 1A-1, Rules of Civil Procedure;
- (2) Requesting that the Commission return a file stamped copy and supplying a postage prepaid envelope or prepaid delivery service envelope;  
or
- (3) Requesting that the Commission date-stamp a copy at the time of hand-delivery.

*Authority G.S. 1A-1; 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-22.*

**30 NCAC 05A .0107 RECEIPT DATE**

For the purpose of determining compliance with filing deadlines, the postmarked date on a Statement of Economic Interest filed by U.S. Mail shall be used. For electronic filing and commercial or hand-delivery, the receipt date will be the actual date received by the Commission.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-22.*

**SUBCHAPTER 05B - CONTENTS**

**30 NCAC 05B .0101 DEFINITION OF IMMEDIATE  
FAMILY**

A child of a covered person who is 18 years of age or older and who temporarily resides away from home is "residing in the covered person's household" for each year in which the child is claimed as a dependent on the covered person's Federal Income Tax Return.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-24(a).*

**30 NCAC 05B .0102 REPORTABLE STOCK  
HOLDING THRESHOLD IS PER COMPANY**

The ten thousand dollar (\$10,000) threshold that triggers reporting of stocks is per company and not the cumulative value of stocks held in multiple companies.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-24(a)(2)(e).*

**30 NCAC 05B .0103 SECOND MORTGAGE NOT  
REPORTABLE**

A second mortgage is another form of "indebtedness on the filing person's primary personal residence," and, is not reportable.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-24(a)(2)(k).*

**30 NCAC 05B .0104 REPORTABLE LIABILITY  
THRESHOLD IS PER CREDITOR**

The ten thousand dollar (\$10,000) threshold that triggers reporting of liabilities is per creditor and not the cumulative value of multiple debts.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(4); 138A-10(a)(10); 138A-24(a)(2)(k).*

**CHAPTER 06 - EDUCATION (RESERVED)**

**CHAPTER 07 - GIFTS**

**SUBCHAPTER 07A - INTERESTED PERSONS**

**30 NCAC 07A .0101 "INTERESTED PERSONS"**

For purposes of this Chapter, the term "interested persons" shall mean those persons listed in G.S. 138A-32(d).

*Authority G.S. 138A-10(a)(2); 138A-10(a)(10); 138A-32(d).*

**SUBCHAPTER 07B - FOOD AND BEVERAGE FOR  
IMMEDIATE CONSUMPTION AT CERTAIN  
GATHERINGS**

**30 NCAC 07B .0101 GATHERINGS OPEN TO THE  
GENERAL PUBLIC**

For purposes of G.S. 138A-32(e)(1)b., if the general public is required to pay a fee to attend a gathering, while individual public servants, legislators, or legislative employees are not charged the same fee, the gathering is not "open to the general public."

*Authority G.S. 120C-101(a); 120C-303; 138A-10(a)(2); 138A-10(a)(10); 138A-32(c); 138A-32(d); 138A-32(d1); 138A-32(e)(1)b.*

**30 NCAC 07B .0102 ASSOCIATED WITH THE  
PERSON OR GOVERNMENTAL UNIT**

(a) For purposes of G.S. 138A-32(e)(1)c.1, when legislators or legislative employees are invited and the gathering is sponsored by a group that only consists of lobbyists, lobbyist principals, or liaison personnel, 10 individuals associated with the group shall actually attend the gathering. For purposes of this Paragraph, "group" shall mean more than one sponsoring lobbyist, lobbyist principal or liaison personnel.

(b) For purposes of G.S. 138A-32(e)(1)c.1, when public servants and legislators or legislative employees are invited and the gathering is sponsored by a group that only consists of interested persons, lobbyists or lobbyist principals, 10 individuals associated with the group shall actually attend the gathering. For purposes of this Paragraph, "group" shall mean more than one sponsoring interested person, lobbyist or lobbyist principal.

(c) For purposes of G.S. 138A-32(e)(1)c.1, "associated with the person or governmental unit" includes, but is not limited to:

- (1) An employee;
- (2) An individual who is a director, officer, partner, or holds another leadership position;
- (3) An owner of a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more, other than a trustee on a deed of trust;
- (4) An owner of five percent or more of the business, other than a trustee on a deed of trust;
- (5) A registered lobbyist;

(d) Whether other relationships qualify as "associated with the person" or "associated with the governmental unit" will be determined on a case-by-case basis.

*Authority G.S. 120C-101(a); 120C-303; 138A-10(a)(2); 138A-10(a)(10); 138A-32(c); 138A-32(d); 138A-32(d1); 138A-32(e)(1)c.*

**30 NCAC 07B .0103 INVITED**

(a) For purposes of G.S. 138A-32(e)(1)c. a "specific qualifying group" means all members of one of the groups of public

servants, legislators, or legislative employees listed in G.S. 138A-32(e)1.c.

(b) If more than one specific qualifying group is invited to a gathering, the requirements of G.S. 138A-32(e)(1)c. are satisfied if one host or sponsor provides written notice to all members of at least one of those specific qualifying groups.

(c) For purposes of G.S. 138A-32(e)(1)c. "written notice" includes a notice made by e-mail.

*Authority G.S. 120C-101(a); 120C-303; 138A-10(a)(2); 138A-10(a)(10); 138A-32(e)(1)c.*

**SUBCHAPTER 07C - CERTAIN MEETINGS AND  
CONFERENCES FUNDED BY LOBBYIST PRINCIPALS**

**30 NCAC 07C .0101 EDUCATIONAL MEETING  
CRITERIA**

A determination as to whether an event qualifies as an educational meeting, shall be based upon consideration of the following non-exclusive factors:

(1) Whether the meeting's *primary* purpose is to *influence* a public servant, legislator, or legislative employee with respect to executive or legislative action or to *promote learning* for professional improvement notwithstanding a particular executive or legislative action. In applying this factor, the following facts shall be considered:

(a) Whether the meeting is directly related to an upcoming official vote, recommendation, or other action that the public servant, legislator, or legislative employee may take, such as the discussion of a legislative or executive proposal or specific concerns with respect to a matter that would require legislative or executive action to remedy.

(b) Whether the individual or entity hosting the meeting is attempting to influence particular legislative or executive action by the public servant, legislator, or legislative employee whose meeting expenditures will be paid or intends to request such action at the time the meeting is held.

(c) Whether the facts otherwise demonstrate that the individual's or entity's purpose in holding the meeting is to influence legislative or executive action.

(2) The nature of the individual or entity holding the meeting. In applying this factor, the following facts shall be considered:

(a) Whether the individual or entity is a State agency or governmental entity.

(b) Whether the individual or entity is an educational institution.

- (c) Whether the individual or entity routinely sponsors meetings with educational content.
- (d) Whether the individual or entity holding the meeting is a Lobbyist Principal.
- (3) Whether the Lobbyist Principal that is providing the reasonable actual expenditures of the legislator, legislative employee, or public servant attending the meeting is also the sponsor or co-sponsor of the meeting.
- (4) Whether the complete agenda of the meeting demonstrates that the meeting's primary purpose is to promote learning for professional improvement, rather than influence, a public servant, legislator, or legislative employee with respect to executive or legislative action. In applying this factor, the following facts shall be considered:
  - (a) The proportion of scheduled events that have a speaker, roundtable discussion, or other educational content.
  - (b) The proportion of scheduled events held in the absence of a meal or entertainment.
  - (c) The proportion of the meeting agenda that includes meals or entertainment provided in conjunction with formal educational content.
  - (d) Whether the meeting agenda covers a wide range of topics or has a very limited, industry-specific focus.
  - (e) Whether the meeting would take place regardless of the attendance of the public servant, legislator, or legislative employee whose meeting expenditures will be paid.
  - (f) Whether the speakers or panel participants at the meeting are associated with the Lobbyist Principal paying for the meeting expenditures of the public servant, legislator, or legislative employee, including its registered lobbyist.
  - (g) Whether the speakers are outside experts in their field.
- (5) The relationship of the location of the meeting to the meeting's educational content. In applying this factor, the following facts shall be considered:
  - (a) Whether there is a basis for holding the meeting in a location other than the location where the public servant, legislator, or legislative employee whose meeting expenditures will be paid lives or works.

- (b) Whether the location of the meeting is integral to the meeting's educational content.
- (c) Whether the meeting is sponsored by a state, national, or international organization for the benefit of its state, national, or international membership.
- (d) Whether the public servant, legislator, or legislative employee whose meeting expenditures will be paid could obtain a comparable degree of educational information through other means that would not require travel.
- (6) Whether the total length of the meeting is reasonably necessary to fulfilling its educational purpose.
- (7) The degree of personal benefit derived by the legislator, legislative employee, or public servant relative to the meeting's educational value.

*Authority G.S. 120C-101(a); 120C-303; 138A-10(a)(2); 138A-10(a)(10); 138A-32(e)(3)(i).*

## **CHAPTER 08 - CONFLICTS OF INTEREST AND OTHER ETHICAL STANDARDS (RESERVED)**

## **CHAPTER 09 - ETHICS COMPLAINTS**

### **SUBCHAPTER 09A - FILING A COMPLAINT**

#### **30 NCAC 09A .0101 SCOPE**

The rules in this Subchapter shall apply only to complaints filed pursuant to the State Government Ethics Act, Chapter 138A of the North Carolina General Statutes.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(5); 138A-10(a)(6); 138A-10(a)(10); 138A-12.*

#### **30 NCAC 09A .0102 FORMS**

Complaints shall be filed in accordance with G.S. 138A-12(c). A form for filing a complaint is available on the Commission's website at [www.ethicscommission.nc.gov](http://www.ethicscommission.nc.gov) or by contacting the Commission at (919) 715-2071.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(5); 138A-10(a)(6); 138A-10(a)(10); 138A-12(c).*

### **SUBCHAPTER 09B - PRELIMINARY INQUIRY AND PROBABLE CAUSE DETERMINATION**

#### **30 NCAC 09B .0101 INQUIRY AND PROBABLE CAUSE PANELS**

(a) The preliminary inquiry and the determination of probable cause shall be made by a panel of two Commission members, neither of whom shall be of the same political party, and the Executive Director. The Chair shall appoint members of the

panel to serve on a rotating basis. The Chair is authorized to appoint substitute panel members in the Chair's discretion.

(b) After a preliminary inquiry, the panel may dismiss a complaint if it determines:

- (1) The individual against whom the complaint was filed is not a covered person or legislative employee; or
- (2) The complaint did not allege facts sufficient to constitute a violation under G.S. 138A-12(b).

(c) Commission members who serve on a panel shall not participate in any other proceeding involving a complaint which was considered by the panel.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(5); 138A-10(a)(6); 138A-10(a)(10); 138A-12.*

### **30 NCAC 09B .0102 PROBABLE CAUSE**

Probable cause means a reasonable cause to believe that a covered person or legislative employee committed a violation of G.S. 138A-12(b). Probable cause includes a reasonable belief in the legal validity of the claim itself. Probable cause:

- (1) Is a flexible, common-sense standard and does not require a showing that such a belief be correct or more likely true than false.
- (2) Deals with probabilities that are not technical but are factual and practical considerations of everyday life on which reasonable and prudent individuals, not legal technicians, act.
- (3) Is a pragmatic question to be determined in each case in the light of the particular circumstances and offense involved.
- (4) Is more than a bare suspicion, but less than the legal standard of "preponderance of the evidence," "clear or convincing evidence," or "proof beyond a reasonable doubt" that a Respondent has committed an unethical act.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(5); 138A-10(a)(6); 138A-10(a)(10); 138A-12(h).*

### **30 NCAC 09B .0103 WRITTEN RESPONSE AFTER PRELIMINARY INQUIRY**

(a) After a preliminary inquiry, if the covered person or legislative employee chooses to file a response with the Commission pursuant to G.S. 138A-12(g), the covered person or legislative employee shall file the response no later than 30 calendar days after receiving the written notice that the Commission is conducting a further inquiry.

(b) The Executive Director may extend the deadline in Paragraph (a) of this Rule for up to 30 calendar days upon good cause shown.

*Authority G.S. 138A-10(a)(2); 138A-10(a)(5); 138A-10(a)(6); 138A-10(a)(10); 138A-12(g).*

## **CHAPTER 10 - LOBBYING**

### **SUBCHAPTER 10A - REGISTRATION (RESERVED)**

### **SUBCHAPTER 10B - PROHIBITIONS AND RESTRICTIONS (RESERVED)**

### **SUBCHAPTER 10C - REPORTING SECTION .0100 - GENERAL**

#### **30 NCAC 10C .0101 CALCULATING VALUE OF REPORTABLE EXPENDITURES**

When determining if reporting is required pursuant to the ten dollar threshold of G.S. 120C-100(a)(12), the aggregate amount of all things of value made to, at the request of, for the benefit of, or on behalf of a designated individual and that designated individual's immediate family members on that calendar day shall be used.

*Authority G.S. 120C-100(a)(12); 120C-101(a); 120C-400; 120C-401; 120C-402; 120C-403.*

#### **30 NCAC 10C .0102 REPORTABLE EXPENDITURES MADE TO OR FOR THE BENEFIT OF A DESIGNATED INDIVIDUAL OR A DESIGNATED INDIVIDUAL'S IMMEDIATE FAMILY MEMBER**

(a) A reportable expenditure made to or for the benefit of a designated individual or a designated individual's immediate family member shall be reported on the expense report filed for the month the reportable expenditure is received by the designated individual or the designated individual's immediate family member.

(b) When the reportable expenditure is made to or for the benefit of a designated individual or a designated individual's immediate family member, the date of the reportable expenditure is the date the reportable expenditure is received by the designated individual or the designated individual's immediate family member.

*Authority G.S. 120C-100(a)(12); 120C-101(a); 120C-400; 120C-401; 120C-402; 120C-403.*

#### **30 NCAC 10C .0103 REPORTABLE EXPENDITURE MADE AT THE REQUEST OF OR ON BEHALF OF A DESIGNATED INDIVIDUAL OR A DESIGNATED INDIVIDUAL'S IMMEDIATE FAMILY MEMBER**

(a) A reportable expenditure made at the request of or on behalf of a designated individual or a designated individual's immediate family member shall be reported on the expense report filed for the month the reportable expenditure is made by the giver.

(b) When the reportable expenditure is made at the request of or on behalf of a designated individual or a designated individual's immediate family member, the date of the reportable expenditure is the date the reportable expenditure is made by the giver.

*Authority G.S. 120C-100(a)(12); 120C-101(a); 120C-400; 120C-401; 120C-402; 120C-403.*

### **SECTION .0200 - LOBBYIST REPORTING (RESERVED)**

### **SECTION .0300 - LOBBYIST PRINCIPAL REPORTING**

**30 NCAC 10C .0301 REASONABLY ALLOCATED  
ESTIMATES ALLOWED**

(a) For purposes of lobbyist principal reporting required by G.S. 120C-403(d) and (e), a lobbyist's estimate does not need to be an exact calculation or determination but shall be reasonably allocated. "Lobbyist's estimate" means a lobbyist's estimate of the portion of the salary or other payment that is reasonable allocated for lobbying and lobbying services. "Lobbying services" are those communications and activities listed in G.S. 120C-403(e)(2).

(b) A lobbyist's estimate is reasonably allocated if it:

- (1) Specifies the portion of the lobbyist's salary, fee, or retainer that is estimated to be in payment for lobbying and lobbying services (for example, "25 percent", rather than "under 40 percent" or "from 10 percent to 30 percent").
- (2) Includes all payments for lobbying that the lobbyist principal conveyed to the lobbyist

during the registration period under G.S. 120C-200(d);

(3) Includes all payments for lobbying services the lobbyist principal conveyed to the lobbyist during the registration period under G.S. 120C-200(d);

(4) Is consistent with the known facts and circumstances underlying the employment terms or compensation agreement between the lobbyist principal and the lobbyist;

(5) Is made retrospectively; and

(6) Is made in good faith.

(c) The estimate of the portion of the lobbyist's payment that is allocated for the purpose of lobbying should be verifiable in some manner in the event the allocation is questioned.

*Authority G.S. 120C-101(a); 120C-400; 120C-403(d); 120C-403(e).*

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**APPROVED RULES**

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

*Rules approved by the Rules Review Commission at its meeting on September 16, 2010.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT****MEDICAL CARE COMMISSION**

<u>Licensure Surveys</u>	10A NCAC 13B .3106	24:22 NCR
<u>Chemical Addiction or Abuse Treatment Program Requirements</u>	10A NCAC 13P .1401*	24:22 NCR
<u>Provisions for Participation in the Chemical Addiction of...</u>	10A NCAC 13P .1402	24:22 NCR
<u>Conditions for Restricted Practice with Limited Privileges</u>	10A NCAC 13P .1403*	24:22 NCR
<u>Reinstatement of an Unencumbered EMS Credential</u>	10A NCAC 13P .1404	24:22 NCR
<u>Failure to Complete the Chemical Addiction or Abuse Treat...</u>	10A NCAC 13P .1405	24:22 NCR

**PUBLIC HEALTH, COMMISSION FOR**

<u>General</u>	10A NCAC 41C .0901*	24:24 NCR
<u>Certification of Individuals</u>	10A NCAC 41C .0902*	24:24 NCR
<u>Certification of Renovation Firms</u>	10A NCAC 41C .0903	24:24 NCR
<u>Accreditation of Training Providers</u>	10A NCAC 41C .0905*	24:24 NCR
<u>Standards for Conducting Lead-Based Paint Renovation Acti...</u>	10A NCAC 41C .0906*	24:24 NCR
<u>Standards for Records Retention, Information Distribution...</u>	10A NCAC 41C .0907	24:24 NCR

**INSURANCE, DEPARTMENT OF**

<u>Ethical Standards</u>	11 NCAC 04 .0423*	24:24 NCR
<u>General Information</u>	11 NCAC 06A .0201	24:24 NCR
<u>Licenses</u>	11 NCAC 06A .0212*	24:24 NCR
<u>Resident Surplus Lines License Renewal</u>	11 NCAC 06A .0234	24:24 NCR
<u>Rental Car Company License Application</u>	11 NCAC 06A .0238	24:24 NCR
<u>Administration of Examination</u>	11 NCAC 06A .0305	24:24 NCR
<u>Licensing of Resident Agent, LTD Representative and Adjuster</u>	11 NCAC 06A .0402	24:24 NCR
<u>Licensing of Business Entities</u>	11 NCAC 06A .0413	24:24 NCR
<u>Fingerprints Required for Criminal Record Checks</u>	11 NCAC 06A .0418*	24:24 NCR
<u>Renewal of Agent Appts: Licenses/Limited Reps: Company ...</u>	11 NCAC 06A .0501*	24:24 NCR
<u>Failure to Renew License</u>	11 NCAC 06A .0504	24:24 NCR
<u>Termination of Appointments for Limited Reps and Company ...</u>	11 NCAC 06A .0505*	24:24 NCR
<u>Cancellation of Licenses Issued to Individuals</u>	11 NCAC 06A .0506	24:24 NCR
<u>Licensee Requirements</u>	11 NCAC 06A .0802*	24:24 NCR
<u>Sanctions for Noncompliance</u>	11 NCAC 06A .0811	24:24 NCR
<u>Special Cases</u>	11 NCAC 06A .0812*	24:24 NCR
<u>Definitions</u>	11 NCAC 06A .0901	24:24 NCR
<u>Transactions with Insureds</u>	11 NCAC 06A .0902	24:24 NCR
<u>Relationships with Third Parties</u>	11 NCAC 06A .0903	24:24 NCR
<u>Regulatory Matters</u>	11 NCAC 06A .0904	24:24 NCR

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**APPROVED RULES**

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<u>Catastrophic Disasters</u>	11	NCAC	06A	.0905	24:24 NCR
<u>Fingerprints Required for Criminal Record Checks</u>	11	NCAC	06A	.0906*	24:24 NCR

**HOME INSPECTOR LICENSURE BOARD**

<u>Fee Schedule</u>	11	NCAC	08	.1011*	24:22 NCR
<u>General Limitations</u>	11	NCAC	08	.1104	24:22 NCR
<u>Code of Ethics</u>	11	NCAC	08	.1116*	24:22 NCR
<u>Per Student Fee</u>	11	NCAC	08	.1332	24:22 NCR

**INSURANCE, DEPARTMENT OF**

<u>Definitions</u>	11	NCAC	13	.0101	24:24 NCR
<u>Purpose of Division</u>	11	NCAC	13	.0102	24:24 NCR
<u>Deputy Commissioner</u>	11	NCAC	13	.0103	24:24 NCR
<u>Division Personnel</u>	11	NCAC	13	.0104	24:24 NCR
<u>Field Investigations: Examinations</u>	11	NCAC	13	.0105	24:24 NCR
<u>Renewal of Insurance Premium Finance License</u>	11	NCAC	13	.0304	24:24 NCR
<u>Quarterly Report</u>	11	NCAC	13	.0309	24:24 NCR
<u>Surety Bond</u>	11	NCAC	13	.0405	24:24 NCR
<u>Collateral Security Required by Bondsmen</u>	11	NCAC	13	.0512*	24:24 NCR
<u>Alteration of Affidavit of Surety</u>	11	NCAC	13	.0513	24:24 NCR
<u>Surety Bondsmen Licensing Procedures</u>	11	NCAC	13	.0516	24:24 NCR
<u>Fingerprints Required for Criminal Record Checks</u>	11	NCAC	13	.0519	24:24 NCR
<u>Prelicensing Education: Definitions for Bail Bond Prelice...</u>	11	NCAC	13	.0520*	24:24 NCR
<u>Bail Bond Monthly Report</u>	11	NCAC	13	.0521	24:24 NCR
<u>Continuing Education Requirements</u>	11	NCAC	13	.0522*	24:24 NCR
<u>Qualification for BCEC</u>	11	NCAC	13	.0523	24:24 NCR
<u>BCEC Extension of Time: Hardship</u>	11	NCAC	13	.0524*	24:24 NCR
<u>Approval of BCEC Courses</u>	11	NCAC	13	.0526*	24:24 NCR
<u>Issuance of and Continuation BCEC of Provider Approval</u>	11	NCAC	13	.0530*	24:24 NCR
<u>Examinations: Special Accommodations (Americans with Disa...</u>	11	NCAC	13	.0532	24:24 NCR
<u>Schedule of Examinations</u>	11	NCAC	13	.0533	24:24 NCR
<u>Certificate of Course Completion</u>	11	NCAC	13	.0534	24:24 NCR
<u>Examination Authorization Letter</u>	11	NCAC	13	.0535	24:24 NCR
<u>Responsibility of Applicant at Examination Site</u>	11	NCAC	13	.0536*	24:24 NCR
<u>Administration of Examination</u>	11	NCAC	13	.0537	24:24 NCR
<u>Bail Bond Prelicensing Education Provider</u>	11	NCAC	13	.0539*	24:24 NCR
<u>Bail Bond Prelicensing Education Courses</u>	11	NCAC	13	.0541*	24:24 NCR
<u>Bail Bond Prelicensing Instructions</u>	11	NCAC	13	.0542*	24:24 NCR

**PRIVATE PROTECTIVE SERVICES BOARD**

<u>Renewal or Reissue of Licenses and Trainee Permits</u>	12	NCAC	07D	.0203*	24:18 NCR
<u>Reports</u>	12	NCAC	07D	.0404*	24:10 NCR
<u>Renewal or Reissue of Unarmed Security Guard Registration</u>	12	NCAC	07D	.0706*	24:18 NCR
<u>Renewal of Armed Security Guard Firearm Registration Permit</u>	12	NCAC	07D	.0806*	24:18 NCR
<u>Training Requirements for Armed Security Guards</u>	12	NCAC	07D	.0807*	24:10 NCR



<u>Renewal of Firearms Trainer Certificate</u>	12	NCAC	07D	.0904*	24:18 NCR
<u>Renewal of an Unarmed Guard Trainer Certificate</u>	12	NCAC	07D	.0911*	24:18 NCR

**FUNERAL SERVICE, BOARD OF**

<u>Special Procedures for Licensing of Active Military Perso...</u>	21	NCAC	34B	.0311*	24:19 NCR
<u>Surety Bonds</u>	21	NCAC	34D	.0203*	24:19 NCR

**PHARMACY, BOARD OF**

<u>Office of the Board</u>	21	NCAC	46	.1204	24:22 NCR
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**ADMINISTRATIVE HEARINGS, OFFICE OF**

<u>General</u>	26	NCAC	03	.0101*	24:24 NCR
<u>Commencement of Contested Case: Notice and Filing Fee</u>	26	NCAC	03	.0103*	24:24 NCR
<u>Duties of the Administrative Law Judge</u>	26	NCAC	03	.0105	24:24 NCR

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

**10A NCAC 13B .3106 LICENSURE SURVEYS**

- (a) Prior to the initial issuance of a license to operate a facility, the Division shall conduct a survey to determine compliance with rules promulgated pursuant to G.S. 131E-79.
- (b) The Division may conduct an investigation of a complaint in any facility.
- (c) Facilities that are accredited through an accrediting body approved pursuant to section 1865(a) of the Social Security Act shall not be subject to routine inspections.
- (d) The Division shall survey non-accredited facilities at least once every three years.

*History Note: Authority G.S. 131E-79; 131E-80;  
Eff. January 1, 1996;  
Amended Eff. October 1, 2010.*

**10A NCAC 13P .1401 CHEMICAL ADDICTION OR ABUSE TREATMENT PROGRAM REQUIREMENTS**

- (a) The OEMS shall provide a treatment program for aiding in the recovery and rehabilitation of EMS personnel subject to disciplinary action for being unable to perform as credentialed EMS personnel with reasonable skill and safety to patients and the public by reason of use of alcohol, drugs, chemicals, or any other type of material and who are recommended by the EMS Disciplinary Committee pursuant to G.S. 143-519.
- (b) This program requires:
  - (1) an initial assessment by a healthcare professional specialized in chemical dependency affiliated with the treatment program;
  - (2) a treatment plan developed for the individual using the findings of the initial assessment;
  - (3) random body fluid screenings;
  - (4) the individual attend three self-help recovery meetings each week for the first year of

- participation, and two each week for the remainder of participation in the treatment program;
- (5) monitoring of the individual for compliance with the treatment program; and
- (6) written progress reports available for review by the EMS Disciplinary Committee:
  - (A) upon completion of the initial assessment by the treatment program;
  - (B) upon request by the EMS Disciplinary Committee throughout the individual's participation in the treatment program;
  - (C) upon completion of the treatment program;
  - (D) of all body fluid screenings showing chain of custody;
  - (E) by the therapist or counselor assigned to the individual during the course of the treatment program; and
  - (F) listing attendance at self-help recovery meetings.

*History Note: Authority G.S. 131E-159(f); 143-508(d)(10); 143-509(13); 143-519;  
Eff. October 1, 2010.*

**10A NCAC 13P .1402 PROVISIONS FOR PARTICIPATION IN THE CHEMICAL ADDICTION OR ABUSE TREATMENT PROGRAM**

Individuals recommended by the EMS Disciplinary Committee to enter the Treatment Program defined in Rule .1401 of this Section may participate if:

- (1) the individual acknowledges, in writing, the actions which violated the performance requirements found in this Subchapter;
- (2) the individual has not been charged or convicted of diverting chemicals for the

- purpose of sale or distribution or dealing or selling illicit drugs;
- (3) the individual is not under investigation or subject to pending criminal charges by law enforcement;
- (4) the individual ceases in the direct delivery of any patient care and surrenders all EMS credentials until either the individual is eligible for issuance of an encumbered EMS credential pursuant to Rule .1403 of this Section, or has successfully completed the treatment program established in Rule .1401 of this Section; and
- (5) the individual agrees to accept responsibility for all costs including assessment, treatment, monitoring, and body fluid screening.

*History Note:* Authority G.S. 131E-159(f); 143-508(d)(10); 143-509(13); 143-519;  
Eff. October 1, 2010.

**10A NCAC 13P .1403 CONDITIONS FOR RESTRICTED PRACTICE WITH LIMITED PRIVILEGES**

- (a) Individuals who have surrendered their EMS credential as a condition of entry into the treatment program may be reviewed by the EMS Disciplinary Committee to determine if a recommendation to the OEMS for issuance of an encumbered EMS credential is warranted.
- (b) In order to obtain an encumbered credential with limited privileges, an individual must:
  - (1) be compliant for a minimum of 90 consecutive days with the treatment program described in Paragraph (b) of Rule .1402 of this Section;
  - (2) be recommended in writing for review by the individual's treatment counselor;
  - (3) be interviewed by the EMS Disciplinary Committee; and
  - (4) be recommended in writing by the EMS Disciplinary Committee for issuance of an encumbered EMS credential. The EMS Disciplinary Committee shall detail in their recommendation to the OEMS all restrictions and limitations to the individual's practice privileges.
- (c) The individual must agree to sign a consent agreement with the OEMS which details the practice restrictions and privilege limitations of the encumbered EMS credential, and which contains the consequences of failure to abide by the terms of this agreement.
- (d) The individual shall be issued the encumbered credential within 10 business days following execution of the consent agreement described in Paragraph (c).

*History Note:* Authority G.S. 131E-159(f); 143-508(d)(10); 143-509(13); 143-519;  
Eff. October 1, 2010.

**10A NCAC 13P .1404 REINSTATEMENT OF AN UNENCUMBERED EMS CREDENTIAL**

Reinstatement of an unencumbered EMS credential is dependant upon the individual successfully completing all requirements of the treatment program as defined in this Section.

*History Note:* Authority G.S. 131E-159(f); 143-508(d)(10); 143-509(13);  
Eff. October 1, 2010.

**10A NCAC 13P .1405 FAILURE TO COMPLETE THE CHEMICAL ADDICTION OR ABUSE TREATMENT PROGRAM**

Individuals who fail to complete the treatment program, upon review and recommendation by the North Carolina EMS Disciplinary Committee to the OEMS, are subject to revocation of their EMS credential.

*History Note:* Authority G.S. 131E-159(f); 143-508(d)(10); 143-519;  
Eff. October 1, 2010.

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**10A NCAC 41C .0901 GENERAL**

(a) In addition to the definitions found in 40 CFR Part 745 Subpart E and Subpart L and G.S. 130A-453.22 the following definitions apply throughout this Section:

- (1) "Accredited training course" means a lead training course accredited by the Program.
- (2) "Accredited training provider" means a training provider who is accredited by the Program, and who provides accredited training courses.
- (3) "Program" means the Lead-Based Paint Hazard Management Program for Renovation, Repair and Painting within the Division of Public Health.
- (4) "Training hour" means at least 50 minutes of actual learning, including time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.
- (5) "Working day" means Monday through Friday. Holidays falling on any of these days are included in the definition.

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

*History Note:* Authority G.S. 130A-22; 130A-453-31;  
Temporary Adoption Eff. January 1, 2010;  
Eff. November 1, 2010.

**10A NCAC 41C .0902 CERTIFICATION OF INDIVIDUALS**

(a) No person shall perform lead-based paint renovation activities for compensation in target housing and child-occupied facilities until that person has been certified by the Program in the applicable certification category. Certification is not required for a trained renovation worker as defined by G.S. 130A-453.22(b)(7).

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

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

- (1) An applicant for initial certification shall have successfully completed an accredited initial dust sampling technician training course within the 12 months immediately preceding application. If initial training was completed more than 12 months prior to application, the applicant shall have successfully completed an accredited dust sampling technician training course at least every 60 months from the date of the last training, and within 12 months immediately preceding the application.
- (2) An applicant shall submit a completed dust sampling technician certification application with the following information to the Program:
  - (A) full name of the applicant;
  - (B) address, including city, state, zip code, and telephone number;
  - (C) date of birth, sex, height, and weight;
  - (D) name, address, including city, state, zip code, and telephone number of certified renovation firm;
  - (E) name of training provider;
  - (F) name of training course completed;
  - (G) dates of course attended;
  - (H) one color photograph of the applicant; and
  - (I) confirmation of completion of accredited initial and refresher training courses, as applicable, from the training provider. The confirmation shall be in the form of an original certificate of completion of the accredited training course, or an original letter from the training provider, on training provider letterhead, including the information in Parts (A) through (G) of this Subparagraph, confirming completion of the course.

(3) Initial dust sampling technician certification expires on the last day of the 12 month after training was taken.

(4) An applicant for renewal of dust sampling technician certification shall have successfully completed an accredited initial or refresher training course within 48 months prior to applying for certification renewal, and shall meet the requirements of Paragraphs (b) and (c) of this Rule. All renewal certifications expire on the last day of the 12th month from the date of certification. If a person fails to obtain the required training within 48 calendar months of the date of last training, that person may renew certification only by successful completion of an accredited dust sampling technician course and by meeting the requirements of Paragraphs (b) and (c) of the Rule. If a person fails to obtain the required training within 60 calendar months of the date of last training, that person may renew certification only by successful completion of an accredited initial dust sampling technician course and by meeting the requirements of Paragraphs (b) and (c) of this Rule.

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

- (1) An applicant for renovator certification shall have successfully completed an accredited initial renovator training course prior to application. If initial training was completed more than 60 months prior to application, the applicant shall have successfully completed an accredited refresher course for the specific discipline at least every 60 months from the date of completion of initial training.
- (2) An applicant shall submit a completed renovator certification application with the following information to the Program:
  - (A) full name of the applicant;
  - (B) address, including city, state, zip code, and telephone number;
  - (C) date of birth and sex;
  - (D) name, address, including city, state, zip code, and telephone number of certified renovation firm;
  - (E) name, address, including city, state, zip code, and telephone number of training provider that provided the training;
  - (F) name of training course completed and language in which it was taught;
  - (G) date(s) of course completion and exam;
  - (H) confirmation of completion of accredited initial and refresher training courses, as applicable from the training provider. The confirmation shall be in the form of a

copy of an original certificate of completion of the accredited training course, or an original letter from the training provider, on training provider letterhead, including the information in Parts (A) through (G) of this Subparagraph, and confirming completion of the course; and

- (I) one color photograph of the applicant.
- (3) An applicant for renewal of renovator certification shall have successfully completed the required accredited refresher training course no more than 60 months prior to applying for certification renewal, and shall meet the requirements of Paragraphs (b) and (d) of this Rule. If a person fails to obtain the required training within 60 calendar months of the date of last training, that person may renew certification only by successful completion of an accredited initial renovator course and by meeting the requirements of Paragraphs (b) and (d) of this Rule.

(e) All certified persons shall be assigned a unique certification number by the Program.

(f) A person whose certification or certification renewal is revoked, suspended or denied because of misrepresentations or because of violations that create a public health threat as defined in G.S. 130A-475(d), shall not reapply for certification or certification renewal before 12 months after the effective date of the revocation, suspension, or denial and shall repeat the initial training course and other requirements as set out in Paragraphs (b), (c), and (d) of this Rule.

(g) The Program may revoke, suspend or deny certification or certification renewal upon a finding that the certified person has violated any requirement referenced in the following provisions with regard to renovation activities, as determined by the agencies which administer these Rules:

- (1) Department of Labor Rules found at Chapter 7, Title 13 of the North Carolina Administrative Code;
- (2) Department of Transportation Rules found at Title 19A of the North Carolina Administrative Code;
- (3) Solid Waste Management Rules found at Chapter 13, Title 15A of the North Carolina Administrative Code; and
- (4) NC Childhood Lead Poisoning Prevention Program requirements found at G.S. 130A, Article 5, Part 4.

*History Note: Authority G.S. 130A-453.24; 130A-453.25; 130A-453.31; 130A-23; Temporary Adoption Eff. January 1, 2010; Eff. November 1, 2010.*

#### **10A NCAC 41C .0903 CERTIFICATION OF RENOVATION FIRMS**

(a) The Program shall issue a certificate of approval to firms meeting the requirements in Paragraphs (b) and (c) of this Rule.

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

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

(c) All certifications may be renewed annually by submitting a completed application provided by the Program for evaluation.

(d) A firm whose certification is revoked, suspended or denied because of misrepresentations or because of violations that create a public health threat as defined in G.S. 130A-475(d) shall not reapply for certification or renewal of certification before 12 months after the effective date of the revocation, suspension, or denial and shall comply with the requirements for firm certification as set out in Paragraphs (a), (b), and (c) of this Rule. The Program may revoke, suspend or deny certification or certification renewal upon a finding that a certified firm, or an individual performing a renovation on behalf of the firm, has violated any requirement referenced in Rule .0902(g) of this Section. Firm certification may be revoked, suspended or denied upon revocation of certification by US EPA or a US EPA authorized program.

*History Note: Authority G.S. 130A-453.24; 130A-453.25; 130A-453.22; 130A-23; Temporary Adoption Eff. January 1, 2010. Eff. November 1, 2010.*

#### **10A NCAC 41C .0905 ACCREDITATION OF TRAINING PROVIDERS**

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

- (1) Submit a completed application on a form provided by the Program including:
  - (A) the name, address including city, state and zip code, and telephone number of the training provider;

- (B) a statement that all courses taught in North Carolina for certification will comply with all of the requirements of the rules in this Section;
  - (C) a statement that the training provider is responsible for maintaining the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics;
  - (D) a statement that the training provider is responsible for maintaining the validity and integrity of the course examination to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics;
  - (E) documentation for the training manager, pursuant to Rule .0904 of this Section; and
  - (F) the original signature, title, and printed name of an official of the training provider.
- (2) Training Providers accredited by US EPA or by a state with a US EPA authorized program shall submit documentation of their accreditation to the Program.

(b) In accordance with G.S. 130A-23, the Program may suspend, revoke, or deny accreditation of a training provider for any violation of G.S. 130A, Article 19B or the rules of this Section and shall revoke accreditation upon revocation of accreditation by the US EPA or by any state with a US EPA authorized accreditation program. A training provider whose course accreditation has been revoked by the Program is not eligible for accreditation for a period of 12 months from the date of revocation. The Program shall also revoke a training provider's accreditation upon a finding that the training course provider has falsified training documents or issued one or more certificates to an individual who did not actually attend the course, complete the hands-on exercises, and pass the examination. When accreditation is revoked for falsification of documents or improper issuance of certificates, the training course provider shall not be eligible for reaccreditation for a period of 36 months from the date of revocation.

*History Note: Authority G.S. 130A-453.26; 130A-453.31; 130A-23;*  
*Temporary Adoption Eff. January 1, 2010;*  
*Eff. November 1, 2010.*

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

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

(b) The following shall be maintained on site during renovation activities and be available for review by the Program:

- (1) A copy of the Program issued firm certification;
- (2) A copy of the Program issued certification letter for the certified renovator assigned to the project; and
- (3) Photo-identification cards issued by the Department for inspectors, risk assessors and dust sampling technicians performing dust wipe sampling or clearance sampling as applicable.

*History Note: Authority G.S. 130A-453.28; 130A-453.31;*  
*Temporary Adoption Eff. January 1, 2010;*  
*Eff. November 1, 2010.*

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

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

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

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

*History Note: Authority G.S. 130A-453.29; 130A-453.31;*  
*Temporary Adoption Eff. January 1, 2010;*  
*Eff. November 1, 2010.*

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**TITLE 11 – DEPARTMENT OF INSURANCE**

**11 NCAC 04 .0423 ETHICAL STANDARDS**

(a) Every agent, limited representative, broker, adjuster, appraiser, or other insurer's representative shall, when conducting insurance business with a member of the public:

- (1) identify himself or herself and his or her occupation; and
- (2) provide his or her National Producer Number and the Department's website address and phone number for verification of licensure status when requested to show proof of licensure by any claimant, any repairer while he or she is investigating a claim or loss, any Department representative, or any other person with whom he or she has contact while performing his or her insurance business.

(b) No claims management person, agent, agency employee, limited representative, broker, adjuster, appraiser, or other insurer's representative shall:

- (1) accept any gratuity or other form of remuneration from any provider of services for recommending that provider to claimants;
- (2) purchase salvage from a claimant;
- (3) intimidate or discourage any claimant from seeking legal advice and counsel by withdrawing and reducing a settlement offer previously tendered to the claimant or threatening to do so if the claimant seeks legal advice or counsel. No adjuster shall advise a claimant of the advisability of seeking legal counsel nor recommend any legal counsel to any claimant; or
- (4) cause any undue delay in the settlement of a property damage claim on account of the claimant's choice of a motor vehicle repair service.

(c) No claims management person, agent, agency employee, limited representative, broker, or other insurer's representative shall recommend the utilization of a particular motor vehicle repair service without informing the claimant that he is under no obligation to use the recommended repair service and that he may use the service of his choice.

*History Note: Authority G.S. 58-2-40; 58-33-10; 58-33-30; 58-35-25; 58-63-65; 58-65-40; Eff. December 15, 1979; Amended Eff. October 1, 2010; April 1, 1993; April 1, 1989; July 1, 1986.*

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#### **11 NCAC 06A .0201 GENERAL INFORMATION**

(a) All forms pertaining to licensure including applications, bonds, appointments, termination of appointments and other forms required by Chapter 58 shall be supplied by the Division. The Division shall make these forms available in an electronic format and require the licensee or company to file documents electronically with the Commissioner or the Commissioner's designee. The actual cost of the electronic filing is the administrative fee charged by the Commissioner's designee which may include a transaction fee, a credit card processing fee, or other bank processing fee. The administrative fee shall be paid at the time of the electronic filing transaction by the electronic payment options made available by the Commissioner's designee through electronic check, credit card, automated clearing house (ACH), or electronic funds transfer (EFT). The Division shall provide instructions for proper completion of all forms.

(b) Forms shall be completed in full and must contain necessary signatures in order to be accepted. Companies and applicants shall submit all forms or complete other requirements within time schedules established under Chapter 58.

(c) Companies or applicants may duplicate forms without alteration or modification thereto.

(d) If any additional supporting documents, information or fees are required under Chapter 58, they shall be submitted with the appropriate forms or applications. The additional supporting documents, information, or fees required under Chapter 58 shall be filed electronically to the Commissioner or the Commissioner's designee. The actual cost of the electronic filing is the administrative fee charged by the Commissioner's designee which may include a transaction fee, a credit card processing fee, or other bank processing fee. The administrative fee shall be paid at the time of the electronic filing transaction by the electronic payment options made available by the Commissioner's designee through electronic check, credit card, automated clearing house (ACH) or electronic funds transfer (EFT).

*History Note: Authority G.S. 58-2-40; 58-2-250; Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. October 1, 2010; February 1, 1989.*

#### **11 NCAC 06A .0212 LICENSES**

The Commissioner shall issue an electronic license record to the licensed individual or business entity showing the name of the licensee, identifying number of the licensee, date of issue and, if applicable, the type of insurance a licensee is authorized to sell and the terms of the license.

*History Note: Authority G.S. 58-2-40; 58-33-26(k); Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. October 1, 2010; October 1, 1990; February 1, 1989; July 1, 1986.*

#### **11 NCAC 06A .0234 RESIDENT SURPLUS LINES LICENSE RENEWAL**

*History Note: Authority G.S. 58-2-40; 58-21-40(d); 58-21-65(d),(f); Eff. February 1, 1989; Temporary Amendment Eff. October 3, 1991 For a Period of 180 Days to Expire on March 30, 1992; Amended Eff. February 1, 1996; March 1, 1992; Repealed Eff. October 1, 2010.*

#### **11 NCAC 06A .0238 RENTAL CAR COMPANY LICENSE APPLICATION**

*History Note: Authority G.S. 58-2-40; 58-33-17; 58-33-125(c); Temporary Adoption Eff. October 3, 1991 For a Period of 180 Days to Expire on March 30, 1992; Eff. March 1, 1992; Repealed Eff. October 1, 2010.*

#### **11 NCAC 06A .0305 ADMINISTRATION OF EXAMINATION**

(a) Individuals applying for an agent or adjuster license shall present to the test site personnel upon request the applicable items described in 11 NCAC 06A .0304(a) through (d).

(b) Applicants may take simple function calculators, but shall not take textbooks, other books or papers into the examinations. Applicants found to have any of these materials shall not be allowed to continue the examination.

(c) Applicants shall leave the examination room only after obtaining permission from the examination proctors and handing in exam materials. No extra time shall be allowed for completing the examination.

(d) Any applicant who gives or receives assistance during the examination shall not receive an examination score. The proctors of the examination shall report the incident to the Commissioner.

*History Note: Authority G.S. 58-2-40; 58-33-30(e); Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. October 1, 2010; February 1, 1996; October 1, 1990; February 1, 1989.*

#### **11 NCAC 06A .0402 LICENSING OF RESIDENT AGENT, LTD REPRESENTATIVE AND ADJUSTER**

(a) An applicant for a resident variable life and variable annuity product shall hold a resident life license before making application for a resident variable life and variable annuity product license. An agent licensed to sell variable life and variable annuity products shall be appointed by a company authorized to sell variable annuities and variable life insurance products in North Carolina. The company shall verify that the agent has met the requirements of the NASD or its successor organization.

(b) A limited representative shall be appointed with each company for which he will solicit business for the following kinds of insurance:

- (1) Dental services;
- (2) Limited line credit insurance;
- (3) Motor club;
- (4) Prearrangement insurance, as defined in G.S. 58-60-35(a)(2), when offered or sold by a preneed sales licensee licensed under Article 13D of Chapter 90 of the General Statutes; or
- (5) Travel, accident and baggage.

(c) Responsibility of insurance companies for forms:

- (1) Companies shall have on file with the Division the address and email address of one central licensing office and the individual within such office to which all correspondence, licenses, and invoices will be forwarded.
- (2) Companies shall have on file with the Division the name of the individual responsible for all agent appointments and termination of agent appointments submitted by the company to the Division.
- (3) A company shall verify the licensure of an agent before the company appoints the agent.
- (4) Companies shall notify the Division within 10 days after any change of address or email address of the central licensing office and of any change of the individual within such office

to which all correspondence, licenses, and invoices will be forwarded.

(d) Responsibility of the agent, limited representative and adjuster:

- (1) A person, after surrender or termination of a license for such period of time that he is no longer eligible for waiver of the examination, shall meet all legal requirements for previously unlicensed persons.
- (2) Every licensee shall, upon demand from the Division, furnish in writing any information relating to the licensee's insurance business within 10 business days after the demand.

(e) An applicant for a resident license shall, if an electronic record is not available, obtain an original letter of clearance from his former state of residency certifying the kinds of insurance for which the applicant was licensed, that all licenses held in that state have been canceled and that the applicant was in good standing in that state at the time of the cancellation of licenses. A letter of clearance is valid for 90 days from date of issuance.

(f) Only individuals may apply for limited representative and adjuster licenses.

*History Note: Authority G.S. 58-2-40; 58-2-195(a); 58-33-26; 58-33-30; 58-33-66; Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. October 1, 2010; February 1, 2008; April 1, 2003; February 1, 1996; October 1, 1990; February 1, 1989.*

#### **11 NCAC 06A .0413 LICENSING OF BUSINESS ENTITIES**

*History Note: Authority G.S. 58-2-40; 58-33-31; Eff. February 1, 1989; Amended Eff. March 1, 2008; April 1, 2003; February 1, 1996; October 1, 1990; Repealed Eff. October 1, 2010.*

#### **11 NCAC 06A .0418 FINGERPRINTS REQUIRED FOR CRIMINAL RECORD CHECKS**

(a) An applicant for a resident insurance producer license shall furnish the Commissioner with a complete set of the applicant's fingerprints as authorized by G.S. 58-33-48. An applicant for an insurance producer license as defined in G.S. 58-33-10(7), includes:

- (1) An applicant for an initial resident insurance producer license;
- (2) A non-resident insurance producer applying for a resident insurance producer license;
- (3) An adjuster applying for an initial resident insurance producer license;
- (4) A resident insurance producer license applicant applying for reinstatement of an insurance producer license that has been lapsed for more than one year; and
- (5) A resident insurance producer license applicant whose license has been suspended or

revoked for non-payment of child support pursuant to G.S. 110-142.1.

(b) As authorized by G.S. 58-33-48, fingerprints shall be furnished in the following manner:

- (1) Each resident insurance producer license applicant who is required to submit fingerprints under G.S. 58-33-48 shall have a complete set of their fingerprints electronically captured by a criminal law enforcement agency approved by State Bureau of Investigation (SBI) to submit fingerprints via electronic means;
- (2) Each resident insurance producer license applicant who is required to submit fingerprints under G.S. 58-33-48 shall submit with the insurance producer license application the Electronic Fingerprint Submission Release of Information Form that has been completed and certified by a law enforcement officer that the applicant's fingerprints have been submitted via electronic means to the SBI;
- (3) Each resident insurance producer license applicant who is required to submit fingerprints under G.S. 58-33-48 shall submit with the insurance producer license application the Authority for Release of Information form required by the SBI to release the criminal history record check information to the Department;
- (4) Each resident insurance producer license applicant who is required to submit fingerprints under G.S. 58-33-48 shall submit with the insurance producer license application the cost for the state and national criminal history record fee that is set forth pursuant to G.S. 114-19.1(a); and
- (5) All fingerprint impressions must be suitable for use by the SBI to conduct a state criminal history record check and for the Federal Bureau of Investigations (FBI) to conduct a national criminal history record check. If the SBI deems the electronic fingerprints are not suitable, the Commissioner shall notify and provide instructions to the applicant to resubmit his fingerprints in the manner set forth in Subparagraph (1) of this Paragraph within 30 days.

(c) The application of a resident insurance producer required to submit fingerprints is not be complete until the Commissioner receives the state and national criminal history record information. In accordance with G.S. 58-33-30(a), the Commissioner shall not issue the license of an insurance producer that does not satisfy the license application requirements.

*History Note: Authority G.S. 58-2-40; 58-33-30; 58-33-48; Eff. October 1, 2010.*

**11 NCAC 06A .0501 RENEWAL OF AGENT APPTS: LICENSES/LIMITED REPS**

(a) Annually the Division shall notify each insurance company and motor club company of dates and procedures for renewing agent appointments and limited representative licenses. Companies shall be given at least 30 days' advance notice of the last date the Division shall process terminations.

(b) On the last date to submit terminations, the Division shall cease processing all terminations and bill companies for renewals. All appointments and licenses shall automatically be billed for the appointment renewal unless the Division has received a termination request from the company within the specified time.

(c) The Division shall send each company an invoice stating the total amount of money due and a list of all appointees or licensees associated with the total due. The Division shall make this invoice and a list of all appointees or licensees associated with the total due available electronically to each company. Companies shall remit the amount stated in the invoice by electronic payment to the Commissioner or the Commissioner's designee and shall pay all associated fees for electronic processing. Any discrepancies claimed by companies shall be investigated only after full payment is received.

(d) Upon receipt of the company payment, the Division shall provide to the company an electronic list of all appointments and licenses renewed.

(e) Appointments recorded and licenses issued prior to the renewal date, but after the date specified by the Division as the last date to process termination are valid until the following year.

(f) Failure of a company to pay any invoice by the due date shall automatically result in the termination of all appointees or licensees of that company. The Commissioner shall not issue any new appointments until all outstanding invoices have been paid. Any company that has had appointments or licensees cancelled by the Commissioner pursuant to this Rule shall not process any new electronic appointments until all outstanding invoices have been paid. When the outstanding invoices are paid, the company may re-appoint agents or limited representatives and shall pay the appointment fees.

*History Note: Authority G.S. 58-2-40; 58-2-250; 58-33-40(f); 58-33-56; 58-33-125(a); 58-33-125(h); Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. October 1, 2010; February 1, 1996; October 1, 1990; February 1, 1989; July 1, 1986.*

**11 NCAC 06A .0504 FAILURE TO RENEW LICENSE**

Failure to renew a broker, limited representative, adjuster or motor vehicle damage appraiser license by March 31 by payment of the annual renewal fee as specified in G.S. 58-33-125(a) shall result in automatic lapse of the license on April 1 by the Division.

*History Note: Authority G.S. 58-2-40; 58-33-26(m); 58-33-125(a); Eff. February 1, 1976; Readopted Eff. June 12, 1978; Amended Eff. October 1, 2010; February 1, 1989.*



**11 NCAC 06A .0505      TERMINATION OF APPOINTMENTS FOR LIMITED REPS**

All companies shall submit termination of appointments through an electronic system provided by the Commissioner.

*History Note:*    *Authority* G.S. 58-2-40; 58-2-250; 58-33-56(b);

*Eff.* June 12, 1978;

*Amended Eff.* October 1, 2010; October 1, 1990; February 1, 1989; July 1, 1986.

**11 NCAC 06A .0506      CANCELLATION OF LICENSES ISSUED TO INDIVIDUALS**

(a) Any insurance producer, adjuster, viatical settlement broker or surplus lines licensee desiring to cancel a license shall submit a written request to the Division.

(b) Cancellation of a license automatically terminates all appointments for the kind of insurance covered by the license.

*History Note:*    *Authority* G.S. 58-2-40; 58-33-40(e);

*Eff.* February 1, 1989;

*Amended Eff.* October 1, 2010; April 1, 2003; October 1, 1990.

**11 NCAC 06A .0802      LICENSEE REQUIREMENTS**

(a) Each person holding a life, accident and health or sickness, property, casualty, personal lines, or adjuster license shall obtain 24 ICECs during each biennial compliance period. Each person holding one or more life, accident and health or sickness, property, casualty, personal lines, variable life and variable annuity products or adjuster license shall complete an ethics course or courses within two years after January 1, 2008, and every biennial compliance period thereafter as defined in this Section. The course or courses shall comprise three ICECs.

(b) Each person holding one or more property, personal lines, or adjuster license, shall complete a continuing education course or courses on flood insurance and the National Flood Insurance Program, or any successor programs, within the first biennial compliance period after January 1, 2008, and every other biennial compliance period thereafter. The course or courses shall comprise three ICECs.

(c) Each licensee shall, before the end of that licensee's biennial compliance year, furnish evidence as set forth in this Section that the continuing education requirements have been satisfied.

(d) An instructor shall receive the maximum ICECs awarded to a student for the course.

(e) Licensees shall not receive ICECs for the same course more often than one time in any biennial compliance period.

(f) Licensees shall receive ICECs for a course only for the biennial compliance period in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

(g) Licensees shall maintain records of all ICECs for five years after obtaining those ICECs, which records shall be available for inspection by the Commissioner.

(h) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident adjusters who qualify for licensure by passing the North Carolina adjuster examination pursuant to G.S. 58-33-30(h)(2)a shall meet the same continuing

education requirements as a resident adjuster including mandatory flood and ethics courses. Nonresident adjusters who qualify for licensure by passing an adjuster examination in another state pursuant to G.S. 58-33-30(h)(2)b and are in good standing in that state shall be credited with having met the same continuing education requirements as resident adjusters, including mandatory flood and ethics courses.

(i) Only a licensed insurance producer who is unable to comply with continuing education requirements due to military service, or long-term medical disability may request a waiver for continuing education requirements. A long-term medical disability means that it is certified on an annual basis by an attending physician to the licensee. The Commissioner shall grant an exemption from Continuing Education requirements for up to one year if the producer submits the following:

- (1) Deployment orders from the United States Department of Defense; or
- (2) A notarized statement from a licensed physician stating the producer is unable to do the work he is licensed to do.

(j) A licensee who was granted an exemption from the requirements of this Section prior to October 1, 2010 continues to be exempt from continuing education requirements for as long as the licensee certifies to the Commissioner that he:

- (1) is age 65 or older;
- (2) has been continuously licensed in the line of insurance for at least 25 years; and
- (3) either:
  - (A) holds a professional designation specified in 11 NCAC 06A .0803; or
  - (B) certifies to the Commissioner annually that the licensee is an inactive agent who neither solicits applications for insurance nor takes part in the day to day operation of an agency.

(k) Any licensee who qualifies for exemption under Paragraph (j) of this Rule shall meet the ethics and flood courses as required in Paragraph (a) and (b) of this Rule and in Rule .0812 of this Section.

(l) Courses completed before the issue date of a new license do not meet the requirements of this Section for that new license.

(m) No credit shall be given for courses taken before they have been approved by the Commissioner.

(n) Each person with an even numbered birth year shall meet continuing education requirements in an even numbered compliance year. Each person with an odd numbered birth year shall meet continuing education requirements in an odd numbered compliance year. The licensee shall complete 24 hours of continuing education by the last day of the licensee's birth month in the compliance year.

(o) An existing licensee requiring continuing education is an individual who holds any of the following licenses on or before December 31, 2007: life and health, property and liability, personal lines, or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The licensee's birth month determines the month that continuing

education is due. (Example: An individual born in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year.) The number of ICECs required by this Rule is prorated based on one ICEC per month, up to 24 months. This conversion shall be completed within four years. (Example: An individual with a birth date of February 16, 1960, would have the following two compliance periods during the continuing education conversion: 1st – two

ICECs by the end of February 2008; the 2nd – 24 ICECs by the end of February 2010. An individual with a birth date of April 4, 1957, would have the following two compliance periods during the continuing education conversion: 1st – 16 ICECs by the end of April 2009; the 2nd – 24 ICECs by the end of April 2011.) The chart below reflects the number of hours an existing licensee requiring continuing education must have during the four-year conversion.

Compliance Year	EXISTING LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH																							
	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEPT		OCT		NOV		DEC	
	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd
2008	1		2		3		4		5		6		7		8		9		10		11		12	
2009		13		14		15		16		17		18		19		20		21		22		23		24
2010	24		24		24		24		24		24		24		24		24		24		24		24	
2011		24		24		24		24		24		24		24		24		24		24		24		24

(p) A new licensee requiring continuing education is an individual who is issued any of the following licenses on or after January 1, 2008: life, accident and health or sickness, property, casualty, personal lines or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The licensee's birth month determines the month that continuing education is due. (Examples: An individual born in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year. An individual with a birth date of December 1, 1960, licensed in 2008, is required to meet 24 hours of continuing education by December 31, 2010. An individual with a birth date of October 1, 1957, licensed in 2008, is required to meet 24 hours of continuing education by October 31, 2011.) The chart below shows the first deadline by which a new licensee would be required to complete 24 hours of continuing education.

License Issue Year	NEW LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH																							
	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEPT		OCT		NOV		DEC	
	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd
<b>2008</b>	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
<b>2009</b>	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011
<b>2010</b>	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013
<b>2011</b>	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013

(q) A member of a professional insurance association may receive no more than two ICECs during the biennial compliance period based solely on membership in the association. The professional insurance association shall be approved as a continuing education provider, shall have been in existence for at least five years, and shall have been formed for purposes other than providing continuing education. The professional insurance association shall:

- (1) Provide the Commissioner or the Administrator with the association's Articles of Incorporation on file with the N.C. Secretary of State;
- (2) Certify to the Commissioner or Administrator that the licensee's membership is active during the biennial compliance period;
- (3) Certify to the Commissioner or Administrator that the licensee attended 50 percent of the regular meetings;
- (4) Certify to the Commissioner or Administrator that the licensee attended a statewide or intrastate regional educational meeting on an annual basis, where the regional meeting covered an area of at least 25 counties of the State; and
- (5) Pay the one dollar (\$1.00) per ICEC to the Commissioner or Administrator.

*History Note: Authority G.S. 58-2-40; 58-2-185; 58-2-195; 58-33-130; 58-33-133;*

*Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990;*

*ARRC Objection Lodged July 19, 1990;*

*Eff. December 1, 1990;*

*Temporary Amendment Eff. October 3, 1991 for a period of 180 days to expire on March 30, 1992;*

*Amended Eff. October 1, 2010; February 1, 2008; January 1, 2007; February 1, 1995; August 1, 1994; February 1, 1994; January 1, 1993.*

#### **11 NCAC 06A .0811 SANCTIONS FOR NONCOMPLIANCE**

(a) If the license of any person lapses under G.S. 58-33-130(c), the license shall be reinstated when the person has completed the continuing education requirements and paid an administrative fee of seventy-five dollars (\$75.00) within four months after the end of the person's previous compliance year. If the person does not satisfy the requirements for licensure reinstatement within four months after the end of the person's previous compliance year, the person shall complete the appropriate prelicensing education requirement and pass the appropriate licensing examination, at which time the Commissioner shall reinstate the person's license.

(b) The Commissioner may suspend, revoke, or refuse to renew a license for any of the following causes:

- (1) Failing to respond to Department inquiries, including continuing education audit requests, within seven calendar days after the receipt of the inquiry or request.
- (2) Requesting an extension or waiver under false pretenses.
- (3) Refusing to cooperate with Department employees in an investigation or inquiry.

(c) The Commissioner may suspend, revoke, or refuse to renew a course provider's, presenters, or instructor's authority to offer courses for any of the following causes:

- (1) Advertising that a course is approved before the Commissioner has granted such approval in writing.

- (2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content.
- (3) Presenting or using unapproved material in providing an approved course.
- (4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner.
- (5) Preparing and distributing certificates of attendance or completion before the course has been approved.
- (6) Issuing certificates of attendance or completion before the completion of the course.
- (7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course.
- (8) Failing to notify the Commissioner in writing of suspected or known violations of the North Carolina General Statutes or Administrative Code within 30 days after suspecting or knowing about the violations.
- (9) Violating the North Carolina General Statutes or Administrative Code.
- (10) Failing to monitor attendance and attention of attendees.
- (11) Preparing and distributing fraudulent certificates of attendance or completion.
- (12) Failing to ensure that the licensee completes the course hours approved by the Commissioner.

(d) Course providers and presenters are responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of any of the activities associated with the course.

(e) The Commissioner may require any one of the following upon a finding of a violation of this Section:

- (1) Refunding all course tuition and fees to licensees.
- (2) Providing licensees with a course to replace the course that was found in violation.
- (3) Withdrawal of approval of courses offered by the provider, presenter, or instructor.

(f) Each year, the Commissioner shall verify each nonresident licensee's record through the NAIC Producer Data Base to ensure that the licensee has complied with the continuing education requirements in the licensee's home state. If the license lapses under G.S. 58-33-32, the Commissioner shall cancel the license.

*History Note: Authority G.S. 58-2-40; 58-33-125(a); 58-33-130; 58-33-132; 58-33-133;*  
*Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990;*  
*ARRC Objection Lodged July 19, 1990;*  
*Eff. December 1, 1990;*  
*Amended Eff. October 1, 2010; February 1, 2008; January 1, 2007; June 1, 1992.*

## **11 NCAC 06A .0812 SPECIAL CASES**

(a) In addition to the courses in 11 NCAC 06A .0803, the Commissioner shall prepare courses to address and remedy deficiencies in licensee professional performance or conduct detected by the Commissioner through analyses of consumer complaints or from Departmental audits or examinations of insurance companies, licensees, or insurance agencies or brokerages.

(b) The Commissioner shall require an individual licensee to take and complete remedial or rehabilitative courses if the licensee has committed any of the acts or omissions specified in G.S. 58-33-46.

(c) The Commissioner shall award 24 biennial continuing professional educational credit hours based on government service relative to insurance or finance, such as service as a legislator on a committee in the General Assembly that hears insurance and finance matters.

*History Note: Authority G.S. 58-2-40; 58-33-46; 58-33-130; 58-33-130(a)(5);*  
*Eff. August 1, 1995;*  
*Amended Eff. October 1, 2010.*

## **11 NCAC 06A .0901 DEFINITIONS**

## **11 NCAC 06A .0902 TRANSACTIONS WITH INSURED**

## **11 NCAC 06A .0903 RELATIONSHIPS WITH THIRD PARTIES**

## **11 NCAC 06A .0904 REGULATORY MATTERS**

*History Note: Authority G.S. 58-2-40; 58-33-10; 58-33-10(b); 58-33-25(a); 58-33-30; 58-33-70; 58-33-76; 58-63-15(2), 58-63-15(11);*  
*Eff. April 1, 1996;*  
*Amended Eff. February 1, 2006;*  
*Repealed Eff. October 1, 2010.*

## **11 NCAC 06A .0905 CATASTROPHIC DISASTERS**

*History Note: Authority G.S. 58-2-40; 58-33-46; 58-33-70; 58-33-120; 58-63-10; 58-63-15;*  
*Eff. February 1, 2006;*  
*Repealed Eff. October 1, 2010.*

## **11 NCAC 06A .0906 FINGERPRINTS REQUIRED FOR CRIMINAL RECORD CHECKS**

(a) An applicant for a resident public adjuster license shall furnish the Commissioner with a complete set of the applicant's fingerprints as authorized by G.S. 58-33A-15. An applicant for a public adjuster license includes:

- (1) An applicant for an initial resident public adjuster license;
- (2) A non-resident public adjuster applying for a resident public adjuster license;
- (3) A resident public adjuster license applicant applying for reinstatement of license that has been lapsed for more than one year;
- (4) A resident public adjuster license applicant whose license has been suspended or revoked

for non-payment of child support pursuant to G.S. 110-142.1; or

- (5) An owner, partner, officer manager, or director of a business entity, or member or manager of a limited liability company applying for a resident public adjuster business entity license.

(b) As authorized by G.S. 58-33A-15, fingerprints shall be furnished in the following manner:

- (1) Each resident public adjuster license applicant who is required to submit fingerprints under G.S. 58-33A-15 shall have a complete set of their fingerprints electronically captured by a criminal law enforcement agency approved by State Bureau of Investigation (SBI) to submit fingerprints via electronic means;
- (2) Each resident public adjuster license applicant who is required to submit fingerprints under G.S. 58-33A-15 shall submit with the public adjuster license application the Electronic Fingerprint Submission Release of Information Form that has been completed and certified by a law enforcement officer that the applicant's fingerprints have been submitted via electronic means to the SBI;
- (3) Each resident public adjuster license applicant who is required to submit fingerprints under G.S. 58-33A-15 shall submit with the public adjuster license application the Authority For Release Of Information form required by the SBI to release the criminal history record check information to the Department;
- (4) Each resident public adjuster license applicant who is required to submit fingerprints under G.S. 58-33A-15 shall submit with the public adjuster license application the cost for the state and national criminal history record fee that is set forth pursuant to G.S. 114-19.1(a); and
- (5) All fingerprint impressions must be suitable for use by the SBI to conduct a state criminal history record check and for the Federal Bureau of Investigations (FBI) to conduct a national criminal history record check. If the SBI deems the electronic fingerprints are not suitable, the Commissioner shall notify and provide instructions to the applicant to resubmit his fingerprints in the manner set forth in Subparagraph (1) of this Paragraph within 30 days.

(c) The application of a resident public adjuster required to submit fingerprints is not be complete until the Department receives the state and national criminal history record information. In accordance with G.S. 58-33A-20(c), the Commissioner shall not issue the license of a public adjuster that does not satisfy the license application requirements.

*History Note: Authority G.S. 58-2-40; 58-33A-15; 58-33A-20; Eff. October 1, 2010.*

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#### 11 NCAC 08 .1011 FEE SCHEDULE

(a) The following fees apply to the licensure of home inspectors:

Application for Home Inspector License	\$ 35.00
Application for Associate Home Inspector License	\$ 20.00
Home Inspector Examination	\$ 80.00
Initial Issuance or Annual Renewal of Home Inspector License	\$160.00
Initial Issuance or Annual Renewal of Associate Home Inspector License	\$110.00
Late Renewal Penalty Fee - Home Inspector License	\$ 30.00
Late Renewal Penalty Fee - Associate Home Inspector License	\$ 20.00
Copies of Board Rules and License Standards	\$ 5.00

(b) The home inspector and the associate home inspector initial issuance license fees are due after successful completion of the examination. The Board shall not issue a license until it receives the appropriate fee. The license is valid from the date of issue until the following September 30.

*History Note: Authority G.S. 143-151.49; 143-151.55; 143-151.57; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. October 1, 2010; January 1, 2008.*

#### 11 NCAC 08 .1104 GENERAL LIMITATIONS

(a) Home inspections done in accordance with this Section are not technically exhaustive.

(b) This Section applies to buildings with four or fewer dwelling units, and individually owned residential units within multi-family buildings, and their attached garages or carports.

*History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. October 1, 2010.*

#### 11 NCAC 08 .1116 CODE OF ETHICS

(a) Licensees shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.

(b) Opinions expressed by licensees shall only be based on their education, experience, and honest convictions.

(c) A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client's designated representative.

(d) No licensee shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.

(e) No licensee shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible.

(f) No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.

(g) Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform.

(h) A licensee shall not solicit for repairs of systems or components found defective in the course of a home inspection performed by the licensee or that licensee's company.

(i) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

(j) Licensees shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of a property.

*History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. October 1, 2010; July 1, 2000.*

**11 NCAC 08 .1332 PER STUDENT FEE**

Following completion of any approved continuing education update or elective course, the course sponsor shall submit to the Board, along with the roster and the items required to be submitted by Rule .1331 of this Section, a fee in the amount of five dollars (\$5.00) per credit hour for each licensee who completes the course according to the criteria in Rule .1305 of this Section. Fees paid by check or money order shall be made payable to the Home Inspector Licensure Board. The sponsor shall make a separate fee payment for each separate class session.

*History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. December 4, 2002; Amended Eff. October 1, 2010.*

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**11 NCAC 13 .0101 DEFINITIONS  
11 NCAC 13 .0102 PURPOSE OF DIVISION  
11 NCAC 13 .0103 DEPUTY COMMISSIONER  
11 NCAC 13 .0104 DIVISION PERSONNEL  
11 NCAC 13 .0105 FIELD INVESTIGATIONS:  
EXAMINATIONS**

*History Note: Authority G.S. 58-2-40; 58-7.3; 58-9; 58-9.2; 58-35-5(b); 58-35-15(a); 58-57; 58-57.1; 66-46; 66-48; 66-49.13; 85C-2; 85C-35; Eff. February 1, 1976; Readopted Eff. January 1, 1978; Amended Eff. April 8, 2002;*

*Repealed Eff. October 1, 2010.*

**11 NCAC 13 .0304 RENEWAL OF INSURANCE  
PREMIUM FINANCE LICENSE**

*History Note: Authority G.S. 58-2-40; 58-35-15(c); Eff. February 1, 1976; Readopted Eff. January 1, 1978; Amended Eff. April 8, 2002; Repealed Eff. October 1, 2010.*

**11 NCAC 13 .0309 QUARTERLY REPORT**

*History Note: Authority G.S. 58-2-40; 58-35-30; Eff. February 1, 1976; Readopted Eff. January 1, 1978; Amended Eff. May 1, 1989; Repealed Eff. October 1, 2010.*

**11 NCAC 13 .0405 SURETY BOND**

The surety bond described in G.S. 58-69-10 shall be executed on the Bond-MC form supplied by the Commissioner of Insurance and shall be completed and executed in accordance with the laws of North Carolina governing surety bonds by a surety company authorized to transact business in this state.

*History Note: Authority G.S. 58-2-40; 58-69-20(5); Eff. February 1, 1976; Readopted Eff. January 1, 1978; Amended Eff. October 1, 2010; April 8, 2002.*

**11 NCAC 13 .0512 COLLATERAL SECURITY  
REQUIRED BY BONDSMEN**

(a) The collateral security required by bail bondsmen must be reasonable in relation to the amount of the bond in that any collateral security (including personal property, real property, indemnity agreement and guarantee) received by such licensee shall not, in the aggregate, exceed the amount of the bond.

(b) Any collateral security shall be returned to the person who deposited it with the bail bondsman immediately after the obligation, the satisfaction of which was secured by the collateral, is discharged.

(c) Any bail bondsman, runner or other representative who receives collateral security shall hold such collateral security in trust. No indemnity agreement or other security received as collateral security for a bond shall contain any provision whereby any liability or obligation under such agreement extends beyond the termination of liability under the bond.

(d) If the bondsman's liability is reduced at any time and for any reason, the collateral security and all obligations under collateral indemnity agreements or guarantees shall be reduced to the same extent that the liability under the bond was reduced, and any excess thereof shall be immediately returned to the depositor of the security.

(e) No indemnity agreement or other security agreement taken as collateral for bonds shall include any provision for the payment of interest or other additional fees or charges.

(f) All persons who sign any type of indemnity agreement or other type of security agreement to be used as collateral shall be

furnished by the bondsman or his representative with a copy of such agreement.

(g) The provisions of this Section relating to indemnity agreements or other security agreements apply to all such agreements whether set forth on the face of the bond or contained in a separate agreement.

(h) All indemnity agreements or other security agreements shall be considered as collateral security and shall be listed and described on the form provided by the Administrative Office of the Courts (Form No. 277 AOC-L or its successor) entitled "Affidavit of Surety."

(i) Upon any modification or alteration of the collateral security, the bondsman shall comply with the provisions of 11 North Carolina Administrative Code 13 .0513.

(j) All agreements and contracts with defendants or anyone on behalf of the defendant, shall have a form number and the license number of the bail bondsman printed thereon and must be submitted to the Department for approval. No such agreements or contracts shall be used by the licensee until written approval has been given by the Department.

*History Note:* Authority G.S. 58-2-40; 58-71-5(a); 58-71-95; 58-71-100;

*Eff. August 1, 1976;*

*Readopted Eff. January 1, 1978;*

*Amended Eff. October 1, 2010; September 14, 1978.*

#### **11 NCAC 13 .0513 ALTERATION OF AFFIDAVIT OF SURETY**

Upon any modification or alteration of the collateral security, the bondsman shall execute a written amendment to the Affidavit of Surety setting forth the details of such modification or alteration. A copy of any such amendment shall be furnished to the principal and the person furnishing the collateral security or premium, and a copy shall be on file in the office of the bondsman.

*History Note:* Authority G.S. 58-2-40; 58-71-5(a);

*Eff. August 1, 1976;*

*Readopted Eff. January 1, 1978;*

*Amended Eff. October 1, 2010.*

#### **11 NCAC 13 .0516 SURETY BONDSMEN LICENSING PROCEDURES**

*History Note:* Authority G.S. 58-2-40; 58-71-5(a);

*Eff. July 1, 1986;*

*Amended Eff. April 8, 2002;*

*Repealed Eff. October 1, 2010.*

#### **11 NCAC 13 .0519 FINGERPRINTS REQUIRED FOR CRIMINAL RECORD CHECKS**

(a) The following individuals shall furnish the Commissioner with a complete set of fingerprints as authorized by G.S. 58-71-51:

- (1) An applicant for an initial professional bail bondsman, surety bail bondsman, or runner license;

- (2) A licensed professional bail bondsman, surety bail bondsman, or runner applying for another type professional bail bondsman, surety bail bondsman, or runner license;
- (3) A professional bail bondsman, surety bail bondsman, or runner license applicant applying for reinstatement of a license that has lapsed or expired;
- (4) A professional bail bondsman, surety bail bondsman, or runner license applicant who has been disqualified in any manner under Chapter 58;
- (5) A professional bail bondsman, surety bail bondsman, or runner license applicant whose license has been suspended or revoked for non-payment of child support pursuant to G.S. 110-142.1; and
- (6) A licensed professional bail bondsman, surety bail bondsman, or runner submitting a renewal application in an even-year pursuant to G.S. 58-71-75.

(b) As authorized by G.S. 58-71-51, fingerprints shall be furnished in the following manner:

- (1) Each applicant shall have a complete set of their fingerprints electronically captured by a criminal law enforcement agency approved by the State Bureau of Investigation to submit fingerprints via electronic means;
- (2) The Electronic Fingerprint Submission Release of Information Form that has been completed and certified by a law enforcement officer that the applicant's fingerprints have been submitted via electronic means to the SBI shall be submitted with the application;
- (3) The Authority For Release of Information form required by the SBI to release the criminal history record check information to the Department shall be submitted with the application;
- (4) The cost for the state and national criminal history record fee that is set forth pursuant to G.S. 114-19.1(a) shall be submitted with the application; and
- (5) All fingerprint impressions must be suitable for use by the SBI to conduct a state criminal history record check and for the Federal Bureau of Investigations (FBI) to conduct a national criminal history record check. If the SBI deems the electronic fingerprints are not suitable, the Commissioner shall notify the applicant and provide instructions for them to resubmit their fingerprints in the manner set forth in Subparagraph (1) of this Paragraph within 30 days.

(c) The professional bail bondsman, surety bail bondsman, or runner initial or renewal license application is not complete until the Department receives the state and national criminal history record information. In accordance with G.S. 58-71-50 and 58-71-75, the Commissioner shall not issue a license to a

professional bail bondsman, surety bail bondsman, or runner license applicant who does not satisfy the initial and renewal license application requirements.

*History Note:* Authority G.S. 58-2-40; 58-71-50; 58-71-51; 58-71-75;  
*Eff. October 1, 2010.*

**11 NCAC 13 .0520 PRELICENSING EDUCATION: DEFINITIONS FOR BAIL BOND PRELICENSING AND CONTINUING EDUCATION**

As used in this Section, unless the context indicates otherwise:

- (1) "Agent Services Division" or "Division" means the Agent Services Division of the North Carolina Department of Insurance, the Division responsible for the licensing, education and regulation of professional bail bondsmen, surety bail bondsmen, and bail bond runners.
- (2) "Bail bond continuing education" means instruction in subjects related to the duties and responsibilities of a runner or a bail bondsman.
- (3) "Bail bond continuing education credit or "BCEC" means a value assigned to a course by the Commissioner after review and approval of course information. This term means the same as "hours of continuing education" as used in G.S. 58-71-71(b).
- (4) "Certificate Of Course Completion" means a document from the approved bail bond pre-licensing or continuing educational provider certifying that the applicant has met the requirements of pre-licensing or continuing education.
- (5) "Compliance year" means the annual license period running from July 1 to June 30 in which the licensee is required to complete three hours of BCEC pursuant to G.S. 58-71-71(b).
- (6) "Course" means a continuing education course directly related to bail bond principles and practices.
- (7) "Instructor" means an individual who meets the qualifications required by 11 NCAC 13 .0542; teaches, lectures, leads, or otherwise instructs a course; and is responsible for the preparation and presentation of lesson plans to that school's students.
- (8) "Instructional hour" means a 50 minute hour in the classroom.
- (9) "Licensee" means a licensed professional bail bondsman, surety bail bondsman or runner.
- (10) "Outline" means the content outline prepared and published by the Department that summarizes the specific bail bond subject areas on which the professional bail bondsman, surety bail bondsman or runner license examination is based.
- (11) "Professional Testing Service" or "Service" means the organization specializing in the

development and administration of licensing examinations on a contract basis for the Department.

- (12) "Provider" means an entity that provides prelicensing or continuing education approved by the Department.
- (13) "State Licensing Examination" or "Examination" means a collection of questions designed to test the professional bail bondsman, surety bail bondsman, or runner license knowledge of the basic concepts, principles and laws relevant to the bail bond profession to determine his competence to be licensed in North Carolina.

*History Note:* Authority G.S. 58-2-40; 58-71-5(a); 58-71-70; 58-71-71;  
*Eff. October 1, 2010.*

**11 NCAC 13 .0521 BAIL BOND MONTHLY REPORT**

A professional bail bondsman shall file the written report required by G.S. 58-71-165 electronically with the Commissioner or the Commissioner's designee.

*History Note:* Authority 58-2-40; 58-2-250; 58-71-165;  
*Eff. October 1, 2010.*

**11 NCAC 13 .0522 CONTINUING EDUCATION REQUIREMENTS**

- (a) Each person holding a professional bail bondsman, surety bail bondsman or runner's license shall obtain three hours of continuing education pursuant to G.S. 58-71-71(b).
- (b) An instructor shall receive the maximum BCEC awarded to a student for the course.
- (c) Licensees shall maintain records of all BCECs for five years after obtaining the BCEC, and shall make them available for inspection by the Commissioner upon request.
- (d) A licensee is exempt from the requirements of this Rule if the licensee provides proof of one of the following:
  - (1) active military service; or
  - (2) he or she is in compliance with G.S. 58-71-71(c).
- (e) Courses completed before the issue date of a new license do not meet the requirements of this Section for that new license.
- (f) No BCEC shall be given for courses taken before they have been approved by the Commissioner.

*History Note:* Authority G.S. 58-2-40; 58-2-185; 58-2-195; 58-71-71;  
*Eff. October 1, 2010.*

**11 NCAC 13 .0523 QUALIFICATION FOR BCEC**

- (a) The Commissioner shall award one BCEC for each instructional hour.
- (b) Courses shall not be approved for less than one BCEC.
- (c) Course providers shall monitor participants for attendance and ensure that licensees complete the BCEC hours approved by the Commissioner. Participants shall not read any material other



than related to the course during instructional hours or use any electronic devices such as cell phones, laptops, computers other than what is provided by the instructor as part of the curriculum of the course.

(d) The licensee shall attend 100 percent of the course for BCEC.

*History Note: Authority G.S. 58-2-40; 58-71-71;  
Eff. October 1, 2010.*

**11 NCAC 13 .0524 BCEC EXTENSION OF TIME:  
HARDSHIP**

(a) A licensee may request in writing to the Commissioner an extension of time in which to complete BCEC if the request is made 45 days prior to the expiration date of the license.

(b) The Commissioner shall deny or grant the requested extension no later than 30 days prior to the expiration date of the license.

*History Note: Authority G.S. 58-2-40; 58-71-71;  
Eff. October 1, 2010.*

**11 NCAC 13 .0526 APPROVAL OF BCEC COURSES**

(a) Providers of all courses shall file with the Commissioner copies of program catalogs, course outlines and copies of advertising literature before the course is approved pursuant to G.S. 58-71-71(d).

(b) A provider shall submit course attendance records electronically within 15 business days after course completion.

(c) An error on the licensee's record that is caused by the provider in submitting the course attendance records shall be resolved by the provider within 15 days after the discovery of the error by the provider.

*History Note: Authority G.S. 58-2-40; 58-71-71;  
Eff. October 1, 2010.*

**11 NCAC 13 .0530 ISSUANCE OF AND  
CONTINUATION BCEC OF PROVIDER APPROVAL**

(a) Any individual or entity intending to provide classes, seminars, or other forms of instruction as approved courses shall submit:

- (1) an application provided by the Commissioner for provider approval; and
- (2) an application provided by the Commissioner for course approval.

(b) The Commissioner shall provide any potential course provider who is denied approval a written explanation for the denial.

(c) Any provider receiving a provider approval denial has 15 business days from the date of the denial to respond to the denial.

(d) Providers shall retain continuing education records for five years and shall provide these records upon request to the Commissioner.

*History Note: Authority G.S. 58-2-40; 58-71-71;  
Eff. October 1, 2010.*

**11 NCAC 13 .0532 EXAMINATIONS: SPECIAL  
ACCOMMODATIONS (AMERICANS WITH  
DISABILITIES ACT)**

An individual with a physical disability may have special assistance from other individuals acting as readers or recorders for the state licensing examination. Applicants requiring special assistance shall request the assistance from the professional testing service before registration for the examination. Verification of handicaps and a statement of all assistance needed shall be included at the time of application.

*History Note: Authority G.S. 58-2-40; 58-71-70;  
Eff. October 1, 2010.*

**11 NCAC 13 .0533 SCHEDULE OF  
EXAMINATIONS**

The Division shall publish or cause to have published the current schedules of state professional bail bondsman, surety bail bondsman, and runner examinations. The schedules shall include day, time and location of each examination.

*History Note: Authority G.S. 58-2-40; 58-71-70;  
Eff. October 1, 2010.*

**11 NCAC 13 .0534 CERTIFICATE OF COURSE  
COMPLETION**

A Certificate of Course Completion shall be signed by an approved prelicensing provider or instructor indicating that the applicant has completed the mandatory prelicensing education requirements as specified in G.S. 58-71-71. Certificates of Course Completion expire six months from issuance.

*History Note: Authority G.S. 58-2-40; 58-71-71;  
Eff. October 1, 2010.*

**11 NCAC 13 .0535 EXAMINATION  
AUTHORIZATION LETTER**

After review of the professional bail bondsman, surety bail bondsman, or runner license application and verification the applicant meets the qualifications for licensure as prescribed by G.S. 58-71-50 and has submitted license fees as specified in G.S. 58-71-55, the Division shall issue an Examination Authorization Letter which allows the professional bail bondsman, surety bail bondsman, and runner license applicant to make a reservation to sit for the bail bond examination. The Examination Authorization letter is valid for 30 days from date of issuance.

*History Note: Authority G.S. 58-2-40; 58-71-70; 58-71-71;  
Eff. October 1, 2010.*

**11 NCAC 13 .0536 RESPONSIBILITY OF  
APPLICANT AT EXAMINATION SITE**

(a) Professional bail bondsman, surety bail bondsman, or runner license applicants shall bring to the examination site the Examination Authorization letter issued by the Division, the confirmation numbers obtained from the testing service at the time of examination reservation, and two forms of proof of identity, one of which shall be photo bearing.

(b) Applicants are allowed to bring the following examination supplies to the examination site:

- (1) a simple function calculator;
- (2) pens; and
- (3) pencils.

(c) No applications shall be supplied at the examination site for completion by applicants and no supplies as described in Paragraph (b) of this Rule shall be furnished to applicants at the examination site.

(d) Applicants shall arrive at the examination site at the time specified in the examination schedule.

*History Note: Authority G.S. 58-2-40; 58-71-70; 58-71-7; Eff. October 1, 2010.*

**11 NCAC 13 .0537 ADMINISTRATION OF EXAMINATION**

(a) Professional bail bondsman, surety bail bondsman, or runner license applicants may use a simple function calculator during the examination.

(b) Applicants shall not take cellular telephones, textbooks, other books or papers into the examinations. Applicants found to have any of these materials shall not be allowed to continue the examination.

(c) Applicants may leave the examination room only after obtaining permission from the examination proctors and handing in exam materials. No extra time shall be allowed for completing the examination.

(d) Any applicant who gives or receives assistance during the examination shall turn in all exam materials and leave the room. Under these circumstances, the applicant's answer sheet shall not be scored and information regarding the giving of assistance shall be reported by the proctors to the Commissioner.

*History Note: Authority G.S. 58-2-40; 58-71-70; 58-71-71; Eff. October 1, 2010.*

**11 NCAC 13 .0539 BAIL BOND PRELICENSING EDUCATION PROVIDER**

(a) This Rule applies to all bail bond prelicensing providers offering a prelicensing course prescribed by G.S. 58-71-71. All providers desiring to conduct a prelicensing course shall be approved and issued a certificate of authority by the Commissioner before commencement of the courses.

(b) A provider seeking approval to conduct a prelicensing course shall make written application to the Commissioner for a certificate of authority.

(c) The Division shall approve a provider when:

- (1) the provider has submitted all information required by the rules in this Section;
- (2) the course to be conducted complies with Rule 11 NCAC 13 .0541 of this Section; and
- (3) the provider has a qualified instructor to teach bail bonding for which it is seeking approval.

(d) The Commissioner shall deny, revoke, suspend, or terminate approval of any provider upon finding that:

- (1) the provider has failed to comply with any of the provisions of this Section;

- (2) any provider official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, licensing examination questions for the state exam;
- (3) the provider has not conducted at least one prelicensing course during any 12-month period; or
- (4) the provider has refused or failed to submit information or forms prescribed by the rules in this Section.

(e) In all proceedings to deny, revoke, suspend, or terminate the certificate of authority of a provider, the provisions of Chapter 150B of the General Statutes are applicable.

(f) When a provider's approval is discontinued, the procedure for reinstatement is to apply as a new provider, with a statement of the reasons that the provider is now eligible for reconsideration.

(g) If a provider's approval has been suspended upon the Commissioner's finding that the provider has not conducted at least one prelicensing course during any 12-month period, that provider may reapply after one year of suspension. At such time, the Commissioner shall give the provider six months to conduct at least one prelicensing course.

(h) A provider shall notify the Commissioner in writing of any change of course location or schedule information no fewer than five business days before the change.

(i) A provider shall notify the Commissioner in writing of a change of textbook prior to use in an approved prelicensing course.

(j) An approved provider may use, for advertising or promotional purposes, examination performance data made available to the provider by the Commissioner, provided that any data disclosed by the provider shall be accurate, shall be presented in a manner that is not misleading, and shall:

- (1) be limited to the annual examination performance data for the particular provider and for all examination candidates in the State; and
- (2) include the type of examination, the time period covered, the number of candidates examined, and either the number or percentage of candidates passing the examination.

(k) A provider's facilities and equipment shall have been found by appropriate local building code inspectors to be in compliance with all applicable local, State and federal laws and regulations regarding safety, sanitation, and access by persons with disabilities.

(l) The provider is responsible for administrative matters such as recruiting instructors, evaluating and certifying the qualifications of instructors, developing educational programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the prelicensing program.

(m) A provider shall publish and provide to all prelicensing students before enrollment a publication that contains the following information:

- (1) name of provider and publication date;
- (2) name of sponsor;
- (3) all associated costs; and

- (4) an outline or description of all prelicensing courses offered.
- (n) A provider shall file with the Commissioner a report that sets forth the exact dates, times, locations, and instructor name for each scheduled prelicensing course. This information shall be submitted at the beginning of each quarter or semester before the first class meeting of each prelicensing course.
- (o) Providers shall retain the following material on file at one location for at least five years:
  - (1) class schedules;
  - (2) advertisements;
  - (3) bulletins, catalogues, and other official publications;
  - (4) grade reports, showing a numeric grade for each student;
  - (5) attendance records;
  - (6) master copy of each comprehensive course examination, indicating the answer key course location, course dates and name of instructor;
  - (7) list of student names and the name of the instructor; and
  - (8) student registration information.
  - (9) All files shall be made available to the Commissioner upon request.
- (p) In the event of illness, injury or death of an instructor, the provider may use another instructor to complete a course.

*History Note: Authority G.S. 58-2-40; 58-2-40, 58-71-71; Eff. October 1, 2010.*

**11 NCAC 13 .0541 BAIL BOND PRELICENSING EDUCATION COURSES**

- (a) Providers shall offer no less than 12 instructional hours of prelicensing education.
- (b) The following requirements are course standards:
  - (1) All courses shall consist of instruction on bail bonding licensing, regulations, procedures for setting bail and forfeiture of bail as set forth in Chapter 58 Article 71 and Chapter 15A Article 26 and 37 of the North Carolina General Statutes.
  - (2) Courses may also include coverage of related subject areas not prescribed by the Commissioner; however, such courses must provide additional class time, above the minimum requirement stated in Paragraph (a) of this Rule, for the coverage of such subject areas.
  - (3) Prelicensing courses shall be for instructional purposes only and not for promoting the interests of or recruiting employees for any particular bail bond agency or surety insurance company.
  - (4) Providers shall establish and enforce academic standards for course completion that assure that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course.

- (5) Providers shall conduct a comprehensive course examination that covers all subject areas prescribed by the Commissioner for each course. Providers may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the provider. No comprehensive course examination shall be given until a student has completed the instructional requirement as prescribed in Subparagraph (1) of this Paragraph.
- (6) Students shall attend the minimum 12 hours of bail bond instruction set forth in Paragraph (a) of this Rule. Time set aside for breaks, pop-tests, quizzes, the final comprehensive course examination and other non-instructional activities shall not count toward the minimum instructional requirement.
- (c) The following requirements shall be met for scheduling purposes:
  - (1) Class meetings shall not exceed eight hours of instruction in any given day.
  - (2) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open-entry or open-exit basis.
- (d) The choice of classroom course text is at the discretion of each provider.
- (e) All prelicensing courses shall be taught by instructors who meet the qualifications described in Rule 11 NCAC 13 .0542.
- (f) The following certification of course completion procedures apply:

- (1) Providers shall validate each student who successfully completes a prelicensing course by issuing a Certificate of Course Completion. The Certificate of Course Completion shall not be validated for a student prior to the student completing all course requirements and passing the course's comprehensive examination; and
- (2) A Certificate of Course Completion shall be attached to the application for bail bond license(s) and expires six months after issuance. If an applicant does not apply for a license within six months after receiving the Certificate of Course Completion, the applicant must complete the prelicensing education requirements again.

*History Note: Authority G.S. 58-2-40; 58-2-40, 58-71-71; Eff. October 1, 2010.*

**11 NCAC 13 .0542 BAIL BOND PRELICENSING AND BCEC INSTRUCTORS**

- (a) A person desiring approval as a bail bond prelicensing or BCEC instructor shall make written application to the Commissioner.
- (b) Instructor applicants must be sponsored by a provider seeking to employ the applicant as an instructor. If the employing provider is not currently approved by the

Commissioner, an application for preclicensing or BCEC provider approval shall be submitted along with the application for instructor approval.

(c) The Commissioner shall approve an applicant for a bail bond preclicensing instructor upon finding that the applicant has met the following qualifications:

- (1) Has not been disqualified in any manner under Chapter 58 of the North Carolina General Statutes; and
- (2) Has 10 years or more experience in the NC bail bond industry;

(d) The Commissioner shall approve an applicant for a BCEC instructor upon finding that the applicant has met the following qualifications:

- (1) Has not been disqualified in any manner under Chapter 58 of the North Carolina General Statutes; and
- (2) Has five or more total years experience in the following:
  - (A) NC bail bond industry;
  - (B) full time employee of a surety insurance company;
  - (C) NC law enforcement or the judicial system;
  - (D) Skip tracer;
  - (E) Private investigation; or
  - (F) Banking, certified public accountant or other profession related to business management principles.

(e) Instructor applicants shall submit to a personal interview by the Agent Services Division. A written history of courses taught by the applicant or other documentation is required to verify the applicant's qualifications to instruct approved courses.

(f) The Commissioner shall deny, summarily suspend, or terminate the approval of an instructor upon finding that:

- (1) The instructor fails to meet the criteria for approval provided by this Rule;
- (2) The instructor has failed to comply with statutes or rules regarding preclicensing or BCEC courses;
- (3) The instructor provided false information to the Commissioner;
- (4) The instructor has at any time been disqualified under Chapter 58 of the North Carolina Department of Insurance; or
- (5) The instructor has obtained or used, or attempted to obtain or use examination questions, in any manner or form.

(g) In all proceedings to deny, revoke, suspend, or terminate approval of an instructor, the provisions of Chapter 150B of the General Statutes are applicable.

(h) When an instructor's approval is discontinued, the procedure for reinstatement is to apply as a new instructor, with a statement of reasons that he is now eligible for reconsideration. The Commissioner shall perform an investigation before new approval is granted.

*History Note:* Authority G.S. 58-2-40; 58-71-7;  
Eff. October 1, 2010.

## TITLE 12 – DEPARTMENT OF JUSTICE

### **12 NCAC 07D .0203 RENEWAL OR RE-ISSUE OF LICENSES AND TRAINEE PERMITS**

(a) Each applicant for a license or trainee permit renewal shall submit an original and one copy of a renewal form. This form shall be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be accompanied by:

- (1) a head and shoulders color photograph of the applicant of a quality sufficient for identification, one inch by one inch in size and taken within six months of the application;
- (2) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 12 months or a criminal record check from a third party criminal record check provider;
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance as set out in G.S. 74C-10(e).

(b) If a licensee in good standing with the Board has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within three years of the expiration date and the following documentation is submitted to the Board:

- (1) an Application For Reinstatement of an Expired License;
- (2) one set of classifiable fingerprints on an applicant fingerprint card;
- (3) one head and shoulders photograph(s) of the applicant of a quality sufficient for identification, one inch by one inch in size and taken within six months of the application;
- (4) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months or a criminal record check from a third party criminal record check provider;
- (5) the applicant's non-refundable application fee;
- (6) proof of liability insurance as set out in G.S. 74C-10(e); and
- (7) a separate check or money order made payable to the State Bureau of Investigations to cover criminal record checks performed by the State Bureau of Investigations.

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

*History Note:* Authority G.S. 74C-5; 74C-8; 74C-9;  
*Eff. June 1, 1984;*  
*Amended Eff. October 1, 2010; November 1, 2007; January 4, 1994; July 1, 1987; December 1, 1985.*

**12 NCAC 07D .0404 REPORTS**

(a) Private investigators shall make and offer to each client a written report containing the findings and details of the investigation within 30 days after the completion of the investigation for which the client has paid the investigator for the services. A copy of the written report shall be retained by the licensee.

(b) Descriptive reports, chronological reports, cover letters, and itemized invoices to the client shall be personally signed by a licensee. The file copy shall reflect the names of all participating employees and a description of the work performed by each one. These documents shall be retained by the licensee who signed the report.

*History Note:* Authority G.S. 74C-5;  
*Eff. June 1, 1984;*  
*Amended Eff. October 1, 2010; July 1, 1987.*

**12 NCAC 07D .0706 RENEWAL OR REISSUE OF UNARMED SECURITY GUARD REGISTRATION**

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

- (1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (2) statements of any criminal record obtained from the appropriate authority in each area where the applicant has resided within the immediate preceding 12 months or a criminal record check from a third party criminal record check provider;
- (3) the applicant's renewal fee; and
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Each applicant for reissue of a registration identification card shall complete, and his employer shall sign a form provided by the Board. This form shall be submitted to the Board and accompanied by:

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

(c) The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the application which will serve as a record of application for renewal or reissue and

shall retain a copy of the application in the individual's personnel file in the employer's office.

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

*History Note:* Authority G.S. 74C-5; 74C-11;  
*Eff. June 1, 1984;*  
*Amended Eff. October 1, 2010; December 1, 1995; February 1, 1990; July 1, 1987; December 1, 1985.*

**12 NCAC 07D .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his employer shall complete a form provided by the Board. This form shall be submitted not more than 90 days nor less than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (2) statements of any criminal record obtained from the appropriate area where the applicant has resided within the immediate preceding 12 months or a criminal record check from a third party criminal record check provider;
- (3) the applicant's renewal fee; and
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

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

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 07D .0807.

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

*History Note: Authority G.S. 74C-5; 74C-11; 74C-13;  
Eff. June 1, 1984;  
Amended Eff. October 1, 2010; December 1, 1995; February 1, 1990; December 1, 1985.*

**12 NCAC 07D .0807 TRAINING REQUIREMENTS  
FOR ARMED SECURITY GUARDS**

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in 12 NCAC 07D .0707. Private Investigator Licensees applying for an armed security guard firearm registration permit shall first complete a four hour training course consisting of blocks of instruction "The Security Officer in North Carolina" and "Legal Issues for Security Officers" as set forth in 12 NCAC 07D .0707(a). Private Investigator Licensees applying for an armed security guard firearm registration permit are not required to complete the following training blocks found in the basic training course referenced in 12 NCAC 07D .0707(a): "Emergency Response," "Communications," "Patrol Procedures," "Note Taking and Report Writing," and "Department." A Private Investigator Licensee applying for an armed security guard firearm registration permit shall meet all additional training requirements set forth in 12 NCAC 07D .0707 as well as the training requirements set forth in this Rule.

(b) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

(c) Applicants for an armed security guard firearm registration permit shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office. Should a student fail to attain a score of 80 percent accuracy as referenced above, the student will be given an additional three attempts to qualify on the course of fire they did not pass. Failure to meet the qualification after three attempts shall require the student to repeat the entire Basic Training Course for Armed Security Guards. All additional attempts must take place within 20 days of the completion of the initial 20 hour course.

(d) All armed security guard training required by 12 NCAC 07D shall be administered by a certified trainer and shall be successfully completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(e) All applicants for an armed security guard firearm registration permit must obtain training under the provisions of

this Section using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(f) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(g) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards which consists of at least four hours of classroom instruction and is a review of the requirements set forth in Paragraphs (b)(1) through (b)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (c) of this Rule.

(h) To be authorized to carry a standard 12 gauge shotgun in the performance of his duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training which shall include the following:

- (1) legal limitations on the use of shotguns;
- (2) shotgun safety, including range firing procedures;
- (3) shotgun operation and maintenance; and
- (4) shotgun fundamentals.

An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit.

(i) In addition to the requirements set forth in Paragraph (h) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office.

(j) Applicants for shotgun recertification shall complete an additional one hour of classroom training as set forth in Paragraphs (h)(1) through (h)(4) of this Rule and shall also complete the requirements of Paragraph (i) of this Rule.

(k) Applicants for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (c) of this Rule.

(l) The armed security officer is required to qualify annually both day and night. If the security officer fails to qualify on either course of fire, the security officer cannot carry a firearm until such time as they meet the qualification requirements. Upon failure to qualify the firearm instructor must notify the security officer that they are no longer authorized to carry a firearm and the Firearm Instructor must notify the employer and the Private Protective Services staff on the next business day.

*History Note: Authority G.S. 74C-5; 74C-13;  
Eff. June 1, 1984;  
Amended Eff. November 1, 1991; February 1, 1990; July 1, 1987;  
Temporary Amendment Eff. January 14, 2002;*

*Amended Eff. October 1, 2010; June 1, 2009; February 1, 2006; August 1, 2002.*

**12 NCAC 07D .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE**

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

- (1) certification of the successful completion of a firearms trainer refresher course approved by the Board and the Attorney General consisting of a minimum of eight hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, control and safety procedures, and methods of handgun and shotgun firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) a certified statement of the result of a criminal records search from the governmental authority housing criminal record information or clerk of superior court in each area where the applicant has resided within the immediate preceding 48 months or a criminal record check from a third party criminal record check provider;
- (3) the applicant's renewal fee;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board; and
- (5) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

*History Note: Authority G.S. 74C-5; 74C-13; Eff. June 1, 1984; Amended Eff. October 1, 2010; June 1, 2009; December 1, 1995; December 1, 1985.*

**12 NCAC 07D .0911 RENEWAL OF AN UNARMED GUARD TRAINER CERTIFICATE**

Each applicant for renewal of an unarmed guard trainer certificate shall complete a board renewal form. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate. In addition, the applicant shall include the following:

- (1) the renewal fee set forth in 12 NCAC 07D .0903(a)(3);
- (2) certification of a minimum of 16 hours of Board approved armed or unarmed instruction performed during the current unarmed guard trainer certification period;
- (3) statement verifying the classes taught during the current unarmed guard trainer certification period on a form prescribed by the Board; and
- (4) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

*History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13; Eff. August 1, 2004; Amended Eff. October 1, 2010; January 1, 2008.*

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

**CHAPTER 34 - BOARD OF FUNERAL SERVICE**

**21 NCAC 34B .0311 SPECIAL PROCEDURES FOR LICENSING OF ACTIVE MILITARY PERSONNEL**

(a) Definitions. As used in this Rule:

- (1) "Active military person" shall mean any person holding an applicable license or permit from the Board who meets the conditions of G.S. 105-249.2(a) and would be subject to any continuing education requirement, renewal fee, or renewal application to renew or reinstate any permit or license issued by the Board.
- (2) "Active military status" shall mean any active military person who is not practicing funeral service, funeral directing, or embalming because of military service.
- (3) "Active status" shall mean any person holding a license to practice funeral directing, funeral service, or embalming in good standing who has not been approved for an inactive license under the provisions of G.S. 90-210.25(a1).
- (4) "Applicant" shall mean the active military person or any person authorized to conduct business affairs for the active military person under the authority granted by a power of attorney executed under the laws of any state.

(b) The following provisions shall apply to funeral director, funeral service, and embalmer licenses only:

- (1) Any active military person wishing to claim active military status shall file a form provided by the Board. The applicant shall furnish the full name of the active military person; license number, address and telephone number of the active military person; date of active military service; anticipated date the active military person will resume practice, if known; and documentation from the branch of service demonstrating entitlement to active military status. The Board shall notify the applicant in writing of its decision on the application and shall place the active military person on active military status upon approving the application.
- (2) No fees or renewal applications shall be required during the period of active military status. Continuing education shall not be required for any calendar year when active military status is effective. Any calendar year in which continuing education is not required of the active military person shall be credited toward the total years of continuing education required by G.S. 90-210.25(a)(5)e.
- (3) Active military status shall terminate upon the earlier of return to active status or upon six months after severance from active military duty.
- (4) Any active military person may claim active military status retroactively within six months from severance from active military duty.
- (5) Any active military person whose license lapses for failing to timely claim active military status shall be subject to the provisions of reinstatement under G.S. 90-210.25(a)(5)b. and shall not be entitled to any waivers of continuing education, renewal fees, or reinstatement fees.
- (6) To return to active status, the active military person shall file an application for renewal and renewal fee for the calendar year regardless of the date of application.

(c) If any funeral establishment, crematory, or preneed establishment ceases operations because the active military person claims active military status, all such licenses or permits shall terminate upon transfer of the active military person to active military status. If the active military person resumes active status, any funeral establishment, preneed establishment, or crematory shall be required to apply for a new license or permit but shall only be required to pay the renewal fee to issue the new license or permit.

*History Note:* Authority G.S. 90-210.23(a); 90-210.25(a)(5),(a1); 93B-15(b);  
Eff. October 1, 2010.

#### **21 NCAC 34D .0203 SURETY BONDS**

(a) Any applicant for a new preneed funeral establishment license or any preneed licensee required to maintain a surety bond under G.S. 90-210.67(b) shall submit a copy of the bond

with its initial application and with each renewal application. The bond shall cover all insurance premiums paid under a preneed insurance policy and all trust payments under a preneed funeral trust. The bond shall name the Board as trustee and shall be issued by a bonding company licensed to do business in this State. The Board shall recognize all surety bond forms approved by the N.C. Department of Insurance.

(b) Any preneed establishment licensee required to obtain a bond may petition the Board to repeal the requirement one year after obtaining the bond. The preneed establishment licensee shall establish that the firm is solvent. For purposes of this paragraph, solvency shall be defined as assets in excess of liabilities; provided, however, that goodwill shall not be considered an asset and that unperformed preneed funeral contracts shall be treated as both an asset and a liability of equal value. A preneed establishment may demonstrate solvency by submitting a balance sheet prepared by a certified public accountant that is no more than 90 days old or through other financial evidence generally recognized as valid by certified public accountants.

(c) All petitions must be filed on a form provided by the Board. The petition form shall be verified before a notary public by the owner, a corporate officer, partner, or member of the limited liability company owning the preneed establishment and shall require the petitioner to furnish the following information:

- (1) the name of the preneed establishment;
- (2) certifications that the firm is solvent, has no unsatisfied civil judgments against it, and has not paid a claim on the bond; and
- (3) any other information that the Board deems necessary to determine solvency or to process the petition and that is required by law.

*History Note:* Authority G.S. 90-210.67(b); 90-210.69(a);  
Eff. October 1, 2010.

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### **CHAPTER 46 - BOARD OF PHARMACY**

#### **21 NCAC 46 .1204 OFFICE OF THE BOARD**

*History Note:* Authority G.S. 90-85.6;  
Eff. April 1, 1983;  
Amended Eff. November 1, 2003; July 1, 1996; May 1, 1989;  
Repealed Eff. October 1, 2010.

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### **CHAPTER 26 – OFFICE OF ADMINISTRATIVE HEARINGS**

#### **26 NCAC 03 .0101 GENERAL**

(a) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.



(b) The Office of Administrative Hearings shall supply forms for use in contested cases. These forms shall conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.

(c) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings by facsimile (fax) or electronic mail by an attached file either in PDF format or a document compatible with Microsoft Word 2007. Electronic mail with attachment shall be sent by electronic transmission to: oah.clerks@oah.nc.gov. The faxed or electronic documents shall be deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed document, one copy and the appropriate filing fee (if a fee is required by G.S. 150B-23.2) is received by OAH within seven business days following the faxed or electronic transmission. Other electronic transmissions, for example, electronic mail without attached file as specified in this Paragraph, shall not constitute a valid filing with the Office of Administrative Hearings.

(d) Every pleading and other documents filed with OAH shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.

(e) Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

*History Note:* Authority G.S. 7A-750; 7A-751(a); 150B-23.2; 150B-40(c);

*Eff. August 1, 1986;*

*Amended Eff. May 1, 2009; January 1, 2006; April 1, 2004; April 1, 2001; August 1, 2000; February 1, 1994; July 1, 1992; May 1, 1989; January 1, 1989;*

*Emergency Amendment Eff. October 1, 2009;*

*Temporary Amendment Eff. December 1, 2009;*

*Amended Eff. October 1, 2010.*

## **26 NCAC 03 .0103 COMMENCEMENT OF CONTESTED CASE: NOTICE AND FILING FEE**

(a) A contested case in the Office of Administrative Hearings is commenced by the filing of a petition as required by G.S. 150B-23 and payment of the appropriate filing fee (if a fee is required by G.S. 150B-23.2).

(b) Within five days of filing a petition to commence a contested case, the Chief Administrative Law Judge shall assign an administrative law judge to the case. Within ten days of the filing of a petition commencing a contested case, the chief hearings clerk of the Office of Administrative Hearings shall serve a Notice of Contested Case Filing and Assignment upon all who are parties to the dispute. The notice shall contain the following:

- (1) Name of case and date of filing;
- (2) Name, address, and telephone number of the administrative law judge; and

- (3) A request that the party send within 30 days a copy of the document constituting the agency action that caused the filing of the petition.

(c) In contested cases commenced by a person aggrieved involving the following causes of action, the petitioner shall pay a filing fee of one hundred twenty-five dollars (\$125.00):

- (1) Contested cases challenging certificate of need filed pursuant to G.S. 131E-188;
- (2) Contested cases challenging permit actions under G.S. 143-215.1, G.S. 143-215.10C, G.S. 143-215.15, and G.S. 143-215.108;
- (3) Contested cases where the amount in controversy is fifty thousand dollars (\$50,000) or greater.

(d) In contested cases commenced by a person aggrieved which do not involve the causes of action listed in Paragraph (c) of this Rule, the petitioner shall pay a fee of twenty dollars (\$20.00).

(e) The filing fee shall be waived in a contested case in which the petition is filed in forma pauperis and supported by such proofs as are required in G.S. 1-110. A petitioner seeking to have the filing fee waived under this Paragraph shall file the appropriate OAH form with the chief hearings clerk simultaneously when filing the petition for a contested case.

(f) The filing fee shall be waived in a contested case involving a mandated federal cause of action.

(g) The method of payment shall be:

- (1) cash;
- (2) money order;
- (3) certified check; or
- (4) check drawn on an attorney's trust or operating account.

*History Note:* Authority G.S. 150B-23; 150B-23.2; 150B-33; *Eff. August 1, 1986;*

*Amended Eff. October 1, 1991; November 1, 1987; September 1, 1986;*

*Emergency Amendment Eff. October 1, 2009;*

*Temporary Amendment Eff. December 1, 2009;*

*Amended Eff. October 1, 2010.*

## **26 NCAC 03 .0105 DUTIES OF THE ADMINISTRATIVE LAW JUDGE**

In conjunction with the powers of administrative law judges prescribed by G.S. 150B-33 and G.S. 150B-36, the administrative law judge shall perform the following duties, consistent with law:

- (1) Hear and rule on motions;
- (2) Grant or deny continuances;
- (3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
- (4) Examine witnesses when deemed necessary to make a complete record and to aid in the full development of material facts in the case;
- (5) Make preliminary, interlocutory, or other orders as deemed appropriate;
- (6) Grant dismissal when the case or any part thereof has become moot or for other reasons;

- (7) Order the State of North Carolina, when it is the losing party as determined by the presiding Administrative Law Judge, to reimburse the filing fee to the petitioner; and
- (8) Apply sanctions in accordance with Rule .0114 of this Section.

*History Note: Authority G.S. 7A-751(a); 8C-1, Rule 614; 150B-23.2; 150B-33; 150B-36;*  
*Eff. August 1, 1986;*  
*Amended Eff. April 1, 2001; February 1, 1994; November 1, 1987;*  
*Emergency Amendment Eff. October 1, 2009;*  
*Temporary Amendment Eff. December 1, 2009;*  
*Amended Eff. October 1, 2010.*

*This Section contains information for the meeting of the Rules Review Commission on Thursday, November 18, 2010 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Jim R. Funderburk - 1st Vice Chair

David Twiddy - 2nd Vice Chair

Ralph A. Walker

Jerry R. Crisp

Jeffrey P. Gray

**Appointed by House**

Jennie J. Hayman - Chairman

John B. Lewis

Clarence E. Horton, Jr.

Daniel F. McLawhorn

Curtis Venable

**COMMISSION COUNSEL**

Joe Deluca (919)431-3081

Bobby Bryan (919)431-3079

**RULES REVIEW COMMISSION MEETING DATES**

November 18, 2010      December 16, 2010

January 20, 2011      February 17, 2010

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**AGENDA****RULES REVIEW COMMISSION****Thursday, November 18, 2010 9:00 A.M.**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
  - A. Structural Pest Control Committee – 02 NCAC 34 .0331, .1103 (Bryan)
  - B. Alcoholic Beverage Control Commission – 04 NCAC 02R .0701, .1008 (DeLuca)
  - C. Department of Labor and Apprenticeship Council – 13 NCAC 14B .0202, .0205, .0208, .0211, .0213, .0308, .0401, .0407, .0604, .0610, .0611, .0612 (Bryan)
  - D. Board of Architecture – 21 NCAC 02 .0108, .0204, .0206, .0213, .0214, .0215 (Bryan)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between September 21, 2010 and October 20, 2010
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Commission Business
  - Next meeting: December 16, 2010

**Commission Review  
Log of Permanent Rule Filings  
September 21, 2010 through October 20, 2010**

**PLANT CONSERVATION BOARD**

The rules in Chapter 48 are from the Plant Conservation Board and cover plant industry.

The rules in Subchapter 48F concern plant conservation and include organizational rules (.0100); procedures for placing on protected plant lists penalties and enforcement (.0200); endangered plant species list threatened plant species list: list of species of special concern (.0300); collection propagation and movement of endangered and threatened plant species (.0400); and forms (.0500).

<u>Protected Plant Species List</u> Amend/*	02	NCAC	48F	.0301
<u>Threatened Plant Species List</u> Repeal/*	02	NCAC	48F	.0302
<u>Plant Species of Special Concern</u> Repeal/*	02	NCAC	48F	.0304
<u>Collection and Sale of Ginseng</u> Amend/*	02	NCAC	48F	.0305
<u>Collection and Sale of Venus Flytrap</u> Amend/*	02	NCAC	48F	.0306
<u>Definitions</u> Amend/*	02	NCAC	48F	.0401
<u>Protected Plant Propagation</u> Amend/*	02	NCAC	48F	.0402
<u>Movement and Sale of Special Concern</u> Repeal/*	02	NCAC	48F	.0403
<u>Duplication of Special Concern Permits</u> Repeal/*	02	NCAC	48F	.0404
<u>Movement for Conservation Purposes</u> Amend/*	02	NCAC	48F	.0406
<u>Protected Plant Permits, Certificate of Origin</u> Amend/*	02	NCAC	48F	.0407
<u>Criteria for Approval Plant Conservation Permits</u> Repeal/*	02	NCAC	48F	.0408
<u>Emergency Procedures for Rescue Operations</u> Amend/*	02	NCAC	48F	.0409
<u>Criteria for Issuance of Protected Plant Permits</u> Adopt/*	02	NCAC	48F	.0410
<u>Issuance of Protected Plant Permits</u> Adopt/*	02	NCAC	48F	.0411
<u>Conditions of Permit Issuance and Acceptance</u> Adopt/*	02	NCAC	48F	.0412
<u>Amendment of Permits</u> Adopt/*	02	NCAC	48F	.0413
<u>Designations</u> Repeal/*	02	NCAC	48F	.0501
<u>Form PC-1</u> Repeal/*	02	NCAC	48F	.0502
<u>Form PC-2</u> Repeal/*	02	NCAC	48F	.0503
<u>Form PC-3</u>	02	NCAC	48F	.0504

Repeal/*				
<u>Form PC-4</u>	02	NCAC	48F	.0505
Repeal/*				
<u>Form PC-5</u>	02	NCAC	48F	.0506
Repeal/*				
<u>Form PC-6</u>	02	NCAC	48F	.0507
Repeal/*				
<u>Form PC07</u>	02	NCAC	48F	.0508
Repeal/*				
<u>Form PC-9</u>	02	NCAC	48F	.0509
Repeal/*				
<u>Form PC-9</u>	02	NCAC	48F	.0510
Repeal/*				
<u>Form PC-10</u>	02	NCAC	48F	.0511
Repeal/*				
<u>Form PC-11</u>	02	NCAC	48F	.0512
Repeal/*				
<u>Form PC-12</u>	02	NCAC	48F	.0513
Repeal/*				
<u>Form PC-13</u>	02	NCAC	48F	.0514
Repeal/*				
<u>Form PC-14</u>	02	NCAC	48F	.0515
Repeal/*				

#### **LABOR, DEPARTMENT OF**

The rules in Chapter 7 are from the office of occupational safety and health.

The rules in Subchapter 7A are general rules and operational procedures including purpose, definitions (.0100); organization (.0200); procedures (.0300); state advisory council on occupational safety and health (.0500); safety and health programs and committees (.0600); rules of practice for variances, limitations, tolerances and exemptions (.0700); informal conference procedures (.0800); and access to employee medical records (.0900).

<u>Incorporation by Reference</u>	13	NCAC	07A	.0301
Amend/*				
<u>Copies Available</u>	13	NCAC	07A	.0302
Repeal/*				

The rules in Subchapter 7F cover specific OSHA standards for various industries: general (.0100); construction (.0200); agriculture (.0300); shops fabricating structural steel and steel plate (.0400); maritime (.0500); communication towers (.0600); blasting and use of explosives (.0700); and cranes and derricks standards (.0900).

<u>General Requirements</u>	13	NCAC	07F	.0401
Repeal/*				
<u>Definitions Applicable to this Standard</u>	13	NCAC	07F	.0402
Repeal/*				
<u>Color Coding and Warning Signs for Physical Hazards</u>	13	NCAC	07F	.0403
Repeal/*				
<u>Personal Protective Equipment</u>	13	NCAC	07F	.0404
Repeal/*				
<u>Lighting</u>	13	NCAC	07F	.0405
Repeal/*				
<u>Ventilation</u>	13	NCAC	07F	.0406
Repeal/*				

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**RULES REVIEW COMMISSION**

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<u>Cleaners and Solvents</u>	13	NCAC	07F	.0407
Repeal/*				
<u>Ionizing Radiation</u>	13	NCAC	07F	.0408
Repeal/*				
<u>General Requirements for All Machines and Equipment</u>	13	NCAC	07F	.0409
Repeal/*				
<u>Cranes: Derricks: and Hoists</u>	13	NCAC	07F	.0410
Repeal/*				
<u>Material Handling Devices</u>	13	NCAC	07F	.0411
Repeal/*				
<u>Slings and Alloy-Steel Chains</u>	13	NCAC	07F	.0412
Repeal/*				
<u>Mobile Equipment</u>	13	NCAC	07F	.0413
Repeal/*				
<u>Jacks: Lever: Ratchet: Screw: and Hydraulic</u>	13	NCAC	07F	.0414
Repeal/*				
<u>Portable Power and Hand Tools</u>	13	NCAC	07F	.0415
Repeal/*				
<u>Electrical</u>	13	NCAC	07F	.0416
Repeal/*				
<u>Handling and Storing Material</u>	13	NCAC	07F	.0417
Repeal/*				
<u>Handling Material from a Railway Car</u>	13	NCAC	07F	.0418
Repeal/*				
<u>Unloading Material from a Truck</u>	13	NCAC	07F	.0419
Repeal/*				
<u>Reaming and Drilling</u>	13	NCAC	07F	.0420
Repeal/*				
<u>Riveting</u>	13	NCAC	07F	.0421
Repeal/*				
<u>Bolting</u>	13	NCAC	07F	.0422
Repeal/*				
<u>Manual Abrasive Blasting</u>	13	NCAC	07F	.0423
Repeal/*				
<u>Painting</u>	13	NCAC	07F	.0424
Repeal/*				
<u>Galvanizing and Pickling Operations</u>	13	NCAC	07F	.0425
Repeal/*				
<u>Source of Standards</u>	13	NCAC	07F	.0426
Repeal/*				

**ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

<u>Outstanding Resource Waters</u>	15A	NCAC	02B	.0225
Amend/*				
<u>New River Basin</u>	15A	NCAC	02B	.0307
Amend/*				
<u>Catawba River Basin</u>	15A	NCAC	02B	.0308
Amend/*				

## ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 28 are from the NC Aquariums and concern use of North Carolina Aquariums (.0100); scheduling activities for group use (.0200); unauthorized use of facilities, fees (.0300); firearms, fires, and smoking (.0400); conduct, alcoholic beverages, pets and proper dress (.0500); commercial activities, solicitations, etc. (.0600); and preservation of aquarium property (.0700).

<u>Fee Schedule</u>	15A	NCAC	28	.0302
Amend/*				

## ELECTROLYSIS EXAMINERS, BOARD OF

The rules in Chapter 19 are from the Board of Electrolysis Examiners and include general provisions (.0100); application procedures (.0200); administrative law procedures (.0300); sanitation, equipment and supplies (.0400); schools (.0600); and continuing education (.0700).

<u>Infection Control Standards</u>	21	NCAC	19	.0401
Repeal/*				
<u>Sterilization and Disinfection</u>	21	NCAC	19	.0402
Repeal/*				
<u>Definitions</u>	21	NCAC	19	.0404
Adopt/*				
<u>Hand Hygiene</u>	21	NCAC	19	.0405
Adopt/*				
<u>Use of Gloves</u>	21	NCAC	19	.0406
Adopt/*				
<u>Cleaning, Sterilization, and Safety Precautions for Instr...</u>	21	NCAC	19	.0407
Adopt/*				
<u>Environmental Control and Housekeeping</u>	21	NCAC	19	.0408
Adopt/*				
<u>Client Evaluation</u>	21	NCAC	19	.0409
Adopt/*				
<u>Hepatitis B Virus (HBV) Vaccination</u>	21	NCAC	19	.0410
Adopt/*				
<u>Follow-Up Procedures for Exposures to Hepatitis, Human Im...</u>	21	NCAC	19	.0411
Adopt/*				
<u>Standard Precautions for Disease Control and Prevention</u>	21	NCAC	19	.0412
Adopt/*				
<u>Curriculum</u>	21	NCAC	19	.0601
Amend/*				
<u>Certifications Not Transferable</u>	21	NCAC	19	.0603
Amend/*				
<u>Program Directors</u>	21	NCAC	19	.0604
Amend/*				
<u>Enrollment Procedures</u>	21	NCAC	19	.0605
Amend/*				
<u>School Equipment</u>	21	NCAC	19	.0608
Amend/*				
<u>School Library</u>	21	NCAC	19	.0609
Amend/*				
<u>Equipment, Student and Teacher Ratio</u>	21	NCAC	19	.0613
Amend/*				

<u>School Hours and Schedule</u> Amend/*	21	NCAC	19	.0614
<u>School Advertisements</u> Amend/*	21	NCAC	19	.0617
<u>Private Practice in a School Building</u> Amend/*	21	NCAC	19	.0618
<u>Equipment Endorsements and Sales Prohibited</u> Amend/*	21	NCAC	19	.0619
<u>Certification of Schools in Other States or Jurisdictions</u> Amend/*	21	NCAC	19	.0622
<u>Continuing Education Requirements, Renewal, Reinstatement...</u> Amend/*	21	NCAC	19	.0701
<u>Board Approval of Courses</u> Amend/*	21	NCAC	19	.0702
<u>Time Limits on Credit</u> Amend/*	21	NCAC	19	.0704

## **NURSING, BOARD OF**

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

<u>Selection and Qualifications of Nurse Members</u> Amend/*	21	NCAC	36	.0109
<u>Suspension of Authority to Expend Funds</u> Adopt/*	21	NCAC	36	.0119
<u>Regular Renewal</u> Amend/*	21	NCAC	36	.0201
<u>Reinstatement of Lapsed License</u> Adopt/*	21	NCAC	36	.0203
<u>Nurse Anesthesia Practice</u> Amend/*	21	NCAC	36	.0226

## **ONSITE WASTEWATER AND INSPECTOR BOARD**

The rules in Chapter 39 are from the Onsite Wastewater Contractors and Inspectors Certification Board and include definitions (.0100); certification of onsite wastewater contractors or inspectors (.0200); onsite wastewater contractor or inspector fees (.0300); certification by examination (.0400); certification renewal (.0500); continuing education requirements (.0600); and procedures for disciplinary actions (.0700).

<u>Definitions</u> Adopt/*	21	NCAC	39	.0101
<u>Types of Certification</u> Adopt/*	21	NCAC	39	.0102
<u>Application Requirements for Certification</u> Adopt/*	21	NCAC	39	.0201
<u>Schedule of Certification Fees</u> Adopt/*	21	NCAC	39	.0301
<u>Onsite Wastewater Contractor or Inspector Examinations</u> Adopt/*	21	NCAC	39	.0401
<u>Time and Place of Examination</u> Adopt/*	21	NCAC	39	.0402



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**RULES REVIEW COMMISSION**

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<u>Conducting and Grading Examinations</u>	21	NCAC	39	.0403
Adopt/*				
<u>Issuance of Certificates</u>	21	NCAC	39	.0404
Adopt/*				
<u>Conditions and Limitations for Renewal of Certification</u>	21	NCAC	39	.0501
Adopt/*				
<u>Requirements</u>	21	NCAC	39	.0601
Adopt/*				
<u>Approval of Continuing Education Courses</u>	21	NCAC	39	.0602
Adopt/*				
<u>Determination of Credit</u>	21	NCAC	39	.0603
Adopt/*				
<u>Recordkeeping</u>	21	NCAC	39	.0604
Adopt/*				
<u>Special Provisions for Continuing Education</u>	21	NCAC	39	.0605
Adopt/*				
<u>Revocation, or Suspension of Certification</u>	21	NCAC	39	.0701
Adopt/*				
<u>Certification Following Revocation or Voluntary Surrender...</u>	21	NCAC	39	.0702
Adopt/*				
<u>Penalties</u>	21	NCAC	39	.0703
Adopt/*				

**RESPIRATORY CARE BOARD**

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and definitions (.0100); application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); miscellaneous provisions (.0500); rules (.0600); and administrative hearing procedures (.0700).

<u>Fees</u>	21	NCAC	61	.0204
Amend/*				

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

**OFFICE OF ADMINISTRATIVE HEARINGS**

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

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

**ADMINISTRATIVE LAW JUDGES**

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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>				
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)	09 ABC 5421	Brooks	04/19/10	
ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	Brooks	04/19/10	
ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market	09 ABC 5257	Brooks	04/19/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Lee Street)	09 ABC 5422	May	06/09/10	
ABC Commission v. Boulos 2, Inc., T/A Akron Texaco	10 ABC 0027	May	04/21/10	
ABC Commission v. 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	
ABC Commission v. Ab3 LLC T/A On the Roxx	10 ABC 4120	Brooks	10/08/10	
ABC Commission v. El Corona Mexican Restaurant Inc., T/A Corona II	10 ABC 4122	May	09/24/10	
ABC Commission v. Ben Long Wang, T/A Sapporo Bistro	10 ABC 4843	May	10/15/10	
<b><u>BOARD OF SOCIAL WORK CERTIFICATION AND LICENSURE</u></b>				
Miriam Deborah Kahn Sichel v. Social Work Certification and Licensure Board	10 BSW 2454	Overby	06/25/10	
<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>				
Tammy S. Barbone v. Crime Victims Compensation Comm.	08 CPS 2667	Brooks	07/16/10	
Christine G. Mroskey v. Crime Victims Compensation	09 CPS 0451	Gray	06/24/10	
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	Overby	03/31/10	
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	
Earl Stanley Peters III v. Victims Compensation Service Division	09 CPS 5444	Elkins	08/30/10	
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	
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X&M Trucking, Xavier Artis v. Dept State Highway Patrol, DMV	10 CPS 0855	Lassiter	07/20/10
Preferred Materials Inc v. Department of Crime Control & Public Safety, DMV	10 CPS 0931	Elkins	08/30/10
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
Vincent John Hall v. Crime Victims Compensation Commission, Maxton Police Department, Officer Duron Burney	10 CPS 2811	Gray	10/04/10
Anne F. Palmer v. Victim and Justice Services	10 CPS 3604	Lassiter	09/08/10

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

Peterkin & Associates Inc v. DHHS	09 DHR 1883	Gray	10/15/10	
C&W Alternative Family Living Facility, Inc., v. CenterPoint Human Services and DHHS	09 DHR 3377	Brooks	06/16/10	
Kevin Summers v. DHHS, Div. of Health Service Regulation, Health Care Personnel Registry	09 DHR 3766	Overby	08/12/10	
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	
Mattie Lowe/Angela Lowe, Lowe Family Care Home #3 v. DHHS, Division of Health Service Regulation	09 DHR 4148	Gray	08/27/10	
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Rex Hospital, Inc, d/b/a Rex Hospital and UNC and Wake Radiology Oncology Services v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Parkway Urology, P.A.	09 DHR 5769	Gray	07/20/10	
University of North Carolina Hospitals at Chapel Hill, and Rex Hospital, Inc. d/b/a Rex Healthcare and Wake Radiology Oncology Services, PLLC v. DHHS	09 DHR 5770	Gray	07/20/10	
Wake Radiology Oncology Services, PLLC and University of North Carolina Hospitals at Chapel Hill and Rex Hospital, Inc. d/b/a Rex Healthcare v. DHHS, Division of Health Service Regulation, CON Section and Parkway Urology, P.A. d/b/a Cary Urology, P.A.	09 DHR 5785	Gray	07/20/10	
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June Rae Crittenden v. Health Care Registry Section, DHHS	09 DHR 6166	Overby	03/29/10	
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Elizabeth Ann Holt v. DHHS, Division of Health Service Regulation	09 DHR 6347	Brooks	03/31/10	
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Estate of Nora L. Edwards, Wanda Harrington v. DHHS, Div. of Medical Assistance	09 DHR 6836	Overby	03/16/10	
Jerry Flood, Forever Young Group Care v. DHHS, Div. of Health Service Regulation	09 DHR 6839	Gray	10/01/10	
Teresa Dargan Williams v. DHHS, Division of Health Service Regulation	10 DHR 0246	Gray	05/21/10	
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Samuel and Nita Gaskin v. DHHS	10 DHR 0420	Overby	06/09/10	
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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	
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Park Village Rehab and Health v. DHHS	10 DHR 1305	Elkins	09/15/10	
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	
Wee Wiggles Child Care Center a/k/a P&L Services LLC, Patricia York, and Ramona Jones	10 DHR 1514	May	07/20/10	
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Triad ENT Debbie Beck v. DHHS, Division of Medical Assistance	10 DHR 1668	May	08/04/10
Elizabeth House Blackwell v. DHHS, Div. of Health Service Regulation	10 DHR 1670	Overby	07/15/10
Sandbox Academy Child Care Center, Cynthia Martin v. OAH, DHHS	10 DHR 1837	Mann	08/27/10
Patrice Michele Harris-Powell v. DHHS, Div. of Health Service Regulation	10 DHR 2067	Elkins	07/26/10
Joseph B. Twine III v. DHHS	10 DHR 2068	Elkins	08/30/10
Lenora Wesley v. Division of Child Development, DHHS	10 DHR 2069	Gray	08/17/10
Deborah Gail Robinson v. DHHS, Health Service Regulation	10 DHR 2448	Elkins	10/18/10
Happy Feet Learning Center, Tamika Herron v. Division of Child Development, DHHS	10 DHR 2658	Mann	08/20/10
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
Laytoya Daniels v. DHHS, Div. of Health Service Regulation, Health Care Personnel Registry	10 DHR 2913	Webster	08/27/10
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Positive Connection Community Services, Inc., DHHS	10 DHR 3128	Gray	07/30/10
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King's Memorial Christian Academy v. DHHS, Div. of Child Development	10 DHR 4719	Gray	09/30/10
Patricia Hill, Building Joy in Healthcare v. DHSR	10 DHR 4842	Lassiter	09/23/10
Crandell's Enterprises Inc., Mary Ann Crandell-MHL #-092-669	10 DHR 5201	Overby	10/15/10

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Robert Lee Hood v. DOC	10 DOC 4838	Lassiter	10/11/10
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## DEPARTMENT OF JUSTICE

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Timothy Tracy Walker v. Criminal Justice Education and Training Standards Commission	10 DOJ 3288	Gray	09/13/10	

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Michael L. Bost Sr., v. Retirement System	09 DST 3781	May	04/15/10	
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Windy Woods, LLC v. DENR, Division of Water Quality	09 EHR 4621	Gray	06/04/10	25:05 NCR 674
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Bill M. Klimvakis, Bill's Plumbing v. DENR, Division of Waste Management	10 EHR 3286	Overby	08/23/10	

### 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	
James Edward Summerlin v. State Health Plan	10 INS 2520	Gray	09/21/10	

### OFFICE OF STATE PERSONNEL

Linda Cheryl Strider v. Vance County Board of Social Services	08 OSP 0904	Lassiter	06/25/10	
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
Jewel C. Mosley v. Wilson County Health Department, Felix Meyer, Director	08 OSP 2140	Gray	07/20/10	
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	
Bobby L. Murray v. NCCU	09 OSP 2149	Gray	06/18/10	25:07 NCR 933
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	
O'Tonious T. Raynor v. DHHE, Emery Milliken	09 OSP 4648	Webster	07/26/10	25:07 NCR 948
Charles T. Hodge Jr. v. Mike Totolo, Vance County Public Schools	09 OSP 4977	Elkins	08/30/10	
Michael Karr v. DHHS, Division of Vocational Rehabilitation Services	09 OSP 5157	Elkins	07/19/10	25:07 NCR 960
Robert L. Hamm v. Department of Correction	09 OSP 5320	May	04/15/10	
Horace Blakeney v. UNC Charlotte	09 OSP 5352	Brooks	07/14/10	
Steven Dancy v. Appalachian State University	09 OSP 5566	Brooks	08/02/10	
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	
Stephen R. West v. UNC	10 OSP 1567	Overby	09/02/10	
Janice F. Stokes v. DOC, Division of Community Corrections	10 OSP 2316	Gray	08/20/10	
Beverly Ann Wynn v. DOC, Div. of Community Corrections and Div. of Prisons	10 OSP 2415	Elkins	09/20/10	
Alvin L. Bess v. The County of Cumberland	10 OSP 2517	Overby	06/25/10	
Cynthia Lloyd v. Vance County	10 OSP 2577	Overby	08/30/10	
John Anthony McDonald, II v. DHHS, Division of Information Resource Management	10 OSP 2786	Gray	06/24/10	
Tammy R. Northern v. County of Durham Criminal Justice Resources Center	10 OSP 2904	Gray	08/20/10	

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**CONTESTED CASE DECISIONS**

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Cornelia G. Snow v. Wendy Godwin/Longleaf Neuro-Medical Treatment Center	10 OSP 2909	Lassiter	06/29/10
Angela R. Harris v. DOC	10 OSP 3007	Lassiter	08/31/10
Vance L. Yates v. DJJDP Dept. of Juvenile Justice & Delinquency Prevention	10 OSP 3155	Overby	08/20/10
Maureen Marie Schepis v. DHHS, J. Iverson Riddle Developmental Center, Emery Milliken, DHHS General Counsel	10 OSP 3346	Gray	08/30/10
George A. McLamb v. DOC	10 OSP 4398	Gray	10/20/10

**OFFICE OF SECRETARY OF STATE**

Jenny S. Thompson v. Department of SOS	09 SOS 2342	Lassiter	03/17/10
Jessica Nicole Blackwell Lewis v. Dept. of SOS	09 SOS 6174	Elkins	08/30/10
James D. Harrison v. Notary Public Commission	10 SOS 1515	May	06/15/10

**UNC HOSPITALS**

Alexander Lee v. UNC Hospitals	10 UNC 1095	Elkins	08/30/10
Edwin Matthews v. UNC Hospitals	10 UNC 2576	Overby	09/13/10