

NORTH CAROLINA REGISTER

VOLUME 25 • ISSUE 16 • Pages 1873 - 1949

February 15, 2011

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Contact List for Rulemaking Questions or Concerns

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

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

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

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Rule Review and Legal Issues

Rules Review Commission
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Raleigh, North Carolina 27609 (919) 431-3104 FAX

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

Fiscal Notes & Economic Analysis

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

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

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

Governor's Review

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

Legislative Process Concerning Rule-making

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

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

NORTH CAROLINA REGISTER
Publication Schedule for January 2011 – December 2011

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
25:13	01/03/11	12/08/10	01/18/11	03/04/11	03/21/11	05/01/11	05/2012	09/30/11
25:14	01/18/11	12/22/10	02/02/11	03/21/11	03/21/11	05/01/11	05/2012	10/15/11
25:15	02/01/11	01/10/11	02/16/11	04/04/11	04/20/11	06/01/11	05/2012	10/29/11
25:16	02/15/11	01/25/11	03/02/11	04/18/11	04/20/11	06/01/11	05/2012	11/12/11
25:17	03/01/11	02/08/11	03/16/11	05/02/11	05/20/11	07/01/11	05/2012	11/26/11
25:18	03/15/11	02/22/11	03/30/11	05/16/11	05/20/11	07/01/11	05/2012	12/10/11
25:19	04/01/11	03/11/11	04/16/11	05/31/11	06/20/11	08/01/11	05/2012	12/27/11
25:20	04/15/11	03/25/11	04/30/11	06/14/11	06/20/11	08/01/11	05/2012	01/10/12
25:21	05/02/11	04/08/11	05/17/11	07/01/11	07/20/11	09/01/11	05/2012	01/27/12
25:22	05/16/11	04/25/11	05/31/11	07/15/11	07/20/11	09/01/11	05/2012	02/10/12
25:23	06/01/11	05/10/11	06/16/11	08/01/11	08/22/11	10/01/11	05/2012	02/26/12
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26:01	07/01/11	06/10/11	07/16/11	08/30/11	09/20/11	11/01/11	05/2012	03/27/12
26:02	07/15/11	06/23/11	07/30/11	09/13/11	09/20/11	11/01/11	05/2012	04/10/12
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26:05	09/01/11	08/11/11	09/16/11	10/31/11	11/21/11	01/01/12	05/2012	05/28/12
26:06	09/15/11	08/24/11	09/30/11	11/14/11	11/21/11	01/01/12	05/2012	06/11/12
26:07	10/03/11	09/12/11	10/18/11	12/02/11	12/20/11	02/01/12	05/2012	06/29/12
26:08	10/17/11	09/26/11	11/01/11	12/16/11	12/20/11	02/01/12	05/2012	07/13/12
26:09	11/01/11	10/11/11	11/16/11	01/03/12	01/20/12	03/01/12	05/2012	07/28/12
26:10	11/15/11	10/24/11	11/30/11	01/17/12	01/20/12	03/01/12	05/2012	08/11/12
26:11	12/01/11	11/07/11	12/16/11	01/30/12	02/20/12	04/01/12	05/2012	08/27/12
26:12	12/15/11	11/22/11	12/30/11	02/13/12	02/20/12	04/01/12	05/2012	09/10/12

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. 80

EXTENDING THE YOUTH ACCOUNTABILITY PLANNING TASK FORCE

WHEREAS, the Youth Accountability Planning Task Force was established in Session Law 2009-451; and

WHEREAS, the Task Force is scheduled to terminate at the submission of a final report to me, the General Assembly, and the citizens of the State as required by Section 18.9(h) of Session Law 2009-451; and

WHEREAS, the Task Force submitted its final report on January 14, 2011; and

WHEREAS, the matter of juvenile justice is an important one for our state, and allowing the Task Force to continue will allow members to work on implementation of the plan submitted in the final report.

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 Youth Accountability Planning Task Force (hereinafter the "YAPTF") is hereby re-established.

Section 2. Membership

- a. The YAPTF shall consist of twenty-one (21) members. The Governor shall appoint co-chairs of the YAPTF.
- b. The membership shall include the following persons:

The following members or their designees shall serve as ex officio members:

- (1) The Secretary of the Department of Juvenile Justice and Delinquency Prevention.
- (2) The Director of the Administrative Office of the Courts.

- (3) The Secretary of the Department of Health and Human Services.
- (4) The Secretary of the Department of Correction.
- (5) The Secretary of the Department of Crime Control and Public Safety.
- (6) The Superintendent of Public Instruction.
- (7) The Secretary of the Department of Administration, or a designee having knowledge of programs and services for youth and young adults.
- (8) The Juvenile Defender in the Office of Indigent Defense.
- (9) One representative from the Governor's Crime Commission, appointed by the Governor.
- (10) One representative from the North Carolina Sentencing and Policy Advisory Commission, appointed by the Governor.

The remaining members shall be appointed as follows:

- (11) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (12) Three members of the Senate appointed by the President Pro Tempore of the Senate.
- (13) Two chief court counselors, appointed by the Governor, one to be from a rural county and one from an urban county.
- (14) One present or former chief district court judge or superior court judge appointed by the Chief Justice of the North Carolina Supreme Court.
- (15) One police chief appointed by the President Pro Tempore of the Senate.
- (16) One district attorney appointed by the Speaker of the House of Representatives.

Section 3. Duties

The YAPTF shall have the following duties:

- a. Continue the duties assigned in Section 18.9(f) of Session Law 2009-451.
- b. Evaluate the recommendations submitted in the January 2011 report.
- c. Address any other related issues that the YAPTF considers necessary.

Section 4. Meetings

- a. The YAPTF shall meet monthly or upon the call of the Governor or the Chair.
- b. A majority of the YAPTF shall constitute a quorum for the transaction of business.

Section 5. Administration

- a. The Office of the Governor and the North Carolina Department of Juvenile Justice and Delinquency Prevention may provide staff for the YAPTF as necessary and as determined by the Governor, upon the request of the YAPTF.

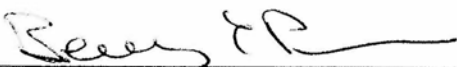
- b. The YAPTF may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.
- c. No per diem allowance shall be paid to members of the YAPTF. Members of the YAPTF may receive necessary travel and subsistence expenses in accordance with State law.

Section 6. Effect and Duration

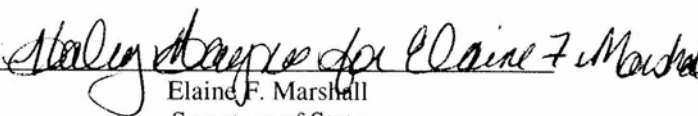
This Executive Order is effective immediately. It shall remain in effect until December 31, 2012, pursuant to N.C. Gen. Stat. § 147-16.2, or unless earlier rescinded.

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 fourteenth day of January in the year of our Lord two thousand and eleven, 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

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

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

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

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

Public Hearing: *March 7, 2011, 1:00PM, NCSU McKimmon Center, 1101 Gorman Street, Raleigh, NC 27606.*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on April 18, 2011.*

Statement of Subject Matter:

1. Request by Andy Davis, with The Marwin Company, Inc., to amend the 2012 NC Residential Code, Section N1102.2.3. The proposed amendment is as follows:

N1102.2.3 Access hatches and doors.

(no change to Section)

Exceptions:

1. Pull down stair systems shall be weatherstripped and insulated to ~~an R-5 insulation~~ a maximum U-factor of U-0.17 with a minimum of R-5 insulation value. Non-rigid insulation materials are not allowed. Additional insulation systems that enclose the stair system from above are allowed. Exposed foam plastic ~~must~~ shall meet the provisions of the North Carolina Residential Code.

2. (no change to exception)

Motion – Cindy Browning/Second – Ralph Euchner/Passed – The request was granted unanimously and was referred to the Residential Committee for review.

2. Request by Johnny C. Clark, PE, with the North Carolina Department of Public Instruction, to amend the 2012 NC Mechanical Code, Table 403.3. The proposed amendment is as follows:

TABLE 403.3

REQUIRED OUTDOOR VENTILATION AIR

Education; Delete footnote “g” from Art Classroom and Science Laboratories.

Motion – John Hitch/Second – Kim Reitterer/Passed – The request was granted unanimously.

3. Request by Johnny C. Clark, PE, with the North Carolina Department of Public Instruction, to amend the 2012 NC Mechanical Code, Section 403.3.1.3. The proposed amendment is as follows:

Add the following to paragraph 403.3.1.3:

Exception: K-12 schools shall be exempt from use of this effectiveness factor ($V_{oz}=V_{bz}$)

Motion – John Hitch/Second – Kim Reitterer/Passed – The request was granted unanimously.

4. Request by Johnny C. Clark, PE, with the North Carolina Department of Public Instruction, to amend the 2012 NC Mechanical Code, Section 403.3.2.3.4. The proposed amendment is as follows:

Add the following to paragraph 403.3.2.3.4:

Exception: K-12 schools shall be exempt from use of this efficiency factor ($V_{ot}=V_{ou}$)

Motion – John Hitch/Second – Kim Reitterer/Passed – The request was granted unanimously.

5. Request by David Smith, NC Building Code Council, to amend the 2009 NC Residential Code, Section R313.2 and the 2012 NC Residential Code, Section R314.3. The proposed amendment is as follows:

2009 NC Residential Code

R313.2 Location. Smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside each separate sleeping area in the immediate vicinity of the bedrooms.
3. On each additional story of the dwelling, including basements and habitable attics (finished) but not including crawl spaces, or uninhabitable (unfinished) attic stories and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

When more than one smoke alarm is required to be installed within an individual dwelling unit the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit.

2012 NC Residential Code

R314.3 Location. Smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside each separate sleeping area in the immediate vicinity of the bedrooms.
3. On each additional story of the dwelling, including basements and habitable attics (finished) but not including crawl spaces, or uninhabitable (unfinished) attic stories and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

When more than one smoke alarm is required to be installed within an individual dwelling unit the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit.

Motion – David Smith/Second – Tom Turner/Passed – The request was granted unanimously.

6. Request by David Smith, NC Building Code Council, to amend the 2009 and 2012 NC Residential Code, Section R807.1. The proposed amendment is as follows:

R807.1 Attic access. An attic access opening shall be provided to attic areas that exceed 100 square feet (9.29 m²) and have a vertical height of 60 inches (1524 mm) or greater. The net clear opening shall not be less than 20 inches by 30 inches (508 mm by 762 mm) and shall be located in a hallway or other readily accessible location. A 30-inch (762 mm) minimum unobstructed headroom in the attic space shall be provided at some point above the access opening. See Section M1305.1.3 for access requirements where mechanical equipment is located in attics.

Exceptions:

1. Concealed areas not located over the main structure including porches, areas behind knee walls, dormers, bay windows, etc. are not required to have access.
2. Pull down stair treads, stringers, handrails, and hardware may protrude into the net clear opening.

Motion – David Smith/Second – Tom Turner/Passed – The request was granted unanimously.

7. Request by the Electrical Standing Committee to adopt the 2011 NEC with NC Amendments.

The proposed NC amendments to the 2011 NEC are posted at the following link:
http://www.ncdoi.com/OSFM/Engineering/BCC/engineering_bcc_ah_minutes.asp

Motion – Kim Reitterer/Second – Cindy Browning/Passed – The request was granted unanimously.

8. Request by Roger Ballard representing NC Department of Public Instruction to amend the 2009 NC Building Code, Table 715.4. The proposed amendment is as follows:

Table 715.4 Fire Door and Fire Shutter Fire Protection Ratings

(add footnote “c” in Table, to “Fire partitions, corridor walls”)

c. Fire-rated bathroom/restroom doors are not required when opening onto fire-rated halls, corridors, exit access provided:

(1) no other rooms open off of the bathroom/restroom, and

(2) no gas or electric appliances other than electric hand dryers are located in the bathroom/restroom, and

(3) the walls, partitions, floor and ceiling of the bathroom/restroom have a fire rating at least equal to the rating of the hall, corridor or exit access, and

(4) the bathroom/restroom is not used for any other purpose than it is designed.

Motion – Steve Knight/Second – Ralph Euchner/Passed – The request was granted unanimously and was referred to the Building Committee for review.

8(a). Request by Roger Ballard representing NC Department of Public Instruction to amend the 2012 NC Building Code, Table 715.4. The proposed amendment is as follows:

Table 715.4 Fire Door and Fire Shuttter Fire Protection Ratings

(add footnote “c” in Table, to “Fire partitions, corridor walls”)

c. Fire-rated bathroom/restroom doors are not required when opening onto fire-rated halls, corridors, exit access provided:

(1) no other rooms open off of the bathroom/restroom, and

(2) no gas or electric appliances other than electric hand dryers are located in the bathroom/restroom, and

(3) the walls, partitions, floor and ceiling of the bathroom/restroom have a fire rating at least equal to the rating of the hall, corridor or exit access, and

(4) the bathroom/restroom is not used for any other purpose than it is designed.

Motion – Steve Knight/Second – Ralph Euchner/Passed – The request was granted unanimously and was referred to the Building Committee for review.

9. Request by Roger Ballard representing NC Department of Public Instruction to amend the 2009 NC Building Code, Section 715.4.7. The proposed amendment is as follows:

715.4.7 Door closing. Fire doors shall be self-closing or automatic-closing in accordance with this section.

Exceptions:

1. Fire doors located in common walls separating sleeping units in Group R-1 shall be permitted without automatic-closing or self-closing devices.

2. The elevator car doors and the associated hoistway enclosure doors at the floor level designated for recall in accordance with Section 3003.2 shall be permitted to remain open during Phase I emergency recall operation.

3. Doors from classrooms, with less than 1200 net square feet, in Group E occupancies opening directly onto a 1-hour rated corridor shall be permitted to be installed without self-closing devices.

Motion – Steve Knight/Second – Ralph Euchner/Passed – The request was granted unanimously and was referred to the Building Committee for review.

9(a). Request by Roger Ballard representing NC Department of Public Instruction to amend the 2012 NC Building Code, Section 715.4.8. The proposed amendment is as follows:

715.4.8 Door closing. Fire doors shall be self-closing or automatic-closing in accordance with this section.

Exceptions:

1. Fire doors located in common walls separating sleeping units in Group R-1 shall be permitted without automatic-closing or self-closing devices.

2. The elevator car doors and the associated hoistway enclosure doors at the floor level designated for recall in accordance with Section 3003.2 shall be permitted to remain open during Phase I emergency recall operation.

3. Doors from classrooms, with less than 1200 net square feet, in Group E occupancies opening directly onto a 1-hour rated corridor shall be permitted to be installed without self-closing devices.

Motion – Steve Knight/Second – Ralph Euchner/Passed – The request was granted unanimously and was referred to the Building Committee for review.

10. Request by Ralph Euchner representing the Plumbing Ad-Hoc Committee to adopt the Rainwater Collection and Distribution Systems code language.

The proposed Appendix C-1, Rainwater Collection and Distribution Systems, is posted at the following link:
http://www.ncdoi.com/OSFM/Engineering/BCC/engineering_bcc_minutes.asp

Motion – David Smith/Second – Cindy Browning/Passed – The request was granted unanimously.

[Items 11 through 32 were identified by the Chairman as being cost offsets to balance the adoption of the 2012 Energy Conservation Code. These code changes were accompanied with a letter from Governor Perdue.] Motion – Hawley Truax/ - The motion was to amend the original motion, to break down the items within the complete package into individual items – The motion was passed unanimously. Motion was made to grant Items 11 through 32 – The motion was passed unanimously.

11. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Section 202. The proposed amendment is as follows:

202 Definitions

~~**STORY, ATTIC.** Any story situated wholly or partly in the roof so designated arranged or built as to be used for storage or habitation. If an attic which is accessible by a fixed stairway has a 7 foot (2134 mm) clear height for greater than 50 percent of the floor area of the story below then the space shall be considered as a story.~~

12. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Section 202. The proposed amendment is as follows:

WIND BORNE DEBRIS REGION. Areas within hurricane-prone regions ~~defined as that area east of the inland waterway from the NC/SC state line north to Beaufort Inlet and from that point to include the barrier islands to the NC/VA state line~~ within 1500 feet (0.452km) of the mean high water line of the Atlantic Ocean.

13. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Section R302.2.5. The proposed amendment is as follows:

R302.2.5 Townhouse eave protection In townhouse construction (with three or more attached dwellings) Projections extending into the fire separation distance shall have not less than 1 hour fire resistive construction on the underside. Soffit material beyond the fire separation distance shall be securely attached to framing members. ~~and shall be constructed using either noncombustible soffit material; fire retardant treated soffit material; vinyl soffit installed over ¾ inch (19 mm) wood sheathing or 5/8 inch (16 mm) gypsum board; or aluminum soffit installed over ¾ inch (19 mm) wood sheathing or 5/8 inch (16 mm) gypsum board. Venting requirements shall be provided in both soffit and underlayments. Vents shall be either nominal 12 inch (51 mm) continuous or equivalent intermittent and shall not exceed the minimum net free air requirements established in Section R806.2 by more than 50 percent.~~
Vents in soffit are not allowed within 4 feet (1219 mm) of fire walls or property lines.

14. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Section R314.3.1. The proposed amendment is as follows:

R314.3.1 Alterations, repairs and additions. When alterations, repairs and additions requiring a building permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be equipped with smoke alarms. ~~located as required for new dwellings; the smoke alarms shall be interconnected and hard wired. which may be battery powered and shall be designed to emit a recurring signal when batteries are low and need to be replaced.~~

15. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Section R404.4. The proposed amendment is as follows:

R404.4 Retaining walls Retaining walls that ~~are not laterally supported at the top and that retain in excess of 48~~ are not laterally supported at the top and that retain in excess of 48 ~~of unbalanced fill support buildings and their accessory structures shall be designed to ensure stability against overturning, sliding, excessive foundation pressure and water uplift. In addition any retaining wall which meets the following:~~
1. Any retaining wall systems on a residential site that cross over adjacent property lines regardless of vertical height, and
2. Retaining walls that support buildings and their accessory structures.

Retaining walls shall be designed for a safety factor of 1.5 against lateral sliding and overturning

16. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Section R4403.1. The proposed amendment is as follows:

R4403.1 Foundation Wall Footings. Foundation wall footings in the 120 and 130 mph wind zones shall be a minimum of 8" x 24" ~~15"~~ for houses 2-1/2 stories and less. The footing for a three story building shall be 10" x 24" ~~18"~~. ~~Footings shall be reinforced with three #4 (or two #5 bars) at 3 inches above the bottom of the footing. The bars shall be continuous or lapped 25 inches at all splices.~~

17. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Section R311.2. The proposed amendment is as follows:

R311.2 Egress door. At least one exterior egress door shall be provided for each *dwelling* unit. The egress door shall be side-hinged, and shall provide a minimum clear width of 32 inches (813mm) when measured between the face of the door and the stop, with the door open 90 degrees (1.57 rad). The minimum clear height of the door opening shall not be less than 78 inches (1981 mm) in height measured from the top of the threshold to the bottom of the stop. Other exterior doors shall not be required to comply with these minimum dimensions. All interior ~~and egress doors and a minimum of one~~ exterior egress doors shall be readily openable from the side from which egress is to be made without the use of a key or special knowledge or effort.

18. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Section R313.1.1. The proposed amendment is as follows:

R313.1.1 Carbon monoxide alarms. In new construction, dwelling units within which fuel-fired appliances are installed or have attached garages shall be provided with an approved carbon monoxide alarm installed outside of each separate sleeping area in the immediate vicinity of the bedroom(s) as directed by the alarm manufacturer

19. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Table R403. The proposed amendment is as follows:

**TABLE R403.
MINIMUM WIDTH OF CONCRETE OR MASONRY FOOTINGS
(inches)^a**

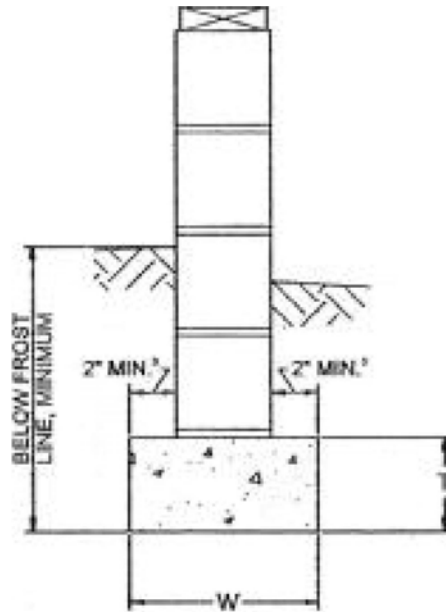
	<i>LOAD BEARING VALUE OF SOIL (psf)</i>			
	<i>1,500</i>	<i>2,000</i>	<i>3,000</i>	<i>4,000</i>
<i>Conventional Wood Frame Construction</i>				
<i>1-story</i>	16 <u>12^b</u>	16 <u>12^b</u>	12	12
<i>2-story</i>	16 <u>15^b</u>	16 <u>15^b</u>	12	12
<i>3-story</i>	23	17	12	12
<i>4-Inch Brick Veneer Over Wood Frame or 8-Inch Hollow Concrete Masonry</i>				
<i>1-story</i>	16 <u>12^b</u>	16 <u>12^b</u>	12	12
<i>2-story</i>	16 <u>15^b</u>	16 <u>15^b</u>	12	12
<i>3-story</i>	32	24	16	12
<i>8-Inch Solid or Fully Grouted Masonry</i>				
<i>1-story</i>	16	16	12	12
<i>2-story</i>	29	21	14	12
<i>3-story</i>	42	32	21	16

For SI: 1 inch = 25.4 mm, 1 pound per square foot = 0.0479 kPa.

- a. Where minimum footing width is 12 inches, use a single width of solid or fully grouted 12-inch nominal concrete masonry units is permitted.
- b. A minimum footing width of 12" is acceptable for monolithic slab foundations.

20. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Table R403.3(1). The proposed amendment is as follows:

**FIGURE R403.3 (1)
CONCRETE AND MASONRY FOUNDATION DETAILS**



1. Foundations shall extend not less than 12 inches below ~~the natural grade or engineered fill~~ finished grade and in no case less than the frost line depth.

REMAINING NOTES TO REMAIN THE SAME

21. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Table R408.1.1. The proposed amendment is as follows:

R408.1.1 Foundation vent sizing. The minimum net area of ventilation openings shall be not less than 1 square foot (0.0929 m²) for each 150 square feet (13.9 m²) of crawl space ground area

Exception: The total area of ventilation openings may be reduced to 1/1,500 of the of the ~~crawl space ground area~~ under-floor area where the ground surface is treated with an approved vapor retarder material and the required openings are placed so as to provide cross-ventilation of the space. The installation of operable louvers shall not be prohibited.

22. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Table R408.2. The proposed amendment is as follows:

R408.2 Ground vapor retarder. Requires full coverage ground vapor retarders for all wall-vented ground spaces. Wall-vented crawl spaces shall be protected from water entry by the evaporation of water from the ground surface. A minimum 6 mil (0.15 mm) polyethylene vapor retarder or equivalent shall be installed to nominally cover all exposed earth in the crawl space with joints lapped not less than 12 inches (305 mm). Where there is no evidence that the ground water table can rise to within 6 inches (152 mm) of the floor of the crawl space it is acceptable to puncture the ground vapor retarder at low spots to prevent water puddles from forming on top of the vapor retarder due to condensation. The floor of the crawl space shall be graded so that it drains to one or more low spots. Install a drain to daylight or sump pump at each low spot. Crawl space drains shall be kept separate from roof gutter drain systems and foundation perimeter drains.

23. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Table R703.2. The proposed amendment is as follows:

R703.2 ~~Water-resistive barrier~~ Weather-resistant sheathing paper. One layer of No. 15 asphalt felt, free from holes and breaks, complying with ASTM D 226 for Type 1 felt or other approved water-resistive barrier shall be applied over studs or sheathing of all exterior walls as required by Table 703.4. Such felt or material shall be applied horizontally, with the upper layer lapped over the lower layer not less than 2 inches (51 mm). Where joints occur, felt shall be lapped not less than 6 inches (152 mm). The felt or other approved material shall be continuous to the top of walls and terminated at penetrations and building appendages in a manner to meet the requirements of the exterior wall envelope as described in Section R703.1.

Exception: Omission of the water-resistive barrier is permitted in the following situations:

1. In detached accessory buildings.
2. Under exterior wall finish materials as permitted in Table R703.4.
3. Under paperbacked stucco lath when the paper backing is an approved weather-resistive sheathing paper.

4. Under panel siding with shiplap joints or battens.

TABLE R703.4
WEATHER-RESISTANT SIDING ATTACHMENT AND MINIMUM THICKNESS
(reprint from 2006)

WALL COVERING

TABLE R703.4
WEATHER-RESISTANT SIDING ATTACHMENT AND MINIMUM THICKNESS

SIDING MATERIAL		NOMINAL THICKNESS* (inches)	JOINT TREATMENT	SHEATHING PAPER REQUIRED	TYPE OF SUPPORTS FOR THE SIDING MATERIAL AND FASTENERS ^{b,c,d}					
					Wood or wood structural panel sheathing	Fiberboard sheathing into stud	Gypsum sheathing into stud	Foam plastic sheathing into stud	Direct to studs	Number or spacing of fasteners
Horizontal aluminum ^f	Without insulation	0.019 ^g	Lap	Yes Note m	0.120 nail 1½" long	0.120 nail 2" long	0.120 nail 2" long	0.120 nail ^h	Not allowed	Same as stud spacing
		0.024	Lap	Yes Note m	0.120 nail 1½" long	0.120 nail 2" long	0.120 nail 2" long	0.120 nail ^h	Not allowed	
	With insulation	0.019	Lap	Yes Note m	0.120 nail 1½" long	0.120 nail 2½" long	0.120 nail 2½" long	0.120 nail ^h	0.120 nail 1½" long	
Brick veneer		2	Section R 703	Yes	See Section R703 and Figure R 703.7 ^b					
Concrete masonry veneer		2								
Hardboard ⁱ Panel siding-vertical		7/16	Note r	Yes Note y	Note o	Note o	Note o	Note o	Note o	6" panel edges 12" inter. sup. ^z
Hardboard ⁱ Lap-siding-horizontal		7/16	Lap Note r	Yes	Note q	Note q	Note q	Note q	Note q	Same as stud spacing 2 per bearing
Steel ⁱ		29 ga.	Lap	Yes	0.113 nail 1¾" Staple-1¾"	0.113 nail 2¾" Staple-2½"	0.113 nail 2½" Staple-2½"	0.113 nail ^h Staple ^z	Not allowed	Same as stud spacing
Stone veneer		2	Section R 703	Yes	See Section R703 and Figure R 703.7 ^b					
Particleboard panels		¾ - ½	Note r	Yes	6d box nail	6d box nail	6d box nail	box nail ^f	6d box nail, ¾ not allowed	6" panel edge 12" inter. sup.
		5/8	Note r	Yes	6d box nail	8d box nail	8d box nail	box nail ^f	6d box nail	
Plywood panel ⁱ (exterior grade)		¾	Note r	Yes	0.099 nail-2"	0.113 nail-2½"	0.099 nail-2"	0.113 nail ^h	0.099 nail-2"	6" on edges
Vinyl siding ^a		0.035	Lap	Yes Note m	0.120 nail 1½" Staple-1¾"	0.120 nail 2" Staple-2½"	0.120 nail 2" Staple-2½"	0.120 nail ^h Staple ^z	Not allowed	Same as stud spacing
Wood ^a Rustic, drop		¾ Min	Lap	Yes	Fastener penetration into stud-1"				0.113 nail-2½" Staple-2"	Face nailing up to 6" widths, 1 nail per bearing; 8" widths and over, 2 nails per bearing
Shiplap		19/32 Average	Lap	Yes						
Bevel		7/16	Lap	Yes						
Butt tip		3/16	Lap	Yes						
Fiber cement panel siding ^g		5/16	Note t	Yes Note y	6d corrosion resistant nail ^a	6d corrosion resistant nail ^f	6d corrosion resistant nail ^f	—	4d corrosion resistant nail ^h	6" oc on edges, 12" oc on intermed. studs
Fiber cement lap siding ^a		5/16	Lap Note w	Yes Note y	6d corrosion resistant nail ^a	6d corrosion resistant nail ^f	6d corrosion resistant nail ^f	—	6d corrosion resistant nail ^h	Note x

For SI: 1 inch = 25.4 mm.

a. Based on stud spacing of 16 inches on center. Where studs are spaced 24 inches, siding shall be applied to sheathing approved for that spacing.

b. Nail is a general description and shall be T-head, modified round head, or round head with smooth or deformed shanks.

c. Staples shall have a minimum crown width of 7/16-inch outside diameter and be manufactured of minimum No. 16 gage wire.

d. Nails or staples shall be aluminum, galvanized, or rust-preventive coated and shall be driven into the studs for fiberboard or gypsum backing.

e. Aluminum nails shall be used to attach aluminum siding.

f. Aluminum (0.019 inch) shall be unbacked only when the maximum panel width is 10 inches and the maximum flat area is 8 inches. The tolerance for aluminum siding shall be +0.002 inch of the nominal dimension.

g. Deleted.

h. All attachments shall be coated with a corrosion-resistive coating.

i. Shall be of approved type.

j. Three-eighths-inch plywood shall not be applied directly to studs spaced greater than 16 inches on center when long dimension is parallel to studs. One-half-inch plywood shall not be applied directly to studs spaced greater than 24 inches on center. The stud spacing shall not exceed the panel span rating provided by the manufacturer unless the panels are installed with the face grain perpendicular to studs or over sheathing approved for that stud spacing.

NCRC)

(continued)

Footnotes to Table R703.4—continued

- k. Woodboard sidings applied vertically shall be nailed to horizontal nailing strips or blocking set 24 inches on center. Nails shall penetrate 1.5 inches into studs, studs and wood sheathing combined, or blocking. A weather-resistant membrane shall be installed weatherboard fashion under the vertical siding unless the siding boards are lapped or battens are used.
- l. Hardboard siding shall comply with AHA A135.6.
- m. A weather-resistant sheathing paper is not required if all of the following conditions are met:
 - 1. Design wind speed is 110 mph (48 m/s) or less.
 - 2. All horizontal sheathing joints are flashed with an approved corrosion-resistive material or draped with a minimum 6 mil polyethylene.
- n. Vinyl siding shall comply with ASTM D 3679.
- o. Minimum shank diameter of 0.092 inch, minimum head diameter of 0.225 inch, and nail length must accommodate sheathing and penetrate framing 1.5 inches.
- p. When used to resist shear forces, the spacing must be 4 inches at panel edges and 8 inches on interior supports.
- q. Minimum shank diameter of 0.099 inch, minimum head diameter of 0.240 inch, and nail length must accommodate sheathing and penetrate framing 1.5 inches.
- r. Vertical end joints shall occur at studs and shall be covered with a joint cover or shall be caulked.
- s. Fiber cement siding shall comply with the requirements of ASTM C 1186.
- t. See Section R703.10.1.
- u. Minimum 0.102 inch smooth shank, 0.255 inch round head.
- v. Minimum 0.099 inch smooth shank, 0.250 inch round head.
- w. See Section R703.10.2.
- x. Face nailing: 2 nails at each stud. Concealed nailing: one 11 gage 1½ galv. roofing nail (0.371 inch head diameter, 0.120 inch shank) or 6d galv. box nail at each stud.
- y. See Section R703.2, Exceptions.
- z. Minimum nail length must accommodate sheathing and penetrate framing 1.5 inches.

24. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Table R703.7.4.2. The proposed amendment is as follows:

R703.7.4.2 Air space. The veneer shall be separated from the sheathing by an air space of a minimum of nominal 1 inch (25.4 mm) air space but not more than 4.5 inches (114 mm). The weather –resistant membrane or asphalt saturated felt required by Section R703.2 is not required over water repellent sheathing materials.

25. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Table R802.3. The proposed amendment is as follows:

R802.3 Framing details. Rafters shall be framed to ridge board or to each other with a gusset plate as a tie. Ridge board shall be at least 1-inch (25.4 mm) nominal thickness and not less in depth than the cut end of the rafter. Opposing rafters at the ridge must align within the thickness of the ridge member. Regularly spaced hip and valley rafters need not align. At all valleys and hips there shall be a valley or hip rafter not less than 2-inch (51 mm) nominal thickness and not less in depth than the cut end of the rafter. Hip and valley rafters shall be supported at the ridge by a brace to a bearing partition or be designed to carry and distribute the specific load at that point. Where the roof pitch is less than three units vertical in 12 units horizontal (25-percent slope), structural members that support rafters and ceiling joists, such as ridge beams, hips and valleys, shall be designed as beams.

26. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Table R807.1. The proposed amendment is as follows:

R807.1 Attic access. An attic access opening shall be provided to attic areas that exceed ~~400~~ 400 square feet (9.29 m²) and have a vertical height of 60 inches (1524 mm) or greater. The net clear opening shall not be less than 20 inches by 30 inches (508 mm) by 762 mm) and shall be located in a hallway or other readily accessible location. A 30-inch (762 mm) minimum unobstructed headroom in the attic space shall be provided at some point above the access opening. See Section MI305.1.3 for access requirements where mechanical equipment is located in attics.

Exception: Concealed areas not located over the main structure including porches areas behind knee walls, dormers, bay windows etc. are not required to have access.

27. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Residential Code, Appendix M. The proposed amendment is as follows:

Appendix M:

Section AM111- Figure AM111

Rail Posts – Remove bolting requirement

Riser Openings – remove solid riser/opening restrictions

28. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Administrative Code and Policies, Section 107.2. The proposed amendment is as follows:

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

29. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2008 NC Electrical Code, Section 338.10(B) (4)(a). The proposed amendment is as follows:

Section 338.10(B) (4) (a)

(4) Installation Methods for Branch Circuits and Feeders.

(a) Interior installations. In addition to the provisions of this article, Type SE service-entrance cable used for interior wiring shall comply with the installation requirements of Part II of Article 334, excluding 334.80.

30. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Fire Code, Section 101.2.1. The proposed amendment is as follows:

101.2.1 Appendices. Provisions in the appendices shall not apply unless specifically referenced in the code text ~~adopted by the local governing authority having jurisdiction.~~

31. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Plumbing Code, Section 502.5. The proposed amendment is as follows:

502.5 Water heaters installed in garages. Water heaters having an ignition source shall be elevated such that the source of ignition is not less than 18 inches (457 mm) above the garage floor. Appliances shall be located or protected so that they are not subject to physical damage by a moving vehicle.

Exception(s):

1. Elevation of the ignition source is not required for appliances that are listed as flammable vapor ignition.

2. Electric water heaters.

32. Request by Robert Privott representing NC Home Builders Associations and Governor Beverly Perdue to amend the 2012 NC Building Code, Section 903.2.7. The proposed amendment is as follows:

903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exceptions:

1. An automatic sprinkler system is not required in new adult and child care facilities in existing Groups R-3 and R-4 occupancies.

2. An automatic sprinkler system is not required throughout all buildings with a Group R-2 fire area where two stories or less in height, including basements, or where having 16 or less dwelling units.

PUBLIC NOTICE

STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

The Division of Water Quality (DWQ) invites public comment on, or objections to, the water quality permitting actions listed below. Persons wishing to comment are invited to submit their comments in writing to the listed addresses no later than **March 18, 2011**. All comments received prior to that date will be considered in the final determination regarding permit actions. All comments and requests should reference the specific permitting action and permit number.

1) Eighty-nine local governments across North Carolina have applied to renew their individual NPDES Phase II Stormwater Permit to discharge stormwater to receiving waters of the State within the local government's jurisdictional area from their Municipal Separate Stormwater Sewer System (MS4). The list of the 89 local governments and the Fact Sheet and the individual draft permits can be viewed at: <http://portal.ncdenr.org/web/wq/ws/su/public-notice>

Please direct questions or comments to:

Mike Randall
NC Division of Water Quality
1617 Mail Service Center
Raleigh, NC 27699-1617
Telephone Number: (919)-807-6374
mike.randall@ncdenr.gov

2) DWQ intends to issue a new General Permit NCG240000 for the discharge of stormwaters and wastewaters from qualifying composting operations. The Fact Sheet and the draft General Permit may be viewed at: <http://portal.ncdenr.org/web/wq/ws/su/public-notice>

Please direct questions or comments to:

Ken Pickle
NC Division of Water Quality
1617 Mail Service Center
Raleigh, NC 27699-1617
Telephone Number: (919) 807-6376
ken.pickle@ncdenr.gov

3) DWQ intends to revise General Permit NCG210000 for the Timber Products Industry to include the previously excluded Chip Mills sector. In addition, DWQ intends to allow the expired General Permit NCG220000 for Chip Mills to remain permanently expired. The amended Fact Sheet and revised General Permit cover page may be viewed at:

<http://portal.ncdenr.org/web/wq/ws/su/public-notice>

Please direct questions or comments to:

Bethany Georgoulas
NC Division of Water Quality
1617 Mail Service Center
Raleigh, NC 27699-1617
Telephone Number: (919) 807-6372
bethany.georgoulas@ncdenr.gov

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

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

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rule cited as 02 NCAC 38 .0604.

Proposed Effective Date: June 1, 2011

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than March 2, 2011, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: This rule establishes requirements for posting cash prices and credit surcharges for retail motor fuel sales. The proposed changes update the rule to clarify requirements for dispensers that are capable of computing both cash and credit prices.

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

Comments may be submitted to: David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919)707-3010, fax (919)716-0090, email david.mcleod@ncagr.gov

Comment period ends: April 18, 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

CHAPTER 38 - STANDARDS DIVISION

SECTION .0600 - SALE OF PETROLEUM PRODUCTS

**02 NCAC 38 .0604 PRICE POSTING/CASH
DISCOUNTS FOR RETAIL MOTOR FUEL SALES**

(a) If any condition or qualification is required to purchase fuel at the posted price, that condition or qualification shall be posted clearly and conspicuously in conjunction with the advertised price.

(b) At those locations where separate dispensers or islands are established for credit card and cash sales, the dispensers or islands shall be clearly and conspicuously identified to avoid customer confusion.

(c) At those locations where the same dispenser is used for cash and credit card sales, the following shall apply:

- (1) ~~If the dispenser is set at the cash price, If the dispenser is capable of computing only one price, then the dispenser shall be set at the cash price and the credit surcharge rate (either per gallon, percentage, or per gallon credit price) shall be clearly and conspicuously displayed;~~
- (2) ~~If the dispenser is set at the credit price, the cash discount rate (either per gallon, percentage, or per gallon cash price) shall be clearly and conspicuously displayed;~~
- (3)(2) If the dispenser is capable of computing both cash and credit sales, both prices shall be clearly and conspicuously displayed, the credit surcharge rate (either per gallon, percentage, or per gallon credit price) shall be clearly and conspicuously displayed.

Authority G.S. 81A-2; 81A-23.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rules cited as 02 NCAC 48 .1702-.1703.

Proposed Effective Date: June 1, 2011

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may

request a public hearing on the proposed rules by submitting a request in writing no later than March 2, 2011, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: *These changes update the list of Noxious Weeds adding two to the list of Class A Noxious Weeds, deleting one from the list of Class B Noxious Weeds, and by moving one from the list to the other. These changes also update the list of regulated areas for Bushkiller and Puncturevine while deleting the regulated areas for the weed taken off of the Class B Noxious Weed list.*

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

Comments may be submitted to: *David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919)707-3010, fax (919)716-0090, email david.mcleod@ncagr.gov*

Comment period ends: *April 18, 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

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .1700 - STATE NOXIOUS WEEDS

02 NCAC 48A .1702 NOXIOUS WEEDS

(a) Class A Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class A Noxious Weeds:

- (1) All weeds listed in 7 C.F.R. 360.200 which is hereby incorporated by reference including subsequent amendments and editions. A full list of Federal Noxious Weeds may be found at:
http://www.access.gpo.gov/nara/cfr/waisidx_07/7cfr360_07.html;
- (2) Elodea, African -- Lagarosiphon spp. (all species);
- (3) Fern, Water -- Salvinia spp. (all except S. minima);
- ~~(4) Mile-a-Minute -- Polygonum perfoliatum;~~
- ~~(4) Floating Heart, Crested -- Nymhoides cristata;~~
- ~~(5) Floating Heart, Yellow -- Nymhoides peltata;~~
- ~~(5)(6) Stonecrop, Swamp -- Crassula helmsii;~~
- ~~(6)(7) Water-chestnut -- Trapa spp.~~
- ~~(8) Water Snowflake -- Nymhoides indica~~

(b) Class B Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class B Noxious Weeds:

- ~~(1) Betony, Florida -- Stachys floridana Shuttlew.;~~
- ~~(2)(1) Bushkiller -- Cayratia japonica Thunb.;~~
- ~~(3)(2) Fieldcress, Yellow -- Rorippa sylvestris (L.) Bess.;~~
- ~~(4)(3) Lythrum -- Any Lythrum species not native to North Carolina;~~
- ~~(4) Mile-a-Minute -- Persicaria perfoliata (L.) H. Gross;~~
- (5) Puncturevine -- Tribulus terrestris L.;
- (6) Thistle, Canada -- Cirsium arvense (L.) Scop.;
- (7) Thistle, Musk -- Carduus nutans L.;
- (8) Thistle, Plumeless -- Carduus acanthoides L.;
- (9) Vitex, Beach -- Vitex rotundifolia L.f.;
- (10) Watermilfoil, Eurasian -- Myriophyllum spicatum L.;
- (11) Waterprimrose, Uruguay -- Ludwigia hexapetala (Hook & Arn.) Zardini, Gu & Raven.

(c) Class C Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class C Noxious Weeds: Bittersweet, Oriental -- Celastrus orbiculatus Thunb.

Authority G.S. 106-420.

02 NCAC 48A .1703 REGULATED AREAS

(a) Except as permitted in 02 NCAC 48A .1705 and .1706, the following is prohibited:

- (1) The movement of Beach Vitex (Vitex rotundifolia L.F.) or any regulated article infested with Beach Vitex from the following counties: Brunswick, Carteret, Currituck, Dare, Hyde, New Hanover, Onslow, Pender;
- (2) The movement of Bushkiller (Cayratia japonica Thunb.) or any regulated article infested with Bushkiller from the following counties: Davidson, Forsyth, ~~Franklin~~, Mecklenburg;

- (3) The movement of Canada Thistle [*Cirsium arvense* (L.) Scop.] or any regulated article infested with Canada Thistle from the following counties: Ashe, Avery, Haywood, Mitchell, Northampton, Yancey;
 - (4) The movement of Class A, B, or C noxious weeds or any regulated article infested with Class A, B, or C noxious weeds into North Carolina;
 - (5) The movement of a Class A noxious weed or any regulated article infested with any Class A noxious weed is prohibited within the state;
 - (6) The movement of Eurasian Watermilfoil (*Myriophyllum spicatum* L.) or any regulated article infested with Eurasian Watermilfoil from the following counties: Halifax, Northampton, Perquimans, Tyrrell, Warren;
 - (7) ~~The movement of Florida Betony (*Stachys floridana* Shuttlew.) or any regulated article infested with Florida Betony from the following counties: Bladen, Brunswick, Cumberland, Forsyth, Hoke, New Hanover, Onslow, Wake; The movement of Mile-a-Minute (*Persicaria perfoliata* (L.) H. Gross or any regulated article infested with Mile-a-Minute from that portion of Alleghany County East of Highway 113 beginning at the Virginia border to the junction with Highway 18 and Northwest of Highway 18 beginning at the junction with Highway 113 all the way to the junction with U.S. Highway 21 in Sparta and West of Highway 21 to the North Carolina border with Virginia;~~
 - (8) The movement of Musk Thistle (*Carduus nutans* L.) or any regulated article infested with Musk Thistle from the following counties: Buncombe, Cleveland, Chatham, Gaston, Henderson, Lincoln, Madison, Randolph, Rowan, Rutherford;
 - (9) The movement of Plumeless Thistle (*Carduus acanthoides* L.) or any regulated article infested with Plumeless Thistle from the following counties: Haywood, Jackson, Madison, Watauga;
 - (10) The movement of Puncturevine (*Tribulus terrestris* L.) or any regulated article infested with Puncturevine from the following counties: ~~Durham~~, New Hanover;
 - (11) The movement of any Lythrum species not native to North Carolina or any regulated article infested with any nonnative Lythrum species from the following counties: Forsyth, Watauga;
 - (12) The movement of Uruguay Waterprimrose [*Ludwigia hexapetala* (Hook & Arn.) Zardini, Gu & Raven] or any regulated article infested with Uruguay Waterprimrose from the following counties: Bladen, Brunswick, Columbus, Durham, Granville, Hyde, New Hanover, Orange, Rowan, Wake, Warren;
 - (13) The movement of Yellow Fieldcress [*Rorippa sylvestris* (L.) Bess.] or any regulated article infested with Yellow Fieldcress from the following county: Orange;
 - (14) The movement of Oriental Bittersweet (*Celastrus orbiculatus* Thunb.) or any regulated article infested with Oriental Bittersweet from the following counties: Alleghany, Ashe, Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, Swain, Transylvania, Watauga, Wilkes, Yancey;
 - (15) The sale or distribution of any Class A or B noxious weed;
 - (16) The sale or distribution of any Class C noxious weed outside a regulated area.
- (b) Other regulated areas. The Commissioner may designate as a regulated area any state or portion of a state in which there is reasonable cause to believe that a noxious weed exists, and there is an immediate need to prevent its introduction, spread or dissemination in North Carolina.

Authority G.S. 106-420; 106-421.

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 06A .0802.

Proposed Effective Date: June 1, 2011

Public Hearing:

Date: March 4, 2011

Time: 10:00 a.m.

Location: 430 N. Salisbury Street, 3rd Floor Jim Long Conference Room, Raleigh, NC 27603

Reason for Proposed Action: *The proposed rule change is to delete the requirement for the grandfathered "exempt from CE" agents to do ethics and flood. This change is based upon a comment received as a result of Executive Order No. 70 – Rules Modification and Improvement Program. The Department adopted the continuing education (CE) exemptions under the Producer Licensing Model Act (PLMA) which allows exemptions from insurance CE only for military and medical reasons. Prior to October 1, 2010, the Department did grant exemptions for age/experience/designations but when we adopted the PLMA exemption we grandfathered those agents with an exemption based on age/experience/designations.*

Procedure by which a person can object to the agency on a proposed rule: *The NC Department of Insurance will accept*

written objections to this rule until the expiration of the comment period on April 18, 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: April 18, 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 06 - AGENT SERVICES DIVISION

SUBCHAPTER 06A - AGENT SERVICES DIVISION

SECTION .0800 - CONTINUING EDUCATION

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.~~
- ~~(4)(k)~~ Courses completed before the issue date of a new license do not meet the requirements of this Section for that new license.

~~(m)~~(l) No credit shall be given for courses taken before they have been approved by the Commissioner.

~~(n)~~(m) 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)~~(n) 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)~~(o) 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
2008	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
2009	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011
2010	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013
2011	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)~~(p) 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.

Authority G.S. 58-2-40; 58-2-185; 58-2-195; 58-33-130; 58-33-133.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0313.

Proposed Effective Date: September 1, 2011

Public Hearing:

Date: March 17, 2011

Time: 6:30 p.m.

Location: North Elementary School, 10390 NC Highway 86 North, Providence, NC 27315

Reason for Proposed Action:

Pease Associates, Inc., on behalf of the City of Roxboro, has requested that a portion of the Dan River in Caswell County (Roanoke River Basin) be reclassified from Class C to WS-IV CA and WS-IV (PA). The reason for the reclassification is to allow a new intake structure to be placed in the river, which will provide the City of Roxboro as well as the Towns of Yanceyville and Milton with an emergency potable water supply source that will be utilized in the future and a permanent potable water supply source when needed.

For a riverine intake, a CA is the land and waters approximately 0.5 miles linearly upstream and draining to an intake. For this proposal, the CA would extend along the river from the proposed intake, which is to be located nearly 0.7 miles upstream of the NC62 bridge near Milton, NC, to a point roughly 0.5 miles linearly upstream and draining to the intake. The nearly 200-acre CA contains no named tributaries to the Dan River, and is located entirely within NC. A PA for a riverine

intake is the lands and waters located approximately 10 miles run-of-the-river upstream and draining to an intake, excluding the CA. For this proposal, the PA would be split nearly in half by the NC-Virginia (VA) state line. The NC portion of the proposed PA would extend along the river from the proposed CA to the NC-VA state line, where the Dan River enters Caswell County. This NC portion of the proposed PA covers about 39.5 miles of named waterbodies and 22,800 acres, and includes several entire named tributaries, and lower portions of many named tributaries, to the Dan River; these tributaries are currently classified as Class C.

NC Division of Environmental Health (DEH) staff have stated that the subject waters can be treated for potable water supply use, but the proposed intake is not the most appropriate water supply source based on the adequacy of water supply sources currently being utilized in the area, and the location of a significant portion of the proposed watershed within VA. NC Division of Water Resources (DWR) supports the proposed reclassification, and 2002 DWQ studies show that the subject waters meet water supply water quality standards.

VA officials said they received a Public Water Supply (PWS) reclassification request regarding the proposed intake, and have been following VA's standard reclassification process for this request. This process has occurred partially in tandem with NC's rule-making process. In VA, the PWS designation would extend along a portion of the Dan River from the VA/NC state line to a point nearly 1.3 miles upstream, including portions of several tributaries to that part of the Dan River. In this case, nearly 10 miles of VA waters would receive the PWS classification.

If reclassified, regulations affecting new development and wastewater discharges would apply in the NC part of the proposed watershed, where there are no wastewater dischargers, and no known proposed discharges or development that would be impacted by the proposal, except for potentially two DOT planned bridge replacements that may need additional stormwater control devices to meet requirements associated with the proposal. The proposed NC part of the watershed is located entirely within Caswell County's jurisdiction, which supports the proposed reclassification. Caswell County would be required to modify their water supply watershed protection ordinance within 270 days after the reclassification effective date. In addition, regulations affecting wastewater discharges would apply in the VA part of the proposed watershed, where currently there are no wastewater discharges.

Procedure by which a person can object to the agency on a proposed rule: You may attend the public hearing and make relevant verbal comments, and/or submit written comments, data or other relevant information by April 18, 2011. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so.

The EMC is very interested in all comments pertaining to the proposed reclassification. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed reclassification. The EMC may not adopt a rule that differs

substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see General Statute 150B 21.2 (g)). Written comments on the proposed reclassification may be submitted to Elizabeth Kountis of the Water Quality Planning Section at the postal address, e-mail address, or fax number listed in this notice.

Comments may be submitted to: Elizabeth Kountis, Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919)807-6418, fax (919)807-6497, email Elizabeth.kountis@ncdenr.gov

Comment period ends: April 18, 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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0313 ROANOKE RIVER BASIN

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

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (B) Washington Regional Office
943 Washington Square Mall

- (C) Washington, North Carolina
Winston-Salem Regional Office
585 Waughtown Street
Winston-Salem, North Carolina
- (D) Division of Water Quality
Regional Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Virginia are classified "C", except that all backwaters of John H. Kerr Reservoir and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "B," and all backwaters of Lake Gaston and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "C and B".

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

- (1) May 18, 1977;
- (2) July 9, 1978;
- (3) July 18, 1979;
- (4) July 13, 1980;
- (5) March 1, 1983;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) July 1, 1991;
- (9) August 3, 1992;
- (10) August 1, 1998;
- (11) April 1, 1999;
- (12) April 1, 2001;
- (13) November 1, ~~2007-2007~~;
- (14) September 1, 2011.

(d) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective July 1, 1991 with the reclassification of Hyco Lake (Index No. 22-58) from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 1, 1998 with the reclassification of Cascade Creek (Camp Creek) [Index No. 22-12] and its tributaries from its source to the backwaters at the swimming lake from Class B to Class B ORW, and reclassification of Indian Creek [index No. 22-13] and its tributaries from its source to Window Falls from Class C to Class C ORW.

(g) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 1, 1998 with the reclassification of Dan River and Mayo River WS-IV Protected Areas. The Protected Areas were reduced in size.

(h) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective April 1, 1999 as follows:

- (1) Hyco River, including Hyco Lake below elevation 410 [Index No. 22-58-(0.5)] was reclassified from Class B to Class WS-V B.
- (2) Mayo Creek (Maho Creek) (Mayo Reservoir) [Index No. 22-58-15] was reclassified from its source to the dam of Mayo Reservoir from Class C to Class WS-V.

(i) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective April 1, 2001 as follows:

- (1) Fullers Creek from source to a point 0.8 mile upstream of Yanceyville water supply dam [Index No. 22-56-4-(1)] was reclassified from Class WS-II to Class WS-III.
- (2) Fullers Creek from a point 0.8 mile upstream of Yanceyville water supply dam to Yanceyville water supply dam [Index No. 22-56-4-(2)] was reclassified from Class WS-II CA to Class WS-III CA.

(j) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective November 1, 2007 with the reclassification of Hanging Rock Hillside Seepage Bog near Cascade Creek [Index No. 22-12-(2)] to Class WL UWL as defined in 15A NCAC 02B .0101. The Division of Water Quality maintains a Geographic Information Systems data layer of the UWL.

(k) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective September 1, 2011 as follows:

- (1) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from the City of Roxboro's intake, located approximately 0.7 mile upstream of NC62, to a point approximately 0.5 mile upstream of the City of Roxboro's intake from Class C to Class WS-IV CA.
- (2) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from a point approximately 0.5 mile upstream of the City of Roxboro's intake to the North Carolina-Virginia state line from Class C to Class WS-IV.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

**CHAPTER 18 - BOARD OF EXAMINERS OF
ELECTRICAL CONTRACTORS**

**IMPLEMENTATION OF THE ELECTRICAL
CONTRACTING LICENSING ACT**

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Electrical Contractors intends to amend the rule cited as 21 NCAC 18B .0804.

Proposed Effective Date: June 1, 2011

Public Hearing:

Date: April 6, 2011

Time: 1:00 p.m.

Location: North Raleigh Hilton Hotel, 3415 Wake Forest Road, Raleigh, NC 27609

Reason for Proposed Action: *The Board has become aware that certain paging systems operate at 70 volts, but are, nevertheless systems which holders of low voltage license are qualified to install without substantial risk as a result of the limited wiring involved. Accordingly the Board proposes to allow holders of low voltage license to install such systems without the need to obtain a higher level of license.*

Procedure by which a person can object to the agency on a proposed rule: *Any person desiring to comment upon or object to a proposed rule may do so either by appearing at the public hearing or in writing as set out below prior to the end of the comment period.*

Comments may be submitted to: Robert L. Brooks, Jr., 3101 Industrial Drive, Suite 206, Raleigh, NC 27619, phone (919)733-9042

Comment period ends: April 18, 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

SECTION .0800 - SPECIAL RESTRICTED LICENSES

**21 NCAC 18B .0804 SCOPE OF SP-FA/LV LICENSE
IS PROPOSED TO BE AMENDED AS FOLLOWS:**

(a) Definition. As used in this Chapter, fire alarm, burglar alarm and low voltage wiring systems are defined as:

- (1) wiring systems of 50 volts or less and control circuits directly associated therewith;
- (2) wiring systems that have a voltage in excess of 50 volts and consist solely of power limited circuits meeting the definition of a Class II or Class III wiring system in the National Electrical Code; Code or paging systems not in excess of 70 volts;
- (3) line voltage wiring that has a voltage not in excess of 300 volts to ground and is installed from the load-side terminals of a disconnecting means or from a junction box, either of which has been installed by others, for the specific purpose of supplying the low voltage wiring system involved. Some low voltage wiring systems that meet this definition are exempt under Rule .0805;
- (4) interconnected components wired to a common control panel either as a standalone fire alarm system or as part of a combination burglar/fire system to monitor and annunciate the status of evidence of flame, heat, smoke or water flow within a building or structure in accordance with the requirements of the N.C. State Building Code and NFPA 72; or
- (5) alarm systems or devices used to detect burglary or theft as defined in G.S. 74D-2(a).

(b) Scope. A special restricted fire alarm/low voltage electrical contracting license authorizes the licensee to install, maintain, or repair only low voltage wiring and directly related wiring. Wiring is directed related if it:

- (1) originates at the load-side terminals of a disconnecting means or junction box that:
 - (A) has been installed, complete with line-side connections, by others for the purpose of supplying the low voltage wiring system involved; and
 - (B) is permanently and legibly marked to identify the low voltage wiring system supplied; and
- (2) is not installed in a location considered as hazardous under the National Electrical Code.

Authority G.S. 87-42; 87-43.3.

**CHAPTER 31 - MARRIAGE AND FAMILY THERAPY
LICENSURE BOARD**

SUBCHAPTER 18B - BOARD'S RULES FOR THE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marriage and Family Therapy Licensure Board intends to adopt the rules cited as 21 NCAC 31 .0802, .1001-.1002; amend the rules cited as 21 NCAC 31 .0201-.0202, .0301, .0401, .0501-.0504, .0506, .0609, .0701, .0801; and repeal the rules cited as 21 NCAC 31 .0302-.0303, .0901.

Proposed Effective Date: July 1, 2011

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Send a letter requesting a public hearing and indicating the amendment(s) for which a hearing is requested. Letter should include contact information comprised of, but not limited to: name, address, phone number, email (if applicable). Send letter via US Mail to Wanda Nicholson, NC Marriage and Family Therapy Licensure Board, PO Box 37669, Raleigh, NC 27627 or fax to (919) 336-5156 or email ncmftlb@nc.rr.com (.pdf attachment only).

Reason for Proposed Action: To ensure rules are adopted to ensure compliance with NC Statutory changes adopted October 1, 2009; to clarify requirements for licensure and application submission; to clarify the process for review of applications; to clarify when exams are given and ADA compliance; to clarify continuing education requirements and the instances of when extensions may be granted; to clarify educational requirements; to clarify supervision requirements and documentation requirements for supervision; to clarify equivalent degrees and hours for educational requirements for licensure applicants; to clarify alternative supervision requirements; to define direct client contact; to update how to access code of ethical principles; to clarify requirements for licensed associates; to clarify fees under NC Statutes; and to clarify what would occur should Board's authority to expend funds be suspended pursuant to G.S. 93B-2.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to the proposed rules changes to Wanda Nicholson, Executive Director of the NC Marriage and Family Therapy Licensure Board via letter. The letter should include contact information comprised of, but not limited to: name, address, phone number, email (if applicable). Send letter via US Mail to Wanda Nicholson, NC Marriage and Family Therapy Licensure Board, PO Box 37669, Raleigh, NC 27627 or fax to (919) 336-5156 or email ncmftlb@nc.rr.com (.pdf attachment only).

Comments may be submitted to: Wanda Nicholson, NC Marriage and Family Therapy Licensure Board, PO Box 37669, Raleigh, NC 27627; phone (919) 469-8081; fax (919) 336-5156; email ncmftlb@nc.rr.com

Comment period ends: April 18, 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 .0200 - APPLICATION FOR LICENSING

21 NCAC 31 .0201 CREDENTIALS REQUIRED

~~The credentials required for each applicant consist of:~~ An applicant for licensure shall submit the following to the Board:

- (1) ~~notarized~~ Notarized application form and application fee;
- (2) ~~official~~ Official graduate college transcripts sent directly to the Board by the training institution(s) evidencing
 - (a) completion of a master's or doctoral degree in marriage and family therapy from a recognized educational institution, or
 - (b) completion of a related degree from a recognized educational institution with course of study encompassing an appropriate course of study as defined in 21 NCAC 31 .0501.
- (3) ~~written evidence, transcript, or other document(s) evidencing satisfactory completion of a course of study in marriage and family therapy from an appropriate non-degree granting agency, institution, or program when applicable;~~ Additional documentation (copies of course catalog and syllabi reflective of the year course was passed) may be required;
- (4) ~~approved~~ Reports from American Association of Marriage and Family Therapy (AAMFT) Approved Supervisors, Supervisors Reports using Board forms, verifying clinical experience, and supervision, and endorsement for licensure;
- (5) ~~evidence~~ Evidence of good moral character, which ~~must~~ shall include three endorsements for ~~licensure~~ licensure, using Board forms, from other licensed or certified mental health professionals familiar with the applicant. Endorsers cannot be the applicant's approved supervisor; and in the community.

- (6) Evidence of a passing score on the National Marriage and Family Therapy Examination.

~~An application will automatically be placed in an inactive file if all necessary materials are not received within one year from the date of the application.~~

Authority G.S. 90-270.51(b); 90-270.52; 90-270.54(1)(2).

21 NCAC 31 .0202 REVIEW PROCEDURE

(a) Copies of all materials pertaining to an applicant ~~are~~ shall be mailed by the applicant submitted to the each Board Office member on Board approved forms for receipt one month prior to the scheduled meeting during which the application will be reviewed. Applications shall be reviewed by the Board at scheduled meetings or special meetings called for such purpose by the Board Chair.

(b) ~~If the credentials educational requirements are met, and the application are approved, is approved by the Board, the Board shall inform the applicant of the approval, and shall give the applicant shall be so informed and is then given information regarding the examination.~~ National Marriage and Family Therapy Examination.

(c) ~~If the education requirements are not met, or the application is otherwise not approved, credentials or application are deemed unacceptable by the Board, the Board shall inform the applicant shall so be informed of the disapproval, with an explanation of the areas which are considered deficient. Applicants may remedy deficiencies within one year two years from the date of notification of such without having to reapply. After two years of application inactivity, the file shall be closed and a new application and fee is required.~~

(d) If during the review process, questions arise from any source which may pertain to the applicant's qualifications for licensing, the Board may seek to resolve the questions by communication with the person who made the comments or any other appropriate person(s), or may refer the matter to counsel or to a member or employee of the Board for investigation.

(e) If an application is denied, the grounds for denial shall be given to the ~~applicant~~ applicant in writing. An applicant who has been denied licensure may file a request for hearing pursuant to G.S. 150B-38 within 15 days of notice of the denial. In lieu of a hearing, the The applicant may request reconsideration of the application and present additional written material in support thereof. ~~of the application, which shall be reviewed at the next scheduled Board meeting. The Board shall not be required to reconsider its decision to deny an application, nor shall it be required to review any materials submitted in support of a request for reconsideration.~~

Authority G.S. 90-270.51(b).

SECTION .0300 - EXAMINATION

21 NCAC 31 .0301 WRITTEN EXAMINATION

(a) ~~The Board shall employ a standardized national examination in Marriage and Family Therapy as approved by the Association of Marriage and Family Therapy Regulatory Boards (AMFTRB). Licensure as a North Carolina Marriage and Family Therapist or as a Licensed Marriage and Family Therapy~~

Associate requires passing the National Marriage and Family Therapy Examination.

(b) The examination shall be given at least biannually.

(c) The passing score on the examination shall be determined by ~~the testing agency and the Board.~~ Board in collaboration with the testing agency.

(d) The examination may be taken after the Board approves the application.

(e) Special Administrations. Applicants with disabilities which meet compliance requirements of the Americans with Disabilities Act of 1990 (ADA) may request accommodations for testing. Special test administrations shall be as comparable as possible to a standard administration. The applicant shall contact the Board to request any accommodation four weeks in advance of the testing to give sufficient time to process the request.

Authority G.S. 90-270.51(b); 90-270.55(a)(b)(c).

21 NCAC 31 .0302 REPORTING OF SCORES

~~The Board shall inform the applicant of their examination score. A passing score qualifies the applicant for licensure. Those who have not passed the examination are referred to Rule .0303 of this Section.~~

Authority G.S. 90-270.51(b).

21 NCAC 31 .0303 FIRST REEXAMINATION

~~An applicant who has failed the written examination shall not be admitted to a subsequent examination for a period of at least six months. The applicant shall not submit a new application form, but shall update any information in the application that is no longer accurate and pay another examination fee.~~

Authority G.S. 90-270.51(b); 90-270.55(e).

SECTION .0400 - RENEWAL

21 NCAC 31 .0401 LICENSURE RENEWAL FORM

(a) ~~The Licensure Renewal Form shall include year of renewal, fee, the licensee's current home and business address and telephone numbers.~~

(b) ~~Licenses not renewed by July 1 are expired.~~

(c) ~~Copies of continuing education certificates shall be attached to the renewal form.~~

(a) Licenseses shall provide documentation of compliance with G.S. 90-280.58C to the Board on the forms provided by the Board.

(b) The Board shall waive the license application renewal fee for any individual who is currently licensed by and in good standing with the Board if the individual is serving in the armed forces of the United States and if G.S. 105-249.2 grants the individual an extension of time to file a tax return. The waiver shall be in effect for any period that is disregarded under Section 7508 of the Internal Revenue Code in determining the taxpayer's liability for a federal tax.

(c) The Board shall extend the deadline for filing a license renewal application for any individual who currently holds a license and is in good standing with the Board if the individual is

serving in the armed forces of the United States and if G.S. 105-249.2 grants the individual an extension of time to file a tax return. The extension shall be in effect for any period that is disregarded under Section 7508 of the Internal Revenue Code in determining the taxpayer's liability for a federal tax.

Authority G.S. 90-270.51(b); 90-270.58.

SECTION .0500 - DEFINITIONS

21 NCAC 31 .0501 APPROPRIATE COURSE OF STUDY

(a) The "appropriate course of study" in ~~an allied mental health a related degree field~~ in G.S. 90-270.54(1)a is a graduate degree that includes specific marriage and family therapy content including coursework in theoretical foundation of marriage and family therapy, assessment and diagnosis, practice of marriage and family therapy; human development and family relations; professional identity and ethics, clinical research, and supervised clinical practicum or internship, in general family studies, marriage and family therapy, personality theory, psychopathology, and a clinical practicum in marriage and family therapy.

(b) Applicants who were enrolled in a masters marriage and family therapy degree program on or before July 1, 2011 may be considered for licensure under the prior version of this Rule.

Authority G.S. 90-270.47(1)a-d; 90-270.51(b); 90-270.54(1)a.

21 NCAC 31 .0502 ONGOING SUPERVISION

(a) ~~Approved ongoing~~ On-going supervision as contained in G.S. 90-270.54(a)(1)b means face-to-face conversation with a person who:

- (1) ~~is a licensed marriage and family therapist and has completed or is completing:~~
 - (A) ~~36 hours of ongoing supervision of supervision while supervising at least two marriage and family therapy supervisees;~~
 - (B) ~~a three semester hour course or equivalent in marriage and family therapy supervision;~~
 - (C) ~~a philosophy of supervision statement;~~
 - (D) ~~a report of the supervision process with one marriage and family therapy supervisee; or~~
- (2) ~~holds the equivalent as determined by the Board.~~

an AAMFT Approved Supervisor, or a person who otherwise meets the standards set forth by AAMFT which are incorporated by the Board by reference. These incorporated standards include subsequent amendments and additions. A copy of these standards may be obtained at no charge by writing the American Association of Marriage and Family Therapy at 112 Alfred Street, Alexandria, Virginia 22314-3061 or at their website, www.aamft.org.

(b) ~~Approved ongoing~~ On-going supervision shall ~~be obtained usually in periods of approximately one hour each and shall~~

focus on the raw data (quantitative information about the client) from the supervisee's continuing clinical practice, which shall be available to the supervisor through a combination of direct observation, co-therapy, written clinical notes, and audio and video recordings.

(c) None of the following ~~shall be deemed to constitute acceptable approved~~ constitutes ongoing supervision:

- (1) ~~peer~~ Peer supervision, i.e., supervision by a person of equivalent, rather than superior, qualifications, status and experience;
- (2) ~~supervision~~ Supervision by current or former family members of your immediate or extended family, or any other persons where the nature of the personal relationship prevents or makes difficult the establishment of a professional relationship;
- (3) ~~administrative~~ Administrative supervision - ~~for example,~~ clinical practice performed under administrative rather than clinical supervision by an institutional director or executive;
- (4) ~~a~~ A primarily didactic process wherein techniques or procedures are taught in a ~~group setting,~~ classroom, workshop or seminar; or
- (5) ~~consultation~~ Consultation, staff development or orientation to a field or program or role-playing of family interrelationships as a substitute for ~~current~~ clinical practice in ~~an~~ appropriate a clinical situation.

(d) Applicants for licensure must have accumulated a minimum of 200 hours of approved ongoing supervision concurrent with the completion of the 1,500 hours of clinical experience required by G.S. 90-270.54(a)(1)b. Licensed Marriage and Family Therapy Associates must remain under on-going supervision for at least one hour monthly until licensed as a Licensed Marriage and Family Therapist.

(e) Graduates of marriage and family therapy programs who have completed 200 hours of approved ongoing supervision within their degree shall complete a minimum of 25 hours of approved ongoing supervision concurrently with the completion of the remaining 1,000 hours of post-degree clinical experience required by G.S. 90-270.54(a)(1)b. Graduates of marriage and family therapy programs may apply up to 500 hours of direct clinical experience obtained during their program toward the 1,500 required as long as those hours were obtained under the direct supervision of an AAMFT Approved Supervisor or AAMFT Supervisor Candidate. Applicants for the Marriage and Family Therapy license must have documented a minimum of 500 relational hours toward their required 1,500 hours. Relational hours are defined as hours spent providing therapy with more than one client in the room who are all part of the same treatment plan. They may also include face to face communication with members of the larger system who are also working in direct collaboration with the same client(s). This contact may only be counted if it is authorized via written release by the client(s) or required by law for the purpose of developing and carrying out a treatment plan.

(f) Supervision Reports shall be submitted on supervision report forms provided by the Board. Supervision report forms are contained within the licensure application packet which may be

obtained at no charge by writing the Board at their current address of Post Office Box 37669, Raleigh, North Carolina 27627 or subsequently published address or downloaded from www.nclmft.org, which is the current Board website or its successor.

Authority G.S. 90-270.51(b); 90-270.54(1)b.

21 NCAC 31 .0503 EQUIVALENCY

(a) An appropriate course of study for an "equivalent" degree under ~~G.S. 90-270.47(1)e~~ G.S. 90-270.47(6)e is defined ~~by the Board to consist of~~ as a minimum of or quarter hour equivalent to a 45-semester hour graduate program. Twenty-seven Thirty-three semester hours or their quarter hour equivalent, shall consist of the following content and clinical training:

- ~~(1) General Family Studies (six semester hours). This category is viewed by the Board as being a broad and inclusive one which may include courses in marriage, family relations, child development, family sociology, or other such related topics in which the marriage and family content is clearly evident.~~
- ~~(2) Marriage and Family Therapy Theory (six semester hours). This category shall include specific and extensive content in systems theory as well as other theoretical approaches to marriage and family therapy. In addition, the Board shall consider course work in this category which exceeds six semester hours to be applicable toward meeting the requirements for Item (1) of this Rule.~~
- ~~(3) Individual Studies. Theories of personality (three semester hours), and psychopathology or abnormal behavior (three semester hours).~~
- ~~(4) Clinical Practicum in Marriage and Family Therapy (nine semester hours or 20 hours per week for 12 months)~~
- (1) Theoretical Foundation of Marriage and Family Therapy (six semester hours);
- (2) Assessment and Diagnosis (three semester hours);
- (3) Practice of Marriage and Family Therapy (six semester hours);
- (4) Human Development and Family Relations (three semester hours);
- (5) Professional Identity and Ethics (three semester hours);
- (6) Research in Marriage and Family Therapy (three semester hours); and
- (7) Supervised Clinical Practicum or Internship (nine semester hours);

The remaining 18 semester hours shall consist of ~~core~~ course work appropriate to the disciplinary specialty in which the degree is granted.

(b) Applicants who were enrolled in a related degree program on or before July 1, 2011 shall be considered for licensure under the following requirements which were in the prior version of this Rule. An appropriate course of study for an "equivalent" degree under G.S. 90-270.47(1)e is defined by the Board to

consist of a 45 semester hour graduate program. Twenty-seven semester hours consist of the following content and clinical training:

- (1) General Family Studies (six semester hours). This category is viewed by the Board as being a broad and inclusive one which may include courses in marriage, family relations, child development, family sociology, or other such related topics in which the marriage and family content is clearly evident.
- (2) Marriage and Family Therapy Theory (six semester hours). This category shall include specific and extensive content in systems theory as well as other theoretical approaches to marriage and family therapy. In addition, the Board shall consider course work in this category which exceeds six semester hours to be applicable toward meeting the requirements for General Family Studies.
- (3) Individual Studies. Theories of Personality (three semester hours), and psychopathology or abnormal behavior (three semester hours).
- (4) Clinical Practicum in Marriage and Family Therapy (nine semester hours or 20 hours per week for 12 months).

The remaining 18 semester hours shall consist of course work appropriate to the disciplinary specialty in which the degree is granted.

Authority G.S. 90-270.47(6)e; 90-270.51(b); 90-270.54(1)a.

21 NCAC 31 .0504 ALTERNATIVE TO CLINICAL PRACTICUM

In lieu of the clinical practicum requirements under Rule .0501 or Rule .0503 of this Section, the Board shall accept evidence of a supervised clinical practicum defined as at least 120 clinical contact hours with at least 24 hours of supervision obtained subsequent to the granting of a related degree in an equivalent ~~otherwise appropriate~~ course of study providing provided the supervision meets the requirements of "approved supervision" under Rule .0502 of this Section. The hours of supervision must be reported to the Board on the Board forms.

Authority G.S. 90-270.51(b).

21 NCAC 31 .0506 DIRECT CLIENT CONTACT

~~(a) "Supervised Clinical Experience" means hours of actual face-to-face marriage and family therapy contact with individuals, couples, and families.~~

~~(b) Group therapy with the exception of couple and family groups, case staffing, community and other collateral contact, agency meetings, and paperwork do not meet the requirements for supervised clinical experience and cannot be counted toward the 1500 hours of clinical experience required for licensure.~~

(a) As used in this Chapter, direct client contact is defined as face-to-face (therapist and client) therapy with in individuals, couples, families, or groups from a systemic perspective. Direct client contact must:

- (1) Relate to client treatment plans;

- (2) Be goal directed; and
- (3) Assist client to affect change in cognition, affect and behavior.

(b) Assessments (intake and otherwise) may be counted up to 250 hours of direct client contact. Assessment is Clinical encounter that involves gathering of current and historical data from a client that is then used to determine what type of therapeutic service is most appropriate. If the individual who conducted the assessment does not provide the therapeutic service, it is considered an assessment hour only.

(c) Client psycho-education may be counted up to 250 hours direct client contact. Psycho-education refers to a treatment approach that provides education for individuals and families in assistance with emotional, mental, social and relational disturbances.

(d) The following are not direct client contact and may not be counted:

- (1) Observing therapy without actively participating in follow-up therapy at some point during immediately following the session.
- (2) Record keeping.
- (3) Administrative activities.
- (4) Supervision, or
- (5) Client contact while not receiving supervision.

Authority G.S. 90-270.51(b); 90-270.54(1)b.

SECTION .0600 - CODE OF ETHICAL PRINCIPLES

21 NCAC 31 .0609 ETHICAL PRINCIPLES

(a) The Board adopts the code of ethical principles of the American Association for Marriage and Family Therapy (AAMFT) published as the AAMFT CODE OF ETHICAL PRINCIPLES FOR MARRIAGE AND FAMILY THERAPISTS of August 1991, or its successor publication, by reference including subsequent amendments and editions. The current code is published on the AAMFT's website (www.aamft.org).

(b) Each applicant, associate, or licensee is responsible for being shall be familiar with and following follow this code of ethics.

(c) A copy of this code of ethics may be obtained by writing the American Association for Marriage and Family Therapy, 1133 15th Street, NW, Suite 300, Washington, D.C. 20006-112 Alfred Street, Alexandria VA 22314-3061.

Authority G.S. 90-270.51(b); 90-270.60(5).

SECTION .0700 - CONTINUING EDUCATION

21 NCAC 31 .0701 REQUIREMENTS FOR CONTINUING EDUCATION

(a) Licensed Marriage and Family Therapists and Licensed Marriage and Family Therapy Associates shall submit each year with the license renewal forms evidence of 42 20 hours of continuing education credits in marriage and family therapy continuing education obtained subsequent to the prior license renewal. Evidence of completion shall consist of a certificate of attendance and completion signed by the responsible officer of a

continuing education provider, provider and shall include date(s) of attendance, number of hours, name of attendee, and name of course.

~~(b) The Board shall not pre-approve continuing education programs.~~

~~(e)(b) Only continuing~~ Continuing education units that by title and content clearly deal with marriage and family therapy practice and therapeutic issues, ethics and supervision of marriage and family therapy shall be accepted approved by the Board.

(c) Ongoing supervision by an AAMFT approved supervisor or AAMFT supervisor candidate may be utilized for up to 12 hours of continuing education. Written documentation of the supervisor's status shall be provided to the Board via a copy of the AAMFT supervisor or supervisor candidate verification form.

(d) Three hours of ethics training in the provision of professional mental health services is required (as part of the required 20 hours of continuing education) for each renewal period.

(e) The maximum number of hours of continuing education credits for presenting a continuing education course in marriage and family therapy or teaching a course in marriage and family therapy at a recognized educational institution is five.

~~(d)(f)~~ Continuing Education credit shall not be accepted for the following:

- (1) Regular work activities, administrative staff meetings, case staffing/reporting, etc.;
- (2) Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches;
- (3) Independent unstructured or self-structured learning; learning, defined as learning which is undertaken by the licensee without peer or other guidance, review, input, supervision or monitoring;
- (4) Training specifically related to policies and procedures of an agency; or
- (5) Non-therapy content programs such as finance or business management.

~~(e)(g)~~ If a person submits documentation for continuing education that is not clearly identifiable as dealing with marriage and family therapy practice and therapeutic issues, ethics or the supervision of marriage and family therapy, the Board shall request a written description of the continuing education and how it applies to professional practice in marriage and family therapy. If the Board determines that the training cannot be considered, the individual shall be given 90 days from the date of notification to replace the hours not allowed. Those hours shall be considered replacement hours and cannot shall not be counted during the next renewal period.

~~(f)(h)~~ If evidence of satisfactory completion of marriage and family continuing education is not presented to the Board within 90 days from the date of notification, the license shall expire expires automatically.

(i) The Board shall waive the continuing education requirements in this Section for any individual who is currently licensed by and in good standing with the Board if the individual is serving

in the armed forces of the United States and if G.S. 105-249.2 grants the individual an extension of time to file a tax return. The waiver shall be in effect for any period that is disregarded under Section 7508 of the Internal Revenue Code in determining the taxpayer's liability for a federal tax.

(j) If the evidence of completion is not postmarked by July 1, the evidence of completion will not be accepted by the Board, and the license will expire effective July 1.

Authority G.S. 90-270.51(b); 90-270-58C.

SECTION .0800 - LICENSED MARRIAGE AND FAMILY THERAPY ASSOCIATE

21 NCAC 31 .0801 LICENSED MARRIAGE AND FAMILY THERAPY ASSOCIATE CREDENTIALS REQUIRED

~~(a) The designation Marriage and Family Therapy Associate shall be granted to persons preparing for the practice of marriage and family therapy who:~~

- ~~(1) have completed a marriage and family therapy degree or equivalent in an allied mental health field;~~
- ~~(2) show evidence of intent to accrue the required clinical contact hours for licensing under approved supervision;~~
- ~~(3) have filed a Marriage and Family Therapy Associate application form with the Board, which shall include evidence of appropriate course work and the agreement of at least one Approved Supervisor to provide supervision.~~

~~(b) Upon approval by the Board a certificate designating the applicant as a Marriage and Family Therapy Associate will shall be issued and be valid for three years from the date of issue.~~

~~(c) Upon petition to the Board and with demonstration of special circumstances and steady progress toward licensure the Board may grant a one year extension of the Associate designation.~~

~~(d) Persons holding the Associate designation may in no way not identify themselves as or imply that they are licensed marriage and family therapists.~~

(a) An applicant for licensure as a marriage and family therapy associate shall ensure the submission of the following to the Board:

- (1) Notarized application form and application fee;
- (2) Official graduate college transcripts sent directly to the Board by the training institution(s) evidencing; completion of a master's or doctoral degree in marriage and family therapy from a recognized educational institution, or completion of a related degree from a recognized educational institution with course of study encompassing coursework as defined by the Board in 21 NCAC 31 .0501. Additional documentation (copies of course catalog and syllabi) of qualifying coursework may be required if the Board has questions about course content;

(3) Evidence of good moral character which include three endorsements for licensure, using Board forms, from other licensed or certified mental health professionals familiar with the applicant. Endorsers shall not be the applicant's approved supervisor;

(4) Evidence of a passing score on the examination required by the Board pursuant to G.S. 90-270.54 (a)(2); and

(5) Evidence of an agreement with a supervisor who meets the requirements of Rule .0502 for ongoing supervision.

(b) All complete application materials shall be received within two years from the date of the application or the file shall be closed.

Authority G.S. 90-270.48(b)(1); 90-270.51(b).

21 NCAC 31 .0802 LICENSED MARRIAGE AND FAMILY THERAPY ASSOCIATE

A license designating the applicant as a Licensed Marriage and Family Therapy Associate will be issued by the Board to persons meeting the requirements set out in Rule .0801 of this Section. The license will be valid for three years from the date of issuance. Upon written application to the Board showing special circumstances and steady progress toward licensure, the Board may in its discretion grant a one year extension to the License. No more than one extension shall be granted. Special circumstances are defined as events beyond the control or fault of the Licensed Marriage and Family Therapy Associate, including illness of self, partner, spouse or child, or death of life partner, spouse or child. Persons who are licensed as Licensed Marriage and Family Therapy Associates must disclose to their clients that they are required to practice under on-going supervision, and the name of their supervisor.

Authority G.S. 90-270.54A.

SECTION .0900 - RECIPROCITY

21 NCAC 31 .0901 RECIPROCAL LICENSE

A reciprocal license shall be granted under G.S. 90-270.56 when there is a written agreement between the North Carolina Board and the Board regulating Marriage and Family Therapy in the State in which the applicant holds a valid license.

Authority G.S. 90-270.51(b); 90-270.56.

SECTION .1000 - FEES

21 NCAC 31 .1001 FEES

The Board sets the following fees:

- (1) Each license examination \$ 50.00
- (2) Each license application as a marriage and family therapist \$200.00
- (3) Each license application as a marriage and family therapist associate \$200.00
- (4) Each reciprocal license application \$200.00
- (5) Each renewal of license \$100.00

(6)	Each reinstatement of an expired license	\$200.00
(7)	Each application to return to active status	\$200.00
(8)	Each duplicate license	\$ 25.00
(9)	Each annual maintenance of inactive status	\$ 50.00
(10)	Each application to extend associate license	\$ 50.00

Authority G.S. 90-270.57.

21 NCAC 31 .1002 FUND SUSPENSION

In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2, the Board shall continue to issue and re-new licenses and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

Authority G.S. 93B-2(d); S.L. 2009-458.

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0303, .0318.

Proposed Effective Date: August 1, 2011

Public Hearing:

Date: May 20, 2011

Time: 1:00 p.m.

Location: NC Board of Nursing Office, 4516 Lake Boone Trail, Raleigh, NC 27607

Reason for Proposed Action: *There is only one accrediting body – National League for Nursing Accrediting Commission (NLNAC) that accredits diploma, ADN and PN nursing programs. There has been a change in the interpretation of NLNAC's faculty standards resulting in a requirement for all full-time faculty and 51% part-time faculty to be MSN (Masters of Science in Nursing) prepared. This essentially eliminates the opportunity for the provision of a rational for the other non-nursing master's prepared faculty. In order to meet the new interpretations, current master's prepared faculty with other majors such as Education would no longer be qualified to teach. Maintaining the current requirement for national accreditation by 2015 would result in decreasing the enrollment figures dramatically in a time of pending shortage of nurses.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections to these rules by contacting Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, Post Office Box 2129, Raleigh, NC 27602, Fax (919)781-9461, email jeans@ncbon.com.*

Comments may be submitted to: *Jean H. Stanley, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602, phone (919)782-3211, ext 252, fax (919)781-9461, email jeans@ncbon.com*

Comment period ends: May 20, 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 .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0303 EXISTING NURSING PROGRAM

(a) All nursing programs under the authority of the Board ~~may~~shall obtain national program accreditation by a nursing accreditation body as defined in 21 NCAC 36 .0120(29) by December 31, 2015. ~~Thereafter, the program must maintain national accreditation to remain Board approved.~~

(b) Full Approval

- (1) The Board shall review approved programs at least every eight years as specified in G.S. 90-171.40. Reviews of individual programs shall be conducted at shorter intervals upon request from the individual institution or as considered necessary by the Board. National Accreditation self study reports shall provide basis for review for accredited programs.
- (2) The Board shall send a written report of the review no more than 20 business days following the completion of the review process. Responses from a nursing education program regarding a review report or Board Warning Status as referenced in Paragraph (b) of this Rule shall be received in the Board office by the deadline date specified in the letter accompanying the report or notification of Warning Status. If no materials or documents are received by the specified deadline date, the Board shall act upon the

findings in the review report and testimony of the Board staff.

- (3) If the Board determines that a program has complied with the rules in this Section, the program shall be continued on Full Approval status.
- (4) If the Board determines a pattern of noncompliance with one or more rules in this Section, a review shall be conducted. The program shall submit to the Board a plan of compliance to correct the identified pattern. Failure to comply with the correction plan shall result in withdrawal of approval, constituting closure, consistent with 21 NCAC 36 .0309.

(c) Warning Status

- (1) If the Board determines that a program is not complying with the rules in this Section, the Board shall assign the program Warning Status, and shall give written notice by certified mail to the program specifying:
 - (A) the areas in which there is noncompliance;
 - (B) the date of notice by which the program must comply. The maximum timeframe for compliance is two years; and
 - (C) the opportunity to schedule a hearing.
- (2) On or before the required date of compliance identified in this Paragraph, if the Board determines that the program is complying with the rules in this Section, the Board shall assign the program Full Approval Status.
- (3) If the Board finds the program is not in compliance with the rules in this Section by the date specified in Part (c)(1)(B) of this Rule, the Board shall withdraw approval constituting closure consistent with 21 NCAC 36 .0309.
- (4) Upon written request from the program, submitted within 10 business days of the Board's written notice of Warning Status, the Board shall schedule a hearing within 30 business days from the date on which the request was received.
- (5) When a hearing is held at the request of the program and the Board determines that:
 - (A) the program is in compliance with the rules in this Section, the Board shall assign the program Full Approval status; or
 - (B) the program is not in compliance with the rules in this Section, the program shall remain on Warning Status. A review by the Board shall be conducted during that time.

NOTE: The Board recommends that all nursing programs under the authority of the Board pursue and maintain national nursing accreditation.

Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40.

21 NCAC 36 .0318 FACULTY

- (a) Full-time and part-time faculty members are considered nursing program faculty. When part-time faculty members are utilized, they shall participate in curriculum implementation and evaluation.
- (b) Policies for nursing program faculty members shall be consistent with those for other faculty of the institution. Variations in these policies may be necessary due to the nature of the nursing curriculum.
- (c) Nurse faculty members shall be academically qualified and sufficient in number to accomplish program outcomes.
- (d) Fifty percent or more of the nursing faculty will hold a master's degree.
- ~~(e)(d)~~ Each nurse faculty member shall hold a current unrestricted license to practice as a registered nurse in North Carolina. The program director shall document current licensure to practice as a registered nurse in North Carolina.
- ~~(f)(e)~~ Nursing faculty who teach in a program leading to initial licensure as a nurse shall:
 - (1) hold either a baccalaureate in nursing or a master's degree in nursing from an accredited institution;
 - (2) if employed after December 31, 1983, have two calendar years or the equivalent of full time clinical experience as a registered nurse;
 - (3) prior to or within the first three years of employment, have preparation in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to assignment. This preparation may be demonstrated by one of the following:
 - (A) completion of 45 contact hours of continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of education course work;
 - (D) national certification in nursing education; or
 - (E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, objectives to be met and evaluated, review of strategies for identified student population and expectations of student and faculty performance;
 - (4) If employed prior to July 1, 2006, faculty shall meet the requirements in Subparagraph (e)(3) of this Rule by December 31, 2010. If employed on or after July 1, 2006 faculty members have three years from date of

employment to meet the requirements in Subparagraph (e)(3) of this Rule.

- (5) maintain competence in the areas of assigned responsibility; and
- (6) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse; and
- ~~(7) Faculty newly employed after December 31, 2015, must meet standards established by a nursing accreditation body as defined in 21 NCAC 36.0120(29).~~

~~(g)(f)~~ Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.

~~(h)(g)~~ Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities and serve as role models to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold a current, unrestricted license to practice as a registered nurse in North Carolina.

~~(i)(h)~~ Nurse faculty members shall have the authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

~~(j)(i)~~ Nurse faculty members shall be sufficient in number to implement the curriculum as demanded by the course objectives, the levels of the students, and the nature of the learning environment, and shall be sufficient to provide for teaching, supervision and evaluation. The faculty-student clinical ratio shall be 1:10 or less.

~~(k)(j)~~ There shall be a written evaluation of each nurse faculty member by the program director or a designee; and a written evaluation of the program director according to the institutional policy.

Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83.

CHAPTER 52 - BOARD OF PODIATRY EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Podiatry Examiners intends to adopt the rules cited as 21 NCAC 52 .0212, .0611, amend the rules cited as 21 NCAC 52 .0101, .0201-.0202, .0204, .0206, .0208, .0301-.0303, .0601, .0610, .0701-.0703, .0804 and repeal the rules cited as 21 NCAC 52 .0102, .0602-.0606.

Proposed Effective Date: June 1, 2011

Public Hearing:

Date: April 7, 2011

Time: 10:00 a.m.

Location: 1500 Sunday Drive, Suite 102, Raleigh, NC 27607

Reason for Proposed Action: *Add two Rules: provide for specialty credentialing procedures as required in statute and consolidate separate rules about forms into a single rule. Amend Rules: to remove language that duplicates statutes or other rules, change name of "National Board Exam" to new name, add definitions and terms, clarify term "ample information", update Authority with statute number changes or add/correct Authority, change name of Section, add Board's website address, and to change "will" to "shall" or "must". Repeal Rules: to remove Rules that duplicate statutory language, to remove Rules that refer to Form numbers that are to be consolidated into a single rule.*

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

Any person wishing to object to a proposed rule shall address their request to: Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607. The caption of the objection should bear the notation: RULEMAKING OBJECTION RE: and then the subject area.

The written objection should include the following information:

- (1) an indication of the subject area to which the objection is directed. For example: "This objection concerns the rulemaking hearing to amend Rule .0000";
- (2) either a draft of the proposed rule or a summary of its contents;
- (3) reason for the objection;
- (4) the effect on existing rules;
- (5) any data supporting the objection;
- (6) effect of the proposed rule on existing practices in the area involved, including cost factors;
- (7) names of those most likely to be affected by the rule with addresses if reasonably known; and
- (8) name(s) and address(es) of objector(s).

Comments may be submitted to: Penney De Pas, Rulemaking Coordinator, NC Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607, phone (919)861-5583, fax (919)787-4916, email info@ncbpe.org

Comment period ends: April 18, 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

SECTION .0100 - ORGANIZATION OF THE BOARD

21 NCAC 52 .0101 NAME AND PURPOSE

~~The Board of Podiatry Examiners (hereinafter referred to as the board) is established as provided for in the General Statutes of the State of North Carolina for the purpose of examining and licensing qualified applicants for licensure, regulating the practice of podiatry and performing such other duties as may be required by the General Statutes.~~

(a) The office of the board shall be in Raleigh and the mailing address of the board is 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607.

(b) In addition to the definitions and terms in G.S. 90-202.2

http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_90/gs_90-202.2.html, the following terms have the following meanings:

- (1) "Application" shall mean the application form provided by the Board;
- (2) "American Podiatric Medical Licensing Examination" and "APMLE", shall mean the national examination in multiple parts, formerly known as (and referred in the statutes as) the "National Boards," as administered by the National Board of Podiatric Medical Examiners and including the examination formerly called "PM-Lexis;"
- (3) "Board" or "board" shall refer to the "Board of Podiatry Examiners" of North Carolina as defined in G.S. 90-202.4;
- (4) "Establishment" in G.S. 55B-10 shall mean any separate podiatry office, clinic, or branch location where podiatry services are provided. It does not include a corporate office located in a separate building or location where podiatry services are not performed; and
- (5) "Podiatry" has the same meaning as in G.S. 90.202.2.

Authority G.S. 90-202.4; 90-202.6; 90-202.8; 55B-10.

21 NCAC 52 .0102 MEMBERSHIP

~~The board shall consist of four members appointed by the Governor as provided in the General Statutes.~~

Authority G.S. 90-202.4.

SECTION .0200 - EXAMINATION AND LICENSING

21 NCAC 52 .0201 APPLICATION

Anyone who meets the statutory requirements and wishes to apply for examination may do so by submitting a written application to the ~~office of the executive secretary of the board, board at 1500 Sunday Drive, Raleigh, North Carolina 27607.~~ Such Application for Examination or Application of Reciprocity shall be made on a form provided by the ~~board.~~ Applicants shall furnish the board with certification of graduation from a four year high school, completion of at least two years of undergraduate college education, graduation from an accredited college of podiatric medicine, and passing scores on all parts of the APMLE, National Boards, including PM-Lexis, as provided in the statutes. The application will state the amount of the fee, which is non-refundable. The application must be accompanied by the application fee of three hundred fifty dollars (\$350.00), which ~~shall be the maximum amount provided by statute.~~ Applications must also be notarized by a Notary Public in good standing.

Authority G.S. 90-202.5; 90-202.6; 90-202.7.

21 NCAC 52 .0202 EXAMINATION

The board shall conduct an examination of all qualified applicants at least once each year at such time and at such place as the board may choose. This examination may be written, oral, or clinical or any combination of written, oral and ~~clinical.~~ The examination shall be scheduled so as not to conflict with the APMLE, National Boards.

Authority G.S. 90-202.6.

21 NCAC 52 .0204 RE-EXAMINATION

Unsuccessful candidates for licensure may apply to the board for re-examination within a period of one year and be entitled to re-examination upon the payment of the three hundred fifty dollar (\$350.00) examination fee. ~~fee, which fee shall be the maximum amount allowed by statute.~~

Authority G.S. 90-202.6.

21 NCAC 52 .0206 LICENSING

Upon the successful completion of all the requirements of the board, each successful candidate shall be issued a license ~~(BPE Form No. 3)~~ which shall be numbered and contain the applicant's name and date of issuance. This certificate shall be signed by the members of the board and attested to by affixing the official seal of the Board of Podiatry Examiners.

Authority G.S. 90-202.6; 90-202.7.

21 NCAC 52 .0208 CONTINUING EDUCATION

An additional requirement for issuance of the annual renewal certificate shall be certification to the board of proof of having complied with the Continuing Education ~~continuing education~~ provisions of the General Statutes. The board shall notify all podiatrists that 25 hours are required annually and will ~~notify them~~ make available publicly on its website the approval process ~~for of~~ what programs, seminars, or other courses of study will be

accepted as fulfilling this requirement. ~~The board will consider any other courses a license holder wishes to attend if ample information is provided to the board. The board may provide a form (BPE No. 5) which provides for dates, location and faculty of such programs and which is to be signed by an executive officer of the organization or institution sponsoring such programs. Certification is required by statute.~~

Authority G.S. 90-202.4(g); 90-202.11.

21 NCAC 52 .0212 SPECIALTY CREDENTIALING PRIVILEGES

(a) The Board shall grant surgical specialty privileges to podiatrists in the areas of amputation, ankle surgery, and club foot correction.

(b) Application for such privileges shall be made upon a form provided by the Board along with two copies of the applicants' surgery logs, both of which shall be highlighted in different colors (one color per specialty area, i.e. amputations, ankle surgeries, and club foot corrections).

Authority G.S. 90-202.2.

SECTION .0300 - PROFESSIONAL CORPORATIONS

21 NCAC 52 .0301 REGISTRATION

No podiatrist or group of podiatrists may operate in the State of North Carolina as a professional corporation without first obtaining from the board a certificate of registration as required by the General Statutes. Registration shall be as set forth in G.S. 55B-10:

<http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Cchapter=0055B> . Each corporate registrant must pay a separate registration fee of twenty-five dollars (\$25.00) per year for each separate establishment where podiatric services are performed. The application should contain the name and address of this corporation and the names of all the officers and shareholders of the corporation. If the board finds that no disciplinary action is pending against any of the officers or shareholders, upon payment of a fifty dollar (\$50.00) registration fee, it shall issue a certificate of registration (PC Form No.2) which will remain in effect until January 1 of the following year.

Authority G.S. 55B-10; 90-202.4(g).

21 NCAC 52 .0302 ANNUAL RENEWAL

Upon written application to the board on or before January 1 of each year and upon payment of a fee of twenty five dollars (\$25.00), an annual renewal certificate (PC Form No.3) shall be issued by the board. Failure to comply will result in a penalty as specified in Rule .0303 of this Section. Annual renewal of a professional podiatry corporate registration shall be as set forth in G.S. 55B-11:
<http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Cchapter=0055B>.

Authority G.S. 55B-11; 90-202.4 (g).

21 NCAC 52 .0303 PENALTIES

~~If a corporation does not apply for renewal of its certificate of registration within 30 days after the date of the expiration of such certificate, the certificate of registration shall be automatically suspended and may be reinstated within the calendar year upon the payment of the required renewal fee plus a penalty of ten dollars (\$10.00). Penalties for non-renewal of a professional podiatry corporation certificate of registration shall be as set forth in G.S. 55B-11:~~
<http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Cchapter=0055B>.

Authority G.S. 55B-11; 90-202.4(g).

SECTION .0600 - GENERAL PROVISIONS

21 NCAC 52 .0601 APPLICATION FOR EXAMINATION

The application for examination shall be used by all applicants who wish to take the examination for licensure. It shall require the applicant to furnish the board with information required or permitted by these Rules. The form may be obtained in hard-copy or electronic format from the office of the executive secretary ~~at 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607,~~ or from the board's website at www.ncbpe.org.

Authority G.S. 90-202.5.

21 NCAC 52 .0602 CERTIFICATE OF LICENSURE

~~The licensure certificate (BPE Form No. 3) will be the official license to practice podiatry in the State of North Carolina.~~

Authority G.S. 90-202.6.

21 NCAC 52 .0603 APPLICATION FOR RENEWAL

~~The application for renewal of license (BPE Form No. 4) will be used to annually apply for renewal of the license to practice. The form will require the license holder to inform the board of his current office address, his status in regard to practice and such other information as the board may require to maintain accurate and updated records on the status of the profession within the state.~~

Authority G.S. 90-202.10.

21 NCAC 52 .0604 CERTIFICATE OF CONTINUING EDUCATION

~~BPE Form No. 5 may be used to certify that the licensee has met the continuing education requirements as stated in the General Statutes.~~

Authority G.S. 90-202.11.

21 NCAC 52 .0605 CERTIFICATE FOR ESTABLISHING A PROFESSIONAL CORPORATION

~~Prior to being registered with the Secretary of the State of North Carolina, each professional corporation shall obtain from the secretary of the board a certificate (PC Form No. 2) that each~~

~~and every shareholder of the proposed corporation is duly licensed to practice podiatry in the State of North Carolina.~~

Authority G.S. 55B-10.

21 NCAC 52 .0606 CERTIFICATE OF REGISTRATION OF PROFESSIONAL CORPORATION

~~Every professional corporation shall annually apply to the board for a certificate of registration, using PC Form No. 3.~~

Authority G.S. 55B-11.

21 NCAC 52 .0610 APPL/EXAM/PODIATRIST LICENSED/OTHER STATES (RECIPROCITY)

The application for examination for those already licensed in other states to practice podiatric medicine shall be used by applicants who request such consideration. The requirements shall be the same as for the applicant in Rule .0201 of this Chapter and as required by statute. Application forms may be obtained from the office of the executive secretary of the ~~board~~ board or from the board's website at www.ncbpe.org.

Authority G.S. 90-202.7.

21 NCAC 52 .0611 FORMS AND APPLICATIONS

(a) The Board shall prescribe and issue the following items:

- (1) Certificate of Licensure,
- (2) Licensure Renewal Card,
- (3) Temporary License Certificate, and
- (4) Certificate of Corporate Registration.

(b) The Board shall provide and require use of its application forms for the following specific purposes which may be obtained from the Board's web site, <http://www.ncbpe.org>:

- (1) Licensure Renewal Application,
- (2) Disclaimer Form,
- (3) Corporate Registration Application,
- (4) Corporate Registration Renewal, and
- (5) Specialty Credentialing Application.

Authority G.S. 90-202.4(g); 90-202.6; 90-202.7; 90-202.9; 90-202.10; 90-202.11; 55B-10; 55B-11.

SECTION .0700 - PETITIONS FOR RULES

21 NCAC 52 .0701 PETITION FOR RULEMAKING HEARINGS

Any person wishing to submit a petition requesting the board to promulgate, amend or repeal a rule shall address a petition ~~to: to the office of the Board of Podiatry Examiners, Examiners, 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607.~~ The caption of the petition shall bear the notation: RULEMAKING PETITION RE: and then the subject area.

Authority G.S. 150B-20.

21 NCAC 52 .0702 CONTENTS OF PETITION

The petition ~~should~~ must include the following information:

- (1) an indication of the subject area to which the petition is directed. For example: "This

petition is to hold a rulemaking hearing to amend Rule .0000"; .0000;"

- (2) either a draft of the proposed rule or a summary of its contents;
- (3) reason for the proposal;
- (4) the effect on existing rules;
- (5) any data supporting the proposal;
- (6) effect of the proposed rule on existing practices in the area involved, including cost factors;
- (7) names of those most likely to be affected by the proposed rule with addresses if reasonably known; and
- (8) name(s) and address(es) of petitioner(s).

Authority G.S. 150B-20.

21 NCAC 52 .0703 DISPOSITION OF PETITIONS

(a) The board ~~will~~ shall determine whether the public interest will be served by granting the request. Prior to making this determination, the board may request additional information from the petitioner(s); it may contact interested persons or persons likely to be affected by the proposed rule and request comments; and it may use any other appropriate method for obtaining information on which to base its determination. It ~~will~~ shall consider the contents of the petition submitted plus any other information obtained by the means described herein.

(b) The board ~~will~~ shall make a determination for the institution of rulemaking proceedings or for the denial of the petition as provided by ~~G.S. 150B-16.~~ G.S. 150B-20.

Authority G.S. 150B-20.

SECTION .0800 - NOTICE OF RULEMAKING HEARINGS

21 NCAC 52 .0804 NOTICE MAILING LIST

(a) Upon a determination to hold a ~~rule-making-rulemaking~~ proceeding, either in response to a petition or otherwise, the Board shall give notice to all interested parties of the proceedings in accordance with the requirements of G.S. 150B.

(b) Mailing List. Any person desiring to be placed on the mailing list for the ~~rule-making-rulemaking~~ notices may file a request in writing, furnishing his name and mailing address to the Board. The request shall state the subject areas within the authority of the Board for which notice is requested.

(c) Fee Charged. The cost to be on the mailing list for ~~rule-making-rulemaking~~ notices shall be fifteen dollars (\$15.00) per year. A notice and invoice shall be mailed no later than February 1 of each year to the last known address of persons on the mailing list. Persons who do not renew their request to remain on the mailing list by remitting the fee by March 1 of each year shall be deleted from the list.

Authority G.S. 150B-21.2(d); 90-20.4(g).

**CHAPTER 64 - BOARD OF EXAMINERS FOR SPEECH
AND LANGUAGE PATHOLOGISTS AND
AUDIOLOGISTS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners for Speech and Language Pathologists and Audiologists intends to adopt the rule cited as 21 NCAC 64 .0307.

Proposed Effective Date: *June 1, 2011*

Public Hearing:

Date: *April 8, 2011*

Time: *1:30 p.m.*

Location: *Sheraton Greensboro Four Seasons, 3121 High Point Blvd., Greensboro, NC*

Reason for Proposed Action: *Board of Examiners has an agreement with NC Department of Public Instruction to assume authority over previously separate certification and has agreed to adopt rule to be consistent with rule 16 NCAC 06C .0312(a)(8).*

Procedure by which a person can object to the agency on a proposed rule: *Send written objections by April 18, 2011 to 3100 Tower Blvd., Suite 1315, Durham, NC 27707 or attend public hearing.*

Comments may be submitted to: *John C. Randall, 3100 Tower Blvd., Suite 1315, Durham, NC 27707*

Comment period ends: *April 18, 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

SECTION .0300 - CODE OF ETHICS

21 NCAC 64 .0307

OTHER MISCONDUCT

The Board of Examiners may deny an application for a license or revoke an existing license upon proof of conduct which would constitute grounds for revocation of an existing license, and for any other illegal, unethical, or lascivious conduct if there is a reasonable relationship between the conduct and the ability of the person to perform his or her professional functions effectively.

Authority G.S. 90-304-(a)(3).

This Section contains information for the meeting of the Rules Review Commission on Thursday January 20, 2011 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

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

Appointed by House

Jennie J. Hayman - Chairman
Daniel F. McLawhorn
Curtis Venable
Ann Reed

COMMISSION COUNSEL

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

RULES REVIEW COMMISSION MEETING DATES

February 17, 2011 March 18, 2011
April 21, 2011 May 19, 2011

RULES REVIEW COMMISSION**January 20, 2011****MINUTES**

The Rules Review Commission met on Thursday, January 20, 2011, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, Ann Reed, Curtis Venable and Ralph Walker.

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

The following people were among those attending the meeting:

Catherine Blum	DENR/Division of Marine Fisheries
Lonnie Christopher	Office of the Commissioner of Banks
Joel Walker	DENR/DEH/Radiation Protection
Lee Cox	DENR/DEH/Radiation Protection
Lynda Elliott	Board of Cosmetic Arts Examiners
Erin Gould	Department of Labor
Nancy Pate	Department of Environment and Natural Resources
Barry Gup-ton	Building Code Council
Delores A. Joyner	Office of State Personnel
Bob Brooks	Board of Certified Public Accountant Examiners
Frank Trainor	Board of Certified Public Accountant Examiners
Karen Waddell	Department of Insurance
John Barkley	DOJ/Onsite Wastewater Contractors and Inspectors Certification Board
Mike Hejduk	DOI/Home Inspector Licensure Board
Jon Granger	Department of Environment and Natural Resources
David McLeod	Department of Agriculture and Consumer Services
Daniel Garner	Office of the Commissioner of Banks

The meeting was called to order at 9:02 a.m. with Ms. Hayman presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

Chairman Hayman read into the record the statement of economic interest for Ann Reed, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Ms. Reed's spouse is an attorney employed by Poyner & Spruill, LLP. The potential conflict identified does not prohibit service on the RRC.

APPROVAL OF MINUTES

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the December 16, 2010 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

02 NCAC 34 .1103 – Structural Pest Control Committee. The agency submitted the incorrect version of this rule at the December meeting. The Commission rescinded that approval and approved the resubmitted rule.

02 NCAC 48A .0246 – Board of Agriculture. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 08F .0101, .0103, .0105 – Board of Certified Public Accountant Examiners. The Commission approved the rewritten rules submitted by the agency.

21 NCAC 08J .0111 – Board of Certified Public Accountant Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 08K .0105 – Board of Certified Public Accountant Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 08M .0106 – Board of Certified Public Accountant Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 08N .0206 – Board of Certified Public Accountant Examiners. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 14R .0102, .0103 – Board of Cosmetic Art Examiners. The Commission approved the rewritten rules submitted by the agency.

21 NCAC 39 .0101, .0102, .0201, .0301, .0401-.0404, .0501, .0601-.0605, .0701-.0703 – Onsite Wastewater Contractors and Inspectors Certification Board. The Commission approved the rewritten rules submitted by the agency.

2012 NC Building Code – 424.1.13, 425.1, 1008.1.9.3, G101.4, 1704.1.1, 1704.1.3, 1807.2.4, 1807.2.5, 1810.3.5.2.5, 2210.3.1, 2210.3.3, 2303.4.1.4, 2303.4.3, 3603.6, 3604.1, 3604.2, 3604.3, 3606.1, 3606.7, 3607.2 – Building Code Council. The Commission approved the rewritten rules submitted by the agency.

2012 NC Fire Code – Chapter 2, 1008.1.9.3, 2206.2.3.1 – Building Code Council. The Commission approved the rewritten rules submitted by the agency.

2012 NC Fuel Gas Code – Chapter 2 – Building Code Council. The Commission approved the rewritten rule submitted by the agency.

2012 NC Mechanical Code – Chapter 2 – Building Code Council. The Commission approved the rewritten rule submitted by the agency.

2012 NC Plumbing Code – 607.1, 701.4, 803.5 – Building Code Council. The Commission approved the rewritten rules submitted by the agency.

LOG OF FILINGS

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

Structural Pest Control Committee

02 NCAC 34 .0102 was approved unanimously.

Office of the Commissioner of Banks

04 NCAC 03M .0602 was approved unanimously.

Home Inspector Licensure Board

All permanent rules were approved unanimously.

Department of Insurance

11 NCAC 12 .1030 was approved unanimously.

Criminal Justice Education and Training Standards Commission

All permanent rules were approved unanimously with the following exceptions:

12 NCAC 09B .0304 was withdrawn by the agency and refiled for the February meeting.

12 NCAC 09E .0105 was approved contingent on receiving a technical change requested by Commissioner Gray. The technical change was received.

Department of Labor

All permanent repeals were approved unanimously by the Commission.

Marine Fisheries Commission

All permanent rules were approved unanimously.

Coastal Resources Commission

All permanent rules were approved unanimously with the following exception:

15A NCAC 07M .0402 - The Commission objected to this Rule based on ambiguity. It is unclear who or what this rule applies to. It is unclear what type of projects or facilities the need for the impact assessment detailed in this rule applies to. Paragraph (a) refers to "a proposed project" in the first sentence, an "energy facility" in (a)(8), "the facility" in (a)(10), "energy exploration or development activities in the last paragraph of (a) page 2 at line 17, and "major energy facilities" in (b). In addition the rules before and after this rule seem to apply unevenly to all "energy facilities" and "major energy facilities."

Board of Massage and Bodywork Therapy

21 NCAC 30 .0630 was approved unanimously.

State Personnel Commission

All permanent rules were approved unanimously.

TEMPORARY RULES

There were no temporary rules filed for review.

2011 State Medical Facilities Plan

The Governor's approval was received, therefore the Commission found that the Department of Health and Human Services and the State Health Coordinating Council had complied with G.S. 131E-176(25) in the adoption of the 2011 Plan.

COMMISSION PROCEDURES AND OTHER BUSINESS

The Commissioners voted to send the following response to OSBM regarding a comment received pursuant to Executive Order 70:

The Rules Review Commission was created by the General Assembly and only the General Assembly can change its responsibilities. (See G.S. 143B-30.1.) The comment is incorrect in that the Commission does perform a useful function. The Commission exists to ensure that agencies have statutory authority for administrative rules they adopt; the rules are clear and unambiguous; the rules are reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency; and that the agencies complied with the rulemaking procedures in the Administrative Procedure Act in adopting the rules. The Commission also acts to accomplish one or more of the stated goals of Executive Order 70 to prevent unnecessary

RULES REVIEW COMMISSION

and duplicative rules. The Commission was created, for among other reasons, to fetter un-checked actions by State agencies. (See G.S. 150B-21.9(a).)

Adopted by the Rules Review Commission January 20, 2011.
Jennie Hayman--Chair

The Commissioners voted to table the election of officers to the August 2011 meeting.

The meeting adjourned at 10:17 a.m.

The next scheduled meeting of the Commission is Thursday, February 17 at 9:00 a.m.

Respectfully Submitted,

Dana Vojtko
Publications Coordinator

LIST OF APPROVED PERMANENT RULES
January 20, 2011 Meeting

STRUCTURAL PEST CONTROL COMMITTEE

<u>Definitions</u>	02	NCAC	34	.0102
<u>Re-Inspections</u>	02	NCAC	34	.1103

AGRICULTURE, BOARD OF

<u>The Transportation of Bees</u>	02	NCAC	48A	.0246
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BANKS, OFFICE OF THE COMMISSIONER OF

<u>Seller Discounts for Use of Affiliated Mortgage Lender or...</u>	04	NCAC	03M	.0602
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HOME INSPECTOR LICENSURE BOARD

<u>Continuing Education Required for Renewal of Active License</u>	11	NCAC	08	.1302
<u>Elective Course Component</u>	11	NCAC	08	.1318
<u>Application for Original Approval of an Elective Course</u>	11	NCAC	08	.1319
<u>Per Student Fee</u>	11	NCAC	08	.1332
<u>Renewal of Course and Sponsor Approval</u>	11	NCAC	08	.1336

INSURANCE, DEPARTMENT OF

<u>Long-Term Care Partnership Standards</u>	11	NCAC	12	.1030
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CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Admission of Trainees</u>	12	NCAC	09B	.0203
<u>Basic Law Enforcement Training</u>	12	NCAC	09B	.0205
<u>Required Annual In-Service Training Topics</u>	12	NCAC	09E	.0102
<u>Minimum Training Specifications: Annual In-Service Training</u>	12	NCAC	09E	.0105

LABOR, DEPARTMENT OF

<u>Scope</u>	13	NCAC	07F	.0901
<u>Incorporation by Reference</u>	13	NCAC	07F	.0902
<u>Definitions</u>	13	NCAC	07F	.0903
<u>Operator Qualification and Certification</u>	13	NCAC	07F	.0904

RULES REVIEW COMMISSION

<u>Signal Person Qualification</u>	13	NCAC	07F	.0905
<u>Maintenance and Repair Employee Qualification</u>	13	NCAC	07F	.0906
<u>Training</u>	13	NCAC	07F	.0907
<u>Fall Protection</u>	13	NCAC	07F	.0908
<u>Design, Construction and Testing</u>	13	NCAC	07F	.0909
<u>Equipment With a Rated Hoisting/Lifting Capacity of 2,000 ...</u>	13	NCAC	07F	.0910
<u>Equipment Modifications</u>	13	NCAC	07F	.0911
<u>Assembly and Disassembly of Equipment</u>	13	NCAC	07F	.0912
<u>Power Line Safety</u>	13	NCAC	07F	.0913
<u>Wire Rope</u>	13	NCAC	07F	.0914
<u>Inspections</u>	13	NCAC	07F	.0915
<u>Operation of Equipment</u>	13	NCAC	07F	.0916
<u>Operational Aids</u>	13	NCAC	07F	.0917
<u>Safety Devices</u>	13	NCAC	07F	.0918
<u>Signals</u>	13	NCAC	07F	.0919
<u>Hoisting Personnel</u>	13	NCAC	07F	.0920
<u>Tower Cranes</u>	13	NCAC	07F	.0921
<u>Derricks</u>	13	NCAC	07F	.0922
<u>Floating Cranes/Derricks and Land Cranes/Derricks on Barges</u>	13	NCAC	07F	.0923
<u>Overhead and Gantry Cranes</u>	13	NCAC	07F	.0924
<u>Dedicated Pile Drivers</u>	13	NCAC	07F	.0925
<u>Sideboom Cranes</u>	13	NCAC	07F	.0926
<u>Operator Certification - Written Examination - Technical ...</u>	13	NCAC	07F	.0927

MARINE FISHERIES COMMISSION

<u>Scope of Management</u>	15A	NCAC	03H	.0102
<u>Proclamation Authority of Fisheries Director</u>	15A	NCAC	03H	.0103
<u>Maps and Marking</u>	15A	NCAC	03H	.0104
<u>Definitions</u>	15A	NCAC	03I	.0101
<u>Coral and Live Rock</u>	15A	NCAC	03I	.0116
<u>Maps and Marking</u>	15A	NCAC	03I	.0121
<u>Recreational Use of Pots</u>	15A	NCAC	03J	.0302
<u>Horseshoe Crabs</u>	15A	NCAC	03L	.0207
<u>Mutilated Finfish</u>	15A	NCAC	03M	.0101
<u>Tuna</u>	15A	NCAC	03M	.0520
<u>Ocean Fishing Pier Blanket Coastal Recreational Fishing L...</u>	15A	NCAC	03O	.0113
<u>Shellfish Bottom and Water Column Lease Applications</u>	15A	NCAC	03O	.0202
<u>Transfer of Interest</u>	15A	NCAC	03O	.0209
<u>Procedures and Requirements to Obtain Permits</u>	15A	NCAC	03O	.0501
<u>Primary Nursery Areas</u>	15A	NCAC	03R	.0103
<u>Permanent Secondary Nursery Areas</u>	15A	NCAC	03R	.0104
<u>Special Secondary Nursery Areas</u>	15A	NCAC	03R	.0105
<u>Attended Gill Net Areas</u>	15A	NCAC	03R	.0112
<u>Oyster Sanctuaries</u>	15A	NCAC	03R	.0117

COASTAL RESOURCES COMMISSION

<u>General Definitions</u>	15A	NCAC	07H	.0106
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<u>Use Standards</u>	15A	NCAC	07H	.0208
<u>Declaration of General Policy</u>	15A	NCAC	07M	.0401
<u>Policy Statements</u>	15A	NCAC	07M	.0403

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

<u>X-Ray Fee Amounts</u>	15A	NCAC	11	.1105
<u>Radioactive Materials and Accelerator Fee Amounts</u>	15A	NCAC	11	.1106
<u>Fees and Payment</u>	15A	NCAC	11	.1423

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

<u>Time and Place of CPA Examinations</u>	21	NCAC	08F	.0101
<u>Filing of Examination Applications and Fees</u>	21	NCAC	08F	.0103
<u>Conditioning Requirements</u>	21	NCAC	08F	.0105
<u>Compliance with CPA Firm Registration</u>	21	NCAC	08J	.0111
<u>Supplemental Reports</u>	21	NCAC	08K	.0105
<u>Compliance</u>	21	NCAC	08M	.0106
<u>Cooperation with Board Inquiry</u>	21	NCAC	08N	.0206

COSMETIC ART EXAMINERS, BOARD OF

<u>Application Criteria and Continuing Education Course Appr...</u>	21	NCAC	14R	.0102
<u>Criteria for Continuing Education Courses</u>	21	NCAC	14R	.0103

MASSAGE AND BODYWORK THERAPY, BOARD OF

<u>School Catalog</u>	21	NCAC	30	.0630
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ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

<u>Definitions</u>	21	NCAC	39	.0101
<u>Types of Certification</u>	21	NCAC	39	.0102
<u>Application Requirements for Certification</u>	21	NCAC	39	.0201
<u>Schedule of Certification Fees</u>	21	NCAC	39	.0301
<u>Onsite Wastewater Contractor or Inspector Examinations</u>	21	NCAC	39	.0401
<u>Time and Place of Examination</u>	21	NCAC	39	.0402
<u>Conducting and Grading Examinations</u>	21	NCAC	39	.0403
<u>Issuance of Certificates</u>	21	NCAC	39	.0404
<u>Conditions and Limitations for Renewal of Certification</u>	21	NCAC	39	.0501
<u>Requirements</u>	21	NCAC	39	.0601
<u>Approval of Continuing Education Courses</u>	21	NCAC	39	.0602
<u>Determination of Credit</u>	21	NCAC	39	.0603
<u>Recordkeeping</u>	21	NCAC	39	.0604
<u>Special Provisions for Continuing Education</u>	21	NCAC	39	.0605
<u>Revocation, or Suspension of Certification</u>	21	NCAC	39	.0701
<u>Certification Following Revocation or Voluntary Surrender...</u>	21	NCAC	39	.0702
<u>Penalties</u>	21	NCAC	39	.0703

APPRAISAL BOARD

<u>Fitness for Registration</u>	21	NCAC	57D	.0201
<u>Compliance Manager</u>	21	NCAC	57D	.0303

STATE PERSONNEL COMMISSION

<u>Policy</u>	25	NCAC	01E	.1302
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<u>Donor Guidelines</u>	25	NCAC	01E	.1305
<u>Transfer</u>	25	NCAC	01E	.1808
<u>Use of Leave</u>	25	NCAC	01E	.1809
<u>Appeals</u>	25	NCAC	01J	.0603
<u>Procedural Requirements</u>	25	NCAC	01J	.0613

BUILDING CODE COUNCIL

<u>2012 NC Building Code</u>	2009 IBC with NC Amendments
<u>424.1.13</u>	424.1.13
<u>425.1</u>	425.1
<u>1008.1.9.3</u>	1008.1.9.3
<u>G101.4</u>	G101.4
<u>1704.1.1</u>	1704.1.1
<u>1704.1.3</u>	1704.1.3
<u>1807.2.4</u>	1807.2.4
<u>1807.2.5</u>	1807.2.5
<u>1810.3.5.2.5</u>	1810.3.5.2.5
<u>2210.3.1</u>	2210.3.1
<u>2210.3.3</u>	2210.3.3
<u>2303.4.1.4</u>	2303.4.1.4
<u>2303.4.3</u>	2303.4.3
<u>3603.6</u>	3603.6
<u>3604.1</u>	3604.1
<u>3604.2</u>	3604.2
<u>3604.3</u>	3604.3
<u>3606.1</u>	3606.1
<u>3606.7</u>	3606.7
<u>3607.2</u>	3607.2
<u>2012 NC Fire Code</u>	2009 IFC with NC Amendments
<u>Chapter 2</u>	Chapter 2
<u>1008.1.9.3</u>	1008.1.9.3
<u>2206.2.3.1</u>	2206.2.3.1
<u>2012 NC Fuel Gas Code</u>	2009 IFGC with NC Amendments
<u>Chapter 2</u>	Chapter 2
<u>2012 NC Mechanical Code</u>	2009 IMC with NC Amendments
<u>Chapter 2</u>	Chapter 2
<u>2012 NC Plumbing Code</u>	2009 IPC with NC Amendments
<u>607.1</u>	607.1
<u>701.4</u>	701.4
<u>803.5</u>	803.5

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>				
ABC Commission v. Fusion Foods, Inc., T/A Coastal Blue	09 ABC 4672	Lassiter	11/08/10	
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. Talmar Inc. D/B/A E-City Restaurant and Lounge, Mary Ann Davidson and Ratanya Walker				
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. Speed Dee Superette, Tonya Marchisella	10 ABC 4583	Brooks	11/04/10	
ABC Commission v. Ben Long Wang, T/A Sapporo Bistro	10 ABC 4843	May	10/15/10	
Bobby Larry Avery Jr. Larry's v. State of North Carolina ABC Commission	10 ABC 5360	Lassiter	12/14/10	
<u>BOARD OF SOCIAL WORK CERTIFICATION AND LICENSURE</u>				
Miriam Deborah Kahn Sichel v. Social Work Certification and Licensure Board	10 BSW 2454	Overby	06/25/10	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>				
Tammy S. Barbone v. Crime Victims Compensation Comm.	08 CPS 2667	Brooks	07/16/10	
Christine G. Mroskey v. Crime Victims Compensation	09 CPS 0451	Gray	06/24/10	
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	Overby	03/31/10	
William G. Fisher v. Victims and Justice Services	09 CPS 4024	Brooks	11/15/10	
Terry L. Schermerhorn v. North Carolina State Highway Patrol	09 CPS 4547	Lassiter	10/21/10	
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	
John Rose (Fliptastic, Inc) v. Department of Crime Control and Public Safety	09 CPS 5985	Gray	08/25/10	25:11 NCR 1345
Lynch's Auto Sales Salvage & Wrecker Service, inc v. Crime Control and Public Safety, Division of State Highway Patrol	09 CPS 6158	Lassiter	09/10/10	
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	
Neill Grading and Construction Co., Inc., v. North Carolina State Highway Patrol Motor Carrier	09 CPS 6516	Gray	11/24/10	

CONTESTED CASE DECISIONS

Enforcement Section				
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	09 CPS 6728	Overby	08/17/10	
Motor Carrier Enforcement Section				
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	
Covenant Trucking Company, Inc v. Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	10 CPS 0212	Lassiter	10/21/10	
Benjamin C. Simmons III, Precision Custom Farming, LLC v. DMV	10 CPS 0419	Elkins	06/29/10	25:04 NCR 515
Keon J. Jones v. Victims Compensation Commission	10 CPS 0848	Webster	07/26/10	
X&M Trucking, Xavier Artis v. Dept State Highway Patrol, DMV	10 CPS 0855	Lassiter	07/20/10	
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	
Tracy James Drake, SR v. Victims and Justice Services	10 CPS 2073	Brooks	08/30/10	
Victim: Tyler A. Wright/Guardian Claire S. Casale v. Crime Victims Compensation Commission	10 CPS 2178	Overby	12/20/10	
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	
Nivia Velandra v. Crime Victims Compensation Commission	10 CPS 4061	Gray	11/15/10	

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	
Vance County Home Health, Nwa Kpuda v. DHHS	09 DHR 2815	Webster	10/27/10	
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	
Kid Ventures Inc., d/b/a Health Park Child Development Center v. Div. of Child Development DHHS	09 DHR 4887	Overby	06/22/10	
Nicol Smith v. DHHS	09 DHR 4932	Overby	09/01/10	25:11 NCR 4932
Kimberly N. Carter (Davis) v. DHHS, Div. of Health Service Regulation	09 DHR 5133	Webster	08/03/10	
A+ Child Development Center LLC, v. DHHS, Division of Child Development	09 DHR 5443	May	04/27/10	
Gail N. Highsmith v. DHHS	09 DHR 5513	Brooks	05/13/10	
Sarah J. Bridges v. DHHS	09 DHR 5583	Brooks	05/27/10	
Onslow MRI, LLC v. DHHS, Div. of Health Service Regulation, Certificate of Need Section and Jacksonville Diagnostic Imaging, LLC d/b/a Coastal Diagnostic Imaging	09 DHR 5617	Overby	06/24/10	
Jacksonville Diagnostic Imaging, LLC d/b/a Coastal Diagnostic Imaging v. DHHS, Division of Health Service Regulation, CON Section and Onslow MRI, LLC	09 DHR 5638	Overby	06/24/10	
Kimberly Denise Harrison v. DHHS, Division of Health Service Regulation	09 DHR 5702	Webster	11/09/10	
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	
Kelvin Donelle Lewis v. Health Care Personnel Registry , Nurse Aide Registry	09 DHR 6196	Webster	04/05/10	
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Jerry Flood, Forever Young Group Care v. DHHS, Div. of Health Service Regulation	09 DHR 6839	Gray	10/01/10	
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Margarette Snow v. DHHS	10 DHR 0648	Mann	09/07/10	
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Cassandra Johnson v. Div. of Child Development, DHHS	10 DHR 0683	Brooks	06/29/10	
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Omega Independent Living Services Inc, Site IV v. Div. of Health Service Regulation	10 DHR 1173	Elkins	08/30/10	
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Lenora Wesley v. Division of Child Development, DHHS	10 DHR 2069	Gray	08/17/10	
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Ms. Emery E. Milliken General Counsel				
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Pamela Terry-President/Administrator People Achieving Living Skills Inc. (PALS) v. DHHS, Div Of Health Service Regulation Mental Health Licensure & Certification	10 DHR 3883	Lassiter	08/18/10	
Peggy Ann Blackburn v. Health Care Personnel Registry	10 DHR 4117	May	11/13/10	
Cherry Crisp at Lillies Place LLC v. DHHS	10 DHR 4400	Lassiter	11/04/10	
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Patricia Hill, Building Joy in Healthcare v. DHSR	10 DHR 4842	Lassiter	09/23/10	
Travis Davis v. Health Care Personnel Registry	10 DHR 4985	Gray	11/02/10	
Crandell's Enterprises Inc., Mary Ann Crandell-MHL #092-669	10 DHR 5201	Overby	10/15/10	
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Scott Ray Berkley v. Criminal Justice Education and Training Standards Commission	09 DOJ 3750	Gray	06/25/10	
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Joseph Thomas DePrisco v. Criminal Justice Education and Training Standards Commission	09 DOJ 5354	Lassiter	06/01/10	
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Nedra T. Rollins v. NC State University	09 OSP 1536	Overby	06/07/10	
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Frederick Gooch v. Central Regional Hospital, DHHS	09 OSP 2398	Gray	10/28/10	25:16 NCR 1922
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Patricia Swann v. Central Regional Hospital, DHHS	09 OSP 2402	Gray	10/28/10	25:16 NCR 1922
Mekre Francis v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Murdoch Developmental Center	09 OSP 2813	Gray	05/27/10	
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Tammy R. Northern v. County of Durham Criminal Justice Resources Center	10 OSP 2904	Gray	08/20/10	
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	
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Louis G. Antonellis v. Cumberland County Board of Education Superintendent (Frank Till) Asst. Superintendent (Joseph Locklear) Board Attorney (David Phillips) Principal (Vanessa Alford)	10 OSP 5393	Lassiter	10/29/10	
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Elizabeth Danial Dominique v. NC Teaching Fellows Commission	09 TFC 6833	Webster	09/24/10	25:11 NCR 1366
<u>UNC HOSPITALS</u>				
Alexander Lee v. UNC Hospitals	10 UNC 1095	Elkins	08/30/10	
Edwin Matthews v. UNC Hospitals	10 UNC 2576	Overby	09/13/10	

STATE OF NORTH CAROLINA
COUNTY OF GRANVILLE

Filed
2010 OCT 28 AM 9:08

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

FREDERICK GOOCH,
Petitioner,
v.

Office of
Administrative Hearings

CENTRAL REGIONAL HOSPITAL,
NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
Respondent.

09 OSP 2398

JOHN LONG,
Petitioner,
v.

CENTRAL REGIONAL HOSPITAL,
NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
Respondent.

09 OSP 2400

PATRICIA SWANN,
Petitioner,
v.

CENTRAL REGIONAL HOSPITAL,
NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
Respondent.

09 OSP 2402

DECISION

The above-captioned cases were heard before Administrative Law Judge Beecher R. Gray on September 15, 16, 17, and 20, 2010. At the close of Respondent's evidence, Petitioners moved for a decision in the nature of a directed verdict because Respondent, the party with the burden of proof on the just cause issue, had failed to produce evidence sufficient to establish just cause for termination of any of the three Petitioners. After oral argument from both parties, the motion, treated as one under Rule 41(b) for insufficient evidence, was allowed. Petitioners' claims of retaliation, as stated in the respective petitions, and upon which Petitioners had the burden of proof, were not reached because Petitioners' dispositive motion at the close of Respondent's case in chief was allowed.

APPEARANCES

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ISSUES

Whether Respondent had just cause to discharge Petitioners from its employment for unacceptable conduct because Petitioners abused Patient K.F. by carrying and restraining him in a face down position and by confining him unreasonably.

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. Respondent Central Regional Hospital (CRH) provides inpatient mental health services for individuals with severe mental illness. Respondent Hospital is located in Butner in Granville County, North Carolina.
3. Petitioner Frederick Gooch was employed as a Health Care Technician (HCT) on the Adult Acute Admissions Unit of Respondent CRH for almost fifteen (15) years from April, 1994 until December 01, 2008.
4. Petitioner John Long was employed as a Health Care Technician on the Adult Acute Admissions Unit for three (3) years from October, 2005 until December 01, 2008.
5. Petitioner Patricia Swann is a registered nurse (RN) who was employed on the Adult Acute Admissions Unit approximately seven (7) years from April, 2002 until December 01, 2008.
6. All three Petitioners had above satisfactory work histories with performance evaluations of very good or better during employment by Respondent

7. On November 18-19, 2008, all three Petitioners were working the third shift, arriving at work at 11:00 p.m. on November 18, 2008 and working until the shift was completed at 07:30 a.m. on November 19, 2008. Petitioner Swann was the charge nurse for that shift on ward D2 of the Adult Acute Admissions Unit. HCT Long also was assigned to ward D2 for that shift. HCT Gooch was assigned to ward A2 of the Adult Acute Admissions Unit for that shift. Twenty-two (22) adult males resided on ward D2 during the November 18, 2008 third shift.

8. HCT Timothy Strong, HCT Willie Lawson, temporary HCT Evanston Lontubu, and nurse Ruby Crews, also were assigned to ward D2 for that shift under the direction of Charge Nurse Swann who was responsible for assigning duties to the HCTs and nurse Crews.

9. Blood draws were a common occurrence in Respondent's Hospital. Each patient had blood drawn for lab work as soon as possible after admission and thereafter as ordered by a physician. It was customary practice at CRH for the third shift on ward D2 to begin the process of obtaining required blood draws at 05:30 a.m. each day so as to have them completed and in the lab prior to the shift change at 07:30 a.m.

10. Patient K.F. involuntarily was admitted on or about November 13, 2008 and had refused to allow his blood to be drawn. Sabina Rao, M.D., was K.F.'s attending physician. With full knowledge of K.F.'s refusal to allow a blood draw, Dr. Rao entered a written order in the lab order book on ward D2 at 2:30 p.m. during first shift on November 18, 2008 that K.F.'s blood was to be drawn that day, **by force if necessary**. Neither the first or second shifts on ward D2 attempted to carry out Dr. Rao's order for a blood draw on November 18, 2008.

11. Respondent's non-consenting patient policy in effect on November 18-19, 2008 had been in effect since July, 2008. The non-consenting patient policy provided, in pertinent part, that restrictive interventions "...are used only as a last resort..."

12. Patient K.F., as of November 18, 2008, was approximately 24 years old, six feet two inches in height, and weighed 235 pounds. He was diagnosed upon admission as psychotic with undifferentiated schizophrenia. He recently had shown violence and aggression towards his mother and had been placed on close observation by Respondent because of psychosis and aggression toward staff. Dr. Rao was aware that Patient K.F. was taking the medication Zyprexa, known for causing severe spikes in blood sugar which can lead to diabetic ketoacidosis, changes in bone marrow, and possible sudden death. Dr. Rao's order for the blood draw specified that it be tested for hemoglobin and A1C (insulin level). Dr. Rao believed that this blood draw, by force if necessary, was medically necessary for the safety of this patient.

13. Dr. Rao expected her order to be carried out without further action from her or the nurses or other staff so that it would be accomplished and the results posted by the time she walked onto the ward the morning of November 19, 2008.

14. Respondent's policy as of November 18, 2008 was that a refusing patient be given a fair chance to decide to cooperate and help or consent to the procedure.

15. HCT Strong went to Patient K.F.'s room about 05:30 a.m. to talk with him about the needed blood draw. K.F. refused to allow the blood draw. HCT Strong showed and explained the Doctor's written order to K.F. and informed him that the blood draw would have to be done by force if he would not consent. HCT Strong left K.F. alone and went to other duties to give K.F. time to think about the blood draw and his participation in it. Two or three other staff members went to Patient K.F. to try to talk him into consenting to the blood draw but he continued to refuse.

16. Petitioner Gooch queried Charge Nurse Swann as to whether the forced blood draw should be carried out in view of K.F.'s defiance and refusal. Charge Nurse Swann had other wards called for assistance so that the forced blood draw could be carried out if K.F. continued to refuse to give consent. Petitioner Gooch, HCT Long, HCT Hicks, and temporary HCT Longtubu all responded to the call for assistance with the possible forced blood draw. Petitioners Swann, Gooch, and Long attempted to talk K.F. into cooperating but he continued to refuse and threatened to fight anyone who tried to collect his blood sample.

17. Patient K.F. left his room and advanced down the hall through a set of double doors leading to the nurses' station. K.F. stood with his back to the double hall doors while facing the nurses' station. When the HCTs approached K.F., he began swinging at them, striking HCT Strong. HCT Gooch put his hands on K.F.'s wrist but K.F. swung HCT Gooch around. As HCTs Strong, Gooch, Long, and Lontubu tried to restrain and contain K.F., who was swinging, kicking, and cursing, they all went to the floor. It is not clear from the surveillance video of the event whether K.F. took himself to the floor or was assisted by the containment efforts of the HCTs.

18. K.F. was contained on the floor in the face down position in which he arrived on the floor. K.F. was maintained on the floor for a very short time to allow him to calm so that the HCTs could transfer him to the restraint room. K.F. was combative and threatening as the HCTs gathered him up and carried him to the restraint room a few feet away. K.F. was carried by five staff members who held him in the same face down position he had been in on the floor. Petitioners and other staff believed this carry to be the safest method available at the time to minimize K.F.'s potential to hurt himself or staff if he managed to escape the restraint. Staff members were spaced around K.F. as he was carried and he was queried as to whether he was experiencing any discomfort. Staff was holding onto his arms, his body, and his legs, which were in a moderate spread eagle position. The Staff successfully were able to contain the combative Patient K.F. and place him onto the restraint bed in the restraint room at approximately 6:07 a.m. K.F. was placed into four point soft cuff restraints even though he continued to threaten and attempt to avoid the application of restraints. K.F. is seen in the surveillance video clasping his right and left hands together behind his back so that the staff had to forcefully pull his hands apart to be able to apply the wrist cuffs. During the application of the soft cuff mechanical restraints, Petitioner Gooch partially climbed onto the side of the restraint bed and placed his knee on K.F.'s leg to continue his efforts to prevent harm to K.F. or the staff while staff were attempting to place soft cuff restraints on K.F.'s legs while Petitioner Gooch was trying to place a soft cuff restraint on K.F.'s right arm. K.F. was asked numerous times during both the manual and mechanical restraints whether he was in any pain or discomfort, to which he consistently replied in the negative.

19. Unit Nursing Director Linda Grimaldi made the decision to terminate the employment of all three Petitioners in these consolidated contested cases because they "restrained the patient K.F. in a face down position and unreasonably confined him". Nursing Director Grimaldi gave testimony under oath describing the events seen on one or more of the surveillance videos while the video played on monitors for all present in the courtroom to view. It was noted by the trier of fact that Nurse Grimaldi tended to state opinions and characterizations of evidence as opposed to observed facts. Such testimony tended to reduce Nursing Director Grimaldi's credibility. Nurse Grimaldi testified during one such viewing period that patient K.F. was remaining "docile" while he was struggling to prevent staff from attaching soft cuffs on his wrists by clasping his hands behind his back, as described in paragraph 18 above.

20. The HCTs checked the soft cuffs to see that they were at proper tightness and not making K.F. uncomfortable. HCT Strong obtained the blood sample as ordered without further incident. Charge Nurse Swann checked on K.F. several times but did not document any recording of his vital signs. She asked him if he could and would remain calm and not hurt anyone if he were released. K.F. replied that he would hurt staff if allowed out of the restraints. Petitioner Swann's supervisor and the on-call doctor were notified that K.F. was in mechanical restraints for the forced blood draw.

21. Jennifer Holton, M.D., was the on-call physician who came into the restraint room at approximately the three minute mark after the blood draw to assess Patient K.F. She found K.F. in no physical distress but agitated. K.F. refused to face Dr. Holton, turning his face away each time she tried to talk with him and threatening to hurt someone if she let him out of the restraints. K.F. refused to contract for the safety of himself or the staff if released. Dr. Holton's judgment was that he was in imminent danger of injury to himself or others if released at that point. Dr. Holton issued an order that K.F. remain in physical restraints for up to a maximum of four hours or until he could calm down and contract for safety if that occurred sooner.

22. Charge Nurse Swann assigned temporary HCT Lontubu the duty of continuous 1:1 observation of Patient K.F. after the blood sample was obtained. HCT Lontubu did some monitoring but not continuous monitoring with full visual contact. Petitioner Swann did not follow up on her assignment to see that it was carried out but documented in the records of this event that it was done. Petitioner Swann was in and out of the restraint room numerous times with the opportunity to see that HCT Lontubu was not carrying out the duties she assigned to him.

23. At approximately 7:02 a.m., HCTs Strong, Lontubu, and two others turned Patient K.F. over so that he no longer was face down on the restraint bed. At approximately 7:15 a.m., HCT Bellamy brought K.F.'s breakfast tray into the restraint room where K.F. agreed to eat his breakfast without violence and did so after his wrist cuffs were released. After eating his breakfast and remaining calm, Patient was released completely at approximately 7:24 a.m. and walked out of the restraint room. K.F.'s total time restrained first in the manual and then the mechanical restraints was approximately one hour and twenty-five minutes.

24. Three surveillance videos were made and preserved of the events of November 18-19, 2008 regarding the manual and mechanical restraints of Patient K.F. for the purpose of a forced blood draw. The complete videos were admitted into evidence in these contested cases with portions of each being viewed in court during the hearing.

25. As of November 18-19, 2008, Respondent had no policy, written or otherwise, which prohibited staff from restraining or carrying a violent, out of control, assaultive patient in a face down position in a case, such as here, where to release the patient or attempt to turn him over would create an even greater risk of injury to the patient or the staff attending him.

26. Respondent's approved intervention strategies, referred to as North Carolina Intervention or NCI, had been taught in the classroom setting upon initial employment, with annual recurrent training, of the HCTs and nurses involved in the forced blood draw with Patient K.F. The NCI strategies neither taught nor prohibited a face down restraint or carry of an out of control patient.

27. No evidence was produced in these contested cases that the Petitioners together or any one of them acted with any intent to harm, injure, or humiliate patient K.F. in carrying out Dr. Rao's order for a blood draw.

28. The evidence produced in this contested case demonstrated that it was within Respondent's parameters of practice for staff to put hands on a patient who had become dangerous to self or others so as to avoid harm to the patient or others. It was acknowledged that the NCI policies and procedures, as demonstrated and taught in a calm classroom setting with mannequins or volunteers, often are not practical in the case of an out of control patient. The testimony of Rickey Strickland, former Acting Director of Staff Development at CRH, Psychiatrist Michael Lancaster, M.D., Acting Director of CRH on November 19, 2008, Ray Tate, HCT III Preceptor with 23 years experience with Respondent, and numerous HCTs provided and supported this evidence.

29. Mark Blotzer was a Patient Advocate at CRH on November 18-19, 2008 and conducted an investigation of the incident which resulted in the termination of employment of the three Petitioners in these cases. As a patient advocate, his duties included investigations of allegations of abuse, neglect, or exploitation of patients residing in Respondent's facility. Advocate Blotzer investigated the allegations against the three Petitioners in these contested cases.

30. Patient K.F. never filed or made a complaint that he was mistreated or harmed by staff during the forced blood draw on November 19, 2008. Advocate Blotzer interviewed patient K.F. on or about November 19, 2008 and was told by patient K.F. that he was not harmed, injured, or suffered pain as a result of the forced blood draw.

31. Advocate Blotzer testified on direct examination that he substantiated abuse of patient K.F. by the three Petitioners because patient K.F. said that the staff had used excessive force.

32. During cross examination, Advocate Blotzer testified that he had asked patient K.F. what could be characterized as a leading question when he asked whether patient K.F. agreed with him that the staff had used excessive force in carrying out the forced blood draw. Patient K.F. agreed with this characterization suggested by advocate Blotzer.

33. Advocate Blotzer admitted on cross examination that his substantiation of abuse of patient K.F. by the three Petitioners in these contested cases was based upon patient K.F.'s agreement with the premise of his question on the use of excessive force by the attending Petitioners during the forced blood draw.

34. Advocate Blotzer made a finding in his report substantiating abuse that patient K.F. had suffered harm, pain, and injury during the forced blood draw even though patient K.F. had stated to the Advocate that he had not suffered such harm, pain, or injury. Advocate Blotzer testified that he put the finding of harm, pain, and suffering in his report as a finding of fact because he felt that it should be so stated because patient K.F. had agreed with his suggestion of excessive use of force by the attending staff. Advocate Blotzer testified that even though there was no written or taught procedure prohibiting the face down carry or restraint of a combative patient, it was an implied prohibition.

35. Advocate Blotzer's testimony was to a great extent based upon his opinions and characterizations of the evidence he gathered during his investigation rather than a report based upon the facts he observed. Advocate Blotzer's credibility as a witness was substantially compromised by his pattern of manipulation of the evidence before him.

36. Petitioners gave patient K.F. a reasonable and fair chance to understand the treatment ordered for him on the morning of November 19, 2008 and to decide whether he would cooperate with the staff.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties properly are before the Office of Administrative Hearings.
2. Petitioners Swann, Gooch, and Long are career State employees as that phrase is used in Chapter 126 of the General Statutes of North Carolina and have constitutionally protected interests in the expectation of continued employment.
3. The evidence produced by Respondent in this contested case hearing of three consolidated cases is insufficient to demonstrate unacceptable conduct by any of the three Petitioners or any conduct amounting to abuse, neglect, or exploitation of patient K.F. Respondent's evidence does not establish just cause under Chapter 126 of the General Statutes of North Carolina for Respondent's discharge of any of the three Petitioners.

4. The evidence produced in this contested case hearing would support a written warning for inadequate performance of duties as to Charge Nurse Swann because of her failure adequately to ensure that patient K. F. continuously was monitored during his mechanical restraint period.
5. Petitioners Swann, Gooch, and Long are entitled to reinstatement in the same or similar positions, back pay, front pay until satisfactory reinstatements are accomplished, and reasonable attorney's fees and costs based upon a petition for same duly prepared and submitted to the State Personnel Commission.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, I find that the evidence in this contested case does not establish just cause for the discharge of Petitioners Gooch, Swann, and Long from Respondent's employment. Petitioners Frederick Gooch, Patricia Swann, and John Long are entitled to reinstatement to the same or similar positions from which they were discharged; back pay; front pay until satisfactory reinstatements occur; and reasonable attorney's fees and costs.

ORDER

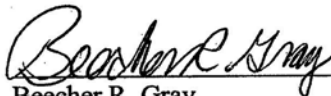
It hereby is ordered that the agency serve a copy of the FINAL DECISION on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. Gen. Stat. § 150B-26(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency making the final decision is the North Carolina State Personnel Commission.

So Ordered, on this the 27 day of October, 2010.

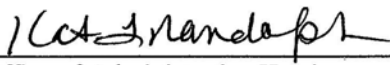

Beecher R. Gray,
Administrative Law Judge

A copy of the foregoing was mailed to:

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ATTORNEY FOR PETITIONERS

Charlene Richardson
Susannah Cox
Assistant Attorneys General
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ATTORNEYS FOR RESPONDENT

This, the 28th day of October, 2010.


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-9001
Phone: 919-431-3000
Fax: 919-431-3100

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DONALD R. BEASON and
MARK C. BEASON,
Petitioners,

v.

NORTH CAROLINA DEPARTMENT
OF THE SECRETARY OF STATE,

Respondent.

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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
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Office of
Administrative Hearings

DECISION

This contested case came on for hearing before Fred Gilbert Morrison Jr., Senior Administrative Law Judge, on August 30, 31, and September 1, 2010, in the Office of Administrative Hearings, Courtroom B, 1711 New Hope Church Road, Raleigh, North Carolina.

Appearing on behalf of Petitioners:

M. Jackson Nichols, Esq.
Allen and Pinnix, P.A.
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Raleigh, North Carolina 27602

Appearing on behalf of Respondent:

North Carolina Department of Justice
Brandon L. Truman, Esq.
Melissa H. Taylor, Esq.
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ISSUE FOR DETERMINATION

Whether Respondent properly assessed Petitioners civil fines for violating Chapter 120C of the North Carolina Lobbying Act, and accompanying administrative rules?

Based upon a preponderance of the admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioners Donald R. Beason ("Don Beason") and Mark C. Beason are residents of Wake County, North Carolina.
2. Respondent North Carolina Department of the Secretary of State ("the Department"), through its Lobbying Compliance Division ("the Division"), is the State agency responsible for regulation of lobbyists and lobbyist principals pursuant to N.C.G.S. §120C-100 *et. seq.* ("The Lobbying Act") and enforcement of Articles 2, 4, and 8 therein, and accompanying administrative rules.
3. Petitioner Don Beason was a registered lobbyist in North Carolina from 1993 until August 20, 2007. During this time period, Don Beason lobbied on behalf of approximately seventy-three (73) lobbyist principals, consisting of twenty (20) associations and fifty-three (53) individual entities. In 2005, Don Beason was ranked as the number one (#1) lobbyist in the state in a survey conducted by the N.C. Center for Public Policy Research. Don Beason resigned as a lobbyist on behalf of his clients in 2007 after publicity concerning a loan he made to then-Speaker of the House Jim Black.
4. Petitioner Mark Beason is Don Beason's son and has been a registered lobbyist in North Carolina since 1999. Don Beason at times supervised Mark Beason. Mark Beason has worked with and for his father since beginning his lobbying career.
5. T. Jerry Williams has been a registered lobbyist in North Carolina since 1971. Mr. Williams has been acquainted with Don and Mark Beason for many years.

6. Don Beason operated a lobbying firm under the name "Beason Government Affairs" during 2007. Don Beason at times employed/engaged his son, Mark, in this business and they shared responsibilities pertaining to providing lobbying services to clients. As of February 2007, Don Beason had established an independent contractor relationship between Beason Government Affairs and T. Jerry Williams. Don Beason had often retained and paid T. Jerry Williams for performing lobbying services on behalf of clients of Beason Government Affairs.

7. Don Beason typically attracted new lobbyist principals, negotiated terms of payment for Beason Government Affairs' services, executed contracts and monitored the work of Mark Beason and T. Jerry Williams, both of whom assisted in fulfilling the objectives of these lobbying contracts. Don Beason and Mark Beason represented many of the same lobbyist principals and shared the same office space. Don Beason found the clients and Mark Beason helped get the job done "lobbywise."

8. Don Beason had extensive knowledge of the newly amended Lobbying Act that took effect on January 1, 2007.

9. N.C. Gen. Stat. §136-28.7, more commonly known as the "Buy America" law, prohibits the North Carolina Department of Transportation ("NCDOT") from allowing the inclusion of imported steel and cement iron products in road construction or repair contracts. The "Buy America" law prohibits foreign and domestic entities from providing imported iron and steel materials to fulfill NCDOT contracts. This law was enacted due in part to concerns regarding the safety and quality of foreign made steel and cement iron products.

10. The Engineering Export Promotion Council ("EEPC") is a trade organization organized by the India Ministry of Commerce to promote export of Indian products, including iron and

steel in foreign markets. EEPC's headquarters in the United States is located in Chicago, Illinois. EEPC's resident director, Rana Roy, was empowered to make decisions on EEPC's behalf and served as the primary contact on behalf of EEPC regarding the 2007 North Carolina lobbying effort by Beason Government Affairs to repeal or amend the "Buy America" law. Mr. Roy was the primary contact between EEPC and Sigma with regard to this lobbying effort.

11. Sigma Corporation ("Sigma") is a New Jersey corporation with a certificate of authority filed in North Carolina for the calendar year of 2007. Sigma imports and sells foreign manufactured cast iron and steel products in the United States and maintains a warehouse in Hamlet, North Carolina. Sigma's authorized officer, Siddharth Bhattacharji, ("Bhattacharji") and Sigma employee, Kevin Mahoney, ("Mahoney") engaged in numerous verbal and written communications with Don Beason on behalf of Sigma and EEPC related to the 2007 North Carolina lobbying effort by Beason Government Affairs to change the "Buy America" law.

12. Star Pipe Products, Limited Partnership ("Star Pipe"), a Texas limited partnership, headquartered in Houston, Texas is a global manufacturer and supplier of a broad array of iron products. Star Pipe imports and sells its products to state and local departments of transportation and road construction contractors. Dan McCutcheon, vice president of Star Pipe, was empowered to make decisions and acted on Star Pipe's behalf regarding the 2007 North Carolina lobbying effort by Beason Government Affairs to repeal or amend the "Buy America" law. Mr. McCutcheon was the primary contact between Star Pipe and Sigma with regard to this lobbying effort. Don Beason did not contract to represent or lobby for Star Pipe.

13. General Foundries, Inc. of New Jersey ("General Foundries") is a New Jersey corporation located in Perth Amboy, New Jersey. General Foundries imports and sells gray iron,

ductile iron, and brass castings. Alex Todani, chief executive officer, was empowered to make decisions and acted on General Foundries' behalf regarding the 2007 North Carolina lobbying effort by Beason Government Affairs to repeal or amend the "Buy America" law. Mr. Todani was the primary contact between General Foundries and Sigma with regard to this lobbying effort. Don Beason did not contract to represent or lobby for General Foundries.

14. Serampore Industries Products (Ltd.) Inc. ("SIP") is a Texas corporation whose headquarters and warehouse are in Houston, Texas. SIP manufactures, imports, and sells Indian construction and municipal iron castings in the United States. Tilak Agarwal, executive vice president, was empowered to make decisions on behalf of SIP for the 2007 North Carolina lobbying effort by Beason Government Affairs to repeal or amend the "Buy America" law. Mr. Agarwal was the primary contact between SIP and Sigma with regard to the lobbying effort. Don Beason did not contract to represent or lobby for SIP.

15. Capitol Foundry of Virginia ("Capitol Foundry") is a Virginia corporation located in Virginia Beach, Virginia. Capitol Foundry imports and sells manufactured iron castings. Lewis "Jim" Corr, president of Capitol Foundry, was empowered to make decisions on behalf of Capitol Foundry for the 2007 North Carolina lobbying effort by Beason Government Affairs to repeal or amend the "Buy America" law. Mr. Corr was the primary contact between Capitol Foundry and Sigma with regard to the lobbying effort. Don Beason did not contract to represent or lobby for Capitol Foundry of Virginia.

16. Sigma and EEPC shared an interest in increasing the import and use of imported Indian municipal castings and other iron products in North Carolina. During late 2006, Sigma officials entered into discussions with Don Beason regarding retaining him to lobby, on behalf of Sigma

and/or EEPC, the executive branch and North Carolina General Assembly concerning repeal or amendment of the "Buy America" law.

17. On November 13, 2006, EEPC representative Ravi Sehgal informed Sigma officer Bhattacharji that he had requested EEPC to convene a meeting on November 22, 2006, to formally approve employing Don Beason to lobby on their behalf in North Carolina to repeal or amend the "Buy America" law during the forthcoming 2007 Session of the General Assembly.

18. On November 28, 2006, Sigma employee Kevin Mahoney requested that Don Beason send a proposed contract for lobbying services for him to forward to EEPC. Donald Beason responded to Mahoney's November 28 email and provided an agreement for his lobbying services. Donald Beason addressed this agreement to EEPC which was located in India although Mahoney worked for Sigma. This proposed contract for services for EEPC included the provision that Mark Beason, T. Jerry Williams, and Donald Beason would perform lobbying services during 2007 for a fee of ninety-five thousand dollars (\$95,000.00). Donald Beason signed the proposed agreement and affixed Mark Beason's signature on the witness line.

19. In response to Don Beason's inquiry concerning the status of the EEPC lobbying proposal, Mahoney sent the following email to Don Beason with a copy to Bhattacharji on January 15, 2007:

I apologize for the delay in our consumption [sic] of the agreement. We are currently experiencing some unexpected delays, and hurdles in the Indian Embassy regarding their legal interpretation of "lobbyists" in general. This does not indicate a lack of interest or necessity for your services, we are very much in need of a lobbyist regarding the current "Buy America" stance of the N.C. congress [sic]. We look forward to working with you on this matter. Please call if you have any questions yourself. Thank you for your patience."

20. Don Beason sent the following email message in response to Mahoney's email:

- a. "The longer you wait, the more difficult this will be. Have you considered having Sigma hire us. Sigma could then bill the other parties for payment."

21. On February 1, 2007, to get the ball rolling, Sigma, on behalf of itself and EEPC with whom it had been working, executed a lobbying contract with Beason Government Affairs for ninety-five thousand dollars (\$95,000.00) plus five-hundred dollars (\$500.00) per month for expenses. This contract included the same language as the previously proposed agreement with EEPC, with the only exceptions being a change in the responsible party from EEPC to Sigma and inclusion of Sarah Price in addition to Mark Beason, T. Jerry Williams, and Donald Beason as persons responsible for providing lobbying services. Donald Beason received a twenty-five thousand dollars (\$25,000.00) retainer for lobbying services

22. Between January 17, 2007 and February 1, 2007, Bhattacharji contacted EEPC, Capitol Foundry, General Foundries, SIP, and Star Pipe to secure each entity's commitment to assist Sigma in paying for the 2007 North Carolina lobbying effort by Beason Government Affairs to repeal or amend the "Buy America" law. Bhattacharji communicated to the other importers that Sigma had already been working with EEPC to find a way to challenge the "Buy America" law that interfered with NCDOT purchase of foreign castings and such an effort was necessary to thwart the North Carolina law to stop growing efforts to have this policy spread to other states.

23. Pursuant to Bhattacharji's negotiations with these entities, EPPC was expected to pay seventy percent (70%) of the cost and the other entities were to divide the remaining thirty percent (30%) of the cost for this North Carolina lobbying effort to be conducted by Beason Government Affairs during 2007. Don Beason was not involved in these negotiations.

24. In early 2007, Don Beason informed Mark Beason that he had been retained by a new lobbying client, Sigma Corporation. At the beginning of 2007, Donald Beason asked T. Jerry

Williams to “work with us” to lobby for Sigma Corporation. T. Jerry Williams was paid by Donald Beason to represent Sigma Corporation. Don Beason also informed Mark Beason that he, Mark, and T. Jerry Williams would lobby on their behalf. Don Beason informed T. Jerry Williams that Mark Beason would take the lead from T. Jerry Williams regarding lobbying activities on behalf of Sigma.

25. Mark Beason was a registered lobbyist for Sigma from March 8, 2007, through December 31, 2007. Mark Beason never reviewed the Sigma contract, never spoke to anyone at Sigma while representing them as a lobbyist prior to the end of the 2007 Session of the General Assembly, and would not have served as a lobbyist for Sigma if Don Beason had not been retained by them. Mark Beason stated that this was his only lobbying client with whom he never directly communicated. It is more likely than not that Mark Beason was also aware of EEPC’s involvement regarding the lobbying efforts to change the “Buy America” law.

26. T. Jerry Williams was a registered lobbyist for Sigma from March 2, 2007 through December 31, 2007. Mr. Williams did not meet with Sigma prior to agreeing to lobby on their behalf. T. Jerry Williams never reviewed the Sigma contract, never spoke to anyone at Sigma while representing them as a lobbyist prior to the end of the 2007 Session of the General Assembly, and would not have served as a lobbyist for Sigma if Don Beason had not retained them as a client. T. Jerry Williams did some research about them, but relied on Don Beason’s recommendation about Sigma.

27. Don Beason was a registered lobbyist for Sigma from May 21, 2007, until he resigned on August 20, 2007. Don Beason regularly updated Sigma representatives Bhattacharji and

Mahoney concerning lobbying activities conducted by himself, Mark Beason, and T. Jerry Williams on their behalf.

28. Mark Beason and T. Jerry Williams were actively involved in lobbying activities on behalf of Sigma with designated individuals in the executive and legislative branches. The Beasons and Mr. Williams regularly met and discussed their lobbying activities and strategies, either in-person or via phone or email, on behalf of Sigma and other clients on a nearly daily basis during the 2007 legislative session. T. Jerry Williams and Don Beason met nearly every Saturday for breakfast during the 2007 legislative session.

29. Between January 1, 2007, and August 2007, Mark Beason, and T. Jerry Williams lobbied at least two DOT “designated individuals,” eight legislators, and three legislative staff members concerning repeal or amendment of the “Buy America” law and DOT enforcement policy concerning this law.

30. On March 26, 2007, Don Beason sent Sigma representative Kevin Mahoney an email with the following text:

“One issue that keeps coming up here is Quality. There is a belief that products made in India do not meet the same quality standards as those produced in the United States. What is the best response to that issue?”

31. On March 30, 2007, a meeting occurred in Washington, D.C., to facilitate the North Carolina lobbying effort to repeal or amend the “Buy America” law being conducted by Beason Government Affairs. This meeting was attended by Don Beason; Sigma representatives Bhattacharji and Mahoney; Rana Roy of EEPC; Capitol Foundry President Jim Corr and another Capitol Foundry employee, Don Poole; and representatives of Multistate Associates, a national lobbying firm. Mark Beason and T. Jerry Williams were not present at this meeting.

32. During the March 30, 2007 meeting, Don Beason stated that NCDOT had expressed concerns regarding the safety and quality of foreign iron castings and he also provided NCDOT "Talking Points" documents to meeting participants recounting the basis for NCDOT's opposition to foreign manufactured iron castings. Don Beason requested that the meeting attendees provide him with evidence to be used in the lobbying effort to rebut these assertions.

33. On April 2, 2007, Sigma representative Mahoney distributed a memorandum of minutes of the March 30, 2007, meeting to representatives of EEPC, Capitol Foundry, General Foundries, SIP, and Star Pipe, summarizing this meeting. This memorandum stated that the state senator Mr. Beason had originally selected to sponsor a bill to repeal or amend the "Buy America" law had opted not to do so due to NCDOT's quality concerns. The memorandum requested each importer to prepare a detailed and fact-based response to these quality concerns to combat the position that importers do not sell quality castings from India.

34. In April 2007, Don Beason submitted a bill for the March 30, 2007, meeting expenses in Washington, D.C., to Mahoney. Mahoney forwarded the email to Bhattacharji who responded directly to Don Beason via email on May 16, 2007, as follows:

"As you are aware, your expenses are being met through efforts of a number of importers as well as the EEPC of India and as a result, though we act as paymasters, we are answerable to a number of people."

35. A copy of this May 16, 2007, message was sent to capitolfoundry@juno.com; eepecchicago@sbcglobal.net; Dan McCutcheon; danm@starpipelineproducts.com; atodani@aol.com; Tilak Agarwal, tilak@sipindustries.com, Kevin Mahoney, km1@sigmaco.com; Gopi Ramanathan, gr11@sigmaco.com, Victor Pais, vp1@sigmaco.com; Karen Barone, kb2@sigmaco.com. Don Beason did not question Bhattacharji regarding why other persons were copied on this email.

36. On May 16, 2007, Don Beason sent a reply message to Bhattacharji indicating that reimbursement of the March 30, 2007, meeting expenses in Washington, D.C., would not be necessary, which stated as follows:

“[T]hanks for your note, it is not necessary for you to pay any of the expenses. I just received something on the response to the NCDOT paper. We will digest that and be ready to move next week.

37. In response to Don Beason’s request for information concerning quality and safety of imported iron, by May 10, 2007, Capitol Foundry, Sigma, and Star Pipe had generated responses which were circulated among the six importers for comment before being provided to Don Beason for his use in his lobbying activities.

38. On May 16, 2007, Bhattacharji emailed the following response to Don Beason’s request for information refuting the NCDOT safety concerns.

“Don, today we will be getting the responses from Capitol Foundry and us with regard to the self serving note put out by NC DOT. I would request you to read through our explanations and formulate a clear and forceful strategy to combat this misinformation. Please feel free to call Jim Corr or me to further elaborate on our position.”

39. On May 16, 2007, Kevin Mahoney sent the following email to Don Beason along with the requested information from the importers refuting NCDOT’s claims concerning the safety and quality of foreign made iron products:

a. “It is important to all of us, that you convey to the NCDOT that we find the claims of the NCDOT libelous and will not stand for the further unfounded degradation of Imported Municipal Castings.”

40. The following individuals were copied on this message: Siddharth Bhattacharji, Brian L.Corr; danm@starpiperproducts.com; RogerJohnson; tilak@sipsindustries.com; atodani@aol.com; ravishgal5@gmail.com; ranaroycal@gmail.com; eepcchicago@sbcglogal.net; Gopi Ramanathan. Don Beason did not question Mahoney concerning why other persons were copied on this email.

41. On May 14, 2007, the Division received lobbyist principal authorizations from Sigma for Don Beason, Mark Beason, and T. Jerry Williams. Don Beason facilitated Sigma's lobbyist principal registration by sending them the appropriate forms with the lobbyist and principal information already completed. When asked by Mahoney what date to include on these forms, May 9, 2007, or February 1, 2007, Don Beason replied that all three forms should be backdated to February 1, 2007. All three lobbyist principal authorization forms were signed by Bhattacharji with a date of February 1, 2007, and received by the Division on May 14, 2007.

42. On May 21 and 23, 2007, T. Jerry Williams, accompanied by Mark Beason, spoke at two North Carolina House of Representatives Transportation Committee meetings concerning the "Buy America" law.

43. On June 26, 2007, Don Beason sent Sigma representative Mahoney the following email in response to a telephone call as to the current status of his efforts:

Kevin: Sorry I missed your call. We are in Committee meetings all day and it is difficult to use the phone. But everyone feels good about the prospects of the Legislature studying (sic) the State's use of Iron products. We will not know for sure for a few more weeks. Stay in touch and we'll do the same. Don.

44. On July 30, 2007, Don Beason provided an additional update to Sigma representative Mahoney regarding the proposed study bill legislation.

45. On July 31, 2007, Don Beason sent an email to Sigma representative Mahoney with:

"The principal supporters are in the House of Representatives. Rep. Nelson Cole, Chair of the House Transportation Committee, has taken the lead for your position. The opposition is lead by Senator Clark Jenkins, Chairman of the Senate transportation [sic] Committee. The Department of Transportation has worked hard against our position and they continue to do so. They have made "safety" the issue..."

46. On August 3, 2007, Don Beason sent an email to Sigma representative Mahoney containing the following message:

The NC DOT has said that iron products from India that they tested had a 20 per cent failure rate. Do you have any information on that test data?

47. On September 4, 2007, Mark Beason and T. Jerry Williams traveled with Don Beason to visit the Sigma office in Cream Ridge, New Jersey. The Beasons and Mr. Williams met with Bhattacharji and Mahoney and EEPC representative Rana Roy to discuss lobbying by Mark Beason and Mr. Williams on their behalf during 2008.

48. On November 30, 2007, T. Jerry Williams sent Sigma an end of year summary describing Beason Government Affairs' lobbying activities during the 2007 Session of the General Assembly. This report stated that Mark Beason, Don Beason, and T. Jerry Williams had conducted the lobbying effort. The report also contained several references to EEPC: "We are sure your legal counsel will know how to word that and perhaps Rana Roy and his staff can help with that wording." "However, we do believe it may be necessary for Rana Roy, Resident Director, Engineering Export Council (EEPC) or his chosen representative of the EEPC, to appear before the Joint Transportation Oversight Committee and speak on behalf of the Council." "We do have a copy of the news release from Rakesh Shah, Chairman of EEPC and that is helpful---." Don Beason did not conceal EEPC's involvement from his son and Williams.

49. Sigma paid Beason Government Affairs a total of one-hundred thousand dollars (\$100,000.00) for lobbying services by Don Beason, Mark Beason, Jerry Williams, and Sarah Price, pursuant to their contract, with the following amounts remitted on or about the following dates:

- a. 2/8/2007 - \$20,000.00
- b. 3/31/2007 - \$21,000.00
- c. 4/2/2007 - \$21,000.00

- d. 5/1/2007 - \$20,500.00
- e. 6/1/2007 - \$15,000.00
- f. 7/31/2007 - \$500.00
- g. 8/31/2007 - \$500.00
- h. 9/4/2007 - \$500.00
- i. 10/2/2007 - \$500.00
- j. 11/1/2007 - \$500.00

50. Sigma periodically sent emails to EEPC, Capitol Foundry, General Foundries, SIP, and Star Pipe including payment invoices and payment acknowledgments for the monies that each organization was contributing toward the 2007 North Carolina lobbying effort to repeal or amend the "Buy America" law. Don Beason was not involved in the sending of these emails.

51. During 2007, Capitol Foundry, General Foundries, SIP, and Star Pipe made the following payments to Sigma for their agreed upon portion of the 2007 North Carolina lobbying costs being paid to Beason Government Affairs:

- a. Capitol Foundry made four payments totaling \$13,787.00;
- b. General Foundries made five payments totaling \$3,883.00;
- c. SIP made two payments totaling \$6,000.00;
- d. Star Pipe made three payments totaling \$4,660.00.

52. On March 26, 2007, April 27, 2007, May 29, 2007, and June 6, 2007, Sigma provided invoice copies to Capitol Foundry, General Foundries, SIP, and Star Pipe, indicating lobbying costs that had been billed to EEPC. It is inconclusive what amount was paid by EEPC.

53. Since the parties could not agree about a protective order covering records, it is inconclusive how much money was received by Mark Beason, Jerry Williams, and Sarah Price from the \$100,000 paid to Beason Government Affairs for lobbying services contracted to be provided by Don Beason, Mark Beason, Jerry Williams, and Sarah Price.

54. In December 2007, Respondent began a formal investigation of Don Beason's lobbying activities, involving many witness interviews and examination of many documents provided by multiple entities. This investigation was principally conducted by Division Special Agent John Lynch with the assistance of other Division staff.

55. In January 2008, Respondent sent Don Beason a letter requesting copies of all his lobbying records and the preservation of lobbying records due to the pending investigation.

56. In November 2009 during an interview with Special Agent Lynch, Don Beason stated that he did not have any records of his 2007 lobbying activity, his computer, or his BlackBerry where they may have been contained. At hearing, Beason stated that his attorney had them.

57. Don Beason and Mark Beason lobbied during 2007 on behalf of Sigma and EEPC and did not disclose the EEPC relationship or file lobbyist expense reports related to EEPC.

58. Sigma filed lobbyist expense reports during 2007 indicating Sigma was paying Don Beason, Mark Beason, and T. Jerry Williams for lobbying services.

59. As a result of the investigation into Don Beason's lobbying activities, Respondent cited EEPC with violations of the Lobbying Act and assessed a civil penalty.

60. As a result of the investigation into Don Beason's lobbying activities, Respondent cited Capitol Foundry for violations of the Lobbying Act and assessed a civil penalty. Capitol Foundry subsequently filed forms in 2010 authorizing Don Beason and Mark Beason, without their

knowledge, to lobby on their behalf in 2007, and lobbyist principal expense reports showing monies paid to Sigma, not Don Beason, for the lobbying effort regarding the Buy America Law.

61. As a result of the investigation into Don Beason's lobbying activities, Respondent cited General Foundries for violations of the Lobbying Act and assessed a civil penalty. General Foundries subsequently filed forms in 2010 authorizing Don Beason and Mark Beason, without their knowledge, to lobby on their behalf in 2007, and lobbyist principal expense reports showing monies paid to Sigma, not Don Beason, for the lobbying effort regarding the Buy America Law.

62. As a result of the investigation into Don Beason's lobbying activities, Respondent cited SIP for violations of the Lobbying Act and assessed a civil penalty. SIP subsequently filed forms in 2010 authorizing Don Beason and Mark Beason, without their knowledge, to lobby on their behalf in 2007, and lobbyist principal expense reports showing monies paid to Sigma, not Don Beason, for the lobbying effort regarding the Buy America Law.

63. As a result of the investigation into Don Beason's lobbying activities, Respondent cited Star Pipe for violations of the Lobbying Act and assessed a civil penalty. Star Pipe subsequently filed forms in 2010 authorizing Don Beason and Mark Beason, without their knowledge, to lobby on their behalf in 2007, and lobbyist principal expense reports showing monies paid to Sigma, not Don Beason, for the lobbying effort regarding the Buy America Law.

64. Don Beason, Mark Beason, and T. Jerry Williams did not register in 2007 to lobby on behalf of EEPC, Capitol Foundry, General Foundries, SIP, or Star Pipe.

65. EEPC, Capitol Foundry, General Foundries, SIP, and Star Pipe did not register in 2007 as lobbyist principals and did not file forms with the Division in 2007 authorizing anybody to lobby on their behalf. Sigma and EEPC were principals. The other four companies were not.

BASED UPON the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of the subject matter and the parties herein pursuant to Article 3 of Chapter 150B and Chapter 120C of the North Carolina General Statutes.
2. Respondent is the State agency in North Carolina responsible for enforcing the rules and regulations that govern enforcement of Articles 2, 4, and 8 of the North Carolina Lobbying Act, N.C. Gen. Stat. § 120C-100 *et seq.*
3. The purpose of the Lobbying Act, N.C. Gen. Stat. § 120C-100 *et seq.*, is to promote full and fair disclosure of lobbying activities and who are paying for such activities.
4. Lobbying consists of any of the following activities: 1) influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family; or 2) developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention of influencing current or future legislative or executive action, or both...N.C. Gen. Stat. §120C-100(a)(10). The activities of Don Beason, Mark Beason, and T. Jerry Williams during 2007 to seek repeal or amendment of the "Buy America" law constituted lobbying.

5. During the year 2007, Don Beason and Mark Beason failed to register as a lobbyist and then lobbied designated individuals on behalf of EEPC in violation of N.C. Gen. Stat. §120C-200 which requires a lobbyist to register for each principal represented.

6. During the year 2007, Don Beason and Mark Beason failed to disclose to designated individuals that they were lobbying on behalf of EEPC in violation of N.C. Gen. Stat. §120C-200(e) which requires such disclosure and 18 NCAC 12.0102(c)(4) & (5) which describe the required form of such disclosure.

7. During the year 2007, Don Beason and Mark Beason failed to file lobbyist reports as a lobbyist for EEPC in violation of N.C. Gen. Stat. §120C-402.

8. The Division was not required to send Don Beason and Mark Beason certified letters notifying them that they had failed to timely file quarterly lobbyist expense reports for EEPC pursuant to N.C. Gen. Stat. §120C-401(e) because Don Beason and Mark Beason failed to adhere to the requirement to register as a lobbyist for this unregistered lobbyist principal.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION

Respondent's Notice of Civil Assessment (\$111,000 penalty with \$500 in registration fees) against Don Beason issued on March 30, 2010, should be upheld in MODIFIED AMOUNTS of a \$6,000 penalty with a \$100.00 registration fee.

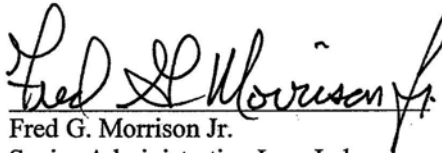
Respondent's Notice of Civil Assessment (\$6,000 penalty with a \$100 registration fee) against Mark Beason issued on March 30, 2010, should be affirmed.

NOTICE AND ORDER

The Decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in N.C. Gen. Stat. §150B-36(b), (b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the Decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. N.C. Gen. Stat. §150B-36(a).

The agency that will make the final decision in this contested case is the North Carolina Department of the Secretary of State.

This is the 22nd day of November, 2010.


Fred G. Morrison Jr.
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

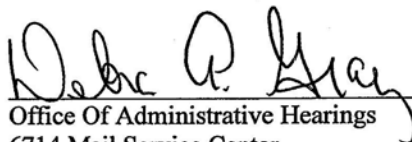
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