

NORTH CAROLINA REGISTER

VOLUME 25 • ISSUE 18 • Pages 2150 - 2196

March 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.

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Office of State Budget and Management
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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
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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
25:24	06/15/11	05/24/11	06/30/11	08/15/11	08/22/11	10/01/11	05/2012	03/11/12
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
26:03	08/01/11	07/11/11	08/16/11	09/30/11	10/20/11	12/01/11	05/2012	04/27/12
26:04	08/15/11	07/25/11	08/30/11	10/14/11	10/20/11	12/01/11	05/2012	05/11/12
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. 82

**PROCLAMATION OF A STATE OF DISASTER
FOR THE TOWN OF WINDSOR**

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

WHEREAS, the Town of Windsor, Bertie County, North Carolina was impacted due to major flooding caused by Tropical Storm Nicole on September 27, 2010; and

WHEREAS, Bertie County declared a local state of emergency on September 29, 2010; and

WHEREAS, the Town of Windsor declared a local state of emergency on September 30, 2010; and

WHEREAS, I have determined that a State of a Disaster, as defined in G.S. §166A-6, existed in the State of North Carolina specifically in the Town of Windsor, Bertie County; and

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria for a Type I disaster are met if: (1) the Secretary of Crime Control and Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) the Town of Windsor and Bertie County has declared a local state of emergency pursuant to N.C.G.S. § 166A-8; (3) the preliminary damage assessment has met or exceeded the State infrastructure criteria set out in G.S. 166A-6.01(b)(2)(a) and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C.G.S. § 166A-6.01, if a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

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

Section 1. Pursuant to N.C.G.S. § 166A-6, a Type I state of disaster is hereby declared for the Town of Windsor, Bertie County.

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

1. Debris clearance
2. Emergency protective measures
3. Repairs to roads and bridges

The town eligible entity shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

Section 3. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this proclamation.

Section 4. This Type I Disaster Declaration shall expire 30 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this Twenty-third of February 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

**Department of Environment and Natural Resources/Division of Water Quality
Pesticide Public Notice**

The North Carolina Division of Water Quality intends to issue a **New** National Pollutant Discharge Elimination General Permit NCG 560000 for the Application of Pesticides as required by Federal appeals court ruling. The draft documents will be available on the web at <http://portal.ncdenr.org/web/wq/swp/ps/npdes/calender>. Persons wishing to comment on the draft may do so until **March 24, 2011**. Additionally there will be a Public Hearing on the permit on **March 21, 2011** at 6:00 pm at the Pitt County Cooperative Extension Center Auditorium, 403 Government Circle, Greenville, NC 27834. Comments can be sent to Division of Water Quality, Attn: Jeff Poupart, 1617 Mail Service Center Raleigh, 27699-1617, Telephone (919) 807-6309. Jeff.poupart@ncdenr.gov. Please be advised that the permit as drafted covers pesticide applications for the following activities in or near Waters of the State: 1. Mosquito control (adulticide), 2. Weed and algae control, 3. Aquatic nuisance animal control, 4. Forest canopy, and 5. Utility easement vegetation control. It exempts pesticide applications to crops.



STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

February 8, 2011

The Honorable Marc Basnight
169 Scuppernon Rd.
Manteo, NC 27954

Re: *Request for Advisory Opinion on Campaign Reporting Question Pursuant to N.C.
Gen. Stat. § 163-278.23*

Dear Senator Basnight:

You have asked for an opinion pursuant to G.S. § 163-278.23 on whether, under Article 22A of Chapter 163 of the General Statutes, the funds of your political committee may be spent continuing your research and advocacy of various policy initiatives that you supported while you campaigned and served in elective office. Such potential expenses include travel for meetings or research trips that would help you expand your knowledge of the impact of climate change on North Carolina, travel and food expenses incurred when meeting with legislators or policymakers on these issues, or printing, writing or other services associated with finalizing or presenting your research to others. The opinion expressed in this letter is provided pursuant to G.S. § 163-278.23.

As you are aware, prior to October 1, 2006, a candidate could spend their campaign funds for any purpose. Legislation enacted in 2006 limited the allowable purposes for campaign expenditures by candidate campaign committees. If the purpose of an expenditure by a candidate campaign committee is not one of the nine allowed by G.S. § 163-278.16B(a), then the expenditure is prohibited. The permissible purposes are as follows:

- (1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.
- (2) Expenditures resulting from holding public office.

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

Letter to Senator Basnight
February 8, 2011
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- (3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
- (4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- (5) Contributions to another candidate or candidate's campaign committee.
- (6) To return all or a portion of a contribution to the contributor.
- (7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.
- (8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.
- (9) Legal expense donation not in excess of four thousand dollars (\$4,000) per calendar year to a legal expense fund established pursuant to Article 22M of Chapter 163 of the General Statutes.

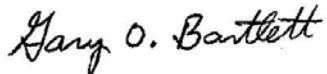
G.S. § 163-278.16B. It is my opinion that these research and issue-advocacy expenditures would be allowable under subparagraph (a)(2) of the statutory provision as they relate to your continuous commitment to issues and matters for which you were engaged while you held public office. Further, you may make expenditures pursuant to subparagraph (a)(3) to any qualified non-profit organization as long as you or a family member are not employed by the organization.

The purpose of G.S. § 163-278.16B is to limit the wide discretion candidates and political committees previously were allowed in how campaign funds were spent. That purpose should be kept in mind by all committees. Whenever a committee is in doubt about whether an expenditure is proper, it should, as has been done here, request an opinion pursuant to G.S. §163-278.23. This statute provides a safe harbor for candidates and political committees that comply with the advice of advisory opinions, even if the advice is ultimately determined to be in error. Because this opinion is based solely on the information you have shared, the opinion would not be binding if the facts changed. Therefore, if the facts with respect to the purposes of your committee's expenditures should change, you will need to contact our office so that we could re-evaluate whether the expenditure would continue to be permissible. As required by law, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Letter to Senator Basnight
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If you should have any questions, please do not hesitate to contact me or Kim Strach,
Deputy Director-Campaign Finance.

Sincerely,



Gary O. Bartlett
Executive Director

cc: Julian Mann III, Codifier of Rules
Kim Westbrook Strach, Deputy Director of Campaign Finance

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

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

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to adopt the rules cited as 04 NCAC 02R .2001-.2003.

Proposed Effective Date: July 1, 2011

Public Hearing:

Date: April 14, 2011

Time: 10:00 a.m.

Location: ABC Commission Offices, 400 East Tryon Road, Raleigh, NC 27610

Reason for Proposed Action: Due to new legislation in the 2010 General Assembly, new rules are needed.

Procedure by which a person can object to the agency on a proposed rule: Interested persons may present oral or written comments at the Rule-Making hearing. In addition, the record will be open for receipt of written comments from March 15, 2011 to May 16, 2011. Written comments not presented at the hearing should be directed to Robert Hamilton. The proposed rules are available for public inspection and copies may be obtained at the Commission's office at: 400 East Tryon Road, Raleigh, NC 27610.

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

Comment period ends: May 16, 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 - ALCOHOLIC BEVERAGE CONTROL
COMMISSION**

**SUBCHAPTER 02R - ORGANIZATIONAL RULES:
POLICIES AND PROCEDURES**

SECTION .2000 – LOCAL BOARD TRAINING

04 NCAC 02R .2001 LOCAL BOARD MEMBERS AND EMPLOYEES

(a) All board members, finance officers and general managers of local boards shall complete a Commission training course for local boards within three months of this Rule's effective date. Completion of a Commission training course for local boards prior to the effective date of this Rule is acceptable. Thereafter:

(1) All board members shall complete a Commission training course for local boards within 12 months of their initial appointment. All board members shall complete a Commission training course for local boards within 12 months of any subsequent appointment.

(2) All finance officers and general managers shall complete a Commission training course for local boards within 12 months of their initial employment.

(3) All finance officers and general managers shall complete a Commission training course for local boards every three years that they are employed by a local board.

(b) Non-Commission training courses are not acceptable forms of training and do not meet the requirements of this Rule.

(c) Board members, finance officers and general managers of local boards that do not meet the requirements of this Section are subject to removal by the Commission as referenced by G.S. 18B-704(c)(iii).

Authority G.S. 18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b).

04 NCAC 02R .2002 LOCAL BOARD TRAINING COURSES

All Commission training courses for local boards shall consist of two hours of ethics as a subject matter and no more than two hours of other subject matter.

Authority G.S. 18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b).

04 NCAC 02R .2003 PARTICIPATION STANDARDS AND ATTENDANCE REQUIREMENTS

(a) Instructors shall require that participants comply with the following participation standards:

- (1) Attendees shall direct their attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
- (2) Attendees shall refrain from engaging in any activities which are distracting to other participants or the instructor, or which otherwise disrupt the orderly conduct of a class.

(b) Instructors may dismiss from a training course any attendee who fails to comply with the participation standards prescribed in Paragraph (a) of this Rule.

(c) Instructors shall not issue a training course completion certificate to any attendee who fails to comply with the participation standards set forth in Paragraph (a) of this Rule, nor shall instructors include the name of such attendee on their reports verifying completion of a training course. Instructors shall submit to the Commission with their reports for the training course a written statement which includes the name of the attendee and the name of the attendee's local board for whom the instructor does not report course credit, details concerning the attendee's failure to comply with the participation standards, and names of other persons in attendance at the class who witnessed the attendee's conduct.

(d) Attendees must complete at least 90 percent of a Commission local board training course to be issued a local board training course completion certificate. Attendees shall not be admitted to a scheduled local board training course after 10 percent of the allotted time has elapsed. Instructors may not make any exceptions to the attendance requirement.

Authority G.S. 18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b).

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 rules cited as 11 NCAC 16 .0101, .0501, .0503 and repeal the rules cited as 11 NCAC 16 .0102, .0104.

Proposed Effective Date: July 1, 2011

Public Hearing:

Date: April 1, 2011

Time: 10:00 a.m.

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

Reason for Proposed Action:

11 NCAC 16 .0101 – to be amended in lieu of rules 16 .0102 & .0104 being repealed.

11 NCAC 16 .0102 – is being repealed because that same data is currently available from the NAIC database – this regulation is no longer needed.

11 NCAC 16 .0104 – is no longer necessary because the data requested provides no useful information to the Department, the state legislature or the public; the data requested goes well beyond the data requested in the statute cited.

11 NCAC 16 .0501 – is amended because the statute refers to a minimum loss ratio and does not state anything about a maximum rate. Therefore the maximum rates is not legally proper. The insurance industry would become free to use any actuarially supported rate, b/c there would no longer be a maximum. However, their loss ratio results would be required to meet a minimum loss ratio which represents the original intention of the statute.

11 NCAC 16 .0503 - The proposed amendment to 16.0503 is necessary as a result of the proposed change to 16.0501 (deleting the single premium rate) then the current language in 16.0503 would become unnecessary and obsolete.

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to this rule until the expiration of the comment period on May 16, 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: May 16, 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

- (3) — ~~The completion of a series of interrogatories concerning the company's loss reserving practices.~~

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

Authority G.S. 58-2-40; 58-2-190.

SECTION .0100 - FIRE AND CASUALTY STATISTICAL DATA

11 NCAC 16 .0104 PROFESSIONAL LIABILITY INSURANCE

11 NCAC 16 .0101 APPLICABILITY

The following Rules describe certain statistical data that shall be submitted to the Actuarial Services Division on a regular basis.

- (1) — ~~11 NCAC 16 .0102 applies to all fire and casualty companies licensed or approved to do business in North Carolina.~~
(2)(1) 11 NCAC 16 .0103 applies to all companies that write North Carolina nonfleet private passenger automobile insurance and to all statistical organizations that collect data relating to that line of insurance.
(3) — ~~11 NCAC 16 .0104 applies to all companies that write North Carolina professional liability insurance and all North Carolina self insurers of professional liability exposures.~~
(4)(2) 11 NCAC 16 .0105 applies to all companies that provide professional liability insurance to more than two percent of the insured physicians and surgeons in North Carolina.
(5)(3) 11 NCAC 16 .0106 applies to all companies that write North Carolina credit property insurance.
(6)(4) 11 NCAC 16 .0107 applies to all companies that write North Carolina nonfiling insurance.

~~To fulfill the requirements of G.S. 58-2-170, every insurer, self insurer, and risk retention group that provides professional liability insurance in North Carolina shall complete annually a Professional Liability Report form. This form is contained on a diskette that is mailed in the early part of each year (applicable to the prior year) by the Actuarial Services Division. Unless otherwise specified, an automatic extension of three months will be granted, making the report due on May 1. Individual companies shall supply the information described in this Rule on both a net and a direct basis. (Note: All licensed insurers, approved surplus lines carriers, and registered risk retention groups that do not insure any professional liability exposures in North Carolina shall submit a statement to that effect, which will be kept in the Department's files. If subsequently such a company begins to insure such exposures, it shall notify the Department within 30 days of this change. All self insurers of professional liability exposures must notify the Department of their status as self insurers in a letter to the Actuarial Services Division.)~~

- (1) — ~~Number of claims pending at the beginning of the year;~~
(2) — ~~Number of claims pending at the end of the year;~~
(3) — ~~Claims closed with payment (after court judgment, other, and total);~~
(4) — ~~Claims closed without payment (after court judgment, other, and total);~~
(5) — ~~Amount of claims closed with payment of court judgment (highest, lowest, average, median);~~
(6) — ~~Amount of claims closed with payment of out of court settlement (highest, lowest, average, median);~~
(7) — ~~Total payments made prior to the latest year on claims closed in that year;~~
(8) — ~~Total payments made in the latest year on claims pending at the end of that year;~~
(9) — ~~Average loss reserve per claim pending at the beginning of the year and at the end of the year (case reserve, IBNR reserve, total);~~
(10) — ~~Direct premium written and earned;~~
(11) — ~~Allocated loss adjustment expenses paid, unallocated loss adjustment expenses paid, and other underwriting expenses paid;~~
(12) — ~~Average loss reserve per claim pending at the beginning of the year and at the end of the year (case allocated reserve, IBNR allocated reserve, unallocated reserve, total).~~

Authority G.S. 58-2-40(1); 58-2-190.

11 NCAC 16 .0102 LOSS RESERVES

~~After a company is licensed, approved, or registered to do business in North Carolina and it is deemed necessary for data collection purposes, the Actuarial Services Division will mail to the company forms, instructions, and a diskette so that the company can complete the requested items involving loss reserve information from the list described in this Rule. The company will have two months from the receipt of the request to comply. (Note: Companies that are part of a group pooling arrangement may submit consolidated information.)~~

- (1) — ~~The reproduction on diskette of the following portions of Schedules O and P of the company's Annual Statements for the years 1981-1988 or for those years during that period when the company was in operation:~~
(a) — ~~Schedule O, Parts 3, 4, and 5;~~
(b) — ~~Schedule P, Parts 1A through 1F.~~
(2) — ~~The reproduction on diskette of Schedule P, Parts 1A through 1Q of the company's Annual Statements for the years 1989 and subsequent or for those years during that period when the company was in operation.~~

Authority G.S. 58-2-170; 58-2-190.

**SECTION .0500 - CREDIT UNEMPLOYMENT
MINIMUM LOSS RATIO STANDARD**

**11 NCAC 16 .0501 MINIMUM INCURRED LOSS
RATIO; ALTERNATE MAXIMUM RATE**

(a)—The premium rates charged for credit unemployment insurance shall be reasonable in relation to the benefits provided as indicated by a minimum annual incurred loss ratio of 60%.

~~(b) In lieu of the minimum ratio in Paragraph (a) of this Rule, a single premium rate that does not exceed two dollars and ten cents (\$2.10) per one hundred dollars (\$100.00) of initial insured indebtedness per year for credit unemployment insurance is reasonable in relation to the benefits provided.~~

Authority G.S. 58-2-40; 58-57-70; 58-57-110(a).

**11 NCAC 16 .0503 GENERAL SUBMISSION
REQUIREMENTS**

(a) All credit unemployment minimum incurred loss ratio compliance demonstrations shall be submitted to and stamped received by the Life and Health Division. All submitted demonstrations shall be submitted no later than March 31, of each calendar year, to become effective during the calendar year of submission, with the exception of submitted demonstrations for use in calendar years 1994 through 1996.

(b) All experience used in the demonstration of compliance shall only be North Carolina experience.

(c) All compliance demonstrations shall be submitted, in accordance with this Rule, to the Life and Health Division each succeeding year for reevaluation.

~~(d) Demonstration of compliance, as specified in this Rule, shall not be effective until January 1, 1997, when using a rate other than the monthly outstanding balance rate prescribed in Rule .0501 of this Section. Compliance with this Rule for calendar years 1994 through 1996 shall be satisfied by the submission of an actuarial memorandum, by a qualified actuary, demonstrating that the submitted credit unemployment insurance rates for calendar years 1994 through 1996 are expected to produce at least a 60% incurred loss ratio.~~

~~(e) Use of the single premium rate prescribed in Rule .0501 of this Section does not require a demonstration of compliance as stated in Paragraph (d) of this Rule.~~

~~(f)(d)~~ The following information shall be submitted in regards to the qualified actuary:

- (1) Name of the qualified actuary;
- (2) Professional designations of the qualified actuary, e.g. A.S.A., F.S.A., or M.A.A.A.;
- (3) Name and address of the company or actuarial consulting firm employing the qualified actuary; and
- (4) Telephone number (including extension) of the qualified actuary.

~~(g)(e)~~ The qualified actuary shall include in the credit unemployment rate request a written statement certifying the following:

- (1) That the qualified actuary (Name of qualified actuary) has reviewed Rules .0501 through .0504 of this Section;

- (2) That the qualified actuary certifies that all submitted calculations and data preparation are in conformity with Rules .0501 through .0504 of this Section; and
- (3) All data submitted are accurate and in conformity with Rule .0502 of this Section.

Authority G.S. 58-2-40; 58-57-70; 58-57-110(a).

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to adopt the rule cited as 13 NCAC 13 .0214 and amend the rules cited as 13 NCAC 13 .0101, .0103, .0202-.0204, .0208-.0209, .0211-.0212, .0301, .0401, .0404, .0406, .0408-.0412.

Proposed Effective Date: *July 1, 2011*

Public Hearing:

Date: *March 31, 2011*

Time: *10:00 a.m.*

Location: *4 W. Edenton Street, 2nd Floor, Room 205, Raleigh, NC 27601*

Reason for Proposed Action: *Pursuant to G.S. 95-69.14, the Commissioner of Labor may, after consultation with the Board of Boiler and Pressure Vessels Rules, adopt, modify, or revoke any rules and regulations governing the construction, installation, repair, alteration, inspection, use, and operation of boilers and pressure vessels as the Commissioner deems appropriate to ensure the safe operation and avoidance of injury to person or property from boilers and pressure vessels. The Board of Boiler and Pressure Vessels Rules last met on June 10, 2010 and as a result of that meeting are proposing the above referenced changes Title 13, Chapter 13 of the NC Administrative Code. In addition to ensuring the safety of citizens in North Carolina, the referenced modifications and adoptions are necessary in order to ensure that the administrative rules governing boiler and pressure vessels in North Carolina conform as nearly as possible to the standards of the National Board Inspection Code, the American Society of Mechanical Engineers and the amendments and interpretations of those engineering standards.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, NC 27699-1101; or via facsimile at (919) 733-4235. Objections may also be submitted during the public hearing conducted on the proposed adoption and amendments. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on May 16, 2011.*

Comments may be submitted to: *Erin T. Gould, Assistant Rulemaking Coordinator, 1101 Mail Service Center, Raleigh, NC 27699-1101; phone (919) 733-7885; fax (919) 733-4235; email erin.gould@labor.nc.gov*

Comment period ends: *May 16, 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 13 - BOILER AND PRESSURE VESSEL

SECTION .0100 - DEFINITIONS

13 NCAC 13 .0101 DEFINITIONS

The following definitions apply throughout the rules in this Chapter, and shall be construed as controlling in case of any conflict with the definitions contained in any other standard or code:

- (1) "Accepted Design and Construction Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME Code), or a comparable code with standards that the Chief Inspector determines to be as safe as the ASME Code.
- (2) "Appurtenance" means any control, fitting, appliance or device attached to or working in conjunction with the boiler proper or pressure vessel.
- (3) "ASME Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.
- (4) "Audit" means activities, other than those identified as certificate inspections, conducted by the Chief Inspector or his designee. These activities include, in part:
 - (a) reviews and surveys for ASME and National Board stamp issuance and renewal;

- (b) audits conducted on an authorized inspector at the location of a manufacturer or repair organization as may be required by the ASME Code, National Board Inspection Code, or National Board Rules for Commissioned Inspectors; and
 - (c) audits pursuant to evaluation for the issuance of North Carolina Specials.
- (5) "Automatically fired boiler" means a boiler that cycles automatically in response to a control system and which does not require a constant attendant for the purpose of introducing fuel into the combustion chamber or to control electrical input.
 - (6) "Authorized Inspection Agency" means an organization employing commissioned inspectors including the following:
 - (a) the Department of Labor, Boiler Safety Bureau;
 - (b) an inspection agency of an insurance company licensed to write boiler and pressure vessel insurance; or
 - (c) an owner-user inspection agency that meets the requirements of G.S. 95-69.15.
 - (7) "Authorized inspector" means an employee of an Authorized Inspection Agency who is commissioned by the National Board and this State, holds an appropriate endorsement on his/her National Board Commission, and inspects as the third party inspector in ASME Code manufacturing facilities.
 - (8) "Boiler", as defined in G.S. 95-69.9(b), includes the following types of boilers:
 - (a) "Exhibition boiler" means a historical or antique boiler which generates steam or hot water for the purposes of entertaining or educating the public or is used for demonstrations, tourist travel or exhibitions. This term includes steam tractors, threshers, steam powered sawmills, and similar usages.
 - (b) "High pressure boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig, or water is heated to a temperature greater than 250°F and a pressure greater than 160 psig for use external to itself. High pressure boilers include the following:
 - (i) Electric boilers.
 - (ii) Miniature boilers.
 - (iii) High temperature water boilers.
 - (iv) High temperature liquid boilers (other than water).

- (c) "Low pressure boiler" means a boiler in which steam or other vapor is generated at a pressure of not more than 15 psig, or water is heated to a temperature not greater than 250°F and a pressure not greater than 160 psig, including the following:
 - (i) "Hot water heating boiler" means a low pressure boiler that supplies heated water that is returned to the boiler from a piping system and is used normally for building heat applications (hydronic boiler).
 - (ii) "Hot water supply boiler" means a low pressure boiler that furnishes hot water to be used externally to itself (domestic water boiler).
 - (iii) "Steam heating boiler" means a low pressure boiler that generates steam to be used normally for building heat applications.
- (d) "Model hobby boiler" means a boiler which generates steam, whether stationary or mobile, where the boiler does not exceed 20 square feet heating surface, a shell diameter of 16 inches, a volume of 5 cubic feet and a pressure not exceeding 150 psig and is used for the purpose of entertainment or exhibiting steam technology.
- (e) "Water heater" means a closed vessel in which water is heated by the combustion of fuel, by electricity, or by any other source and withdrawn for potable use external to the system at pressures not exceeding 160 psig and temperatures not exceeding 210°F.
- (9) "Boiler blowoff" means that system associated with the rapid draining of boiler water to remove concentrated solids which have accumulated as a natural result of steam generation. This term also applies to the blowoff for other boiler appurtenances, such as the low-water fuel cutoff.
- (10) "Boiler proper or pressure vessel" means the internal mechanism, shell, and heads of a boiler or pressure vessel terminating at:
 - (a) the first circumferential joint for welded end connections;
 - (b) the face of the first flange in bolted flange connections; or
 - (c) the first threaded joint in threaded connections.
- (11) "Bureau" means the Boiler Safety Bureau of the North Carolina Department of Labor.
- (12) "Certificate inspection" means an inspection, the report of which is used by the Chief Inspector as justification for issuing, withholding or revoking the inspection certificate. The term certificate inspection also applies to the external inspection conducted in accordance with this Chapter whether or not a certificate is intended to be issued as a result of the inspection.
- ~~(13) "Certificate of competency" means the certificate issued by the Commissioner to a person who has passed the National Board inspectors examination.~~
- ~~(14)~~(13) "Condemned boiler or pressure vessel" means a boiler or pressure vessel:
 - (a) that has been found not to comply with G.S. Chapter 95, Article 7A, or this Chapter;
 - (b) that constitutes a menace to public safety; and
 - (c) that cannot be repaired or altered so as to comply with G.S. Chapter 95, Article 7A, and this Chapter.
- ~~(15)~~(14) "Coil type watertube boiler" means a boiler having no steam space, such as a steam drum, whereby the heat transfer portion of the water containing space consists only of a coil of pipe or tubing.
- ~~(16)~~(15) "Commissioned inspector" means an employee of an Authorized Inspection Agency that is commissioned by the National Board and the State of North Carolina and who is charged with conducting in-service inspections of pressure equipment and inspecting repairs or alterations to that equipment.
- ~~(16)~~ "Defect" means any deterioration to the pressure equipment affecting the integrity of the pressure boundary or its supports. Defects may be cracks corrosion, erosion, bags, bulges, blisters, leaks, broken parts integral to the pressure boundary such as stays, or other flaws identified by NDE or visual inspection.
- (17) "Deficiency" means any violation of the Uniform Boiler and Pressure Vessel Act or this Chapter or identified defects.
- ~~(17)~~(18) "Design criteria" means accepted design and construction code requirements relating to the mode of design and construction of a boiler or pressure vessel.
- ~~(18)~~(19) "External inspection" means an inspection of the external surfaces and appurtenances of a boiler or pressure vessel. An external inspection may entail the "shutting down" of a boiler or pressure vessel while it is in operation, including inspection of internal surfaces, if the inspector determines this action is warranted.

- ~~(19)~~(20) "Hydropneumatic storage tank" means a pressure vessel used for storage of water at ambient temperature not to exceed 120°F and where a cushion of air is contained within the vessel.
- ~~(20)~~(21) "Imminent danger" means any condition or practice in any location that a boiler or pressure vessel is being operated which is such that a danger exists, and which could reasonably be expected to cause death or serious physical harm immediately if the condition is not abated.
- ~~(21)~~(22) "Insurance inspector" means the special inspector employed by an insurance company, and holding a valid North Carolina Commission and National Board Commission.
- ~~(22)~~(23) "Internal inspection" means as complete an examination as can reasonably be made of the internal and external surfaces and appurtenances of a boiler or pressure vessel while it is shut down.
- ~~(23)~~(24) "Maximum allowable working pressure (MAWP)" means the maximum gauge pressure as determined by employing the stress values, design rules and dimensions designated by the accepted design and construction code or as determined by the Chief Inspector in accordance with this Chapter.
- ~~(24)~~(25) "Menace to public safety" means a boiler or pressure vessel that cannot be operated without a risk of injury to persons and property.
- ~~(25)~~(26) "Miniature boiler" means a boiler which does not exceed any of the following:
- (a) 16 inch inside shell diameter;
 - (b) 20 square feet of heating surface (does not apply to electrically fired boilers);
 - (c) 5 cubic feet volume; and
 - (d) 100 psig maximum allowable working pressure.
- ~~(26)~~(27) "National Board Commission" means the commission issued by the National Board to those individuals who have passed the National Board commissioning examination and have otherwise fulfilled the requirements of the National Board Rules for Commissioned Inspectors.
- ~~(27)~~(28) "National Board Inspection Code (NBIC)" means the ANSI/NB-23 standard published by the National Board, as adopted by the Bureau.
- (29) "Nondestructive examination (NDE)" means examination methods used to verify the integrity of materials and welds in a component without damaging its structure or altering its mechanical properties. NDE may involve surface, subsurface, and volumetric examination. Visual inspection, x-rays, and ultrasound are examples of NDE.
- ~~(28)~~(30) "Nonstandard boiler or pressure vessel" means:
- (a) high pressure boilers contracted for or installed before December 7, 1935;
 - (b) heating boilers contracted for or installed before January 1, 1951;
 - (c) pressure vessels contracted for or installed before January 1, 1976;
 - (d) hydropneumatic storage tanks contracted for or installed before January 1, 1986; and
 - (e) boilers or pressure vessels for which the ASME Code is not intended to apply, other than those boilers and pressure vessels to which the term North Carolina Special applies.
- ~~(29)~~(31) "Normal working hours" means between the hours of 6:00 AM and 6:00 PM, Monday through Friday, except for state recognized holidays established in 25 NCAC 01E.0901.
- ~~(30)~~(32) "North Carolina Commission" means the commission issued by the Board, to holders of a National Board Commission, authorizing them to conduct inspections in this State.
- ~~(31)~~(33) "North Carolina Special" means a boiler or pressure vessel that is not constructed under the accepted design and construction code and for which the owner/operator must apply for a special inspection certificate with the Chief Inspector.
- ~~(32)~~(34) "NPS" means nominal pipe size.
- ~~(33)~~(35) "Nuclear component" means the items in a nuclear power plant such as pressure vessels, piping systems, pumps, valves, and component supports.
- ~~(34)~~(36) "Nuclear system" means a system comprised of nuclear components which collectively serve the purpose of producing and controlling an output of thermal energy from nuclear fuel and includes those associated systems essential to the function and overall safety of the power system.
- ~~(35)~~(37) "Operating pressure" means the pressure at which a boiler or pressure vessel operates. It shall not exceed the MAWP except as shown in Section I of the ASME Code for forced flow steam generators.
- ~~(36)~~(38) "Owner or user" means any person or legal entity responsible for the operation of any boiler or pressure vessel installed in this State. This term also applies to a contractor, installer, or agent of the owner or user, as applicable.
- ~~(37)~~(39) "Owner-user inspector" means an individual who holds a valid North Carolina Commission and National Board Commission and is employed by a company operating pressure vessels for its own use and not for resale, and maintains an inspection program that meets the requirements of the National Board for

periodic inspection of pressure vessels owned or used by that company.

~~(38)~~(40) "Pressure piping" means piping including welded piping, external to high pressure boilers from the boiler proper to the required valve(s).

~~(39)~~(41) "Pressure relief devices" mean the devices on boilers and pressure vessels set to open and relieve the pressure in the event of an over pressurization event, and include the following:

(a) "Non-reclosing pressure relief device" means a pressure relief device designed to remain open after operation and includes a rupture disk which is a non-reclosing pressure relief device actuated by static pressure upstream of the device and designed to function by the bursting of a pressure retaining disk.

(b) "Pressure relief valve" means a pressure relief device that is designed to reclose and prevent the further flow of fluid after normal conditions have been restored. These devices include:

(i) "Relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve which opens further with the increase in pressure over the opening pressure.

(ii) "Safety relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action or by opening in proportion to the increase in pressure over the opening pressure.

(iii) "Safety valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action.

~~(40)~~(42) "PSIG" means pounds per square inch gauge.

~~(41)~~(43) "Reinspection or Follow-Up Inspection" means as complete an examination as is necessary to verify that any repair or corrective action required as a result of a certificate inspection is completed.

~~(42)~~(44) "Service vehicle" means a vehicle mounted with an air storage tank and often with other storage tanks that have oil, grease or other fluids. The purpose of the vehicle is to service

vehicles and equipment in the field away from the owners shop.

~~(43)~~(45) "Shop inspection" means an inspection conducted by an Authorized Inspector pursuant to an inspection service agreement whereby the fabrication process or the repair or alteration of a boiler or pressure vessel is observed to ensure compliance with ASME and the National Board.

~~(44)~~(46) "Special inspection" means any inspection conducted by a Deputy Inspector other than a regularly scheduled inspection. Special inspection also includes the performance of an inspection by a Deputy Inspector which requires that the inspector make a special trip to meet the needs of the individual or organization requesting the inspection, including conducting certificate inspections during hours other than normal working hours, and inspection of field repairs and alterations.

~~(45)~~(47) "Special inspector" means a National Board commissioned inspector employed by an insurance company authorized to write boiler and pressure vessel insurance in the state of North Carolina.

~~(46)~~ "Violation" means the failure to comply with the requirements of the Uniform Boiler and Pressure Vessel Act or this Chapter.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0103 INCORPORATED - STANDARDS

The following standards are incorporated by reference, including subsequent amendments and editions of the standards. The rules of this Chapter shall control when any conflict between these Rules and the following standards exists.

(1) The ANSI/NB-23 National Board Inspection Code ~~(NBIC)~~ (NBIC) Parts 2 and 3. Copies of the ANSI/NB-23 National Board Inspection Code Parts 2 and 3 are available for inspection at the offices of the Bureau and may also be obtained from the National Board of Boiler and Pressure Vessel Inspectors, via U.S. Mail at 1055 Crupper Avenue, Columbus, Ohio 43299, via telephone at (614) 888-8320, or via the internet at www.nationalboard.org. The cost is one-hundred and fifty dollars (\$150.00) per ~~copy~~ NBIC hard copy edition (complete set); sixty-five dollars (\$65.00) for one part only; and/or one-hundred thirty dollars (\$130.00) for two parts only, plus shipping and handling.

(2) The American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. Copies of the complete set of the ASME Code are available for inspection at the offices of the Bureau and may also be obtained from the American Society of Mechanical Engineers, via U.S. Mail at ~~22 Law Drive,~~

P.O. Box 2300, Fairfield, New Jersey 07007-2300, via telephone at (800) 843-2763, via facsimile at (973) 882-1170, via email at infocentral@asme.org, or via the internet at www.asme.org. The cost is ~~ten thousand nine hundred dollars (\$10,900.00)~~ fourteen thousand five hundred dollars (\$14,500) per set.

- (3) The North Carolina State Building Code. Copies of the North Carolina State Building Code are available for inspection at the offices of the Bureau and may also either be obtained from the North Carolina Department of Insurance, Office of the State Fire Marshall, Engineering Division, Codebook Section, via ~~U.S. Mail walk-in~~ at 322 Chapanoke Road, Suite 200, Raleigh, North Carolina 27603, or from the International Code Council via telephone at (919) 661-5880; (800) 786-4452 or via the internet at www.ncdoi.com/OSFM/ www.ncdoi.com/OSFM/Engineering/CodeServices/engineering_codeservices_sales.asp. The cost is ~~fifty dollars (\$50.00)~~ one hundred sixteen dollars (\$116.00) per copy.

Authority G.S. 95-69.11; 95-69.14.

SECTION .0200 - ADMINISTRATION

13 NCAC 13 .0202 INSPECTOR QUALIFICATION

(a) Deputy Inspectors conducting certificate inspections shall be in possession of a valid North Carolina Commission. Special Inspectors and Owner-User Inspectors shall be in possession of a National Board Commission and a North Carolina Commission.

(b) ~~A~~ At no cost, a North Carolina Commission shall be issued to an inspector ~~who~~ who:

- (1) has attained a passing grade of 70 percent or higher on ~~passed~~ an examination administered by the Chief Inspector ~~on relating to the Uniform Boiler and Pressure Vessel Act and the rules of this Chapter.~~ Chapter. and
- (2) meets all other criteria as set forth in the Uniform Boiler and Pressure Vessel Act and this Chapter.

~~There is no fee for this examination.~~

(c) If an inspector's North Carolina Commission becomes inactive for more than one calendar year, or if the inspector does not conduct at least one inspection in North Carolina per calendar year, the inspector must retake and pass this examination before becoming active again in this state.

(d) National Board examinations are administered ~~on the first Wednesday and Thursday of March, June, September and December.~~ Applicants for the examination shall contact the Chief Inspector by the 10th of the month prior to the month in which they desire to sit for the examination by the National Board of Boiler and Pressure Vessel Inspectors through Applied Measurement Professionals ("AMP"). Information on the examinations may be found on the National Board web site at www.nationalboard.org or by telephone at (614) 888-8320.

(e) The National Board Inservice Inspector examination covers the ~~construction~~, installation, operation, maintenance and repair of boilers and pressure vessels and their ~~appurtenances, and is administered upon payment to the Department of Labor of a fee of one hundred dollars (\$100.00).~~ Unsuccessful Applicants who desire to retake the National Board examination must pay an additional one hundred dollar (\$100.00) fee before retaking the examination. appurtenances. A grade of 70 percent or higher must be attained to achieve a passing grade on the examination.

(f) ~~A grade of 70 percent or greater must be attained to achieve a passing grade on both examinations.~~

Authority G.S. 95-69.11; 95-69.15.

13 NCAC 13 .0203 NORTH CAROLINA COMMISSION

(a) When requested by the ~~employer,~~ employer and upon presentation of a properly completed Application for Commission as an Inspector of Boilers and Pressure Vessels, a North Carolina Commission, bearing the signature of the Commissioner, shall be issued by the Board to persons holding a valid National Board Commission who have taken and passed the examination specified in 13 NCAC 13 .0202(b).

(b) ~~Requests~~ Applications for a North Carolina Commission shall be processed upon proof of a National Board Commission and payment of a twenty five dollar (\$25.00) fee to the Department of Labor.

(c) North Carolina Commissions are valid through December 31, at which time the inspector's employer shall submit a renewal ~~application-request letter~~ and a twenty five dollar (\$25.00) fee to the Department of Labor.

(d) The North Carolina Commission shall be returned by the employing company with notification of termination date to the Bureau within 30 days of termination of employment.

(e) A North Carolina Commission may be suspended or revoked by the Board in accordance with G.S. 95-69.13 for incompetence, untrustworthiness or falsification of any statement in an application or inspection report. The Board shall give notice of the commencement of proceedings for suspension or revocation of a commission pursuant to G.S. 150B-23. A North Carolina Commission may be suspended prior to the hearing if the Chief Inspector determines that the public health, safety or welfare requires this action. In this case, the proceedings shall be promptly commenced and determined in accordance with G.S. 150B-3. The Board's decision regarding the competency of an inspector shall be determined after consideration of the knowledge, skill, and care ordinarily possessed and employed by boiler and pressure vessel inspection personnel in good standing. Industry custom and practice shall be considered but are not determinative. Failure to conduct the inspections in accordance with this Chapter shall constitute incompetence. The inspector shall be given the opportunity to show that he is conducting his duties in a competent manner and that suspension or revocation is unwarranted. If the inspector believes that the decision of the Board is not warranted, he may file a petition for judicial review pursuant to Article 4 of Chapter 150B of the N.C. General Statutes.

Authority G.S. 95-69.11; 95-69.15.

13 NCAC 13 .0204 CONFLICT OF INTEREST

~~Any~~ Any inspector or his/her supervisor and managers holding commissions in North Carolina shall not engage in any conduct or endeavor that would constitute a conflict of interest including the following:

- (1) Ownership or employment in any kind of boiler or pressure vessel sales or service business;
- (2) Ownership or employment in any kind of boiler or pressure vessel parts or appurtenances sales or service business;
- (3) Consultative services for accepted design and construction codes or National Board quality program design or implementation; or
- (4) Inspection services outside the purview of the employing entity.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0208 INSURANCE COMPANIES TO NOTIFY CHIEF INSPECTOR

(a) All insurance companies shall notify the Chief Inspector within 30 days regarding actions taken on all boiler or pressure vessel risks, including:

- (1) the issuance of a policy;
- (2) the cancellation of a ~~policy;~~ policy; or
- ~~(3) the non-renewal or suspension of a policy because of unsafe conditions; or~~
- ~~(4)~~(3) removal of a boiler or pressure vessel from service.

(b) All insurance companies shall notify the Chief Inspector within 10 days regarding the non-renewal or suspension of a policy because unsafe conditions.

~~(b)(c) Such notification~~ Notification for items listed under Paragraph (a) of this Rule shall be made by using the National Board form NB-4, or a form determined by the Chief Inspector to be equivalent to the National Board form, form. Notifications under Paragraph (b) of this Rule shall be made by telephone at (919) 807-2760, email at boiler.safety@labor.nc.gov or overnight mail or package delivery service to the Boiler Safety Bureau, B506, 111 Hillsborough St., Raleigh, NC 27603. and All notifications shall include reference to the following:

- (1) Object, date of service and effective date;
- (2) Owner's number;
- (3) Jurisdiction number;
- (4) National Board number;
- (5) Name of manufacturer;
- (6) Name of owner including county;
- (7) Location of object including county;
- (8) User of object;
- (9) Date of last inspection for certificate;
- (10) Whether or not a certificate of inspection was issued; and
- (11) Reason for discontinuance or cancellation.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0209 INSTALLERS TO NOTIFY CHIEF INSPECTOR

Any company or individual installing boilers or pressure vessels subject to inspection in accordance with this Chapter shall notify the Chief Inspector and request a certificate inspection not less than 10 working days prior to placing equipment in operation. Any company or individual wishing to install used boilers or pressure vessels that are subject to this Chapter shall formally request permission using the Used Equipment Request Form found on the Boiler Safety Bureau website. Equipment shall not be ~~operated~~ operated, other than for testing, prior to an inspection being conducted that finds the boiler or pressure vessel to be in compliance with this Chapter.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0211 CERTIFICATE INSPECTIONS

(a) A commissioned inspector shall inspect all boilers and pressure vessels at the time of installation and at regular intervals thereafter, as provided in this Rule.

(b) Subject to the exceptions in Paragraphs (c) and (d) of this Rule, and after seven days notice is given to the owner or user, an inspector shall conduct an internal inspection of a high pressure boiler at the time of installation and annually thereafter. ~~Three to nine months after the internal inspection, an~~ An external inspection shall be conducted while the boiler is in operation. The inspector shall ensure that the safety controls are operating as required. Issuance of the inspection certificate shall be based on the results of the internal inspection; however, if the inspector determines during the external inspection that an unsafe condition exists that is likely to result in serious personal injury or property damage, the certificate of operation may be revoked or suspended until such time as the device has been made safe for operation.

(c) In place of the first internal inspection of a new high pressure boiler, an inspector may conduct an external inspection if the inspector determines that data sufficient to determine compliance with the rules of this Chapter can be gathered from an external inspection. This shall not apply to relocated used ~~boilers, boilers or those for which extended inspection certificates are being requested.~~

(d) Miniature boilers, coil-type watertube boilers, and boilers heating a fluid other than water which do not produce steam or vapor operating as high pressure boilers shall undergo an external inspection annually. Miniature boilers, coil-type watertube boilers and boilers heating a fluid other than water operating as heating boilers shall undergo an external inspection biennially. Hobby boilers, locomotive boilers and exhibition boilers shall be inspected annually, at the beginning of the season when they are anticipated to be operated.

(e) ~~Heating~~ Low pressure boilers and pressure vessels, except hydropneumatic storage tanks, shall undergo an external inspection biennially.

(f) Owner-user inspectors shall conduct inspections for pressure vessels as prescribed in this Rule.

(g) Inspectors may order coverings removed, internal inspections, external inspections, removal of internal parts, testing or calibration of control controls, indicating and safety device devices testing or calibration, or and pressure tests

whenever conditions warrant further evaluation of the pressure equipment. The inspector may also require the boiler to be started to verify the operating controls.

(h) Hydropneumatic storage tanks shall undergo an external inspection every four years.

(i) When the inspector or Chief Inspector determines that a certificate cannot be issued as a result of an inspection, the boiler or pressure vessel shall be reinspected after the necessary repairs are made.

(j) Inspections shall be conducted in accordance with the National Board Inspection Code. The inspector may require ~~controls~~ controls, indicating and safety devices to be disassembled, tested, checked or calibrated as necessary to ensure their proper operation.

(k) The Chief Inspector may extend an existing inspection certificate for a high pressure boiler for a period not exceeding 90 days beyond the certificate expiration date, should an inspection at the specified period result in undue hardship for the owner or user. The owner or user shall submit a written request to extend an existing inspection certificate, providing justification for an extension. The request shall include a report from a commissioned inspector of an external inspection which shall have been conducted no earlier than 60 days before the certificate expiration date, and the inspection report shall include a recommendation from the inspector for an extension to the inspection certificate.

(l) The inspection frequency established by this Rule may be modified by the Chief Inspector for individual boilers and pressure vessels if the Chief Inspector determines that due to unique conditions, the frequency established herein is not appropriate, and that the safety attained by the normal inspection frequency will be otherwise obtained. Requirements for extended certificates for pressure equipment are detailed in Rule .0214 of this Chapter. Pressure vessels in "Locked High Radiation" areas may be certified for up to five years and may be inspected in accordance with Paragraph (m) of this Rule.

(m) Pressure retaining items which contain highly hazardous chemicals or biological elements that require level B personal protective equipment, or are in highly hazardous areas or pressure retaining items containing radioactive materials causing the pressure equipment to be classified as "Locked High Radiation," may be inspected remotely, by video camera, provided:

(1) There is a listing of all the items under this criterion at the site. The list shall be kept current by the owner/user and any additions or deletions shall be kept current. Prior to inspection the inspector shall review the last inspection certificate, the ASME data report, any NB repair/alteration forms and any records of testing performed during the certificate period;

(2) Each item shall be inspected by means of live video feed that is monitored by the inspector. The inspector shall remain in radio contact with the individual operating the video equipment;

(3) The inspector shall be in close proximity to the item and shall witness the video equipment operator enter the location of the item;

(4) A scan of all accessible pressure boundaries shall be witnessed by the inspector;

(5) The ASME nameplate shall be viewed as well as the ASME/NB nameplate on any pressure relieving device on the item;

(6) Follow up inspections to verify the correction of deficiencies may be performed with a video inspection using the items outlined herein by the inspector;

(7) The inspector shall submit an inspection report for each pressure retaining item at intervals specified in this Rule and the report shall be annotated indicating that the item was inspected pursuant to this Paragraph; and

(8) Any incident that renders the item inoperative shall immediately be reported to the Bureau by the owner/user or the inspector.

Authority G.S. 95-69.11; 95-69.14; 95-69.17.

13 NCAC 13 .0212 PREPARATION FOR INSPECTION

(a) The owner or user shall prepare a high pressure boiler, including locomotive, hobby and exhibition boilers, for internal inspection by:

- (1) cooling the boiler, furnace, and setting so as to prevent damage to any part;
- (2) draining and washing thoroughly internal parts to be inspected, including disassembly and cleaning of float bowl type low-water fuel cutoff devices and associated piping plugs or caps;
- (3) removing wash-out, drain, and inspection plugs;
- (4) removing enough of the grates in an internally fired boiler to permit inspection;
- (5) removing soot, ashes and unburned solid fuel plus enough brickwork, refractory, and insulation to permit inspection;
- (6) removing manhole and handhole plates;
- (7) preparing the controls and safety devices for inspection and testing;
- (8) preventing leakage of water, steam, or vapors into boiler interiors that would endanger personnel;
- (9) providing adequate ventilation to prevent the accumulation of hazardous gasses; and
- (10) providing, when requested by the inspector, a competent person, as defined under the North Carolina Occupational Safety & Health standard for confined spaces, to assist the inspector in the performance of his inspection.

(b) In addition to the requirements in Paragraph (a) of this Rule, the owner or user shall prepare a high pressure boiler that has a manhole and which is connected to a common header with another boiler for internal inspection by:

- (1) closing and tagging, or padlocking, the steam stop valves and opening all drain valves or cocks located between the steam stop valves;
- (2) closing and tagging, or padlocking, the feed and check valves and opening all drain valves or cocks located between the feed and check valves;
- (3) draining boiler and then closing and padlocking the blowoff valves;
- (4) disconnecting, at the request of the inspector, blowoff lines between pressure parts and valves;
- (5) opening all drains and vent lines;
- (6) closing and tagging or padlocking all fuel valves, blower or fan motors and any other devices that may deliver energy in any form to the boiler; and
- (7) after complying with all other provisions of this Rule, removing the manhole covers.

(c) The owner or user need not make any special preparation for an external inspection of a boiler or pressure vessel, except that if the inspector requires the boiler or pressure vessel to be shut down for a closer inspection, the boiler or pressure vessel shall be prepared as is required for the internal inspection of a high pressure boiler.

Authority G.S. 95-69.11.

13 NCAC 13 .0214 EXTENDED PRESSURE EQUIPMENT OPERATING CERTIFICATES

G.S. 95-69.16 and 13 NCAC 13 .0211(l) allows the Commissioner, through the Chief Inspector, to modify the inspection frequency for individual pressure equipment if it is determined that due to unique conditions, the new frequency will provide for the safety attained by the normal inspection frequency. Proper maintenance programs, the condition of the pressure equipment and a thorough baseline inspection help to determine if the equipment is eligible for extended certification. The Chief Inspector may allow certificate renewal frequencies of up to three years. Companies wishing to have their pressure equipment given an extended certification must apply by letter to the Chief Inspector requesting extended certification.

- (1) For a first time extended inspection frequency, the following shall apply to both new and existing equipment:
 - (a) Base Line Inspections: At the outset of an extended inspection frequency, a base line inspection must be conducted of all inside and outside accessible pressure boundaries. The inspected area shall be examined visually by a North Carolina Department of Labor, Boiler Safety Bureau Inspector Supervisor along with a Deputy Inspector for evidence of cracking, discoloration, wear, pitting, bulging, blistering, excessive corrosion and erosion, arc strikes, gouges, dents and other signs of

surface irregularities. Areas that are suspect shall be non-destructively examined by a method acceptable to the Inspector Supervisor and Deputy Inspector. For areas which are still suspect after such examination, a more thorough supplemental examination and engineering evaluation of the discontinuities shall be conducted and discussed with the Chief Inspector or designee. At that time, a decision shall be rendered on the required repair of the discontinuity.

- (b) Inspection Mapping and Records: An inspection grid map shall be constructed for each pressure component detailing precisely the areas found suspect. The grid shall not exceed four inch square. Suspect area shall be described in relevant details and photographs of such areas shall be taken. Records shall be kept and made available to the Deputy Inspector prior to the next required inspection.

- (c) Base Line Inspection of Boiler Tubes: The boiler tubes shall be examined by nondestructive examination. Tubes shall be examined for wear, corrosion, erosion, thinning, bulging, blistering, dents, discoloration, cracking and any other surface irregularities. Areas which are suspect shall be noted and discussed with the Inspector Supervisor and Deputy Inspector.

- (d) Boiler Tube Inspection Mapping and Record: Where suspect tubes are identified, the boiler tubes shall be numbered in a logical sequence and the location of any suspect area shall be precisely defined and described in relevant details. Photographs of such areas shall be taken. Records shall be kept and made available to the Inspector Supervisor and Deputy Inspector prior to the next required inspection.

- (2) The following process shall be adhered to for subsequent extended certificate inspections:

- (a) Scheduling of Inspections: Approximately two months prior to a scheduled outage in which the boiler may be inspected, and prior to the current certificate expiration, the owner will initiate the inspection process as follows.

- (b) Send a letter addressed to the Chief Inspector requesting the extended certificate.
- (c) Contact the North Carolina Department of Labor, Boiler Safety Bureau at 919-807-2760 and request to speak with an Inspector Supervisor for the purpose of scheduling the inspections required for extending the boiler inspection certificate expiration for to up to 36 months (have the North Carolina identification number available).
- (d) Agree with the Inspector Supervisor and Deputy Inspector on a date to meet for the External Inspection of the boiler and to review reports. The boiler must be operating when the External Inspection is done. Heat recovery boilers with less than one percent capacity factor per year may be excluded from the need to operate during the External Inspection but a letter requesting the exclusion must be sent to the Chief Inspector stating the capacity factor for the year.
- (3) External Inspection: The following reports must be available to the Inspector Supervisor and Deputy Inspector at the External Inspection:
 - (a) NBIC R1 forms with job folders (for the past five years for initial inspections and since the previous inspection for renewals).
 - (b) A list of major modifications scheduled and those modifications done since the last internal inspection with the NBIC R2 forms.
 - (c) VR forms (for the past five years for initial inspections and since the previous inspection for renewals).
 - (d) Remaining life analysis (RLA) reports for headers (for the past five years for initial inspections and since the previous inspection for renewals).
 - (e) Side elevation drawing of the boiler (8 ½ inches by 11 inches).
 - (f) Steam & Mud drums - Original drum thickness, drawings and P4's if available.
 - (g) Copy of the last operating certificate and a copies of the last three years of inspection reports.
 - (h) Reports of annual external inspections (by owner's insurance company or a Boiler Safety Bureau Deputy Inspector).
 - (i) Attention must be paid to the areas determined suspect by previous inspections.
- (4) Internal Inspection: Following are the required Inspections during the outage:
 - (a) Prior to the outage the safety valves must be inspected. Schedule the Operational Test for all safety valves after the unit comes back up. Upon a successful operational test, the repair organization will affix an updated inspection tag to the valve. Request the Deputy Inspector to return and verify the updated inspection tag. In lieu of operational tests, it is acceptable to replace safety valves with new valves or valves reworked by a National Board "VR" or "NVR" authorized company.
 - (b) Inspect the pressure equipment internally.
 - (c) Inspect the drums and shells using the following methods:
 - (i) Examine penetrations into the drum/shell wall for cracking: if the nozzles are visible from inside the drum/shell, then a visual examination is satisfactory; otherwise ultrasonically examine the nozzles, from the outside surface, of at least 20 percent of the pressure equipment nozzles.
 - (ii) Visually examine inside the heads.
 - (iii) Crawl through the drum/shell for a visual examination if possible.
- (5) Setting the Certificate Interval: The Deputy Inspector will inform the owner whether the inspection records and condition of the pressure equipment meet the requirements necessary for requesting the Chief Inspector to extend the inspection certificate. If the necessary requirements are met, the Deputy Inspector will submit his inspection report to the Chief Inspector with the recommendation for up to a three-year certificate.
- (6) Follow-up and Interim Inspections: External inspections of high pressure boilers are required six months after the certificate renewal, and then annually thereafter. The external inspections may be performed by the Boiler Safety Bureau Deputy Inspectors or by the owner's insurance inspector. The results of the inspection must be submitted to the North Carolina Department of Labor, Boiler Safety Bureau on an appropriate inspection form.

Authority G.S. 95-69.11; 95-69.14; 95-69.16.

SECTION .0300 - ENFORCEMENT OF STANDARDS

13 NCAC 13 .0301 INSPECTION DOCUMENTATION

- (a) The inspector shall document the results of the inspection on a written inspection report or in an electronic format recognized by the Chief Inspector.
- (b) If the inspector finds that the boiler or pressure vessel is in compliance with the rules in this Chapter, he shall indicate on the report that the boiler or pressure vessel is satisfactory.
- (c) If the inspector finds the boiler or pressure vessel is not in compliance with the rules in this Chapter, he shall specify on the inspection report the deficiencies and the required repairs or corrective action.
- (d) The inspector shall determine if the deficiency is such that operation of the boiler or pressure vessel creates a condition of imminent danger. If a condition of imminent danger exists, the inspector shall state on the inspection report that operation of the boiler or pressure vessel is to cease until completion of the necessary repairs or corrective action. The inspector shall notify the Chief Inspector upon discovery of any condition of imminent danger.
- (e) If the condition of the boiler or pressure vessel is such that repairs or corrective action cannot bring the boiler or pressure vessel into compliance, the inspector shall recommend to the Chief Inspector that the boiler or pressure vessel be condemned from further use.
- (f) For inspections revealing deficiencies, the inspector shall provide the owner/user contact with detailed information regarding the violation. The inspector shall a copy of the inspection report to the owner/user which details detail the violation and corrective action required. The Bureau shall generate a Notice of Violation letter and send to the Owner/User. The Notice of Violation shall outline the violation(s), the required corrective action, and the date by which the corrective action shall be completed.
- (g) The Bureau shall issue an invoice to the owner or user for the inspections made and for issuance of the inspection certificate. The owner or user shall remit payment as indicated on the invoice within 30 days to the North Carolina Department of Labor.

Authority G.S. 95-69.11; 95-69.16.

SECTION .0400 - GENERAL REQUIREMENTS

TABLE-0404

REQUIRED DEVICE AND REFERENCED RULE	HIGH PRESSURE BOILER	STEAM HEATING BOILER	HOT WATER HEATING BOILER	HOT WATER SUPPLY BOILER	WATER HEATER	PRESSURE VESSEL
Pressure Relief Device .0405	X	X	X	X	X	X
High Limit Control .0406	X	X	X	X	X	X
Pressure Gauge .0407	X	X	X	X		X
Steam Syphon (steam boilers only) .0407	X	X				

13 NCAC 13 .0401 DESIGN AND CONSTRUCTION STANDARDS

- (a) The design, construction, installation, inspection, stamping, and operation of all boilers and pressure vessels shall conform to the rules in this Chapter and the accepted design and construction code.
- (b) Repairs and alterations to boilers and pressure vessels shall conform to the requirements of the National Board Inspection Code.
- (c) The rules of this Chapter shall control when any conflict is found to exist between the Rules and the accepted design and construction code or the National Board Inspection Code.
- (d) Welded repairs and alterations may be made only by an individual or organization in possession of a valid certificate of authorization for use of the National Board "R" symbol stamp. Repairs and alterations shall be reported on National Board "R1" and "R2" reports respectively. The forms, along with supplements used, shall be submitted to the Chief Inspector within 60 days of the completion of the work conducted. Repair and Alteration forms shall be annotated with the appropriate NC identification number for the pressure equipment repaired.
- (e) In such cases where removal of a defect in a pressure-retaining item is not practical at the time of discovery. In such cases, with approval of the Chief Inspector, the repair may be conducted in strict compliance with the NBIC, Part 3 Repairs and Alterations, Repair of Pressure-Retaining Items Without Complete Removal of Defects.
- ~~(e)~~(f) Repairs of safety valves or safety relief valves shall be made by an individual or organization in possession of a valid certificate of authorization for use of the National Board "VR" symbol stamp.

Authority G.S. 95-69.11; 95-69.13; 95-69.14.

13 NCAC 13 .0404 CONTROLS AND SAFETY DEVICES

Boilers and pressure vessels shall be equipped with all suitable controls and safety devices required for safe operation of the equipment. Controls and safety devices shown in Table-0404 in this Rule are considered minimum requirements for the various types of boilers and pressure vessels listed. All devices required in this Rule and shown in Table-0404 are suitable for the maximum allowable operating pressure and temperature of the boiler or pressure vessel on which they are installed. The design, construction, installation, and operational requirements for controls and safety devices are as required in Rules .0405 through .0420 of this Section.

Water Column & Gauge Glass (steam boilers only) .0408	X	X				
Low-Water Fuel Cutoff (If input > 400,000 Btu) .0409	X	X	X	X		
Temperature Gauge .0410			X	X	X	
Bottom Blowoff Valves .0411	X	X				
Drain Valves .0411	X	X	X	X	X	X
Make-up Water Stop Valve(s) .0411	X	X	X	X	X	
Expansion Tank .0412			X	X	X	
Flame Failure Control .0420	X	X	X	X		

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0406 HIGH PRESSURE OR TEMPERATURE LIMIT CONTROL

(a) Each automatically fired steam boiler or system of commonly connected steam boilers shall have at least one steam pressure control that will shut off the fuel supply to each boiler or system of commonly connected boilers when the pressure reaches a preset maximum operating pressure. In addition to the required operating pressure control, each individual automatically fired steam boiler shall have a high steam pressure limit control that will shut off the fuel supply to the boiler to prevent pressure in excess of the maximum allowable working pressure. The high limit control shall be equipped with a manual reset which shall prevent the boiler from being fired after the maximum pressure has been reached until the operator resets the switch manually. Steam boilers shall be provided with a syphon(s) or equivalent which will provide a water seal and protect the pressure control(s) from being damaged by the steam.

(b) Each automatically fired hot water heating boiler, hot water supply boiler, water heater or each system of commonly connected hot water heating or supply boilers shall have at least one temperature-actuated control to shut off the fuel supply when the system water reaches a preset operating temperature. In addition to the required temperature control, each individual automatically fired hot water heating boiler, hot water supply boiler, and water heater shall have a high temperature limit control that will prevent the water temperature from exceeding the maximum allowable temperature for the respective equipment. The high limit control for the hot water heating boilers and hot water supply boilers that are either stamped with the ASME "H" symbol or are not constructed in accordance with the ASME Codes shall be equipped with a manual reset which shall prevent the boiler from being fired after the maximum temperature has been reached until the operator resets the switch manually.

(c) Automatic resets or remote resets by electronic means are prohibited. The manual reset may be incorporated in the high limit control. Where the reset device is separate from the high limit control, a means shall be provided to indicate actuation of the high limit control. Each high limit and operating control shall have its own sensing element and operating switch.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0408 GAUGE GLASSES AND WATER COLUMNS

(a) Steam boilers, except for forced flow steam boilers and forced flow water boilers requiring forced circulation to prevent overheating of the tubes, shall be provided with a visible gauge glass which will allow the operator to observe the water level of the boiler. Boilers with a maximum allowable working pressure in excess of 400 psig shall have two gauge glasses. Two independent remote level indicators may be used, in accordance with the ASME Code, in lieu of one of the gauges. Gauge glasses and remote level indicators must be visible to the operator while reading the pressure at the boiler.

(b) Gauge glasses shall be mounted directly on the boiler or on a water column. Gauge glasses shall be mounted so that the lowest visible part of the gauge glass is above the lowest permissible water level by at least 2 inches for high pressure boilers and 1 inch for steam heating boilers. Gauge glasses may be installed with stop cocks or valves to allow for gauge glass replacement during boiler operation. The connections from the boiler shall be not less than 3/4 inch NPS up to and including the isolation valves, and not less than 1/2 inch outside diameter tubing from the isolation valve to the gauge glass.

(c) Gauge glasses shall be provided with a drain valve or cock and discharge outlet at the bottom-most connection of not less than 1/4 inch diameter. The discharge outlet shall be piped to a safe location to prevent injury to the operator while blowing down the gauge glass.

(d) Water columns, chambers which moderate fluctuations in water elevations for determining the operating water level in a boiler, when used, shall be designed, constructed, and stamped as required by the ASME Code. The piping connections to the boiler shall be not less than 1 inch NPS for high pressure boilers or 3/4 inch NPS for heating boilers. If the water column is connected to the boiler by pipe fittings, no shut off valves of any type shall be placed in such pipe. A cross or equivalent fitting shall be placed at every right angle turn to facilitate cleaning. Water columns shall have a drain valve and discharge outlet of not less than 3/4 inch NPS.

Authority G.S. 95-69.11; 95-69.14.

**13 NCAC 13 .0409 AUTOMATIC LOW-WATER
FUEL CUTOFF CONTROLS AND WATER-FEEDING
DEVICES**

(a) Each automatically fired steam or vapor boiler, except miniature boilers, shall meet the following criteria:

- (1) Have at least two automatic low-water fuel cutoff devices.
- (2) One of the low-water fuel cutoff devices may also be used to regulate the normal water level.
- (3) Each cutoff device shall be installed to prevent startup and to shut down the boiler fuel or energy supply automatically when the surface of the water falls to a level not lower than the lowest visible part of the gauge glass.
- (4) One control shall be set to function ahead of the other. The lower fuel cutoff device shall be equipped with a manual reset which shall prevent the boiler from being fired after the low water limit has been reached until the operator resets the switch manually.
- (5) The low-water fuel cutoffs shall be attached directly to the boiler or to the water ~~column~~ column with no stops or valves. For float type low-water fuel cutoffs installed external to the boiler, each device shall be installed in individual chambers which shall be attached to the boiler by separate pipe connections below the waterline. If the low-water fuel cutoff is connected to the boiler by pipe and fittings, no shut off valves of any type shall be placed in such pipe. A cross or equivalent fitting shall be placed at every right angle turn to facilitate cleaning. Piping from the boiler shall be not less than 1 inch NPS. Low-water fuel cutoff designs embodying a float and float bowl shall have a vertical straightaway valved drain pipe of not less than ¾ inch NPS at the lowest point in the water-equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device tested.

(b) Each automatically fired hot water heating boiler with heat input greater than 400,000 Btu/hr (117 kW) shall meet the following criteria:

- (1) Be protected by a low-water fuel cutoff intended for hot water service.
- (2) The fuel cutoff device shall be installed to prevent startup and to shut down the boiler fuel or energy supply automatically when the surface of the water falls to a level not lower than the lowest safe permissible water level established by the boiler manufacturer.
- (3) The fuel cutoff device shall be equipped with a manual reset which shall prevent the boiler from being fired after the lowest water level has been reached until the operator resets the switch manually.
- (4) The low-water fuel cutoff installed in a hot water heating boiler system may be installed anywhere in the system above the lowest safe

permissible water level established by the boiler manufacturer so long as there is no isolation valve installed between the device and the boiler. Connections to the system shall be not less than 1 inch NPS.

- (5) A means shall be provided for testing the operation of the low-water fuel cutoff on a hot water heating boiler system without resorting to draining the entire system.

(c) Coil type boilers or watertube boilers requiring forced circulation to prevent overheating of the coils or tubes may have a flow-sensing device installed at or near the boiler proper, in lieu of a low-water fuel cutoff, to automatically cut off the fuel supply when the circulation of flow is interrupted. If there is a definitive water line, a low-water fuel cutoff complying with the forgoing shall be provided in addition to the flow-sensing device.

(d) Electric boilers where uncovering of the electrical element can lead to an unsafe condition shall be equipped with a low-water fuel cutoff device. In the case of electrode type boilers, where the reduction in water level provides a self-limiting control on heat input, a low-water cutoff control is not required.

(e) Automatically fired boilers shall be provided with a system to automatically maintain a constant water level so that the water level cannot fall below the lowest safe water line.

(f) Low water fuel cutoff devices embodying a float and float bowl shall be installed so that the boiler feedwater or makeup water cannot be introduced through the float chamber.

Authority G.S. 95-69.14.

**13 NCAC 13 .0410 TEMPERATURE
GAUGES/THERMOMETERS/TEMPERATURE
SENSORS**

~~High temperature water boilers, hot water heating boilers, hot water supply boilers, and water heaters shall be provided with a temperature gauge, installed as close as practicable to the hot water outlet, which will indicate the temperature in degrees Fahrenheit. The indicating device shall have a range of approximately 2 times the intended operating temperature, but in no case shall the indicating device have a range of less than 1 1/2 times nor more than 4 times the intended operating temperature.~~

(a) Every high temperature water boiler, hot water heating boiler, hot water supply boiler or water heater shall be provided with a temperature gauge, thermometer or temperature sensor with the display located and connected so that it is readable. The temperature gauge, thermometer or temperature sensor shall be located so that it indicates the temperature of the water in the boiler at or near the outlet at all times.

(b) Temperature gauges and thermometers shall have a range of approximately two times the intended operating temperature. The temperature gauge shall have a range of no less than one and a half times and no more than four times the intended operating temperature.

(c) Electronic temperature sensors may be used in lieu of temperature gauges and thermometers and shall meet the following requirements:

- (1) The sensor shall be powered from the boiler power supply, have a backup power supply, and have a display that remains on at all times;
- (2) The full scale of the sensor and display shall be at least 250 degrees Fahrenheit, and shall be accurate to within +/- one degree;
- (3) The sensor shall have a minimum operating temperature range of 32 degrees Fahrenheit to 300 degrees Fahrenheit; and
- (4) The display shall have an ambient operating temperature range of 32 degrees Fahrenheit to 120 degrees Fahrenheit, unless otherwise required by the application.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0411 VALVES, DRAINS, AND BOTTOM BLOWOFFS

(a) High pressure boilers operating in excess of 100 psig must be provided with two stop valves for boiler blowoff and drain outlets. Any boiler having a common steam connection with another boiler, and having a manhole opening, shall be provided with two steam outlet stop valves with an ample free-blow drain or vent between the two stop valves. The discharge of this drain shall be visible to the operator while operating the valve.

(b) All boilers, except for coil-type water tube boilers, shall be provided with a drain outlet and stop valve of not less than 3/4 inch NPS at the lowest water containing space, except that if the boiler is provided with a blowoff outlet at the lowest water containing space, an additional drain outlet is not required.

(c) High pressure boilers shall be provided with a bottom blowoff outlet and valve of not less than 1 inch NPS nor more than 2 1/2 inches NPS, except as modified below:

- (1) Miniature high pressure boilers shall have a blowoff outlet of not less than 3/4 inch NPS.
- (2) Electric high pressure boilers not greater than 200kW shall have a blowoff outlet of not less than 3/4 inch NPS.
- (3) High pressure boilers having a heating surface not greater than 100 square feet shall have a blowoff outlet of not less than 3/4 inch NPS.
- (4) All other high pressure boilers shall have a blowoff outlet of not less than 1 inch NPS.

(d) Steam heating boilers shall be provided with a bottom blowoff outlet and valve of not less than 1 inch NPS nor more than 2 1/2 inches NPS, except as modified below:

- (1) Steam heating boilers having a minimum safety valve relieving capacity not exceeding 500 pounds of steam per hour shall have a blowoff outlet of not less than 3/4 inch NPS.
- (2) Steam heating boilers having a minimum safety valve relieving capacity greater than 1205 pounds of steam per hour but not greater than 2500 pounds of steam per hour shall have a blowoff outlet of not less than 1 1/4 inches NPS.
- (3) Steam heating boilers having a minimum safety valve relieving capacity greater than 2500 pounds of steam per hour but not greater

than 6000 pounds of steam per hour shall have a blowoff outlet of not less than 1 1/2 inches NPS.

- (4) Steam heating boilers having a minimum safety valve relieving capacity greater than 6000 pounds of steam per hour shall have a blowoff outlet of not less than 2 inches NPS.
- (5) All other steam heating boilers shall have a blowoff outlet of not less than 1 inch NPS.

(e) All blowoff from boilers shall discharge into a blowdown tank suitable for separating steam and water or shall be piped to prevent injury. Discharge directly to a sewer is prohibited.

(f) Valves for high pressure boilers shall be designed and constructed in accordance with the requirements of ASME Section I, and shall be stamped or embossed with the pressure/temperature rating of the valve.

(g) Valves for heating boilers shall be suitable for the operating pressure and temperature of the boiler.

(h) Pressure reducing valves shall be installed in the makeup water line where inlet supply water pressure is more than 75 percent of the maximum allowable working pressure of the boiler or pressure vessel.

(i) A shutoff valve shall be provided in the makeup water line next to each boiler. ~~For a series of boilers having a single water makeup line, the valve shall be installed next to the boiler piping system. If the water containing capacity of the boiler exceeds 120 gallons, a check valve shall be installed on the source side of the shutoff valve.~~ boiler and shall meet the following specifications:

- (1) Each steam heating boiler and hot water heating boiler shall be provided with a shutoff valve and a check valve. The shutoff valve shall be installed either upstream or downstream of the check valve.
- (2) Each high pressure boiler, except for high temperature water boilers, shall be provided with a shutoff valve and a check valve. The shutoff valve shall be installed between the check valve and the boiler.
- (3) When two or more high pressure boilers are fed from a common source, there shall also be a globe or regulating valve in the branch to each boiler located between the check valve and the source of the supply.

(j) Pressure vessels subject to corrosion shall be equipped with a drain valve installed at the lowest point of the pressure vessel or by installation of an internal drain pipe installed not less than 1/4 inch above the lowest internal surface.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0412 EXPANSION TANKS

(a) Hot water heating systems shall allow for thermal expansion and contraction of the piping to prevent excessive stress from being introduced into the pipe or connected equipment.

(b) When new equipment is installed and a backflow prevention system is installed or already exists on a potable water supply line for a hot water supply boiler or water heater, expansion

tanks shall be installed. For water heaters, backflow preventers or check valves may be installed at the meter in water systems.

(c) When expansion tanks are used they shall be constructed and stamped in accordance with the requirements of this Chapter for pressure vessels, unless exempted due to the vessel size or operating limits.

(d) For a closed type system the expansion tank shall be not less than that determined as follows:

$$V_t = [(0.00041T - 0.0466)V_s]/[(Pa/P_f) - (Pa/P_o)]$$

where:

V_t = minimum volume of tank(s), gal

V_s = volume of system, not including tanks, gal

T = average operating temperature, deg F

P_a = atmospheric pressure, psi

P_f = fill pressure, psi

P_o = maximum operating pressure, psi.

Authority G.S. 95-69.11; 95-69.14.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10G .0402, .0403 and .0405.

Proposed Effective Date: September 1, 2011

Public Hearing:

Date: March 31, 2011

Time: 7:00 p.m.

Location: WRC, NCSU Centennial Campus, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action: *These rules will eliminate the requirement for WRC to provide Internet access, computer equipment and support for such equipment to Wildlife Service Agents (WSAs). Many current agents already have this access and equipment used in connection with their primary business, and do not need additional equipment or support. Elimination of the requirement for WRC to supply this equipment for WAS's will result in a significant savings to the agency.*

Procedure by which a person can object to the agency on a proposed rule: *Objections may be submitted in writing or via electronic mail during the comment period ending May 16, 2011 to C. Norman Young, Jr., NC Department of Justice, SSA, 9001 Mail Service Center, Raleigh, NC 27699-9001; email nyoung@ncdoj.gov.*

Comments may be submitted to: *Cecilia Edgar, NC Wildlife Resources Commission, 1721 Mail Service Center, Raleigh, NC 27699-1721; phone (919) 707-0223; email Cecilia.edgar@ncwildlife.org*

Comment period ends: May 16, 2011

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

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

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

Fiscal Note posted at

http://www.osbm.state.nc.us/files/pdf_files/WRC02072011.pdf

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10G - DISTRIBUTION AND SALE OF HUNTING: FISHING: AND TRAPPING LICENSE

SECTION .0400 - WILDLIFE SERVICE AGENTS

15A NCAC 10G .0402 APPOINTMENT OF WILDLIFE SERVICE AGENTS

(a) Any business operating from a fixed location in North Carolina may apply to the Commission for appointment as a Wildlife Service Agent by completing an application provided by the Commission.

(b) Application. Applications for Wildlife Service Agent appointment shall contain the business name, address, county where the business is located, agent contact information, bank account information, business hours, and any other information requested by the Commission that is reasonably necessary to determine the fitness of the applicant to serve as a Wildlife Service Agent.

(c) Qualifications and Requirements. Applicants shall meet the following qualifications in order to be appointed as a Wildlife Service Agent.

- (1) Businesses shall operate from a fixed location in North Carolina and shall sell a minimum of one thousand dollars (\$1,000) in transaction sales annually. This minimum requirement may be waived by the Executive Director if he finds the applicant's services necessary to maintain adequate agent services to the public in that geographic area.

- (2) An applicant shall have a minimum of one year's experience in operating the business for which the application is made or other equivalent business experience or training. In those cases where other equivalent business experience or training is accepted in lieu of the minimum one year's experience, the applicant shall submit financial statements of the business so that the solvency of the business can be judged.
- (3) Applicants shall provide a bank account for the purpose of transferring net proceeds from all Wildlife Service Agent transactions to the Commission's account in the State Treasury every week via an electronic transfer of funds.
- ~~(4) Applicants shall provide a telephone line or other form of Internet connection for the purpose of processing transactions related to services provided by Wildlife Service Agents.~~

(d) The qualifications as provided by Paragraphs (b) and (c) of this Rule shall be met prior to appointment. Failure to comply with the qualifications and requirements as provided by Paragraph (c) of this Rule, throughout the term of the appointment, may result in termination of the agent appointment. All agents are subject to monitoring of their performance by the Customer Support Section of the Commission.

Authority G.S. 113-134; 113-270.1.

15A NCAC 10G .0403 WILDLIFE SERVICE AGENT AGREEMENT

~~Each Wildlife Service Agent shall execute an Agreement with the Commission acknowledging that the business shall comply with all rules and laws related to the sale of licenses and the registration of vessels. Each Wildlife Service Agent shall execute an Agreement with the Commission and shall comply with all rules, statutes and administrative requirements reasonably related to the sale of licenses and the registration of vessels. All terms and conditions shall be fully set forth in the Agreement at the time of execution.~~ The business shall operate as a public convenience and shall serve the public in an efficient and helpful manner with all reasonable requests for assistance related to the duties of a Wildlife Service Agent whenever open for business. The agent shall be informed and knowledgeable of the laws and rules governing requirements for licenses and vessel transactions and stay abreast of changes in these requirements so that the agent can provide accurate and reliable information and instruction to persons who seek assistance in these matters. The appointment as a Wildlife Service Agent and the Agreement under which the appointment is made are singularly valid for the person named thereon who is authorized to act on behalf of the business and applies only to the business and location named and is non-transferable.

Authority G.S. 113-134; 113-270.1.

15A NCAC 10G .0405 WILDLIFE SERVICE AGENT TERMS AND CONDITIONS

Failure to comply with the following terms and conditions of this Section may result in temporary suspension or termination of a Wildlife Service Agent's appointment:

- (1) Public Service. Wildlife Service Agents shall provide a public service to all persons seeking assistance with matters related to the duties of a Wildlife Service Agent.
- (2) Training. New Wildlife Service Agents shall attend a training session at a location specified by the Commission prior to activation of agent status and prior to receiving any equipment or supplies from the Commission.
- (3) Activation of Agent Status. Upon completion of training and receipt of equipment and supplies, Wildlife Service Agents shall have their equipment set up and ready for operation 10 days after the date they receive the equipment and supplies.

~~(4) If equipment and Internet service provided by the Commission. Upon completion of training, each Wildlife Service Agent shall be equipped with the computer equipment and peripherals necessary to perform transactions required by the Commission. This computer application is web based and is linked to the Commission's central database via the Internet. Agents shall provide a telephone line for this purpose. Equipment and service is provided subject to the following:~~

- ~~(a) Using the equipment and Internet service provided, the agent shall issue all transactions required by the Commission. The record of sale and issuance of each item shall be transmitted immediately to the Commission's database via the Internet. The Commission shall communicate information and instructions about individual agent accounts and messages of general interest to all agents via the computer application and the agent web site.~~
- ~~(b) All training, trouble shooting, maintenance, equipment replacements, materials and supplies shall be furnished by the Commission. Toll free telephone service to link transaction equipment to the system's central database shall be supplied by the Commission.~~
- ~~(c) Upon termination of an agent appointment, all computer equipment and peripherals shall be returned to the Commission as instructed by the Commission.~~
- ~~(d) Wildlife Service Agents shall be financially responsible for any~~

- damage to computer equipment and peripherals resulting from negligence, malicious activity, equipment abandonment, failure to return equipment upon request of the Commission or improper electrical service to the equipment. In the event of fire, theft, or natural disaster, if insured, agents shall relinquish to the Commission any insurance payment(s) for damaged computer equipment or peripherals provided by the Commission within 10 days of receipt. Agents shall report, by telephone to the Commission, any lost, stolen, damaged, or destroyed equipment within 48 hours of the occurrence and shall submit a written report within 10 days thereafter.
- (5) If equipment and internet service is provided by the Agent. Upon completion of training, each Wildlife Service Agent shall be given access to the Commission's agent web site in order to perform transactions required by the Commission. This web site is linked to the Commission's central database via the internet. Agents using their own equipment shall provide their own Internet service provider and shall provide a telephone line for this purpose. Agents providing their own Internet service provider shall receive a monthly credit to their bank account from the Commission. The amount of monthly credit is determined by the Commission's savings on internet service provider costs as a result of the agent providing his or her own service. Use and service provided by the Agent is subject to the following:
- (a) Using the web site provided, the agent shall issue all transactions required by the Commission. There record of sale and insurance of each item shall be transmitted immediately to the Commission's database via the internet. The Commission shall communicate information and instructions about individual agent accounts and message of general interest to all agents via the computer application and the agent web site.
- (b) All training, materials, and supplies shall be furnished by the Commission. The Commission shall not provide technical support, trouble shooting, or maintenance to agents using their own equipment and Internet service provider.
- (c) Upon termination of an agent appointment, access to the Commission's agent web site shall be terminated.
- (6) Supplies. The Commission shall provide each wildlife service agent the forms and supplies necessary to perform transactions or to provide information required by the Commission. In the event that any records or supplies related to the operations of a Wildlife Service Agent are stolen, lost, damaged or destroyed, the agent shall notify the Commission by telephone within 48 hours of the occurrence and shall submit a written report within 10 days thereafter.
- (7) Documentation. Wildlife Service Agents shall mail all transaction documentation to the Commission daily.
- (8)(4) Application. Each Wildlife Service Agent shall notify the Commission of any changes to the original application for appointment such as business name, address, agent contact information, bank account information, business hours and other information related to agent appointment, immediately upon its change.
- (9)(5) Business Change of Ownership, Location, or Management. If the ownership of the business, location or management changes, then the Agreement becomes null and void. Written notice of any change in ownership, location, or management shall be sent to the Commission at least 10 days prior to the change along with an application for a new Wildlife Service Agreement, if desired, pursuant to the rules in this Section.
- (10) Renewal. All Wildlife Service Agent Agreements are issued for a term of three years, but may be renewed upon agreement of the Commission and the Wildlife Service Agent.
- (11)(6) Cancellation. A Wildlife Service Agent may cancel the Agreement at any time by sending written notice to the Commission. The Commission shall immediately instruct resigning agents on the procedures for returning all equipment and supplies and to settle their account. Upon resignation of appointment as a Wildlife Service Agent, the former agent must return all consigned equipment and supplies to the Commission and settle the agent financial account within 10 days of the resignation letter's date.
- (12)(7) Suspension. The Commission shall temporarily suspend any Wildlife Service Agent appointment for failure to comply with this Rule.
- (a) Deficiencies that shall result in temporary suspension include:
- (i) Failure to comply with the terms and conditions as

- outlined in the Wildlife Service agent Agreement.
 - (ii) Failure to deposit sufficient funds one or more times to cover the electronic transfer of funds each week.
 - (iii) Failure to operate as a public convenience as specified in the Agreement one or more times.
 - (iv) Failure to provide proper and correct information one or more times about wildlife transactions and related issues to customers as documented by customer complaints or agency inspections.
 - (v) Failure to submit or return all required documentation for transactions as outlined in the Agreement one or more times.
 - (vi) Failure to safeguard or care for the equipment and supplies, and any other act or omission by the agent that results in financial loss or that reflects poorly on the Commission.
- (b) Temporary suspension is effective immediately upon communication of that fact to the Wildlife Service Agent. Such communication shall state the grounds for temporary suspension and that the agent may request a hearing within 5 working days if he contests the grounds for temporary suspension. If the initial notification is not in writing, it shall be followed by written notice of temporary suspension containing the same information. An employee of the Commission may enter the premises and impound all property and supplies issued or entitled to by the Commission such as equipment, moneys, record books, reports, license forms, other documents and materials pertinent to the agent being suspended. The Commission must make the impounded property, or copies of it, available to the agent during the period of temporary suspension. If a hearing is requested, it shall be before the Executive Director or his designee and shall be held at a location specified by the Executive Director.
- (c) Temporary suspension remains in effect until the hearing. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if, at the end of the suspension period, the agent has not corrected the deficiency or deficiencies that resulted in the suspension. A Wildlife Service Agent may at any time after a hearing appeal his suspension to the Commission. A new suspension shall comply with the provisions of this Item.
- ~~(13)~~(8) Termination. The Commission may terminate any Wildlife Service Agent appointment for failure to comply with this Rule.
 - (a) Deficiencies that may result in termination include:
 - (i) Failure to comply with the terms and conditions as outlined in the wildlife service agreement.
 - (ii) Failure to deposit sufficient funds two or more times to cover the electronic transfer of funds each week.
 - (iii) Failure to meet the minimum transaction sales requirement of one thousand dollars (\$1,000) annually.
 - (iv) Failure to operate as a public convenience as specified in the Agreement two or more times.
 - (v) Failure to provide proper and correct information two or more times about wildlife transactions and related issues to customers as documented by customer complaints or agency inspections.
 - (vi) Failure to return all required documentation for transactions as outlined in the Agreement two or more times.
 - (vii) Failure to safeguard or care for the equipment and any other act or omission by the agent that results in financial loss or that reflects poorly on the Commission.
 - (b) Notice of termination of the appointment may be sent to the Wildlife Service Agent in lieu of or in addition to temporary suspension. The notice must state the grounds for

termination of the appointment and the agent's right to a hearing if he has not previously been afforded one. If the appointment is to be terminated, the notice must state the effective date and hour of termination. If the agent has not been previously afforded a hearing, the agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at a location specified by the Executive Director. If the Executive Director upholds the decision to terminate the appointment, an agent may appeal his termination to the Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no transaction may be made once the agent's termination effective date and time have passed.

- (c) Upon termination of appointment as a Wildlife Service Agent, the former agent must return all consigned equipment and supplies to the Commission and settle the agent financial account within 10 days of the date of receiving written notice from the Commission. Employees of the Commission may conduct inspections and audits when terminating an agent.
 - (d) The Executive Director or his designee holding any hearing under this Item must keep a written record of evidence considered and findings made. Upon appeal to the Commission, the Commission Chairman or another presiding officer must cause such a written record of evidence and findings to be made and kept.
 - (e) No person denied appointment or whose appointment was terminated under this section may apply again for an appointment as a Wildlife Service Agent for a minimum of two years. Upon application, the Commission may not grant the appointment as a Wildlife Service Agent unless the applicant produces evidence, convincing to the Commission, that he meets all standards and qualifications and will comply with all requirements of statutes and rules pertaining to Wildlife Service Agents.
- (14)(9) Use of customer identifying information. Customer identifying information for

customers of the Commission is protected by G.S. 143-254.5. Wildlife Service Agents shall not disclose any customer identifying information to any third party without the express authorization of the Commission. Wildlife Service Agents shall not use such customer identifying information for any purpose whatsoever other than the processing of Commission transactions requested by the customer. Failure to abide by provisions in this Item shall be grounds for immediate termination of the agency.

Authority G.S. 113-134; 113-270.1.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14P .0105, .0108 and repeal the rule cited as 21 NCAC 14C .0202.

Proposed Effective Date: July 1, 2011

Public Hearing:

Date: March 30, 2011

Time: 8:00 a.m.

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

Reason for Proposed Action:

21 NCAC 14C .0202 – This repeal was requested by the office of the governor.

21 NCAC 14P .0105, .0108 – These changes are an attempt to change the penalty amounts to fit the severity of the violation.

Procedure by which a person can object to the agency on a proposed rule: Send a letter to 1201 Front Street, Suite 110, Raleigh, NC 27609

Comments may be submitted to: Stefanie Kuzdrall, 1201 Front Street, Suite 110, Raleigh, NC 27609

Comment period ends: May 16, 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**

SUBCHAPTER 14C - CONTESTED CASES

SECTION .0200 - REQUEST FOR A HEARING

21 NCAC 14C .0202 PREREQUISITES

~~Before a hearing request is made, a person may attempt to resolve the problem with the Board informally by contacting the Chairman of the North Carolina State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, North Carolina 27609.~~

Authority G.S. 88B-4; 150B-38(h).

SUBCHAPTER 14P – CIVIL PENALTY

SECTION .0100 – CIVIL PENALTY

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED:

(a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

(b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is:

- | | | |
|-----|-------------|-------------------------------------|
| (1) | 1st offense | \$100.00 <u>\$50.00</u> |
| (2) | 2nd offense | \$250.00 <u>\$100.00</u> |
| (3) | 3rd offense | \$500.00 <u>\$250.00</u> |

(c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$300.00 |
| (3) | 3rd offense | \$500.00 |

(d) The presumptive civil penalty for practicing in a cosmetic art shop with an apprentice license or a temporary permit without direct supervision is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$300.00 |
| (3) | 3rd offense | \$500.00 |

(e) The presumptive civil penalty for an improperly licensed cosmetic art shop (incorrect number of chairs licensed) is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |

(f) The presumptive civil penalty for teaching with an expired license is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

Authority G.S. 88B-4; 88B-11; 88B-21; 88B-22; 88B- 23(a); 88B-24; 88B-29.

21 NCAC 14P .0108 REVOCATION OF LICENSES AND OTHER DISCIPLINARY MEASURES

(a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:

- | | | |
|-----|-------------|-------------------------------------|
| (1) | 1st offense | \$250.00 <u>\$500.00</u> |
| (2) | 2nd offense | \$500.00 <u>\$750.00</u> |
| (3) | 3rd offense | \$1000.00 |

(b) The presumptive civil penalty for practicing cosmetology, natural hair care, manicuring or esthetics with a license issued to another person is:

- | | | |
|-----|-------------|-------------------------------------|
| (1) | 1st offense | \$300.00 <u>\$500.00</u> |
| (2) | 2nd offense | \$500.00 <u>\$800.00</u> |
| (3) | 3rd offense | \$1,000.00 |

(c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:

- | | | |
|-----|-------------|--------------------------------------|
| (1) | 1st offense | \$300.00 <u>\$500.00</u> |
| (2) | 2nd offense | \$400.00 <u>\$800.00</u> |
| (3) | 3rd offense | \$500.00 <u>\$1000.00</u> |

(d) The presumptive civil penalty for submitting false or fraudulent documents is:

- | | | |
|-----|-------------|------------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1,000.00 |

(e) The presumptive civil penalty for refusing to present photographic identification is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

(f) The presumptive civil penalty for advertising by means of knowingly false or deceptive statement is:

- | | | |
|-----|-------------|--------------------|
| (1) | 1st offense | warning (\$300.00) |
| (2) | 2nd offense | \$400.00 |
| (3) | 3rd offense | \$500.00 |

(g) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license is:

- | | | |
|-----|-------------|-------------------------------------|
| (1) | 1st offense | \$300.00 <u>\$50.00</u> |
| (2) | 2nd offense | \$400.00 <u>\$100.00</u> |
| (3) | 3rd offense | \$500.00 <u>\$250.00</u> |

(h) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1000.00 |

(i) The presumptive civil penalty for the illegal use or possession of equipment or Methyl Methacrylate Monomer (MMA) in a cosmetic art shop or school is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$300.00 |
| (2) | 2nd offense | \$500.00 |
| (3) | 3rd offense | \$1000.00 |

(j) The presumptive civil penalty for failure to maintain footspa sanitation records is:

(1)	1st offense	\$100.00
(2)	2nd offense	\$200.00
(3)	3rd offense	\$300.00

Authority G.S. 88B-4; 88B-24; 88B-29.

CHAPTER 30 - NC BOARD OF MASSAGE AND BODYWORK THERAPY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Massage and Bodywork Therapy intends to amend the rule cited as 21 NCAC 30 .0624.

Proposed Effective Date: *August 1, 2011*

Public Hearing:

Date: *April 29, 2011*

Time: *11:00 a.m.*

Location: *Wachovia Capital Center, 13th Floor Conference Room, 150 Fayetteville Street, Raleigh, NC*

Reason for Proposed Action: *This amendment is being submitted to further clarify Rule 21 NCAC 30 .0624*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to this proposed amendment by submitting a written statement to Charles P. Wilkins at PO Box 2539, Raleigh, NC 27602 postmarked on or before June 13, 2011.*

Comments may be submitted to: *Charles P. Wilkins, PO Box 2539, Raleigh, NC 27602, phone (919)833-2752, fax (919)833-1059, email cwilins@bws-law.com*

Comment period ends: *June 13, 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 .0600 - MASSAGE AND BODYWORK THERAPY SCHOOLS

21 NCAC 30 .0624 STANDARDS OF PROFESSIONAL CONDUCT

(a) The following standards of professional conduct shall apply to instructional staff, administrative staff and ~~students~~students, and shall apply to all school facilities as well as any other location where staff or students are demonstrating or delivering therapeutic treatments as a part of course requirements:

- (1) Conduct shall be in accordance with Standards of Conduct set forth in Section .0500 of this Chapter.
- (2) Nudity is not permitted where massage and bodywork therapy is taught or practiced. For the purpose of this Section, "nudity" is defined as exposure of the genital or anal area for men or women, or exposure of the breast area for women. The only exception shall be for treatment to the breast area while utilizing therapeutic techniques.
- (3) The school shall provide a private area where persons receiving therapeutic treatments may dress or undress, whether for in-class practice or treatments performed in a student clinic. As an alternative, the school may provide instruction to persons receiving therapeutic treatments in the procedure of undressing while on the treatment table under a full sheet covering.

(b) ~~The requirements of this Rule shall apply to all school facilities, as well as any other location where staff or students are demonstrating or delivering therapeutic treatments as a part of course requirements.~~ As defined in Rules .0508 and .0509 of this Chapter, members of the instructional staff or administrative staff of the school shall not engage in sexual activity with students, whether consensual or otherwise. The only exception to this is a personal relationship between a staff member and prospective student that exists before the student applies for enrollment in the school. In such case, the relationship shall be documented in writing and placed in the student's file.

Authority G.S. 90-626(9); 90-631.

CHAPTER 46 - BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .2901.

Proposed Effective Date: *July 1, 2011*

Public Hearing:

Date: May 16, 2011

Time: 5:00 p.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: To amend the rules regarding the return of outdated drugs to address specifically the return of antidotes.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed amendment by attending the public hearing on May 16, 2011 and/or by submitting a written objection by May 16, 2011 to Jay Campbell, Executive Director, North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919)246-1056, email jcampbell@ncbop.org. The North Carolina Board of Pharmacy is interested in all comments pertaining to the proposed rule. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rule.

Comments may be submitted to: Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919)246-1056, email jcampbell@ncbop.org

Comment period ends: May 16, 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 .2900 - PRODUCT SELECTION

21 NCAC 46 .2901 RETURN OF OUTDATED DRUGS

(a) Adequate provisions for return of outdated drugs in both full and partial containers as provided in G.S. 90-85.28(a)(5) means that drugs can be returned up to six months after the labeled expiration date for prompt full credit or replacement. A finding

by the Board that a manufacturer does not meet this standard will cause that manufacturer's products to be ineligible for use in product selection.

(b) This Rule shall not apply to drugs whose only Food and Drug Administration-approved indication is for use as an antidote to biological, chemical, or radiological poisoning.

Authority G.S. 90-85.6; 90-85.28(a)(5).

TITLE 23 – COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Community Colleges intends to amend the rule cited as 23 NCAC 02D .0203.

Proposed Effective Date: August 1, 2011

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

Reason for Proposed Action: "Fees for Extension Programs" is proposed for amendment to comply with Senate Bill 202/Session Law 2009-451, s. 8-12. Additionally, the State Board of Community Colleges thinks the description of self-supporting classes is better in this Code section.

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

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

Comment period ends: May 16, 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 02 - COMMUNITY COLLEGES

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

SECTION .0200 - STANDARD STUDENT FEES

23 NCAC 02D .0203 FEES FOR EXTENSION PROGRAMS

(a) Registration fees for Non-Curriculum Extension Instruction. For purposes of administration of this Rule, non-curriculum extension instruction means all instruction organized, supervised, or delivered outside the regular curriculum programs offered by the college.

- (1) A registration fee, as established by the State Board, as set by the Legislature shall be charged for each occupational extension class.
- (2) Each local board shall establish registration fees for Community Service Programs.
- (3) All recreational courses shall be self-supporting. Colleges shall collect and deposit to a local account fees and other contributions to support entirely the costs of all recreational extension courses taught. Also note Paragraph (e) of Rule .0325 of this Subchapter regarding the reporting of student membership hours for this area.
- ~~(4) A registration fee shall be charged for each extension class of 21 weeks or less. A registration fee shall be charged each 16 weeks for extension classes lasting longer than 21 weeks.~~
- ~~(5)~~(4) Registration Fee Waivers:
 - (A) Special Extension Training Programs. No registration fees shall be charged students enrolling for special extension training programs that directly relate to job performance set forth in G.S. 115D-5(b).
 - (B) College Staff Members. Full-time college staff members employed for a 9, 10, 11, or 12 month term may enroll in one extension or curriculum course per semester in the system without registration fee or tuition charges.

- (C) Individuals meeting the criteria set forth in G.S. 115B-2 shall not be charged registration fees.
- (D) Prison inmates shall not be charged registration fees.
- (E) Elementary and secondary school teachers who take CPR or first aid classes shall not be charged registration fees.
- (F) Members of the North Carolina Civil Air Patrol and individuals engaged in civil preparedness who take special extension training courses that directly relate to their job performance shall not be charged registration fees.

(b) Self-Supported Classes. A self-supporting class is not reported to the state for budget FTE since the cost of conducting the course is paid by students enrolled. A college may sponsor self-supporting classes, ~~see 23 NCAC 02E .0101~~, deposit income (if any) to a local account, and pay all expenses from the local account. Each student shall pay a pro-rata share of the cost of a self-supporting class. Since the cost for a self-supporting class is not considered a registration fee, the pro-rata cost for any individual or group is not waived under G.S. 115D-5(b) or G.S. 115B-2.

- (1) To promote uniformity in determining cost of the self-supporting classes, direct and indirect costs for these classes are defined as follows:
 - (A) Direct Costs
 - (i) Instructor(s) salary including FICA, travel, and course development costs;
 - (ii) Instructional supplies and materials;
 - (iii) Rental of buildings;
 - (iv) Advertising, printing, postage, and mailing;
 - (v) Equipment;
 - (vi) Refreshments; and
 - (vii) Administrative or clerical costs.
 - (B) Indirect Costs. Indirect costs are the charges for activities and services that support self-supporting classes which cannot be directly and exclusively assigned to a self-supporting class. Examples of indirect costs shall include utilities, custodial and security services, coordination, administration, or clerical, salary and fringe benefits.
- (2) If self-supporting receipts (all categories: e.g., curriculum, community service) exceed expenditures for the fiscal year the following provisions apply:
 - (A) Surplus funds shall be expended for student financial aid, scholarships, or program improvement. All

- expenditures shall directly benefit students.
- (B) Funds derived from self-supporting classes shall not be used for:
- (i) Supplemental salaries of any personnel;
 - (ii) Administrative support of the college, other than noted above, and only for activities that directly benefit students; and
 - (iii) College entertainment expense. (Educational activities for non-college personnel or college personnel to enhance student success would not be entertainment. Functions in which the primary purpose is fundraising would be entertainment.)

- (3) Each local board of trustees shall adopt a policy regulating the amount of mark-up the college may charge for a self-supporting class and how surplus funds derived from these classes may be used. Each local board of trustees shall review its policy on self-supporting classes at least once every three years. All expenditures must be consistent with the mission and purpose of the community college system.

(c) Driver Education. Colleges shall collect a student fee as established by the local board of trustees for the adult driver education training course offered through the community service program.

(d) Registration Fee Refunds. A refund shall not be made except under the following circumstances:

- (1) A student who officially withdraws from an extension class(es) prior to the first class meeting shall be eligible for a 100 percent refund. Also, a student is eligible for a 100 percent refund if an applicable class fails to "make" due to insufficient enrollment.
- (2) After the respective class begins, a 75 percent refund shall be made upon the request of the student if the student officially withdraws from the class prior to or on the 10 percent point of the scheduled hours of the class. Note: This Rule is applicable regardless of the number of times the class meets or the number of hours the class is scheduled to meet.
- (3) A 100 percent refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75 percent refund shall be made if the student officially withdraws from a contact hour class on or before the tenth calendar day of the class.

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

- (5) If a student, having paid the required registration fee for a semester or term, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all registration fees for that semester or term may be refunded to the estate of the deceased.

(e) Military Registration Fee Refund - Upon request of the student, each college shall:

- (1) Grant a full refund of registration fees to military reserve and national Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and
- (2) Buy back textbooks through the colleges' bookstore operations to the extent possible.

Colleges shall use distance learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

Authority G.S. 115D-5; 115D-39; S.L. 1995, c. 625.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01H .0904-.0905, .1003-.1004; 01N .0602.

Proposed Effective Date: August 1, 2011

Public Hearing:

Date: May 18, 2011

Time: 10:00 a.m.

Location: Office of State Personnel, Administration Building, 3rd floor, 116 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action: Amend the RIF rules to remove the requirement of completing and forwarding a completed state application to OSP. Amend the Lactation Support rules to ensure that adoptive mothers, who can and do express milk to nurse their babies, receive the same benefits afforded birth mothers under the lactation support policy.

Procedure by which a person can object to the agency on a proposed rule: A person may object to these proposed rules by one of the following methods: 1. A written letter to Delores Joyner, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. 2. An email to delores.joyner@osp.nc.gov.

Comments may be submitted to: *Delores Joyner, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919)807-4850, fax (919)715-9750, delores.joyner@osp.nc.gov*

Comment period ends: *May 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 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01H - RECRUITMENT AND SELECTION

SECTION .0900 - REDUCTION-IN-FORCE - PRIORITY REEMPLOYMENT

25 NCAC 01H .0904 AGENCY AND EMPLOYEE RESPONSIBILITIES

(a) The employing agency shall notify the employee of impending separation as soon as possible in accordance with G.S. 126-7.1(a1), and inform the employee of the priority consideration to be afforded. ~~An employee shall file a completed state application with the employee's agency within 30 days of receipt of written notification of separation. It is the agency's responsibility to submit such an employee's completed state application to the Office of State Personnel. If the employee does not want assistance in finding another State job, the agency shall obtain a written statement from the employee to that effect, and provide a copy to the Office of State Personnel.~~

- (b) The agency shall notify the Office of State Personnel when:
- (1) an employee is officially notified of reduction in force;
 - (2)(4) an eligible employee accepts a position that satisfies the priority; consideration;
 - (3)(2) an employee with priority status due to reduction in force is offered a lateral transfer or promotion and refuses, unless the position offered is more than 35 miles from the employee's original workstation; or

- (4)(3) other conditions that would satisfy or terminate an eligible employee's priority consideration are discovered.

Authority G.S. 126-4(6),(10).

25 NCAC 01H .0905 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

(a) ~~The Office of State Personnel shall provide a priority referral system such that priority consideration may be granted.~~maintain a list of employees notified of reduction in force that will serve as a reference for agencies in applying priority reemployment.

(b) The Office of State Personnel shall also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance includes resumé preparation, personal marketing, and interview skills, along with Employment Security Commission coordination for placement referral.

Authority G.S. 126-4(6),(10).

25 NCAC 01H .1003 AGENCY AND EMPLOYEE RESPONSIBILITIES

(a) The employing agency shall inform the employee of the priority consideration to be afforded. ~~To receive the advantage of the statutory priority, an employee must file a completed state application with the employee's agency within 30 days of separation. It is the agency's responsibility to submit such an employee's completed state application to the Office of State Personnel immediately. If the employee does not want assistance in finding another State job, the agency shall obtain a written statement from the employee to that effect, and provide a copy to the Office of State Personnel.~~

- (b) The Agency shall notify the Office of State Personnel when:
- (1) an employee is eligible for this priority.
 - (2)(4) an eligible employee accepts a position that satisfies the priority consideration, or
 - (3)(2) an eligible employee ~~separated from a position designated as exempt~~ exercises priority and then refuses an employment offer, or
 - (4)(3) other conditions that would satisfy or terminate an eligible employee's priority consideration are discovered.

Authority G.S. 126-4(6),(10).

25 NCAC 01H .1004 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

~~The Office of State Personnel shall provide a priority referral system such that priority consideration may be granted.~~

(a) The Office of State Personnel shall maintain a list of employees that will serve as a reference for agencies in applying priority reemployment.

(b) The Office of State Personnel shall also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance includes resume preparation, personal marketing, and interview skills, along with Employment Security Commission coordination for placement referral.

Authority G.S. 126-4(6),(10).

**SUBCHAPTER 01N - WORKPLACE ENVIRONMENT
AND HEALTH**

SECTION .0600 - LACTATION SUPPORT

25 NCAC 01N .0602 POLICY

It is the policy of the State to assist working mothers who are nursing children during their transition back to work following the birth or adoption of a child by providing lactation support. A lactation support program allows a nursing mother to express breast milk periodically during the work day.

Authority G.S. 126-4.

This Section contains information for the meeting of the Rules Review Commission on Thursday February 17, 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
George Lucier

COMMISSION COUNSEL

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

RULES REVIEW COMMISSION MEETING DATES

March 17, 2011 April 21, 2011
May 19, 2011 June 16, 2011

RULES REVIEW COMMISSION**February 17, 2011****MINUTES**

The Rules Review Commission met on Thursday, February 17, 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, George Lucier, Dan McLawhorn, Ann Reed, Curtis Venable and Ralph Walker.

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

The following people were among those attending the meeting:

Nancy Hemphill	Medical Board
Nancy Pate	Department of Environment and Natural Resources
Dana Folley	DENR/Division of Water Quality
Deborah Gore	DENR/Division of Water Quality
Sarah Morrison	DENR/Division of Water Quality
Karen Waddell	Department of Insurance
Barry Gupton	Building Code Council
Anca Grozav	Office of State Budget and Management
Daron Barnes	Wildlife Resources Commission
Kate Pipkin	Wildlife Resources Commission
Rebecca Shigley	Department of Insurance
Elizabeth Kountis	DENR/Division of Water Quality

The meeting was called to order at 9:01 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 George Lucier, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Mr. Lucier is a consultant for Chin-Caplan law firm. The potential conflict identified does not prohibit service on the RRC.

New Commissioner George Lucier was welcomed and introduced by Chairman Hayman. He was then sworn in by Judge Ralph Walker.

APPROVAL OF MINUTES

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the January 20, 2011 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

15A NCAC 07M .0402 – Coastal Resources Commission. The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

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

Department of Insurance

All permanent rules were approved unanimously.

Criminal Justice Education and Training Standards Commission

12 NCAC 09B .0304 was withdrawn by the agency. The agency subsequently announced that they wished to withdraw this rule from the rulemaking process.

Environmental Management Commission

All permanent rules were approved unanimously with the following exception:

15A NCAC 02H .0903 – The Commission objected to this rule based on ambiguity. In (a)(9) page 2 line 3, it is unclear what is meant by “fundamentally different factors.” That same term is used as a key part of the definition in lines 4 and 5 where the definition reads: “These factors are those relating to an industrial user that are fundamentally different from the factors considered during development of a National Categorical Pretreatment Standard ...” (emphasis added). It is unclear what a term means when the agency uses the same terms to define the term.

15A NCAC 02H .0907 – The Commission objected to this rule based on lack of statutory authority and ambiguity. In (b)(2) line 33 it is unclear what constitutes a “substantial modification” to a pretreatment program. This is critical because a substantial modification requires an additional step of public notice and a comment period along with the addition of the comments to the record in deciding whether to allow the modification. There is no authority cited to set the standards outside rulemaking.

15A NCAC 02H .0908 – The Commission objected to this rule based on ambiguity. In (e)(1), page 2 lines 21 and 22, the POTW (publicly owned treatment works) is required to submit two samples each year for certain parameters listed in its permit. In (e)(1)(A), page 2 lines 27, the division “may” waive the second sampling “for good cause shown.” This in reality is a vague standard and does not constitute the “specific guidelines” required by G.S. 150B-19(6). There is no authority cited to have such a waiver without specific guidelines. In (f), page 3 lines 13 – 16, there is a requirement that certain records be retained. Originally the rule set a period of five years. That was proposed to be changed to “three years after the end of the effective period of the document.” That has been changed again to a period of time “as specified by the Director” and open to unilateral change at any time by the rulemaker. This makes the rule unclear as to how long the records must be retained. There is no authority cited to set this time outside rulemaking.

15A NCAC 02H .0922 – The Commission objected to this rule based on lack of statutory authority for three portions of the rule: (1) There is no authority cited for the provision in (a) line 7 to require a local government to provide a hearing or require the appointment of a hearing officer for appeal of a civil penalty as well as the other unfavorable actions taken in (a) against an industrial user. In N.C.G.S. 143-215.6A(k) the legislature sets the conditions for such a hearing “if a local ordinance provides for a local administrative hearing” (emphasis added). It also notes the recourse (filing a civil action in superior court) someone has if there is no provision for a local hearing. (2) There is no authority cited for the agency to specify what “the terms and conditions of a permit under appeal” shall be as they attempt to do in (a)(1) – (3) lines 18 – 27. Absent specific statutory authority to set out these terms only the General Assembly, and the courts interpreting the legislation, have the authority to specify what happens while any person is pursuing appeal of any agency’s or governing body’s decision. (3) Finally, there is no authority cited for the provisions in (f) which attempt to specify the judicial review that is available or the procedures one must use to avail oneself of the opportunity for judicial review.

Wildlife Resources Commission

15A NCAC 10A .0201 was approved unanimously.

Medical Board

All permanent rules were approved unanimously with the following exceptions:

21 NCAC 32F .0103 – The Commission objected to this rule based on lack of necessity. This Rule is not necessary because its substance is already covered by statute, and neither statute cited as authority is currently in existence. The relevant statute for annual "registration fees," and that is the statutory terminology, is G.S. 90-13.2. All the registration fees, including those for limited volunteer licensees are in the statute. This objection applies to existing language in the Rule.

21 NCAC 32M .0109 was withdrawn by the agency and refiled for the March meeting.

21 NCAC 32X .0104 – The Commission objected to this rule based on ambiguity. In (a) and (b) of the Rule, the Rule says that the Board will publish misdemeanor convictions involving a listed number of crimes. Among those listed are a number of crimes that are not misdemeanors. It is not clear what is meant by listing felonies as misdemeanors.

Medical Board/Perfusion Advisory Committee

21 NCAC 32V .0103 was withdrawn by the agency.

Board of Examiners in Optometry

All permanent rules were approved unanimously with the following exception:

21 NCAC 42B .0302 – The Commission objected to this rule based on ambiguity. In (h), it is not clear what standards the board will use in approving vendors or sponsors. The Rule otherwise deals with approving courses and there do not appear to be any standards for the approval of vendors or sponsors. In (k)(1), it is not clear what form is acceptable to the board. This objection applies to existing language in the Rule.

Building Code Council

All permanent rules were approved with the following exceptions:

2012 NC Energy Conservation Code:

The Commission objected to Rule .103.1 based on lack of statutory authority. There is no authority cited for the last sentence in this Rule. If the statutes do not otherwise require documents to be prepared by a registered design professional, there is no authority cited for the Council to authorize a code official to require it.

The Commission objected to Rule .105.1 based on lack of statutory authority. There is no authority cited for the agency to adopt a rule limiting a court decree. The validity of the remainder of the code would depend on the court decision.

The Commission objected to Rule 503.2.9 based on ambiguity. The agency has submitted two versions of this section. They both apparently went through the same notice and hearing process and were adopted the same day with the same effective date. It is not clear which is the real set of requirements.

Commissioner Gray moved to object to the 2012 NC Energy Code based on lack of authority; Commissioner Funderburk seconded the motion. The motion was defeated two votes to five. Commissioner Venable moved to accept the staff recommendation to object to the above-listed rules and to approve the remaining rules in the 2012 NC Energy Conservation Code. The motion was approved with Commissioners Crisp, Lucier, McLawhorn, Reed, Venable and Walker voting for the motion and Commissioners Funderburk and Gray voting against the motion.

2012 NC Residential Code:

2012 NC Residential Code – The Commission objected to the 2012 N.C. Residential Code adoption as well as the two amendments to the 2009 code based on a failure to comply with the Administrative Procedure Act. The failure to comply was the agency's failure to make the technical changes requested as set out in G.S. 150B-21.10. The Commission also needs to determine whether the proposed amendments are actually intended to apply to the 2009 N.C. Residential Code or the 2012 code or both. There was both a proposed amendment to R313.1 that presumably is an amendment to the existing 2009 NCRC that appears to be different from the same rule in the 2012 IRC Code for the 2012 N.C. Residential Code and it is not clear what rule is intended to be in the 2012 N.C. Residential Code.

The Commission received more than 10 written letters of objection to the 2012 NC Energy Conservation Code and the 2012 NC Residential Code. The approved rules are now subject to legislative review and a delayed effective date. The remaining rules will be subject to legislative review and a delayed effective date if and as they are approved.

TEMPORARY RULES

There were no temporary rules filed for review.

COMMISSION PROCEDURES AND OTHER BUSINESS

The staff informed the Commission about the status of Senate Bills 22 and 29.

The meeting adjourned at 10:43 a.m.

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

Respectfully Submitted,

Dana Vojtko
Publications Coordinator

LIST OF APPROVED PERMANENT RULES February 17, 2011 Meeting

INSURANCE, DEPARTMENT OF

<u>Declaratory Rulings: General Information</u>	11	NCAC	01	.0301
<u>Definitions</u>	11	NCAC	06A	.0801
<u>Approval of Courses</u>	11	NCAC	06A	.0809
<u>Agent Education on LTCP Policies: Company Responsibility</u>	11	NCAC	06A	.0814
<u>Limited Use of Anticipated Withdrawal Rates</u>	11	NCAC	11F	.0406
<u>Collateral Security Required by Bondsmen</u>	11	NCAC	13	.0512

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>White Oak River Basin</u>	15A	NCAC	02B	.0312
<u>Purpose</u>	15A	NCAC	02H	.0901
<u>Scope</u>	15A	NCAC	02H	.0902
<u>Required Pretreatment Programs</u>	15A	NCAC	02H	.0904
<u>POTW Pretreatment Program Implementation Requirements</u>	15A	NCAC	02H	.0905
<u>Submission for Program Approval</u>	15A	NCAC	02H	.0906
<u>National Pretreatment Standards: Prohibited Discharges</u>	15A	NCAC	02H	.0909
<u>National Pretreatment Standards: Categorical Standards</u>	15A	NCAC	02H	.0910
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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

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Brian Scott Bradshaw v. Alarm Systems Licensing Board	10 DOJ 1738	08/03/10	
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Timothy Tracy Walker v. Criminal Justice Education and Training Standards Commission	10 DOJ 3288	09/13/10	
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Mac VIII Enterprises Inc, d/b/a Instant Imprints Michael McDonald v. DOL, John Hoomani Legal Counsel	10 DOL 3556	09/29/10	
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Bakari Delcackio Johnson v. DENR, Division of On-Site Wastewater, Carteret County Health Dept. Environmental Health and Bakari Johnson; Larry Parmley v. DENR, Division of On-Site Wastewater, Carteret County Health Department	06 EHR 1400	12/30/11	25:17 NCR 2110
U.S. Department of the Interior (DOI), Fish and Wildlife Service (FWS) v. DENR, Division of Air Quality And PCS Phosphate Company, Inc (PCS Phosphate)	08 EHR 1067	11/12/10	25:15 NCR 1857
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Dennis Keeney & Patricia Keeney v. Division of Environmental Health	09 EHR 4425	12/30/10	
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Joel F. Hollowell Oil Co, Inc 16,969.43 v. DENR	10 EHR 0288	10/18/10	
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Archie S. Hill v. DENR, Division of Water Quality	10 EHR 5358	01/27/11	
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Lloyd Nelson v. State Health Plan Blue Cross Blue Shield of NC	10 INS 2177	09/08/10
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John Long v. Central Regional Hospital, DHHS	09 OSP 2400	10/28/10	25:16 NCR 1922
Patricia Swann v. Central Regional Hospital, DHHS	09 OSP 2402	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	05/27/10	
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Charles T. Hodge Jr. v. Mike Totolo, Vance County Public Schools	09 OSP 4977	08/30/10	
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Cynthia Lloyd v. Vance County	10 OSP 2577	08/30/10	
John Anthony McDonald, II v. DHHS, Division of Information Resource Management	10 OSP 2786	06/24/10	
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Cornelia G. Snow v. Wendy Godwin/Longleaf Neuro-Medical Treatment Center	10 OSP 2909	06/29/10	
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Superintendent (Joseph Locklear) Board Attorney (David Phillips) Principal (Vanessa Alford)

Elizabeth Plummer v. Vance County, Department of Social Services, Kay Fields, Director	10 OSP 5695	12/16/10
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Elizabeth Danial Dominique v. NC Teaching Fellows Commission	09 TFC 6833	09/24/10	25:11 NCR 1366
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