

NORTH CAROLINA REGISTER

VOLUME 25 • ISSUE 21 • Pages 2317 - 2434

May 2, 2011

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Contact List for Rulemaking Questions or Concerns

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

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

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

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

Rule Review and Legal Issues

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

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

Fiscal Notes & Economic Analysis and Governor's Review

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

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: 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

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
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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. 86

**ESTABLISHING A JUDICIAL NOMINATING COMMISSION FOR
THE APPOINTMENT OF JUSTICES AND JUDGES**

WHEREAS, the Constitution and Laws of the State of North Carolina entrust the Governor with the duty of appointing Justices and Judges of the General Court of Justice when vacancies occur; and

WHEREAS, the quality of our system of justice is determined by the quality of the judicial officers who serve within our judicial system; and

WHEREAS, a fair, impartial, independent, highly qualified, and diverse judiciary is essential to ensuring justice for all who come before North Carolina's courts and to fostering public confidence in the integrity of the judicial process; and

WHEREAS, it is essential that the Governor fills judicial vacancies with men and women of the highest quality who by temperament, ability and integrity will impartially and independently interpret the laws and administer justice; and

WHEREAS, it is my belief that the State of North Carolina can best achieve this goal by establishing a judicial screening commission composed of outstanding lawyers and laypersons from all quarters of the State, to assist me in exercising these important constitutional duties.

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

Section 1. Purpose and Scope of this Executive Order

On and after July 1, 2011, when a vacancy occurs in the office of Chief Justice or Associate Justice of the Supreme Court, Judge of the Court of Appeals, or Judge of the Superior Court, the Judicial Nominating Commission established by this Order shall nominate, from among applicants for appointment to any such vacancy, the three persons it determines most qualified to fill the vacancy, and the Governor will appoint one of those persons to the position. This Order

does not apply to the appointment of Judges of the District Courts or to the appointment of Special Superior Court Judges.

Section 2. Establishment of the Judicial Nominating Commission

- a. The North Carolina Judicial Nominating Commission (the "Commission") is hereby established. It shall be composed of 18 voting members appointed as prescribed herein. All former Chief Justices of the Supreme Court shall serve in an advisory capacity to the Commission. Nothing herein shall preclude one or more of the former Chief Justices from also being appointed to serve as Commissioners pursuant to the appointment process set out herein.
- b. Members of the Commission (hereinafter referred to as "Commissioners") will have knowledge of, and strong interest in, the state judicial system and the needs and operation of North Carolina's state courts. Commissioners who are members of the bar shall have at least ten years of experience in the practice of law. Commissioners shall be residents of the State of North Carolina and shall reflect the diversity of the State.
- c. The Governor will invite nominations for eight voting Commissioners as follows:
 1. The President of the North Carolina State Bar, the President of the North Carolina Bar Association, the President of the North Carolina Advocates for Justice, the President of the North Carolina Association of Defense Attorneys, the President of the North Carolina Association of Black Lawyers, the President of the North Carolina Association of Women Attorneys, the Chair of the Board of the Indigent Services Commission, and the President of the North Carolina Conference of District Attorneys shall each nominate three members of the bar. The Governor shall select one member of the bar from each group of three so nominated to serve on the Commission. Each of the persons submitting nominations pursuant to this subsection will seek to nominate persons who will aid the Governor in achieving the balance and diversity described in Section 2(e) below.
 2. Nominations to the Judicial Nominating Commission shall be made within 30 days following the Governor's request. If any person identified in Section 2(c)(1) above fails to timely make the nomination(s) requested of him or her, the Governor will appoint a Commissioner to the seat that would have been occupied by a nominee of the person failing to make a timely nomination. Whenever the term of a Commissioner is about to expire, or a vacancy on the Commission occurs, the Governor shall invite a nomination(s) from the official who supplied the nomination of the Commissioner whose term is expiring.
- d. The Governor will appoint ten additional voting Commissioners, eight of whom are not lawyers and two of whom may be either a lawyer or non-lawyer, for a total of 18 Commissioners.

- e. In making appointments to the Commission, the Governor will seek to have a balanced Commission reflecting the diversity of North Carolina. With respect to all Commissioners, considerations of balance shall include the presence of at least eight Commissioners who are members of the bar and the presence of at least eight Commissioners who are non-lawyers, as well as geography, race, ethnicity, gender, and political party affiliations. With respect to members of the bar, considerations of balance shall also include law practice experience, practice areas, and practice settings. With respect to non-lawyers, considerations of balance shall also include experience, interests and background. This Order seeks to secure a diversity of perspective on the Commission and to instill public confidence in the Commission and the independence of judges nominated by the Commission.
- f. No Commissioner shall be eligible for appointment to a state judicial office as long as he or she is a Commissioner, and for two years thereafter.
- g. The initial terms of the Commissioners appointed by the Governor pursuant to Section 2(d) will extend from the date of appointment until April 1, 2013. Thereafter, the terms of office for those Commissioners will be two years, but none of those Commissioners may serve more than two full terms. Commissioners appointed pursuant to Section 2(c) will serve four-year terms, but none of those Commissioners may serve more than one full term.
- h. No member shall be removed during his or her term by the Governor except for cause.

Section 3. Organization of the Commission

- a. The Governor shall appoint one Commissioner to be the Chair of the Commission for a two-year term. The Commission shall elect its Vice-Chair and Secretary for two-year terms.
- b. The Commission shall adopt written rules to govern its procedures.
- c. A quorum consisting of a majority of the Commissioners then in office shall be necessary for the Commission to act.
- d. Promptly following the establishment of the Commission, the Commission shall hold one or more public hearings to receive citizen comments and advice regarding the qualities citizens believe are characteristic of an able judiciary.

Section 4. Judicial Vacancies

- a. The Governor will promptly notify the Commission Chair of all vacancies occurring on and after July 1, 2011, whether such vacancy has already occurred or will occur at a definite time in the future. Within six weeks of the Governor's notice to the Commission – or such shorter period as she may prescribe – the Commission shall evaluate all applicants and nominate the three candidates it deems most qualified to the Governor.

- b. In performing its duties, the Commission shall follow procedures established by its rules, with the following minimum requirements:
 - 1. The Commission shall publicize the vacancy and actively recruit qualified members of the Bar for appointment.
 - 2. Only individuals who have filed applications with the Commission may be considered.
 - 3. Applications shall be reviewed based on criteria adopted by the Commission. The criteria shall include, but not be limited to, integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility, and previous public service.
 - 4. In selecting among qualified applicants, the Commission shall seek to foster diversity in race, sex, ethnicity, geography, and professional experience.
 - 5. If fewer than three well-qualified persons apply, the panel shall reopen the application process until no less than three well-qualified candidates (as determined by the Commission in its discretion) apply.
- c. Submitting Nominees to the Governor.
 - 1. The names of the three nominees shall be submitted to the Governor in alphabetical order.
 - 2. Upon receipt of these nominations, the Governor shall make the nominees' names public and shall encourage public comment.

Section 5. Open Meetings

The confidentiality of the proceedings of the Commission shall be determined by applicable state law.

Section 6. Administration

- a. Support staff, facilities, and resources for the Commission shall be provided by the Governor's Legal Counsel.
- b. All departments, commissions, boards, offices, entities, agencies, and officers of the State of North Carolina, or any political subdivision thereof, are authorized and directed to cooperate with the Commission in implementing the provisions of this Order.

- c. No per diem allowance shall be paid to members of the Commission. Members of the Commission and staff may receive necessary travel and subsistence expenses in accordance with state law or as the Office of State Budget and Management allows.

Section 7. Review

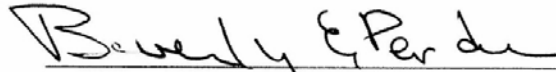
The Governor and her staff annually will evaluate the effectiveness of this Order in providing citizens a fair, impartial, independent, highly qualified, and diverse judiciary.

Section 8. Effect and Duration

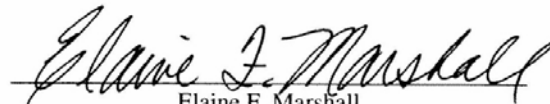
This Executive Order is effective immediately and will be applied to fill all vacancies occurring on and after July 1, 2011. This Executive Order supersedes and replaces all other executive orders on this subject. It shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fifth day of April 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



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JR:JDH:par
DJ 166-012-3
2010-2796

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

August 18, 2010

Don Wright, Esq.
General Counsel, State Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27611

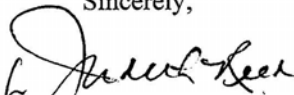
Dear Mr. Wright:

This refers to S.L. 2010-49 (HB1307) (2010), which schedules the November 2, 2010, special constitutional amendment election, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on July 2, 2010.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Section 5 review is required for any voting change (*i.e.*, the qualifications for the Office of Sheriff) adopted as a result of the special election.

Sincerely,


T. Christian Herren, Jr.
Chief, Voting Section

RECEIVED

AUG 23 2010

N.C. BOARD OF ELECTIONS



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JR:JDH:par
DJ 166-012-3
2011-0398

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

March 24, 2011

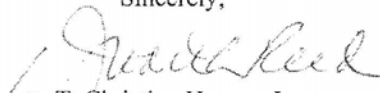
Ann B. Wall, Esq.
General Counsel
Department of the Secretary of State
P.O. Box 29622
Raleigh, North Carolina 27626-0622

Dear Ms. Wall:

This refers to the change in candidate qualifications for the office of sheriff for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on February 16, 2011.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,


T. Christian Herren, Jr.
Chief, Voting Section



U.S. Department of Justice
Civil Rights Division

TCH:RSB:MSR:JDH:par
DJ 166-012-3
2010-3086

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

September 22, 2010

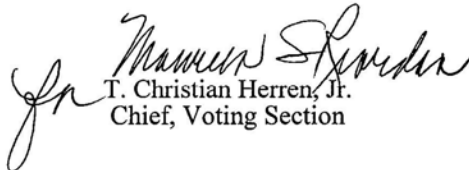
Don Wright, Esq.
General Counsel
State Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27611

Dear Mr. Wright:

This refers to Session Law 2010-95 (S1177) (2010), which replaces the definition of political party in GS 105-159.1(a) so it conforms with the "political party" definition in Chapter 163 of the General Statutes dealing with elections, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on August 5, 2010.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,


T. Christian Herren, Jr.
Chief, Voting Section

RECEIVED

SEP 27 2010

N.C. BOARD OF ELECTIONS



U.S. Department of Justice
Civil Rights Division

TCH:RSB:MSR:KG:par
DJ 166-012-3
2010-3057

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

September 20, 2010

RECEIVED

SEP 28 2010

N.C. BOARD OF ELECTIONS

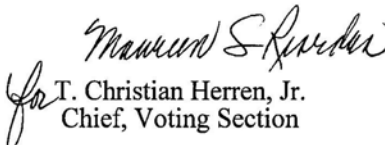
Don Wright, Esq.
General Counsel
P.O. Box 27255
Raleigh, North Carolina 27611

Dear Mr. Wright:

This refers to Session Law 2010-100 (H.B. 1136), which amends G.S. 163-278.16B(c), and provides procedures for the designation of campaign funds of deceased candidates, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on August 4, 2010.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,


T. Christian Herren, Jr.
Chief, Voting Section



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JBG:VW:par
DJ 166-012-3
2010-3090

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

September 17, 2010

RECEIVED

SEP 24 2010

N.C. BOARD OF ELECTIONS

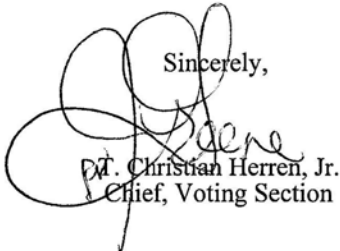
Don Wright, Esq.
General Counsel, Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27255

Dear Mr. Wright:

This refers to Session Law 2010-96 (SB 1165) (2010), which amends GS 163-182 and GS 163-278.67(b) to correct statutory citations for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on August 5, 2010.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,



P. Christian Herren, Jr.
Chief, Voting Section



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JR:JDH:par:maf
DJ 166-012-3
2010-3056

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

September 24, 2010

Don Wright, Esq,
General Counsel
State Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27611

RECEIVED

SEP 29 2010

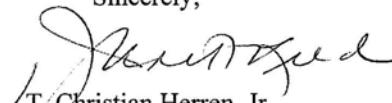
N.C. BOARD OF ELECTIONS

Dear Mr. Wright:

This refers to Session Law 2010-114 (H.B. 593) (2010), which prohibits counties, municipalities, and local school boards from using public funds to endorse or oppose a referendum, election or a particular candidate, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on August 4, 2010.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.14.

Sincerely,


T. Christian Herren, Jr.
Chief, Voting Section



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JBG:JDH:tst
DJ 166-012-3
2010-0453
2010-0461

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

March 11, 2010

Don Wright, Esq.
General Counsel, State Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27611

Dear Mr. Wright:

This refers to the modifications to the English and Spanish versions of the Voter Registration Preference Form and the 2010-01 Guidelines on Voter Registration for pre-registration, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submissions on January 15 and 19, 2010.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Christian Herren, Jr.", written over a circular stamp.

T. Christian Herren, Jr.
Acting Chief, Voting Section

RECEIVED

MAR 15 2010

N.C. BOARD OF ELECTIONS



U.S. Department of Justice

Civil Rights Division

TCH:RSB:SMC:tst:maf
DJ 166-012-3
2010-3471

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

September 2, 2010

Don Wright, Esq.
General Counsel
State Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27611

Dear Mr. Wright:

This refers to the one-time change in date for mail-in absentee ballots to be ready and transmitted to voters before the November 2, 2010, general election from 60 days to 45 days before the election, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on August 31, 2010.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,

A handwritten signature in black ink, reading "T. Christian Herren, Jr.", is written over the typed name.

T. Christian Herren, Jr.
Chief, Voting Section

RECEIVED
SEP 07 2010
N.C. BOARD OF ELECTIONS



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JBG:JDH:tst
DJ 166-012-3
2011-0446

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

March 15, 2011

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to five annexations (Ordinance Nos. 10-69, 10-70, 10-85, 10-93 and 10-94 (2010)) and their designation to districts for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on February 22, 2011.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,

A handwritten signature in black ink, appearing to read "R.T. Christian Herren, Jr.", is written over a circular stamp. The stamp contains the text "R.T. Christian Herren, Jr." and "Chief, Voting Section".

R.T. Christian Herren, Jr.
Chief, Voting Section

DIVISION OF WATER QUALITY: PROPOSAL TO REVISE THE NC CONSTRUCTION GENERAL PERMIT (NCG010000) PROVIDING STORMWATER COVERAGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

The Division of Water Quality proposes to issue a revision to the North Carolina Construction General Permit (NCG01) on or before August 2, 2011. The existing permit was issued effective January 1, 2010. A copy of a "pre-publication" version of the NCG01 was sent to EPA-Region IV on April 12, 2011 as is required by the State-EPA Memorandum of Agreement. After receiving comments from EPA and modifying this version as appropriate, the official publication of the Draft Permit will be available for public review on or before May 13, 2011. A copy of that document and related information can be found at: <http://portal.ncdenr.org/web/wq/ws/su/2011-construction-permit>.

The published Draft Permit will be made public on or before May 13th. The Division will be accepting comments until June 16, 2011. A public meeting for information exchange will be held in Raleigh at 3:00 P.M. on June 7, 2011, in the Ground Floor Hearing Room of the Archdale Building.

You are invited to submit written comments on the published Draft Permit to the address below. (Comments on the initial "Pre-publication" version submitted to EPA on April 12th will also be welcomed.)

Send comments to:

Stormwater Permitting Unit
Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617
Attn: Boyd DeVane

Or email them to boyd.devane@ncdenr.gov

Direct questions to Boyd DeVane at 919-807-6373

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

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

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

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

Public Hearing: *June 13, 2011, 1:00PM, NC Department of Insurance, 322 Chapanoke Road, Classroom Downstairs, Raleigh, NC 27603.*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on July 15, 2011.*

Statement of Subject Matter:

1. Request by James Bartl, AIA and Jim Tschupp, AIA, to amend the 2012 NC Administrative Code and Policies, Section 106.
The proposed amendment is as follows:

Add Exception to 106.2.1 Requirements:

Exception: Projects using BIM-IPD process see 106.2.3.1

Add Exception to 106.2.2 Additional data:

Exception: Projects using BIM-IPD process see 106.2.3.1

106.2.3.1 Building Information Modeling – Integrated Project Delivery Projects.

BIM: model based technology linked with a data base of project information, using three dimensional, real time dynamic modeling software, to plan all building construction. The model encompasses building geometry, spatial relationships, geographic information, and quantities and properties of building components.

IPD: a project delivery method that integrates key participants (owner, Architect, Engineer, contractor, code official, et al), systems, business structures and practices into a process that collaboratively plans and constructs facilities. The collaborative process begins in early design and continues through all phases of design, fabrication and construction.

Commentary: This applies to any project delivery method employing three dimensional modeling software, to virtually construct all building components, by a collaborative team based process from design start to construction completion.

Projects employing a Building Information Modeling – Integrated Project Delivery (BIM-IPD) process will replace the requirements of 106.2.3, with the following permitting and inspection steps.

1. At the project start, the owner's project team (Architect, Engineer, Contractor, et al) will reach agreement with the Code Enforcement Official (CEO) on the prevailing code compliance strategy for the full scope of the project, to be documented in an electronic Appendix B format or an equivalent format, acceptable to the CEO.

2. The CEO may issue a single project master permit, based on the initial project description and code compliance strategy agreement.

3. The CEO shall work collaboratively to review building components or details as scheduled by the owner's project team.

4. The CEO shall inspect built work, as described in Section 107 of this code.

4.1. Concurrence on compliance with the code, with respect to both the model and built product, will be gained before inspections are approved.

5. The owner's project team will submit a validation document, at project substantial completion, documenting the building as constructed and compliance with the NC State Building Code, for records retention by the AHJ.

Validation document: may be a three dimensional model, two dimensional electronic drawings and records, or a combination of both, accurately reflecting the completed building as approved by the code official in the field, and verified with respect to same.

5.1 Where the validation document varies from the approved virtual model regarding building code compliance, the related Architect/Engineer must approve the change.

5.2 Receipt of the validation document will be a condition on issuance of Certificate of Occupancy.

Motion – Mack Nixon/Second – Kim Reitterer/Granted – The request was granted unanimously and was referred to the Administrative Committee for review.

2. Request by Vicky L. Moody, Project Manager, and Charles Knapp, Owner of Rooster Ridge Stairlifts, to amend the 2012 NC Building Code, Section 1109.7. The proposed amendment is as follows: [Note; the item approved was substitute language presented at the meeting and is different from the agenda]

1109.7 Lifts. Platform (wheelchair) lifts are permitted to be a part of a required accessible route in new construction where indicated in Items 1 through 10. Platform (wheelchair) lifts shall be installed in accordance with ASME A18.1.

1. An accessible route to a performing area and speaker platforms in Group A occupancies.
2. An accessible route to wheelchair spaces required to comply with the wheelchair space dispersion requirements of Sections 1108.2.2 through 1108.2.6.
3. An accessible route to spaces that are not open to the general public with an occupant load of not more than five.
4. An accessible route within a dwelling or sleeping unit.
5. An accessible route to wheelchair seating spaces located in outdoor dining terraces in Group A-5 occupancies where the means of egress from the dining terraces to a public way are open to the outdoors.
6. An accessible route to jury boxes and witness stands; raised courtrooms stations including judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations and court reporters' stations; and to depressed areas such as the well of the court.
7. An accessible route to load and unload areas serving amusement rides.
8. An accessible route to play components or soft contained play structures.
9. An accessible route to team or player seating areas serving areas of sport activity.
10. An accessible route where existing exterior site constraints make use of a ramp or elevator infeasible.

Exception: A chairlift that complies with ASME A18.1 shall be permitted to be a part of a required accessible route in new construction in:

1. Religious organizations or entities controlled by religious organizations, including places of worship.
2. Private clubs or establishments exempted under Title II of the Civil Rights Act of 1964.

3409.8.3 Platform lifts. Platform (wheelchair) lifts complying with ICC A117.1 and installed in accordance with ASME A18.1 shall be permitted as a component of an accessible route.

Exception: A chairlift that complies with ASME A18.1 shall be permitted to be a part of a required accessible route in alterations of existing occupancies in :

1. Religious organizations or entities controlled by religious organizations, including places of worship.
2. Private clubs or establishments exempted under Title II of the Civil Rights Act of 1964.

Motion – John Hitch/Second – Mack Nixon/Granted – The request was granted unanimously and was referred to the Building Committee for review.

3. Request by Jerry Tannery and Leon Skinner with the City of Raleigh, to amend the 2009 NC Fuel Gas Code, Section 311. The proposed amendment is as follows:

2009 North Carolina Fuel Gas Code, Section 311 Carbon Monoxide Alarms

311.1 Carbon monoxide alarms. In new construction, dwelling units shall be provided with an approved carbon monoxide alarm installed outside of each separate sleeping area in the immediate vicinity of the bedroom(s) as directed by the alarm manufacturer.

311.2 Where required-existing dwellings. In existing dwellings, where interior alterations, repairs, or additions requiring a building permit occur, or where one or more sleeping rooms are added or created, or where fuel-fired appliances are added or replaced, Carbon Monoxide Alarms shall be provided in accordance with Section 313.1.1.

Exception: Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck, or the installation of a fuel-fire appliance that cannot introduce Carbon Monoxide to the interior of the dwelling, are exempt from the requirements of this section.

311.3 Alarm requirements. The required Carbon Monoxide Alarms shall be audible in all bedrooms over background noise levels with all intervening doors closed. Single station Carbon Monoxide Alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions. Battery powered, plug-in, or hard-wired alarms are acceptable for use.

Motion – David Smith/Second – Kim Reitterer/Granted – The request was granted unanimously and was referred to the Fuel Gas Committee for review.

4. Request by Jerry Tannery and Leon Skinner with the City of Raleigh, to amend the 2009 Mechanical Code, Section 313. The proposed amendment is as follows:

2009 North Carolina Mechanical Code, Section 313 Carbon Monoxide Alarms

313.1 Carbon monoxide alarms. In new construction, dwelling units shall be provided with an approved carbon monoxide alarm installed outside of each separate sleeping area in the immediate vicinity of the bedroom(s) as directed by the alarm manufacturer.

313.2 Where required-existing dwellings. In existing dwellings, where interior alterations, repairs, or additions requiring a building permit occur, or where one or more sleeping rooms are added or created, or where fuel-fired appliances are added or replaced, Carbon Monoxide Alarms shall be provided in accordance with Section 313.1.1.

Exception: Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck, or the installation of a fuel-fire appliance that cannot introduce Carbon Monoxide to the interior of the dwelling, are exempt from the requirements of this section.

313.3 Alarm requirements. The required Carbon Monoxide Alarms shall be audible in all bedrooms over background noise levels with all intervening doors closed. Single station Carbon Monoxide Alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions. Battery powered, plug-in, or hard-wired alarms are acceptable for use.

Motion – David Smith/Second – Kim Reitterer/Granted – The request was granted unanimously and was referred to the Mechanical Committee for review.

5. Request by Jerry Tannery and Leon Skinner with the City of Raleigh, to amend the 2009 NC Plumbing Code, Section 315. The proposed amendment is as follows:

2009 North Carolina Plumbing Code, Section 315 Carbon Monoxide Alarms

315.1 Carbon monoxide alarms. In new construction, dwelling units shall be provided with an approved carbon monoxide alarm installed outside of each separate sleeping area in the immediate vicinity of the bedroom(s) as directed by the alarm manufacturer.

315.2 Where required-existing dwellings. In existing dwellings, where interior alterations, repairs, or additions requiring a building permit occur, or where one or more sleeping rooms are added or created, or where fuel-fired appliances are added or replaced, Carbon Monoxide Alarms shall be provided in accordance with Section 313.1.1.

Exception: Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck, or the installation of a fuel-fire appliance that cannot introduce Carbon Monoxide to the interior of the dwelling, are exempt from the requirements of this section.

315.3 Alarm requirements. The required Carbon Monoxide Alarms shall be audible in all bedrooms over background noise levels with all intervening doors closed. Single station Carbon Monoxide Alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions. Battery powered, plug-in, or hard-wired alarms are acceptable for use.

Motion – David Smith/Second – Kim Reitterer/Granted – The request was granted unanimously and was referred to the Plumbing Committee for review.

6. Request by Luke Hirst, to amend the 2012 NC Plumbing Code, Section 403.2. The proposed amendment is as follows:

403.2 Separate facilities. Where plumbing fixtures are required, separate facilities shall be provided for each sex.

Exceptions:

1. Separate facilities shall not be required for dwelling units and sleeping units.

2. Separate facilities shall not be required in structures or tenant spaces with a total occupant load, including both employees and customers, of 25 or less.
3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 100 or less.
4. Where the code requires only one toilet facility for each sex, two unisex facilities may be substituted for separate sex facilities.

Motion – Tom Turner/Second – Al Bass/Granted – The request was granted with one no vote and was referred to the Plumbing Committee for review.

7. Request by David Smith, NC Building Code Council, to amend Section R313 of the 2009 NC Residential Code and Section R315 of the 2012 NC Residential Code. The proposed amendment is as follows:

2009 NC Residential Code

R313.1.1 Carbon monoxide alarms. In new construction, dwelling units shall be provided with an approved carbon monoxide alarm installed outside of each separate sleeping area in the immediate vicinity of the bedroom(s) as directed by the alarm manufacturer.

R313.1.2 Where required-existing dwellings. ~~For~~^{In} existing dwellings, where interior alterations, repairs, or additions~~fuel-fired appliance replacements, or additions~~ requiring a building permit occurs, or where one or more sleeping rooms are added or created, or where fuel-fired appliances are added or replaced, carbon monoxide alarms shall be provided in accordance with Section 313.1.1.

Exception: Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck, or the installation of a fuel-fire appliance that cannot introduce carbon monoxide to the interior of the dwelling, are exempt from the requirements of this section.

R313.1.3 Alarm requirements. The required carbon monoxide alarms shall be audible in all bedrooms over background noise levels with all intervening doors closed. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions. Battery powered, plug-in, or hard-wired alarms are acceptable for use.

2012 NC Residential Code

R315.1 Carbon monoxide alarms. In new construction, dwelling units shall be provided with an approved carbon monoxide alarm installed outside of each separate sleeping area in the immediate vicinity of the bedroom(s) as directed by the alarm manufacturer.

R315.2 Where required-existing dwellings. ~~For~~^{In} existing dwellings, where interior alterations, repairs, or additions~~fuel-fired appliance replacements, or additions~~ requiring a building permit occurs, or where one or more sleeping rooms are added or created, or where fuel-fired appliances are added or replaced, carbon monoxide alarms shall be provided in accordance with Section 313.1.1.

Exception: Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck, or the installation of a fuel-fire appliance that cannot introduce carbon monoxide to the interior of the dwelling, are exempt from the requirements of this section.

R315.3 Alarm requirements. The required carbon monoxide alarms shall be audible in all bedrooms over background noise levels with all intervening doors closed. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions. Battery powered, plug-in, or hard-wired alarms are acceptable for use.

Motion – David Smith/Second – Hawley Truax/Granted – The request was granted unanimously and was referred to the Residential Committee for review.

8. Request by Angela Wooten, AIA, to amend the 2012 NC Building Code, Section 1210.1. The proposed amendment is as follows:

1210.1 Floors. In other than dwelling units, toilet and bathing room floors shall have a smooth, hard, nonabsorbent surface that extends upward onto the walls at least ~~6 inches (152mm)~~ 3 inches (76mm).

Motion – John Hitch/Second – Bob Ruffner/Granted – The request was granted unanimously and was referred to the Building Committee for review.

9. Request by Wayne Hamilton, NC Fire Service Code Revision Committee, to amend the 2009 and 2012 NC Fire Code, Section 106. The proposed amendment is as follows:

SECTION 106 INSPECTION SCHEDULES

(Preceding text unchanged – Delete and substitute the last paragraph only)

~~On unattended or abandoned structures, the Fire Official shall affix a letter on the premises in a conspicuous place at or near the entrance to such premises requesting an inspection in accordance with Section 107 of this code. This order of notice shall be mailed by registered or certified mail, with return receipt requested, to the last known address of the owner, occupant or both. If the owner, occupant or both shall fail to respond to said notice within ten (10) calendar days, these actions by the Fire Official shall be deemed to constitute an inspection in accordance with this section.~~

On vacant structures, the Fire Code Official shall affix a notice on the premises in a conspicuous place at or near the entrance to such premises requesting an inspection in accordance with Section 106.1 of this code. If the owner, occupant or both shall fail to respond to said notice within ten (10) calendar days, this action by the Fire Code Official shall be deemed to constitute compliance with the inspection schedule.

Motion – Alan Perdue/Second/Granted – The request was granted unanimously and was referred to the Fire Committee for review.

10. Request by Robert Privott, NCHBA, to amend the 2009 Administrative Code and Policies, Section 107. The proposed amendment is as follows:

SECTION 107 INSPECTIONS

107.1 General. The inspection department shall perform the following inspections:

1. Footing inspection;
2. Under slab inspection, as appropriate;
3. Foundation inspection, wood-frame construction;
4. Rough-in inspection;
5. Building framing;
6. Insulation inspection;
7. Fire protection inspection; and
8. Final inspection

Footnote:

1. For residential construction, inspections shall be limited to the comprehensive list above. Requirements for additional inspections must be approved by the North Carolina Building Code Council before being required by local jurisdictions except where unforeseen or unique circumstances exist. In the absence of approval by the Building Code Council the requirements for additional inspection shall have no force and effect.

Motion/Second/Granted – The request was granted unanimously and was referred to the Administrative Committee for review.

Staff noted that this code change may not be within the statutory authority of the Building Code Council, but instead was the statutory authority of the jurisdiction.

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

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

TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Public Library Certification Commission intends to adopt the rules cited as 07 NCAC 02J .0101-.0103 and repeal the rules cited as 07 NCAC 02F .0101-.0103.

Proposed Effective Date: September 1, 2011

Public Hearing:

Date: June 6, 2011

Time: 1:00 p.m.

Location: Archives and History/State Library Building, Room 310E, 109 E. Jones Street, Raleigh, NC

Reason for Proposed Action: The proposed action is necessary in order for the North Carolina Public Librarian Certification Commission to update the Administrative Code provisions relevant to the certification of public librarians, last revised in 1989. In the interim, graduate programs offering a Master's degree in Library Science have integrated use of technology into all coursework, making the current certification requirement for completion of a separate technology course no longer essential. The proposed action will remove the Technology course from the list of required competencies, and clarify the language for the required competencies in Collection Development and Library Management.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Sharon Stack, Chair of the Public Librarian Certification Commission, during the comment period. Additional objections may be made verbally and in writing at the public hearing.

Comments may be submitted to: Sharon Stack, Chair of the Public Librarian Certification Commission, Jacob S. Mauney Memorial Library, 100 South Piedmont Avenue, Kings Mountain, NC 28086-3414, phone (704)739-2371, fax (704)734-4499, email sstack@mauneylibrary.org

Comment period ends: July 1, 2011

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

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

Fiscal Impact:

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

CHAPTER 02 - DIVISION OF STATE LIBRARY

SUBCHAPTER 02F - NORTH CAROLINA PUBLIC LIBRARIAN CERTIFICATION COMMISSION

07 NCAC 02F .0101 PURPOSE OF THE COMMISSION

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

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

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

Authority G.S. 143B-67.

07 NCAC 02F .0102 FULL CERTIFICATION

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

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

~~(c) Courses specifically designed for school, media center, academic, or special librarianship, must also reflect general principles of librarianship in order to fulfill the requirements for public librarian certification.~~

Authority G.S. 143B-67.

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

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

Authority G.S. 143B-67.

SUBCHAPTER 02J - NORTH CAROLINA PUBLIC LIBRARIAN CERTIFICATION COMMISSION

SECTION .0100 - COMMISSION RULES

07 NCAC 02J .0101 PURPOSE OF THE COMMISSION

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

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

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

Authority G.S. 143B-67.

07 NCAC 02J .0102 FULL CERTIFICATION

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

(b) Coursework must include the following core courses:

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

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

Authority G.S. 143B-67.

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

Applicants shall send a completed application form for public librarian certification, accompanied by an official transcript which contains the date of conferral of the degree, to the Library Development Section of the State Library of North Carolina.

Authority G.S. 143B-67.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule the cited as 15A NCAC 18A .1970.

Proposed Effective Date: *October 1, 2011*

Public Hearing:

Date: *May 19, 2011*

Time: *10:00 a.m.*

Location: *2728 Capital Blvd, Room 1A224, Raleigh, NC*

Reason for Proposed Action: *Response to Rulemaking Petition by Premier Aqua ("Premier Tech"), approved to proceed to Rulemaking by the Commission February 16, 2011.*

Procedure by which a person can object to the agency on a proposed rule: *Public comments will be accepted: in writing, by email and/or Public Hearing.*

Comments may be submitted to: *Steven Berkowitz, DEH OSWW, 1642 Mail Service Center, Raleigh, NC 27699-1642, phone (919)715-3271, fax (919)715-3227, email steven.berkowitz@ncdenr.gov*

Comment period ends: *July 1, 2011*

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

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

Fiscal Impact:

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

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS

15A NCAC 18A .1970 ADVANCED WASTEWATER PRETREATMENT SYSTEM

(a) **ADVANCED PRE-TREATMENT SYSTEM PERFORMANCE STANDARDS:** A wastewater system with a design flow of up to 3000 gallons per day approved pursuant to 15A NCAC 18A .1957(c) or .1969 that includes an advanced pretreatment component shall be specifically designed to meet one of the effluent quality standards specified in Table VII prior to dispersal of the effluent to the soil and shall comply with the requirements of this Rule.

Table VII (Effluent Quality Standards for Advanced Pretreatment Systems)

Parameter	NSF-40	TS-I	TS-II
Carbonaceous Biochemical Oxygen Demand (CBOD)	<25 (mg/l)*	<15 (mg/l)	<10 (mg/l)
Total Suspended Solids (TSS)	<30 (mg/l)	<15 (mg/l)	<10 (mg/l)
Ammonium Nitrogen (NH ₄ -N)		<10 (mg/l) (mg/l), or at least 80% removal of NH ₃ if influent TKN exceeds 50 mg/l	<10 (mg/l)
Total Nitrogen (TN) (TN is Total Kjeldahl Nitrogen plus Nitrate+Nitrite Nitrogen)			<20 mg/l or >60% removal
Fecal Coliform		<10,000 (colonies/100 ml)	<1,000 (colonies/100 ml)

*mg/l is milligrams per liter

System performance monitoring, site and system compliance criteria pursuant to these standards are delineated in Paragraphs (n) and (o) of this Rule. These standards or modifications to these standards may be proposed to be complied with by the designer of systems with a design flow of over 3000 gallons per day or Industrial Process Wastewater Systems and approved by the State pursuant to Rules .1938(e) or .1938(f) of this Section, respectively, when documentation is provided that the performance criteria of Rule .1946 of this Section and 15A NCAC 02L shall be met.

(b) Design influent quality shall not exceed the criteria specified in Table VIII, unless the system is designed and approved by the State to handle higher strength wastewater on a product or project-specific basis.

Table VIII (Influent Quality Standards for Advanced Pretreatment Systems)

Parameter	Influent Not to Exceed (mg/l)*
Biochemical Oxygen Demand (BOD)	350
Total Suspended Solids (TSS)	200
Total Kjeldahl Nitrogen (TKN)	100
Fats, Grease and Oil (FOG)	30

*mg/l is milligrams per liter

Maximum influent characteristics in Table VIII are based upon septic tank pretreatment. The product's RWTS, Experimental, Controlled Demonstration, Innovative or Accepted System approval, as applicable, may include alternate or additional influent limitations, such as for systems designed to handle untreated wastewater and special limitations for TS-I and TS-II systems to achieve the proper amount of nitrification.

(c) The site shall be initially evaluated and classified in accordance with the rules of this Section or as otherwise specified in a system-specific approval issued pursuant to 15A NCAC 18A .1969. A ground absorption system receiving effluent from an advanced wastewater pretreatment system may be used on sites classified as SUITABLE or PROVISIONALLY SUITABLE for conventional, modified, alternative, or E & I or accepted systems in accordance with this Section. Modifications to siting and system design criteria pursuant to Paragraphs (d), (e), (f), (g), (h), (i), and (j) of this Rule shall be acceptable, as applicable.

(d) **NSF-40 SYSTEMS SITING AND SIZING REQUIREMENTS:** For systems approved to achieve at least NSF-40 standards and designed for no more than 1500 gallons per day, the following siting and sizing factors apply when designing the soil absorption system:

- (1) Trench or bed bottom separation distances are as specified in this Subparagraph. In Table IX, "SWC" means "Soil Wetness Condition," and "USC" means an "UNSUITABLE Soil/Fill Condition," other than a SWC.

Table IX: Vertical Separation Requirements for NSF-40 Systems ≤1500 gallons per day							
Soil/System Criteria	Rule* Reference	Depth from Surface** to UNSUITABLE Soil/Fill Condition		Minimum Vertical Trench/Bed Bottom Separation Requirement			
		Gravity Distribution	Pressure Dispersal	Gravity Distribution		Pressure Dispersal	
				Depth to USC	Depth to SWC	Depth to USC	Depth to SWC
Soil Group I	Rules .1955, .1956, and .1957(a)	24- inches	24-inches	12-inches	12-inches	12-inches	12-inches
Soil Groups II-IV	Rules .1955, .1956, and .1957(a)	24-inches	24-inches	12-inches	12-inches	12-inches	12-inches
New Fill	Rule .1957(b)(1)	18-inches to USC, and 12-inches to SWC	18-inches to USC, and 12-inches to SWC	18-inches	18-inches	18-inches	12-inches
Existing Fill (≤480 gpd only)	Rule .1957(b)(2)	36-inches of Group I Fill/Soils	24-inches of Group I Fill/Soils	36-inches	36-inches	18-inches	18-inches

*Except as allowed in this Rule, all other requirements of the Rules referenced remain applicable

**Minimum depth of soil/fill required at site to permit system. Depth shall be measured from the naturally occurring soil surface or Existing Fill surface, as applicable

- (2) The total drainfield trench length or bed system bottom area, as required for a ground absorption system receiving septic tank effluent, is reduced by 25 percent in soils which are Groups I or II with SUITABLE structure and clay mineralogy. No other reductions in linear footage of nitrification trench, square footage of trench bottom area or system area shall be applied when a PPBPS or innovative trenches or accepted systems are used for the absorption field, except where based on an adjusted design daily flow rate granted in accordance with 15A NCAC 18A .1949(c). Bed systems remain restricted to a design flow of 600 gallons per day or less; and
- (3) The minimum horizontal setback requirements of 15A NCAC 18A .1950, .1951 and .1956(6)(g), as applicable, shall be met, except as follows:

Table X

Minimum horizontal setbacks for ground
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absorption systems Where NSF-40 Pretreatment System are used for ≤ 1500 gallons per day	
Land Feature or Component	NSF-40 (feet)
Streams classified as WS-1, except for saprolite	70
Waters classified as S.A., from mean high water mark	70
Other coastal waters from mean high water mark	35
Any other stream, canal, marsh or other surface waters, from normal pool elevation	35
Any Class I or Class II reservoir from normal pool elevation	70
Any permanent storm water retention pond from flood pool elevation	35
Any other lake or pond from normal pool or mean high water elevation	35

The Provisions of Subparagraphs (1), (2) and (3) of this Paragraph are also applicable to systems approved as meeting TS-I or TS-II standards pursuant to 15A NCAC 18A .1969, unless otherwise restricted elsewhere in this Rule.

(e) TS-I SYSTEMS SITING AND SIZING REQUIREMENTS: Except as allowed in Parts (3)(A) and (3)(B) of this Paragraph, when trenches are used for the drainfield in conjunction with an advanced pretreatment system meeting TS-I standards, one and only one of the following siting, sizing or system factors pursuant to Subparagraphs (1), (2) or (3) of this Paragraph apply when designing the ground absorption component of the system. When a system is permitted pursuant to this Paragraph, the provisions of Paragraph (d) of this Rule do not apply.

- (1) Trench bottom separation distances for a system with a design flow no greater than 1000 gallons per day are as specified in this Subparagraph. In Table XI, "SWC" means "Soil Wetness Condition," and "USC" means an "UNSUITABLE Soil/Fill Condition," other than a SWC.

Table XI: Vertical Separation Requirements for TS-I Systems ≤ 1000 gallons per day							
Soil/System Criteria	Rule* Reference	Depth from Surface** to UNSUITABLE Soil/Fill Condition		Minimum Vertical Trench Bottom Separation Requirement			
		Gravity Distribution	Pressure Dispersal	Gravity Distribution		Pressure Dispersal	
				Depth to USC	Depth to SWC	Depth to USC	Depth to SWC
Soil Group I	Rules .1955, .1956, and .1957(a)	24- inches	18-inches	12-inches	12-inches	9-inches	9-inches
Soil Groups II-IV	Rules .1955, .1956, and .1957(a)	21-inches	18-inches	9-inches	9-inches	9-inches	9-inches
New Fill	Rule .1957(b)(1)	14-inches to USC, and 12-inches to SWC	12-inches	18-inches	14 -inches	12-inches	9-inches
Existing Fill (≤480 gpd only)	Rule .1957(b)(2)	36-inches of Group I Fill/Soil	24-inches of Group I Fill/Soil	36-inches	36-inches	12-inches	12-inches

*Except as allowed in this Rule, all other requirements of the Rules referenced remain applicable

**Minimum depth of soil/fill required at site to permit system. Depth shall be measured from the naturally occurring soil surface or Existing Fill surface, as applicable

- (A) The trench bottom vertical separation distance shall not be reduced to less than 12 inches to rock or tidal water;
 - (B) With the exception of the reduced setbacks to drainage devices pursuant to Table XII of this Rule, the minimum horizontal setback requirements of 15A NCAC 18A .1950, .1951 and .1956(6)(g), as applicable, shall be met;
 - (C) A special site evaluation shall be provided to the local health department on behalf of the owner, pursuant to Paragraph (p) of this Rule; or
- (2) The long term acceptance rate (LTAR) that would be assigned by the local health department for a ground absorption system using septic tank effluent may be increased by up to a factor of two when all of the following conditions are met:
 - (A) A special site evaluation shall be provided to the local health department on behalf of the owner, pursuant to Paragraph (p) of this Rule, when Group III or IV soils or saprolite occur within three feet of the trench bottom or the site requires drainage of Group II or III soils or
- (B) whenever the design flow exceeds 1000 gallons per day;
 - (B) No further reductions in linear footage of nitrification trench or system area shall be applied when a PPBPS or innovative trenches or accepted systems are used for the absorption field;
 - (C) For systems to be installed in fill, pressure dispersal (LPP or Drip distribution) shall be utilized;
 - (D) With the exception of the reduced setbacks to drainage devices pursuant to Table XII of this Rule or as allowed pursuant to Part (3)(B) of this Paragraph, the minimum horizontal setback requirements of 15A NCAC 18A .1950, .1951, and .1956(6)(g), as applicable, shall be met. For systems with a design flow in excess of 1000 gallons per day, a 25-foot horizontal separation shall be maintained to the property line, unless a site-specific nitrogen migration analysis indicates that a nitrate concentration at the property line will not exceed 10 milligrams per liter (mg/l); or
- (3) The minimum horizontal setback requirements of 15A NCAC 18A .1950, .1951 and .1956(6)(g), as applicable, shall be met, except as follows for a system with a design flow not to exceed 1000 gallons per day:

Table XII

Minimum horizontal setbacks for ground absorption systems Where TS-I Pretreatment Systems are used for ≤ 1000 gallons per day	
Land Feature or Component	TS-I (feet)
Any public water supply	100
Streams classified as WS-I, except for saprolite	70
Waters classified as S-A, from mean high water mark	70
Other coastal waters, from mean high water mark	35
Any other stream, canal, marsh or other surface waters, from normal pool elevation	35
Any Class I or Class II reservoir, from normal pool elevation	70
Any permanent storm water retention pond, from flood pool elevation	35
Any other lake or pond, from normal pool or mean high water elevation	35
Any building foundation	5
Any basement	15
Any property line	10
Top of slope of embankments or cuts of 2 feet or more vertical height	15
Any water line	10
Upslope interceptor/foundation drains/diversions	7
Sideslope interceptor/foundation drains/diversions	10
Downslope interceptor/foundation drains/diversions	20
Groundwater lowering ditches or devices	20
Any swimming pool	15
Any other nitrification field (except the system repair area)	10

(A) With the exception of the reduced setbacks to drainage devices or as allowed pursuant to Part (B) of this Subparagraph, when any horizontal setbacks are proposed to be reduced pursuant to Table XII, the vertical separation modifications or LTAR increases shall not be concurrently applied pursuant to Subparagraphs (1) and (2) of this Paragraph, respectively.

(B) When an accepted system is used which allows for a 25 percent reduction in drainfield trench length, compared with a conventional trench system, for a system designed for 1000 gallons per day or less, the horizontal setback modifications in Table XII and a 25 percent trench length reduction may be concurrently applied when the site has space for an equivalently sized repair system. A special site evaluation shall be

provided to the local health department on behalf of the owner, pursuant to Paragraph (p) of this Rule, when Group III or IV soils or saprolite occur within three feet of the trench bottom.

(f) **TS-II SYSTEMS SITING AND SIZING REQUIREMENTS:** Except as allowed in Parts (3)(A) and (3)(B) of this Paragraph, when trenches are used for the drainfield in conjunction with an advanced pretreatment system meeting TS-II standards, one and only one of the following siting, sizing or system factors pursuant to Subparagraphs (1), (2) or (3) of this Paragraph apply when designing the ground absorption component of the system. When a system is permitted pursuant to this Paragraph, the provisions of Paragraph (d) of this Rule do not apply.

(1) Trench bottom separation distances for systems with a design flow no greater than 1000 gallons per day are as specified in this Subparagraph. In Table XIII, "SWC" means "Soil Wetness Condition," and "USC" means an "UNSUITABLE Soil/Fill Condition," other than a SWC.

Table XIII: Vertical Separation Requirements for TS-II Systems ≤ 1000 gallons per day

Soil/System Criteria	Rule* Reference	Depth from Surface** to UNSUITABLE Soil/Fill Condition		Minimum Vertical Trench Bottom Separation Requirement			
		Gravity Distribution	Pressure Dispersal	Gravity Distribution		Pressure Dispersal	
				Depth to USC	Depth to SWC	Depth to USC	Depth to SWC

PROPOSED RULES

Soil Group I	Rules .1955, .1956, and .1957(a)	24- inches	15-inches	12-inches	12-inches	6-inches	6-inches
Soil Groups II-IV	Rules .1955, .1956, and .1957(a)	21-inches	15-inches	9-inches	9-inches	6-inches	6-inches
New Fill	Rule .1957(b)(1)	14-inches to USC, and 12-inches to SWC	12-inches	18-inches	14-inches	12-inches	9-inches
Existing Fill (≤480 gpd only)	Rule .1957(b)(2)	36-inches of Group I Fill/Soil	24-inches of Group I Fill/Soils	36-inches	36-inches	12-inches	12-inches

*Except as allowed in this Rule, all other requirements of the Rules referenced remain applicable

**Minimum depth of soil/fill required at site to permit system. Depth shall be measured from the naturally occurring soil surface or Existing Fill surface, as applicable

- (A) The trench bottom vertical separation distance shall not be reduced to less than 12 inches to rock or tidal water;
- (B) With the exception of the reduced setbacks to drainage devices pursuant to Table XIV of this Rule, the minimum horizontal setback requirements of 15A NCAC 18A .1950, .1951 and .1956 (6)(g), as applicable, shall be met;
- (C) A special site evaluation shall be provided to the local health department on behalf of the owner, pursuant to Paragraph (p) of this Rule; or
- (2) The long term acceptance rate (LTAR) that would be assigned by the local health department for a ground absorption system using septic tank effluent may be increased by up to a factor of 2.0 in Group II, III and IV Soils and by up to a factor of 2.5 in Group I Soils when all of the following conditions are met:
 - (A) A special site evaluation shall be provided to the local health department on behalf of the owner, pursuant to Paragraph (p) of this Rule, when Group III or IV Soils or saprolite occur within three feet of the trench bottom or the site requires drainage of Group II or III soils, or whenever the design flow exceeds 1000 gallons per day;
 - (B) No further reductions in linear footage of nitrification trench or system area shall be applied when a PPBPS or innovative trenches or accepted systems are used for the absorption field;
 - (C) For systems to be installed in fill, a pressure dispersal system (LPP or Drip distribution) shall be utilized;
 - (D) With the exception of the reduced setbacks to drainage devices pursuant to Table XIV of this Rule or as allowed pursuant to Part (3)(B) of this Paragraph, the minimum horizontal setback requirements of 15A NCAC 18A .1950, .1951 and .1956 (6)(g), as applicable, shall be met;
 - (E) For the LTAR to be increased by a factor above 2.0 (up to 2.5) for a system designed for 1000 gallons per day, or less, there must be at least 36 inches of Group I Soils from the naturally occurring soil surface, the depth to a soil wetness condition below the naturally occurring soil surface must be at least 24 inches, a pressure dispersal system (LPP or Drip) shall be utilized, and there must be a 100-percent repair area;
 - (F) For the LTAR to be increased by a factor above 2.0 (up to 2.5) for a system designed for greater than 1000 gallons per day, there must be at least 48 inches of Group I Soils from the naturally occurring soil surface, the depth to a soil wetness condition below the naturally occurring soil surface must be at least 30 inches, a pressure dispersal system (LPP or Drip) shall be utilized, and there must be a 100-percent repair area; or
 - (3) The minimum horizontal setback requirements of 15A NCAC 18A .1950, .1951 and .1956(6)(g), as applicable, shall be met, except as follows for a system with a design flow not to exceed 1000 gallons per day:

Table XIV: Minimum horizontal setbacks for ground absorption systems Where TS-II Pretreatment Systems are used for ≤ 1000 gallons per day	
Land Feature or Component	TS-II (feet)
Any public water supply	100
Streams classified as WS-I, except for saprolite	50
Waters classified as S-A, from mean high water mark	50
Other coastal waters, from mean high water mark	25
Any other stream, canal, marsh or other surface waters, from normal pool elevation	25
Any Class I or Class II reservoir, from normal pool elevation	50
Any permanent storm water retention pond, from flood pool elevation	25
Any other lake or pond, from normal pool or mean high water elevation	25
Any building foundation	5
Any basement	15
Any property line	10
Top of slope of embankments or cuts of 2 feet or more vertical height	15
Any water line	10
Upslope interceptor/foundation drains/diversions	7
Sideslope interceptor/foundation drains/diversions	10
Downslope interceptor/foundation drains/diversions	15
Groundwater lowering ditches and devices	15
Any swimming pool	15
Any other nitrification field (except the system repair area)	10

(A) With the exception of the reduced setbacks to drainage devices or as allowed pursuant to Part (B) of this Subparagraph, when any horizontal setbacks are proposed to be reduced pursuant to Table XIV, the vertical separation modifications or LTAR increases shall not be concurrently applied pursuant to Subparagraphs (1) and (2) of this Paragraph, respectively.

(B) If the horizontal setbacks for a TS-II system are only proposed to be reduced to the extent allowed for a TS-I system (Table XII), for a system designed for 1000 gallons per day or less, a 25 percent trench length reduction may be concurrently applied, compared to the length required for any type of trench system receiving septic tank effluent, when the site has space for an equivalently sized repair system. A special site evaluation shall be provided to the local health department on behalf of the owner, pursuant to Paragraph (p) of this Rule when Group III or IV soils or saprolite occur within three feet of the trench bottom. No further reductions in linear footage of nitrification trench or system area shall be applied when a PPBPS or innovative trenches or accepted systems are used for the absorption field.

(g) ARTIFICIAL DRAINAGE SYSTEMS which include a TS-I or TS-II pretreatment system may be used when soils are Group I, II or III with SUITABLE clay mineralogy, and all other soil and site factors are SUITABLE or PROVISIONALLY SUITABLE or when a groundwater lowering system is proposed to meet the requirements for a fill system, provided all other soil and site factors are met pursuant to 15A NCAC 18A .1957(b)(i). The following conditions shall be met:

- (1) The drainage system shall meet the requirements of Rule .1956(2)(c), (d) and (e) of this Section;
- (2) The provisions for LTAR or Horizontal Setbacks pursuant to Paragraphs (e) or (f) of this Rule for TS-I or TS-II systems, respectively, shall also apply to Artificial Drainage Systems. However, there shall be no vertical separation modifications pursuant to Subparagraph (e)(1) or (f)(1) of this Rule from as specified elsewhere in the rules of this Section;
- (3) A special site evaluation shall be provided to the local health department on behalf of the owner, pursuant to Paragraph (p) of this Rule, when there are Group III soils at any depth above the proposed drainage system invert elevation, when a groundwater lowering system is proposed for a fill system, or whenever the system is designed for greater than 1000 gallons per day; and
- (4) Plans and specifications are provided to the local health department of the drainage system pursuant to 15A NCAC 18A .1938(c).

(h) SAPROLITE SYSTEMS which include a TS-I or TS-II pretreatment system may be used for systems with a design flow

not to exceed 1000 gallons per day when the following conditions are met:

- (1) The requirements of Rule .1956(6) of this Section shall be met, except where modifications are specifically allowed in this Paragraph.
- (2) Allowable saprolite textures include sandy clay loam in addition to sand, loamy sand, sandy loam, loam, or silt loam.
- (3) Maximum trench depth is five feet.
- (4) The provisions for LTAR or Horizontal Setback modifications as allowed in Paragraphs (e) or (f) of this Rule for TS-I or TS-II systems, respectively, shall also apply to Saprolite Systems. However, there shall be no vertical separation modifications from as specified elsewhere in the Rules of this Section;

- (5) For systems installed in saprolite with sandy clay loam texture, the maximum LTAR for gravity trenches shall be 0.2 gallons per day per square foot and 0.1 gallons per day per square foot for pressure dispersal (LPP or Drip) systems and

- (6) A special site evaluation shall be provided to the local health department on behalf of the owner, pursuant to Paragraph (p) of this Rule.

(i) BED GROUND ABSORPTION SYSTEMS may be used in conjunction with a TS-I or TS-II system as specified in the system approval on sites with a design flow not to exceed 1000 gallons per day under the following circumstances:

- (1) Bed Systems designed for 1000 gallons per day or less shall be subject to the siting and system criteria of this Subparagraph. In Table XV, "SWC" means "Soil Wetness Condition," and "USC" means an "UNSUITABLE Soil/Fill Condition," other than a SWC.

Table XV: Vertical Separation Requirements for TS-I and TS-II Bed Systems Designed for ≤1000 Gallons Per Day				
Soils/System Criteria to Permit System	Allowable Adjustments to Soil Criteria to Permit System	Depth from Surface* to Soil Wetness Condition	Minimum Vertical Bed Bottom Separation Requirement	
			Depth to USC	Depth to SWC
SUITABLE or PROVISIONALLY SUITABLE Soils, 30-inches Group I or II Soils from naturally occurring soil surface, and slope ≤2%	can increase allowable slope from ≤2% to ≤10% based on hydraulic assessment	36 –inches	24-inches	12-inches
36-inches of Group I Soils from naturally occurring soil surface, and slope ≤2%	can reduce from 36 to 18-inches of Group I Soils based on hydraulic assessment, and/or b. can increase allowable slope from ≤2% to ≤10% based on hydraulic assessment	12-inches	12-inches	12-inches
24-inches of Group I Existing Fill meeting Rule .1957(b)(2)(A),(B), and (C), and only when design flow ≤480 gallons per day	No Adjustments Applicable	18-inches	18-inches	18-inches

* Minimum depth of soil/fill required at site to permit system. Depth shall be measured from the naturally occurring soil surface or Existing Fill surface, as applicable

- (A) Vertical separation requirements may be met by adding additional SUITABLE Group I fill material, but shall not be met with the use of a groundwater lowering system.
- (B) The hydraulic assessment in Table XV shall be completed pursuant to Paragraph (p) of this Rule, and shall demonstrate that effluent will not

- (C) discharge to the ground surface and the required separation distance to soil wetness can be maintained. When effluent is distributed to the bed by a pump or siphon and the bed is not located directly beneath the pretreatment component, effluent shall be uniformly distributed by a

- pressure dispersal system (LPP or Drip).
- (2) Horizontal separation distances specified in Subparagraphs (e)(3) and (f)(3) of this Rule are applicable for systems receiving TS-I or TS-II effluent, respectively. The setbacks shall be measured from the nearest edge of the gravel bed, except for fill systems. For fill systems, the setbacks shall be measured from a point five feet from the nearest edge of the gravel bed sidewall, or from the projected toe of the side slope of the fill that is required to meet soil and site limitations, whichever is greater. The system shall be considered to be a fill system only if the gravel bed bottom is installed less than six inches below the naturally occurring soil surface. For fill systems, the requirements of Rule .1957(b) of this Section, for the side slope of the fill shall be met, as determined beginning at a point six-inches above the top edge of the gravel bed.
- (3) The minimum number of square feet of bottom area shall be determined by dividing the design daily sewage flow by the LTAR, determined in accordance with Rule .1955 of this Section. When the bed is installed in fill material, the LTAR shall not exceed 1.0 gallons per day per square foot. The minimum bed size may be reduced as follows:
- (A) The minimum bed size may be reduced by 25 percent, unless the bed is installed in existing fill, in which case the bed area shall not be reduced; or
- (B) For sites that have Group I Soil in the first 36 inches of naturally occurring

soil and no soil wetness condition exists within the first 30 inches below the naturally occurring soil surface, the minimum bed size may be reduced by 40 percent when a pressure dispersal system is utilized to distribute flow uniformly throughout the bed area; a timer controller is used to distribute flow evenly over a 24-hour period; and the system is designed and approved to meet TS-II performance standards. Furthermore, the repair area exemption in 15A NCAC 18A .1945(c) does not apply when the bed size is reduced by more than 25 percent pursuant to this Part.

With the exception of reduced setbacks to drainage devices (Tables XII or XIV), whenever the minimum bed size is reduced pursuant to Parts (A) or (B) of this Subparagraph, the minimum horizontal setbacks as specified in Rules .1950, .1951 and .1956(6)(g) of this Section, as applicable, shall apply and with no reductions applied.

(j) BED GROUND ABSORPTION SYSTEMS may be used in conjunction with a TS-I or TS-II system as specified in the system approval on sites with a design flow greater than 1000 gallons per day not to exceed 3000 gallons per day under the following circumstances:

- (1) Bed Systems designed for greater than 1000 gallons per day but not exceeding 3000 gallons per day shall be subject to the siting and system criteria of this Subparagraph.

Table XVI: Vertical Separation Requirements for TS-I and TS-II Bed Systems Designed for >1000 to ≤3000 Gallons Per Day			
Soils/System Criteria	Depth from Surface* to Soil Wetness Condition	Minimum Vertical Bed Bottom Separation Requirement	
		Depth to Soil Wetness Condition	Allowable Adjustment in Depth to Soil Wetness Condition
54-inches of Group I Soils from naturally occurring soil surface	48-inches	24-inches	Can reduce from 24-inches to 12-inches in naturally occurring soil, or to 18-inches for fill systems based on groundwater mounding analysis

*Minimum depth required at site to permit system shall be measured from the naturally occurring soil surface.

- (A) Vertical separation requirements may be met by adding additional SUITABLE Group I fill material, but shall not be met with the use of a groundwater lowering system.
- (B) A special site evaluation shall be provided to the local health department on behalf of the owner, pursuant to Paragraph (p) of this

Rule. The groundwater mounding analysis in Table XVI must demonstrate that required vertical separations between bed bottom and a soil wetness condition shall be maintained after accounting for projected groundwater mounding.

- (C) Two or more equally sized beds shall be utilized for any TS-I system

- designed for over 1000 gallons per day, or for any TS-II system designed for over 1500 gallons per day. When two beds are used, the minimum separation between beds shall be 20 feet, and when three or more beds are used, the minimum separation between beds shall be 10 feet. Effluent shall be distributed to the beds by a pump and timer control system to distribute flow evenly over a 24-hour period.
- (D) When the system is designed for greater than 1500 gallons per day, the beds shall be located in an area separate from the pretreatment components.
- (E) Whenever the beds are not located directly beneath the pretreatment components, effluent shall be uniformly distributed by a pressure dispersal system (LPP or Drip).
- (2) Horizontal separation distances specified in Rules .1950(a), .1951, or .1956(6)(g) of this Section shall apply without reduction for bed systems designed for greater than 1000 gallons per day. Furthermore, a 25-foot horizontal separation distance shall be maintained from the bed to the property line and the bed, unless a site-specific nitrogen migration analysis indicates that the nitrate concentration at the property line will not exceed 10 milligrams per liter (mg/l), or TS-II effluent is produced by the approved system.
- (3) The minimum number of square feet of bed bottom area shall be determined by dividing the design daily sewage flow by the LTAR, determined in accordance with Rule .1955 of this Section. When the bed is installed in fill material, the LTAR shall not exceed 1.0 gallons per day per square foot. The minimum bed size may be reduced as follows:
- (A) The minimum bed size may be reduced by 25 percent, unless the bed is installed in existing fill, in which case the bed area shall not be reduced; or
- (B) For sites that have Group I Soil in the first 54 inches below the naturally occurring soil surface and no soil wetness condition exists within the first 36 inches below the naturally occurring soil surface, the minimum bed size may be reduced by 40 percent when a pressure dispersal system (LPP or Drip) is utilized to distribute flow uniformly throughout the bed area; a timer controller is used to distribute flow evenly over a 24-hour period; the system is designed and approved to meet TS-II performance standards; and there shall be a 100-percent repair area.
- (k) DESIGN:
- (1) Special system design requirements shall be as prescribed in the product's RWTS, Experimental, Controlled Demonstration, Innovative or Accepted System approval, as applicable.
- (2) Provisions shall be made to allow for the influent to and effluent from the system to be sampled while the system is operational, and
- (3) The system design shall include a means to measure and record daily wastewater flows. The recording device shall provide a means for determining at least the last 30 days of wastewater flow to the system
- (l) INSTALLATION: Pre-treatment systems shall be installed according to the manufacturer's installation specifications and system-specific installation conditions prescribed in the product's RWTS, Experimental, Controlled Demonstration, Innovative or Accepted System approval, as applicable, by a manufacturer-authorized installer. Installation and construction specifications for the ground absorption system shall be in accordance with this Section and site-specific conditions as specified in the Authorization to Construct.
- (m) OPERATION AND MAINTENANCE: Maintenance, as specified in the product's RWTS, Experimental, Controlled Demonstration, Innovative or Accepted System approval, as applicable, shall be performed by the certified operator pursuant to 15A NCAC 18A .1961 and as specified in the product approval. The following provisions apply to the Operation and Maintenance of Advanced Pretreatment Systems:
- (1) For systems installed after July 1, 2006, the manufacturer of a proprietary advanced pretreatment system shall provide for the ongoing operation and maintenance of its systems. The manufacturer shall make available to the owner an operation and maintenance contract that meets the management entity requirements for the system pursuant to 15A NCAC 18A .1961. The contract shall be renewable and the contract term shall be for a minimum of one year.
- (2) For systems installed prior to July 1, 2006, the manufacturer shall provide an optional renewable yearly operation and maintenance contract with the owner that fulfills the management entity requirements for the system pursuant to 15A NCAC 18A .1961.
- (3) Prior to the issuance or re-issuance of an Operation Permit for a proprietary advanced pretreatment system after July 1, 2006, the owner shall provide to the health department documentation that a contract for operation and maintenance of the system is in place with either the manufacturer, manufacturer's

representative, or with a certified operator authorized in writing by the manufacturer or manufacturer's representative to operate the system.

- (4) The manufacturer shall notify the local health department and the State when the owner chooses to not renew an operation and maintenance contract executed pursuant to Subparagraphs (1) or (2) of this Paragraph.

(n) **SYSTEM PERFORMANCE:** The performance of each system shall be monitored by the certified wastewater treatment facility operator (ORC). A performance report shall be submitted annually to the local health department by the ORC. Type of monitoring and monitoring frequency shall vary by type of approval, the designated performance standard, system design flow, and history of system performance as follows:

- (1) Each system shall be visually inspected by the ORC at least annually using a procedure proposed by the manufacturer and approved by the state as part of the product's RWTS, Experimental, Controlled Demonstration, Innovative or Accepted System approval, as applicable,
- (2) The 7-day and 30-day influent wastewater flow from the facility to the system prior to a monitoring visit shall be measured by the ORC using the recording device delineated in Subparagraph (k)(3) of this Rule, or by an alternate approved means. For systems serving Vacation Rentals subject to the North Carolina Vacation Rental Act, G.S. 42A, this visit shall be scheduled during the seasonal high use period and shall be coincident with any required water quality sampling. For existing systems where it is not feasible to directly obtain the past 7-day and 30-day influent wastewater flow data, wastewater usage during the 7 to 30 day period prior to the monitoring visit shall be estimated by using either elapsed time clock readings when an effluent pump is present, water meter readings, or as otherwise specified in the product or site-specific system approval.
- (3) Effluent from an approved Controlled Demonstration, RWTS and Innovative System shall be sampled prior to disposal in the absorption field as follows:
 - (A) A Controlled Demonstration system shall be sampled quarterly for all applicable performance parameters until the system receives Innovative approval, unless the product specific approval includes an alternate monitoring schedule proposed by the manufacturer and approved by the State;
 - (B) Sites with an approved RWTS or Innovative system shall be grab or composite sampled annually for all

applicable performance parameters (semi-annually when the design flow is 1500 to 3000 gallons per day). After two years of data have been collected from at least 50 separate sites that indicate compliant system performance, the number of parameters sampled for TS-I and TS-II Systems may be reduced by 50 percent. An alternative monitoring schedule may be proposed by the manufacturer and approved by the State when determined to provide an equal or more reliable indication of system performance compliance; or

(C) Sites with a design flow up to 1500 gallons per day, which are being managed under an on-going maintenance and operation contract between the owner and the system manufacturer or ORC authorized by the manufacturer, can alternatively be sampled randomly if the manufacturer chooses to comply with the performance audit requirements as stipulated in 15A NCAC 18A .1969(h)(8), when there are at least 10 operational systems covered under such contracts. The manufacturer can also choose to include other existing sites in the performance audit required prior to obtaining accepted system status. Notwithstanding this provision for random sampling, sampling at any other site not being sampled during the audit may be determined to be necessary by the ORC during the visual inspection of the system pursuant to Subparagraph (1) of this Paragraph.

An influent sample to the pre-treatment system (e.g., septic tank effluent) shall be taken concurrently whenever the system effluent is sampled and analyzed for at least BOD and TKN. Effluent shall be re-sampled within 15 days when laboratory results indicate non-compliance with Part (o)(1)(C) of this Rule and analyzed at least for the non-compliant parameter(s), unless an alternate re-sampling schedule is required for a site included in a performance audit. When re-sampling, an influent sample shall be collected concurrently and analyzed for the corresponding parameter.

- (4) An Accepted System with a design flow up to 1500 gallons per day shall comply with Subparagraphs (n)(1) and (n)(2) of this Rule and 15A NCAC 18A .1969(h)(9). Routine sampling of individual sites shall no longer be carried out, unless determined to be necessary

during the visual inspection of the system pursuant to Subparagraph (n)(1) of this Rule or if required as part of an enforcement action by the local health department or the State. In the event that sampling is determined to be necessary, an alternative monitoring schedule may be proposed by the manufacturer or the State and approved by the Commission when the system is granted accepted Status.

- (5) All samples shall be collected, preserved, transported and analyzed in compliance with 40 CFR 136. The manufacturer shall demonstrate that the system can be sampled in compliance with 40 CFR 136 and that the method for system sampling accurately monitors system performance. Samples shall be analyzed by a state certified laboratory. Samples shall be analyzed for the applicable parameters. The sample collector shall maintain a complete chain of custody from sample collection to analysis for each sample collected. The results of all analyses for each sample shall be reported by the certified wastewater laboratory directly to the ORC and simultaneously to the health department and the state. Repeat sampling at any site shall be performed as required in the system approval, approved performance audit, this Rule, or as otherwise directed by the health department or state as part of an enforcement action. The owner or manufacturer or manufacturer's representative may also re-sample a system to verify or refute sample results, as long as the results of all samples collected are similarly reported.

(o) **SITE AND SYSTEM COMPLIANCE:** Compliance with the performance standards shall be determined as follows:

- (1) An individual advanced pretreatment system at a single site shall be considered to be in compliance when:
 - (A) The annual visual inspection indicates compliant conditions as specified in the visual inspection procedure approved pursuant to Subparagraph (n)(1) of this Rule; and
 - (B) The 7-day inflow does not exceed 1.3 times the design daily flow and the 30-day inflow does not exceed the design daily flow; and
 - (C) Influent wastewater to the system does not exceed the requirements in Table VIII, at sites where influent sampling is required; and
 - (D) When annual effluent sampling is required, sample value is no more than two times (2.5 times for fecal coliform) the designated standard for one or more parameters in Table VII, even after re-sampling; or if four or

more effluent samples are collected on different operating days over a one year period, the arithmetic mean (geometric mean for fecal coliform) of the data does not exceed the designated standard for one or more parameters in Table VII, even when excluding from the mean a statistical outlier or an instance of non-compliance that has been remedied by corrective maintenance.

- (2) An approved system shall be considered in compliance when:
 - (A) The arithmetic mean (geometric mean for fecal coliform) of all data collected from all sites during a given one-year period, or from a representative sampling of sites in the state (excluding statistical outliers) does not exceed the designated standard.
 - (B) No more than 20 percent of the sites from which the data were collected in Part (o)(2)(A) of this Rule shall exceed the designated standard for one or more parameters (an individual non-compliant site shall be reclassified "compliant" if found to meet the designated standard upon re-sampling within 30 days).
 - (C) No more than 10 percent of samples collected from all sites during a given one-year period or from a representative sampling of sites in the state shall exceed two times the designated standard for one or more parameters (with the exception of fecal coliform, for which a 2.5 multiplication factor shall be used).

When determining compliance with system performance standards set forth in Parts (A), (B) and (C) of this Subparagraph, data shall be excluded from individual advanced pretreatment systems at single sites found to be out of compliance pursuant to Parts (1)(B) and (1)(C) of this Paragraph and from individual sites that have otherwise been documented to have been subjected to significant abuse, as specified by the manufacturer in its operation and maintenance manual which has been provided to the system owner.

- (3) When a site or system is found to be out of compliance the following actions shall occur:
 - (A) The Operator (ORC) shall inform the owner and the local health department of an individual system at a single site found to be out of compliance, including when wastewater flow is

greater than the system design flow rate; influent wastewater quality exceeds the standards set forth in Table VII; or maintenance/repairs are found to be needed as identified during system inspection. This notice shall identify non-compliant condition(s), explain potential impacts, and suggest methods to bring the system or use back into compliance.

- (B) The local health department shall issue a notice of violation to the owner of an individual system at a single site found to be out of compliance when, the system is found to be malfunctioning as determined during the visual inspection specified in Part (1)(A) of Paragraph (o) of this Rule; wastewater flow exceeds wastewater flow standards in Part (1)(B) of this Paragraph; or the effluent sample results are out of compliance as specified in Parts (1)(D) or (1)(E) of this Paragraph, even upon re-sampling. The notice shall identify the violations and steps necessary to remedy the problems, including modification of the system, establish time frame to achieve compliance, and other follow-up requirements and set forth further enforcement possibilities if compliance is not achieved.
- (C) The state shall issue a notice of violation to the manufacturer of a system found to be out of compliance as specified in Subparagraph (2) of this Paragraph. The notice shall identify the violations and steps necessary to remedy the problems, including modification of the system, establish time frame to achieve compliance, and other follow-up requirements and set forth further enforcement possibilities if compliance is not achieved, which may include action on the system's approval status pursuant to applicable Laws and Rules.
- (D) The local health department shall issue the manufacturer or manufacturer's representative an intent to suspend issuance of new construction authorizations for new systems of a particular manufacturer that has installed and has in operation at least 10 systems in the county if more than 10 percent of the

manufacturer's systems installed in the county are found to be malfunctioning during the visual inspection specified in Subparagraph (n)(1) of this Rule, or in violation of effluent performance standards as specified in Parts (1)(D) or (1)(E) of this Paragraph in any single year, excluding single sites found to be out of compliance pursuant to Parts (1)(B) or (1)(C) of this Paragraph, sites where the owner has not maintained a contract for operation and maintenance of the system pursuant to Rule .1961 of this Section, and individual sites that have otherwise been documented to have been subjected to significant abuse, as specified by the manufacturer in its operation and maintenance manual which has been provided to the system owner.

- (E) The local health department shall issue the manufacturer or manufacturer's representative an intent to suspend issuance of new construction authorizations for new systems of a particular manufacturer that has installed and has in operation at least 10 systems in the county if more than five percent of the manufacturer's systems installed in the county that are being managed under an ongoing maintenance and operation contract between the owner and the system manufacturer or ORC authorized by the manufacturer have required operation and maintenance activities under the control of the manufacturer that have not been completed for the last reported year.
- (F) All individual system compliance data and all operations and maintenance records shall be submitted to the local health department. The local health department shall convey information on individual system compliance to the State on at least an annual basis. Action by a local health department on approval of a system in a county does not preclude action by the State on the system's approval status, pursuant to applicable Laws and Rules.
- (G) Notwithstanding the activities delineated for dealing with non-compliance elsewhere in Subparagraph (3) of this Paragraph,

nothing shall preclude the local health department or State from using any available remedy when an imminent health hazard is determined to exist, in accordance with applicable Laws and Rules.

(p) **RESPONSIBILITIES AND PERMITTING PROCEDURES:** Special responsibilities and permitting procedures for pre-treatment systems shall be as prescribed in the system approval and applicable rules of this Section. The following summarize the conditions requiring a special evaluation of a site where the ground absorption system is to be preceded by an advanced pretreatment system, and what such an evaluation shall include:

- (1) Prior to the issuance of the Improvement Permit at a site where the drainfield is to be preceded by an advanced pre-treatment system, an evaluation shall be provided to the local health department on behalf of the owner when any of the following conditions are applicable:
 - (A) the initial vertical separation siting criteria or vertical separation distances for trench bottoms are proposed to be reduced in accordance with Subparagraphs (e)(1) or (f)(1) of this Rule,
 - (B) drainage is proposed for Group III soils or a groundwater lowering system is proposed to be used in conjunction with a fill system in accordance with Paragraph (g) of this Rule,
 - (C) sandy clay loam texture saprolite is proposed to be used in accordance with Paragraph (h) of this Rule,
 - (D) the LTAR is proposed to be increased on a site with Group III or IV soils within three feet of the proposed trench bottom or on a site where drainage of Group II or III soils is proposed, or on any site when the design flow exceeds 1000 gallons per day, in accordance with Subparagraphs (e)(2) or (f)(2) of this Rule, or
 - (E) for a bed system with flow exceeding 1000 gallons per day in accordance with Paragraph (j) of this Rule, or if required for other bed systems in accordance with Subparagraph (i)(1) of this Rule.
- (2) When a special site evaluation is required pursuant to Subparagraph (1) of this Paragraph, it shall contain the following information, as applicable. This evaluation shall be prepared by a person or persons who are licensed or registered to consult, investigate, or evaluate soil and rock

characteristics, hydraulic conductivity, lateral flow, groundwater hydrology and nutrient transport, if required pursuant to G.S. 89F or 89E. This evaluation shall be provided to the local health department in a written report sealed, signed and dated by any licensed or registered professionals who contributed to the report.

- (A) detailed descriptions of soil profiles and soil morphological conditions to a depth of at least three feet below the proposed trench or bed bottom and description of landscape setting in the initial system area and repair area;
- (B) field measurements of the depth and thickness of each of the soil horizons;
- (C) recommended location and depth for placement of the trenches or beds and the recommended LTAR;
- (D) hydraulic assessment, based on site-specific information, substantiating the projected effectiveness of system performance. This shall include supporting documentation that indicates the treated effluent applied at the proposed LTAR will not result in the discharge of effluent to the surface of the ground after the system is installed and operated within design parameters; that all required vertical separation distances shall be maintained; and justification for any proposed drainage systems or other site modifications. This hydraulic assessment shall require in-situ tests of saturated hydraulic conductivity, groundwater mounding analysis, lateral flow analysis, and monitoring or modeling of existing or projected depth to a soil wetness condition based upon procedures of Rule .1942 of this Section, as needed;
- (E) site-specific nitrogen migration analysis, if needed pursuant to Subparagraphs (e)(2) or (j)(2) of this Rule; and
- (F) proposed site-specific requirements for system design, installation, site preparation, modifications, final landscaping and vegetative cover.

Authority G.S. 130A-334; 130A-335; 130A-336; 130A-337; 130A-340; 130A-342; 130A-343.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to amend the rule cited as 15A NCAC 28 .0302.

Proposed Effective Date: *September 1, 2011*

Public Hearing:

Date: *May 17, 2011*

Time: *2:00 p.m.*

Location: *NC Aquarium, 374 Airport Road, Manteo, NC 27954*

Reason for Proposed Action: *A determination has been made that additional fees are warranted for specialized fishing rigs on Jennette's Pier. These fees are currently charged by other fishing piers on the Outer Banks.*

Procedure by which a person can object to the agency on a proposed rule: *Send written objections to: David Griffin, Division Director, 3125 Poplarwood Court, Suite 160, Raleigh, NC 27604, fax (919)981-5224.*

Comments may be submitted to: *David Griffin, Division Director, 3125 Poplarwood Court, Suite 160, Raleigh, NC 27604, phone (919)877-5500, fax (919)981-5224*

Comment period ends: *July 1, 2011*

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

Fiscal Impact:

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

SECTION .0300 - UNAUTHORIZED USE OF FACILITIES: FEES

15A NCAC 28 .0302 FEE SCHEDULE

(a) The following schedule of fees is applicable to govern admission to the North Carolina Aquariums:

- (1) Roanoke Island:
 - Adult, 13 and over \$8.00
 - Senior, 62 and over \$7.00
 - Child, 3 through 12 \$6.00
- (2) Fort Fisher:
 - Adult, 13 and over \$8.00
 - Senior, 62 and over \$7.00
 - Child, 3 through 12 \$6.00
- (3) Pine Knoll Shores:
 - Adult, 13 and over \$8.00
 - Senior, 62 and over \$7.00
 - Child, 3 through 12 \$6.00

(b) Free admission to the North Carolina Aquariums on Roanoke Island, at Pine Knoll Shores and at Fort Fisher is offered to the following groups:

- (1) Aquarium Society Members;
- (2) Preregistered North Carolina School groups;
- (3) Association of Zoos and Aquariums' reciprocals; and
- (4) Children under the age of three.

Free admission is offered on the following days: Martin Luther King, Jr. holiday and Veteran's Day on November 11.

(c) The following schedule of fees is applicable to govern admission for fishing on the educational fishing piers of the North Carolina Aquariums:

- (1) Daily Fishing Pass \$12.00
(maximum 24 hour period; two rods maximum;
(Ages 13 and over) \$2.00 for each rod over two)
- (2) Youth Fishing Pass \$6.00
(maximum 24 hour period; two rods maximum;
(Ages 12 and under) \$1.00 for each rod over two)
- (3) Pin Fishing Rigs \$3.00
addition to fishing pass fee
(live bait)

Authority G.S. 143B-289.41(b); 143B-289.44.

CHAPTER 28 – NORTH CAROLINA AQUARIUMS

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

Rules approved by the Rules Review Commission at its meeting on March 17, 2011.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Storage and Disposal of Spirituous Liquor Containers</u>	04	NCAC	02S	.0512*	25:12 NCR
<u>Private Clubs: Financial Statements: Record Keeping</u>	04	NCAC	02S	.0518*	25:12 NCR
<u>Restaurants: Income from Sales</u>	04	NCAC	02S	.0519	25:12 NCR
<u>Restaurants, Hotels, and Tour Boats: Record Keeping</u>	04	NCAC	02S	.0520*	25:12 NCR
<u>Record Keeping</u>	04	NCAC	02S	.0612*	25:12 NCR
<u>Sports Clubs: Record Keeping Requirements</u>	04	NCAC	02S	.0616*	25:12 NCR
<u>Tastings Held by Industry Members for ABC Boards</u>	04	NCAC	02S	.0904*	25:12 NCR
<u>Definitions</u>	04	NCAC	02T	.0101	25:12 NCR
<u>Beer Franchise Law; "Brand" Defined</u>	04	NCAC	02T	.0103	25:12 NCR
<u>Wine Product Brand</u>	04	NCAC	02T	.0104	25:12 NCR
<u>Malt Beverage Product Approval: Listing in State</u>	04	NCAC	02T	.0201	25:12 NCR
<u>Wine Approvals: Listing in State</u>	04	NCAC	02T	.0202*	25:12 NCR
<u>New Filing Required Upon Transfer of Brand</u>	04	NCAC	02T	.0206	25:12 NCR
<u>Label Contents: Malt Beverages</u>	04	NCAC	02T	.0303*	25:12 NCR
<u>Growlers</u>	04	NCAC	02T	.0308*	25:12 NCR
<u>Application of Standards</u>	04	NCAC	02T	.0401	25:12 NCR
<u>Record Keeping Requirements: Sales Tickets</u>	04	NCAC	02T	.0502	25:12 NCR
<u>Commercial Bribery</u>	04	NCAC	02T	.0708	25:12 NCR
<u>Consignment Sales: Conditional Sales: Returns</u>	04	NCAC	02T	.0709	25:12 NCR
<u>Prohibited Trade Practices</u>	04	NCAC	02T	.0711*	25:12 NCR
<u>Accepted Trade Practices; Services</u>	04	NCAC	02T	.0712*	25:12 NCR
<u>Accepted Trade Practices: Things of Value; Retail...</u>	04	NCAC	02T	.0713*	25:12 NCR
<u>Transactions with Government and Special...</u>	04	NCAC	02T	.0714	25:12 NCR
<u>Consumer Contests; Sweepstakes</u>	04	NCAC	02T	.0716	25:12 NCR
<u>Conditions When Commission Approval Required for...</u>	04	NCAC	02T	.0717*	25:12 NCR
<u>Distiller Representatives: Prohibited Acts</u>	04	NCAC	02T	.0901*	25:12 NCR
<u>Application for Permit</u>	04	NCAC	02T	.1001	25:12 NCR

CULTURAL RESOURCES, DEPARTMENT OF

<u>Division of State Library</u>	07	NCAC	02A	.0101	25:09 NCR
<u>Library Services and Construction Act Advisory Council</u>	07	NCAC	02A	.0102	25:09 NCR
<u>Purchase and Contract</u>	07	NCAC	02A	.0201	25:09 NCR
<u>Services</u>	07	NCAC	02B	.0101	25:09 NCR
<u>Documents Checklist</u>	07	NCAC	02B	.0102	25:09 NCR

APPROVED RULES

<u>Requests for Services</u>	07	NCAC 02B .0201	25:09 NCR
<u>Services</u>	07	NCAC 02B .0203	25:09 NCR
<u>Reading Room</u>	07	NCAC 02C .0101	25:09 NCR
<u>Circulation of Library Materials</u>	07	NCAC 02C .0102	25:09 NCR
<u>Photocopying</u>	07	NCAC 02C .0103	25:09 NCR
<u>Reference Services</u>	07	NCAC 02C .0104	25:09 NCR
<u>Bibliographies</u>	07	NCAC 02C .0105	25:09 NCR
<u>Selection Policy</u>	07	NCAC 02C .0201	25:09 NCR
<u>Recommendations</u>	07	NCAC 02C .0202	25:09 NCR
<u>Gifts</u>	07	NCAC 02C .0204	25:09 NCR
<u>Complaints Concerning a Title in the Collection</u>	07	NCAC 02C .0205	25:09 NCR
<u>The Collection</u>	07	NCAC 02C .0301	25:09 NCR
<u>Services to Individuals</u>	07	NCAC 02C .0302	25:09 NCR
<u>Interlibrary Loans</u>	07	NCAC 02C .0501	25:09 NCR
<u>In-Wats Services</u>	07	NCAC 02C .0502	25:09 NCR
<u>Eligibility for In-Wats</u>	07	NCAC 02C .0503	25:09 NCR
<u>In-Wats Procedure Manual</u>	07	NCAC 02C .0504	25:09 NCR
<u>Eligibility</u>	07	NCAC 02D .0101	25:09 NCR
<u>Application</u>	07	NCAC 02D .0102	25:09 NCR
<u>New Readers</u>	07	NCAC 02D .0103	25:09 NCR
<u>Selection</u>	07	NCAC 02D .0104	25:09 NCR
<u>Circulation of Materials</u>	07	NCAC 02D .0105	25:09 NCR
<u>Suspension of Services</u>	07	NCAC 02D .0106	25:09 NCR
<u>Braillist</u>	07	NCAC 02D .0107	25:09 NCR
<u>Taping Volunteers</u>	07	NCAC 02D .0108	25:09 NCR
<u>Copyright</u>	07	NCAC 02D .0109	25:09 NCR
<u>Request/Library Patrons/Reproduce Materials:</u>	07	NCAC 02D .0110	25:09 NCR
<u>Special Formats</u>			
<u>Small Collections</u>	07	NCAC 02D .0111	25:09 NCR
<u>Catalogs</u>	07	NCAC 02D .0112	25:09 NCR
<u>Scope of the Collection</u>	07	NCAC 02D .0113	25:09 NCR
<u>Materials Selection Policy</u>	07	NCAC 02D .0114	25:09 NCR
<u>Recommendations</u>	07	NCAC 02D .0115	25:09 NCR
<u>Loan of Materials</u>	07	NCAC 02D .0301	25:09 NCR
<u>Requests and Scheduling</u>	07	NCAC 02D .0302	25:09 NCR
<u>Return of Materials</u>	07	NCAC 02D .0303	25:09 NCR
<u>Late or Damaged Film</u>	07	NCAC 02D .0304	25:09 NCR
<u>Film Service Agreement</u>	07	NCAC 02D .0305	25:09 NCR
<u>Materials Selection Policy</u>	07	NCAC 02D .0306	25:09 NCR
<u>Recommendations</u>	07	NCAC 02D .0307	25:09 NCR
<u>Consultants</u>	07	NCAC 02E .0101	25:09 NCR
<u>Regional Libraries</u>	07	NCAC 02E .0201	25:09 NCR
<u>Board of Trustees</u>	07	NCAC 02E .0202	25:09 NCR
<u>Power of Board</u>	07	NCAC 02E .0203	25:09 NCR
<u>Director</u>	07	NCAC 02E .0204	25:09 NCR
<u>Termination</u>	07	NCAC 02E .0205	25:09 NCR
<u>Finance</u>	07	NCAC 02E .0206	25:09 NCR

APPROVED RULES

<u>Property</u>	07	NCAC 02E .0207	25:09 NCR
<u>Other Provisions/Agreement Establishing/Regional Library</u>	07	NCAC 02E .0208	25:09 NCR
<u>Qualifications for Grant Eligibility</u>	07	NCAC 02E .0301	25:09 NCR
<u>State Aid Grants</u>	07	NCAC 02E .0302	25:09 NCR
<u>Limitations on Aid</u>	07	NCAC 02E .0304	25:09 NCR
<u>State Institution Defined</u>	07	NCAC 02E .0401	25:09 NCR
<u>Funds for Institutions</u>	07	NCAC 02E .0402	25:09 NCR
<u>Eligibility</u>	07	NCAC 02E .0403	25:09 NCR
<u>Scope of Rules</u>	07	NCAC 02G .0101	25:09 NCR
<u>Eligibility for State Library Services</u>	07	NCAC 02G .0102	25:09 NCR
<u>Scope of Rules Collections</u>	07	NCAC 02H .0101	25:09 NCR
<u>Access and Circulation</u>	07	NCAC 02H .0103	25:09 NCR
<u>Reproduction Services</u>	07	NCAC 02H .0104	25:09 NCR
<u>Information, Reference and Research Services</u>	07	NCAC 02H .0105	25:09 NCR
<u>Services for State Agencies</u>	07	NCAC 02H .0106*	25:09 NCR
<u>Scope of Rules</u>	07	NCAC 02H .0201	25:09 NCR
<u>Printed Document Formats Defined</u>	07	NCAC 02H .0202	25:09 NCR
<u>Scope of Rules</u>	07	NCAC 02H .0301	25:09 NCR
<u>Eligibility</u>	07	NCAC 02H .0302*	25:09 NCR
<u>Application</u>	07	NCAC 02H .0303*	25:09 NCR
<u>Library Collections</u>	07	NCAC 02H .0304	25:09 NCR
<u>Reproduction Services</u>	07	NCAC 02H .0306*	25:09 NCR
<u>Volunteers</u>	07	NCAC 02H .0307	25:09 NCR
<u>Scope of Rules</u>	07	NCAC 02I .0101	25:09 NCR
<u>Qualifications for Grant Eligibility</u>	07	NCAC 02I .0201	25:09 NCR
<u>State Aid Grants</u>	07	NCAC 02I .0202*	25:09 NCR
<u>Regional Libraries</u>	07	NCAC 02I .0301	25:09 NCR
<u>Regional Agreement</u>	07	NCAC 02I .0302	25:09 NCR
<u>Regional Library Board of Trustees</u>	07	NCAC 02I .0303	25:09 NCR
<u>Powers and Duties of the Regional Library Board</u>	07	NCAC 02I .0304	25:09 NCR
<u>Director</u>	07	NCAC 02I .0305	25:09 NCR
<u>Finance</u>	07	NCAC 02I .0306	25:09 NCR
<u>Establishment of a Regional Library</u>	07	NCAC 02I .0307	25:09 NCR
<u>Withdrawal from or Dissolution of a Regional Library</u>	07	NCAC 02I .0308	25:09 NCR
<u>Admission Prices</u>	07	NCAC 04S .0103*	25:09 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>Reportable Diseases and Conditions</u>	10A	NCAC 41A .0101*	25:07 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Definition of Terms</u>	15A	NCAC 02H .0903*	24:23 NCR
<u>Procedures for Program Approval, Revision and Withdrawal</u>	15A	NCAC 02H .0907*	24:23 NCR
<u>Reporting/Record Keeping Requirements for POTWS/Industria...</u>	15A	NCAC 02H .0908*	24:23 NCR
<u>Hearings</u>	15A	NCAC 02H .0922*	24:23 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>Ground-Water Sampling and Analysis Requirements</u>	15A NCAC 13B .1632*	25:04 NCR
<u>Detection Monitoring Program</u>	15A NCAC 13B .1633*	25:04 NCR
<u>Assessment Monitoring Program</u>	15A NCAC 13B .1634*	25:04 NCR
<u>Implementation of the Corrective Action Program</u>	15A NCAC 13B .1637*	25:04 NCR

WELL CONTRACTORS CERTIFICATION COMMISSION

<u>Definitions</u>	15A NCAC 27 .0101	25:12 NCR
<u>Submittal and Processing of Applications for Examinations</u>	15A NCAC 27 .0401*	25:12 NCR
<u>Well Contractor Examinations</u>	15A NCAC 27 .0410	25:12 NCR
<u>Time and Place of Examinations</u>	15A NCAC 27 .0420*	25:12 NCR
<u>Conducting and Grading Examinations</u>	15A NCAC 27 .0430*	25:12 NCR
<u>Examination Results and Issuance of Certificates</u>	15A NCAC 27 .0440*	25:12 NCR
<u>Reciprocal Waiver of Examination for Certification</u>	15A NCAC 27 .0510*	25:12 NCR
<u>Conditions and Limitations for Renewal of Certification</u>	15A NCAC 27 .0601*	25:12 NCR
<u>Level D Certification Without Examination</u>	15A NCAC 27 .0703	25:12 NCR
<u>Certification Without Examination in 2008</u>	15A NCAC 27 .0704	25:12 NCR
<u>Requirements</u>	15A NCAC 27 .0801*	25:12 NCR
<u>Approval of Continuing Education Courses</u>	15A NCAC 27 .0810*	25:12 NCR
<u>Determination of Credit</u>	15A NCAC 27 .0820*	25:12 NCR
<u>Recordkeeping</u>	15A NCAC 27 .0830*	25:12 NCR
<u>Special Provisions for Continuing Education</u>	15A NCAC 27 .0840*	25:12 NCR
<u>Revocation, Relinquishment or Expiration of Certification</u>	15A NCAC 27 .0901*	25:12 NCR
<u>Recertification Following Revocation or Relinquishment</u>	15A NCAC 27 .0910*	25:12 NCR

GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>Classification</u>	21 NCAC 12 .0202*	25:04 NCR
<u>Renewal of License</u>	21 NCAC 12 .0503	24:21 NCR
<u>Fund Suspension</u>	21 NCAC 12 .0507	24:21 NCR
<u>Improper Practice</u>	21 NCAC 12 .0701*	25:04 NCR
<u>Unlawful Practice</u>	21 NCAC 12 .0702*	25:04 NCR
<u>Request for Hearing</u>	21 NCAC 12 .0818*	25:04 NCR

COSMETIC ART EXAMINERS, BOARD OF

<u>Separation of Beauty Salon</u>	21 NCAC 14F .0104	25:11 NCR
<u>Teacher/Student Ratio</u>	21 NCAC 14G .0113*	25:11 NCR
<u>School Affiliation with Cosmetic Art Shops and Other Busi...</u>	21 NCAC 14G .0114	25:11 NCR
<u>School Curriculum Approval (A) No Cosmetic Art Shop or an...</u>	21 NCAC 14G .0118	25:11 NCR
<u>Cleanliness of Scissors, Shears, Razors and Other Equipment</u>	21 NCAC 14H .0113	25:11 NCR

APPROVED RULES

<u>Permanent Files</u>	21	NCAC 14I .0101*	25:11 NCR
<u>Summary of Cosmetic Art Education</u>	21	NCAC 14I .0109	25:11 NCR
<u>Uniform</u>	21	NCAC 14I .0110	25:11 NCR
<u>Live Model/Mannequin Performance Requirements</u>	21	NCAC 14J .0207*	25:11 NCR
<u>Approval of Credit for Cosmetology Instruction/Another State</u>	21	NCAC 14J .0501	25:11 NCR
<u>Licenses Required</u>	21	NCAC 14P .0106	25:11 NCR
<u>Performances</u>	21	NCAC 14S .0107	25:11 NCR

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

<u>Application Fees</u>	21	NCAC 25 .0203*	24:19 NCR
<u>Renewal of a Full License</u>	21	NCAC 25 .0204	24:19 NCR
<u>Renewal of a Provisional License</u>	21	NCAC 25 .0205	24:19 NCR
<u>Suspension of Authority to Expend Funds</u>	21	NCAC 25 .0211	24:19 NCR
<u>Extension of Reporting Deadlines</u>	21	NCAC 25 .0406	24:19 NCR
<u>Continuing Education Requirements</u>	21	NCAC 25 .0501	24:19 NCR

MEDICAL BOARD

<u>Prescribing Authority</u>	21	NCAC 32M .0109*	25:10 NCR
<u>Publishing Certain Misdemeanor Convictions</u>	21	NCAC 32X .0104*	25:10 NCR

NURSING, BOARD OF

<u>Prescribing Authority</u>	21	NCAC 36 .0809	25:09 NCR
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OPTICIANS, STATE BOARD OF

<u>Forms</u>	21	NCAC 40 .0112*	25:10 NCR
<u>Negligence in Dispensing Contact Lenses</u>	21	NCAC 40 .0213*	25:10 NCR
<u>Application Photograph Requirement</u>	21	NCAC 40 .0301*	25:10 NCR
<u>Time and Place of Examination</u>	21	NCAC 40 .0307	25:10 NCR
<u>Terms of Examination and Re-Examination</u>	21	NCAC 40 .0318	25:10 NCR

OPTOMETRY, BOARD OF EXAMINERS IN

<u>Continuing Education</u>	21	NCAC 42B .0302*	25:08 NCR
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SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

<u>Definitions</u>	21	NCAC 68 .0101*	25:09 NCR
<u>Supervised Practicum for Certified Substance Abuse Counselor...</u>	21	NCAC 68 .0204*	25:09 NCR
<u>Continuing Education Required for Counselor, Criminal Jus...</u>	21	NCAC 68 .0208*	25:09 NCR
<u>University Substance Abuse Specialty Curricula</u>	21	NCAC 68 .0214*	25:09 NCR
<u>Supervised Practicum for Criminal Justice Addictions Prof...</u>	21	NCAC 68 .0217*	25:09 NCR
<u>Suspension of Authority and Escrow of Funds</u>	21	NCAC 68 .0225	25:09 NCR
<u>Armed Services Credential</u>	21	NCAC 68 .0226	25:09 NCR
<u>Grounds for Professional Discipline</u>	21	NCAC 68 .0601*	25:09 NCR

APPROVED RULES

<u>Complain Procedures</u>	21	NCAC 68	.0602*	25:09 NCR
<u>Investigation of Complaint</u>	21	NCAC 68	.0603*	25:09 NCR
<u>Hearing Before Board</u>	21	NCAC 68	.0604*	25:09 NCR
<u>Method of Discipline</u>	21	NCAC 68	.0605*	25:09 NCR
<u>Effect of Court or of Other Professional Groups</u>	21	NCAC 68	.0606*	25:09 NCR
<u>Awarding the Credential Following Denial</u>	21	NCAC 68	.0610	25:09 NCR
<u>Proof of Rehabilitation</u>	21	NCAC 68	.0611	25:09 NCR
<u>Informal Proceedings</u>	21	NCAC 68	.0615	25:09 NCR
<u>Publication of Ethics Sanctions</u>	21	NCAC 68	.0620	25:09 NCR

COMMUNITY COLLEGES, BOARD OF

<u>School Absence for Religious Observances</u>	23	NCAC 02C	.0213	25:08 NCR
<u>Tuition and Fees for Curriculum Programs</u>	23	NCAC 02D	.0202	25:06 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

WELL CONTRACTORS CERTIFICATION COMMISSION

<u>Types of Certification</u>	15A	NCAC 27	.0110*	25:12 NCR
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OPTICIANS, STATE BOARD OF

<u>Information and Application</u>	21	NCAC 40	.0104*	25:10 NCR
<u>Election of Members</u>	21	NCAC 40	.0109*	25:10 NCR
<u>Professional Responsibility; Continuing Education</u>	21	NCAC 40	.0206*	25:10 NCR
<u>Location of Licensee, Intern or Apprentice</u>	21	NCAC 40	.0207*	25:10 NCR
<u>Display of Registration and License</u>	21	NCAC 40	.0209*	25:10 NCR
<u>Licensure Examination Fees</u>	21	NCAC 40	.0302*	25:10 NCR
<u>Licensure Examination and Re-Examination</u>	21	NCAC 40	.0303*	25:10 NCR
<u>Affidavit of Applicant</u>	21	NCAC 40	.0323*	25:10 NCR
<u>Motion for Continuance</u>	21	NCAC 40	.0422*	25:10 NCR

COMMUNITY COLLEGES, BOARD OF

<u>Admission to Colleges</u>	23	NCAC 02C	.0301*	25:06 NCR
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TITLE 04 – DEPARTMENT OF COMMERCE**04 NCAC 02S .0512 STORAGE AND DISPOSAL OF SPIRITUOUS LIQUOR CONTAINERS**

- (a) Keys Required. Any lock used to secure a storage area shall be capable of being unlocked with a key that is available on the premises at all times.
- (b) Official Inspections. Storage areas shall be open to inspection by the Commission or law enforcement officers pursuant to G.S. 18B-502.
- (c) Empty Containers. As soon as a container of spirituous liquor is empty, the permittee or his employee shall permanently deface the mixed beverages tax stamp and dispose of the bottle.
- (d) Guest Room Cabinet Permittees. A hotel that has been issued a Guest Room Cabinet Permit may store spirituous liquor

and premixed cocktails purchased for resale from guest room cabinets in the same storage area with alcoholic beverages purchased for resale in mixed beverages, as provided in Paragraph (a) of this Rule. A hotel shall not, however, place on display at mixing stations any 50 milliliter containers of liquor that were purchased for resale from cabinets. Empty or partially empty containers of alcoholic beverages purchased by a room guest from a cabinet shall be disposed of by the permittee after the room guest has checked out of the hotel.

History Note: Authority G.S. 18B-100; 18B-207; 18B-502; 18B-1001(13); 18B-1007(b);
Eff. January 1, 1982;
Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0518 PRIVATE CLUBS: FINANCIAL STATEMENTS: RECORD KEEPING

(a) A private club holding a Mixed Beverages Permit shall maintain full and accurate monthly records of its finances, separately indicating each of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold;
- (3) amounts received in payment of members' dues;
- (4) amounts received from charges to members and guests of members; and
- (5) quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the licensed premises due to stated reasons, such as breakage or theft.

(b) Records of purchases of spirituous liquor and sales of mixed beverages shall be filed separate and apart from all other records maintained on the premises.

(c) Records, including original invoices for the items in Paragraph (a) of this Rule, shall be maintained on the premises for three years and shall be open for inspection or audit pursuant to G.S. 18B-502.

(d) A private club holding a Mixed Beverages Permit shall submit to the Commission for its review, reports summarizing the information required to be maintained by this Rule. These reports shall be submitted on an annual basis or upon request by the Commission.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1008; Eff. January 1, 1982; Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0519 RESTAURANTS: INCOME FROM SALES

(a) For the purposes of G.S. 18B-1000(6), in determining what portions of sales can be attributed to the sale of food and non-alcoholic beverages, the following sales may be included:

- (1) food prepared in the permittee's kitchen and served as a meal to be consumed on the premises or as a "take-out" order;
- (2) prepackaged food sold to accompany the meal; and
- (3) non-alcoholic beverages sold to accompany the meal.

(b) For the purposes of G.S. 18B-1000(6), in determining what portions of sales can be attributed to the sale of food and non-alcoholic beverages, the following items may not be included:

- (1) mixed beverages, including the mixer;
- (2) any other alcoholic beverages;
- (3) grocery items not ordered and purchased with meals; and
- (4) cover charges.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1000(6); 18B-1008;

Eff. January 1, 1982;

Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0520 RESTAURANTS, HOTELS, AND TOUR BOATS: RECORD KEEPING

(a) Monthly Records. Restaurants, hotels and tour boats holding Mixed Beverages Permits shall maintain full and accurate monthly records of their finances, separately indicating each of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold;
- (3) if a guest room cabinet permittee, the amounts collected from the sale of liquor from guest room cabinets, and by container size, the quantity of liquor sold from cabinets;
- (4) the quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the premises due to stated reasons, such as breakage or theft;
- (5) if a restaurant or tour boat, amounts collected from the sale of:
 - (A) food and non-alcoholic beverages;
 - (B) items other than food and beverages of all kinds; and
 - (C) malt beverages, unfortified wine and fortified wine;
- (6) if a hotel, amounts collected from:
 - (A) furnishing lodging;
 - (B) sale of meals;
 - (C) sale of malt beverages, unfortified wine and fortified wine; and
 - (D) all other sources.

(b) Segregation of Records. Records of purchases of spirituous liquor and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises.

(c) Retention and Inspection of Records. Records, including original invoices related to alcoholic beverages and mixed beverages, shall be maintained on the premises for three years and shall be open for inspection or audit pursuant to G.S. 18B-502.

(d) Submission of Financial Records. A restaurant, tour boat, or hotel holding a Mixed Beverages Permit shall submit to the Commission for its review, reports summarizing the information required to be maintained by this Rule. These reports shall be submitted on an annual basis or upon request by the Commission.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1006(i); 18B-1008; Eff. January 1, 1982; Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02S .0612 RECORD KEEPING

(a) Convention centers, community theatres, nonprofit and political organizations holding Mixed Beverages permits shall

maintain full and accurate monthly records of their finances, separately indicating each of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold; and
- (3) the quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the premises due to stated reasons, such as breakage or theft.

(b) Segregation of Records. Records of purchases of spirituous liquor and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises.

(c) Retention and Inspection of Records. Records, including original invoices related to alcoholic beverages and mixed beverages, shall be maintained on the premises for three years and shall be open for inspection or audit pursuant to G.S. 18B-502.

(d) Submission of Financial Records. A permittee holding a Mixed Beverages permit under this Rule shall submit to the Commission for its review, reports summarizing the information required to be maintained by the rule. These reports shall be submitted on an annual basis or upon request by the Commission.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1007; Eff. July 1, 1992;

Temporary Amendment Eff. September 24, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;

Amended Eff. April 1, 2011; February 1, 1994.

04 NCAC 02S .0616 SPORTS CLUB: RECORD KEEPING REQUIREMENTS

(a) Monthly Records. A sports club holding ABC permits issued by the Commission shall maintain full and accurate monthly records of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold;
- (3) the quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the premises due to stated reasons, such as breakage or theft;
- (4) amounts collected from the sale of malt beverages, fortified wine, and unfortified wine;
- (5) amounts collected from club activity fees, excluding receipts for food; and
- (6) receipts for food.

(b) The records required to be kept by this Rule shall be kept separate and apart from all other records maintained on the premises.

(c) Records, including original invoices related to alcoholic beverages and mixed beverages, shall be maintained on the premises for three years and shall be open to inspection or audit pursuant to G.S. 18B-502.

(d) A sports club holding ABC permits shall submit to the Commission for its review, reports summarizing the information required by this Rule. These reports shall be submitted on an annual basis or upon request by the Commission.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1000(5a); 18B-1008;

Temporary Adoption Eff. September 24, 1993 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;

Eff. February 1, 1994;

Amended Eff. April 1, 2011.

04 NCAC 02S .0904 TASTINGS HELD BY INDUSTRY MEMBERS FOR ABC BOARDS

(a) Distiller representatives may conduct educational tastings for ABC board members, general managers and employees, whose duties include product selection, upon notification by the distiller representative to the Commission and if the distiller representative has obtained a permit under G.S. 18B-1001(9).

(b) A tasting held under this Rule shall not be conducted in conjunction with a meal, a party or any other social event, but shall be for business purposes only.

(c) No tasting shall be held on ABC board property.

History Note: Authority G.S. 18B-100; 18B-203(a)(9); 18B-207; 18B-1116;

Eff. April 1, 2011.

04 NCAC 02T .0101 DEFINITIONS

The following terms shall have the following meanings when used in this Chapter:

- (1) "Brand," in relation to wines, means the name under which a wine is produced and includes trade names or trademarks. A brand shall not be construed to mean a class or type of wine, but all classes and types of wines sold under the same brand label are considered a single brand. Differences in packaging such as a different style, type or size of container are not considered different brands.
- (2) "Industry member" means any wholesaler, salesman, brewery, winery, bottler, importer, distiller, distiller representative, rectifier, nonresident vendor, vendor representative, or affiliate thereof, that sells or solicits orders for alcoholic beverages, whether or not licensed in this state.
- (3) "Retail permittee" or "retailer" means any permittee holding a retail alcoholic beverage permit issued pursuant to the authority of G.S. 18B-1001, but does not include a non-profit or political organization that has been issued a Special One-Time permit pursuant to the provisions of G.S. 18B-1002(a)(2) or (5).

- (4) "Representative" means any vendor representative, as that term is used in G.S. 18B-1112, or any other person selling or soliciting orders for alcoholic beverages on behalf of a manufacturer, bottler, vendor, or importer.
- (5) "Vendor" means any nonresident malt beverage vendor or nonresident wine vendor, as those terms are used in G.S. 18B-1113 and 18B-1114.
- (6) "Wine" means both fortified wine and unfortified wine, as those terms are defined in G.S. 18B-101(7) and (15).

History Note: Authority G.S. 18B-100; 18B-101; 18B-207; 18B-1112; 18B-1113; 18B-1114; 18B-1116;
Eff. January 1, 1982;
Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

**04 NCAC 02T .0103 BEER FRANCHISE LAW;
 "BRAND" DEFINED**

For purposes of Article 13 of Chapter 18B, the Beer Franchise Law, a distribution agreement between a supplier and wholesaler applies to all products distributed by the supplier under the same brand name. Different categories of products manufactured and marketed under a common identifying trade name are considered to be the same brand; e.g., the "Old Faithful" brand manufactured by Yellowstone Brewery Co. would include "Old Faithful", "Old Faithful Light", "Old Faithful Draft", "Old Faithful Dry" and other products identified principally by and relying upon the "Old Faithful" name, but would not include "Old Teton" which was also manufactured by Yellowstone Brewery Co. Determination of a product's brand shall be made by the Commission at the time the product is approved for sale in North Carolina and shall not be affected by later changes in the manufacturer's advertising strategy or labeling. Differences in packaging, such as different style, type or size of container, do not establish different brands.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1303(a);
Eff. November 1, 1994;
Amended Eff. April 1, 2011.

04 NCAC 02T .0104 WINE PRODUCT BRAND

Determination of a product's brand shall be made by the Commission at the time the product is approved for sale in North Carolina and shall not be affected by later changes in the manufacturer's advertising strategy or labeling. Differences in packaging, such as different style, type or sized of container, do not establish different brands.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1203;
Eff. April 1, 2011.

**04 NCAC 02T .0201 MALT BEVERAGE PRODUCT
 APPROVAL: LISTING IN STATE**

(a) All malt beverage products offered for sale in this State shall first be approved by the Commission. The Commission shall

provide blank Label/Product Application Forms upon request. Thereafter, any approved malt beverage product sold in this State shall conform to the analysis of the samples submitted.

- (b) The Commission shall approve malt beverage products if:
 - (1) the procedure for approval is complied with as required in Paragraph (c) of this Rule;
 - (2) the analysis is within the limits as required in Paragraph (d) of this Rule;
 - (3) the malt beverage product meets or exceeds the packaging requirements as required in 04 NCAC 02T .0301; and
 - (4) at the time of consideration, the Commission does not have evidence to suspect that the product:
 - (A) contains harmful or impure substances;
 - (B) contains an improper balance of substances, based on studies by universities, laboratories, the Commission or other scientific studies;
 - (C) is a spurious or imitation product; or
 - (D) is unfit for human consumption.
- (c) Procedure for Approval. To receive consideration for approval by the Commission for a new malt beverage product, an industry member shall comply with the following procedures:
 - (1) submit a completed Label/Product Approval Form with a list of all container sizes being offered;
 - (2) attach all malt beverage product labels that are specified on the Label/Product Approval Form to the Label/Product Approval Form;
 - (3) upon request from the Commission, submit a sample of the product in a marketable container;
 - (4) attach a copy of the Federal Label Approval Form (COLA) to the Label/Product Approval Form;
 - (5) submit a non-refundable analysis fee in the form of a certified check, cashier's check or money order in the amount of twenty-five dollars (\$25.00) for each new malt beverage product submitted, except if an analysis certified by a laboratory of the product is submitted, submit a non-refundable administrative fee as set out in G.S. 18B-206(c) in the form of a certified check, cashier's check or money order; and
 - (6) forward all required items to the North Carolina Alcoholic Beverage Control Commission, 4307 Mail Service Center, Raleigh, North Carolina 27699-4307.
- (d) All malt beverage analyses shall be within the following limits:
 - (1) a maximum 15 percent alcohol by volume;
 - (2) a maximum 25 parts per million of total sulphur dioxide content; and
 - (3) a maximum 100 parts per million of gallo tannins.

(e) All analyses of products submitted by industry members shall provide the following information in English:

- (1) the measured amounts listed in Paragraph (d) of this Rule;
- (2) the calories per 360 milliliters (12 ounces);
- (3) the specific gravity; and
- (4) the amount of any fortified stimulant per 360 milliliters (12 ounces).

(f) The Commission shall withdraw approval of a malt beverage product when the Commission has evidence to suspect that the product:

- (1) contains harmful or impure substances;
- (2) contains an improper balance of substances;
- (3) is a spurious or imitation product; or
- (4) is unfit for human consumption.

The malt beverage product shall not be reapproved until the Commission has evidence that proves otherwise.

(g) A person possessing malt beverage products that have had the approval withdrawn by the Commission shall have 60 days after notice of the withdrawal to sell or otherwise dispose of the malt beverage products.

History Note: Authority G.S. 18B-100; 18B-203(a)(5); 18B-206; 18B-207;

Eff. January 1, 1982;

Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02T .0202 WINE APPROVALS; LISTING IN STATE

(a) Except as provided in 04 NCAC 02S .0223 for special orders, all wine products offered for sale in this State shall first be approved by the Commission. The Commission shall provide blank Label/Product Application Forms upon request. Thereafter, any approved wine product sold in this State shall conform to the analysis of the samples submitted.

(b) The Commission shall approve a wine product if:

- (1) the procedure for approval is complied with as required in Paragraph (d) of this Rule;
- (2) it is a fortified wine product that the alcohol by volume is above 16 percent and no more than 24 percent;
- (3) it is an unfortified wine product that the alcohol by volume is 16 percent or less;
- (4) the wine product meets or exceeds the packaging requirements as required in 04 NCAC 02T .0301, and
- (5) at the time of consideration, the Commission does not have evidence to suspect that the product:
 - (A) contains harmful or impure substances;
 - (B) contains an improper balance of substances, based on studies by universities, laboratories, the Commission or other scientific studies;
 - (C) is a spurious or imitation product; or
 - (D) is unfit for human consumption.

(c) Procedure for Approval. To receive consideration for approval by the Commission for a new wine product, an industry member shall comply with the following procedures:

- (1) submit a completed Label/Product Application Form;
- (2) submit separate Label/Product Application Forms for fortified and unfortified wine products;
- (3) attach all wine product labels that are specified on the Label/Product Application Form to the Label/Product Application Form;
- (4) upon request from the Commission, submit a 500 milliliter (or a larger size if 500 milliliter is not available) bottle of each product offered;
- (5) attach a copy of the Federal Label Approval Form (COLA) to the Label/Product Application Form;
- (6) submit a non-refundable analysis fee in the form of a certified check, cashier's check or money order in the amount of twenty-five dollars (\$25.00) for each new wine product submitted, except if an analysis certified by a laboratory of the product is submitted, submit a non-refundable administrative fee as set out in G.S. 18B-206(c) in the form of a certified check, cashier's check or money order; and
- (7) forward all required items to the North Carolina Alcoholic Beverage Control Commission, 4307 Mail Service Center, Raleigh, North Carolina 27699-4307.

(d) If an analysis of a product is submitted, it shall provide at least the following information in English:

- (1) alcohol by volume (percent);
- (2) total acidity (g/100 cc as tartaric acid);
- (3) total sulphur dioxide content (ppm);
- (4) volatile acidity, exclusive of sulphur dioxide (g/100 cc as acetic acid);
- (5) alcohol-free soluble solids (degrees/Brix degrees/Balling);
- (6) identity and quantity of any added chemical preservative; and
- (7) the amount of any fortified stimulant per container.

(e) The Commission shall withdraw approval of a wine product when the Commission has evidence to suspect that the product:

- (1) contains harmful or impure substances;
- (2) contains an improper balance of substances;
- (3) is a spurious or imitation product; or
- (4) is unfit for human consumption.

The wine product shall not be reapproved until the Commission has evidence that proves otherwise.

(f) A person possessing wine products that have had the approval withdrawn by the Commission shall have 60 days after notice of the withdrawal to sell or otherwise dispose of the wine products.

History Note: Authority G.S. 18B-100; 18B-203(a)(5); 18B-206; 18B-207;

Eff. January 1, 1982;

Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02T .0206 NEW FILING REQUIRED UPON TRANSFER OF BRAND

When any malt beverage or wine brand or product is transferred from one nonresident vendor, manufacturer or importer to another, the new vendor, manufacturer or importer shall, within 30 days of the acquisition of the brand or product, submit the following items to the Commission:

- (1) label approval application forms (BWL008), with labels attached;
- (2) copies of Federal Label Approval forms;
- (3) a certified laboratory analysis of the product, in English, showing alcohol content by volume, with a non-refundable administrative fee as set out in G.S. 18B-206(c) in the form of a certified check, cashier's check or money order; and
- (4) the wholesaler territorial designations for the brand and product that were in effect on the date the product was acquired by the vendor, manufacturer or importer.

Compliance with this Rule is mandatory notwithstanding the fact that the product has been previously approved by the Commission.

History Note: Authority G.S. 18B-100; 18B-203(a); 18B-206; 18B-1203; 18B-1303(a); 18B-1305(d); Eff. July 1, 1992; Amended Eff. April 1, 2011.

04 NCAC 02T .0303 LABEL CONTENTS: MALT BEVERAGES

Malt beverage labels shall contain the following information in a legible form:

- (1) brand name of product;
- (2) name and address of brewer or bottler;
- (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- (4) net contents; and
- (5) if the malt beverage is fortified with any stimulants, the amount of each (milligrams) per container.

History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; Eff. January 1, 1982; Amended Eff. April 1, 2011.

04 NCAC 02T .0308 GROWLERS

(a) As used in this Rule, a growler is a refillable container no larger than 2 liters (0.5283 gallons) into which a malt beverage is poured for off-premises consumption.

(b) Holders of a brewery permit that have retail permits pursuant to G.S. 18B-1001(2), may sell growlers filled with the brewery's malt beverage for off-premises consumption provided a label is affixed to the growler that accurately provides the information as required by 04 NCAC 02T .0303 and .0305.

(c) Holders of a brewery permit that have retail permits pursuant to G.S. 18B-1001(2), may refill customer's growlers provided a label is affixed to the growler that accurately provides the information as required by 04 NCAC 02T .0303 and .0305.

(d) Breweries that refill growlers sold by other breweries shall relabel the growler prior to filling it with malt beverage.

(e) Breweries that refill growlers sold by other breweries shall remove, deface or cover any permanent or non-permanent labels prior to affixing a new label.

History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; Eff. April 1, 2011.

04 NCAC 02T .0401 APPLICATION OF STANDARDS

All wines produced, imported, bottled, or offered for sale in this State shall meet the standards of identity prescribed as of April 1, 1986, in Subpart C, Part 4, Chapter 1, Title 27 of the Code of Federal Regulations which is incorporated herein by reference and includes subsequent amendments.

The Commission has a copy of those regulations available for inspection at the Commission's principal office. Copies are available at the "actual cost" as defined in G.S. 132-6.2(b) for making the copies and the mailing cost if applicable. The Commission shall provide its "actual cost" on the Commission's website. Persons requesting copies of the above documents shall make payment by certified check, cashier's check or money order to the Commission prior to receiving any copies of the above documents.

History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 27 C.F.R. 4.20; 4.21; 4.22; 4.23; 4.24; 4.25; 4.26; 4.27; Eff. January 1, 1982; Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02T .0502 RECORD KEEPING REQUIREMENTS: SALES TICKETS

(a) In addition to records required to be kept by the North Carolina Department of Revenue, all industry members shall maintain on the licensed premises a copy of every original sales ticket or receipt that relates to sales of alcoholic beverage products, equipment, advertising specialty items, or advertising novelties. Copies shall be in the following form:

- (1) paper; or
- (2) electronic, so long as it can be printed on paper.

(b) Sales Ticket Required. Wholesalers or their salesmen shall, at the time of each sale and delivery of malt beverages or wine to a retailer, provide on every retail sales ticket the following information:

- (1) date of sale;
- (2) name of establishment;
- (3) location;
- (4) quantity of each brand of malt beverages or wine sold;
- (5) unit price;
- (6) total price;
- (7) amount received;
- (8) invoice number; and

- (9) route, if applicable.
- (c) All sales tickets shall be endorsed at the time of sale by the retailer or authorized agent and by the wholesaler with the usual signature of each.
- (d) All sales tickets shall be retained by the wholesaler for a period of three years and shall be filed alphabetically, by sales route, or chronologically by date of sale.

*History Note: Authority G.S. 18B-100; 18B-207;
Eff. January 1, 1982;
Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.*

04 NCAC 02T .0708 COMMERCIAL BRIBERY

(a) No industry member shall make gifts or payoffs to purchasing agents, clerks, bartenders, salesmen or other employees of retail permittees.

(b) No industry member shall give any bonus, premium or compensation to any retailer or an officer, employee or agent of the retailer. Prohibited acts include:

- (1) monetary inducements ("push money") given to retailers or their employees;
- (2) total or partial payment of a retailer's employee's salary;
- (3) sales promotion contests in which a retailer's employees are offered or awarded prizes, such as trips abroad, cash, or automobiles that are totally or partially financed by an industry member;
- (4) payments or gratuities to groups or associations of retailer's employees;
- (5) other gifts such as trips, appliances, or other items given to retail corporate officers; or
- (6) participation in a retailer's sales or management meetings, conventions or outings by sponsoring or underwriting any events in connection with the meeting, convention or outing, unless such participation is limited to the providing of a hospitality suite with light hors d'oeuvres and beverages, and the price paid for the suite is not greater than that paid by any other participant in the meeting, convention or outing.

(c) Notwithstanding Paragraphs (a) and (b) of this Rule, an industry member may invite up to two employees or representatives of a retail permittee who is permitted under G.S. 18B-1001, to, and pay for, a business meal to discuss sales and promotions in person, provided that:

- (1) the business meal, including beverages consumed with the meal, shall take place within North Carolina and shall not take place at any entertainment venue or in conjunction with entertainment;
- (2) if the industry member provides transportation, that it shall be by personal vehicle only;
- (3) the industry member must accompany the employees or representatives of a retail permittee for the duration of the business meal;
- (4) such business meal shall be provided without a corresponding obligation on the part of the

retailer to purchase alcoholic beverages or to provide any other benefit to such industry member;

- (5) such business meal shall be provided without a corresponding obligation on the part of the retailer to exclude from sale the products of any other industry member;
- (6) the cost of the business meal shall not exceed the cost of a business meal in the food and non-alcoholic beverage industry provided in the ordinary course of business; and
- (7) an industry member shall pay for no more than two business meals per retail permittee per calendar year.

This Paragraph does not apply to any industry member that has a bona fide, pre-existing relationship with any retail permittee separate from the beverage alcohol industry.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1116(a);
Eff. January 1, 1982;
Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.*

04 NCAC 02T .0709 CONSIGNMENT SALES: CONDITIONAL SALES: RETURNS

(a) Consignment Sales Prohibited. No industry member shall sell, offer for sale, or contract to sell to any retail permittee, nor shall any retail permittee purchase, offer to purchase, or contract to purchase from any industry member any alcoholic beverages on consignment or under conditional sale, or with the privilege of return, or on any basis other than a bona fide cash sale. For the purposes of this Rule, a consignment sale is any transaction in which title to the merchandise is not transferred at the time of shipment or delivery and which does not involve some form of full cash settlement. No industry member shall contract or agree with a retailer to retain title to alcoholic beverages until those products are sold.

(b) Privilege of Return. No industry member and retailer shall enter into any agreement whereby the retailer has an expressed or implied right to return alcoholic beverages that he cannot sell. Any acceptance of returned merchandise is considered a strong indication that the "privilege of return" existed at the time of sale, and a repeated practice of accepting returned merchandise from a retailer would establish an implied privilege of return, even though no formal agreement has been made.

(c) Sales Conditioned on the Acquisition of Other Merchandise. No industry member shall make any agreement with any retailer with terms that allow the industry member to remove the retailer's inventory conditioned upon present or future sales. The exchange of alcoholic beverages for equal quantities of the same type and brand in containers of another size and style is not considered an acquisition of "other" alcoholic beverages and, therefore, is not prohibited where the return is otherwise permissible.

(d) Exceptions. This Rule does not apply to the following transactions:

- (1) returns of malt beverages or wine for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, such as

- mutilated or damaged labels or containers, error in delivery, product deterioration, products have been deemed unsafe by State or federal authorities, the product approval has been withdrawn as referenced by 04 NCAC 02T .0201 and .0202, or a bona fide discontinuance of the retailer's business;
- (2) exchanges of malt beverage products for equal quantities of the same brand and type, so long as the manufacturer's code date on the products will expire within 30 calendar days of the date of exchange, and the quantity exchanged does not exceed 50 cases of each brand per 30 day period per retail permittee. For the purposes of this Rule, the term "exchange" means to replace product for product and does not authorize the wholesaler to accept returned malt beverage products for cash or credit; and
- (3) returns of wine or malt beverage products from a seasonal retailer who is open only a portion of the year if the products are likely to spoil during the off-season. For purposes of this Rule, a "seasonal retailer" is defined as one that closes its business completely for a period of at least eight weeks during the summer or winter months. Returns from a seasonal retailer may be for cash or credit.
- Note:** The return or exchange of wine products is governed by this Rule and the regulations under the Federal Alcohol Administration Act found in Title 27 of the United States Code of Federal Regulations, Part 11 (27 CFR Sec. 11.1 through 11.46), and nothing in these Rules shall be construed to authorize the return or exchange of wine products if the transaction is prohibited by federal law.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1116; 27 C.F.R. 11.1 through 11.46; Eff. January 1, 1982; Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02T .0711 PROHIBITED TRADE PRACTICES

- (a) General. It shall be a violation of this Rule for any alcoholic beverage (including malt beverages, wines and spirituous liquors) industry member, whether or not licensed in this state, or any officer, director, employee or affiliate, to either directly or indirectly lend, give, furnish or offer to any retail permittee or his employee, or to the owner of the premises on which the business of a retailer is conducted, or for any retail permittee, employee, or owner to demand, require or accept from any industry member, any money, services, furniture, fixture, equipment, sign, glasses, barware, supplies or other thing of value, except as provided in this Rule.
- (b) Prohibited Services. By way of illustration, the following services shall not be furnished, given, provided or made

available to a retail permittee by an industry member, even if the retailer is charged or billed for the services for their market value:

- (1) installing, repairing or maintaining equipment, outdoor signs or other fixtures;
 - (2) promoting a retailer in advertising;
 - (3) reconciling inventory for a retailer;
 - (4) providing labor or employees to assist a retailer in the retailer's promotional events unless otherwise allowed in the rules of the Commission;
 - (5) loaning or renting aerial displays or outdoor inflatables to a retailer for use, whether on or off the retailer's licensed premises;
 - (6) pricing or repricing a product without the retailer's consent;
 - (7) warehousing, by:
 - (A) making refrigerated vehicles available to the retailer; or
 - (B) delaying delivery from a manufacturer, importer, nonresident vendor or warehouse in order to enable the retailer to take advantage of promotional prices or for any other reason;
 - (8) affixing special retailer stamps or stickers to beer or wine packaging, but a wholesaler may affix signs, stickers, stamps, or tags indicating the product's price to a container, shelf or display of its products;
 - (9) entering delivery data on a retailer's in-store computer;
 - (10) providing data processing services;
 - (11) sponsoring sports leagues that are also sponsored by a retailer, or that use the facilities of a retailer for sporting events;
 - (12) guaranteeing the loan of a retailer;
 - (13) extending credit to a retailer;
 - (14) failing to require a deposit equal to that charged by the supplier on kegs and returnable bottles; or
 - (15) negotiating special prices for or financing of equipment.
- (c) Prohibited Things of Value. By way of illustration, the following things of value shall not be furnished, given, loaned, rented or sold to a retail permittee by any industry member:
- (1) aerial displays or tethered inflatables;
 - (2) parties given for retailers or groups of retailers' employees, unless otherwise allowed by the rules of the Commission;
 - (3) prizes at retailer conventions;
 - (4) advertising in a retailer periodical or advertising in a retailer publication designed for distribution to consumers;
 - (5) outside signs;
 - (6) cooperative advertising, including:
 - (A) providing or assisting retailer promotions, whether on or off the retailer's premises;

- (B) participation with a retailer in the advertising of alcoholic beverages, the retailer's business or special events unless specifically approved by the Commission in the case of fundraisers for non-profit charitable organizations after consideration of the factors listed in G.S. 18B-1116(b);
- (C) underwriting the cost of T-markers, scorecards or scoreboards by the purchase of advertising from a third party; or
- (D) customizing point-of-sale advertising materials, novelties, glassware, consumer specialties or product displays by printing or having printed the retailer's name, slogan or logo on the item, unless otherwise specifically allowed in the rules of the Commission;
- (7) making discounts, rebates or refunds to a retailer on the condition that the retailer use the discount, rebate or refund to pay off a loan;
- (8) equipment, fixtures or furnishings; or
- (9) clothing, except as provided in Rule .0713 of this Section.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1116(a)(3),(b);
Eff. July 1, 1992;
Amended Eff. April 1, 2011.*

04 NCAC 02T .0712 ACCEPTED TRADE PRACTICES; SERVICES

The following service activities are specifically allowed in transactions between alcoholic beverage (which includes malt beverages, wines and spirituous liquors) industry member and retailers:

- (1) Shelving and Pricing for Malt Beverage and Wine Wholesalers.
 - (a) Malt beverage and wine wholesalers who have been assigned space in retail permittee outlets may price or re-price their stock as designated by the retail permittee.
 - (b) Malt beverage and wine wholesalers may rearrange and place their brand or brands in their assigned shelf space so as to rotate their stock and keep their assigned space clean and neat.
 - (c) Malt beverage and wine wholesalers may rearrange or reset a retail permittee's alcoholic beverage shelf space, display area, or department pursuant to that retail permittee's plan and direction, but that industry member shall not move or disturb

brands sold by other industry members.

- (2) Coil Cleaning Service. An industry member may render coil cleaning services to a retailer.
- (3) Shelf Management Plans; Notice Prior to Reset.
 - (a) An industry member may discuss with a retailer shelf-management concepts and programs and may provide, publish, and make available data on market sales and analysis.
 - (b) An industry member may provide and suggest shelf-management plans which are customized for a specific retail permittee or group of retail permittees. The retail permittee shall remain solely responsible for implementing any suggested shelf-management plan. If an industry member provides a suggested shelf-management plan to a retail permittee or group of retail permittees, he must provide a suggested plan to any other retail permittee upon request. Shelf-management plans shall meet the following conditions:
 - (i) no retail permittee or person acting on its behalf shall implement a shelf-management plan unless the retail permittee sends notice of the plan to all wholesalers that service that location who have provided a request to the retail permittee to receive such notice;
 - (ii) the notice to wholesalers required under this Sub-item shall include the date and time of the contemplated plan implementation and shall be provided at least two weeks before such time. In the event of an exigent or other unforeseen circumstance in which such notice cannot be provided within the two week period, the retail permittee shall provide such notice within a reasonable period of time as referenced by G.S. 25-1-205(a);
 - (iii) if an industry member assists in the creation of a proposed plan, the notice provided by the retail permittee shall also include the proposal; and

- (iv) the notice to wholesalers required under this Sub-item does not apply to a retail permittee that independently develops or designs his own shelf-management plan without the assistance of an industry member, or who makes adjustments to less than 15 percent of the current self-management plan.
- (c) A wholesaler may provide physical labor to implement a shelf-management plan.
- (d) For purposes of this Rule, a shelf-management plan includes shelf resets.
- (e) For purposes of this Rule, notice from either a retail permittee or an industry member shall be provided by verifiable electronic mail, certified mail, or other delivery service which requires written verification of delivery, and shall include a designated person and contact information for return correspondence.
- (4) Participation in Retailer Association Activities. An industry member may participate in retailer association activities by:
 - (a) displaying product at association conventions or trade shows;
 - (b) renting display or booth space so long as the rental fee is the same as the fee paid by all exhibitors;
 - (c) providing hospitality events which are independent from association sponsored activities;
 - (d) purchasing tickets to functions and paying registration fees if such fees are the same as paid by all exhibitors; and
 - (e) making payments for advertisements in programs or brochures at association shows within the dollar limits established by 27 C.F.R. 6.100 and the Bureau of Alcohol, Tobacco and Firearms which is incorporated herein by reference. Cost adjustment increases authorized by 27 C.F.R. 6.83 are also incorporated herein by reference but subsequent amendments to 27 C.F.R. 6.100 are not incorporated. Copies of these regulations are available for inspection and copying as provided by 04 NCAC 02T .0401.
- (5) Educational Seminars. An industry member may provide or sponsor seminars for retailers and their employees in the following areas:
 - (a) the proper use of equipment;
 - (b) the proper storage, handling and service of alcoholic beverages;
 - (c) safe driving programs;
 - (d) recognizing underage and intoxicated customers; and
 - (e) the history or aspects of a product's manufacturing process.

Seminars may be conducted at the premises of either the retailer or industry member. Nothing in this Rule shall be construed to authorize an industry member to pay the retailer's expenses in attending the seminar.
- (6) Tastings. Beer and wine tastings may be conducted in accordance with 04 NCAC 02S .0901 and .0902.
- (7) Labor for Displays. An industry member may provide personnel to construct a promotional product display on the premises of a retailer, and may move other products from the display area in accordance with 04 NCAC 02T .0704.
- (8) Installations. The following items may be installed by an industry member at no charge to a retailer:
 - (a) point of sale advertising materials; and
 - (b) tapping accessories.
- (9) Bar Spending. An industry member may visit the premises of an on-premise retail account for the purpose of promoting its brands so long as:
 - (a) the visit is unannounced and not advertised; and
 - (b) a patron who refuses the industry member's offer to consume a product is offered a comparable beverage of his choice, either alcoholic or non-alcoholic.
- (10) Non-alcoholic Beverages. A malt beverage wholesaler who is also engaged in the business of selling non-alcoholic beverage products may engage in the accepted trade practices of the soft drink and snack food industries, so long as the sales and practices surrounding the non-alcoholic beverage merchandise are not used as an unlawful inducement to purchase malt beverages.

Note: Wine wholesalers selling non-alcoholic beverage merchandise are governed by the provisions of 27 C.F.R. 6.101.

History Note: Authority G.S. 18B-100; 18B-203(b); 18B-207; 18B-1116(b); 27 C.F.R. 6.83; 27 C.F.R. 6.100; 27 C.F.R. 6.101 (1986); Eff. July 1, 1992; Amended Eff. April 1, 2011.

04 NCAC 02T .0713 ACCEPTED TRADE PRACTICES; THINGS OF VALUE; RETAIL PERMITTEES

(a) **Items That Must Be Sold.** The following things of value shall not be given, loaned or rented by any alcoholic beverage (which includes malt beverages, wines and spirituous liquors) industry member to a retail permittee, but may be sold to the retail permittee at the price paid for the item by the first industry member who acquires the item:

- (1) novelties, such as coolers, umbrellas, ice chests, beach towels, towels, and sports equipment, so long as the novelty item has not been customized for a retail permittee with the retail permittee's name or logo;
- (2) glassware and cups, so long as the items have not been customized for a retail permittee with the retail permittee's name or logo;
- (3) carbon dioxide;
- (4) ice;
- (5) beer tapping accessories, including faucets, rods, vents, taps, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves; and
- (6) menus that exceed the number of food items provided in 04 NCAC 02S .1008(a)(3).

(b) **Items That May Be Provided at No Charge.** The following things of value may be given, furnished, loaned, rented or sold by an industry member to a retail permittee:

- (1) samples of malt beverage, wine and spirituous liquor products in the following quantities:
 - (A) no more than three gallons of any brand of malt beverages;
 - (B) no more than three liters of any brand of wine; and
 - (C) no more than 50 milliliters of any brand of spirituous liquor.

Samples may be given only to a retail permittee who has not previously purchased those brands from the industry member within the previous calendar year.

- (2) recipes, booklets and brochures for cooking with wine, malt beverages or spirituous liquors as described in 04 NCAC 02S .1008(a)(3).
- (3) malt beverage, wine and mixed beverage lists, in accordance with 04 NCAC 02S .1008(a)(3).
- (4) combination packaging, as provided in 27 C.F.R. 6.93;
- (5) consumer specialty items such as bottle or can openers, cork screws, ash trays, shopping bags, individual can coolers, hats, caps, visors, t-shirts (without collars or buttons), or key chains. Such items may be given to retail permittees for distribution to consumers, or may be provided by industry member personnel directly to consumers at the retail permittee's place of business during visits that are not announced or advertised to consumers. Consumer specialty items shall not be

customized for a retail permittee with the retail permittee's name or logo;

- (6) product displays, to include wine racks, bins, barrels, casks and shelving from which malt beverage, wine or spirituous liquor are displayed and sold, so long as:
 - (A) each display bears conspicuous and substantial advertising matter; and
 - (B) the dollar limitations per brand do not exceed one hundred sixty dollars (\$160.00);
- (7) point of sale advertising materials which have value only as advertising, so long as the pieces have not been customized for any individual retail permittee; and
- (8) retail permittee advertising specialty items as described in 04 NCAC 02S .1008(a)(4), so long as the items have not been customized for an individual retail permittee, and so long as the dollar limitations per brand do not exceed three hundred dollars (\$300.00) per year.

(c) **Point-Of-Sale Advertising Materials.** Notwithstanding having a secondary value, the following items are considered to be point-of-sale materials and need not be submitted by an industry member for approval prior to use, so long as the items bear conspicuous advertising matter:

- (1) clocks;
- (2) lamps;
- (3) lighted displays;
- (4) blackboards;
- (5) bulletin boards;
- (6) dart board backgrounds;
- (7) menu and price boards;
- (8) tap standards;
- (9) calendars;
- (10) mirrors; and
- (11) prizes offered in a consumer sweepstakes or contest pursuant to 04 NCAC 02T .0716(b). The prizes shall bear a sticker that shows it is the property of the industry member. The prizes shall be picked up by the industry member at the conclusion of the sweepstakes or contest.

(d) The provisions of 27 C.F.R. 6.93 referenced in this Rule are incorporated by reference, but such incorporation does not include subsequent amendments. Copies of this regulation are available for inspection and copying as provided in 04 NCAC 02T .0401.

(e) Nothing within this Rule applies to ABC boards.

History Note: Authority G.S. 18B-100; 18B-107; 18B-1116(b); 27 C.F.R. 6.83; 27 C.F.R. 6.85; 27 C.F.R. 6.91; 27 C.F.R. 6.93 (1986);

Eff. July 1, 1992;

Amended Eff. April 1, 2011.

04 NCAC 02T .0714 TRANSACTIONS WITH GOVERNMENT AND SPECIAL ONE-TIME PERMITTEES

(a) Permitted Activities. Notwithstanding the restrictions contained in 04 NCAC 02T .0711, the following activities by alcoholic beverage (which includes malt beverages, wines and spirituous liquors) industry members are allowed, as described in this Rule, in transactions with cities, counties, the state, or in transactions with nonprofit or political organizations that have obtained a Special One-Time permit under the provisions of G.S. 18B-1002(a)(2) or (5), or nonprofit organizations that do not hold an ABC permit:

- (1) sponsorships of festivals, concerts, fundraisers or special events cosponsored by the local government, the state or nonprofit or political organizations, including payments of advertising fees;
- (2) loaning or renting portable equipment to a local government, the state or a nonprofit or political organization so long as the equipment loaned or rented is for a single event of limited duration;
- (3) contracts to provide payment for permanent advertising on signs or scoreboards when the industry member has submitted a request for and received an exemption pursuant to G.S. 18B-1116(b);
- (4) providing labor or employees to assist in the setting up or changing of draft beer kegs and equipment which has been loaned or rented pursuant to Subparagraph (a)(2) of this Rule;
- (5) loaning or renting previously approved aerial displays or outdoor inflatables for the duration of a special event, unless the event is held on the premises of a retailer;
- (6) loaning or allowing the use of refrigerated vehicles, unless the event is held in conjunction with or on the premises of a cosponsoring retailer;
- (7) providing novelties, prizes or prize money to nonprofit organizations that have obtained a Special One-Time Permit;
- (8) providing cash contributions, product donations and other consumer goods, provided that any donated product remaining after the event is not supplied by the Special One-Time Permittee to a regular retail permittee;
- (9) participation with a local government or the state in the advertising of events cosponsored by the local government or state; and
- (10) accepting the return of alcoholic beverages not sold, for cash or credit, after the event is over.

(b) Sponsorship/Advertising Agreements Restricted. No sponsorship agreement or advertising contract between an industry member and a city, county, the state, or a Special One-Time permittee shall contain any agreement, either express or implied, that the industry member's products will be sold to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

(c) Cosponsorship with Retail Permittee. In any promotion by an industry member with a local government, the state, or a nonprofit organization in which there is cosponsorship by a retailer other than the local government or the state, the industry member shall obtain prior written approval from the Commission as provided in 04 NCAC 02T .0717.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1116(b);

Eff. July 1, 1992;

Amended Eff. April 1, 2011.

04 NCAC 02T .0716 CONSUMER CONTESTS; SWEEPSTAKES

(a) General. Consumer contests or sweepstakes may be offered by an alcoholic beverage (which includes malt beverages, wines and spirituous liquors) industry member so long as no purchase is required. Entry forms may be attached to or part of an alcoholic beverage label or package so long as alternative methods of entry are available to the consumer by means of a tear pad of entry forms available at the point of purchase or by means of electronic entry forms available on the internet.

(b) Point-of-Sale Permissible; Restriction on Retailer Involvement. An industry member may provide to a retailer point-of-sale advertising materials promoting a sweepstakes or contest. An industry member shall not offer or promote any sweepstakes or contest in conjunction with any retailer as a cosponsor or as the provider of any prize. No prizes may be drawn or awarded on the premises of any retailer. Officers, employees and representatives of industry members and retailers are excluded from participating in a consumer sweepstakes or contest offered under this Rule.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1116(b);

Eff. July 1, 1992;

Amended Eff. April 1, 2011.

04 NCAC 02T .0717 CONDITIONS WHEN COMMISSION APPROVAL REQUIRED FOR PROMOTIONS

(a) Prior Approval Required; Exceptions. An alcoholic beverage (which includes malt beverages, wines and spirituous liquors) industry member shall obtain written approval from the Commission prior to entering into any agreement to engage in activities as a sponsor for any promotion, as that term is defined in 04 NCAC 02T .0702(3), unless the activity involves the following:

- (1) sponsorships of nonprofit organizations that are not special one-time permittees, and the sponsored activity is neither held on the premises of a retailer nor cosponsored by a retailer;
- (2) printing and distribution of items that are classified as point-of-sale advertising material, consumer specialty items, retailer specialty items or novelty items, so long as the items are displayed and distributed in compliance with

04 NCAC 02S .1008, 04 NCAC 02T .0711(c)(6)(B) and 04 NCAC 02T .0713;

- (3) promotions that occur on an annual or regular basis and that have received written approval by the Commission in previous years, so long as the sponsorship activities engaged in by the industry member have not changed; and

- (4) sponsorships of individual amateur sports teams, when:

- (A) the services or things of value provided by the industry member are given to benefit the individual team and its members;
- (B) the team is not comprised of retailers or employees of retailers; and
- (C) the team is not jointly sponsored by a retailer.

(b) The Commission shall approve a promotion if:

- (1) the procedure for approval is complied with as required by Paragraph (c) of this Rule;
- (2) the information provided as required by Paragraph (c) of this Rule is accurate; and
- (3) the promotion is a bona fide promotional event.

(c) Procedure for Approval. To receive consideration for approval by the Commission for a promotional activity, an industry member shall comply with the following procedures:

- (1) submit a completed Industry Promotion Approval form;
- (2) submit copies of broadcast and print advertisements; and
- (3) submit samples of advertising pieces and costs of items.

(d) Notification to Wholesaler. A manufacturer, importer or nonresident vendor of beer or wine that receives approval for promotional activity under this Rule shall provide a copy of the Commission's approval to each of its wholesalers in this state if that wholesaler is or will be participating in the promotion in any manner, including the distribution of promotional materials.

(e) Approvals Restricted to Industry Members. No approval for any promotional activity by an industry member shall be granted to a special one-time permittee, retailer, advertising agency, broadcaster or publisher.

(f) Approvals Granted Only Upon Written Request. The Commission shall not approve any verbal requests or hypothetical fact presentations describing promotional activities requiring prior written approval under this Rule.

(g) Timing of Requests. Industry members shall submit promotions for approval at least two months in advance of the promotion to allow adequate review by the Commission, and to allow for the mailing of written approvals to the industry member.

(h) Promotion Agreements Restricted. Commission approval of a promotion under this Rule shall not be construed as approval for the industry member to enter into any agreement, either express or implied, that its products will be sold or distributed by a retailer or special one-time permittee to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

History Note: Authority G.S. 18B-100; 18B-105; 18B-207; 18B-1116;

Eff. July 1, 1992;

Amended Eff. April 1, 2011.

04 NCAC 02T .0901 DISTILLER REPRESENTATIVES: PROHIBITED ACTS

(a) Representatives Prohibited from Entering Store. Distiller representatives shall not enter any ABC store except for the purpose of calling on the buyer if the buyer's office is maintained in the store, for the purpose of making a purchase or unless given permission by a local Board to market product, build displays, or attach added value items.

(b) Representatives Prohibited from Contacting Store Personnel. Distiller representatives shall not contact, either directly or indirectly, or call upon store personnel while store personnel are off duty for the purpose of promoting their merchandise. Store personnel shall not allow distiller representatives to contact them, either directly or indirectly, or allow the distiller representatives to call upon them while they are off duty for the purpose of promoting their merchandise.

(c) Gifts Prohibited. Representatives shall not give liquor, including samples, or anything of value to local ABC board members or employees, which includes store managers and general managers, at any time. Local ABC board members or employees, which includes store managers and general managers, shall not accept gifts, either directly or indirectly, from any representative.

(d) Soliciting and Advertising Prohibited. Except for purchases made by state or local officials for supply of ABC stores, salesmen of spirituous liquor shall not with regard to purchases of spirituous liquor by any person:

- (1) solicit any order, agreement, or other commitment to purchase liquor, whether or not it is legally enforceable; or
- (2) advertise, promote or encourage purchases by any means or method or furnish any means by which spirituous liquor may be obtained, except as provided in 04 NCAC 02S .1011.

Exceptions shall be made upon notification from the Commission to a distiller representative when there is expressed interest by a fraternal or civic group in the purchase of a ceramic or commemorative decanter. Upon notice, distiller representatives may present pictorial art work or renderings in solicitation and a presentation to that group.

(e) Relationship With Mixed Beverages Permittee. No employee or representative of any distiller, importer, rectifier or bottler may promote or solicit orders by a mixed beverages permittee or aid the permittee in placing orders for any spirituous liquor or for any other alcoholic beverages.

(f) Gifts and Inducements Prohibited. No employee or representative of any rectifier or industry member may give or lend to any mixed beverage permittee, or his employee any gift, money, services, equipment, furniture, fixture or other thing of value.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1116; Eff. January 1, 1982;

Amended Eff. April 1, 2011; July 1, 1992; May 1, 1984.

04 NCAC 02T .1001 APPLICATION FOR PERMIT

An air carrier desiring to purchase malt beverages, wine or spirituous liquor for resale to its passengers while those passengers are in transit aboard an aircraft shall apply for and obtain an Air Carrier Permit. Application shall be on a form provided by the Commission and shall be made by the air carrier's employee responsible for purchases of food and beverages for service to passengers. The food and beverage service manager, by whatever title called, shall provide, and certify under oath the following information to the Commission:

- (1) name of air carrier;
- (2) name of airport where permit will apply;
- (3) address of airport;
- (4) mailing address of carrier at airport;
- (5) state in which air carrier corporation is incorporated; and
- (6) residence of food and beverage manager.

The applicant shall also include a diagram of the location where the malt beverages, wine and spirituous liquor will be stored.

History Note: Authority G.S. 18B-100; 18B-107; 18B-207;
Eff. January 1, 1982;
Amended Eff. April 1, 2011; May 1, 1984.

Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989; June 1, 1981;
Repealed Eff. April 1, 2011.

07 NCAC 02B .0203 SERVICES

History Note: Authority G.S. 125-2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989; June 1, 1981;
Repealed Eff. April 1, 2011.

- 07 NCAC 02C .0101 READING ROOM**
- 07 NCAC 02C .0102 CIRCULATION OF LIBRARY MATERIALS**
- 07 NCAC 02C .0103 PHOTOCOPYING**
- 07 NCAC 02C .0104 REFERENCE SERVICES**
- 07 NCAC 02C .0105 BIBLIOGRAPHIES**

History Note: Authority G.S. 125-2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989; June 1, 1981;
Repealed Eff. April 1, 2011.

TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES

- 07 NCAC 02A .0101 DIVISION OF STATE LIBRARY**
- 07 NCAC 02A .0102 LIBRARY SERVICES AND CONSTRUCTION ACT ADVISORY COUNCIL**

History Note: Authority G.S. 125-1; 125-2; 125-8; 143B-10;
20 U.S. Code 16; 34 C.F.R. 770.4;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989; May 3, 1986;
Repealed Eff. April 1, 2011.

07 NCAC 02A .0201 PURCHASE AND CONTRACT

History Note: Authority G.S. 125-2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989;
Repealed Eff. April 1, 2011.

- 07 NCAC 02B .0101 SERVICES**
- 07 NCAC 02B .0102 DOCUMENTS CHECKLIST**

History Note: Authority G.S. 125-2; 125-11; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989; June 1, 1981;
Repealed Eff. April 1, 2011.

07 NCAC 02B .0201 REQUESTS FOR SERVICES

History Note: Authority G.S. 125-2; 143B-10;

- 07 NCAC 02C .0201 SELECTION POLICY**
- 07 NCAC 02C .0202 RECOMMENDATIONS**

History Note: Authority G.S. 125-2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989; June 1, 1981;
Repealed Eff. April 1, 2011.

- 07 NCAC 02C .0204 GIFTS**
- 07 NCAC 02C .0205 COMPLAINTS CONCERNING A TITLE IN THE COLLECTION**

History Note: Authority G.S. 125-2; 143B-10;
Eff. June 1, 1981;
Amended Eff. June 1, 1989;
Repealed Eff. April 1, 2011.

- 07 NCAC 02C .0301 THE COLLECTION**
- 07 NCAC 02C .0302 SERVICES TO INDIVIDUALS**

History Note: Authority G.S. 125-2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989;
Repealed Eff. April 1, 2011.

- 07 NCAC 02C .0501 INTERLIBRARY LOANS**
- 07 NCAC 02C .0502 IN-WATS SERVICES**
- 07 NCAC 02C .0503 ELIGIBILITY FOR IN-WATS**
- 07 NCAC 02C .0504 IN-WATS PROCEDURE MANUAL**

History Note: Authority G.S. 125-2; 125-12; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989; June 1, 1981;
Repealed Eff. April 1, 2011.

07 NCAC 02D .0101 ELIGIBILITY
07 NCAC 02D .0102 APPLICATION
07 NCAC 02D .0103 NEW READERS
07 NCAC 02D .0104 SELECTION
07 NCAC 02D .0105 CIRCULATION OF MATERIALS
07 NCAC 02D .0106 SUSPENSION OF SERVICES
07 NCAC 02D .0107 BRAILLIST
07 NCAC 02D .0108 TAPING VOLUNTEERS
07 NCAC 02D .0109 COPYRIGHT
07 NCAC 02D .0110 REQUEST/LIBRARY
PATRONS/REPRODUCE MATERIALS: SPECIAL
FORMATS
07 NCAC 02D .0111 SMALL COLLECTIONS
07 NCAC 02D .0112 CATALOGS
07 NCAC 02D .0113 SCOPE OF THE COLLECTION

History Note: Authority G.S. 125-2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989; June 1, 1981;
Repealed Eff. April 1, 2011.

07 NCAC 02D .0114 MATERIALS SELECTION
POLICY
07 NCAC 02D .0115 RECOMMENDATIONS

History Note: Authority G.S. 125-2; 143B-10;
Eff. June 1, 1981;
Amended Eff. June 1, 1989;
Repealed Eff. April 1, 2011.

07 NCAC 02D .0301 LOAN OF MATERIALS
07 NCAC 02D .0302 REQUESTS AND SCHEDULING
07 NCAC 02D .0303 RETURN OF MATERIALS
07 NCAC 02D .0304 LATE OR DAMAGED FILM
07 NCAC 02D .0305 FILM SERVICE AGREEMENT

History Note: Authority G.S. 125-2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Transferred from T07: 02C .0400 Eff. April 29, 1981;
Amended Eff. June 1, 1989; June 1, 1981;
Repealed Eff. April 1, 2011.

07 NCAC 02D .0306 MATERIALS SELECTION
POLICY
07 NCAC 02D .0307 RECOMMENDATIONS

History Note: Authority G.S. 125-2; 143B-10;
Eff. June 1, 1981;
Amended Eff. June 1, 1989;
Repealed Eff. April 1, 2011.

07 NCAC 02E .0101 CONSULTANTS

History Note: Authority G.S. 125-2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989; June 1, 1981;
Repealed Eff. April 1, 2011.

07 NCAC 02E .0201 REGIONAL LIBRARIES
07 NCAC 02E .0202 BOARD OF TRUSTEES
07 NCAC 02E .0203 POWER OF BOARD
07 NCAC 02E .0204 DIRECTOR
07 NCAC 02E .0205 TERMINATION
07 NCAC 02E .0206 FINANCE
07 NCAC 02E .0207 PROPERTY
07 NCAC 02E .0208 OTHER
PROVISIONS/AGREEMENT
ESTABLISHING/REGIONAL
LIBRARY

History Note: Authority G.S. 125-2; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. January 1, 1992; June 1, 1989;
Repealed Eff. April 1, 2011.

07 NCAC 02E .0301 QUALIFICATIONS FOR GRANT
ELIGIBILITY
07 NCAC 02E .0302 STATE AID GRANTS

History Note: Authority G.S. 125-7; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Emergency Amendment Eff. July 1, 1979, for a period of 120
days to expire on October 29, 1979;
Emergency Amendment Made Permanent Eff. October 29, 1979;
Amended Eff. October 1, 2007; May 1, 1995; June 1, 1989; June
1, 1981;
Repealed Eff. April 1, 2011.

07 NCAC 02E .0304 LIMITATIONS ON AID

History Note: Authority G.S. 125-7; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Emergency Amendment Eff. July 1, 1979, for a period of 120
days to expire on October 29, 1979;
Emergency Amendment Made Permanent Eff. October 29, 1979;
Amended Eff. June 1, 1989;
Repealed Eff. April 1, 2011.

07 NCAC 02E .0401 STATE INSTITUTION DEFINED
07 NCAC 02E .0402 FUNDS FOR INSTITUTIONS
07 NCAC 02E .0403 ELIGIBILITY

History Note: Authority G.S. 125-2; 143B-10;
Eff. June 1, 1989;
Repealed Eff. April 1, 2011.

07 NCAC 02G .0101 SCOPE OF RULES

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

History Note: Authority G.S. 125-1; 125-2; 143B-10;
Eff. April 1, 2011.

07 NCAC 02G .0102 ELIGIBILITY FOR STATE LIBRARY SERVICES

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

History Note: Authority G.S. 125-2; 125-7; 125-8;
Eff. April 1, 2011.

07 NCAC 02H .0101 SCOPE OF RULES

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

History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.

07 NCAC 02H .0103 ACCESS AND CIRCULATION

- (a) Access and use of the Library's resource collections varies according to user profile, resource format, and circulation status of materials, as determined by the State Librarian.
- (b) The Library shall provide State employees and the general public online access to digital resources in its collections using search and retrieval technologies that are accessible and usable by all.
- (c) Certain printed materials in the Library's collections are designated non-circulating and shall not be used outside the Library. Non-circulating items include general reference materials, permanent depository copies of State documents, rare books, vertical file materials, periodicals, print newspapers, and the genealogy reference collection.
- (d) State employees may borrow materials from the Library's circulating print, microform, and audiovisual collections for use outside the library. Non-State employees may borrow print, microform, and audiovisual materials from the Library through interlibrary loan at their local libraries, or they can use the material within the State Library.
- (e) If any borrower loses or damages Library material charged in the borrower's name, the borrower is responsible for the cost of replacing the material. Library borrowing privileges shall be withheld until payment is made.

History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.

07 NCAC 02H .0104 REPRODUCTION SERVICES

The Library shall provide for the reproduction of library content in compliance with U.S. copyright law. State employees and members of the general public may photocopy or request digital reproduction of Library content at a cost fixed by the Library

based on cost of equipment, supplies, and staff time. Photocopying equipment shall be available for use by library users. Library staff shall provide digital reproduction services.

History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.

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

- (a) State Library staff shall provide reference and research services for State employees to facilitate access to information and resources that address the business needs of State government.
- (b) State Library staff shall provide information, reference services, and access to Library resources for the general public seeking information by or about North Carolina or conducting research related to North Carolina government, people, places, history, culture, statistical data, or genealogy.
- (c) State Library staff shall provide instruction to state employees and the general public concerning the use of the Library's facilities and information tools and resources. Library staff shall develop and conduct informational and instructional programs related to information resources and library research.

History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.

07 NCAC 02H .0106 SERVICES FOR STATE AGENCIES

- (a) State Library staff shall consult with State agencies requesting assistance with projects, programs, or situations requiring professional library knowledge and expertise. Library staff may consult on issues related to cataloging, classification, metadata, access, digitization, digital information management, and preservation of print and digital resources, based on staff availability and consideration of higher priority work as approved by the State Librarian.
- (b) Cataloging staff shall perform classification, cataloging, and processing of library materials and resources for state government agencies on a priority basis. Before services are provided, the Library and the recipient State agency shall sign a memorandum of understanding that specifies the responsibilities and relationship between the two agencies and any costs required for library systems access and technologies.

History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.

07 NCAC 02H .0201 SCOPE OF RULES

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

History Note: Authority G.S. 125-2; 125-11.9;
Eff. April 1, 2011.

07 NCAC 02H .0202 PRINTED DOCUMENT FORMATS DEFINED

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

History Note: Authority G.S. 125-2; 125-11.9; Eff. April 1, 2011.

07 NCAC 02H .0301 SCOPE OF RULES

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

History Note: Authority G.S. 125-2; 143B-10; Eff. April 1, 2011.

07 NCAC 02H .0302 ELIGIBILITY

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

History Note: Authority G.S. 125-2; 143B-10; Eff. April 1, 2011.

07 NCAC 02H .0303 APPLICATION

All users must complete an official application form and be certified in accordance with 36 C.F.R. 701.10 as eligible and meeting requirements established by the Library of Congress.

History Note: Authority G.S. 125-2; 143B-10; Eff. April 1, 2011.

07 NCAC 02H .0304 LIBRARY COLLECTIONS

- (a) The Library shall perform the functions of a public library. Its collection consists of recreational and general informational materials selected and produced by the Library of Congress for network distribution and additional materials selected by the Library.
- (b) The Library reproduces titles in Braille and audio formats in compliance with U.S. copyright law.

History Note: Authority G.S. 125-2; 143B-10; Eff. April 1, 2011.

07 NCAC 02H .0306 REPRODUCTION SERVICES

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

History Note: Authority G.S. 125-2; 143B-10; Eff. April 1, 2011.

07 NCAC 02H .0307 VOLUNTEERS

- (a) Any interested person may request to volunteer his services to the Library. Volunteers shall receive no pay for their services

and must go through a training and testing period under the supervision of Library staff.

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

History Note: Authority G.S. 125-2; 143B-10; Eff. April 1, 2011.

07 NCAC 02I .0101 SCOPE OF RULES

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

History Note: Authority G.S. 125-2; 125-7; 125-8; 143B-10; Eff. April 1, 2011.

07 NCAC 02I .0201 QUALIFICATIONS FOR GRANT ELIGIBILITY

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

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

- have the difference deducted from its state allocation;
- (7) Pay salaries for professional positions funded from the Aid to Public Libraries Fund at least at the minimum rate of a salary grade of 69 as established by the Office of State Personnel;
- (8) Provide to the State Library of North Carolina an annual audit of the political subdivision(s) funding the library consistent with generally accepted accounting principles;
- (9) Submit annually to the State Library of North Carolina a copy of the bylaws of the library system's Board(s) of Trustees;
- (10) Submit annually a current long-range plan of service to the State Library of North Carolina. A long-range plan of service is a plan of at least five years. Upon request, the library shall submit an assessment of a community's library needs to the State Library of North Carolina;
- (11) Submit a copy of the agreement establishing the library system, if composed of more than one local governmental unit; and
- (12) Meet the following stipulations when establishing a new library or re-establishing eligibility for the Aid to Public Libraries Fund:
 - (a) meet all requirements of this Section on July 1 of the year prior to the fiscal year that the library plans to receive state aid;
 - (b) continue to meet all requirements of this Section from July 1 to June 30 of that year, which shall be known as the demonstration year; and
 - (c) file a full application for state aid by the June 30 deadline at the close of the demonstration year in order to receive state aid in the next fiscal year.

*History Note: Authority G.S. 125-7;
Eff. April 1, 2011.*

07 NCAC 02I .0202 STATE AID GRANTS

All grants are contingent upon appropriations budgeted by the General Assembly. Eligible county, regional, and municipal library systems shall receive grants subject to the approval of the Secretary of the Department of Cultural Resources subject to requirements in Rule .0201 of this Subchapter. Block and per capita income equalization grants may be used for materials, salaries, equipment, and operating costs.

*History Note: Authority G.S. 125-7;
Eff. April 1, 2011.*

07 NCAC 02I .0301 REGIONAL LIBRARIES

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

- (1) serves two or more contiguous counties;

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

*History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.*

07 NCAC 02I .0302 REGIONAL AGREEMENT

An agreement establishing a regional library shall contain:

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

*History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.*

07 NCAC 02I .0303 REGIONAL LIBRARY BOARD OF TRUSTEES

(a) The regional library board of trustees shall be the governing body of a regional library. It shall be composed of not more than 15 members as stipulated in the regional agreement. Each participating local governmental unit shall have representation on the board in proportions determined to be equitable by all participating local governmental units as stipulated in the regional agreement. Members of the regional library board shall be appointed as specified in the regional agreement.

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

*History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.*

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

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

- (1) to adopt such bylaws and rules for its own governance as may be necessary and in conformity with the law;

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

*History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.*

07 NCAC 02I .0305 DIRECTOR

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

*History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.*

07 NCAC 02H .0306 REPRODUCTION SERVICES

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

*History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.*

07 NCAC 02I .0307 ESTABLISHMENT OF A REGIONAL LIBRARY

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

- (1) On or before July 1 of the fiscal year prior to the establishment of the regional library, a representative of the participating local governmental units shall submit to the State Library of North Carolina a written notification of intent to form a regional library and establish eligibility for grants to public libraries.

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

*History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.*

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

- (a) A county proposing to withdraw from a regional library shall give written notice on or before July 1 to the regional library board, the other participating local governmental units, and the State Library of North Carolina. The withdrawal shall be effective on the following June 30.
- (b) The withdrawing county shall establish eligibility for grants to public libraries according to 07 NCAC 02I .0201 on or before the effective date of withdrawal.
- (c) Capital expenditures by the withdrawing county that are necessitated by the withdrawal may not replace support for operating costs in establishing eligibility to receive grants to public libraries according to 07 NCAC 02I .0201.
- (d) If withdrawal of a county results in the dissolution of the regional library, the remaining county must also establish eligibility to receive grants to public libraries according to 07 NCAC 02I .0201 by the effective date of withdrawal.

*History Note: Authority G.S. 125-2; 143B-10;
Eff. April 1, 2011.*

07 NCAC 04S .0103 ADMISSION PRICES

- (a) Visitors to Tryon Palace shall choose from among the following set of options:
 - (1) Time Travelers Pass which costs twenty dollars (\$20.00) for adults and ten dollars (\$10.00) for children in grades 1 through 12 and admits the ticketholders to all attractions at Tryon Palace including Palace and Gardens, Museums and Historic Houses;
 - (2) Governor's Pass which costs fifteen dollars (\$15.00) for adults and eight dollars (\$8.00) for children in grades 1 through 12 and admits the ticketholders to the Palace, Gardens, and all House Museums; or
 - (3) Gardens and Galleries Pass which costs fifteen dollars (\$15.00) for adults and eight dollars (\$8.00) for students grades 1 through 12 and

admits ticket holders to all museum galleries along with all Gardens.

(b) Children below the first grade are admitted free.

(c) Discounts on tickets are available for pre-booked group tours of 10 or more participants, AAA members, senior citizens 62 and older, active duty military personnel, and full-time college students. The discounted adult and student Time Traveler's Pass are fifteen dollars (\$15.00) and six dollars (\$6.00) respectively. The discounted Governor's Pass and Gardens and Galleries Pass for adults and students are twelve dollars (\$12.00) and four dollars (\$4.00) respectively.

(d) Families with three or more children grades 1 through 12 are charged for only two children and the others are admitted with a complimentary pass.

(e) All ticket holders may pay an additional two dollars (\$2.00) for adults and one dollar (\$1.00) for student grades 1 through 12 to extend the ticket for a second day within a seven day period.

(f) A Special Event Ticket which costs six dollars (\$6.00) for adults and three for students in grades 1 through 12 is available for lectures, performances, and fee-based living history programs;

(g) Fees for Special Exhibitions, Programs, and Performances supported partially or totally by gate receipts shall be based on the amount of receipts required to fund the costs of the exhibition, program, or performance calculated per attendee.

(h) Current members of the Tryon Palace Council of Friends are admitted free to daily tours and programs when they display their current membership card.

History Note: Authority G.S. 121-4(8); 143B-10(j);

Eff. February 1, 1985;

Amended Eff. April 1, 2011; August 1, 2000; November 1, 1989.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) anthrax - immediately;
- (3) botulism - immediately;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease – 7 days;
- (10) cryptosporidiosis - 24 hours;
- (11) cyclosporiasis - 24 hours;
- (12) dengue - 7 days;
- (13) diphtheria - 24 hours;

- (14) Escherichia coli, shiga toxin-producing - 24 hours;
- (15) ehrlichiosis - 7 days;
- (16) encephalitis, arboviral - 7 days;
- (17) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes - 24 hours;
- (18) gonorrhea - 24 hours;
- (19) granuloma inguinale - 24 hours;
- (20) Haemophilus influenzae, invasive disease - 24 hours;
- (21) Hantavirus infection – 7 days;
- (22) Hemolytic-uremic syndrome – 24 hours;
- (23) Hemorrhagic fever virus infection – immediately;
- (24) hepatitis A - 24 hours;
- (25) hepatitis B - 24 hours;
- (26) hepatitis B carriage - 7 days;
- (27) hepatitis C, acute - 7 days;
- (28) human immunodeficiency virus (HIV) infection confirmed - 24 hours;
- (29) influenza virus infection causing death - 24 hours;
- (30) legionellosis - 7 days;
- (31) leprosy – 7 days;
- (32) leptospirosis - 7 days;
- (33) listeriosis – 24 hours;
- (34) Lyme disease - 7 days;
- (35) lymphogranuloma venereum - 7 days;
- (36) malaria - 7 days;
- (37) measles (rubeola) - 24 hours;
- (38) meningitis, pneumococcal - 7 days;
- (39) meningococcal disease - 24 hours;
- (40) monkeypox – 24 hours;
- (41) mumps - 7 days;
- (42) nongonococcal urethritis - 7 days;
- (43) novel influenza virus infection – immediately;
- (44) plague - immediately;
- (45) paralytic poliomyelitis - 24 hours;
- (46) pelvic inflammatory disease – 7 days;
- (47) psittacosis - 7 days;
- (48) Q fever - 7 days;
- (49) rabies, human - 24 hours;
- (50) Rocky Mountain spotted fever - 7 days;
- (51) rubella - 24 hours;
- (52) rubella congenital syndrome - 7 days;
- (53) salmonellosis - 24 hours;
- (54) severe acute respiratory syndrome (SARS) – 24 hours;
- (55) shigellosis - 24 hours;
- (56) smallpox – immediately;
- (57) Staphylococcus aureus with reduced susceptibility to vancomycin – 24 hours;
- (58) streptococcal infection, Group A, invasive disease - 7 days;
- (59) syphilis - 24 hours;
- (60) tetanus - 7 days;
- (61) toxic shock syndrome - 7 days;
- (62) trichinosis - 7 days;

- (63) tuberculosis - 24 hours;
- (64) tularemia - immediately;
- (65) typhoid - 24 hours;
- (66) typhoid carriage (*Salmonella typhi*) - 7 days;
- (67) typhus, epidemic (louse-borne) - 7 days;
- (68) vaccinia - 24 hours;
- (69) vibrio infection (other than cholera) - 24 hours;
- (70) whooping cough - 24 hours;
- (71) yellow fever - 7 days.

(b) For purposes of reporting, confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture, repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test, positive nucleic acid detection (NAT) test, or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.

(c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
 - (A) Any hantavirus or hemorrhagic fever virus.
 - (B) Arthropod-borne virus (any type).
 - (C) *Bacillus anthracis*, the cause of anthrax.
 - (D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
 - (E) *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
 - (F) *Brucella* spp., the causes of brucellosis.
 - (G) *Campylobacter* spp., the causes of campylobacteriosis.
 - (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - (I) *Clostridium botulinum*, a cause of botulism.
 - (J) *Clostridium tetani*, the cause of tetanus.
 - (K) *Corynebacterium diphtheriae*, the cause of diphtheria.
 - (L) *Coxiella burnetii*, the cause of Q fever.
 - (M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
 - (N) *Cyclospora cayetanensis*, the cause of cyclosporiasis.

- (O) *Ehrlichia* spp., the causes of ehrlichiosis.
- (P) Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
- (Q) *Francisella tularensis*, the cause of tularemia.
- (R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
- (S) Human Immunodeficiency Virus, the cause of AIDS.
- (T) *Legionella* spp., the causes of legionellosis.
- (U) *Leptospira* spp., the causes of leptospirosis.
- (V) *Listeria monocytogenes*, the cause of listeriosis.
- (W) Monkeypox.
- (X) *Mycobacterium leprae*, the cause of leprosy.
- (Y) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
- (Z) Poliovirus (any), the cause of poliomyelitis.
- (AA) Rabies virus.
- (BB) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (CC) Rubella virus.
- (DD) *Salmonella* spp., the causes of salmonellosis.
- (EE) *Shigella* spp., the causes of shigellosis.
- (FF) Smallpox virus, the cause of smallpox.
- (GG) *Staphylococcus aureus* with reduced susceptibility to vanomycin.
- (HH) *Trichinella spiralis*, the cause of trichinosis.
- (II) Vaccinia virus.
- (JJ) *Vibrio* spp., the causes of cholera and other vibrioses.
- (KK) Yellow fever virus.
- (LL) *Yersinia pestis*, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
 - (A) Group A *Streptococcus pyogenes* (group A streptococci).
 - (B) *Haemophilus influenzae*, serotype b.
 - (C) *Neisseria meningitidis*, the cause of meningococcal disease.
- (3) Positive serologic test results, as specified, for the following infections:

- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
 - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
 - (ii) Any hantavirus or hemorrhagic fever virus.
 - (iii) Chlamydia psittaci, the cause of psittacosis.
 - (iv) Coxiella burnetii, the cause of Q fever.
 - (v) Dengue virus.
 - (vi) Ehrlichia spp., the causes of ehrlichiosis.
 - (vii) Measles (rubeola) virus.
 - (viii) Mumps virus.
 - (ix) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
 - (x) Rubella virus.
 - (xi) Yellow fever virus.
- (B) The presence of IgM serum antibodies to:
 - (i) Chlamydia psittaci
 - (ii) Hepatitis A virus.
 - (iii) Hepatitis B virus core antigen.
 - (iv) Rubella virus.
 - (v) Rubeola (measles) virus.
 - (vi) Yellow fever virus.
- (4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes that have a level below that specified by the Centers for Disease Control and Prevention as the criteria used to define an AIDS diagnosis.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES**

15A NCAC 02H .0903 DEFINITION OF TERMS

(a) Unless otherwise defined in Paragraph (b) of this Rule, the definitions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.3 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

(b) For this Rule the following definitions in addition to those incorporated by reference in Paragraph (a) of this Rule shall apply:

- (1) "Approval Authority" means the Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources, or his/her designee;
- (2) "Average" means the value calculated by dividing the sum of the data values collected over a time period by the number of data points which comprise the sum;
- (3) "Bypass" is the intentional diversion of waste streams from any portion of a pretreatment facility. Also see Rule .0919 of this Section and 40 CFR Part 403.17 for additional requirements;
- (4) "Commission" means the Environmental Management Commission of the North Carolina Department of Environment and Natural Resources or its successor;
- (5) "Control Authority" refers to the POTW organization if the POTW organization's pretreatment program has been approved in accordance with Rules .0905, .0906, and .0907 of this Section, and that approval has not been subsequently withdrawn. Otherwise, the approval authority is the control authority;
- (6) "Division" refers to the North Carolina Department of Environment and Natural Resources, Division of Water Quality;
- (7) "Enforcement Response Plan" or "ERP" means the control authority pretreatment program document describing the guidelines for identifying violations of and enforcing specific local limits and other pretreatment standards and requirements;
- (8) "EPA" means the United States Environmental Protection Agency;
- (9) "Fundamentally Different Factors" are factors upon which a variance from a categorical standard may be granted under Rule .0912 of this Section and 40 CFR Part 403.13;
- (10) "Headworks Analysis" or "HWA" is the analysis used to calculate the maximum allowable POTW influent loadings for flow and pollutants of concern based on design

History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141;
Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988;
Eff. March 1, 1988;
Amended Eff. October 1, 1994; February 1, 1990;
Temporary Amendment Eff. July 1, 1997;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. February 13, 2003; October 1, 2002; February 18, 2002; June 1, 2001;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. November 1, 2003; May 16, 2003;
Amended Eff. January 1, 2005; April 1, 2004;
Temporary Amendment Eff. June 1, 2006;
Amended Eff. April 1, 2008; November 1, 2007; October 1, 2006;
Temporary Amendment Eff. January 1, 2010;
Temporary Amendment Expired September 11, 2010;
Amended Eff. April 1, 2011.

- capacity, NPDES or non-discharge permit limits, pass through, interference, sludge, or worker safety and health considerations, as applicable. The headworks analysis is the technical basis for deriving local limits applied to industrial users;
- (11) "Indirect Discharge" or "Discharge" refers to the introduction of pollutants into a POTW from any non-domestic source regulated under Sections 307(b), (c), or (d) of the Clean Water Act;
- (12) "Industrial User" or "User" means a source of indirect discharge;
- (13) "Industrial Waste Survey" refers to the survey of the users of the POTW collection system or treatment plant performed by the control authority as required by 40 CFR Part 403.8 (f)(2)(i-iii) and Rule .0905 of this Section, including identification of all industrial users and the character and amount of pollutants contributed to the POTW by these industrial users and identification of those industrial users meeting the definition of significant industrial user. Where the control authority accepts wastewater from one or more satellite POTWs, the IWS for that control authority shall address all satellite POTW service areas, unless the pretreatment program in those satellite service areas is administered by a separate control authority;
- (14) "Interference" refers to inhibition or disruption of the POTW collection system; treatment processes; operations; or its sludge process, use, or disposal which causes or contributes to a violation of any requirement of the control authority's (or the POTW's if different from the control authority) NPDES, collection system, or non-discharge permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits;
- (15) "Medical Waste" refers to isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes;
- (16) "Monitoring Plan" refers to the monitoring plan designed to collect POTW site-specific data for use in the Headworks Analysis. Monitoring Plans may be designated as "Long Term" or "Short Term," LTMP and STMP, respectively, as the Division Director determines to be necessary;
- (17) "National Categorical Pretreatment Standard" or "Categorical Standard" refers to any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Clean Water Act which applies to a specific category of industrial users, and which appears in 40 CFR Parts 405-471;
- (18) "National Prohibited Discharge Standard" is an absolute prohibition against the discharge of certain substances to the POTW, including both general and specific prohibitions;
- (19) "Net/Gross Calculation" is an adjustment of a categorical standard to reflect the presence of pollutants in the industrial user's intake water that may be granted under Rule .0915 of this Section and 40 CFR Part 403.15;
- (20) "Noncontact Cooling Water" is water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product;
- (21) "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State;
- (22) "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-44;
- (23) "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the control authority's (or the POTW's, if different from the control authority) NPDES, collection system, or non-discharge permit;
- (24) "Pollutant" includes any waste defined in G.S. 143-213(18); dredged spoil; solid waste; incinerator residue; garbage; sewage sludge; munitions; medical wastes; chemical waste; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; municipal and agricultural waste; and certain characteristics of wastewater, such as pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor;
- (25) "Pollutant of Concern" or "POC" is a pollutant identified as being of concern to the control authority for purposes of the pretreatment program; a pollutant of concern may include but not be limited to conventional wastewater pollutant, such as BOD, TSS, or ammonia; any of the priority pollutants; pH; and any pollutant that may be identified as a source of interference, pass through, whole effluent toxicity, or sludge contamination;
- (26) "POTW", or "Publicly Owned Treatment Works," means a treatment works as defined by Section 212 of the Clean Water Act (CWA), which is owned by a state or local

- government organization. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes the collection system, only if it conveys wastewater to a POTW treatment plant. Also see 15A NCAC 02T .0402. The term also means the local government organization, or municipality, as defined in Section 502(4) of the CWA, which has jurisdiction over indirect discharges to and the discharges from such a treatment works. In this context, the organization may be the owner of the POTW treatment plant or the owner of the collection system into which an indirect discharger discharges. This second type of POTW may be referred to as a "satellite POTW organization." For clarity, the local government may be referred to as the "POTW organization" or "Control Authority" as applicable in this Rule and all other rules in this Section. See also Subparagraph (b)(5) of this Rule and Rule .0908(h) of this Section;
- (27) "POTW Director" means the chief administrative officer of the control authority or his/her delegate;
- (28) "Pretreatment" refers to the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW collection system or treatment plant. The reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d);
- (29) "Pretreatment Standard" is any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user;
- (30) "Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product;
- (31) "Removal Credits" are credits that may be granted under Rule .0921 of this Section and 40 CFR Parts 403.7 and 403.11 to adjust categorical standards in such a way as to reflect POTW consistent removal of a particular pollutant;
- (32) "Sewer Use Ordinance" or "SUO" means the POTW or control authority organization ordinance providing the legal authority for administering the pretreatment program;
- (33) "Significant Industrial User" or "SIU" means an industrial user that discharges wastewater into a publicly owned treatment works and that:
- (A) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters);
- (B) Contributes process wastewater which makes up five percent or more of the NPDES or non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS and ammonia;
- (C) Is subject to categorical standards under 40 CFR Part 403.6 and 40 CFR Parts 405-471;
- (D) is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, or the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options;
- (E) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Parts (A) or (B) of this Subparagraph has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a significant industrial user; or
- (F) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Part (C) of this Subparagraph meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a non-significant categorical industrial user;
- (34) "Significant Noncompliance" or "SNC" is the status of noncompliance of a significant industrial user when one or more of the following criteria are met:
- (A) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the

- measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);
- (B) "Technical Review Criteria" (TRC) violations, defined here as those in which 33 percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH));
- (C) Any other violation of a pretreatment standard or requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority (or POTW, if different from the control authority), determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (D) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the control authority's or the POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;
- (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a pretreatment permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, self-monitoring reports, and reports on compliance with compliance schedules;
- (G) Failure to accurately report noncompliance; or
- (H) Any other violation or group of violations that the control authority or POTW determines will adversely affect the operation or implementation of the local pretreatment program;
- Additionally, effective January 1, 2012, any industrial user which meets the criteria in Parts (C), (D), or (H) of this Subparagraph shall also be in SNC;
- (35) "Staff" means the staff of the Division of Water Quality, Department of Environment and Natural Resources;
- (36) "Upset" means the same as set out in Rule .0914 of this Section and 40 CFR Part 403.16;
- (37) "Waste reduction" means source reduction and recycling;
- (38) "Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW; and
- (39) "Waters of the State" are all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained in, flow through, or border upon the State or any portion thereof.

History Note: Authority G.S. 130A-334(13); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6; Eff. March 28, 1980; Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0907 PROCEDURES FOR PRETREATMENT PROGRAM APPROVAL, REVISION AND WITHDRAWAL

(a) Procedures for approval of a control authority pretreatment program and for removal credit authorization are as follows:

- (1) Except where in conflict with any part of this Section, the approval procedures for control authority pretreatment programs and applications for removal credit authorization promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.11 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at

http://cfpub1.epa.gov/npdes/home.cfm?program_id=3; and

- (2) Upon program approval, a control authority is delegated, subject to the provisions of Rules .0916 and .0917 of this Section, the authority to issue the construction, operation and discharge permits required by G.S. 143-215.1(a) for those significant industrial users discharging or proposing to discharge to the POTW;

(b) Either the Division or the control authority may initiate program revisions. The control authority shall submit a request to the Division for approval of modifications to its approved pretreatment program, including, but not limited to its legal authority, or sewer use ordinance (SUO), headworks analysis (HWA), long or short term monitoring plan (LTMP/STMP), enforcement response plan (ERP), summary of industrial waste survey (IWS) activities, and revisions to the list of significant industrial users (SIUs). Revisions to an approved pretreatment program shall be accomplished as follows:

- (1) the control authority shall submit a modified program description, an attorney's statement if the legal authority of the program is being modified, and other documents as the Division Director determines to be necessary under the circumstances. The attorney's statement may consist merely of a verification that the North Carolina model pretreatment sewer use ordinance is proposed for adoption by the control authority, if that is the case;
- (2) whenever the Division Director determines that the proposed program modifications are substantial as defined in 40 CFR Part 403.18(b), the Division shall issue public notice and provide an opportunity for public comment as described in Rules .0109 and .0110 of this Subchapter. Public notices issued by the control authority are deemed sufficient notice;
- (3) the Division Director or his/her delegate shall approve or disapprove program revisions based on the requirements of this Section, G.S. 143-215.1, G.S. 143-215.3 and the Water Quality Memorandum of Agreement between the Division and the EPA; and
- (4) Except as specified below, a pretreatment program revision shall become effective upon written approval of the Division Director:
 - (A) Pretreatment permits: See Rule .0917(d); and
 - (B) The Division shall have 30 days from the receipt of a request for deletion of SIUs from the SIU list in which to make general comments upon, objections to or recommendations with respect to the request. Unless such an objection or request for more information is made, the request shall be final and binding;

(c) The Division Director may withdraw pretreatment program approval when a control authority no longer complies with requirements of this Section and the control authority fails to take corrective action. The following procedures apply when the Division Director determines that program withdrawal may be needed:

- (1) The Division Director shall give the control authority 180 days notice of the program withdrawal;
- (2) the control authority shall submit within 60 days of such notice a plan for the orderly transfer of all relevant program information not in the possession of the Division (such as permit files, compliance files, reports and permit applications) which is necessary for the Division to administer the pretreatment program;
- (3) within 60 days of the receipt of the control authority transfer plan, the Division Director shall evaluate the control authority plan and shall identify any additional information needed by the Division for program administration or identify any other deficiencies in the plan; and
- (4) at least 30 days before the program withdrawal, the Division Director shall publish public notice of the program transfer and shall mail notice to all pretreatment permit holders of the control authority;

(d) Applications for removal credit authorization shall be made in accordance with procedures established by this Rule. Approval shall become effective upon written approval of the Division Director.

(e) A pretreatment program is considered inactive when industrial users defined as significant industrial users no longer discharge to the POTW, based on modifications of the control authority pretreatment program approved by the Division. Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to discharge to the POTW. When required by the Division to return to active status, a control authority may be required to update any or all of the requirements listed in Rule .0906 of this Section that no longer meet the standards of these Rules. The control authority shall obtain Division approval of the reactivation under this Rule prior to commencement of discharge of the significant industrial user.

(f) The Division may require that representatives of modified pretreatment programs developed under Rule .0904(b) of this Section meet with Division personnel periodically to discuss implementation of and revisions to their modified pretreatment program.

History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-215.3(e); 150B-21.6;

Eff. March 28, 1980;

Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

**15A NCAC 02H .0908 REPORTING/RECORD
KEEPING REQUIREMENTS FOR POTWS/INDUSTRIAL
USERS**

(a) Except where in conflict with any part of this Section, the regulations regarding the reporting requirements for control authorities and industrial users promulgated by the Environmental Protection Agency and codified as 40 CFR Parts 403.8(g) and 403.12 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

(b) Control authorities with active approved pretreatment programs shall submit once per year a pretreatment report describing its pretreatment activities over the previous 12 months. Two copies of each pretreatment report shall be submitted to the Division by March 1 of each year for activities conducted for two six-month periods, January 1 through June 30 and July 1 through December 31 of the previous year. This annual report shall contain the following information in accordance with forms provided by the Division:

- (1) a narrative summary of actions taken by the control authority to ensure compliance with pretreatment requirements;
- (2) a pretreatment program summary on forms or in a format provided by the Division;
- (3) a list of industrial users in significant noncompliance with pretreatment requirements, the nature of the violations, and actions taken or proposed to correct the violations; on forms or in a format provided by the Division;
- (4) an allocation table as described in Rule .0916(c)(4) of this Section; and
- (5) other information which in the opinion of the Division Director is needed to determine compliance with the implementation of the pretreatment program, including, but not limited to, significant industrial user compliance schedules, public notice of industrial users in significant noncompliance, a summary of significant industrial user effluent monitoring data as described in Paragraphs (a) and (e) of this Rule, a summary of information related to significant non-compliance determination for industrial users that are not considered significant industrial users, and Long or Short Term Monitoring Plan data on forms or in a format provided by the Division;

(c) In lieu of submitting annual reports as described in Paragraph (b) of this Rule, the Division Director may allow modified pretreatment programs developed under Rule .0904(b) of this Section to submit only a partial annual report, or to meet with Division personnel as required to discuss enforcement of pretreatment requirements and other pretreatment implementation issues.

(d) Inactive pretreatment programs are not required to submit the report described in Paragraphs (b) and (c) of this Rule. Inactive approved pretreatment programs shall notify the

Division when a significant industrial user proposes to discharge to the POTW and shall comply with Rule .0907 of this Section.

(e) Samples shall be collected and analyzed by the control authority independent of the industrial users for each significant industrial user as follows:

- (1) Except as specified below, a minimum of once each year for all permit-limited parameters including flow:
 - (A) Independent monitoring of the industrial user by the control authority is not required for pollutants which are limited by a categorical standard for which specific certification or other alternative procedures apply where the industrial user submits the required documentation for that certification or procedure, even if the industrial user chooses to monitor in addition to using certification or other alternative procedures;
 - (B) The minimum frequencies in this Subparagraph shall be reduced by half for all permit-limited parameters at a significant industrial user determined by the control authority, subject to approval under Rule .0907 of this Section, to fit the criteria under 40 CFR Part 403.12(e)(3) (Middle Tier CIU), [after 403.8(f)(2)(v)(C)]; and
 - (C) For categorical parameters with monitoring waived under 40 CFR Part 403.12(e)(2), a minimum of once during the term of the applicable significant industrial user pretreatment permit (40 CFR Part 403.8(f)(2)(v)(A)); and
- (2) If the control authority elects to sample and analyze in lieu of the industrial user, the control authority shall collect and analyze for the required parameters and, if applicable, in accordance with categorical standards;

(f) Records Retention:

- (1) Control authorities and industrial users shall retain for three years records of monitoring activities and results along with supporting information including annual pretreatment reports, general records, water quality records, and records of industrial user impact on the POTW;
- (2) Other documents required by any portion of this Section (including supporting information) for other pretreatment program elements, such as pretreatment permits (IUPs), HWAs, SUOs, ERPs, etc., shall be retained for three years after the document has expired or been updated or replaced;

- (3) A summary of all significant industrial user effluent monitoring data reported to the control authority by the industrial user or obtained by the control authority shall be maintained on forms or in a format provided by the Division for review by the Division; and
- (4) Also see Rule .0805 of this Subchapter for laboratory records retention requirements.

(g) Forms or format deviating from Division provided forms or format for all documents and supporting information required by any portion of this Section shall contain all required information in a logical order or, if appropriate, in a computer-compatible format.

(h) In the case where the receiving POTW treatment plant is not owned by the same local governmental organization as the control authority, all information required to be reported to the industrial user's control authority by this Section shall also be submitted to the POTW treatment plant governmental organization.

(i) In the case where the control authority accepts electronic reporting, the reporting shall comply with 40 CFR Part 3, and the control authority shall maintain documentation of approval as required under 40 CFR Part 3.

History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.2; 143-215.3(a)(2); 143-215.3(a)(14); 143-215.6(a)(1); 143-215.63 through 143-215.69; 150B-21.6; Eff. March 28, 1980; Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0922 HEARINGS

(a) The control authority sewer use ordinance (SUO) and attorney's statement required under Rule .0906(b)(1) shall provide for the effective enforcement and compliance with its pretreatment program in accordance with the provisions of G.S. 160A-175 for municipalities, G.S. 153A-123 for counties, G.S. 162A-9.1 for water and sewer authorities and G.S. 162A-81 for metropolitan sewerage districts. This shall include:

- (1) providing industrial users assessed civil penalties by the control authority for violations of its pretreatment program with the opportunity to request review of the penalty in accordance with the provisions of G.S. 143-215.6A(k); and
- (2) providing industrial users the opportunity to request review of other actions taken by the control authority to administer and enforce its pretreatment program. Such control authority actions may include denial or termination of a pretreatment permit or other permission to discharge, issuance of a permit or other permission to discharge subject to conditions the industrial users deems unacceptable, and the issuance of an administrative order subject to conditions the industrial users deems unacceptable. The opportunity to request review may include the right to request a review of a control authority action with the

local government as established in that local government's SUO, or to request a review by the superior court having local jurisdiction.

(b) If the control authority elects to provide industrial users with the opportunity for local government reviews under Subparagraphs (a)(1) and (a)(2) of this Rule, the control authority may establish procedures and requirements for the review process. These procedures may include the number of days after receipt of an action by which the industrial user must request the review, the contents or form of the request, and which party or parties will conduct local government hearings.

History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.2(b); 143-215.3(a)(3); 143-215.3(a)(14); 143-214.3(e); 143-215.6A(j); 143-215.6A(k); 153A-123; 160A-175; 162A-9.1; 162A-81; Eff. April 1, 2011.

15A NCAC 13B .1632 GROUND-WATER SAMPLING AND ANALYSIS REQUIREMENTS

(a) A ground-water monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells. The ground-water sampling and analysis plan shall be approved by the Division and the owner or operator shall place a copy of the approved plan in the operating record. The plan shall include procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures;
- (4) Chain of custody control; and
- (5) Quality assurance and quality control.

(b) The ground-water monitoring program shall include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples.

(c) The sampling procedures and frequency shall be protective of human health and the environment.

(d) Ground-water elevations shall be measured in each well immediately prior to purging, each time ground-water is sampled. The owner or operator shall determine the rate and direction of ground-water flow each time ground-water is sampled. Ground-water elevations in wells which monitor the same waste management area shall be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction. The owner or operator shall determine ground-water elevation and flow as follows:

- (1) In order to accurately determine ground-water elevations for each monitoring well, the wells shall have been surveyed. If required by G.S. 89C, a professional land surveyor shall survey the wells. [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via a letter dated July 16, 2010,

that the surveying pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.] The survey of the wells shall conform to at least the following levels of accuracy:

- (A) The horizontal location to the nearest 0.1 foot;
- (B) The vertical control for the ground surface elevation to the nearest 0.01 foot; and
- (C) The vertical control for the measuring reference point on the top of the inner well casing to the nearest 0.01 foot.

- (2) In order to determine the rate of ground-water flow, the owner or operator shall provide data for hydraulic conductivity and porosity for the formation materials at each of the well locations.

(e) The owner or operator shall establish Division-approved background ground-water quality in accordance with rules .1631(a)(1) and .1632(f) through (h) of this Section for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the MSWLF unit.

(f) The number of samples collected to establish ground-water quality data shall be consistent with the appropriate statistical procedures to be used, as provided for in 40 CFR 258.

(g) Should the owner or operator choose to perform statistical analysis of groundwater quality data whether for purposes of establishing background concentrations or to determine if there is an exceedance of the groundwater protection standard as defined in Rule .1634(g) and .1634(h) of this Section, the owner or operator shall select one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

- (1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.
- (2) A parametric analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.
- (3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

- (4) A control chart approach that gives control limits for each constituent.

- (5) Another statistical test method that meets the performance standards of this Rule. The owner or operator shall submit a justification for an alternative test method to the Division for approval. The justification shall demonstrate that the alternative statistical test method meets the performance standards of this Rule. If approved, the owner or operator shall place a copy of the justification for an alternative test method in the operating record.

- (h) Any statistical method chosen to evaluate ground-water monitoring data shall comply with the following performance standards, as appropriate:

- (1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator (or the Division) to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method shall be considered.

- (2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

- (3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

- (4) If a tolerance interval or a prediction interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of

samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

- (5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.
- (6) If necessary, as provided for in 40 CFR 258, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) Within 120 days from the date of sampling or as specified in the facility permit, whichever is less, the owner or operator shall submit to the Division a report that includes all information from the sampling event; including field observations relating to the condition of the monitoring wells, field data, laboratory data, statistical analysis (if utilized), sampling methodologies, quality assurance and quality control data, information on ground-water flow direction, calculations of ground-water flow rate, for each well any constituents that exceed ground-water standards, as defined in Rule .1634(g) through (h) of this Section.

*History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Amended Eff. April 1, 2011.*

15A NCAC 13B .1633 DETECTION MONITORING PROGRAM

- (a) Detection monitoring is required at MSWLF units at all ground-water monitoring wells that are part of the detection monitoring system as established in the approved monitoring plan. At a minimum, as provided for in 40 CFR 258, the detection monitoring program shall include monitoring for the constituents listed in Appendix I of 40 CFR Part 258. "Appendix I Constituents for Detection Monitoring" (Appendix I), is incorporated by reference including subsequent amendments and editions. Copies of this material may be inspected or obtained at the Department of Environment and Natural Resources, Division of Waste Management, Raleigh, North Carolina at no cost.
- (b) The monitoring frequency for all Appendix I detection monitoring constituents shall be at least semiannual during the life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed for the Appendix I constituents during the first semiannual sampling event. At least one sample from each well (background and downgradient) shall be collected and analyzed during subsequent semiannual sampling events.
- (c) If the owner or operator determines that there is an exceedance of the ground-water protection standards, as defined in Paragraph (g) or (h) of Rule.1634 for one or more of the

constituents listed in Appendix I of this Rule at any monitoring well at the relevant point of compliance, the owner or operator:

- (1) Shall, within 14 days of this finding, report to the Division and place a notice in the operating record indicating which constituents have exceeded ground-water protection standards;
- (2) Shall establish an assessment monitoring program meeting the requirements of this Section within 90 days except as provided for in Subparagraph (3) of this Paragraph; and
- (3) May demonstrate that a source other than a MSWLF unit caused the exceedance, or the exceedance resulted from an error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration shall be approved by the Division. If required by G.S. 89C or G.S. 89E, a professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010 respectively, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] A copy of this report shall also be placed in the operating record. If a successful demonstration is made, documented, and approved by the Division, the owner or operator may continue detection monitoring. If after 90 days, a successful demonstration is not made, the owner or operator shall initiate an assessment monitoring program as required by this Section.

*History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Amended Eff. April 1, 2011.*

15A NCAC 13B .1634 ASSESSMENT MONITORING PROGRAM

- (a) Assessment monitoring is required whenever one or more of the constituents listed in Appendix I is detected in exceedance of the ground-water protection standards, as defined in Paragraph (g) or (h) of this Rule.
- (b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator shall sample and analyze the ground water for all constituents identified in Appendix II of 40 CFR Part 258. 40 CFR Part 258 – "Appendix II List of Hazardous Inorganic and Organic Constituents" (Appendix II), is incorporated by reference including subsequent amendments and editions. Copies of this material may be inspected or obtained at the Department of Environment and Natural Resources, Division of Waste Management, Raleigh, North Carolina at no cost. A minimum of one sample from each downgradient well shall be collected and analyzed during each sampling event. For any constituent

detected in the downgradient wells as the result of the Appendix II analysis, a minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed to establish background for the new constituents. The Division may specify, as provided for in 40 CFR 258, an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The Division may delete, as provided for in 40 CFR 258, any of the Appendix II monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Division may specify an appropriate alternate frequency for repeated sampling and analysis for Appendix II constituents required by Paragraph (b) of this Rule, during the active life and post-closure care of the unit considering the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Ground-water flow rates;
- (4) Minimum distance of travel;
- (5) Resource value of the aquifer; and
- (6) Nature, fate, and transport of any detected constituents.

(d) After obtaining the results from the initial or subsequent sampling events required in Paragraph (b) of this Rule, the owner or operator shall:

- (1) Within 14 days, submit a report to the Division and place a notice in the operating record identifying the Appendix II constituents that have been detected;
- (2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells of the approved detection monitoring system for the unit for all constituents listed in Appendix I and for those constituents in Appendix II that have been detected in response to Paragraph (b) of this Rule. A report from each sampling event shall be submitted to the Division and placed in the facility operating record. At least one sample from each well (background and downgradient) shall be collected and analyzed during each of these sampling events;
- (3) Establish and report to the Division background concentrations for any constituents detected pursuant to Paragraph (b) or (d)(2) of this Rule; and
- (4) Obtain a determination from the Division to establish ground-water protection standards for all constituents detected pursuant to Paragraph (b) or (d) of this Rule. The ground-water protection standards shall be established in accordance with Paragraph (g) or (h) of this Rule.

(e) If the concentrations of all Appendix II constituents are shown to be at or below the approved ground-water protection standards, for two consecutive sampling events, the owner or operator shall report this information to the Division, and the Division shall give approval to the owner or operator to return to detection monitoring.

(f) If one or more Appendix II constituents are detected above the approved ground-water protection standards in any sampling event, the owner or operator, shall within 14 days of this finding, submit a report to the Division, place a notice in the operating record, and notify local government officials. The owner or operator:

- (1) shall:
 - (A) Characterize the nature and extent of the release by installing additional monitoring wells, as necessary;
 - (B) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with Paragraph (d)(2) of this Rule;
 - (C) Notify all persons who own land or reside on land that directly overlies any part of the plume of contamination if contaminants have migrated off-site; and
 - (D) Within 90 days, initiate an assessment of corrective measures as required under Rule .1635 of this Section; or
- (2) may demonstrate that a source other than a MSWLF unit caused the exceedance of the ground-water protection standards, or the exceedance resulted from error in sampling, analysis, or natural variation in ground-water quality. A report documenting this demonstration shall be approved by the Division. If required by G.S. 89C or G.S. 89E, a professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010 respectively, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] A copy of the approved report shall also be placed in the operating record. If a successful demonstration is made, the owner or operator may discontinue assessment monitoring, and may return to detection monitoring when approval is given by the Division. Until a successful demonstration is made, the owner or operator shall comply with Paragraph (f)(1) of this Rule including initiating an assessment of corrective measures.

(g) The owner or operator shall obtain a determination from the Division on establishing a ground-water protection standard for each Appendix II constituent detected in the ground-water. The ground-water protection standard shall be the most protective of Subparagraphs (1) through (4) or Subparagraph (5);

- (1) For constituents for which a maximum contamination level (MCL) has been

- promulgated under the Section 1412 of the Safe Drinking Water Act codified under 40 CFR Part 141, the MCL for that constituent;
- (2) For constituents for which a water quality standard has been established under the North Carolina Rules Governing Public Water Systems, 15A NCAC 18C, the water quality standard for that constituent;
 - (3) For constituents for which a water quality standard has been established under the North Carolina Groundwater Classifications And Standards, 15A NCAC 02L .0202, the water quality standard for that constituent;
 - (4) For constituents for which MCLs or water quality standards have not been promulgated, the background concentration for the constituent established from wells in accordance with Rule .1631(a)(1) and Rule .1632 of this Section; or
 - (5) The owner or operator may request the Division approve a background level that is higher than the standard established in Subparagraphs (1) through (3) of this Paragraph or health based levels identified under Paragraph (h) of this Rule. The background level shall be established in accordance with Rule .1631(a)(1) and Rule .1632. The approved background level shall be the established ground-water protection standard.

(h) The Division may establish an alternative ground-water protection standard for constituents for which neither an MCL or water quality standard has not been established. These ground-water protection standards shall be health based levels that satisfy the following criteria:

- (1) The level is derived in a manner consistent with E.P.A. guidelines for assessing the health risks of environmental pollutants;
- (2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792) or equivalent standards;
- (3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) of 1×10^{-6} and;
- (4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For the purposes of this Rule, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(i) In establishing ground-water protection standards under Paragraph (h) of this Rule the Division shall consider the following:

- (1) Multiple contaminants in the ground water;
- (2) Exposure threats to sensitive environmental receptors; and
- (3) Other site-specific exposure or potential exposure to ground-water.

History Note: Authority G.S. 130A-294;

Eff. October 9, 1993;

Amended Eff. April 1, 2011.

15A NCAC 13B .1637 IMPLEMENTATION OF THE CORRECTIVE ACTION PROGRAM

(a) Based on the approved schedule for initiation and completion of remedial activities, the owner or operator shall:

- (1) Establish and implement a corrective action ground-water monitoring program that:
 - (A) At a minimum, as provided for in 40 CFR 258, meets the requirements of an assessment monitoring program under Rule .1634 of this Section;
 - (B) Indicates the effectiveness of the corrective action remedy; and
 - (C) Demonstrates compliance with ground-water protection standards pursuant to Paragraph (e) of this Rule.
- (2) Implement the approved corrective action remedy; and
- (3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required. The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:
 - (A) Time required to develop and implement a final remedy;
 - (B) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;
 - (C) Actual or potential contamination of drinking water supplies or sensitive ecosystems;
 - (D) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously;
 - (E) Weather conditions that may cause hazardous constituents to migrate or be released;
 - (F) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and
 - (G) Other situations that may pose threats to human health or the environment.

(b) The owner or operator or the Division may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Rule .1636(b) of this Section are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques, as approved by the Division, that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under Paragraph (c) of this Rule.

(c) If the owner or operator or the Division determines that compliance with requirements under Rule .1636(b) of this Section cannot be practically achieved with any currently available methods, the owner or operator shall:

- (1) Submit a written report that documents that compliance with the requirements under Rule .1636(b) of this Section cannot be practically achieved with any currently available methods and gain approval from the Division. If required by G.S. 89C or G.S. 89E, a professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.];
- (2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and
- (3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:
 - (A) Technically practicable;
 - (B) Consistent with the overall objective of the remedy; and
- (4) Submit a report justifying the alternative measures to the Division for approval prior to implementing the alternative measures. Upon approval by the Division, this report shall be placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under Rule .1636 of this Section, or an interim measure required under Paragraph (a) of this Rule, shall be managed in a manner:

- (1) That is protective of human health and the environment; and
- (2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to Rule .1636 of this Section are considered complete when:

- (1) The owner or operator complies with the approved ground-water protection standards at all points within the plume of contamination

that lie beyond the relevant point of compliance;

- (2) Compliance with the approved ground-water protection standards has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded these standards for a period of three consecutive years; and
- (3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator shall submit a report to the Division documenting that the remedy has been completed in compliance with Paragraph (e) of this Rule. This report shall be signed by the owner or operator and by the preparer of the report. If required by G.S. 89C or G.S. 89E, a professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] Upon approval by the Division, this report shall be placed in the operating record.

(g) When, upon completion of the certification, the Division determines that the corrective action remedy has been completed in accordance with Paragraph (e) of this Rule, the owner or operator shall be released from the requirements for financial assurance for corrective action under Rule .1628(d) of this Section.

*History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Amended Eff. April 1, 2011.*

15A NCAC 27 .0101 DEFINITIONS

(a) "Commission" means the Well Contractors Certification Commission as established by the North Carolina General Assembly.

(b) "College course" means a semester unit or quarter hour unit of instruction given at a college or university, which is relevant to well contractor activities.

(c) "Course/activity" means any course or activity with a clear purpose and objective which will maintain, improve or expand skills and knowledge relevant to the practice of well contractor activities.

(d) "Department" means the Department of Environment and Natural Resources.

(e) "Personally manage" means giving directions to the on-site person who is personally supervising well contractor activities.

(f) "Personally supervise" means the on-site direction and control of all well contractor activities at any time those activities are being conducted.

(g) "Professional development hour" or "PDH" means a nominal contact hour of instruction or presentation that is the basic unit of credit for all courses or activities related to satisfying continuing education requirements and shall hereafter

be referred to as "continuing education unit" or "CEU". One CEU is equivalent to 60 minutes of instructional time.

(h) "Secretary" means the Secretary of the Department of Environment and Natural Resources.

History Note: Authority G.S. 87-98.2; 87-98.12; 143B-301.11;

Temporary Adoption Eff. December 15, 1998;

Eff. August 1, 2000;

Amended Eff. May 1, 2011.

15A NCAC 27 .0110 TYPES OF CERTIFICATION

(a) The following types of certification for well contractors are established:

- (1) Level A certification: this level of certification includes all well contractor activities and is required for geothermal well and related loop installations;
- (2) Level B certification: this level of certification includes all Level C well contractor activities; hydrofracturing; and all well construction and all well drilling techniques except sonic, air rotary and mud rotary drilling;
- (3) Level C certification: this level of certification includes all Level D well contractor activities and grouting; well abandonment; rehabilitating a well due to biofouling; well development (eg.-pumping or surging); packer and liner installations; and extending casing above land surface; and
- (4) Level D certification: this level of certification includes breaking a well seal, installation of a pump or other equipment in a well, and disinfection.

(b) Each certified well contractor shall be assigned a permanent certification number and shall be issued a certificate with that certification number. Certification numbers are not transferable and shall not be used by another well contractor.

(c) The certification number shall be carried by the well contractor on a card issued by the Commission at all times when performing well contractor activities.

(d) A certified well contractor of the appropriate level must be present at all times when well contractor activities are being performed.

History Note: Authority G.S. 87-98.2; 87-98.4; 87-98.12; 143B-301.11;

Temporary Adoption Eff. December 15, 1998;

Eff. August 1, 2000;

Amended Eff. May 1, 2008;

Amended Eff. Pending Legislative Review.

15A NCAC 27 .0401 SUBMITTAL AND PROCESSING OF APPLICATIONS FOR EXAMINATIONS

(a) An applicant for certification as a well contractor shall submit a complete application for certification by examination to the Commission with the appropriate fee(s) and, if applicable, proof of completion of coursework as provided in Rule .0301(e) of this Chapter.

(b) Upon receipt of the complete application by the Commission, the application shall be reviewed for eligibility to take the examination.

(c) If the Commission determines that the applicant is eligible for examination:

- (1) Level A applicants required to complete a field observation shall be notified by the designee(s) in writing to schedule a field observation. Once a field observation is successfully completed by the applicant the designee(s) shall notify the applicant in writing of his or her assignment to the next scheduled examination or requirement for an out-of-cycle examination. A successfully completed field observation will count toward the application requirements for up to 60 months; and
- (2) All other approved applicants shall be notified in writing of their assignment to the next scheduled examination. The notification shall advise the applicant of the date, time and place of the examination and the required grade for passing the examination. The assigned examination must be at least 30 days after the date of application approval.

(d) If the designee(s) of the Commission determines that the applicant is not eligible for examination, the designee(s) shall notify the applicant in writing and advise of the reason for ineligibility. Upon learning of ineligibility, the applicant may request a meeting with the Commission, relative to the ineligibility, if the applicant so desires. Such requests must be in writing and shall be submitted no later than 30 days following the date of receipt of the letter of notification. The Commission shall review the request and grant or deny it no later than the second Commission meeting following receipt of the request. The applicant shall be given written notice of the decision to grant or deny the request and the reasons therefore.

(e) Any applicant who knowingly supplies false information on the application for certification for the purpose of gaining eligibility, shall be ineligible for the examination and must forfeit the annual and examination fees. Applicants who have intentionally supplied false information must also wait 12 months before being eligible to resubmit an application for certification.

History Note: Authority G.S. 87-98.6; 87-98.9; 143B-301.11; Temporary Adoption Eff. December 15, 1998;

Eff. August 1, 2000;

Amended Eff. May 1, 2011; May 1, 2008.

15A NCAC 27 .0410 WELL CONTRACTOR EXAMINATIONS

(a) Well contractor examinations shall be comprehensive examinations that are standardized statewide. The examinations shall be designed to determine the applicant's knowledge of applicable rules; the ability to perform well contractor activities; and the ability to supervise, direct, manage and control the contracting activities of the well contracting business. Examinations and field observations shall be conducted in English.

(b) If a request for an accommodation in taking the examination is based on a medical condition, the applicant shall submit, in addition to a request form, supporting documentation from a physician.

(c) A grade on the examination of 70 percent or more shall be passing. Results of the examination shall be reported as either passing or failing.

*History Note: Authority G.S. 87-98.6; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011; May 1, 2008.*

15A NCAC 27 .0420 TIME AND PLACE OF EXAMINATION

An examination shall be given at least twice a year. Additional examinations may be scheduled by a representative(s) of the Commission. Information regarding the date, time, and place shall be made available upon request.

*History Note: Authority G.S. 87-98.6; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011.*

15A NCAC 27 .0430 CONDUCTING AND GRADING EXAMINATIONS

(a) Examinations, prepared by members of the Commission or its authorized representatives, shall be given only to those who, after filing a complete application, have been determined to be eligible.

(b) To gain entrance to the examination, each applicant shall identify him or herself by way of his or her driver's license or other form of photographic identification reasonably satisfactory to the proctor and with an admission ticket as provided by the Commission upon application approval.

(c) Examinations shall be conducted and graded under the supervision of a representative of the Commission.

(d) Representatives of the Commission who are supervising the examinations may take appropriate action against applicants, including dismissal from the examination, if cheating does occur. If a North Carolina certified well contractor assists an applicant in cheating on the examination, the Commission shall revoke the certification in accordance with G.S. 87-98.8 and Rule .0901 of this Chapter.

*History Note: Authority G.S. 87-98.6; 87-98.8; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011.*

15A NCAC 27 .0440 EXAMINATION RESULTS AND ISSUANCE OF CERTIFICATES

(a) After an examination, the applicant shall be informed, in writing only, by the Commission or its authorized representatives as to the results of his or her examination. If a passing score is obtained, such notification constitutes certification by the Commission. After each examination, a list of those passing shall be drawn up and made a part of the

permanent records of the Commission. Upon completion of the examination process, applicants who pass the examination shall be issued a certificate.

(b) Under normal circumstances, neither the examination grade nor the examination paper of any applicant shall be made available to anyone other than the members of the Commission and its authorized representatives who assist in conducting and grading the examinations. The examination papers shall be held by the Commission in a secure location for a period of six months following notification to the applicant. Questions by the applicant concerning the examination must be made in writing to the Commission within six months of the notification date. An applicant who fails to pass an examination, and who is still eligible to retake the examination under their current application, shall be entitled to and notified of the privilege to review his or her examination, within six months of the applicant's failed exam, in the presence of one or more Commission members or its authorized representative.

*History Note: Authority G.S. 87-98.6; 87-98.8; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011.*

15A NCAC 27 .0510 RECIPROCAL WAIVER OF EXAMINATION FOR CERTIFICATION

(a) The Commission may waive the examination requirement of this Chapter for an applicant who is licensed or holds a certification to practice well contractor activities in another state which also provides for equivalent reciprocal waiver of examination for licensing or certification to practice well construction activities in that state to North Carolina certified well contractors.

(b) The Commission may grant a waiver of the written examination and field observation requirement to an applicant who provides evidence satisfactory to the Commission that the applicant:

- (1) Meets the requirements for certification established by the Commission under this Chapter; and
- (2) Became licensed or certified in the other state after passing in that state an examination that is equal or comparable to the examination for which the applicant is seeking the waiver.

*History Note: Authority G.S. 87-98.6; 87-98.7; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011.*

15A NCAC 27 .0601 CONDITIONS AND LIMITATIONS FOR RENEWAL OF CERTIFICATIONS

(a) Certification issued pursuant to this Rule shall not be transferable and shall expire on June 30 of each year. A certification may be renewed without examination for ensuing years by making application to the Commission, obtaining any required continuing education units, and paying the renewal fee no later than the expiration date of the certification. Receipt by the Commission of all required documentation and appropriate

fee(s) shall extend the validity of the current certification until a new certification is received or the applicant is notified by the Commission that formal administrative action has been taken to suspend, revoke or deny renewal of the certification.

(b) A well contractor serving on temporary active duty in the uniformed services of the United States for a period of time exceeding 80 consecutive days in a certification period, shall be granted an extension of time for which to submit renewal fee with proof of orders, within 30 days of completion of orders.

(c) If a certification is not renewed by June 30, or by the extension of time granted in (b), the certification is expired. The contractor is not to engage in well contractor activities, and is subject to disciplinary action and civil penalties for any violation of the certification requirement. Certification may be regained during this time by making application to the Commission, submitting documentation for any required continuing education units, and paying the renewal fee no later than 30 days from expiration or renewal extension date of the certification.

(d) If a certification is not renewed within 30 days from the June 30 or renewal extension expiration of the certification in accordance with G.S. 87-98.7(b) and G.S. 87-98.9, the certification shall become void and may be renewed only in accordance with the requirements of G.S. 87-98.7(b).

(e) No application for a renewal shall be granted if the applicant's certification is suspended until the period for such suspension has expired.

(f) No application for a renewal shall be granted until a photograph of the applicant is obtained by a representative of the Commission for use on the applicant's wallet card.

(g) Individuals certified under this program shall notify the Commission within 30 days in writing regarding any change of their personal or professional contact information.

(h) The Commission shall notify the well contractor of nonpayment of the annual renewal fee in accordance with G.S. 87-98.9. Notice shall be attempted by certified mail or personal service.

*History Note: Authority G.S. 87-98.6; 87-98.7(b); 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011.*

15A NCAC 27 .0703 LEVEL D CERTIFICATION WITHOUT EXAMINATION

15A NCAC 27 .0704 CERTIFICATION WITHOUT EXAMINATION IN 2008

*History Note: Authority G.S. 87-98.5; 143B-301.11;
Eff. May 1, 2008;
Repealed Eff. May 1, 2011.*

15A NCAC 27 .0801 REQUIREMENTS

(a) Every certified well contractor is required to obtain six Continuing Education Units (CEU) during the renewal period. The renewal period is July 1 through June 30.

(b) If a certified well contractor exceeds the annual requirement in any renewal period, a maximum of six CEU may be carried forward into the subsequent renewal period.

(c) Selection of courses and activities which meet the requirements of Rule .0820 of this Chapter is the responsibility of the certified well contractor.

(d) CEU may be earned as follows:

- (1) Completion of college courses or community college courses;
- (2) Completion of continuing education courses (including, but not limited to correspondence, televised, videotaped, audiotapes, webinars and other courses/tutorials) that provide a completion certificate;
- (3) Teaching or instructing a course described in Subparagraph (1) or (2) of this Paragraph;
- (4) Attending or making presentations at professional or technical events (including but not limited to seminars, in-house courses, workshops, meetings, conventions, or conferences);
- (5) Authoring published papers, articles, or books; and
- (6) Active participation in professional or technical societies as defined in Rule .0820 of this Chapter.

*History Note: Authority G.S. 87-98.12; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011.*

15A NCAC 27 .0810 APPROVAL OF CONTINUING EDUCATION COURSES

(a) Courses must be preapproved by a representative(s) of the Commission no less than 30 days prior to the course date.

(b) Course approvals shall expire June 30 of each certification period for which they have been approved.

(c) Representatives of the Commission must be allowed to attend any approved course for the purpose of auditing without fee or advanced notice.

(d) First Aid, CPR, OSHA Mine Safety, and HAZWOPER Refresher classes may only be approved for CEU credit every odd numbered certification period.

(e) The Commission shall approve courses that instruct on well contractor activities and the use of well contractor equipment, products, and materials. To be approved, courses and activities must contain a clear purpose and objective and result in the maintenance, improvement, or expansion of skills and knowledge related to the practice of well contractor activities. Additionally, to be approved, requests for approval of courses or activities shall include the following information:

- (1) course or activity content;
- (2) timed agenda for the course;
- (3) all course or activity dates and locations;
- (4) qualifications of instructors (including both education and experience); and
- (5) sample of completion certificate or other forms provided by or to be preapproved by the Commission for use in documenting attendance.

(f) CEU credit shall not be awarded for courses involving direct sales of products to course attendees.

History Note: Authority G.S. 87-98.12; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011.

15A NCAC 27 .0820 DETERMINATION OF CREDIT

(a) The Commission has final authority with respect to approval of courses or activities, CEU values, and methods of earning credit. Courses or activities must maintain, improve or expand the skills and knowledge related to the practice of well contractor activities in order for a well contractor to receive credit. The Commission shall award the stated hours of credit (CEU) for any acceptable and successfully completed course or activity in each of the following categories:

- (1) Credit for college or community college courses shall be 45 CEU for receipt of a passing grade in the course, regardless of the number of credits awarded by the college or community college;
- (2) Credit for continuing education courses (including, but not limited to, correspondence, televised, videotaped, audiotapes, webinars and other courses/tutorials) that provide a completion certificate shall be one CEU for each hour of attendance or contact time;
- (3) Credit for published papers, articles and books is 10 CEUs;
- (4) Credit for active participation in professional and technical societies is limited to two CEU per organization. "Active participation" requires that the well contractor attend at least 75 percent of the regularly scheduled meetings. CEU credits for this type of activity are not earned until the end of each calendar year of membership in the organization. A minimum of three (3) meetings held in a year is required to qualify for CEU credit; and
- (5) Credit for teaching or presenting in Items (1) and (2) of this Rule are double the stated credits. Credit for teaching or presenting is available only for the first time that a well contractor teaches such a course or makes such a presentation.

(b) CEU credit shall not be awarded to an individual certified well contractor for scheduled portions of a program where the individual did not actually attend, was not awake or in which the individual certified well contractor did not personally participate.

History Note: Authority G.S. 87-98.12; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011.

15A NCAC 27 .0830 RECORDKEEPING

The responsibility of maintaining records to be used to support credits claimed is the responsibility of the contractor. To claim CEU credit, the contractor or course provider shall provide documentation as specified in this Rule to representatives of the Commission. Documentation for courses taken must be submitted during the certification period for which CEU are being claimed or as noted in G.S. 87-98.7(b). Courses taken prior to the current certification period shall not be accepted, unless an extension has been granted as noted in Rule .0840(b) of this Chapter, Rule .0840(c) of this Chapter or G.S. 87-98.7(b). The course provider shall be responsible for submitting documentation as specified in this Rule for classes where 10 or more certified well contractors are present. Documentation to claim CEU credit is required to include, but is not limited to:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructors name and CEU credits claimed on forms provided by the Commission; and
- (2) Attendance verification records in the form of completion certificates or forms provided or preapproved by the Commission.

History Note: Authority G.S. 87-98.12; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011; May 1, 2008.

15A NCAC 27 .0840 SPECIAL PROVISIONS FOR CONTINUING EDUCATION

(a) Given the intrinsic educational value of preparing for and successfully passing the North Carolina well contractors certification examination, a well contractor certified by way of examination shall not be required to obtain any CEU prior to their first renewal of certification.

(b) A well contractor serving on temporary active duty in the uniformed services of the United States for a period of time exceeding 80 consecutive days in a certification period shall have the continuing education requirement waived for that certification period. Requests must be received by the Commission at least 30 days prior to the June 30 renewal deadline, or within 30 days of completion of orders.

(c) If certified by a physician, a well contractor experiencing physical disability, illness, or other incapacitating medical condition such that the well contractor is incapable of attending continuing education courses or activities during a given renewal period shall be granted an extension of time in which to obtain CEU required during that renewal period. Requests for extension must be received by the Commission at least 30 days prior to the June 30 renewal deadline. The extension shall allow the requesting well contractor 12 months from the date the extension is granted to correct the deficiency in CEU for the renewal period in issue.

History Note: Authority G.S. 87-98.12; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2011.

**15A NCAC 27 .0901 REVOCATION,
RELINQUISHMENT OR EXPIRATION OF
CERTIFICATION**

(a) The Commission may suspend or revoke the certification of a well contractor or issue a letter of reprimand in accordance with the provisions of G.S. 87-98.8, G.S. 150B-3, and G.S. Chapter 150B, Article 3A.

(b) The disciplinary committee is delegated the authority to administer disciplinary action including a letter of reprimand, suspension or revocation of the certification of a well contractor. The Chairman shall convene a disciplinary committee meeting to review the circumstances of any proposed letter of reprimand, suspension or revocation. Written notice of the meeting of the committee shall be served on the well contractor personally or by certified mail at least 15 days prior to the meeting, and shall contain the following: the date, time, and place of the meeting; the disciplinary action proposed; notice of the reasons for the proposed disciplinary action; and an invitation to attend the committee meeting and present facts and reasons why the disciplinary action should not be taken. If served by mail, the notice shall be addressed to the well contractor at his or her last mailing address on file with the Commission.

(c) The disciplinary committee shall consist of the following:

- (1) The Chairman;
- (2) Two members of the Commission, appointed by the Chairman:
 - (A) a member who is a certified well contractor; and
 - (B) a member who is an environmental health professional actively engaged in well inspection and permitting.

(d) The disciplinary committee members shall consider the facts and reasons in support of or against the proposed disciplinary action, and within 10 working days of the conclusion of the committee meeting, the committee shall make and issue a decision. The disciplinary committee shall report the decision to the Commission at its next scheduled meeting.

(e) The well contractor shall be informed of the disciplinary committee's decision in writing, which shall contain the following: the disciplinary action, if any, which has been taken; notice of the reasons for the action; and a statement giving the well contractor the opportunity for a hearing under G.S. Chapter 150B, Article 3A.

(f) The notice shall be served on the well contractor personally or by certified mail. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1). The notice shall also state that, to obtain a hearing, the well contractor must file a written request for a hearing with the Commission at its business address no later than the 30th day following the date of receipt of the disciplinary committee's written decision. A hearing request which is mailed satisfies the 30 days' filing requirement if the hearing request is received no later than the 30th day following the date of the receipt of the written decision.

(g) The disciplinary action shall become the final action of the Commission if the well contractor does not request a hearing within 30 days.

(h) Certification may be relinquished by submission to the Commission of the original certificate, wallet card and a notarized statement of relinquishment.

(i) If a letter of reprimand is issued, a copy of the letter shall be kept in the well contractor's file and a copy must be sent to the well contractor's employer of record. The well contractor shall be given the opportunity to put a letter of rebuttal into the file when a reprimand has been issued.

History Note: Authority G.S. 87-98.8; 143B-300; 150B-3; 150B-38; 150B-40; 150B-43;

Temporary Adoption Eff. December 15, 1998;

Eff. August 1, 2000;

Amended Eff. May 1, 2011; May 1, 2008.

**15A NCAC 27 .0910 RECERTIFICATION
FOLLOWING REVOCATION OR RELINQUISHMENT**

(a) After revocation or relinquishment has been effective for a period determined by the Commission, a person may apply in writing for recertification by the Commission, including in his petition any relevant facts concerning changes to conditions under which revocation or relinquishment occurred. Such facts shall show that the applicant shall comply with the laws and regulations.

(b) After revocation, Level A applicants must also pass the field observation prior to written examination.

(c) Within 120 days following receipt of a complete application for recertification, the Commission shall notify the applicant by letter of its decision to deny or grant examination eligibility in accordance with procedures set out in Rule .0301 of this Chapter. Additional eligibility requirements including a show cause conference may be imposed by the Commission. Eligibility shall be granted only if there is substantial evidence that the conditions leading to the revocation or relinquishment have been corrected.

(d) Recertification of a person as a well contractor shall only occur by means of application, field observation if applicable and examination. The examination(s) shall not be waived. The applicant shall meet the eligibility requirements set forth in Rule .0301 of this Chapter. The applicant shall not be eligible for temporary certification under G.S. 87-98.7(c).

(e) Upon notification of the Commission's decision to deny eligibility, the applicant may appeal the decision pursuant to the procedures contained in G.S. 150B, Article 3A.

History Note: Authority G.S. 87-98.8; 143B-301.11; 150B-3; 150B-43;

Temporary Adoption Eff. December 15, 1998;

Eff. August 1, 2000;

Amended Eff. May 1, 2011.

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

**CHAPTER 12 - LICENSING BOARD FOR GENERAL
CONTRACTORS**

21 NCAC 12 .0202 CLASSIFICATION

(a) A general contractor must be certified in one of five classifications. These classifications are:

- (1) **Building Contractor.** This classification covers all building construction activity including: commercial, industrial, institutional, and all residential building construction; parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, curbs, gutters, and water and wastewater systems which are ancillary to the aforementioned structures and improvements; and work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Marine Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), S(Swimming Pools), and S(Asbestos).
- (2) **Residential Contractor.** This classification covers all construction activity pertaining to the construction of residential units which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; all site work, driveways, sidewalks, and water and wastewater systems ancillary to the aforementioned structures and improvements; and the work done as part of such residential units under the specialty classifications of S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Swimming Pools), and S(Asbestos).
- (3) **Highway Contractor.** This classification covers all highway construction activity including: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, culvert construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. It includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of fencing, signage, runway lighting and marking; and work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction), S(Railroad Construction), and H(Grading and Excavating).
- (4) **Public Utilities Contractor.** This classification includes those whose operations are the performance of construction work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(b)(3). The Board may issue a license to a public utilities contractor that is limited to

any of the subclassifications set forth in G.S. 87-10(b)(3) for which the contractor qualifies. A public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), PU(Water Lines and Sewer Lines), PU(Water Purification and Sewage Disposal), and S(Swimming Pools).

(5) **Specialty Contractor.** This classification covers all construction operation and performance of contract work outlined as follows:

- (A) **H(Grading and Excavating).** This classification covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. It covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. It also includes clearing and grubbing, and erosion control activities.
- (B) **S(Boring and Tunneling).** This classification covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. It includes preparation of the ground surfaces at points of ingress and egress.
- (C) **PU(Communications).** This classification covers the installation of the following:
 - (i) All types of pole lines, and aerial and underground distribution cable for telephone systems;
 - (ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;
 - (iii) Underground conduit and communication cable including fiber optic cable; and

- (iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.

(H) PU(Water Purification and Sewage Disposal). This classification covers the performance of construction work on water and wastewater systems, water and wastewater treatment facilities and all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. It covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of such work on water and wastewater treatment facilities.
- (D) S(Concrete Construction). This classification covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots and highways.

(I) S(Insulation). This classification covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. It does not include the insulation of mechanical equipment and ancillary lines and piping.
- (E) PU(Electrical-Ahead of Point of Delivery). This classification covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.

(J) S(Interior Construction). This classification covers the installation of acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. It includes the removal of asbestos and replacement with non-toxic substances.
- (F) PU(Fuel Distribution). This classification covers the construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals and slurries through pipeline from one station to another. It includes all excavating, trenching and backfilling in connection therewith. It covers the installation, replacement and removal of above ground and below ground fuel storage tanks.

(K) S(Marine Construction). This classification covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; it covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. It does not include structures required on docks, slips and piers.
- (G) PU(Water Lines and Sewer Lines). This classification covers construction work on water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. It includes pavement patching, backfill and erosion control as part of such construction.

(L) S(Masonry Construction). This classification covers the installation, with or without the use of mortar or adhesives, of the following:

- (i) Brick, concrete block, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry;
 - (ii) Installation of fire clay products and refractory construction; and
 - (iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). This classification covers the building, construction and repair of railroad lines including:
 - (i) The clearing and filling of rights-of-way;
 - (ii) Shaping, compacting, setting and stabilizing of road beds;
 - (iii) Setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and
 - (iv) Construction and repair of tool sheds and platforms.
- (N) S(Roofing). This classification covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" for purposes of this Subparagraph to includes cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). This classification covers
 - (i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and
 - (ii) The layout, assembly and erection by welding, bolting or riveting such metal products as curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.
- (P) S(Swimming Pools). This classification covers the construction, service and repair of all swimming pools. It includes:
 - (i) Excavation and grading;
 - (ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
 - (iii) Installation of all equipment including pumps, filters and chemical feeders. It does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.
- (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities.
- (R) S(Wind Turbine). This classification covers the construction, installation and repair of wind turbines, wind generators and wind power units. It includes assembly of blades, generator, turbine structures and

towers. It also includes ancillary foundation work, field fabrication of metal equipment and structural support components.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified."

History Note: Authority G.S. 87-1; 87-4; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. June 1, 1994; June 1, 1992; May 1, 1989; January 1, 1983; Temporary Amendment Eff. February 18, 1997; Amended Eff. June 1, 2011; September 1, 2009; April 1, 2004; April 1, 2003; August 1, 2002; April 1, 2001; August 1, 2000; August 1, 1998.

21 NCAC 12 .0503 RENEWAL OF LICENSE

(a) Form. A licensee's application for renewal requires the licensee to set forth whether there were any changes made in the status of the licensee's business during the preceding year and also requires the licensee to give a financial statement for the business in question. The financial statement need not be prepared by a certified public accountant or by a qualified independent accountant but may be completed by the licensee on the form itself.

(b) The Board shall require a licensee to submit an audited financial statement if there is any evidence indicating that the licensee may be unable to meet its financial obligations. A licensee shall be required to provide evidence of continued financial responsibility satisfactory to the Board if there are indications that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities. Except as provided herein, evidence of financial responsibility shall be subject to approval by the Board in accordance with the requirements of Rule .0204 of this Chapter. A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing. A licensee in bankruptcy shall provide to the Board an audited financial statement with a classified balance sheet as part of any application for renewal. A corporate licensee shall notify the Board of its dissolution or suspension of its corporate charter within 30 days of such dissolution or suspension.

(c) Display. The certificate of renewal of license granted by the Board, containing the signatures of the Chairman and the Secretary-Treasurer, must be displayed at all times by the licensee at his place of business.

(d) Upon receipt of a written request by or on behalf of a licensee who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return, the Board shall grant that same extension of time for complying with renewal application deadlines, for paying renewal fees, and for meeting any other requirement or conditions related to the maintenance or renewal of the license issued by the Board. A

copy of the military orders or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

History Note: Authority G.S. 87-1; 87-10; 93B-15; Eff. February 1, 1976; Readopted Eff. September 26, 1977; ARRC Objection March 19, 1987; Amended Eff. May 1, 1989; August 1, 1987; Temporary Amendment Eff. June 28, 1989 for a period of 155 Days to Expire on December 1, 1989; Amended Eff. December 1, 1989; RRC Removed Objection of March 19, 1987 Eff. August 20, 1992 based on subsequent amendment; Amended Eff. September 1, 1992; Temporary Amendment Eff. May 31, 1996; Amended Eff. June 1, 2011; June 1, 2003; April 1, 2003; August 1, 2002; April 1, 1997.

21 NCAC 12 .0507 FUND SUSPENSION

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

History Note: Authority G.S. 87-4; 93B-2; Eff. June 1, 2011.

21 NCAC 12 .0701 IMPROPER PRACTICE

(a) Preferring Charges. Any person who believes that any licensed general contractor is in violation of the provisions of G.S. 87-11 may prefer charges against that person or corporation by setting forth in writing those charges and swearing to their authenticity. The charges shall be filed with the Secretary-Treasurer of the Board at the Board's address in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination:

- (1) A charge, properly filed, shall be initially referred to the review committee.
- (2) The review committee shall be a committee made up of the following individuals:
 - (A) one member of the Board,
 - (B) the Secretary-Treasurer or his designee, and
 - (C) either a staff person or Board member agreed upon by the individuals listed in Parts (A) and (B) of this Subparagraph.
- (3) Once a charge is referred to the review committee, it shall forward a written notice of and explanation of the charge to the person or corporation against whom the charge is made. The review committee shall request a response from the person or corporation so charged to show compliance with all lawful requirements for retention of the license. The review committee shall send Notice of the charge and

of the alleged facts or alleged conduct by first class mail to the last known address of the person or corporation.

- (4) If the respondent denies the charge brought against him, then the review committee may direct that a field investigation be performed by an investigator retained by the Board.

- (5) After all preliminary evidence has been received by the review committee, it shall make a threshold determination of the charges brought. From the evidence, it shall recommend to the Board that:

(A) The charge be dismissed as unfounded or trivial;

(B) When the charge is admitted as true by the respondent, the Board accept the respondent's admission of guilt and order the respondent not to commit in the future the act or acts admitted by him to have been violated and, also, not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or

(C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11. Prior to the matter being heard and determined by the Board, it may be resolved by consent order.

- (6) The review committee shall not be required to notify the parties of the reasons of the review committee in making its threshold determination.

(c) Board Determination. After a hearing, in accordance with the hearing requirements of Section .0800 of this Chapter, the Board shall make a determination of the charge in light of the requirements of G.S. 87-11.

History Note: Authority G.S. 87-11; 150B-3; 150B-38; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. June 1, 2011; April 1, 2006; April 1, 2003; May 1, 1989.

21 NCAC 12 .0702 UNLAWFUL PRACTICE

(a) Preferring Charges. Any person who believes that any person or corporation is in violation of the acts specified in G.S. 87-13 may prefer charges against that person or corporation. The charges shall be filed with the Secretary-Treasurer of the Board at the Board's office in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination:

- (1) A charge of unlawful practice, properly filed, shall be referred to the review committee;

- (2) The review committee is a committee made up of the following individuals:

(A) one member of the Board,

(B) the Secretary-Treasurer or his designee, and

(C) either a staff person or Board member agreed upon by the individuals listed in Parts (A) and (B) of this Subparagraph;

- (3) With or without notifying any of the parties involved, the review committee shall investigate the charge to determine whether there is probable cause to believe that a party against whom a charge has been brought in fact has violated the provisions of G.S. 87-13; and

- (4) After all preliminary evidence has been received by the review committee, it shall:

(A) If probable cause is found, forward the decision along with the reasons for the decision and any evidence accumulated by it to Board counsel for appropriate action; or

(B) If no probable cause is found, notify the party preferring charges.

History Note: Authority G.S. 87-1; 87-13;

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. June 1, 2011; May 1, 1989.

21 NCAC 12 .0818 REQUEST FOR HEARING

(a) Any time an aggrieved person believes his rights, duties, or privileges have been affected by the Board's administrative action, but has not received notice of a right to an administrative hearing pursuant to Rule .0817 of this Section, the aggrieved person may file a request for an administrative hearing.

(b) Before an aggrieved person may file a request he must first exhaust all reasonable efforts to resolve the issue informally with the Board.

(c) Subsequent to such informal action, if still dissatisfied, the aggrieved person shall submit a request to the Board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request shall contain the following information:

(1) Name and address of the aggrieved person,

(2) A statement of the action taken by the Board which is challenged,

(3) A statement of the way in which the aggrieved person has been aggrieved, and

(4) A request for a hearing.

(d) An aggrieved person shall submit a request for an administrative hearing to the Board's office within 60 days of receipt of notice of the action taken by the Board which is challenged. The Board shall acknowledge the request and schedule a hearing.

History Note: Authority G.S. 87-11(b); 150B-11; 150B-38;

Eff. September 1, 1988;

Amended Eff. June 1, 2011; August 1, 2002.

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14F .0104 SEPARATION OF BEAUTY SALON

(a) A beauty salon, whether residential or non-residential, shall be separated from any building or room used for any other business by solid walls at least 7 ft. in height.

(b) An entrance to a beauty salon from a passageway, walkway or mall area used only for access to the salon, or to the salon and other businesses, may be open.

History Note: Authority G.S. 88B-4(9); Eff. February 1, 1976; Amended Eff. April 1, 2011; July 1, 1990; January 1, 1989; April 1, 1988.

21 NCAC 14G .0113 TEACHER/STUDENT RATIO

(a) All cosmetic art schools shall provide one teacher for every 25 enrolled students. In theory or demonstration classes the student teacher ratio may exceed 1:25. During student practical work on live models, there must be a ratio of one teacher for every 20 students.

(b) These ratios shall be adhered to at all time schools are in operation. Refer to 21 NCAC 14G .0115.

History Note: Authority G.S. 88B-4; Eff. February 1, 1976; Amended Eff. April 1, 2011; April 1, 1999; August 1, 1998; April 1, 1991; January 1, 1989; May 1, 1988.

21 NCAC 14G .0114 SCHOOL AFFILIATION WITH COSMETIC ART SHOPS AND OTHER BUSINESS

(a) No cosmetic art shop or any other business shall be operated as a cosmetic art school.

(b) When a school and a shop are under the same ownership or otherwise associated, separate operation of the shop and school shall be maintained:

- (1) If the school and shop are located in the same building, separate entrances and visitor reception areas shall be maintained; and
- (2) The school and shop shall have separate public information releases, advertisements, names and advertising signs.

History Note: Authority G.S. 88B-4(7a)(9); Eff. February 1, 1976; Amended Eff. April 1, 2011; April 1, 1991; January 1, 1989; May 1, 1988.

21 NCAC 14G .0118 SCHOOL CURRICULUM APPROVAL

Licensed cosmetic art schools must submit, for Board approval, course curriculum for all disciplines of cosmetic art.

History Note: Authority G.S. 88B-4; 88B-16; Eff. April 1, 2011.

21 NCAC 14H .0113 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT

(a) All scissors, shears, razors, and other metal instruments must be cleaned and disinfected after each use in the following manner:

- (1) If the implement is not immersible, it shall be cleaned by wiping it with a moistened clean cloth and disinfected with a disinfectant used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
- (2) If it is immersible, it shall be disinfected by immersion and whenever it comes in contact with blood, with:
 - (A) disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
 - (B) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) or tuberculocidal, that is mixed and used according to the manufacturer's directions; or
 - (C) household bleach in a 10 percent solution for 10 minutes.
- (3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.

(b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.

(c) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.

History Note: Authority G.S. 88B-4; 88B-14; Eff. February 1, 1976; Amended Eff. April 1, 2011; December 1, 2008; January 1, 2008; October 1, 2006; February 1, 2004; August 1, 1998; June 1, 1994; January 1, 1989; April 1, 1988.

21 NCAC 14I .0101 PERMANENT FILES

(a) A section of a cosmetic art school shall contain at least a desk, chair and a permanent file suitable for permanent records of matriculations of all students enrolled.

(b) Permanent files shall be kept under lock and key, in the beauty establishment, subject to inspection by the Board or its authorized agents.

(c) Included in this file shall be permanent records of the matriculations of all students enrolled along with proof of documentation for verification purposes including the following:

- (1) names and addresses of students;
- (2) places and dates of birth;

- (3) Social Security number;
 - (4) date students entered school;
 - (5) number of hours earned;
 - (6) breakdown of practical work performed by the student;
 - (7) grades on all examinations taken by the student; and
 - (8) date of graduation.
- (d) The original of all enrollment forms is to be filed with the Board, and a duplicate is to be held by the school.

*History Note: Authority G.S. 88B-4;
Eff. February 1, 1976;
Amended Eff. April 1, 2011; July 1, 2010; April 1, 1991;
January 1, 1989; April 1, 1988.*

21 NCAC 14I .0109 SUMMARY OF COSMETIC ART EDUCATION

- (a) The manager of each cosmetic art school must compile, from the school's records, a summary of hours, live model/mannequin performance completions, date of enrollment, and last date of attendance.
- (b) The graduation form documentation must be signed by a teacher, and the student and must have the seal of the school affixed.

- (c) The original graduation form documentation must be prepared on a form furnished by the Board. The cosmetic art school shall mail, within 30 days after the student's graduation date, with the school seal affixed the graduation form documentation to the Board at the Board's address.

*History Note: Authority G.S. 88B-4; 88B-7; 88B-8; 88B-9; 88B-10; 88B-16;
Eff. February 1, 1976;
Amended Eff. April 1, 2011; December 1, 2008; August 1, 2000;
August 1, 1998; May 1, 1991; January 1, 1989; April 1, 1988.*

21 NCAC 14I .0110 UNIFORM

A waiver of the uniform requirement in 21 NCAC 14J, 21 NCAC 14K, 21 NCAC 14O and 21 NCAC 14S may be requested for enrollment classes of cosmetic art students. Cosmetic art schools may request from the Board a waiver of the uniform requirement no more than once per year.

*History Note: Authority G.S. 88B-4(a)(10);
Eff. April 1, 2011.*

21 NCAC 14J .0207 LIVE MODEL/MANNEQUIN PERFORMANCE REQUIREMENTS

- (a) The following live model/mannequin performance completions shall be done by each student in the advanced department before the student is eligible to take the cosmetologist's examination. Sharing of performance completions is not allowed. Credit for a performance shall be given to only one student.

		1200 Hours		1500 Hours	
		Live Model	Maniq.	Live Model	Maniq.
(1)	scalp and hair treatments with massage	8		10	
(2)	fullhead fingerwave and style	3	OR 3	5	OR 5
(3)	fullhead pincurl and style	3	OR 3	5	OR 5
(4)	Hair Styling – sets, blowdrying				
	Thermal press/flat iron, artificial hair	80	56	100	70
(5)	haircuts	60	8	75	10
(6)	chemical reformation or permanent waving and relaxers	16	12	20	15
(7)	temporary color	3		5	
(8)	Color Application – semi, demi, Permanent color, and hair lightening	24	8	30	10
(9)	Multidimensional Color – low/high				
	Lighting, cap, bleach	3	8	5	10
(10)	lash and brow tinting	2		4	
(11)	Nail Care – manicures and pedicures	12		15	
(12)	artificial nails	4	OR 4	4	OR 4
(13)	facials with massage/makeup	3		10	
(14)	hair removal	3		5	

- (b) Certification of live model or mannequin performance completions is required along with the application for the examination.
- (c) A live model may be substituted for a mannequin for any mannequin service.

- (d) All mannequin services may be performed using a simulated product.
- (e) Simulated product is not allowed for credit for live model performance.

History Note: Authority G.S. 88B-4;

Eff. August 1, 1998;

Amended Eff. April 1, 2011; June 1, 2010; July 1, 2009; November 1, 2005.

21 NCAC 14J .0501 APPROVAL OF CREDIT FOR COSMETOLOGY INSTRUCTION/ANOTHER STATE

(a) An applicant shall receive credit for instruction taken in another state if the conditions set forth in this Rule are met.

(b) The applicant's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records on a case-by-case basis.

History Note: Authority G.S. 88B-16:

Eff. March 2, 1992;

Amended Eff. April 1, 2011; May 1, 2004; August 1, 2000; August 1, 1998; June 1, 1994.

21 NCAC 14P .0106 LICENSES REQUIRED

(a) The presumptive civil penalty for practicing cosmetic art without a license is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$200.00 |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

(b) The presumptive civil penalty for performing services which the practitioner is not licensed to perform is:

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

(c) The presumptive civil penalty for practicing cosmetic art teaching without a license is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$250.00 |
| (2) | 2nd offense | \$350.00 |
| (3) | 3rd offense | \$500.00 |

History Note: Authority G.S. 88B-4; 88B-29;

Temporary Adoption Eff. January 1, 1999;

Eff. August 1, 2000;

Amended Eff. April 1, 2011; July 1, 2010; December 1, 2008; August 1, 2002.

21 NCAC 14S .0107 PERFORMANCES

(a) All natural hair care students shall complete the following minimum number of live model performances during the natural hair care course under the supervision of a licensed cosmetologist or natural hair care teacher before taking the natural hair care examination:

Requirement Description	Hours	Services
Beginners: Sanitation, bacteriology, disinfection, shampooing, draping, anatomy, disorders of the	80	-

hair and scalp			
Styles and techniques of natural hair styling including twisting, wrapping, extending, locking, blow dry and hot iron	220		-
Performance Requirements	-	Mannequin	Live Model
Braids	-	5	5
Twists	-	5	5
Knots	-	3	2
Corn rows	-	3	2
Hairlocking	-	5	5
Artificial hair and decorations	-	5	5
Braid Removal	-	5	5
Blow dry and hot iron	-	5	5

(b) A minimum of 80 hours of technical and practical instruction in application areas are required prior to conducting performances on the public. A live model may be substituted for a mannequin for any mannequin service. All mannequin services may be performed using a simulated product. A performance consists of 10 or more lengths of hair.

History Note: Authority G.S. 88B-4(a)(10);

Eff. July 1, 2010;

Amended Eff. April 1, 2011.

CHAPTER 25 – INTERPRETER AND TRANSLITERATOR LICENSING BOARD

21 NCAC 25 .0203 APPLICATION FEES

(a) The Board shall not review a license application until the appropriate license fee has been paid pursuant to the following fee schedule:

Application for Initial Full License under G.S. 90D-7 and -9	\$225.00
Application for Renewal of Full License	\$150.00
Application for Initial Provisional License under G.S. 90D-8	\$225.00
Application for Renewal of Provisional License	\$150.00
Application for Replacement of Lost, Damaged or Destroyed License	\$10.00

(b) These fees shall be nonrefundable and shall be paid by cash or by cashier's check, certified check, or money order made

payable to the North Carolina Interpreter and Transliterators Licensing Board.

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

History Note: Authority G.S. 90D-6(6); 90D-10(b); 93B-15; Eff. March 21, 2005;
Amended Eff. May 1, 2011.

21 NCAC 25 .0204 RENEWAL OF A FULL LICENSE

(a) An application for the renewal of a full license is not timely filed unless it is received by the Board on or before the expiration date of the license being renewed.

(b) If a licensee does not timely file an application for the renewal of a full license, the licensee shall not practice or offer to practice as an interpreter or transliterator for a fee or other consideration, represent himself or herself as a licensed interpreter or transliterator, or use the title "Licensed Interpreter for the Deaf", "Licensed Transliterator for the Deaf", or any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator until he or she receives a new initial license.

(c) An untimely filed application for the renewal of a full license shall be processed as an application for a new initial license.

(d) The Board shall not review an untimely filed application for the renewal of a full license until the applicant pays the initial full license fee specified by Rule .0203 of this Section;

(e) If the license being renewed has been suspended by the Board, any renewal license issued to the applicant shall be suspended as well until the term of the suspension has expired.

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

History Note: Authority G.S. 90D-6; 90D-11; 90D-12; 93B-15; Eff. March 21, 2005;
Amended Eff. May 1, 2011.

21 NCAC 25 .0205 RENEWAL OF A PROVISIONAL LICENSE

(a) An application for the renewal of a provisional license is not timely filed unless it is received by the Board on or before the expiration date of the license being renewed.

(b) If a licensee does not timely file an application for the renewal of a provisional license, the licensee shall not practice or

offer to practice as an interpreter or transliterator for a fee or other consideration, represent himself or herself as a licensed interpreter or transliterator, or use the title "Licensed Interpreter for the Deaf", "Licensed Transliterator for the Deaf", or any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator until he or she receives either a renewed provisional license, as described in Paragraph (c) of this Rule, or an initial full license.

(c) An application to renew an expired provisional license shall be approved by the Board if it is received by the Board within one year after the provisional license expired and if the application demonstrates that the applicant continues to qualify for a provisional license. A provisional license cannot be renewed after it has expired a second time.

(d) If the license being renewed has been suspended by the Board, any renewal license issued to the applicant shall be suspended as well until the term of the suspension has expired.

(e) The Board shall renew a provisional license as many as three times upon receipt of timely applications that demonstrate that the applicant continues to qualify for a provisional license. The Board may, in its discretion, renew a provisional license a fourth or fifth time if the applicant timely files an application that demonstrates to the Board's satisfaction that the applicant's progress toward full licensure was delayed by:

- (1) a life-altering event, such as an acute or chronic illness suffered by either the applicant or a member of the applicant's immediate family;
- (2) active military service; or
- (3) a catastrophic natural event, such as a flood, hurricane, or tornado.

(f) The Board shall not for any reason renew a provisional license for a sixth time.

(g) The Board shall not issue an initial provisional license to anyone who has previously held a provisional license.

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

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; 90D-12; 93B-15; Eff. March 21, 2005;
Amended Eff. May 1, 2011; August 1, 2007.

21 NCAC 25 .0211 SUSPENSION OF AUTHORITY TO EXPEND FUNDS

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

History Note: Authority G.S. 93B-2(d);

Eff. May 1, 2011.

21 NCAC 25 .0406 EXTENSION OF REPORTING DEADLINES

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

*History Note: Authority G.S. 93B-15;
Eff. May 1, 2011.*

21 NCAC 25 .0501 CONTINUING EDUCATION REQUIREMENTS

(a) A licensee shall earn at least two continuing education units ("CEUs") each licensure year. At least 1.0 of those CEUs shall be earned in professional studies and at least 1.0 of those CEUs shall be earned in a setting in which three or more persons come together at the same location at the same time as a group to listen to a lecture, to view a demonstration, to participate in group discussions, or to learn through any combination of these or similar activities.

(b) Surplus CEUs shall not be carried forward from the licensure year in which they were earned to any subsequent licensure year.

(c) A licensee may not earn CEUs while interpreting, whether or not the licensee is compensated for his or her services.

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

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; 93B-15;

Eff. March 21, 2005;

Amended Eff. May 1, 2011; August 1, 2007.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32M .0109 PRESCRIBING AUTHORITY

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0110(b) of this Section.

(2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:

- (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
- (B) dosage units for schedules II, IIN, III and IIIN are limited to a 30 day supply; and
- (C) the supervising physician(s) possesses the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.

(3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:

- (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
- (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.

(4) Refills may be issued for a period not to exceed one year.

(5) Each prescription shall be noted on the patient's chart and include the following information:

- (A) medication and dosage;
- (B) amount prescribed;
- (C) directions for use;
- (D) number of refills; and
- (E) signature of nurse practitioner.

(6) Prescription Format:

- (A) All prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval number.
- (B) The nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.

(c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC

46 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.

History Note: Authority G.S. 90-18(14); 90-18.2; 90-171.23(14);

Eff. February 1, 1991;

Recodified from 21 NCAC 32M .0106 Eff. January 1, 1996;

Amended Eff. April 1, 2011; November 1, 2008; August 1, 2004; May 1, 1999; January 1, 1996; September 1, 1994; March 1, 1994.

21 NCAC 32X .0104 PUBLISHING CERTAIN MISDEMEANOR CONVICTIONS

(a) The Board shall publish misdemeanor convictions involving offenses against a person including manslaughter, assault, battery, sexual crimes, hazing, false imprisonment, stalking, abuse and neglect.

(b) The Board shall publish misdemeanor convictions involving moral turpitude including fraud, arson, blackmail, burglary, embezzlement, extortion, false pretenses, forgery, larceny, malicious destruction of property, receiving stolen goods with guilty knowledge, robbery, theft, transporting stolen goods with guilty knowledge, bribery, counterfeiting, tax fraud, mail fraud, perjury, harboring a fugitive from justice with guilty knowledge, tax evasion, abandonment of a minor child, bigamy, gross indecency, incest, solicitation, and prostitution; attempting, aiding and abetting, or serving as an accessory in the commission of a crime involving moral turpitude; and taking part in or attempting to take part in a conspiracy involving moral turpitude where the underlying crime would not involve moral turpitude.

(c) The Board shall publish all misdemeanor convictions involving drugs or alcohol where the conviction was entered after the licensee's enrollment in medical school or a Physician Assistant education program.

(d) The Board shall publish misdemeanor convictions involving violations of public health and safety codes.

(e) The Board shall publish misdemeanor convictions for failure to file state and federal tax returns.

(f) The Board shall publish misdemeanor convictions set forth above for ten years from the date of conviction.

(g) Publish means publishing on the Board's website or any other way the Board deems appropriate.

History Note: Authority G.S. 90-5.2; 90-14.3;

Eff. August 11, 2009;

Amended Eff. April 1, 2011.

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0809 PRESCRIBING AUTHORITY

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall

be included in the collaborative practice agreement as outlined in Rule .0810(b) of this Section.

- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:

- (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
- (B) dosage units for schedules II, IIN, III, and IIIN are limited to a 30 day supply; and
- (C) the supervising physician(s) must possess the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.

- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:

- (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
- (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.

- (4) Refills may be issued for a period not to exceed one year.

- (5) Each prescription shall be noted on the patient's chart and include the following information:

- (A) medication and dosage;
- (B) amount prescribed;
- (C) directions for use;
- (D) number of refills; and
- (E) signature of nurse practitioner.

- (6) Prescription Format:

- (A) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval number;
- (B) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.

(c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 36 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.

*History Note: Authority G.S. 90-8.1; 90-8.2; 90-18(14); 90-18.2; 90-171.23(b)(14);
Recodified from 21 NCAC 36 .0227(h) Eff. August 1, 2004;
Amended Eff. April 1, 2011; November 1, 2008; August 1, 2004.*

CHAPTER 40 - BOARD OF OPTICIANS

21 NCAC 40 .0104 INFORMATION AND APPLICATION

(a) Any person desiring to become a North Carolina licensed optician may obtain information on licensure and an application form by download from the Board webpage. Application forms must be completed in order to be considered for licensure by waiver of the examination, or to sit for the licensure examination.

(b) Any person not able to download licensure information, or the licensure or examination application, may request that the Board office mail the materials which the Board will subsequently mail to the requesting person.

(c) When submitting an application for licensure or examination, the applicant shall submit all applicable fees as set out in 21 NCAC 40 .0108. Additionally, the applicant shall provide:

- (1) information, including an affirmation regarding whether the applicant has violated G.S. 90, Article 17, or Title 21, Chapter 40, of the North Carolina Administrative Code, or been convicted of a felony or misdemeanor,
- (2) information as to whether the applicant has been named as a defendant or respondent to a lawsuit involving fraud, deceit, or misrepresentation; malpractice, unethical conduct, gross negligence, or gross misconduct, and
- (3) the applicant's age.

(d) Additionally, the applicant shall include the following when submitting the application:

- (1) evidence of qualifications to comply with G.S. 90-237 or G.S. 90-241, whichever applicable, and
- (2) a passport-size photograph taken within six months of the date the application is submitted to the Board.

*History Note: Authority G.S. 90-237; 90-239; 90-240; 90-249(6); 90-249.1(a)(8);
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 1998; February 1, 1989; February 1, 1988; November 1, 1981;*

Amended Eff. Pending Legislative Review.

21 NCAC 40 .0109 ELECTION OF MEMBERS

(a) Optician/licensee appointments to the Board are selected by election and gubernatorial appointment. By April 1 of each year, any licensed optician desiring his or her name to be placed in nomination shall forward a petition endorsed by five licensees to the Board.

(b) By April 10 of each year, the Board of Opticians shall prepare and distribute by mail to each North Carolina licensee eligible to vote:

- (1) a notice of the election, its dates and method of participation,
- (2) the name of each nominee,
- (3) biographical information on each nominee,
- (4) a ballot, and
- (5) a return envelope.

(c) The return envelope containing the ballot shall be postmarked no later than April 30. The enclosed ballot will not be valid unless the optician's signature, license number, and correct mailing address are on the left top corner of the return envelope.

(d) The Board Chair shall appoint an Election Committee of at least three Board members, who shall not be nominees. The Election Committee shall review all ballots that have been determined valid based on this Rule, and count all the valid ballots.

(e) Based upon the canvass by the Election Committee, the Board Chair shall submit to the Governor a list of three nominees which shall be listed from highest to lowest votes and percentages received for each nominee.

(f) The Governor shall complete the appointment process based on G.S. 90-238.

*History Note: Authority G.S. 90-238;
Eff. November 1, 1981;
Amended Eff. April 1, 2011; February 1, 1989; January 1, 1986;
Amended Eff. Pending Legislative Review.*

21 NCAC 40 .0112 FORMS

*History Note: Authority G.S. 90-249;
Eff. November 1, 1981;
Amended Eff. January 1, 1994; February 1, 1989; August 1, 1985; July 1, 1983;
Repealed Eff. April 1, 2011.*

21 NCAC 40 .0206 PROFESSIONAL RESPONSIBILITY; CONTINUING EDUCATION

(a) With the goal of keeping the vision health and welfare of the client uppermost at all times, promoting optimal public health for North Carolina's citizens, striving to continuously develop educational and technical proficiency, and informing himself or herself as to new developments within the profession, a licensed optician shall:

- (1) maintain adequate equipment and instruments in his or her office at all times to assure professional service to the public;

- (2) assist his or her clients in whatever manner possible in obtaining further care when, in his or her opinion, additional care is needed;
- (3) maintain records;
- (4) treat all information concerning his or her clients as privileged and not to be communicated to others except when authorized or required by a law or rule, or with express consent of the client;
- (5) take annual courses of study in subjects related and essential to the practice of opticianry for the purpose of enhancing his or her scientific knowledge and professional skills, gaining the benefits of new techniques, and acquiring increased knowledge of laws and rules governing the practice of opticianry.

(b) Each North Carolina-licensed optician shall take a total of at least eight hours of continuing education each calendar year as follows:

- (1) three hours of study on the practice of contact lens fitting; in lieu thereof, two hours of study on contact lens fitting and one hour of study may be on optical business management or consumer protection; and either:
 - (A) When there have been no amendments or changes to the North Carolina opticianry laws or rules during the previous year, five hours of study on eyeglass fitting and dispensing; in lieu thereof, four hours of a study on eyeglass fitting and dispensing and one hour of study may be on laws and rules affecting North Carolina opticians, or ethics; or
 - (B) When there has been an amendment or change to North Carolina opticianry laws or rules during the previous year, all licensed opticians practicing opticianry in the state shall take one hour of continuing education on the laws and rules relating to such amendment or change and four hours of study as described in Part (A) of this Subparagraph. The Board shall notify licensees when amendments or changes are made that would require each licensee's attendance at law/rule continuing education.
- (2) Any licensed optician who is not practicing opticianry in the state shall annually obtain a total of at least eight hours of courses of study: three hours shall be essential to the practice of contact lens fitting, and five hours shall be essential to eyeglass fitting and dispensing. One of the eight hours may be on optical business management or consumer protection. All hours shall be currently-approved by the American Board of Opticianry or the National Contact Lens Examiners.

The hours of study set forth in this Rule may not be waived, except upon presentation of evidence of illness rendering the licensee's attendance impossible, or by presentation of active-duty orders for the licensee serving in a branch of the US armed forces.

(c) Courses of study must be approved by the Board, meeting the following criteria:

- (1) Courses must be directly related to the practice of a dispensing optician as defined in G.S. 90-235 and G.S. 90-236. The education of opticians must be the primary and customary objective of the education provider.
- (2) Each course must be made available to all NC licensed opticians.
- (3) The following information shall be submitted to the Board office no later than 45 days prior to the date the course is to be presented. The following information is required for course submission and consideration:
 - (A) Location and scheduled time for course presentation;
 - (B) Title of course;
 - (C) Instructor's name, address and qualifications. Instructors must be qualified by education and experience to provide instruction in the course subject;
 - (D) Course description, including course length, instructional objectives, or course outline;
 - (E) Indication of course's approval status with the American Board of Opticianry or National Contact Lens Examiners;
 - (F) Name and address of provider agency, and primary contact information;
 - (G) Description of the provider's attendance certification process; and
 - (H) Agreement to provide electronic attendance roster to Board, and certified attendance documentation to attendees.
- (4) Course content shall be presented in an objective manner that does not promote the sale or marketing of one company's products or services over another. Presentations on new optical technology shall not include a specific brand/manufacture of the technology in the title or content. Product-specific "info-commercials" and sales pitches shall not be approved.
- (5) Courses shall consist of a minimum 50 minutes' education for each hour credit.
- (6) Instructors may not present more than four consecutive hours of continuing education.

(d) Each course shall be submitted for approval separately and completely each time credit is sought.

(e) All approved courses shall allow complimentary on-site review by representatives from the Board.

(f) Course sponsors shall:

- (1) Certify opticians' attendance for the requisite period;
- (2) Submit to the Board an electronic attendance roster, including names and credit hours received; and
- (3) Certify attendance documentation by the provider agency.

(g) Opticians and course attendees shall:

- (1) Retain documentation for a minimum 2-year period beginning with the next renewal year immediately following the date the courses were taken; and
- (2) Present the documentation to Board as required during the license renewal process.

History Note: Authority G.S. 90-235, 90-236, 90-249, 90-249.1;

Eff. February 1, 1976;

Amended Eff. September 6, 1977;

Readopted Eff. September 29, 1977;

Amended Eff. July 1, 1991; February 1, 1989; February 1, 1988; January 1, 1986;

Amended Eff. Pending Legislative Review.

21 NCAC 40 .0207 LOCATION OF LICENSEE, INTERN OR APPRENTICE

(a) Prior to performing acts regulated by the Board, each dispensing optician, intern or apprentice shall notify the Board of their employment status and the name and physical address of their employment. Changes in employment status or employment address shall be reported to the Board within 10 days.

(b) Each dispensing optician, apprentice, or intern shall report to the Board, within 30 days, of any change in his or her home address.

(c) Notification from the Board is deemed to have been received if mailed to either the home or business address of the dispensing optician, intern, or apprentice provided by the individual and shown in the records of the Board.

History Note: Authority G.S. 90-243; 90-249(a)(4),(8),(11); 90-294.1;

Eff. November 1, 1981;

Amended Eff. Pending Legislative Review.

21 NCAC 40 .0209 DISPLAY OF REGISTRATION AND LICENSE

(a) Each registered optical place of business or training establishment shall display its registration certificate in a conspicuous and public area of the principal place of business.

(b) Each apprentice and intern shall display his or her registration certificate in a conspicuous and public part of the training establishment wherein he or she is engaged as a trainee.

(c) Each optician to whom a license has been granted shall display his or her license and current renewal seal in a

conspicuous and public part of the office or establishment wherein he or she is engaged as a dispensing optician.

History Note: Authority G.S. 90-244;

Eff. November 1, 1981;

Amended Eff. February 1, 1989; July 1, 1983;

Amended Eff. Pending Legislative Review.

21 NCAC 40 .0213 NEGLIGENCE IN DISPENSING CONTACT LENSES

History Note: Authority G.S. 90-237; 90-240; 90-249;

Eff. May 1, 1989;

Repealed Eff. April 1, 2011.

21 NCAC 40 .0301 APPLICATION PHOTOGRAPH REQUIREMENT

An applicant for licensure or examination must attach to an application form a passport-size photograph of the applicant's face taken within the past six months. Photographs shall be retained as a part of applicants' files for the purpose of identification.

History Note: Authority G.S. 90-249(a)(6);

Eff. February 1, 1976;

Amended Eff. April 1, 2011; February 1, 1989; November 1, 1981; September 6, 1977.

21 NCAC 40 .0302 LICENSURE EXAMINATION FEES

(a) The fee for licensure examination participation shall be remitted to the Board by cash, certified check or money order.

(b) The full fee shall be paid for each examination date in which an applicant participates; there shall be no prorating of the fee.

(c) Licensure examination fees shall not be returned due to the withdrawal of the applicant or failure to take the examination after the fee has been accepted by the Board. The Board shall, however, apply a remitted and accepted fee to a future examination, upon receipt of an updated and fully executed examination application. If, during its review of an application, the Board determines that information submitted is false, misleading or deceptive, the Board shall deny the application but retain any fees paid.

History Note: Authority G.S. 90-245; 90-246;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. February 1, 1989; November 1, 1981;

Amended Eff. Pending Legislative Review.

21 NCAC 40 .0303 LICENSURE EXAMINATION AND RE-EXAMINATION

(a) A candidate who has met the qualifications as defined in G.S. 90-237, and either 90-240 or 90-241(b) shall be admitted to the licensure examination upon the Board's receipt of a fully executed application and the examination fee.

(b) The examination shall be administered twice yearly, at a time and location specified by the Board.

(c) Exam applications obtained by procedures outlined in Rule .0104 must be properly executed and received by the Board no later than 60 days prior to the Board-specified date of an examination.

(d) The licensure exam shall consist of written and practical components. An optician's license shall not be issued until a passing score has been achieved on all components within three years from the date one component is successfully completed.

(e) A participant who is unsuccessful in passing an exam component may retake the failed components upon timely receipt of an updated and properly executed exam retake application and remittance of the examination fee.

(f) A participant who is unsuccessful in passing an exam component may see the failed portion of his or her examination by registering for a Board-proctored exam review.

History Note: Authority G.S. 90-240; 90-249; 93B-8;
Eff. February 1, 1976;

Amended Eff. February 1, 1989; February 1, 1988; August 1, 1985; July 1, 1983;

Amended Eff. Pending Legislative Review.

21 NCAC 40 .0307 TIME AND PLACE OF EXAMINATION

History Note: Authority G.S. 90-240; 90-241;
Eff. February 1, 1976;

Amended Eff. September 6, 1977;

Readopted Eff. September 29, 1977;

Amended Eff. July 1, 1991; February 1, 1989; August 1, 1985; November 1, 1981;

Repealed Eff. Pending Delayed Effective Date.

21 NCAC 40 .0318 TERMS OF EXAMINATION AND RE-EXAMINATION

History Note: Authority G.S. 90-237; 90-240; 90-249;
Eff. November 1, 1981;

Amended Eff. February 1, 1989;

Repealed Eff. Pending Delayed Effective Date.

21 NCAC 40 .0323 AFFIDAVIT OF APPLICANT

(a) Applicants for any Board process (training, examination, and licensure application) shall attest under oath to the completeness and accuracy of the information contained in applications.

(b) The Board may decide to conduct a criminal background check as a part of its application review. Application fees are inclusive of costs involved for such investigations, and no additional charges shall be assessed against the applicant.

(c) If an applicant submits incomplete, false, or misleading information, the Board shall bar any applicant from admission to examination, apprenticeship, internship, business or training establishment registrations or licensure.

(d) If any optician, optometrist, or ophthalmologist submits incomplete, false or misleading information, then the Board shall bar them from training.

History Note: Authority G.S. 90-243; 90-249;
Eff. November 1, 1981;

Amended Eff. February 1, 1989;

Amended Eff. Pending Legislative Review.

21 NCAC 40 .0422 MOTIONS FOR CONTINUANCE

(a) The Chair or presiding officer shall grant motions for a continuance of a hearing upon a showing of good cause. In determining whether good cause exists, the Chair or presiding officer shall consider the ability of the party requesting a continuance to:

- (1) Proceed effectively without a continuance;
- (2) Obtain legal counsel, and whether efforts to obtain counsel have been diligent;
- (3) Obtain consent of the other party in the hearing;
- (4) Have key witnesses that are unavailable for the hearing; and
- (5) Have witnesses who have been served with a subpoena unavailable for the hearing.

(b) Motions for a continuance shall be in writing and shall be received in the office of the Board no less than seven calendar days before the hearing date.

(c) A motion for a continuance which is filed less than seven calendar days from the date of the hearing shall be denied, unless the reason for the motion could not have been ascertained earlier.

(d) Motions for continuance filed on the day of the hearing shall be ruled on by the Chair or presiding officer.

History Note: Authority G.S. 90-239;

Eff. Pending Legislative Review.

21 NCAC 42B .0302 CONTINUING EDUCATION

(a) Each optometrist holding a certificate of registration shall take annual courses of study approved by the Board as related to and essential to the practice of optometry as defined in G.S. 90-114. The Board shall approve courses whose content and quality of presentation are reasonably assured to the end that the licensee's abilities to meet the public demand of acceptable standards of care are enhanced and that currency of knowledge is insured.

(b) Each licensee shall determine if a course has been approved by the Board prior to the taking of the course and submitting it for credit.

(c) No course or course offering shall be considered for approval unless the vendor or sponsor has submitted to the Board no later than 30 days prior to the offering of the course information deemed sufficient by the Board as to the course title, course format, course content and learning purpose, lecturers including curriculum vitae, dates courses are offered, city and state where offered, and the name, address, and telephone number of the vendor or sponsor and the contact person(s) to whom inquiries can be made.

(d) Those courses that are approved, including the type and number of hours of credit, shall be entered by the Board's staff into the Board's central data base and the vendor or sponsor notified. Information concerning those courses that have been approved shall be made available to any licensee making inquiry concerning course approval.

(e) The Board shall maintain continuing education data on-line in its central data base for a minimum period of five years preceding the next annual license renewal date. A yearly listing of credits shall be furnished each licensee at the time of license renewal. Additional reports shall be available on request and with payment of a transcript fee of five dollars (\$5.00). Telephone inquiries as to current status of continuing education hours may be made during normal business hours.

(f) Notification of the number of hours required by the Board for license renewal shall be given to each licensee at the time the licensee receives notice of annual license renewal. Such notice shall state the number of hours of approved continuing education required in the following year in order to renew a license for the second following year. The number of required continuing education hours is 25 hours.

(g) In any calendar year no less than 12 hours of the continuing education requirement must be in courses focused on current practices and advancements in the fields of ocular and general pharmacology, diagnosis and therapeutics, or advanced clinical procedures, said hours to be deemed "certified" credit hours by the Board. Courses certified to meet this special requirement shall be of sufficient length and depth to address the subject matter in the course description(s) and taught by individuals who have training and experience in the area taught.

(h) Courses of self-study by vendors meeting the standards and criteria set by the Council on Optometric Postgraduate Education (COPE) or the Accreditation Council for Continuing Medical Education (ACCME), said course(s) meant to be taken by individuals through journal articles or over the internet where organized material is presented and written evaluations are made prior to or after completing the course(s) are eligible for approval provided the vendor or sponsor has submitted the course or courses for approval as described in this Rule prior to its being offered to the licensee. However, no licensee shall receive credit for more than six hours of educational credit by this means in any calendar year.

(i) Courses that are classified as practice administration shall be accepted by the Board for credit provided that no more than four hours of the total number of continuing education hours required shall be accepted within one calendar year for the purpose of credit for any licensee.

(j) All courses accepted for credit must be taken within the calendar year for which the credit is applied; provided, however, that any course dependent upon an examination for successful completion may be certified to the Board following examination even if the examination or the results thereof are not available until the next calendar year.

(k) Attendance at any course or courses approved by the Board shall be for the requisite period. The vendor or sponsor of the course shall assure compliance with this requirement and shall so certify to the Board no later than 30 days following the courses being offered. Documentation of attendance may be transmitted:

- (1) By the vendor or sponsor of the education provided the documentation contains the following information:
 - (A) Course title and classification verification;
 - (B) Vendor or sponsor identification;

(C) Name of and license number of North Carolina licensee; and

(D) Vendor or sponsor's attestation or verification of attendance.

- (2) By any licensee directly to the Board provided that the attendance is documented by the vendor or sponsor of the education, on a form given the licensee attending the course(s) attesting to their attendance, and the original form, not a photocopy or facsimile, is submitted.

(l) Electronic transfer of attendance records in a data base format compatible to the Board's data management system is acceptable; provided, however, the Board may at any time within three years of the date of transfer call for a hard copy verification if in its opinion such verification is necessary.

History Note: Authority G.S. 12-3.1; 90-117.5; 90-123.1; Eff. February 1, 1976;

Readopted Eff. May 30, 1978;

Amended Eff. April 1, 2011; April 1, 1993; June 1, 1989; September 30, 1981.

CHAPTER 68 - SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

21 NCAC 68 .0101 DEFINITIONS

As used in the General Statutes or this Chapter, the following terms have the following meaning:

- (1) "Applicant" means a person who submits documentation seeking Board status for registration or certification.
- (2) "Application packet" means a set of instructions and forms required by the Board for registration.
- (3) "Approved Supervisor" means a supervisor as set out in G.S. 90-113.31. This is a person who fulfills or is in the process of fulfilling the requirements for this Board designation pursuant to Rule .0211 of this Chapter by completing its academic, didactic and experiential requirements.
- (4) "Assessment" means identifying and evaluating an individual's strengths, weaknesses, problems and needs for the development of a treatment or service plan for alcohol, tobacco and drug abuse.
- (5) "Clinical Supervision" means clinical oversight required for all credentials with a minimum of 50 percent clinical supervision that shall accrue in person, face-to-face, while in the proximity of the same room whereas the balance of this requirement may be fulfilled electronically if performed in real time.
- (6) "Clinical Supervision Specific Education" means training that directly covers the aspects of clinical supervision of a substance abuse

- professional or any of the 12 core functions in their clinical application.
- (7) "Client" means an individual who is in receipt of substance abuse counseling.
- (8) "Complainant" means a person who has filed a complaint pursuant to these Rules.
- (9) "Consultation" means a meeting for discussion, decision-making and planning with other service providers for the purpose of providing substance abuse services.
- (10) "Crisis" means a decisive, crucial event either directly or indirectly related to alcohol or drug use, in the course of treatment that threatens to compromise or destroy the rehabilitation effort.
- (11) "Deemed Status Group" means those persons who are credentialed as a clinical addictions specialist because of their membership in a deemed status discipline.
- (12) "Education" means a service which is designed to inform and teach various groups; including clients, families, schools, businesses, churches, industries, civic and other community groups about the nature of substance abuse disorders and about available community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life's problems.
- (13) "Full Time" means 2,000 hours per year.
- (14) "General Professional Skill Building" means education provided to enhance general skills of a substance abuse professional.
- (15) "Hearing panel" means a body composed of members of a committee designated by the chairperson of the committee to conduct an informal hearing to determine that the applicant meets the standards required to be awarded or maintained for a credential.
- (16) "Impairment" means a mental illness, substance abuse or chemical dependency, physical illness, or aging problem.
- (17) "Letter of Reference" means a letter that recommends a person for certification.
- (18) "Membership In Good Standing" means a member's certification is not in a state of revocation, lapse, or suspension. However, an individual whose certification is suspended and the suspension is stayed is a member in good standing during the period of the stay.
- (19) "Passing score" means the score set by the entity administering the exam.
- (20) "Person served" means an individual who is not a client but is in receipt of substance abuse prevention counseling.
- (21) "Personal service" means the actual delivery of a document into the hands of the person to whom it is intended.
- (22) "President" means the President of the Board.
- (23) "Prevention Consultation" means a service provided to other mental health, human service, and community planning/development organizations or to individual practitioners in other organizations to assist in the development of insights and skills of the practitioner necessary for prevention.
- (24) "Prevention performance domains" means areas of professional activities to include:
- (a) planning and evaluations;
 - (b) education and skill development;
 - (c) community organization;
 - (d) public and organizational policy; and
 - (e) professional growth and responsibility.
- (25) "Referral" means identifying the needs of an individual that cannot be met by the counselor or agency and assisting the individual in utilizing the support systems and community resources available.
- (26) "Rehabilitation" means re-establishing the functioning needed for professional competency.
- (27) "Reinstatement" means an action where the Board restores certification or registration to an applicant after the applicant completes the requirements imposed by the Board.
- (28) "Relapse" means the return to the pattern of substance abuse as well as the process during which indicators appear prior to the person's resumption of substance abuse or a re-appearance or exacerbation of physical, psychological or emotional symptoms of impairment.
- (29) "Renewal" means an action by the Board granting a substance abuse professional a consecutive certification or registration based upon the completion of requirements for renewal as prescribed by the Board.
- (30) "Revival" means an action by the Board granting a substance abuse professional a certification or registration following a lapse of certification or registration wherein the professional must also meet the requirements for renewal as prescribed by the Board.
- (31) "Reprimand" means a written warning from the Board to a person making application for certification by the Board or certified by the Board.
- (32) "Respondent" means a person who is making application for certification by the Board or is certified by the Board against whom a complaint has been filed.
- (33) "Sexual activity" means:
- (a) Contact between the penis and the vulva or the penis and the anus;

- (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or
 - (c) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (34) "Sexual contact" means any of the following actions:
- (a) Vaginal intercourse, cunnilingus, fellatio, or anal intercourse, if initiated, agreed to, or not resisted by the substance abuse professional; or
 - (b) Kissing or the intentional touching of the other's lips, genital area, groin, inner thigh, buttocks, breasts, or any other body parts, as well as the clothing covering any of these body parts for the purpose of sexual stimulation or gratification of either the substance abuse professional or the client if initiated, agreed to, or not resisted by the substance abuse professional.
- (35) "Substance Abuse Counseling Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the 12 core functions (Rule .0204 of this Chapter) as documented by a job description and supervisors evaluation.
- (36) "Substance Abuse Prevention Consultant Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the prevention domains referenced by Rule .0206 of this Chapter and as documented by a job description and supervisor's evaluation.
- (37) "Substance Abuse Specific" means education focused upon alcohol and other drugs and the substance abusing population and is provided for a substance abuse professional by one whose education and experience is in the field of alcohol and other drugs.
- (38) "Supervised Practice" means supervision of the applicant in the knowledge and skills related to substance abuse professionals.
- (39) "Suspension" means a loss of certification or the privilege of making application for certification.

21 NCAC 68 .0204 SUPERVISED PRACTICUM FOR CERTIFIED SUBSTANCE ABUSE COUNSELOR AND LICENSED CLINICAL ADDICTIONS SPECIALIST

(a) All applicants for the certified substance abuse counselor or the clinical addictions specialist credential shall complete a 300 hour supervised practicum supervised by an applicant supervisor and the practicum shall cover all core functions of counseling. Verification of at least ten hours of this supervised practicum shall be made in each of the core functions of this Rule. These 120 hours of the supervised practicum shall be divided into one hour of supervision for every 10 hours of practice in each one of the 12 core functions. These core functions are:

- (1) Screening to determine a client is appropriate and eligible for admission to a particular program;
- (2) Intake to provide the administrative and initial assessment procedures for admission to a program;
- (3) Orientation of the client to the general nature and goals of the program, rules governing client conduct, notice of the hours during which services are available, treatment costs to be borne by the client, if any, and client's rights;
- (4) An assessment to identify and evaluate for the purpose of the development of a treatment plan an individual's strengths, weaknesses, problems and needs;
- (5) The treatment planning process whereby the counselor and client identify and rank problems needing resolution, establish agreed upon immediate and long term goals, and decide on a treatment process and the resources to be utilized;
- (6) Counseling to assist individuals, families, or groups in achieving goals through exploration of a problem and its ramifications, examination of attitudes and feelings, consideration of alternative solutions, and making decisions;
- (7) Case management activities which bring services, agencies, resources or people together within a planned framework of action toward the achievement of established goals;
- (8) Providing those crisis intervention services which respond to an alcohol or other drug abuser's needs during acute emotional and physical distress;
- (9) Provision of client education information to individuals and groups describing alcohol and other drug abuse and the available services and resources;
- (10) Referring the client whose needs cannot be met by the counselor or agency to other support systems and community resources available;
- (11) Charting the results of the assessment and treatment plan while writing reports, progress notes, discharge summaries and other client-

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.40; 90-113.41; 90-113.41A;

Eff. August 1, 1996;

Temporary Amendment Eff. November 15, 1997;

Amended Eff. April 1, 2011; April 1, 2003; August 1, 2002; April 1, 2001; August 1, 2000; August 1, 1998.

- related data necessary for the compilation of necessary reports and recordkeeping; and
- (12) Consultation with substance abuse and other professionals to assure comprehensive, quality care for the client.

(b) The remaining 180 hours of this supervised practicum shall be in the core function areas.

(c) Upon completion of the 300 hours, the supervisor shall complete an evaluation form reviewing the certified substance abuse counselor or clinical addictions specialist professional development and provide it to the Board, documenting the 300 hours of practice, including 30 hours of supervision on a form provided by the Board.

(d) This supervised practicum may be completed as part of an academic course of study in a regionally accredited college or university or it may be developed in the work setting as long as it is supervised by an applicant supervisor.

(e) The 300 hours of supervised practical training provided by an applicant supervisor shall be completed as part of the required two years postgraduate supervised substance abuse counseling experience.

(f) The supervision required by this Rule shall be provided by the practice supervisor and set forth as follows:

- (1) The first 4,000 hours of practice supervision shall be performed at the rate of one hour for every 40 hours of practice;
- (2) The second 4,000 hours of practice supervision shall be performed at the rate of one hour for every 80 hours of practice;
- (3) All subsequent practice supervision shall be performed at the rate of one hour for every 160 hours of practice.

History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.39; 90-113.40;

Eff. August 1, 1996;

Amended Eff. April 1, 2011; January 1, 2010; August 1, 2002.

**21 NCAC 68 .0208 CONTINUING EDUCATION
REQUIRED FOR COUNSELOR, CRIMINAL JUSTICE
ADDICTIONS PROFESSIONAL AND PREVENTION
CONSULTANT RE-CREDENTIALING**

(a) In order to be re-credentialed, a substance abuse professional shall:

- (1) Comply with the following:
 - (A) No more than 25 percent may be in-service education, received within your organization by staff of the same employment.
 - (B) No more than 25 percent of workshop presentation with one hour of presentation translating to one hour of education. Workshop presentation shall be a part of an event pre-approved by the Board as set out in these Rules.
 - (C) An applicant shall include documentation of each event submitted.

(D) All applicants shall include three hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education, three hours of professional ethics training and education and three hours of education to be selected from the list appearing in Rule 21 NCAC 68 .0205(2)(e)(i) through (v) for each re-credentialing.

(E) No more than 50 percent self-study, approved by the Board as set out in these Rules.

(2) Submit the following:

- (A) A completed application form with continuing education documented;
- (B) A non-refundable one hundred twenty-five dollar (\$125.00) recertification fee; and
- (C) A signed and dated statement that the applicant shall follow the substance abuse professional's code of conduct.

(b) Each credentialed counselor, criminal justice addictions professional and prevention consultant shall receive 60 hours of Board approved, as set out in these Rules, education during the current re-credentialing period that shall be documented. No more than 25 percent may be in-service education. A minimum of 30 hours shall be substance abuse specific (SAS). The education may include a combination of hours including attending and conducting workshops.

(c) To be re-credentialed, a criminal justice addictions professional and a certified substance abuse counselor shall submit a post-certification supervision contract signed by a practice supervisor and supervisee.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.38; 90-113.39;

Eff. August 1, 1996;

Amended Eff. April 1, 2011; January 1, 2010; April 1, 2003; August 1, 2002; August 1, 2000.

**21 NCAC 68 .0214 UNIVERSITY SUBSTANCE
ABUSE SPECIALTY CURRICULA**

(a) The standards committee shall be notified by a school of its intent to provide a substance abuse specialty curricula.

(b) Upon notification of the school's intent to provide a substance abuse specialty curriculum, the Board shall inform the school that the following information shall be needed from the applicant school:

- (1) Curricula description including number of hours of substance abuse specific credits;
- (2) Information as to how the educational requirements for substance abuse specialty shall be met within the curricula pursuant to G.S. 90-113.41A(a)(2) a.-k.;
- (3) The names and resume of any faculty who shall be teaching the substance abuse curricula;

- (4) The name of the school in which the substance abuse curricula shall be housed and organizational contact information; and
- (5) Specific guidelines and information on the field experience that shall be required of students including current substance abuse specific field placements and supervision.

(c) The standards committee shall review curricula to determine if the proposal meets educational, hour, substance abuse specific and supervised experience qualifications.

(d) The curricula review subcommittee of the standards committee shall present recommendations to the Board.

(e) The Board shall notify the school of the status of its request and any recommendation.

(f) The curricula shall be submitted for review every three years. Application for extension of the curricula shall be made 90 days prior to the current expiration date.

(g) Individuals applying who have completed a curriculum from a school meeting the criteria set forth in Subparagraphs (b)(1) through (b)(5) of this Rule shall submit an official masters or more advanced degree transcript from the university or college.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40;

Eff. August 1, 2002;

Amended Eff. April 1, 2011; January 1, 2010.

21 NCAC 68 .0217 SUPERVISED PRACTICUM FOR CRIMINAL JUSTICE ADDICTIONS PROFESSIONAL CERTIFICATION

(a) All applicants for the criminal justice addictions professional certification shall complete 300 hours supervised practicum. The applicant supervisor shall;

- (1) Train the criminal justice addictions professional and cover all criminal justice performance domains as set out in G.S. 90-113.31B(6);
- (2) Submit verification that at least 10 hours of supervised practice was provided in each of the performance domains; and
- (3) Provide verification of at least one hour of supervision for every 10 hours of practice in each one of the performance domains on a supervisor evaluation form provided by the Board.

(b) The remaining hours of the supervised practicum shall be in any of the performance domains.

(c) Upon completion of 300 hours, the applicant supervisor shall:

- (1) Complete an evaluation form reviewing criminal justice addictions professional's development as a professional;
- (2) Document the 300 hours of practice to include 30 hours of supervision by the applicant supervisor; and
- (3) Submit this information to the Board on a form provided by the Board.

(d) The supervised practicum may be completed as part of an academic course of study in a regionally accredited college or

university or it may be developed in the work setting as long as it is supervised by an applicant supervisor. The supervised practicum shall take place within a criminal justice addiction professional setting to include a workplace for law enforcement, the judiciary, or corrections.

(e) Upon completion of the credentialing process described in this Rule, the supervision required shall be provided by the practice supervisor and set forth as follows:

- (1) The first 4,000 hours of practice supervision shall be performed at the rate of one hour for every 40 hours of practice;
- (2) The second 4,000 hours of practice supervision shall be performed at the rate of one hour for every 80 hours of practice;
- (3) All subsequent practice supervision shall be performed at the rate of one hour for every 160 hours of practice.

History Note: Authority G.S. 90-113.31A; 90-113.31B(6); 90-113.40; 90-113.40B;

Eff. January 1, 2010;

Amended Eff. April 1, 2011.

21 NCAC 68 .0225 SUSPENSION OF AUTHORITY AND ESCROW OF FUNDS

The Board shall file the annual reports set forth in G.S. 93B-2 no later than October 31 of each year. In the event the Board fails to file the reports as required by G.S. 93B-2 and the Board's authority to expend any funds is suspended until such time as the Board files the required reports, the Board shall deposit any fees or funds received during the period of suspension into an escrow account established by the Board solely for this purpose.

History Note: Authority G.S. 90-113.30; 90-113.33; 93B-2; Eff. April 1, 2011.

21 NCAC 68 .0226 ARMED SERVICES EXTENTION FOR CREDENTIAL

Upon receipt of a written request by or on behalf of a credentialed substance abuse professional who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249 authorizes an extension of time to file a tax return, the Board shall postpone renewal fees, renewal application deadlines, continuing education requirements and any other requirements or conditions related to the maintenance of the license issued by the Board or to the renewal thereof for the same period of time as the extended period of time to file a tax return that is granted pursuant to G.S. 93B-15.

History Note: Authority G.S. 90-113.30; 90-113.33; 93B-15; Eff. April 1, 2011.

21 NCAC 68 .0601 GROUNDS FOR PROFESSIONAL DISCIPLINE

The following are grounds for discipline:

- (1) Fraud or misrepresentation in procuring or maintaining a credential:

- (a) Acting as to practice, attempt to practice, or to supervise others while representing oneself to be a credentialed substance abuse professional without being duly credentialed;
 - (b) Falsely representing material fact to procure or maintain a credential, whether by word or conduct;
 - (c) Concealing requested information contained in the application;
 - (d) Attempting to file or filing any false or forged diploma, certificate, affidavit, transcript, identification or qualification;
 - (e) Submitting material which is not the work product of the applicant;
 - (f) Knowingly assisting another to procure or maintain his or her credential on the basis of fraud; or
 - (g) Assisting any uncredentialed person to practice as a credentialed substance abuse professional in violation of this code.
- (2) Fraud or misrepresentation to the public:
- (a) Knowingly make misleading, deceptive, false, or fraudulent misrepresentations in the practice of the profession; or
 - (b) Advertising or holding oneself out to the public to provide professional services for which he or she is not credentialed; or
 - (c) Pursuing an illegal practice as set forth in G.S. 90-113.43.
- (3) Knowingly make misleading, deceptive, false, or fraudulent representations to the Board.
- (4) Exploitation of a relationship with client or person served:
- (a) Entering into a professional relationship in violation of Rule .0509 of this Chapter;
 - (b) Participating in or soliciting sexual activity or sexual contact with a current or former client or client of one's agency in violation of Rule .0509 of this Chapter;
 - (c) Entering into personal financial arrangements with a client or person served in violation of Rule .0511 or any other Rule.
- (5) Illegal acts or practices:
- (a) Violation of federal or state confidentiality statutes;
 - (b) Conviction for violating any controlled substances law or any driving while impaired law; or
 - (c) Being an accessory to or participating in dishonesty, fraud, misrepresentation or any other illegal act involving a client or person served.
- (6) Professional incompetency or failure to meet standards of practice:
- (a) Failure to follow the standards of skill and competence possessed and applied by professional peers certified in this State acting in the same or similar circumstances;
 - (b) Practicing outside his or her scope of practice;
 - (c) Use of drugs including alcohol to the extent that professional competency is affected or that the professional suffers impairment;
 - (d) Refusal to seek treatment for chemical dependency or mental health problems which impair professional performance; or
 - (e) Engaging in conduct that an ordinary, reasonable, and prudent person could foresee would result in harm or injury to the public.
- (7) In professional relationships, the following are prohibited:
- (a) Knowingly offering professional services to a client in a professional relationship with another substance abuse professional except with the knowledge of the other professional or after the termination of the client's relationship by the other professional;
 - (b) Sending or receiving any form of remuneration for referral of clients or persons served for substance abuse services from the professional to whom the referral was made;
 - (c) Accepting from or charging the client a fee for a referral to another substance abuse professional;
 - (d) Accepting or charging a fee when no substance abuse professional services are actually provided; except actual costs for copies and administrative services may be recovered; or
 - (e) Failing to cooperate with the investigations and proceedings of any professional ethics committee unless the failure is within the exercise of the professional's constitutional rights.

History Note: Authority G.S. 90-113.33; 90-113.37; 90-113.39; 90-113.40; 90-113.42; 90-113.43; 90-113.44; 90-113.45; 90-338;
Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

*Eff. February 1, 1996;
Amended Eff. April 1, 2011; August 1, 2000.*

21 NCAC 68 .0602 COMPLAINT PROCEDURES

(a) Initiation. Any individual with personal knowledge that any person has violated the code of ethics, any other rules of the Board, or G.S. 90, Article 5C may file a complaint against the substance abuse professional by submitting a written complaint.

(b) Form. The complaint shall be in writing, stating the nature of the alleged offense and signed by the complainant. The complaint shall include:

- (1) The name, address, and telephone number of the complainant;
- (2) The name and address of the person against whom the complaint is made;
- (3) A statement of the facts that describes the allegations against the person.

(c) The complaint shall be investigated as set out in Rule .0603.

(d) Following an investigation of the complaint, the ethics chairperson shall try to reach a settlement through informal procedures pursuant to G.S. 150B-22.

(e) Once the ethics committee concludes there is a basis to schedule a disciplinary hearing before the Board, the committee chairperson shall notify the person against whom the complaint is made. The notice to the respondent shall include the following:

- (1) State the section(s) of the code of ethics, other rules of the Board, or G.S. 90, Article 5C which the complaint alleges has been violated;
- (2) Direct that the respondent reply in writing and by certified mail within 15 days of receipt of this notice;
- (3) Inform the respondent that failure to respond in writing within 15 days may result in revocation of credential.

(f) Whenever practicable, notice shall be given by personal service or by certified mail at the last known address of the respondent. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(g) If notice cannot be given either by personal service or by certified mail, a notice that a complaint has been brought against the respondent shall then be given by publication. A party that cannot with due diligence be served by personal delivery or certified mail may be given notice to respond to a complaint by publication. Service of notice by publication shall consist of publishing a notice by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county of respondent's last address provided to the Board by the respondent. There shall be mailed to the party at or immediately prior to the first publication a copy of the notice to respond by publication to the respondent's last known address. Upon completion of such service there shall be filed with the Board by the ethics committee chairperson an affidavit showing the publication and mailing substantially in accordance with the requirement of G.S. 1-75.10(2), the

circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served. The notice shall include a statement by the Board that a complaint has been made against the respondent that is scheduled to be heard by the Board within 90 days. The notice shall inform respondent that respondent shall be given 30 days from the date of the last date of publication in which to respond to the service by publication for the purpose of notifying the Board of respondent's whereabouts. Response shall be made in writing to the Board at the address provided by the Board in its notice. If respondent provides the Board with information whereby respondent can be served by the deadline specific in the notice, the Board shall provide notice either personally or by certified mail as provided in Paragraph (d) of this Rule. Failure of respondent notified by publication of a complaint brought by the Board shall be treated as a failure of respondent to reply to the charges.

(h) Failure of the respondent to reply to the charges, including each specific allegation, may be considered an admission of the facts contained in the allegation(s).

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.44; 113.45;

Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1996;

Amended Eff. April 1, 2011; August 1, 1998.

21 NCAC 68 .0603 INVESTIGATION OF COMPLAINT

(a) The ethics committee chairperson, in consultation with the executive director or his or her designee and legal counsel, shall investigate the allegations in the complaint. The chairperson may appoint any person(s) or name a subcommittee to serve as the investigating entity to prepare an investigative report.

(b) The investigating entity may contact the complainant and person against whom the complaint is made.

(c) Upon completion of the investigation, the ethics committee chairperson in consultation with the investigating entity may determine that:

- (1) The complaint is without merit. The chairperson shall notify the complainant that the complaint is dismissed and may notify the respondent of the dismissal;
- (2) Upon completion of an investigation wherein the complaint is not dismissed, the ethics committee chairperson may:
 - (A) Offer an informal resolution pursuant to G.S. 150B-22;
 - (B) Schedule a meeting with the respondent;
 - (C) Refer the report to the ethics committee or its hearing panel;
 - (D) Schedule a hearing before the Board; or
 - (E) The chairperson may take a voluntary dismissal of the case where the respondent relinquishes his or her

credential for an agreed upon period of time.

(d) The ethics committee members or its subcommittee shall review a report referred by the ethics chairperson and may take any of the following actions:

- (1) Dismiss the complaint;
- (2) Remand the matter to the investigating entity in order to obtain additional evidence sufficient upon which to base a decision;
- (3) Make a written offer of informal resolution;
- (4) Schedule a meeting with the respondent whereby the dispute may be settled through informal procedures; or
- (5) Schedule a disciplinary hearing before the Board.

History Note: Authority G.S. 90-113.33; 90-113.34; 90-113.44;

Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1996;

Amended Eff. April 1, 2011; August 1, 1998.

21 NCAC 68 .0604 HEARING BEFORE BOARD

(a) A hearing shall be initiated:

- (1) At the call of the ethics chairperson, ethics committee or ethics hearing panel in the case of a complaint against a credentialed professional; or
- (2) By any person pursuant to G.S. 150B, Article 3A on appeal of an agency decision.

(b) The hearing shall be conducted pursuant to G.S. 150B, Article 3A.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.44; 90-113.45;

Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1996;

Amended Eff. April 1, 2011.

21 NCAC 68 .0605 METHOD OF DISCIPLINE

(a) In the course of the disciplinary investigation or hearing the Board may:

- (1) Deny a credential;
- (2) Revoke a credential;
- (3) Suspend a credential until further order of the Board or for a specified period of time;
- (4) Admonish, reprimand, or censure the Respondent; or
- (5) Take other actions not to be considered a disciplinary action, including a letter of caution or letter of warning with the consent of the Respondent.

(b) Disciplinary or other actions by the Board with the Respondent's consent may be stayed for an additional period of time while the Respondent satisfies all of the conditions of the

consent order based on the Respondent's failure to complete the order for reasons outside the Respondent's control.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.37; 90-113.43; 90-113.44; 90-113.45;

Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1996;

Amended Eff. April 1, 2011.

21 NCAC 68 .0606 EFFECT OF ACTIONS OF COURT OR OF OTHER PROFESSIONAL GROUPS

(a) If a person credentialed or applying for a credential from the Board has been disciplined by another professional organization or convicted of a felony or a misdemeanor, the ethics committee or the Board may take this prior record into consideration when imposing disciplinary sanctions.

(b) When such prior discipline is discovered, it shall be referred to the ethics committee and shall be treated by the ethics committee in the same manner as a complaint.

(c) Such prior discipline or conviction as described in Paragraph (a) of this Rule shall be presumed to be correct and appropriate. In order to overcome this presumption, the respondent shall prove to the committee's or the Board's satisfaction at least one of the following:

- (1) The process was so flawed that the finding of the court, organization or board is without basis; or
- (2) Following an investigation by the Board, the disciplinary action by the court, organization or board does not bear a reasonable relation to the conduct complained of resulting in undue punishment.

(d) Registrants and certified professionals shall notify the Board within 30 days from the date of any conviction or finding of guilt, or pleading of nolo contendere for all criminal convictions. This reporting shall include DWI convictions but exclude all other traffic convictions pursuant to G.S. 20.

(e) Failure to report these criminal convictions shall be considered a violation of the ethical principles of conduct.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.43; 90-113.44; 90-113.45;

Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1996;

Amended Eff. April 1, 2011; April 1, 2003.

21 NCAC 68 .0610 AWARDED THE CREDENTIAL FOLLOWING DENIAL

(a) Upon a showing that there are circumstances that could establish a basis for reinstatement or otherwise awarding a credential following its denial, the Board may grant such permission.

(b) A request for reinstatement or otherwise awarding the credential following its denial shall be initiated by the respondent.

(c) A letter of application for reinstatement or otherwise awarding the credential following its denial shall present facts which, if established, shall be sufficient to enable the Board to determine that the basis for the sanction no longer exists.

(d) To determine that there is a basis reinstating or awarding a credential, the Board may consider:

- (1) The nature of the offense;
- (2) The severity of the offense;
- (3) Any resulting harm or injury to the public and its extent;
- (4) The length of time since the punishment was imposed;
- (5) Restitution made; and
- (6) Any other factor the Board considers relevant.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.39; 90-113.40; 90-113.44; 90-113.45;

Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1996;

Amended Eff. April 1, 2011.

21 NCAC 68 .0611 PROOF OF REHABILITATION

(a) As used in G.S. 90-113.44 and elsewhere, rehabilitation shall be sustained and continuous for at least six months.

(b) Upon consideration of the evidence evaluated as set forth in Paragraph (c) of this Rule, the required rehabilitation may be extended pursuant to the treatment recommendations as approved by the Board.

(c) Evidence for consideration shall include:

- (1) Documentation of treatment history including all assessments, evaluations, treatment, counseling, and group experiences;
- (2) Complete criminal record;
- (3) A comprehensive biopsychosocial and medical assessment that includes evidence of physical, mental, psychological and social functioning;
- (4) Medical diagnosis and treatment history and functioning prognosis;
- (5) Relapse; and
- (6) Whether or not the respondent cooperated with the Board's investigation, to include self-reporting the violation.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40;

Eff. August 1, 2002;

Amended Eff. April 1, 2011.

21 NCAC 68 .0615 INFORMAL PROCEEDINGS

(a) In addition to formal hearings pursuant to G.S. 90-113.33 and G.S. 90-113.34, the Board may conduct informal proceedings in order to settle certain matters of dispute. A substance abuse professional practicing pursuant to a credential or other authority granted by the Board may be invited to attend a meeting with the Board or a committee of the Board on an informal basis to discuss matters as the Board may advise in its communication to the person. No public record of such

proceeding shall be made nor shall any individual be placed under oath to give testimony. Information discussed by a person in an informal hearing before the Board may be used in a formal hearing against the Respondent if initiated.

(b) Attendance at such an informal meeting is not required and is at the discretion of the person so invited. A person invited to attend an informal meeting shall be entitled to have counsel present.

(c) As a result of such informal meeting, the Board may recommend:

- (1) Actions be taken by a person;
- (2) The person be offered the opportunity to enter into a consent order;
- (3) That it institute a formal public hearing concerning a person; or
- (4) That it take other public or non-public action as the Board may deem appropriate in each case.

History Note: Authority G.S. 150B-22; 150B-38(h);

Eff. April 1, 2001;

Amended Eff. April 1, 2011.

21 NCAC 68 .0620 PUBLICATION OF ETHICS SANCTIONS

Sanctions of censure, suspension or revocation of a credential shall be published by the Board as soon as it is practicable.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.42; 90-113.43; 90-113.44;

Eff. August 1 2002;

Amended Eff. April 1, 2011.

TITLE 23 – COMMUNITY COLLEGES

23 NCAC 02C .0213 SCHOOL ABSENCE FOR RELIGIOUS OBSERVANCES

Each community college shall adopt a policy that authorizes a minimum of two excused absences each academic year for religious observances required by the faith of a student. The policy may require that the student provide written notice of the request for an excused absence a reasonable time prior to the religious observance. The policy shall also provide that the student shall be given the opportunity to make up any tests or other work missed due to an excused absence for a religious observance.

History Note: Authority G.S. 115D-5;

Temporary Adoption Eff. November 2, 2010;

Eff. April 1, 2011.

23 NCAC 02C .0301 ADMISSION TO COLLEGES

(a) Each college shall maintain an open-door admission policy to all applicants who are legal residents of the United States and who are either high school graduates or are at least 18 years of age. Student admission processing and placement determination shall be performed by the officials of each college. Admission

requirements for an emancipated minor shall be the same as for an applicant 18 years old or older. Provisions with respect to admission of minors are set forth in Rule .0305 of this Section.

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

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

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

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

any period of time that the student is suspended or expelled from any other educational entity.

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

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

(f) Boards of trustees shall implement an appeals process for applicants denied admission pursuant to Paragraph (e) of this Rule.

History Note: Authority G.S. 115D-1; 115D-5; 115D-20; Eff. February 1, 1976; Amended Eff. July 10, 2010; January 1, 2006; January 1, 1996; September 1, 1993; January 1, 1987; May 1, 1982; Amended Eff. Pending Legislative Review.

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

(a) Tuition:

- (1) Student Residence Classification. The classification of students for tuition purposes shall be made pursuant to G.S. 115B-2, 115D-39, 116-143.1, 116-143.3, and 116-143.5.
- (2) Tuition Rates In-State:
 - (A) A general and uniform tuition rate is established by the State Board as set by the Legislature for full-time curriculum students per semester or term for North Carolina residents.
 - (B) A North Carolina resident who is a part-time student shall pay a per credit hour rate for curriculum instruction, as established by the State Board, for any semester or term as set by the Legislature.
- (3) Learning Laboratory. No tuition fees charged.
- (4) Tuition Creditable Upon Transfer of Student. When a student has paid the required tuition at a college and is given permission to transfer to another college within the system during the academic semester for which the tuition was paid, the college from which the student transfers shall issue to him a statement certifying the amounts of tuition that have been paid, and the college to which he is transferring shall accept such certificate in lieu of requiring payment again. [Also, see 23 NCAC 02D .0323(b)(2) which provides

- information regarding reporting student hours in membership.]
- (5) Tuition Student Enrolled in More Than One College. Where a student desires to enroll for the same semester at two or more colleges of the system, the total amount of tuition and fees may be paid to the student's "home" college. "Home" college is defined as the college which the student initially registers for classes. The "home" college shall, in that case, assume responsibility for arranging with the other college or colleges for enrolling the student in appropriate classes without further charge. Such arrangement shall be made by exchange of letters between the colleges involved. Student membership hours for instruction received shall be reported by the college in which the respective instruction occurred.
- (6) Tuition Rates Out-of-State:
- (A) Any full-time curriculum student who is an out-of-state resident shall pay tuition fees as established by the State Board for each semester or term as set by the Legislature.
- (B) An out-of-state resident who is a part-time student shall pay a per credit hour rate for curriculum instruction as established by the State Board as set by the Legislature.
- (7) Tuition Waivers:
- (A) Individuals in the categories set forth in G.S. 115D-5(b) shall be exempt from tuition for specialized training courses only, unless otherwise permitted under this Rule.
- (B) College Staff Members. Full-time college staff members employed for a 9, 10, 11, or 12 month term may enroll in one curriculum or extension course per semester, as well as the summer term, in the system without payment of tuition or registration fee.
- (C) Basic Law Enforcement Training Program (BLET) for law enforcement officers. All law enforcement officers employed by a municipal, county, state, or federal law enforcement agency when taking courses in a state-mandated BLET training program, are exempt from tuition payment. Also, trainees shall be exempt from BLET class tuition if a letter of sponsorship from a state, county, or municipal law enforcement agency is on file at the college.
- (D) Individuals meeting the criteria set forth in G.S. 115B-2 shall not be charged tuition.
- (E) High school students taking courses pursuant to Paragraph (c) (concurrent enrollment) and Paragraph (e) (cooperative high school programs) of 23 NCAC 02C .0305 of this Chapter shall not be charged tuition.
- (F) Patients in state alcoholic rehabilitation centers shall not be charged tuition.
- (G) Juveniles committed to the Department of Juvenile Justice and Delinquency Prevention shall not be charged tuition.
- (H) Prison inmates shall not be charged tuition.
- (b) Pre-Enrollment Deposit. The local board of trustees may establish a pre-enrollment deposit up to a maximum of fifteen dollars (\$15.00). The pre-enrollment deposit, if established, shall be required only when a prospective student has made application for admission and has been accepted. This advance payment is not refundable unless the class(es) fails to materialize or a refund is required by the death of the student. This advance payment shall be deposited to the State Treasurer and credited against the full tuition due from the student during the regular registration period. For the purposes of this Rule, any tuition refund granted shall not include the pre-enrollment deposit of the student unless a refund is granted when a class fails to materialize or because of the student's death.
- (c) Late Enrollment Fee. A late enrollment fee up to five dollars (\$5.00) may be charged curriculum students registering after the specific closing date of registration, with such fees becoming state funds.
- (d) Tuition Refunds:
- (1) A refund shall not be made except under the following circumstances:
- (A) A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) of the academic semester or term as noted in the college calendar. Also, a student is eligible for a 100 percent refund if the class in which the student is officially registered is cancelled due to insufficient enrollment.
- (B) A 75 percent refund shall be made if the student officially withdraws from the class(es) prior to or on the official 10 percent point of the semester.
- (C) For classes beginning at times other than the first week (seven calendar days) of the semester a 100 percent refund shall be made if the student officially withdraws from the class prior to the first class meeting. A 75 percent refund shall be made if the student officially withdraws from the class prior to or on the 10 percent point of the class.

- (D) A 100 percent refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75 percent refund shall be made if the student officially withdraws from a contact hour class on or before the 10th calendar day of the class.
- (2) To comply with applicable federal regulations regarding refunds, federal regulations supersede the state refund regulations stated in this Rule.
- (3) Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester may be refunded to the estate of the deceased.
- (4) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt local refund policies.
- (e) Military Tuition Refund. Upon request of the student, each college shall:
- (1) Grant a full refund of tuition and fees to military reserve and National Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and
- (2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.
- History Note: Authority G.S. 115D-5; 115D-39; 116-143.1; P.L. 93-508; S.L. 1995, c. 625; S.L. 2010-31, s. 8.6; Eff. February 1, 1976; Amended Eff.; September 1, 1993; December 1, 1984 Temporary Amendment Eff. November 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. June 1, 1994; Temporary Amendment Eff. June 1, 1997; Amended Eff. April 1, 2011; August 1, 2010; April 1, 2005; August 1, 2002; August 1, 1998.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday May 19, 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 919-431-3000. 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

May 19, 2011 June 16, 2011
July 21, 2011 August 18, 2011

AGENDA

RULES REVIEW COMMISSION

Thursday, May 19, 2011 9:00 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Board of Cosmetic Examiners – 21 NCAC 14N .0113 (DeLuca)
 - B. Appraisal Board – 21 NCAC 57D .0402 (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between March 22, 2011 and April 20, 2011
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Commission Business
 - Next meeting: June 16, 2011

Commission Review

Log of Permanent Rule Filings

March 22, 2011 through April 20, 2011

INSURANCE, DEPARTMENT OF

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

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

Licensee Requirements

11 NCAC 06A .0802

Amend/*

CRIME CONTROL AND PUBLIC SAFETY, DEPARTMENT OF

The rules in Chapter 9 concern the State Highway Patrol.

The rules in Subchapter 9J concern motor carrier safety regulations.

Safety of Operation and Equipment

14A NCAC 09J .0101

Amend/*

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS FOR

The rules in Chapter 18 are from the State Board of Examiners of Electrical Contractors.

The rules in Chapter 18B are from the Board of Electrical Contractors including general provisions (.0100); examinations and qualifications (.0200); terms and definitions applicable to licensing (.0300); licensing requirements (.0400); reciprocal licensing agreements with other states (.0700); special restricted licenses (.0800); violations and contested case hearings (.0900); forms, certificates, and publications of the board (.1000); and continuing education courses and requirements (.1100).

Reference to State Building and Elevator Codes

21 NCAC 18B .0102

Amend/*

Organization

21 NCAC 18B .0103

Amend/*

Joint Resolution and Agreements

21 NCAC 18B .0106

Repeal/*

Examinations

21 NCAC 18B .0204

Amend/*

Minimum Passing Grade

21 NCAC 18B .0205

Repeal/*

Regular Examinations

21 NCAC 18B .0206

Repeal/*

Application for Regular Examinations

21 NCAC 18B .0207

Repeal/*

Specially Arranged Examinations

21 NCAC 18B .0208

Repeal/*

Fees

21 NCAC 18B .0209

Amend/*

Applications Duly Filed

21 NCAC 18B .0210

Amend/*

Waiting Period Between Examinations

21 NCAC 18B .0211

Amend/*

Permits and Inspections

21 NCAC 18B .0308

Adopt/*

License Name Requirements

21 NCAC 18B .0402

Amend/*

Licenses Expiring and Individuals Qualified/July 1, 1970

21 NCAC 18B .0601

Repeal/*

Qualified Individuals Listed Prior to July 1, 1970

21 NCAC 18B .0602

Repeal/*

Scope of SP-SFD License

21 NCAC 18B .0803

Amend/*

Scope of SP-FA/LV License

21 NCAC 18B .0804

Amend/*

<u>Minimum Requirements for Course Sponsor Approval</u> Amend/*	21	NCAC 18B .1102
<u>Minimum Requirements for Course Instructor Approval</u> Amend/*	21	NCAC 18B .1103

NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE

The rules in Subchapter 32V are rules covering licensure of perfusionists and the practice of perfusion. Perfusion primarily concerns operating cardiopulmonary bypass systems during cardiac surgery cases.

<u>Qualifications for License</u> Amend/*	21	NCAC 32V .0103
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PODIATRY EXAMINERS, BOARD OF

The rules in Chapter 52 concern Board of Podiatry Examiners including organization of the Board (.0100); examination and licensing (.0200); professional corporations (.0300); revocation or suspension of license (.0400); certification of podiatric assistants (.0500); general provisions (.0600); petitions for rules (.0700); notice of rulemaking hearings (.0800); rulemaking hearings (.0900); declaratory rulings (.1000); administrative hearing procedures (.1100); administrative hearings decisions related rights and procedures (.1200); nominations for podiatrist members of the board of podiatry examiners; the board of podiatry examiners constituting a board of podiatry elections; and procedures for holding an election (.1300); and scope of practice (.1400).

<u>Name and Purpose</u> Amend/*	21	NCAC 52 .0101
<u>Membership</u> Repeal/*	21	NCAC 52 .0102
<u>Application</u> Amend/*	21	NCAC 52 .0201
<u>Examination</u> Amend/*	21	NCAC 52 .0202
<u>Re-Examination</u> Amend/*	21	NCAC 52 .0204
<u>Licensing</u> Amend/*	21	NCAC 52 .0206
<u>Continuing Education</u> Amend/*	21	NCAC 52 .0208
<u>Specialty Credentialing Privileges</u> Adopt/*	21	NCAC 52 .0212
<u>Registration</u> Amend/*	21	NCAC 52 .0301
<u>Annual Renewal</u> Amend/*	21	NCAC 52 .0302
<u>Penalties</u> Amend/*	21	NCAC 52 .0303
<u>Application for Examination</u> Amend/*	21	NCAC 52 .0601
<u>Certificate of Licensure</u> Repeal/*	21	NCAC 52 .0602
<u>Application for Renewal</u> Repeal/*	21	NCAC 52 .0603
<u>Certificate of Continuing Education</u> Repeal/*	21	NCAC 52 .0604
<u>Certificate for Establishing a Professional Corporation</u> Repeal/*	21	NCAC 52 .0605

<u>Certificate of Registration of Professional Corporation</u>	21	NCAC 52	.0606
Repeal/*			
<u>Appl/Exam/Podiatrist Licensed/Other States (Reciprocity)</u>	21	NCAC 52	.0610
Amend/*			
<u>Forms and Applications</u>	21	NCAC 52	.0611
Adopt/*			
<u>Petition for Rulemaking Hearings</u>	21	NCAC 52	.0701
Amend/*			
<u>Contents of Petition</u>	21	NCAC 52	.0702
Amend/*			
<u>Dispositions of Petitions</u>	21	NCAC 52	.0703
Amend/*			
<u>Notice Mailing List</u>	21	NCAC 52	.0804
Amend/*			

RESPIRATORY CARE BOARD

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and definitions (.0100); application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); miscellaneous provisions (.0500); rules (.0600); and administrative hearing procedures (.0700).

<u>License Renewal</u>	21	NCAC 61	.0302
Amend/*			

SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

The rules in Chapter 68 include general provisions (.0100); certification (.0200); clinical addictions specialist (.0300); education (.0400); ethical principles of conduct (.0500); grounds for discipline and disciplinary procedures (.0600); and appeals process (.0700).

<u>Definitions</u>	21	NCAC 68	.0101
Amend/*			
<u>Supervised Practicum for Certified Substance Abuse Counse...</u>	21	NCAC 68	.0204
Amend/*			
<u>Continuing Education Required for Counselor, Criminal Jus...</u>	21	NCAC 68	.0208
Amend/*			
<u>Supervised Practicum for Criminal Justice Addictions Prof...</u>	21	NCAC 68	.0217
Amend/*			
<u>Armed Services Credential</u>	21	NCAC 68	.0226
Amend/*			

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 2 are from the rules division and cover publication of The North Carolina Administrative Code (NCAC) and the North Carolina Register (NCR).

The rules in Subchapter 2C are the submission procedures for rules and other documents to be published in the North Carolina Register and the North Carolina Administrative Code including general provisions (.0100); codification of rules (.0200); the Register (.0300); the Administrative Code (.0400); temporary rules (.0500); emergency rules (.0600); and publication on the OAH website (.0700).

<u>Definitions</u>	26	NCAC 02C	.0102
Amend/*			
<u>Original and Duplicate Copy</u>	26	NCAC 02C	.0103
Amend/*			
<u>Return Copy</u>	26	NCAC 02C	.0104

Repeal/*	
<u>Electronic Version</u>	26 NCAC 02C .0105
Amend/*	
<u>General Format Instructions</u>	26 NCAC 02C .0108
Amend/*	
<u>Illustrations/Notes</u>	26 NCAC 02C .0110
Amend/*	
<u>Publication of Notice of Text</u>	26 NCAC 02C .0306
Amend/*	
<u>Electronic Filing</u>	26 NCAC 02C .0308
Adopt/*	
<u>Publication of a Permanent Rule</u>	26 NCAC 02C .0402
Amend/*	
<u>Body of the Rule</u>	26 NCAC 02C .0405
Amend/*	
<u>History Note</u>	26 NCAC 02C .0406
Amend/*	
<u>Publication of a Temporary Rule</u>	26 NCAC 02C .0502
Amend/*	
<u>Publication of an Emergency Rule</u>	26 NCAC 02C .0602
Amend/*	
<u>Publication of a Rule on the OAH Website</u>	26 NCAC 02C .0702
Amend/*	

BUILDING CODE COUNCIL

<u>2009 NC Residential Code - Soffit</u>	R703.11.2
Amend/*	
<u>2009 NC Residential Code - Flame Spread</u>	R703.11.3
Amend/*	
<u>2012 NC Residential Code - Soffit</u>	R703.11.3
Amend/*	
<u>2012 NC Residential Code - Flame Spread</u>	R703.11.4
Amend/*	

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
ABC Commission v. Fusion Foods, Inc., T/A Coastal Blue	09 ABC 4672	11/08/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)	09 ABC 5421	04/19/10	
ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	04/19/10	
ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market	09 ABC 5257	04/19/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Lee Street)	09 ABC 5422	06/09/10	
ABC Commission v. Boulos 2, Inc., T/A Akron Texaco	10 ABC 0027	04/21/10	
ABC Commission v. Startown Lounge, Inc. T/A 5 O'clock Somewhere	10 ABC 0153	06/25/10	
ABC Commission v. Diversified Investments and Growth, LLC, T/A Petro Mart 6	10 ABC 0576	07/09/10	
ABC Commission v. Talmar Inc. D/B/A E-City Restaurant and Lounge, Mary Ann Davidson and Ratanya Walker			
ABC Commission v. Scooby's Bar & Restaurant, Sherri Lynn Bridgeman	10 ABC 2512	08/02/10	
Melvin Lewis, JA's Inc. T/A PAPA Ja's Fine Family Dining v. ABC Commission	10 ABC 2603	12/08/10	
ABC Commission v. Alpha 3 Enterprises LLC, T/A Liquid Room	10 ABC 2659	07/14/10	
ABC Commission v. Taqueria Guadalajara II, Inc, Jaime Fuentes Vice President	10 ABC 3107	07/15/10	
ABC Commission v. Ab3 LLC T/A On the Roxx	10 ABC 4120	10/08/10	
ABC Commission v. El Corona Mexican Restaurant Inc., T/A Corona II	10 ABC 4122	09/24/10	
ABC Commission v. Partnership T/A La Poblanita	10 ABC 4235	02/09/11	
ABC Commission v. Speed Dee Superette, Tonya Marchisella	10 ABC 4583	11/04/10	
ABC Commission v. Ben Long Wang, T/A Sapporo Bistro	10 ABC 4843	10/15/10	
Bobby Larry Avery Jr. Larry's v. State of North Carolina ABC Commission	10 ABC 5360	12/14/10	
ABC Commission v. Clifton Ballard T/A Club Phoenix I	10 ABC 5543	03/11/11	
ABC Commission v. Lourdes, Inc, T/A, El Gavilan	10 ABC 6372	01/13/11	
ABC Commission v. Centro Celvesera La Zaona, LLC, T/A Centro Celvesera LA Saona	10 ABC 9704	03/31/11	
<u>BOARD OF SOCIAL WORK CERTIFICATION AND LICENSURE</u>			
Miriam Deborah Kahn Sichel v. Social Work Certification and Licensure Board	10 BSW 2454	06/25/10	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Tammy S. Barbone v. Crime Victims Compensation Comm.	08 CPS 2667	07/16/10	
Christine G. Mroskey v. Crime Victims Compensation	09 CPS 0451	06/24/10	
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	03/31/10	
William G. Fisher v. Victims and Justice Services	09 CPS 4024	11/15/10	
Terry L. Schermerhorn v. North Carolina State Highway Patrol	09 CPS 4547	10/21/10	
William Pickard Trucking, Inc., William Pickard v. Dept. of Crime Control and Public Safety, State Highway Patrol	09 CPS 4692	06/09/10	
California Overland Ltd., NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 5225	05/12/10	
Earl Stanley Peters III v. Victims Compensation Service Division	09 CPS 5444	08/30/10	
John Rose (Fliptastic, Inc) v. Department of Crime Control and Public Safety	09 CPS 5985	08/25/10	25:11 NCR 1345

CONTESTED CASE DECISIONS

Lynch's Auto Sales Salvage & Wrecker Service, inc v. Crime Control and Public Safety, Division of State Highway Patrol	09 CPS 6158	09/10/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	04/01/10	
Marius A. Christian v. State Highway Patrol	09 CPS 6368	08/13/10	
Jose H. Geronimo Ramirez v. Victims and Justice Services	09 CPS 6454	06/23/10	
Neill Grading and Construction Co., Inc., v. North Carolina State Highway Patrol Motor Carrier Enforcement Section	09 CPS 6516	11/24/10	
David Leon Darby v. Division of Crime Control and Public Safety	09 CPS 6703	08/17/10	
Selective Clearing and Grading, Inc., Danny Creech, Lynn Creech v. Crime Control and Public Safety	09 CPS 6726	07/29/10	
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