

NORTH CAROLINA REGISTER

VOLUME 26 • ISSUE 05 • Pages 363 – 439

September 1, 2011

I. EXECUTIVE ORDERS	
Executive Order No. 98-101	363 – 370
II. IN ADDITION	
Decision Letters on "Changes Affecting Voting" from US Attorney General ...	371 – 372
III. PROPOSED RULES	
Environment and Natural Resources, Department of	
Environmental Management Commission	375 – 379
Wildlife Resources Commission	379 – 380
Health and Human Services, Department of	
Child Care Commission	373 – 375
IV. APPROVED RULES.....	381 – 417
Commerce, Department of	
Alcoholic Beverage Control Commission	
Health and Human Services, Department of	
Child Care Commission	
Social Services Commission	
Justice, Department of	
Sheriffs' Education and Training Standards Commission	
Labor, Department of	
Department	
Occupational Licensing Boards and Commission	
Chiropractic Examiners, Board of	
Engineers and Surveyors, Board of Examiners for	
Irrigation Contractors' Licensing Board	
Nursing, Board of	
V. RULES REVIEW COMMISSION	418 – 423
VI. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	424 – 426
Text of ALJ Decisions	
10 EHR 08355.....	427 – 439

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
25:20	04/15/11	03/25/11	04/30/11	06/14/11	06/20/11	08/01/11	05/2012	01/10/12
25:21	05/02/11	04/08/11	05/17/11	07/01/11	07/20/11	09/01/11	05/2012	01/27/12
25:22	05/16/11	04/25/11	05/31/11	07/15/11	07/20/11	09/01/11	05/2012	02/10/12
25:23	06/01/11	05/10/11	06/16/11	08/01/11	08/22/11	10/01/11	05/2012	02/26/12
25:24	06/15/11	05/24/11	06/30/11	08/15/11	08/22/11	10/01/11	05/2012	03/11/12
26:01	07/01/11	06/10/11	07/16/11	08/30/11	09/20/11	11/01/11	05/2012	03/27/12
26:02	07/15/11	06/23/11	07/30/11	09/13/11	09/20/11	11/01/11	05/2012	04/10/12
26:03	08/01/11	07/11/11	08/16/11	09/30/11	10/20/11	12/01/11	05/2012	04/27/12
26:04	08/15/11	07/25/11	08/30/11	10/14/11	10/20/11	12/01/11	05/2012	05/11/12
26:05	09/01/11	08/11/11	09/16/11	10/31/11	11/21/11	01/01/12	05/2012	05/28/12
26:06	09/15/11	08/24/11	09/30/11	11/14/11	11/21/11	01/01/12	05/2012	06/11/12
26:07	10/03/11	09/12/11	10/18/11	12/02/11	12/20/11	02/01/12	05/2012	06/29/12
26:08	10/17/11	09/26/11	11/01/11	12/16/11	12/20/11	02/01/12	05/2012	07/13/12
26:09	11/01/11	10/11/11	11/16/11	01/03/12	01/20/12	03/01/12	05/2012	07/28/12
26:10	11/15/11	10/24/11	11/30/11	01/17/12	01/20/12	03/01/12	05/2012	08/11/12
26:11	12/01/11	11/07/11	12/16/11	01/30/12	02/20/12	04/01/12	05/2012	08/27/12
26:12	12/15/11	11/22/11	12/30/11	02/13/12	02/20/12	04/01/12	05/2012	09/10/12

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 98 EXTENDING EXECUTIVE ORDER NO. 94

WHEREAS, I issued Executive Order No. 94 on June 25, 2011, declaring a state of emergency that existed in the following North Carolina counties: Robeson, Columbus, Brunswick, Bladen, Cumberland, Harnett, Sampson, Pender, New Hanover, Johnston, Duplin, Onslow, Jones, Carteret, Pamlico, Craven, Lenoir, Wayne, Wilson, Greene, Pitt, Edgecombe, Martin, Beaufort, Washington, Tyrrell, Dare, Hyde, and Nash due to the extreme fire hazard created by dry conditions and the current wildfires/forest fires in several of these counties; and

WHEREAS, the Executive Order contained a provision that it would be effective for thirty (30) days or the duration of the emergency, whichever is less; and

WHEREAS, the conditions that necessitated the state of emergency have continued and therefore requires the extension of Executive Order 94.

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

Executive Order No. 94 is hereby extended until midnight August 25, 2011. This order is effective immediately.

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



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 99

PORTS AND LOCAL ECONOMY COMPATIBILITY

WHEREAS, with Executive Order No. 32, I established the Governor's Logistics Task Force to review the State's transportation logistics, including conducting an inventory and evaluation of the State's public and private transportation and commerce assets (such as ports, inland ports, airports, highways, railroads, major distribution centers, and business and industrial parks), exploring innovative ideas in transportation and economic development, and making recommendations to create an integrated logistics plan for North Carolina; and

WHEREAS, the Department of Transportation, in conjunction with the Governor's Logistics Task Force, is conducting a study regarding North Carolina's maritime logistics options; and

WHEREAS, there has been recent public outcry regarding the planned sulfur smelting plant at the Morehead City Port due to potential incompatibility between the proposed use of the port and the existing economy within Morehead City, the Town of Beaufort, and Carteret County; and

WHEREAS, it is important for state-owned and state-operated facilities to work with local governments and private neighbors to coordinate activities in such a manner that they may have an overall positive impact in the community of which they are a part.

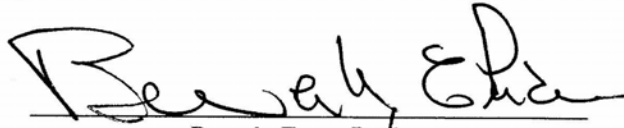
NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED**:

Section 1. The North Carolina Department of Transportation shall continue its study of the State's maritime logistics. In coordination with the Governor's Logistics Task Force and the North Carolina State Ports Authority, the Department's study shall specifically identify activities at and uses of the Wilmington and Morehead City ports that are not incompatible with the underlying economic base and existing predominant economic sectors supported by the surrounding community.

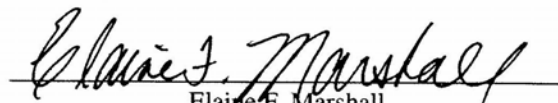
Section 2. This Executive Order is effective immediately and shall remain in effect until rescinded.

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 twenty-seventh day of July 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-sixth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 100

NORTH CAROLINA PRE-KINDERGARTEN PROGRAM

WHEREAS, the North Carolina Pre-Kindergarten program (formerly known as More at Four) is widely acknowledged to be one of the finest and most successful pre-kindergarten programs in America; and

WHEREAS, without the opportunity for appropriate development in the early years, children are in danger of falling behind their peers and remaining at a disadvantage throughout their educational careers; and

WHEREAS, studies have repeatedly shown that at-risk children who participate in the North Carolina Pre-Kindergarten program (hereinafter "NC Pre-K") are better prepared to succeed in school and that these benefits are maintained for years thereafter; and

WHEREAS, all other children in the classroom also benefit from the success of at-risk children because teachers have more time to devote to helping all children learn; and

WHEREAS, studies have shown that through early childhood education, states save millions of dollars that would otherwise be spent on early grade retention, special education, remedial programs, drop-out prevention, and a myriad of other costs; and

WHEREAS, I have initiated the Career and College – *Ready, Set, Go!* Initiative which sets as its goal that all students graduate ready for a career, college or technical training, and NC Pre-K is critical to preparing at-risk four year olds to achieve; and

WHEREAS, it is the constitutional right of all children to have the opportunity to obtain a sound basic education, a right repeatedly recognized by the North Carolina Supreme Court; and

WHEREAS, it is crucial to the futures of at-risk children and our State that we make all efforts to preserve and expand NC Pre-K; and

WHEREAS, in the 2011 Budget Bill, House Bill 200, the North Carolina General Assembly transferred NC Pre-K to the Department of Health and Human Services (hereinafter

“DHHS” or the “Department”), which operates North Carolina’s acclaimed childcare subsidy and quality rating program; and

WHEREAS, because of the long history and success of NC Pre-K as implemented by the Department of Public Instruction (hereinafter “DPI”), ongoing and substantive consultation between DHHS and DPI is critical to the continued success of NC Pre-K.

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

Section 1. The transfer of NC Pre-K from DPI to DHHS shall be implemented in a manner that maintains and strengthens the current academic standards and operation of NC Pre-K. In order to maintain high academic standards and the integrity of NC Pre-K, DHHS is directed to do the following, after consultation with DPI: (a) continue both the critical infrastructure and sufficient per child funding to ensure that current standards are not reduced; (b) require all lead teachers to obtain (within a prescribed timeframe) and maintain Birth-Kindergarten licensure or a pre-school add-on license; (c) determine, in consultation with the Early Childhood Advisory Council (hereinafter “ECAC”), whether NC Pre-K should operate as a distinct program within the Division of Child Development and Early Education (hereinafter “DCDEE”); and (d) continue to base the academic standards of NC Pre-K upon the following five domains of child development, which are essential to the success of pre-kindergarten programs: (1) approaches to learning, (2) cognitive development, (3) language development and communication, (4) emotional and social development, and (5) health and physical development.

Section 2. To ensure that the transition of NC Pre-K from DPI to DHHS is efficient, effective, and consistent with the goals of NC Pre-K, the Department shall work closely with the State Board of Education, DPI and the ECAC regarding the implementation of NC Pre-K and the requirements of this Executive Order. In addition, the Department shall work with the ECAC on an ongoing basis to continue coordination and collaboration for NC Pre-K and other early childhood programs in the State involving health, family strengthening, early care and education.

Section 3. Within two months from the effective date of this Order, the Department, in consultation with DPI, shall develop a plan for all eligible at-risk four year olds who apply to be accepted into NC Pre-K. The plan shall include the following: (a) identifying and removing barriers that may prevent participation by eligible at-risk four year olds, including requiring providers to waive any copayment that has the effect of preventing any eligible at-risk four year old from taking advantage of NC Pre-K; (b) continuing to identify eligible at-risk children using NC Pre-K criteria for identification of children who are at-risk; and (c) searching for unserved eligible at-risk four year olds.

Section 4. Within two months from the effective date of this Order, the Department, in consultation with DPI, shall develop a plan to ensure that staffing in the NC Pre-K program is aligned with the academic standards of NC Pre-K and is coordinated and aligned with the kindergarten through grade 3 program. The Department, likewise in consultation with DPI, shall determine whether it would improve the coordination of services delivered to at-risk children to

physically locate any of its NC Pre-K positions at DPI along with other educational pre-kindergarten efforts funded through and residing at DPI.

Section 5. Within two months from the effective date of this Order, the Department, in consultation with DPI, shall develop a detailed plan for providing financial support to local classrooms—including leveraging other financing sources—that will enable them to meet the high standards necessary to keep North Carolina’s children at the forefront of learning opportunities and academic achievement and to maintain a truly diverse system of services by encouraging both public and private providers. The Department also shall consult with DPI regarding the coordination and management of the multiple funding streams that support NC Pre-K.

Section 6. Under the North Carolina Constitution, the State Board of Education possesses the responsibility for supervising and administering the free public school system. Pre-kindergarten is a critical academic program to enable at-risk children to be successful in the public schools. The State Board of Education and DPI are encouraged to continue their strong presence in early education reform, particularly with respect to strengthening the pre-kindergarten through grade 3 continuum and the necessary supports to ensure child success beyond the pre-kindergarten year.

Section 7. The alignment of the pre-kindergarten program with the kindergarten through grade 3 curriculum and other early learning initiatives at DPI is critical. To implement this order, DHHS shall consult with, and, as appropriate, enter into Memoranda of Understanding with DPI to address agency coordination and maintenance of high standards for the pre-kindergarten program.

Section 8. Public schools have provided cost-effective, high quality pre-kindergarten services, and it is important that they continue to participate as providers. The Department is directed to exercise its legal authority to remove all barriers so as to encourage participation by public schools in NC Pre-K. Pursuant to the authority granted to DHHS in the 2011 Budget Bill, House Bill 200, DHHS is directed to waive any requirement to blend private pay families with pre-kindergarten subsidized children for public school classrooms. The Division of Child Development and Early Education shall give public school classrooms access to Subsidized Early Education for Kids (SEEK), the new child care attendance reporting and payment delivery system. Pursuant to the 2011 Budget Bill, public school classrooms will have a one-year transition period to become licensed through DCDEE and may continue to operate NC Pre-K classrooms for the 2011-2012 school year. The Department shall create a transition plan to assist public schools in obtaining licensure through DCDEE. If meeting licensure standards for a public school constitutes a significant barrier to access to NC Pre-K for at-risk students, the public school may request a waiver of the licensure requirement from DCDEE.

Section 9. As funds are available, the Department shall maintain child identifiers currently in place for certain publicly-funded pre-kindergarten children and shall expand them across the early childhood system for the purpose of linking them to the DPI data system (CEDARS) in order to document longitudinal child outcomes for children served.

Section 10. In order to meet the need for highly qualified teachers in NC Pre-K classrooms, all state higher educational institutions with four-year degree programs leading to a Birth-Kindergarten teaching license and community colleges offering early childhood associate degree programs are encouraged to develop strong and effective articulation agreements that accelerate the completion time for students who transfer into Birth-Kindergarten teacher education programs. All community colleges that participate in these agreements are strongly encouraged to have early childhood degree programs which are accredited within three years by the Early Childhood Associates Degree Accreditation Program of the National Association for the Education of Young Children.

Section 11. This Executive Order is effective immediately and 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 tenth day of August 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-sixth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER 101

TERMINATION OF EXECUTIVE ORDERS 94 and 98

WHEREAS, I issued Executive Order No. 94 on June 25, 2011, declaring that a state of emergency existed in the following North Carolina counties: Robeson, Columbus, Brunswick, Bladen, Cumberland, Harnett, Sampson, Pender, New Hanover, Johnston, Duplin, Onslow, Jones, Carteret, Pamlico, Craven, Lenoir, Wayne, Wilson, Greene, Pitt, Edgecombe, Martin, Beaufort, Washington, Tyrrell, Dare, Hyde, and Nash due to the extreme fire hazard created by dry conditions and the wildfires/forest fires in several of those counties; and

WHEREAS, I extended Executive Order No. 94, by issuing Executive Order 98 on July 25, 2011, because the conditions had not improved in the impacted counties; and

WHEREAS, the North Carolina Forest Service of the North Carolina Department of Agriculture has rescinded the burning ban in the impacted areas on August 8, 2011, and the wildfires have been significantly contained.

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

Executive Orders No. 94 and 98 issued June 25, 2011, and July 25, 2011, are hereby terminated. This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this tenth day of August 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-sixth.



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State



U.S. Department of Justice

Civil Rights Division

TCH:RSB:KR:SMC:tst
DJ 166-012-3
2011-2144
2011-2305

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

July 19, 2011

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

Dear Mr. Holec:

This refers to four annexations (Ordinance Nos. 11-017, 11-024, 11-034 and 11-037 (2011)) and their designation to districts of 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 submissions on June 6 and 16, 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 these submissions 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.
for T. Christian Herren, Jr.
Chief, Voting Section



U.S. Department of Justice
Civil Rights Division

TCH:RSB:MSR:ZB:par
DJ 166-012-3
2011-2456

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

August 4, 2011

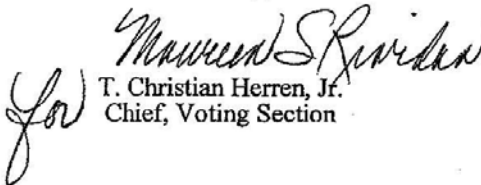
Adam S. Mitchell, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, North Carolina 27602-1151

Dear Mr. Mitchell:

This refers to the temporary change in the general election date and the temporary extension of terms of office, for the Town of Tarboro in Edgecombe 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 June 27, 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,


T. Christian Herren, Jr.
Chief, Voting Section

RECEIVED

AUG 08 2011

Tharrington Smith

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to adopt the rule cited as 10A NCAC 09 .1725 and amend the rules cited as .0604, .1719 and .2904.

Link to agency website pursuant to G.S. 150B.19.1(c):
<http://ncchildcare.dhhs.state.nc.us/general/whatsnew.asp>

Proposed Effective Date: January 1, 2012

Public Hearing:

Date: September 27, 2011

Time: 1:30 p.m.

Location: Division of Child Development and Early Education, 319 Chapanoke Road, Suite 120, Room 300, Raleigh, NC

Reason for Proposed Action: The NC Child Care Commission proposes rule-making in direct response to comments that were received from the public and the Child Fatality Task Force requesting rule-making to improve the safety and welfare of children while in child care. Amendments to Rules .0604 and .1719(6) are proposed as the result of incidents in which children were burned by the contents within a crock pot when the electrical cord was pulled and the pot fell down. The amended rule states that small appliances with heating elements and/or cords shall not be accessible to preschool children.

The adoption of Rule .1725 is proposed as a result of concerns related to injuries from small appliances as well as an incident in which a child was attacked by a dog while in care at a family child care home. This rule would require the provider to inform parents if they do or do not carry accidental or liability insurance. The parent can then decide whether or not to enroll their child in the facility. Amendments to Rules .1719(10) and (11) also would notify parents if the facility maintains any animals on the premises and would require the child care provider to secure all animals (indoors or outdoors) while children are in care.

Rule 10A NCAC 09 .2904(c) regards the enrollment of children who are typically developing in developmental day preschool classrooms. The goal of the rule is to have inclusive classrooms so that developmental day classrooms include typically developing children along with children that have special needs. However, during regular child care program visits, DCDEE found that the rule causes difficulties in classrooms due to frequent enrollment changes, which are common and lead to programs being deemed as out of compliance with the rule. In order to comply with the rule as it is now, it would require the

dismissal of 50% of the special needs children served in order to accommodate typical children. Schools continually turn away special needs children whose parents want placement for their children. Without an amendment to the rule, the program and services currently provided would be lost to the community and the children of Wake County. Inclusive classrooms that include typically developing children along with children with special needs is also considered as best practice according to current early childhood research. Amendments to Rule .2904(c), will eliminate the enrollment capacity of 50% or more for typically developing children in a developmental day preschool classroom

Procedure by which a person can object to the agency on a proposed rule: Anyone wishing to comment on these proposed rules or would like to request copies of the rules, should contact Dedra Alston, Rule-making Coordinator, NC Division of Child Development and Early Education, 2201 Mail Service Center, Raleigh, NC 27699-2201, at (919)890-7060 or Dedra.Alston@dhhs.nc.gov. Written comments will be accepted through **October 31, 2011**. Oral Comments may be made during the public hearing. The Commission Chair may impose time limits for oral remarks.

Comments may be submitted to: Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27603, phone (919)890-7060, fax (919)662-4568, email Dedra.Alston@dhhs.nc.gov

Comment period ends: October 31, 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 (check all that apply).

☐

State funds affected

☐

Environmental permitting of DOT affected

Analysis submitted to Board of Transportation

- ☐ **Local funds affected**
Date submitted to OSBM:
☐ **Substantial economic impact (≥\$500,000)**
☐ **Approved by OSBM**
☒ **Approval by OSBM not required**

CHAPTER 09 - CHILD CARE RULES

**SECTION .0600 - SAFETY REQUIREMENTS FOR
CHILD CARE CENTERS**

**10A NCAC 09 .0604 GENERAL SAFETY
REQUIREMENTS**

- (a) Potentially hazardous items, such as archery equipment, hand and power tools, nails, chemicals, propane stoves, lawn mowers, and gasoline or kerosene, whether or not intended for use by children, shall be stored in locked areas or with other safeguards, or shall be removed from the premises.
- (b) Firearms and ammunition are prohibited in a licensed child care program unless carried by a law enforcement officer.
- (c) Electrical outlets not in use which are located in space used by the children shall be covered with safety plugs unless located behind furniture or equipment that cannot be moved by a child.
- (d) Electric fans shall be mounted out of the reach of children or shall be fitted with a mesh guard to prevent access by children.
- (e) All electrical appliances shall be used only in accordance with the manufacturer's instructions. For small appliances with heating elements, such as bottle warmers, crock pots, irons, coffee pots, or curling irons, neither the appliance nor the cord, if applicable, shall be accessible to preschool children.
- (f) Electrical cords shall not be accessible to infants and toddlers. Extension cords, except as approved by the local fire inspector, shall not be used. Frayed or cracked electrical cords shall be replaced.
- (g) All materials used for starting fires, such as matches and lighters, shall be kept in locked storage or shall be stored out of the reach of children.
- (h) Smoking is not permitted in space used by children when children are present. All smoking materials shall be kept in locked storage or out of the reach of children.
- (i) Fuel burning heaters, fireplaces and floor furnaces shall be provided with a protective screen attached securely to substantial supports to prevent access by children and to prevent objects from being thrown into them.
- (j) Plants that are toxic shall not be in indoor or outdoor space that is used by or is accessible to children.
- (k) Air conditioning units shall be located so that they are not accessible to children or shall be fitted with a mesh guard to prevent objects from being thrown into them.
- (l) Gas tanks shall be located so they are not accessible to the children or shall be in a protective enclosure or surrounded by a protective guard.
- (m) Cribs and playpens shall be placed so that the children occupying them shall not have access to cords or ropes, such as venetian blind cords.
- (n) Once a day, prior to initial use, the indoor and outdoor premises shall be checked for debris, vandalism, and broken equipment. Debris shall be removed and disposed.

(o) Plastic bags, toys, and toy parts small enough to be swallowed, and materials that can be easily torn apart such as foam rubber and styrofoam, shall not be accessible to children under three years of age, except that styrofoam plates and larger pieces of foam rubber may be used for supervised art activities and styrofoam plates may be used for food service. Latex and rubber balloons shall not be accessible to children under five years of age.

(p) When non-ambulatory children are in care, a crib or other device shall be available for evacuation in case of fire or other emergency. The crib or other device shall be fitted with wheels in order to be easily moveable, have a reinforced bottom, and shall be able to fit through the designated fire exit. For centers that do not meet institutional building code, and the exit is more than eight inches above grade, the center shall develop a plan to ensure a safe and timely evacuation of the crib or other device. This plan shall be demonstrated to a Division representative for review and approval. During the monthly fire drills required by Rule 10A NCAC 09 .0302(d)(4), the evacuation crib or other device shall be used in the manner described in the evacuation plan.

(q) A first aid kit must always be available on site.

Authority G.S. 110-85; 110-91(3),(6); 143B-168.3.

**SECTION .1700 –FAMILY CHILD CARE HOME
REQUIREMENTS**

**10A NCAC 09 .1719 REQUIREMENTS FOR A SAFE
INDOOR/OUTDOOR ENVIRONMENT**

The operator shall maintain a safe indoor and outdoor environment for the children in care. In addition, the operator shall:

- (1) keep all areas used by the children, indoors and outdoors, clean and orderly and free of items which are potentially hazardous to children. This includes the removal of small items that a child can swallow. In addition, loose nails or screws and splinters shall be removed on inside and outside equipment;
- (2) safely store equipment and supplies such as lawnmowers, power tools, or nails, so they are inaccessible to children;
- (3) ensure that all stationary outdoor equipment is firmly anchored and is not installed over concrete or asphalt. Footings which anchor the equipment shall not be exposed;
- (4) securely mount electric fans out of the reach of children or have a mesh guard on each fan;
- (5) cover all electrical outlets not in use and remove old, cracked or frayed cords in occupied outlets;
- (6) ensure that, for small appliances with heating elements, such as bottle warmers, crock pots, irons, coffee pots, or curling irons, neither the appliance nor the cord, if applicable, shall be accessible to preschool children;
- ~~(6)(7)~~ have solid and safe indoor and outdoor stairs and steps if these are used by the children.

Indoor and outdoor stairs with two or more steps which are used by the children shall be railed. Indoor stairs with more than two steps shall be made inaccessible to children in care who are two years old or younger;

- (7)(8) maintain any swimming pools or wading pools on the premises in a manner which will safeguard the lives and health of the children. All swimming or wading pools used by children in care shall meet the "Rules Governing Public Swimming Pools," in accordance with 15A NCAC 18A .2500 which are hereby incorporated by reference including subsequent amendments. A copy of these Rules is on file at the Division at the address given in Rule .0102 of this ~~Subchapter~~ Chapter or may be obtained at no cost by writing the North Carolina Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 26799-1630;
- (8)(9) enclose any in-ground swimming pools by a fence four feet high to prevent chance access by children. The swimming pool shall be separate from the play area. Access to the water in above ground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to the children;
- (9)(10) ~~ensure that animals that are potentially dangerous to children as determined by the Division are safely secured in areas not accessible to the children in care; and secure all dogs in areas that are not accessible to children in care, indoors and outdoors, except those times when dogs are used in supervised activities or pet therapy programs;~~
- (11) notify parents prior to enrollment of children of all animals on the Family Child Care Home premises. In addition, before new animals come onto the Family Child Care Home premises, parents shall be notified; and
- (10)(12) safely store all combustible materials that may create a fire hazard.

Authority G.S. 110-85; 110-88; 110-91(3),(4),(5),(6).

10A NCAC 09 .1725 ACCIDENT/LIABILITY INSURANCE

- (a) The legal operator shall provide written notification to the parent of each child enrolled that specifies the amount of accident or liability insurance carried by the Family Child Care Home (FCCH) operator or the lack of accident or liability insurance coverage.
- (b) Each parent must sign a statement which attests that a copy of the FCCH's written notice regarding insurance was given to and discussed with him or her. This statement shall be kept in the child's file.

Authority G.S. 110-85; 110-88.

SECTION .2900 - DEVELOPMENTAL DAY SERVICES

10A NCAC 09 .2904 PROGRAM REQUIREMENTS

- (a) Children shall participate in daily activities outlined in a plan of care such as an Individualized Family Service Plan (IFSP), Individualized Education Program (IEP), Person Centered Plan (PCP), or for children who are typically developing, an activity plan developed by the center. Activities shall allow children to participate in whole group, as part of a group, or independently.
- (b) In addition to the restrictions specified in 10A NCAC 09 .0713 regarding ages and grouping of children, preschool children aged three and older shall not be grouped with school aged children except for special events or activities such as birthday, holiday, or cultural celebrations and special presentations such as puppet or magic shows, a special story teller, or a discussion of safety practices by a fireman or nurse. Children aged birth to five years may be cared for in groups with older children for the first and last operating hour of the day provided the staff/child ratio for the youngest child in the group is maintained.
- (c) ~~During the 10 month school year (as defined by the State Board of Education), 75 percent or more of classrooms with preschool children aged three and older, shall maintain an enrollment capacity of 50 percent or more typically developing children. In addition to operational policies required by 10A NCAC 09 .2805(a), Developmental Day Center policies shall also include a description of the ways that children with special needs have opportunities to interact with children who are typically developing.~~

Authority G.S. 110-85; 110-88(14).

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0311.

Link to agency website pursuant to G.S. 150B.19.1(c):
<http://portal.ncdenr.org/web/wq/ps/csu/reclass>

Proposed Effective Date: March 1, 2012

Public Hearing:

Date: September 29, 2011

Time: 7:00 p.m.

Location: Williamsburg Elementary School, 2830 NC Hwy 87, Reidsville, NC 27320

Reason for Proposed Action: *Portions of the Haw River in Alamance, Caswell, Guilford, and Rockingham Counties (Cape Fear River Basin) are proposed to be reclassified to Water Supply-IV (WS-IV) Critical Area (CA) and WS-IV (Protected Area or PA). During the drought of 2002, the City of Greensboro (City) received permission from the Division of Environmental Health and funding from the Division of Water*

Resources to construct and use an emergency intake on the Haw River. The intake, which is a permanent structure, was utilized from October 2007 through April 2008. Continued use of the intake as an emergency intake requires the reclassification of the surface waters draining to the intake.

For a riverine intake, a CA is the land and waters approximately 0.5 miles linearly upstream and draining to an intake. For this proposal, the CA would extend along the river from the intake, which is located approximately 650 feet upstream of Guilford County Road 2712, to a point approximately 0.5 miles upstream of the intake and includes approximately 316 acres of land. There are no named tributaries to the Haw River in the proposed CA, which is located entirely within Guilford County A PA for a riverine intake is the lands and waters located approximately 10 miles run-of-the-river upstream and draining to an intake. For this proposal, the PA would extend along the river from a point approximately 0.5 miles upstream of the intake to a point approximately 0.6 mile downstream of U.S. Route 29 and includes approximately 18,501 acres of land. The proposed PA includes two entire named tributaries, as well as the lower portion of one named tributary, to the Haw River, and these tributaries are proposed to be reclassified to include the WS-IV designation. The PA is located within Rockingham, Guilford, Alamance and Caswell Counties.

If reclassified, regulations affecting new development as well as existing and new wastewater discharges would apply throughout the water supply watershed. Other requirements, which would apply only in the CA, are additional treatment for new industrial process wastewater discharges, no new landfills, and no new land application sites. Furthermore, upon reclassification, Alamance County would be expected to implement the Jordan Lake buffer requirements because the Jordan Lake rules apply to the entire proposed watershed; Caswell, Guilford and Rockingham Counties are currently implementing the Jordan buffer requirement in the proposed watershed. Finally, the proposed watershed is located entirely within the jurisdictions of Alamance, Caswell, Guilford, and Rockingham Counties. These counties would be required to, and have agreed to, modify their water supply watershed protection ordinances within 270 days after the reclassification effective date.

In the proposed water supply watershed, there are three NPDES permitted wastewater discharges and two permitted animal operations; none of these operations would be impacted by the proposed reclassification. In addition, there are no land application sites in the proposed watershed's CA. There are no known planned discharges and developments in the proposed reclassification area, and no known plans for existing discharges to become process industrial dischargers in the proposed area.

The public hearing and comment period are to be held in accordance with the federal Water Pollution Control Act (the Clean Water Act) which requires States, at least every three years, to review and revise water quality standards to protect aquatic life and human health. These standards are provided in existing rules NCAC 15A 02B .0100 and .0201 through .0228. The process is called the Triennial Review and includes an assessment and revision of the designated uses of waters (classifications) and the water quality criteria (standards), which are based on the designated uses. More specifically, the

public hearing and comment period are to address the potential assignment of a WS-IV classification to a portion of the Haw River watershed for the purpose of protecting its proposed designated use as a public water supply. This proposal will result in changing the water quality standards for waters within the above-mentioned Critical Area and Protected Area.

Procedure by which a person can object to the agency on a proposed rule: You may attend the public hearing and provide verbal comments that specifically address the proposed reclassification of the Haw River. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. In addition, written comments addressing the proposed reclassification of the Haw River will be accepted until October 31, 2011.

All persons interested and potentially affected by the proposal are encouraged to read this entire notice and make comments on the proposed reclassification. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text [General Statute 150B 21.2 (g)]. Written comments on the proposed reclassification of the Haw River may be submitted to Elizabeth Kountis of the Water Quality Planning Section at the postal address, e-mail address, or fax number listed in this notice.

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

Comment period ends: October 31, 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 (check all that apply).

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☒ Analysis submitted to Board of Transportation
- ☒ Local funds affected
- ☐ Date submitted to OSBM: June 16, 2011
- ☐ Substantial economic impact (≥\$500,000)

- ☒ **Approved by OSBM**
☐ **Approval by OSBM not required**

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 02B - SURFACE WATER AND
WETLAND STANDARDS**

**SECTION .0300 - ASSIGNMENT OF STREAM
CLASSIFICATIONS**

15A NCAC 02B .0311 CAPE FEAR RIVER BASIN

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

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Winston-Salem Regional Office
585 Woughtown Street
Winston-Salem, North Carolina
 - (B) Fayetteville Regional Office
225 Green Street
Systel Building Suite 714
Fayetteville, North Carolina
 - (C) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (D) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina
 - (E) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina
 - (F) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The Cape Fear River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) December 14, 1980;
- (4) August 9, 1981;
- (5) April 1, 1982;
- (6) December 1, 1983;
- (7) January 1, 1985;
- (8) August 1, 1985;
- (9) December 1, 1985;
- (10) February 1, 1986;
- (11) July 1, 1987;
- (12) October 1, 1987;
- (13) March 1, 1988;
- (14) June 1, 1988;
- (15) July 1, 1988;
- (16) January 1, 1990;
- (17) August 1, 1990;
- (18) August 3, 1992;

- (19) September 1, 1994;
- (20) August 1, 1998;
- (21) April 1, 1999;
- (22) August 1, 2002;
- (23) November 1, 2004;
- (24) November 1, 2007;
- (25) January 1, 2009;
- (26) August 11, 2009;
- (27) September 1, ~~2009~~2009;
- (28) March 1, 2012.

(c) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective June 1, 1988 as follows:

- (1) Cane Creek [Index No. 16-21-(1)] from source to a point 0.5 mile north of N.C. Hwy. 54 (Cane Reservoir Dam) including the Cane Creek Reservoir and all tributaries has been reclassified from Class WS-III to WS-I.
- (2) Morgan Creek [Index No. 16-41-1-(1)] to the University Lake dam including University Lake and all tributaries has been reclassified from Class WS-III to WS-I.

(d) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective July 1, 1988 by the reclassification of Crane Creek (Crains Creek) [Index No. 18-23-16-(1)] from source to mouth of Beaver Creek including all tributaries from C to WS-III.

(e) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows:

- (1) Intracoastal Waterway (Index No. 18-87) from southern edge of White Oak River Basin to western end of Permuda Island (a line from Morris Landing to Atlantic Ocean), from the eastern mouth of Old Topsail Creek to the southwestern shore of Howe Creek and from the southwest mouth of Shinn Creek to channel marker No. 153 including all tributaries except the King Creek Restricted Area, Hardison Creek, Old Topsail Creek, Mill Creek, Futch Creek and Pages Creek were reclassified from Class SA to Class SA ORW.
- (2) Topsail Sound and Middle Sound ORW Area which includes all waters between the Barrier Islands and the Intracoastal Waterway located between a line running from the western most shore of Mason Inlet to the southwestern shore of Howe Creek and a line running from the western shore of New Topsail Inlet to the eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.
- (3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach

Inlet was reclassified from Class SA to Class SA ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows: Big Alamance Creek [Index No. 16-19-(1)] from source to Lake Mackintosh Dam including all tributaries has been reclassified from Class WS-III NSW to Class WS-II NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective June 1, 1994 as follows:

- (1) The Black River from its source to the Cape Fear River [Index Nos. 18-68-(0.5), 18-68-(3.5) and 18-65-(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
- (2) The South River from Big Swamp to the Black River [Index Nos. 18-68-12-(0.5) and 18-68-12(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
- (3) Six Runs Creek from Quewhiffle Swamp to the Black River [Index No. 18-68-2] was reclassified from Class C Sw to Class C Sw ORW.

(i) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective September 1, 1994 with the reclassification of the Deep River [Index No. 17-(36.5)] from the Town of Gulf-Goldston water supply intake to US highway 421 including associated tributaries from Class C to Classes C, WS-IV and WS-IV CA.

(j) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 1998 with the revision to the primary classification for portions of the Deep River [Index No. 17-(28.5)] from Class WS-IV to Class WS-V, Deep River [Index No. 17-(41.5)] from Class WS-IV to Class C, and the Cape Fear River [Index 18-(10.5)] from Class WS-IV to Class WS-V.

(k) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of Buckhorn Creek (Harris Lake)[Index No. 18-7-(3)] from the backwaters of Harris Lake to the Dam at Harris Lake from Class C to Class WS-V.

(l) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1,

1999 with the reclassification of the Deep River [Index No. 17-(4)] from the dam at Oakdale-Cotton Mills, Inc. to the dam at Randleman Reservoir (located 1.6 mile upstream of U.S. Hwy 220 Business), and including tributaries from Class C and Class B to Class WS-IV and Class WS-IV & B. Streams within the Randleman Reservoir Critical Area have been reclassified to WS-IV CA. The Critical Area for a WS-IV reservoir is defined as 0.5 mile and draining to the normal pool elevation of the reservoir. All waters within the Randleman Reservoir Water Supply Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in 15A NCAC 02B .0248.

(m) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 2002 as follows:

- (1) Mill Creek [Index Nos. 18-23-11-(1), 18-23-11-(2), 18-23-11-3, 18-23-11-(5)] from its source to the Little River, including all tributaries was reclassified from Class WS-III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.
- (2) McDeed's Creek [Index Nos. 18-23-11-4, 18-23-11-4-1] from its source to Mill Creek, including all tributaries was reclassified from Class WS III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.

The "@" symbol as used in this Paragraph means that if the governing municipality has deemed that a development is covered under a "5/70 provision" as described in Rule 15A NCAC 02B .0215(3)(b)(i)(E) (Fresh Surface Water Quality Standards for Class WS-III Waters), then that development is not subject to the stormwater requirements as described in rule 15A NCAC 02H .1006 (Stormwater Requirements: High Quality Waters).

(n) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective November 1, 2004 as follows:

- (1) A portion of Rocky River [Index Number 17-43-(1)] from a point approximately 0.3 mile upstream of Town of Siler City upper reservoir dam to a point approximately 0.3 mile downstream of Lacy Creek from WS-III to WS-III CA.
- (2) A portion of Rocky River [Index Number 17-43-(8)] from dam at lower water supply reservoir for Town of Siler City to a point approximately 65 feet below dam (site of proposed dam) from C to WS-III CA.
- (3) A portion of Mud Lick Creek (Index No. 17-43-6) from a point approximately 0.4 mile upstream of Chatham County SR 1355 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.
- (4) A portion of Lacy Creek (17-43-7) from a point approximately 0.6 mile downstream of Chatham County SR 1362 to Town of Siler

City lower water supply reservoir from WS-III to WS-III CA.

(o) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water Quality maintains a Geographic Information Systems data layer of these UWLs.

- (1) Military Ocean Terminal Sunny Point Pools, all on the eastern shore of the Cape Fear River [Index No. 18-(71)] were reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (2) Salters Lake Bay near Salters Lake [Index No. 18-44-4] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (3) Jones Lake Bay near Jones Lake [Index No. 18-46-7-1] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (4) Weymouth Woods Sandhill Seep near Mill Creek [18-23-11-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (5) Fly Trap Savanna near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (6) Lily Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (7) Grassy Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (8) The Neck Savanna near Sandy Run Swamp [Index No. 18-74-33-2] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (9) Bower's Bog near Mill Creek [Index No. 18-23-11-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (10) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(p) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective January 1, 2009 as follows:

- (1) a portion of Cape Fear River [Index No. 18-(26)] (including tributaries) from Smithfield Packing Company's intake, located approximately 2 miles upstream of County Road 1316, to a point approximately 0.5 miles upstream of Smithfield Packing Company's intake from Class C to Class WS-IV CA.
- (2) a portion of Cape Fear River [Index No. 18-(26)] (including tributaries) from a point approximately 0.5 miles upstream of Smithfield Packing Company's intake to a point approximately 1 mile upstream of Grays Creek from Class C to Class WS-IV.

(q) The schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 11,

2009 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at B. Everett Jordan Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the B. Everett Jordan Reservoir Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in 15A NCAC 02B .0262 through .0272.

(r) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective September 1, 2009 with the reclassification of a portion of the Haw River [Index No. 16-(28.5)] from the Town of Pittsboro water supply intake, which is located approximately 0.15 mile west of U.S. 15/501, to a point 0.5 mile upstream of the Town of Pittsboro water supply intake from Class WS-IV to Class WS-IV CA.

(s) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective March 1, 2012 with the reclassification of a portion of the Haw River [Index No. 16-(1)] from the City of Greensboro's intake, located approximately 650 feet upstream of Guilford County 2712, to a point approximately 0.5 miles upstream of the intake from Class WS-V NSW to Class WS-IV CA NSW, and a portion of the Haw River [Index No. 16-(1)] from a point approximately 0.5 miles upstream of the intake to a point nearly 0.6 miles downstream of U.S. Route 29 from Class WS-V NSW to Class WS-IV NSW.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10B .0223.

Link to agency website pursuant to G.S. 150B.19.1(c): http://www.ncwildlife.org/HotTopics/documents/RuleText/h6_RuleText.pdf

Proposed Effective Date: January 1, 2012

Public Hearing:

Date: September 22, 2011

Time: 7:00 p.m.

Location: Nash Community College, 522 N. Old Carriage Road, Rocky Mount, NC 27804

Reason for Proposed Action: *The feral swine rule is proposed for adoption to establish a season and bag limits based on newly enacted State legislation. (SL 2011-369)*

Procedure by which a person can object to the agency on a proposed rule: *Objections may be submitted in writing or via electronic mail during the comment period to C. Norman Young, Jr., 9001 Mail Service Center, Raleigh, NC 27699-9011, email nyoung@ncdoj.gov.*

Comments may be submitted to: *Kate Pipkin, 1701 Mail Service Center, Raleigh, NC 27699-1721, phone (919)707-0065, email Kathryn.pipkin@ncwildlife.org*

Comment period ends: *October 31, 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 (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ Approval by OSBM not required

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0200 - HUNTING

15A NCAC 10B .0223 FERAL SWINE

(a) Open season. There is no closed season for taking feral swine by hunting.

(b) Bag limits. There are no bag limit restrictions.

Authority G.S. 113-129; 113-134; 113-291; 113-291.2.

*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 July 21, 2011.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Local Board Members and Employees</u>	04	NCAC	02R	.2001*	25:18 NCR
<u>Local Board Training Courses</u>	04	NCAC	02R	.2002	25:18 NCR
<u>Participation Standards and Attendance Requirements</u>	04	NCAC	02R	.2003	25:18 NCR

CHILD CARE COMMISSION

<u>Application for a License for a Child Care Center</u>	10A	NCAC	09	.0302*	25:14 NCR
<u>Application for a License for a Family Child Care Home</u>	10A	NCAC	09	.1702*	25:14 NCR
<u>Centers Operating under G.S. 110-106</u>	10A	NCAC	09	.2101*	25:14 NCR

SOCIAL SERVICES COMMISSION

<u>New Licenses</u>	10A	NCAC	70E	.0703	25:19 NCR
<u>Relicensure and Renewal</u>	10A	NCAC	70E	.0704*	25:19 NCR
<u>Method of Mutual Home Assessment</u>	10A	NCAC	70E	.0802	25:19 NCR
<u>Responsible Individual List</u>	10A	NCAC	70E	.1115*	25:19 NCR
<u>Licensure</u>	10A	NCAC	70F	.0102	25:19 NCR
<u>Staff</u>	10A	NCAC	70F	.0207	25:19 NCR
<u>Preplacement Assessment</u>	10A	NCAC	70H	.0405*	25:19 NCR
<u>Licensing Actions</u>	10A	NCAC	70I	.0101*	25:19 NCR
<u>Personnel Qualifications</u>	10A	NCAC	70I	.0404	25:19 NCR
<u>Licensing Actions</u>	10A	NCAC	70K	.0103*	25:19 NCR
<u>Personnel</u>	10A	NCAC	70K	.0201*	25:19 NCR

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Basic Law Enforcement Training Course for Deputies</u>	12	NCAC	10B	.0502*	25:19 NCR
<u>Detention Officer Certification Course</u>	12	NCAC	10B	.0601*	25:19 NCR
<u>Evaluation for Training Waiver</u>	12	NCAC	10B	.0603*	25:19 NCR
<u>Comp Written Exam - Detention Officer Certification Course</u>	12	NCAC	10B	.0606*	25:19 NCR
<u>Trainee Attendance</u>	12	NCAC	10B	.1305*	25:19 NCR

LABOR, DEPARTMENT OF

<u>Certificate Inspections</u>	13	NCAC	13	.0211*	25:18 NCR
--------------------------------	----	------	----	--------	-----------

CHIROPRACTIC EXAMINERS, BOARD OF

<u>Agreements to Provide Financing or Management</u>	21	NCAC	10	.0211*	25:14 NCR
--	----	------	----	--------	-----------

Services

IRRIGATION CONTRACTORS' LICENSING BOARD

<u>Surety Bonds and Legal Status</u>	21	NCAC	23	.0102*	25:13 NCR
<u>System Design Objectives and Requirements</u>	21	NCAC	23	.0401*	25:13 NCR
<u>Water Pressure</u>	21	NCAC	23	.0404*	25:13 NCR
<u>Components and Zone Designs</u>	21	NCAC	23	.0406*	25:13 NCR

NURSING, BOARD OF

<u>Existing Nursing Program</u>	21	NCAC	36	.0303*	25:16 NCR
<u>Faculty</u>	21	NCAC	36	.0318*	25:16 NCR

ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR

<u>Records of Board Proceedings</u>	21	NCAC	56	.0401	25:20 NCR
<u>Requirements for Licensing</u>	21	NCAC	56	.0501*	25:20 NCR
<u>Expirations and Renewals of Certificates</u>	21	NCAC	56	.0505*	25:20 NCR
<u>Waiver for Licensees Serving on Active Duty in the Armed ...</u>	21	NCAC	56	.0506	25:20 NCR
<u>Expirations and Renewals of Certificates</u>	21	NCAC	56	.0606*	25:20 NCR
<u>Waiver for Licensees Serving on Active Duty in the Armed ...</u>	21	NCAC	56	.0607	25:20 NCR
<u>Annual Renewal</u>	21	NCAC	56	.0804*	25:20 NCR
<u>Standard Certification Requirements</u>	21	NCAC	56	.1103*	25:20 NCR
<u>Improper Practice by a Licensee</u>	21	NCAC	56	.1301*	25:20 NCR
<u>Unlawful Practice by and Unlicensed Person</u>	21	NCAC	56	.1302	25:20 NCR
<u>Classification of Vertical Control Survey</u>	21	NCAC	56	.1605*	25:20 NCR
<u>Specifications for Topographic and Planimetric Mapping.</u>	21	NCAC	56	.1606*	25:20 NCR
<u>Global Positioning Systems Surveys</u>	21	NCAC	56	.1607*	25:20 NCR
<u>Classification/Land Information System/Geographic Informa...</u>	21	NCAC	56	.1608*	25:20 NCR
<u>Requirements</u>	21	NCAC	56	.1703	25:20 NCR
<u>Determination of Credit</u>	21	NCAC	56	.1705*	25:20 NCR
<u>Exemptions</u>	21	NCAC	56	.1707*	25:20 NCR
<u>Sponsors</u>	21	NCAC	56	.1713*	25:20 NCR

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 02R .2001 LOCAL BOARD MEMBERS AND EMPLOYEES

(a) All board members, finance officers and general managers of local boards shall complete a Commission training course for local boards by August 2, 2011. Completion of a Commission training course for local boards prior to May 2, 2011, is acceptable. Thereafter:

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

Commission training course for local boards within 12 months of any subsequent appointment.

- (2) All finance officers and general managers shall complete a Commission training course for local boards within 12 months of their initial employment.
- (3) After taking the initial Commission training course for local boards, all finance officers and general managers shall complete a Commission training course for local boards every three years that they are employed by a local board.

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

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

*History Note: Authority G.S. 18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b);
Temporary Adoption Eff. May 2, 2011;
Eff. August 1, 2011.*

04 NCAC 02R .2002 LOCAL BOARD TRAINING COURSES

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

*History Note: Authority G.S. 18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b);
Temporary Adoption Eff. May 2, 2011;
Eff. August 1, 2011.*

04 NCAC 02R .2003 PARTICIPATION STANDARDS AND ATTENDANCE REQUIREMENTS

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

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

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

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

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

*History Note: Authority G.S. 18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b);
Temporary Adoption Eff. May 2, 2011;
Eff. August 1, 2011.*

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, shall apply for a license for a child care center using the form provided by the Division. If the operator will be a group, organization, or other entity, an officer of the entity who is legally empowered to bind the operator shall complete and sign the application.

(b) The applicant shall arrange for inspections of the center by the local health, building and fire inspectors. The applicant shall provide an approved inspection report signed by the appropriate inspector to the Division representative. A provisional classification may be accepted in accordance with Rule .0401(1) of this Chapter. When a center does not conform with a building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The Division shall accept the inspector's documentation in lieu of compliance with the standard. Nothing in this Rule precludes or interferes with issuance of a provisional license pursuant to Section .0400 of this Chapter.

(c) The applicant, or the person responsible for the day-to-day operation of the center, shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center shall comply with applicable requirements for activities, equipment, and staff/child ratios for the capacity of the center and type of license requested. The applicant will make the following written information available to the Division for review to verify compliance with provisions of this Chapter and G.S. 110:

- (1) daily schedules;
- (2) activity plans;
- (3) emergency care plan;
- (4) discipline policy;
- (5) incident reports;
- (6) incident logs; and
- (7) a copy of the certified criminal history check for the applicant, or the applicant's designee as defined in Rule .2701(g) of this Chapter, from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months.

(d) The applicant shall demonstrate to the Division representative that measures will be implemented to have the following information in the center's files and readily available to the representative for review:

- (1) Staff records which include an application for employment and date of birth; documentation

- of previous education, training, and experience; medical and health records; documentation of participation in training and staff development activities; and required criminal records check documentation;
 - (2) Children's records which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;
 - (3) Daily attendance records;
 - (4) Daily records of arrival and departure times at the center for each child;
 - (5) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the signature of the person who conducted the drill;
 - (6) Records of monthly playground inspections documented on a checklist provided by the Division; and
 - (7) Records of medication administered.
- (e) The Division representative shall measure all rooms to be used for child care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The Division representative shall enter the dimensions of each room to be used for child care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.
- (f) The Division representative shall make one or more inspections of the center and premises to assess compliance with all applicable requirements as follows:
- (1) If all applicable requirements of G.S. 110 and this Section are met, the Division shall issue the license.
 - (2) If all applicable requirements of G.S. 110 and this Section are not met, the representative may recommend issuance of a provisional license in accordance with Section .0400 of this Chapter or the representative may recommend denial of the application. Final disposition of the recommendation to deny is the decision of the Secretary.
 - (3) The license shall be displayed in an area that parents are able to view daily.
- (g) When a person applies for a child care center license, the Secretary may deny the application for the license under the following circumstances:
- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
 - (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
 - (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
 - (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (1), (2), or (3) of this Paragraph. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
 - (A) would participate in the administration or operation of the facility;
 - (B) has a financial interest in the operation of the facility;
 - (C) provides care to children at the facility;
 - (D) resides in the facility; or
 - (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
 - (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Chapter; or
 - (6) if abuse or neglect has been substantiated against the person.
- (h) In determining whether denial of the application for a license is warranted pursuant to Paragraph (g) of this Rule, the Division shall consider:
- (1) any documentation provided by the applicant which describes the steps the applicant will take to prevent reoccurrence of noncompliance issues which led to any prior administrative action taken against a license previously held by the applicant;
 - (2) training certificates or original transcripts from a nationally recognized regionally accredited institution of higher learning related to providing quality child care for any coursework, and which were taken subsequent to any prior administrative action taken against a license previously held by the applicant. Nationally recognized means that every state in this nation acknowledges the validity of the coursework taken at higher education institutions that meet the requirements of one of the six regional accrediting bodies;
 - (3) proof of employment in a licensed child care facility and references from the administrator or licensee of the child care facility regarding work performance;
 - (4) documentation of collaboration or mentorship with a licensed child care provider to obtain additional knowledge and experience related to operation of a child care facility; and

- (5) documentation explaining relationships with persons meeting the criteria listed in Subparagraph (g)(4) of this Rule.

History Note: Authority G.S. 110-85; 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 110-99; 143B-168.3; Eff. January 1, 1986; Amended Eff. August 1, 2011; July 1, 2010; April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1996; November 1, 1989; July 1, 1988; January 1, 1987.

10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

(a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:

- (1) Only one licensed family child care home shall operate at the location address of any home.
- (2) The applicant shall list each location address where a licensed family child care home will operate.

(b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures apply:

- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.
- (2) The coordinating parent shall know the current location address at all times and shall provide the information to the Division upon request.

(c) The applicant shall assure that the structure in which the family child care home is located complies with the following requirements:

- (1) The structure complies with the North Carolina Building Code for family child care homes or has written approval for use as a family child care home by the local building inspector.
- (2) The structure meets North Carolina Residential Building Code or is a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations adopted by the NC Department of Insurance. Exception: Single wide manufactured homes are limited to a maximum of three preschool-age children (not more than two may be two years of age or less) and two school-age children.
- (3) All children are kept on the ground level with an exit at grade.

- (4) All homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.

- (5) All homes are provided with at least one five pound 2-A: 10-B: C type extinguisher readily accessible for every 2,500 square feet of floor area.

- (6) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved by the Department of Insurance for that installation and are provided with a protective screen attached securely to supports are allowed. Unvented fuel burning heaters and portable electric space heaters of all types are prohibited.

- (7) All indoor areas used by children are heated when the temperature is below 65 degrees and ventilated when the temperature is above 85 degrees.

- (8) Hot pipes or radiators which are hot enough to be capable of burning children and are accessible to the children are covered or insulated.

- (9) Accommodations for breastfeeding mothers are provided that include seating and an electrical outlet, in a place other than a bathroom, that is shielded from view by staff and the public, which may be used by mothers while they are breastfeeding or expressing milk.

(d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include:

- (1) a copy of the certified criminal history check from the Clerk of Superior Court's office in the county or counties where the applicant and any household member(s) over age 15, have resided during the previous 12 months;
- (2) a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course;
- (3) proof of negative results of the applicant's tuberculosis test completed within the past 12 months;
- (4) a completed health questionnaire;
- (5) a copy of current pet vaccinations for any pet in the home;
- (6) a negative well water bacteriological analysis if the home has a private well;
- (7) copies of any inspections required by local ordinances; and
- (8) any other documentation required by the Division according to the rules in this Section to support the issuance of a license.

(e) Upon receipt of a complete application and supporting documentation, a Division representative shall make an announced visit to each home unless the applicant meets the

criteria in Paragraph (g) of this Rule to determine compliance with the requirements, to offer technical assistance when needed, and to provide information about local resources. The issuance of a license applies as follows:

- (1) If all applicable requirements of G.S. 110 and this Section are met, a license shall be issued;
- (2) If the applicable requirements are not met but the applicant has the potential to comply, the Division representative shall establish with the applicant a time period for the home to achieve compliance. If the Division representative determines that all applicable requirements are met within the established time period, a license shall be issued; or
- (3) If all applicable requirements are not met or cannot be met within the established time, the Division shall deny the application. Final disposition of the recommendation to deny is the decision of the Division.

(f) The Division shall allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule when the applicant is currently licensed as a family child care home operator, needs to relocate, and notifies the Division of the relocation; and the Division representative is unable to visit before the relocation occurs. A person shall not operate until he or she has received from the Division either temporary permission to operate or a license.

(g) When a person applies for a family child care home license, the Secretary may deny the application for the license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
 - (A) would participate in the administration or operation of the facility;
 - (B) has a financial interest in the operation of the facility;
 - (C) provides care to the children at the facility;

- (D) resides in the facility; or
- (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;

- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Chapter; or
- (6) if abuse or neglect has been substantiated against the person, or if abuse or neglect was substantiated against a household member.

(h) In determining whether denial of the application for a license is warranted pursuant to Paragraph (g) of this Rule, the Division shall consider:

- (1) any documentation provided by the applicant which describes the steps the applicant will take to prevent reoccurrence of noncompliance issues which led to any prior administrative action taken against a license previously held by the applicant;
- (2) training certificates or original transcripts from a nationally recognized regionally accredited institution of higher learning related to providing quality child care for any coursework, and which were taken subsequent to any prior administrative action taken against a license previously held by the applicant. Nationally recognized means that every state in this nation acknowledges the validity of the coursework taken at higher education institutions that meet the requirements of one of the six regional accrediting bodies;
- (3) proof of employment in a licensed child care facility and references from the administrator or licensee of the child care facility regarding work performance;
- (4) documentation of collaboration or mentorship with a licensed child care provider to obtain additional knowledge and experience related to operation of a child care facility; and
- (5) documentation explaining relationships with persons meeting the criteria listed in Subparagraph (g)(4) of this Rule.

(i) The license shall not be bought, sold, or transferred from one individual to another.

(j) The license is valid only for the location address listed on it.

(k) The license must be returned to the Division in the event of termination, revocation, suspension, or summary suspension.

(l) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent when the child is enrolled.

(m) A licensee shall notify the Division whenever a change occurs which affects the information shown on the license.

History Note: Authority G.S. 110-85; 110-88(5); 110-91; 110-93; 110-99; 143B-168.3; Eff. January 1, 1986;

Amended Eff. August 1, 2011; July 1, 2010; April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1991; November 1, 1989; January 1, 1987.

10A NCAC 09 .2101 CENTERS OPERATING UNDER G.S. 110-106

(a) At least 30 days prior to the first day of operation of a new religious-sponsored child care center, the prospective operator shall send a "Letter of Intent to Operate" to the Division. That letter shall include the name, address, and telephone number of the operator and the center, if known; the proposed number and age range of children to be served; and the center's scheduled opening date. A representative of the Division shall contact the prospective operator no later than seven calendar days after the Letter of Intent is received to advise the operator of the applicable requirements and procedures.

(b) Religious-sponsored child care centers shall comply with all child care center requirements in this Chapter except for the rules regarding age-appropriate activities in Rules .0505 through .0511(a) and .2508; and staff qualifications and training requirements in Paragraphs (d) through (f) of Rule .0703, Rules .0704, .0707 through .0711, and Paragraphs (a) through (d) of Rule .0714. For staff working with school-aged children only, 10A NCAC 09 .2510 does not apply. Compliance shall be documented at least annually using the same forms and in the same manner as for all other centers.

(c) The Division shall notify the operator in writing as to whether the center complies or does not comply with the requirements.

History Note: Authority G.S. 110-85; 110-106; 143B-168.3; Eff. January 1, 1986; Amended Eff. August 1, 2011; April 1, 2001; April 1, 1992; January 1, 1991; November 1, 1989; July 1, 1988.

10A NCAC 70E .0703 NEW LICENSES

(a) The supervising agency shall submit all licensing materials to the licensing authority dated within 180 days prior to submitting an application for a new license. The supervising agency shall submit medical examinations of the members of the foster home to the licensing authority dated within 12 months prior to submitting an application for a new license.

(b) The supervising agency shall submit all licensing application materials required for a license to the licensing authority at one time. The licensing authority shall return incomplete licensing applications to the supervising agency.

(c) The licensing authority shall issue a new license, if approved according to the rules in this Section, effective the date the application and all required materials are received by the licensing authority.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2007; Amended Eff. August 1, 2011; November 1, 2009.

10A NCAC 70E .0704 RELICENSURE AND RENEWAL

(a) Materials for renewing a license are due to the licensing authority prior to the date the license expires.

(b) All relicensing materials shall be completed and dated within 180 days prior to the date the supervising agency submits materials for licensure to the licensing authority. Medical examinations of the members of the foster home shall be completed and dated within 12 months prior to submitting materials for relicensure.

(c) All relicensing materials shall be submitted at one time to the licensing authority. The licensing authority shall return incomplete relicensure applications to the supervising agency.

(d) If materials are submitted after the foster home license expires, a license is issued by the licensing authority effective the date the licensing materials are approved by the licensing authority.

(e) When a foster home license is terminated for failure to submit relicensure materials, the licensing authority shall relicense the home if the relicensure materials are submitted to the licensing authority within one year of the date the license was terminated and all requirements are met. After one year, the supervising agency shall submit a new licensure application to the licensing authority.

(f) When a foster home license has been terminated in good standing and the foster family wishes to be licensed again, the licensing authority shall renew the license if there are no changes or the changes meet the requirements of the Rules of this Section. The period of time for this renewed license is from the date the request is received by the licensing authority to the end date of the license period in effect when the license was terminated.

(g) Unless previously licensed foster parents who have not been licensed within the last 24 consecutive months demonstrate mastery of the parenting skills listed in 10A NCAC 70E .1117(1) to the satisfaction of the supervising agency and documented to the licensing authority, the foster parents shall complete the 30 hours of pre-service training specified in 10A NCAC 70E .1117(1).

(h) Unless previously licensed therapeutic foster parents who have not been licensed within the last 24 consecutive months demonstrate mastery of the therapeutic skills listed in 10A NCAC 70E .1117(2) to the satisfaction of the supervising agency and documented to the licensing authority, the therapeutic foster parents shall complete the 10 hours of pre-service training specified in 10A NCAC 70E .1117(2).

(i) The supervising agency shall provide documentation to the licensing authority that trainings for first aid, CPR, and universal precautions are updated.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2007; Amended Eff. August 1, 2011; November 1, 2009.

10A NCAC 70E .0802 METHOD OF MUTUAL HOME ASSESSMENT

(a) The mutual home assessment shall be carried out in a series of planned discussions between the licensing worker of the supervising agency, the prospective foster parent applicants and

other members of the household. The family shall be seen by the licensing social worker in the family's home and in the supervising agency's office.

(b) In an application involving a single applicant, there shall be two separate face-to-face interviews occurring on two different dates. In an application involving joint applicants, there shall be a separate face-to-face interview with each applicant and an additional two face-to-face interviews with both applicants. The two face-to-face interviews shall occur on two different dates. There shall be separate face-to-face interviews with each member of the household 10 years of age or older. Training and group sessions do not count as face-to-face interviews. The assessment process shall be a joint effort of the supervising agency and the applicants to determine the applicants' suitability for providing foster care and the kind of child the applicants can best parent.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;

Eff. September 1, 2007;

Amended Eff. August 1, 2011.

10A NCAC 70E .1115 RESPONSIBLE INDIVIDUALS LIST

(a) An applicant is not eligible for licensure if the applicant has within the last five years been substantiated for abuse or serious neglect and is placed on the Responsible Individuals List as defined in North Carolina General Statute 7B-311.

(b) After five years, an applicant who is on the Responsible Individuals List may be considered for licensure based on the following factors:

- (1) nature of the substantiation;
- (2) length of time since the substantiation;
- (3) circumstances surrounding the substantiation;
- (4) evidence of rehabilitation;
- (5) history of convictions and violations; and
- (6) letter of support for licensure from the executive director of the agency.

(c) The supervising agency shall provide documentation to the licensing authority of the results of Child Abuse and Neglect Central Registry Checks of states where the applicant has resided the past five years.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;

Eff. September 1, 2007;

Amended Eff. August 1, 2011.

10A NCAC 70F .0102 LICENSURE

History Note: Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 131D-10.10; 143B-153;

Eff. February 1, 1986;

Amended Eff. July 18, 2002; July 1, 1990;

Temporary Amendment Eff. July 1, 2003;

Amended Eff. October 1, 2008; August 1, 2004;

Repealed Eff. August 1, 2011.

10A NCAC 70F .0207 STAFF

(a) The agency shall verify prior to employment the personal qualifications of employees through at least three references.

(b) The agency shall require that each applicant provide a signed statement that the applicant has no criminal, social or medical history which would adversely affect the applicant's capacity to work with children and adults. Prior to employment, the agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the applicant has had child protective services involvement resulting in a substantiation of child abuse or serious neglect. The agency shall require that each applicant provide a signed statement that the applicant has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. Prior to employment, a certified criminal record check for the applicant shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed. The agency shall require that each applicant provide a signed statement that the applicant has not abused, neglected, or exploited a disabled adult, and has not been a domestic violence perpetrator.

(c) Employees are not eligible for employment if they have been convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime of rape, sexual assault, or homicide.

(d) The employee is not eligible for employment if within the last five years he or she has been convicted of a felony involving:

- (1) assault;
- (2) battery; or
- (3) a drug-related offense.

(e) The agency shall employ staff qualified to perform administrative, supervisory, direct care, social work, therapeutic, and placement services.

(f) The agency shall have staff to keep correspondence, records, bookkeeping and files current and in good order. The staff shall maintain strict confidentiality concerning contents of the case records.

(g) The agency shall maintain a roster of members of the staff listing position, title, and qualifications and a current organizational chart showing administrative structure and staffing, including lines of authority. The organizational chart shall be submitted prior to initial licensure and biennially thereafter.

(h) An agency which uses volunteers and interns as unpaid staff to work directly with clients shall:

- (1) have written job descriptions and select only those persons qualified to meet the requirements of those jobs;
- (2) require three references relevant to the role and responsibilities to be assumed;
- (3) designate a staff member to supervise and evaluate volunteers and interns;

- (4) develop and implement a plan for the orientation and training of volunteers and interns in the philosophy of the agency and the needs of the clients and their families; and
- (5) require that each volunteer and intern provide a signed statement that they have no criminal, social or medical history that would adversely affect their capacity to work with children and adults. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the intern or volunteer has had child protective services involvement resulting in a substantiation of child abuse or serious neglect. Prior to beginning volunteer or intern duties, a certified criminal record check shall be obtained and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256). The agency shall require that each volunteer or intern provide a signed statement that the volunteer or intern has not abused or neglected a child, been a respondent in a juvenile court proceeding that resulted in the removal of a child, or had child protective services involvement that resulted in the removal of a child. The agency shall require that each volunteer or intern provide a signed statement that the volunteer or intern has not abused, neglected, or exploited a disabled adult and has not been a domestic violence perpetrator.
- (i) Volunteers or interns are not eligible to serve as volunteers or interns if they have been convicted of a felony involving:
 - (1) child abuse or neglect;
 - (2) spouse abuse;
 - (3) a crime against a child or children (including child pornography); or
 - (4) a crime of rape, sexual assault, or homicide.
- (j) Volunteers or interns are not eligible to serve as volunteers or interns, if within the last five years they have been convicted of a felony involving:
 - (1) assault;
 - (2) battery; or
 - (3) a drug-related offense.
- (k) The agency shall require that each employee provide a signed statement that the employee has no criminal, social or medical history that will adversely affect the employee's capacity to work with children and adults every two years as long as the employee is employed. Every two years as long as the employee is employed, the agency shall submit authorization to the Division of Social Services to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the employee has had child protective services involvement resulting in a substantiation of child abuse or serious neglect. Every two years as long as the employee is employed the agency shall require that each employee provide a signed statement that the employee has not abused or neglected a

child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. Every two years as long as the employee is employed, a certified criminal record check for each employee shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed. The agency shall require that every two years as long as the employee is employed each employee provide a signed statement that the employee has not abused, neglected, or exploited a disabled adult, and has not been a domestic violence perpetrator.

(l) The employing agency shall make all determinations concerning the individual's fitness for employment, volunteering and internship based on the requirements of this Rule.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 131D-10.10; 143B-153;

Eff. February 1, 1986;

Amended Eff. August 1, 2011; June 1, 2010; October 1, 2008; July 18, 2002.

10A NCAC 70H .0405 PREPLACEMENT ASSESSMENT

(a) The agency shall complete a preplacement assessment within 90 days after the application for adoption has been approved and the request for the assessment has been received. In a case involving a single adoptive applicant, there shall be two separate face-to-face interviews occurring on two different dates. In a case involving joint applicants, there shall be a separate face-to-face interview with each applicant and an additional two face-to-face interviews with both applicants. At least one interview shall be conducted in the applicants' home. There shall be separate face-to-face interviews with each member of the household ten years of age or older. The assessment process shall be a joint effort of the adoption agency and the applicants to determine the kind of child the applicants can best parent. Any assessment that was completed 18 months or more before placement of a child occurs shall be updated to include current information about the family. Any agency updating a preplacement assessment not originally completed by that agency assumes responsibility for the entire assessment, and the new assessment shall reflect that it is the responsibility of the agency conducting the update. Physical examinations of family members shall be current to within 18 months of the assessment.

(b) The agency shall assess the following areas and shall record the information in the adoptive applicants' record:

- (1) the applicants' reasons for wanting to adopt;
- (2) the strengths and needs of each member of the household;
- (3) the attitudes and feelings of the family, extended family, and other individuals involved with the family toward accepting adoptive children, and parenting children not born to them;
- (4) the attitudes of the applicants toward the birth parents and in regard to the reasons the child is in need of adoption;

- (5) the applicants' attitudes toward child behavior and discipline;
- (6) the applicants' plan for discussing adoption with the child;
- (7) the emotional stability and maturity of applicants;
- (8) the applicants' ability to cope with problems, stress, frustrations, crises, and loss;
- (9) the applicants' ability to give and receive affection;
- (10) the applicants' child-caring skills and willingness to acquire additional skills needed for the child's development;
- (11) the applicants' ability to provide for the child's physical and emotional needs;
- (12) whether the applicant has ever been convicted of a crime other than a minor traffic violation;
- (13) the strengths and needs of birth children or previously adopted children,
- (14) the applicant's physical and mental health, including any addiction to alcohol or drugs;
- (15) financial information provided by the applicant, including property and income;
- (16) the applicants' personal character references;
- (17) the applicant's religious orientation, if any;
- (18) the location and physical environment of the home;
- (19) the plan for child care if parents work;
- (20) recommendations for adoption in regard to the number, age, sex, characteristics, and special needs of children who could be best served by the family;
- (21) any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;
- (22) whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, neglected, dependent, undisciplined or delinquent, and the outcome of the proceeding or whether the individual has been found to have abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child;
- (23) documentation of the results of the search of the Responsible Individual's List as defined in 10A NCAC 70A .0102 for all adult members of the household that indicates they have not had child protective services involvement resulting in a substantiation of child abuse or serious neglect;
- (24) documentation of the results of Child Abuse and Neglect Central Registry Checks of states where the applicant has resided the past five years;

- (25) whether the applicant has located a parent interested in placing a child for adoption with the applicant, and a brief, non identifying description of the parent and the child;
- (26) the applicants' age, date of birth, nationality, race or ethnicity;
- (27) the applicant's marital and family status and history, including the presence of any children born to or adopted by the applicant, and any other children in the household;
- (28) the applicant's educational and employment history and any special skills; and
- (29) any additional fact or circumstance that may be relevant to a determination of the applicant's suitability to be an adoptive parent, including the quality of the home environment and the level of functioning of any children in the household.

When any of the information listed in this Paragraph is not reasonably available, the preplacement assessment shall state why the information is unavailable.

(c) The assessment shall be prepared and typed by the agency and shall be reviewed by the agency's adoption review committee, signed and dated by an authorized agency representative when complete and final, and shall become part of the applicants' permanent record. The agency's adoption review committee shall be composed of a minimum of three members, including an agency representative in a management position in children's services, the child's social worker(s) responsible for the placement and adoption functions of the child's case, and an at-large member selected by the agency.

(d) Once the agency has made a decision regarding the suitability of the applicant as an adoptive placement, the preplacement assessment shall include documentation of the factors which support that determination. If the agency determines that the applicant is not suitable to be an adoptive parent, the assessment shall state the specific concerns that support the determination. A specific concern is one that reasonably indicates the placement of any minor, or a particular minor, in the home of the applicant would pose a significant risk of harm to the well-being of the minor.

(e) The agency preparing the preplacement assessment may redact from the assessment provided to the placing parent or guardian information reflecting the prospective adoptive parent's financial account balances and information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses.

History Note: Authority G.S. 48-2-502; 48-3-303; 131D-10.5; 143B-153;
Eff. October 1, 2008;
Amended Eff. August 1, 2011; November 1, 2009.

10A NCAC 70I .0101 LICENSING ACTIONS

- (a) All rules in 10A NCAC 70I apply to residential child-care facilities.
- (b) License.

- (1) The Department of Health and Human Services, Division of Social Services (licensing authority) shall issue a license when it determines that a residential child-care facility is in compliance with rules in Subchapters 70I and 70J of this Chapter.
 - (2) A license shall be issued for a period of two years.
 - (3) A residential child-care facility shall not be licensed under both G.S. 131D and G.S. 122C.
 - (4) Residential child-care facilities licensed after August 1, 2011 shall have a three year or longer accreditation from either the Council on Accreditation (COA), The Joint Commission (TJC), formerly known as the Joint Commission on Accreditation of Healthcare Organizations, The Commission on Accreditation and Rehabilitation Facilities (CARF) or The Council on Quality and Leadership (CQL).
- (c) Changes in any information on the license.
- (1) The licensing authority shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70I and 70J.
 - (2) A residential child-care facility shall notify the licensing authority in writing of its request for a change in license, including information that is necessary to assure the change is in compliance with the rules in Subchapters 70I and 70J of this Chapter.
- (d) Termination.
- (1) When a residential child-care facility voluntarily discontinues child-caring operations, either temporarily or permanently, the residential child-care facility shall notify the licensing authority in writing of the date, reason and anticipated length of closing.
 - (2) If a license is not renewed by the end of the licensure period, the licensing authority shall automatically terminate the license.
 - (3) If a license issued pursuant to this Subchapter is terminated for more than 60 days, the facility shall meet all requirements for a new facility before being relicensed.
 - (4) Any existing licensed residential child-care facility that is closed or vacant for more than one year shall meet all requirements of a new facility prior to being relicensed.
- (e) Adverse Licensure Action.
- (1) The licensing authority shall deny, suspend or revoke a license when a residential child-care facility is not in compliance with the rules in Subchapters 70I and 70J unless the residential child-care facility, within 10 working days from the date the residential child-care facility initially received the deficiency report from the licensing authority, submits a plan of correction. The plan of correction shall specify the following:
 - (A) the measures that will be put in place to correct the deficiency;
 - (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
 - (C) the individual or individuals who will monitor the corrective action; and
 - (D) the date the deficiency will be corrected which shall be no later than 60 days from the date the routine monitoring was concluded.
 - (2) The licensing authority shall notify a residential child-care facility in writing of the decision to deny, suspend or revoke a license.
 - (3) Appeal procedures specified in 10A NCAC 70L .0301 are applicable for persons seeking an appeal to the licensing authority's decision to deny, suspend or revoke a license.
- (f) Licensure Restriction.
- (1) An applicant who meets any of the following conditions shall have his/her licensure denied:
 - (A) the applicant owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122, or any combination thereof, and any one of the following conditions exist:
 - (i) A single violation has been assessed in the six months prior to the application.
 - (ii) Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.
 - (iii) Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.
 - (iv) Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.
 - (B) the Department of Health and Human Services has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that was previously held by the applicant and the applicant

- voluntarily relinquished the license and 60 months have not passed from the date of the revocation or summary suspension;
- (C) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that is owned by the applicant;
- (D) the applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; and G.S. 110, Article 7 and the rules adopted under these laws and 60 months have not passed from the date of the revocation or summary suspension;
- (E) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E-256; or
- (F) the applicant is an individual who has a finding on the Responsible Individual's List as described in 10A NCAC 70A .0102.
- (2) The denial of licensure pursuant to this Paragraph shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at <http://www.ncleg.net/Statutes/Statutes.html>.
- (3) The facility or agency shall inform the licensing authority of any current licenses or licenses held in the past five years for residential child-care facilities, child-placing agencies or maternity homes in other states. The agency shall provide written notification from the licensing authority in other states regarding violations, penalties or probationary status imposed in that state. The licensing authority shall take this information into consideration when granting a North Carolina license.

History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153;
 Eff. July 1, 1999 (See S. L. 1999, c. 237, s. 11.30);
 Temporary Amendment Eff. July 1, 2003;
 Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on December 18, 2003);
 Amended Eff. August 1, 2011; September 1, 2007.

10A NCAC 70I .0404 PERSONNEL QUALIFICATIONS

(a) Applicants, employees, volunteers or interns who have a history of criminal convictions that would adversely affect their

capacity and ability to provide care, safety and security for the children in residence shall not be employed or utilized as volunteers or interns. A signed statement shall be obtained attesting that the applicant, employee, volunteer or intern does not have such a record prior to beginning employment, volunteer duties or internships. Prior to employment or before beginning volunteer duties or internships, a certified criminal record check for the applicant, volunteer or intern shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these searches, a decision shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 70A .0102, to determine if the applicant, employee, volunteer or intern has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall require that each applicant, employee, volunteer or intern provide a signed statement that the applicant, employee, volunteer or intern has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. A signed statement shall be obtained attesting that the applicant, employee, volunteer or intern has not abused, neglected or exploited a disabled adult and has not been a domestic violence perpetrator.

(b) Applicants, employees, volunteers and interns are not eligible for employment, volunteer or intern positions if they have been convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime of rape, sexual assault, or homicide.

(c) Applicants, employees, volunteers and interns are not eligible for employment, volunteer or intern positions if within the last five years they have been convicted of a felony involving:

- (1) assault;
- (2) battery; or
- (3) a drug-related offense.

(d) Employees, volunteers or interns driving a residential child-care facility vehicle shall possess a valid North Carolina driver's license appropriate for the type of vehicle used.

(e) The agency shall require that each employee provide a signed statement that the employee has no criminal, social or medical history that will adversely affect the employee's capacity to work with children and adults every two years as long as the employee is employed. Every two years as long as the employee is employed, the agency shall submit authorization to the Division of Social Services to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the employee has had child protective services involvement resulting in a substantiation of child abuse or serious neglect. Every two years as long as the employee is

employed the agency shall require that each employee provide a signed statement that the employee has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. Every two years as long as the employee is employed, a certified criminal record check for each employee shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed. The agency shall require that every two years as long as the employee is employed each employee provide a signed statement that the employee has not abused, neglected, or exploited a disabled adult, and has not been a domestic violence perpetrator.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c.237 s. 11.30); Amended Eff. August 1, 2011; June 1, 2010; October 1, 2008.

10A NCAC 70K .0103 LICENSING ACTIONS

(a) License.

- (1) Licensure is required in accordance with G.S. 131D-10.3 and with rules in Subchapters 70F and 70K of this Chapter.
- (2) Licenses shall be in effect for two years unless suspended or revoked. Appeal procedures specified in 10A NCAC 70L .0301 apply for persons seeking an appeal of the licensing authority's decision to deny, suspend, or revoke a license.
- (3) Residential maternity homes licensed after August 1, 2011 shall have a three year or longer accreditation from either the Council on Accreditation (COA), The Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations (TJC), The Commission on Accreditation and Rehabilitation Facilities (CARF) or The Council on Quality and Leadership (CQL).
- (4) Applicants shall inform the licensing authority of any current licenses or licenses held in the past five years for child-placing agencies, maternity homes, or residential child-care facilities in other states. Applicants shall provide written documentation from the licensing authority in other states regarding violations, penalties, or probationary status imposed in other states.

(b) Changes in any information on the license.

- (1) The licensing authority shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70F and 70K of this Chapter.
- (2) A residential maternity home shall notify the licensing authority in writing of its request for a change in license, including information that is necessary to assure the change is in

compliance with the rules in Subchapters 70F and 70K of this Chapter.

(c) Termination.

- (1) When a residential maternity home voluntarily discontinues operations, either temporarily or permanently, the residential maternity home shall notify the licensing authority in writing of the date, reason and anticipated length of closing.
- (2) If a license is not renewed by the end of the licensure period, the licensing authority shall automatically terminate the license.
- (3) When the license of any existing residential maternity home is terminated for more than 60 days, the home shall meet all requirements of a new facility prior to being relicensed.
- (4) Any existing licensed residential maternity home that is closed or vacant for more than one year shall meet all requirements of a new facility prior to being relicensed.

(d) Adverse licensure action.

- (1) The licensing authority shall deny, suspend or revoke a license when a residential maternity home is not in compliance with the rules in Subchapters 70F and 70K of this Chapter unless the residential maternity home within 10 working days from the date the maternity home initially received the deficiency report from the licensing authority submits a plan of correction. The plan of correction shall specify the following:
 - (A) the measures that will be put in place to correct the deficiency;
 - (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
 - (C) the individual or individuals who will monitor the corrective action; and
 - (D) the date the deficiency will be corrected which shall be no later than 60 days from the date the routine monitoring was concluded.
- (2) The licensing authority shall notify a residential maternity home in writing of the decision to deny, suspend or revoke a license.
- (3) Appeal procedures specified in 10A NCAC 70L .0301 shall be applicable for persons seeking an appeal to the licensing authority's decision to deny, suspend or revoke a license.

(e) Licensure shall be denied when it is determined that the following conditions apply:

- (1) the applicant owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C, or any combination thereof, and any one of the following conditions exist:

- (A) A single violation has been assessed in the six months prior to the application.
 - (B) Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.
 - (C) Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.
 - (D) Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.
- (2) the Department of Health and Human Services has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that was previously held by the applicant and the applicant voluntarily relinquished the license and 60 months have not passed from the date of the revocation or summary suspension;
- (3) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that is owned by the applicant;
- (4) the applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; and G.S. 110, Article 7 and the rules adopted under these laws and 60 months have not passed from the date of the revocation or summary suspension;
- (5) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E-256; or
- (6) the applicant is an individual who has a finding on the Responsible Individual's List as described in 10A NCAC 70A .0102.

History Note: Authority G.S. 131D-10.10; 143B-153; Eff. October 1, 2008; Amended Eff. August 1, 2011.

10A NCAC 70K .0201 PERSONNEL

(a) Staff Qualifications and Functions.

- (1) Executive Director. There shall be an executive director employed for the general management and supervision of the maternity home. The executive director shall meet the

requirements of a Social Services Program Administrator I as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:
(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04077.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715.

The executive director shall:

- (A) direct the maternity home's program of care and services in accordance with policies established by the governing board and within license standards;
 - (B) recruit, employ, supervise and discharge staff;
 - (C) assure a training program for staff;
 - (D) prepare the annual budget, supervise expenditures, and operate within the budget established;
 - (E) establish and maintain good working relationships with other human service agencies and represent the agency in the community; and
 - (F) delegate authority to a staff member meeting the qualifications described in this Subparagraph during his or her absence.
- (2) Professional Services Staff. The maternity home shall have available professional services personnel to assure appropriate services are provided for each resident in accordance with her case plan or out-of-home family services agreement.
- (3) Social Work Supervisor. Social work supervisors shall be employed by the maternity home to supervise, evaluate and monitor the work and progress of the social work staff. The social work supervisor shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:
(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04016.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. Social work

supervisors shall receive 24 hours of continuing education annually.

- (4) Social Worker. Social workers shall be employed by the maternity home to provide intake services and social work services to the residents and their families in accordance with the case plan or out-of-home family services agreement. The social worker shall meet the requirements of a Social Worker II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site: (http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04012.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.
- (5) Direct Care Staff. All direct care staff shall have a high-school diploma or GED. Direct care staff shall receive 24 hours of continuing education annually.
- (6) Direct Care Supervisory Staff. All direct care supervisory staff shall have a high-school diploma or GED. Direct care supervisory staff shall receive 24 hours of continuing education annually.
- (7) Staff members of the maternity home may maintain dual employment or serve as volunteers with adoption agencies or crisis pregnancy centers as long as the maternity home does not provide services to the clients of the adoption agency or crisis pregnancy center. Staff members of the maternity home may serve on the board of directors of adoption agencies or crisis pregnancy centers as long as the adoption agency or crisis pregnancy center does not provide services to the clients of the maternity home.

(b) Staffing Requirements. There shall be at least one social worker assigned for every 15 residents. Supervision of social workers shall be assigned as follows:

Supervisors Required	Social Workers Employed
0	0-4 (executive director serves as social work supervisor)
1	5
2	6-10
3	11-15
There shall be one additional supervisor for every one to five additional social workers.	

(c) Direct Care Staff. Direct care staff shall be employed for direct care of maternity home residents (residents include mothers and infants as well as any children or dependents of staff members who live or are cared for in the home). There shall be at least one direct care staff member assigned for every eight residents during waking hours and one direct care staff member for every twelve residents during sleeping hours. Additional direct care staff or other personnel shall be available to assist with emergency situations or special needs of the residents.

(d) Direct Care Supervisory Staff. There shall be at least one direct care supervisor for every 15 direct care staff members.

(e) Volunteers and Interns. If the maternity home uses volunteers or interns to work directly with residents, the requirements of 10A NCAC 70F .0207 apply.

(f) Additional Personnel Requirements. In addition to those requirements specified in 10A NCAC 70F .0207, the following rules are applicable to maternity home programs:

- (1) Health Examinations. All direct care staff, food service staff and anyone serving in the capacity of direct care staff and food service staff shall have a medical examination completed by a physician, physician's assistant, or nurse practitioner, hereafter referred to as "licensed medical provider," within at least 12 months before beginning employment and biennially thereafter. The agency shall maintain documentation that all direct care staff and food service staff or anyone serving in the capacity of direct care staff and food service staff have had a TB skin test or chest x-ray prior to employment unless contraindicated by a licensed medical provider. A medical history form shall be completed by all direct care staff and food service staff. Examinations must include tests necessary to determine that the staff member is able to carry out assigned duties and does not have any communicable disease or condition which poses risk of transmission in the facility. A report of each examination shall be made a part of the employee's personnel file. A medical examination report shall be completed on any adopted children or relative children of direct care staff residing in the maternity home within 12 months prior to the license date. The birth children of direct care staff who reside in the maternity home shall be tested for TB only if one or more of the parents tests positive for TB. There shall be documentation that adopted children or other relative children residing in the maternity home have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. A medical examination and TB test, if required, shall be completed on any children or relative children of direct care staff who subsequently begin residing in the maternity home. Examinations shall include tests

necessary to determine that the children or relative children of staff members who reside in the maternity home do not have any communicable diseases or conditions which pose risk of transmission in the facility. A medical history form shall be completed on any children or relative children of direct care staff who reside in the living unit. Medical examination reports and medical history forms of children of the residents residing the maternity home shall be maintained in the personnel file of their parent or relative.

- (2) Staff Development. The maternity home staff shall have a written staff development plan which provides staff training in the following areas:

- (A) medical, physical, and psychological aspects of pregnancy;
- (B) prenatal and postnatal care;
- (C) developmental needs of adolescents and young adults;
- (D) developmental needs of infants and children;
- (E) parenting preparation classes;
- (F) stages of growth in infants;
- (G) day-to-day care of infants;
- (H) disciplinary techniques for infants, children and adolescents;
- (I) education planning;
- (J) job seeking skills;
- (K) locating housing;
- (L) money management;
- (M) food management;
- (N) child care;
- (O) health education;
- (P) stress management;
- (Q) life skills;
- (R) decision making;
- (S) substance abuse;
- (T) pregnancy prevention;
- (U) counseling skills;
- (V) emergency medical care; and
- (W) nutrition and food preparation.

- (3) A residential maternity home shall ensure that a staff member trained in cardiopulmonary resuscitation (CPR) and first aid, such as those provided by the American Red Cross, the American Heart Association or equivalent organizations, is always available to the clients in care; and that direct care service personnel shall receive training in first aid and CPR within the first 30 days of employment. Training in CPR shall be appropriate for the ages of clients in care. First aid and CPR training shall be updated as required by the American Red Cross, the American Heart Association or equivalent organizations.

*Eff. February 1, 1986;
Amended Eff. June 1, 1990;
RRC Objection Eff. April 15, 1993 Due to Lack of Statutory Authority;
Amended Eff. August 1, 2011; August 1, 2010;
November 1, 2009; October 1, 2008; July 2, 1993.*

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 10B .0502 BASIC LAW ENFORCEMENT TRAINING COURSE FOR DEPUTIES

(a) The basic training course for deputy sheriffs consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 620 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

- (1) **LEGAL UNIT**
 - (A) Motor Vehicle Laws 20 hours
 - (B) Preparing for Court and Testifying in Court 12 hours
 - (C) Elements of Criminal Law 24 hours
 - (D) Juvenile Laws and Procedures 10 hours
 - (E) Arrest, Search and Seizure/Constitutional Law 28 hours
 - (F) ABC Laws and Procedures 4 hours
 - UNIT TOTAL 98 hours**
- (2) **PATROL DUTIES UNIT**
 - (A) Techniques of Traffic Law Enforcement 24 hours
 - (B) Explosives and Hazardous Materials Emergencies 12 hours
 - (C) Traffic Accident Investigation 20 hours
 - (D) In-Custody Transportation 8 hours
 - (E) Crowd Management 12 hours
 - (F) Patrol Techniques 26 hours
 - (G) Law Enforcement Communication and Information Systems 8 hours
 - (H) Anti-Terrorism 4 hours
 - (I) Rapid Deployment 8 hours
 - UNIT TOTAL 122 hours**
- (3) **LAW ENFORCEMENT COMMUNICATION UNIT**
 - (A) Dealing with Victims and the Public 10 hours

History Note: Authority G.S. 131D-10.10; 143B-153;

- (B) Domestic Violence Response 12 hours
- (C) Ethics for Professional Law Enforcement 4 hours
- (D) Individuals with Mental Illness and Mental Retardation 8 hours
- (E) Crime Prevention Techniques 6 hours
- (F) Communication Skills for Law Enforcement Officers 8 hours
- UNIT TOTAL 48 hours
- (4) INVESTIGATION UNIT
 - (A) Fingerprinting and Photographing Arrestee 6 hours
 - (B) Field Note-taking and Report Writing 12 hours
 - (C) Criminal Investigation 34 hours
 - (D) Interviews: Field and In-Custody 16 hours
 - (E) Controlled Substances 12 hours
 - (F) Human Trafficking 2 hours
 - UNIT TOTAL 82 hours
- (5) PRACTICAL APPLICATION UNIT
 - (A) First Responder 32 hours
 - (B) Firearms 48 hours
 - (C) Law Enforcement Driver Training 40 hours
 - (D) Physical Fitness (classroom instruction) 8 hours
 - (E) Fitness Assessment and Testing 12 hours
 - (F) Physical Exercise 1 hour daily, 3 days a week 34 hours
 - (G) Subject Control Arrest Techniques 40 hours
 - UNIT TOTAL 214 hours
- (6) SHERIFF-SPECIFIC UNIT
 - (A) Civil Process 24 hours
 - (B) Sheriffs' Responsibilities: Detention Duties 4 hours
 - (C) Sheriffs' Responsibilities: Court Duties 6 hours
 - UNIT TOTAL 34 hours
- (7) COURSE ORIENTATION 2 hours
- (8) TESTING 20 hours
- TOTAL COURSE HOURS 620 HOURS

(c) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy shall be used as the as basic curriculum for this Basic Law Enforcement Training Course. Copies of this manual may be obtained at cost by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099.

(d) The Commission shall designate the developer of the Basic Law Enforcement Training Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Basic Law Enforcement Training Courses. Individuals who successfully complete such a pilot Basic Law Enforcement Training Course offering shall be

deemed to have successfully complied with and satisfied the minimum training requirement.

(e) The rules governing Minimum Standards for Completion of Training, codified as Title 12, Subchapter 09B, Section .0400 of the North Carolina Administrative Code, and previously adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall, automatically include any later amendments and editions of the incorporated matter to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission. Copies of the incorporated materials may be obtained at no cost from the Criminal Justice Standards Division, North Carolina Department of Justice, 114 West Edenton Street, Post Office Drawer 149, Raleigh, North Carolina 27602.

History Note: Authority G.S. 17E-4(a);

Eff. January 1, 1989;

Amended Eff. August 1, 2011; January 1, 2010; January 1, 2006; August 1, 2000; January 1, 1996; January 1, 1995; February 1, 1991; January 1, 1990.

12 NCAC 10B .0601 DETENTION OFFICER CERTIFICATION COURSE

(a) This Section establishes the current standard by which Sheriffs' Office and district confinement personnel shall receive detention officer training. The Detention Officer Certification Course shall consist of a minimum of 168 hours of instruction designed to provide the trainee with the skills and knowledge necessary to perform those tasks considered essential to the administration and operation of a confinement facility.

(b) Each Detention Officer Certification Course shall include the following identified topic areas and approximate minimum instructional hours for each area:

- (1) LEGAL UNIT
 - (A) Orientation 3 hours
 - (B) Criminal Justice Systems 2 hours
 - (C) Legal Aspects of Management and Supervision 14 hours
 - (D) Introduction to Rules and Regulations 2 hours
 - (E) Ethics 3 hours
 - UNIT TOTAL 24 Hours
- (2) PHYSICAL UNIT
 - (A) Contraband/Searches 6 hours
 - (B) Patrol and Security Function of the Jail 5 hours
 - (C) Key and Tool Control 2 hours
 - (D) Investigative Process in the Jail 8 hours
 - (E) Transportation of Inmates 7 hours
 - UNIT TOTAL 28 Hours
- (3) PRACTICAL APPLICATION UNIT
 - (A) Processing Inmates 7 hours
 - (B) Supervision and Management of Inmates 5 hours
 - (C) Suicides and Crisis Management 5 hours
 - (D) Aspects of Mental Illness 6 hours

	(E)	Fire Emergencies	4 hours
	(F)	Notetaking and Report Writing	5 hours
	(G)	Communication Skills	5 hours
		UNIT TOTAL	37 hours
(4)		MEDICAL UNIT	
	(A)	First Aid and CPR	10 hours
	(B)	Medical Care in the Jail	6 hours
	(C)	Stress	3 hours
	(D)	Subject Control Techniques	28 hours
	(E)	Physical Fitness for Detention Officers	22 hours
		UNIT TOTAL	69 hours
(5)		REVIEW AND TESTING	7 hours
(6)		STATE EXAM	3 hours
		TOTAL HOURS	168 HOURS

(c) Consistent with the curriculum development policy of the Commission as published in the "Detention Officer Certification Course Management Guide", the Commission shall designate the developer of the Detention Officer Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Detention Officer Certification Courses. Individuals who complete such a pilot Detention Officer Certification Course offering shall be deemed to have complied with and satisfied the minimum training requirement.

(d) The "Detention Officer Certification Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for the Detention Officer Certification Course. Copies of this manual may be obtained by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099. The cost of this manual is forty dollars (\$40.00) at the time of adoption of this Rule.

(e) The "Detention Officer Certification Course Management Guide" as published by the North Carolina Justice Academy is hereby incorporated by reference and shall automatically include any later amendments, editions of the incorporated matter to be used by school directors in planning, implementing and delivering basic detention officer training. The standards and requirements established by the "Detention Officer Certification Course Management Guide" must be adhered to by the school director. Each certified school director shall be issued a copy of the guide at the time of certification at no cost to the certified school.

History Note: Authority G.S. 17E-4(a);

Eff. January 1, 1989;

Amended Eff. August 1, 2011; October 1, 2009; January 1, 2006; August 2, 2002; August 1, 2000; August 1, 1998; February 1, 1998; January 1, 1996; June 1, 1992; January 1, 1992; January 1, 1991.

12 NCAC 10B .0603 EVALUATION FOR TRAINING WAIVER

Applicants for certification with prior detention or correctional officer experience shall have been employed and certified as a detention or correctional officer in order to be considered for a training evaluation under this Rule. The following rules shall be

used by division staff in evaluating a detention officer's training and experience to determine eligibility for a waiver of training:

- (1) Persons who have separated from a detention officer position during the probationary period after having completed a commission-certified detention officer training course and who have been separated from a detention officer position for more than one year shall complete a subsequent commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as described in 12 NCAC 10B .0602(a).
- (2) Persons who separated from a detention officer position during their probationary period after having completed a commission-certified detention officer training course and who have been separated from a detention officer position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (3) Persons who separated from a detention officer position during the probationary period without having completed a detention officer training course or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1) and who have remained separated or suspended for over one year shall complete a commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (4) Persons holding General Detention Officer Certification who have completed a commission-certified detention officer training course and who have separated from a detention officer position for more than one year shall complete a subsequent commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (5) Persons holding Grandfather Detention Officer Certification who separate from a detention officer position and remain separated from a detention officer position for more than one year shall complete a commission-certified detention officer training program in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (6) Persons transferring to a sheriff's office from another law enforcement agency who hold a detention officer certification issued by the North Carolina Criminal Justice Education and

Training Standards Commission are subject to evaluation of their prior training and experience on an individual basis. The Division staff shall determine the amount of training, which is comparable to that received by detention officers pursuant to 12 NCAC 10B .0601(b), required of these applicants.

(7) Persons holding general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission and who:

- (a) completed training as a correctional officer between January 1, 1981 and August 1, 2002;
- (b) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
- (c) have had less than a one year break in service, or no break in service, shall serve a 12-month probationary period as prescribed in 12 NCAC 10B .0602(a) and shall complete the following topic areas in a commission-certified detention officer certification course and take the state examination in its entirety during that probationary period:
 - (i) Orientation 3 hours
 - (ii) Legal Aspects of Management & Supervision 14 hours
 - (iii) Medical Care in the Jail 6 hours
 - (iv) Investigative Process in the Jail 8 hours
 - (v) Criminal Justice System 2 hours
 - (vi) Introduction to Rules and Regulations Governing Jails 2 hours
 - (vii) Subject Control Techniques 28 hours

TOTAL HOURS

(63) hours

(8) Persons holding general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission and who:

- (a) completed training as a correctional officer after August 1, 2002;
- (b) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
- (c) have had less than a one year break in service, or no break in service, shall serve a 12-month probationary period as prescribed in 12 NCAC 10B .0602(a); may apply for a waiver to the Division by submitting

documentation of the training completed as a correctional officer.

Division staff shall compare the completed correctional officer training to the existing Detention Officer Certification Course and determine whether any of the Detention Officer Certification Course blocks of instruction can be waived. Granting of a waiver is based on a showing of completion of comparable training. The Division shall notify the employing agency of the resulting training requirements. The detention officer and shall complete the required training in a commission-certified Detention Officer Certification Course and take the state examination in its entirety during the probationary period.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1989;

Amended Eff. August 1, 2011; January 1, 2006; August 1, 2002; August 1, 1998; February 1, 1998; January 1, 1996; January 1, 1993; January 1, 1992; January 1, 1991.

12 NCAC 10B .0606 COMP WRITTEN EXAM – DETENTION OFFICER CERTIFICATION COURSE

(a) At the conclusion of a school's offering of the "Detention Officer Certification Course", an authorized representative of the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the course work. A trainee shall not be administered the comprehensive written examination until such time as all course work is successfully completed.

(b) The examination shall be comprised of four units as specified in 12 NCAC 10B .0601(b). Each unit is designed to test the trainees' proficiency in that unit.

(c) The Commission's representative shall submit to the school director within 10 days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination upon achieving a minimum of 70 percent correct answers on each of the four units as prescribed in 12 NCAC 10B .0601(b).

(e) A trainee who has fully participated in a scheduled delivery of a certified training course and has demonstrated satisfactory competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on any of the four units of the Commission's comprehensive written examination may request the Director to authorize a re-examination of the trainee in those units for which he or she has failed to make a passing score of 70 percent as follows:

- (1) A trainee's request for re-examination shall be made in writing on the Commission's form within 30 days after the original examination and shall be received by the Division before the expiration of the trainee's probationary certification as a detention officer.

- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the trainee's "Detention Officer Certification Course".
- (3) A trainee shall have only one opportunity for re-examination and shall satisfactorily complete the subsequent unit examination in its entirety within 90 days after the original examination.
- (4) A trainee shall be assigned in writing by the Division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score of 70 on the unit re-examination, the trainee shall not be given successful course completion and must enroll and successfully complete the unit(s) he or she failed upon re-examination in a subsequent course offering within 180 days of the second failure before further examination may be permitted.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1989; Amended Eff. August 1, 2011; August 1, 2002; January 1, 1996; January 1, 1994; January 1, 1992.

12 NCAC 10B .1305 TRAINEE ATTENDANCE

- (a) Each trainee enrolled in a certified "Telecommunicator Certification Course" shall attend all class sessions. The sheriff or agency head is responsible for the trainee's regular attendance at all sessions of the telecommunicator training course.
- (b) The school director may recognize valid reasons for class absences and may excuse a trainee from attendance at specific class sessions. However, excused absences shall not exceed ten percent of the total class hours for the course offering, except where the absence is due to religious observance as provided for in the community college policy, in which case the absence excused may be for an additional 11.3 hours.
- (c) If the school director grants an excused absence from a class session, he shall schedule appropriate make-up work and ensure the satisfactory completion of such work during the current course presentation or in a subsequent course delivery as is permissible under 12 NCAC 10B .1306.
- (d) A trainee is not eligible for administration of the State Comprehensive Examination nor certification for successful course completion if the cumulative total of class absences, with accepted make-up work, exceeds the amount of time allowed in Paragraph (b) of this Rule and shall be terminated from further course participation by the school director at the time of such occurrence.
- (e) The school director may terminate a trainee from course participation or may deny certification of successful course completion where the trainee is habitually tardy to, or regularly departs early from, class meetings or field exercises.
- (f) Where a trainee is enrolled in a program as required in this Section, attendance shall be 100 percent in order to receive a successful course completion.

History Note: Authority G.S. 17E-4; 17E-7; Eff. April 1, 2001; Amended Eff. August 1, 2011.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 13 .0211 CERTIFICATE INSPECTIONS

- (a) A commissioned inspector shall inspect all boilers and pressure vessels at the time of installation and at regular intervals thereafter, as provided in this Rule.
- (b) Subject to the exceptions in Paragraphs (c) and (d) of this Rule, and after seven days notice is given to the owner or user, an inspector shall conduct an internal inspection of a high pressure boiler at the time of installation and annually thereafter. An external inspection shall be conducted annually while the boiler is in operation. The inspector shall ensure that the safety controls are operating as required. Issuance of the inspection certificate shall be based on the results of the internal inspection; however, if the inspector determines during the external inspection that an unsafe condition exists that is likely to result in serious personal injury or property damage, the inspector shall recommend to the Chief Inspector that the certificate of operation be revoked pursuant to 13 NCAC 13 .0301(d).
- (c) In place of the first internal inspection of a new high pressure boiler, an inspector may conduct an external inspection if the inspector determines that data sufficient to determine compliance with the rules of this Chapter can be gathered from an external inspection. This shall not apply to relocated used boilers or those for which extended inspection certificates are being requested.
- (d) Miniature boilers, coil-type watertube boilers, and boilers heating a fluid other than water which do not produce steam or vapor operating as high pressure boilers shall undergo an external inspection annually. Miniature boilers, coil-type watertube boilers and boilers heating a fluid other than water operating as heating boilers shall undergo an external inspection biennially. Hobby boilers, locomotive boilers and exhibition boilers shall be inspected annually, at the beginning of the season when they are anticipated to be operated.
- (e) Low pressure boilers and pressure vessels, except hydropneumatic storage tanks, shall undergo an external inspection biennially.
- (f) Owner-user inspectors shall conduct inspections for pressure vessels as prescribed in this Rule.
- (g) Inspectors may order coverings removed, internal inspections, external inspections, removal of internal parts, testing or calibration of controls, indicating and safety devices and pressure tests whenever conditions warrant further evaluation of the pressure equipment. The inspector may also require the boiler to be started to verify the operating controls.
- (h) Hydropneumatic storage tanks shall undergo an external inspection every four years.
- (i) When the inspector or Chief Inspector determines that a certificate cannot be issued as a result of an inspection, the boiler or pressure vessel shall be reinspected after the necessary repairs are made.

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

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

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

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

- (1) There is a listing of all the items under this criterion at the site. The list shall be kept current by the owner/user and any additions or deletions shall be kept current. Prior to inspection the inspector shall review the last inspection certificate, the ASME data report, any National Board ("NB") repair/alteration forms and any records of testing performed during the certificate period;
- (2) Each item shall be inspected by means of live video feed that is monitored by the inspector. The inspector shall remain in radio contact with the individual operating the video equipment;
- (3) The inspector shall be in proximity to the item and shall witness the video equipment operator enter the location of the item;
- (4) A scan as complete as possible (within the limitations of the equipment) of all the pressure boundaries shall be witnessed by the inspector;
- (5) The ASME nameplate shall be viewed as well as the ASME/NB nameplate on any pressure relieving device on the item;
- (6) Follow up inspections to verify the correction of deficiencies can be performed with a video

inspection using the items outlined herein by the inspector;

- (7) The inspector shall submit an inspection report for each pressure retaining item at intervals specified in this Rule and the report shall be annotated indicating that the item was inspected pursuant to this Paragraph; and
- (8) Any incident that renders the item inoperative shall be reported to the Bureau by the owner/user or the inspector within 24 hours.

History Note: Authority G.S. 95-69.11; 95-69.14; 95-69.17; Eff. May 29, 1981; Amended Eff. August 1, 2011; July 1, 2006; January 1, 1995; March 2, 1992.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

21 NCAC 10 .0211 AGREEMENTS TO PROVIDE FINANCE OR MANAGEMENT SERVICES

(a) Purpose and extent of rule. G.S. 90-157.3 limits the "ownership" of a chiropractic practice to licensed chiropractors. However, in addition to the treatment of patients, operating a chiropractic practice involves the procurement of financing, office space, equipment, supplies and personnel, as well as the creation and implementation of advertising and marketing strategies, billing procedures and other management functions. It is common in many chiropractic offices for one or more of these operating components to be outsourced. The purpose of this Rule is to define the extent to which a chiropractor licensed and practicing in North Carolina may enter into a financing or management services agreement with a vendor who is not a North Carolina-licensed chiropractor while remaining in compliance with the ownership limitations imposed by G.S. 90-157.3. This Rule does not apply to contracts exclusively between or among North Carolina-licensed chiropractors.

(b) Review of agreements. No person shall be required to submit a financing or management services agreement to the Board for advance approval. The Board shall review existing or proposed agreements only upon request of one or more of the parties or as part of a disciplinary investigation. In order to protect pricing information, trade secrets and similar proprietary information, the Board shall maintain the confidentiality of any agreement under review. The review shall be completed within 90 days of submission, and any agreement not disapproved within 90 days shall be deemed approved.

(c) Prohibited provisions. Beginning July 1, 2012, the following contractual provisions, singly or in combination, shall be deemed by the Board to violate G.S. 90-157.3:

- (1) Any provision or series of provisions that creates a partnership between the chiropractor and the vendor to engage in the practice of chiropractic in contravention of G.S. 90-

157.3(a). When reviewing contracts for compliance with this section, the Board shall apply the rules for determining the existence of a partnership set forth in G.S. 59-37 and the ordinary legal definition of partnership, as follows: "a partnership is a combination by two or more persons of their property, effects, labor, or skill in a common business or venture, under an agreement to share the profits and losses in equal or specified proportions;"

- (2) Ownership or control of patient records by the vendor or any party other than the chiropractor;
- (3) Control by the vendor over the hiring and firing of any personnel who provide clinical services to patients;
- (4) Any requirements imposed by the vendor that affect the chiropractor's exercise of professional judgment in creating treatment plans and delivering clinical services to patients;
- (5) Control by the vendor over the transfer of ownership interests in the practice, but this prohibition shall not prevent the vendor from terminating the agreement if the chiropractor transfers ownership of the practice without the vendor's consent;
- (6) Any attempt to transfer legal liability from the chiropractor to the vendor for the content of advertising or the implementation of any marketing program undertaken to promote the practice.

History Note: Authority G.S. 90-142; 90-147; 90-157.3; Eff. September 1, 2011.

CHAPTER 23 – IRRIGATION CONTRACTORS' LICENSING BOARD

21 NCAC 23 .0102 SURETY BONDS AND LEGAL STATUS

(a) For purposes of this Section a corporate entity is a person as defined in G.S. 89G-1(5) who engages in irrigation contracting, other than natural persons. A natural person licensed by the Board shall post a surety bond or irrevocable letter of credit for his individual license listing his name and the name of any corporation, partnership, limited liability corporation, limited liability partnership or assumed or registered business name under which he does business.

(b) If any licensed individual employed by a corporate entity does irrigation contracting on his or her own behalf, outside the scope of his employment, agency or other relationship with the corporate entity named on the surety bond or irrevocable letter of credit submitted to the Board, that individual licensee must obtain and post a separate surety bond or irrevocable letter of credit with the Board, naming himself as principal.

(c) When a licensed individual terminates his or her relationship (e.g. employment, partnership, or agency) with a corporate entity that lists the individual on a surety bond or irrevocable letter of credit, the licensed individual must purchase and post his own surety bond or irrevocable letter of credit with the Board. The licensed individual shall report the termination to the Board within five business days of its effective date.

(d) If a licensed individual uses a corporate entity to engage in irrigation contracting and is required to file any corporate documents with the North Carolina Secretary of State pursuant to North Carolina law or rules, the individual licensee who qualifies said corporate entity to engage in irrigation contracting shall notify the Board of having filed corporate documents by providing the Board with copies of the same within five business days of the filing date. In lieu of submitting paper copies of such filings, the individual licensee may submit an e-mail to the Board's administrator including a link to the filed corporate documents on the North Carolina Secretary of State's website within 24 hours of those documents being available on said website.

(e) If a corporate entity's ownership changes or the right to control the corporate entity passes from one person or group to another person, group or receiver, the individual licensee who qualifies that corporate entity to engage in irrigation contracting shall notify the Board within five business days of the date when the change in the right of control has become effective. Such changes include addition of or termination of partnerships, changes in corporate form such as from corporation to limited liability company, sale or transfer of a controlling interest in the corporate entity, merger of the corporate entity with another person, or dissolution of the person's corporate or other legal status.

(f) An individual licensee who qualifies a corporate entity to engage in irrigation contracting shall notify the Board in a timely fashion of the beginning of any of the following legal actions in which the corporate entity, as the petitioner or respondent:

- (1) has been named a respondent under an action for legal dissolution by the North Carolina Department of Justice or by a partner, shareholder or such other person as may have the right or authority to bring such action;
- (2) has been notified of its administrative dissolution by the North Carolina Secretary of State; or
- (3) has been notified of the initiation of any legal proceeding as may affect its corporate form, ownership or right of control or otherwise affect its status or ability to comply with G.S. 89G and the Board's rules.

Notice to the Board is timely if the Board receives written notice or e-mail of such action within 10 business days of the receipt of notice or service of legal process by the individual licensee or the registered agent of the corporate entity.

(g) Any individual licensee who has been suspended solely due to cancellation of his or her surety bond or irrevocable letter of credit may apply for reinstatement upon providing the following to the Board:

- (1) A valid surety bond or irrevocable letter of credit naming him as principal;

- (2) An affidavit affirming that the suspended licensee has otherwise complied with all obligations of a licensee under G.S. 89G, and has refrained from practicing irrigation construction or contracting except as may be subject to a statutory exemption;
- (3) Proof of compliance with the licensee's continuing education requirements for each calendar year in which the suspension has been in force; and
- (4) A license application fee of one hundred dollars (\$100.00).

History Note: Authority G.S. 89G-5; 89G-6; 89G-10;
Eff. August 1, 2011.

21 NCAC 23 .0401 SYSTEM DESIGN OBJECTIVES AND REQUIREMENTS

- (a) An irrigation system shall be designed to uniformly distribute water.
- (b) An irrigation contractor shall prepare a system design considering the following criteria:
 - (1) soil type;
 - (2) slope;
 - (3) plant root depth;
 - (4) differing plant material requirements;
 - (5) microclimates;
 - (6) weather conditions;
 - (7) quantity, quality and delivery pressure of the water source; and
 - (8) any issues relating to the long-term management of the system and the landscape it serves.
- (c) To conserve and protect water resources, an irrigation system contractor shall select equipment components and installation techniques that meet state and local code requirements and site requirements.
- (d) The irrigation system shall be designed to provide uniform distribution of water.
- (e) To ensure that the irrigation system is designed to uniformly distribute the water, to conserve and protect water resources, and to function well as a component of the overall landscape, the irrigation system contractor shall:
 - (1) Obtain direct knowledge of site conditions by visiting it. Viewing and relying solely on plot plans to generate a design is not adequate preparation for designing an irrigation system.
 - (2) Produce a design that meets all applicable state and local codes, including plumbing and electrical codes.
 - (3) When allowable by law, specify in the plan the manufacturer, model, type, and size of all components to eliminate ambiguity during construction and to facilitate management of the system.
 - (4) Select pipe, electrical wire and other materials based on design parameters, environmental conditions, code requirements, and long-term management requirements of the system.

- (5) Design the irrigation system to minimize installation and maintenance difficulties.
- (6) Select and place shrubs, trees, and groundcover sprinkler and drip/micro-irrigation components according to the expected size of larger specimen plants through a minimum three-year establishment period for shrubs and 10 years for trees.

History Note: Authority G.S. 89G-5;
Eff. August 1, 2011.

21 NCAC 23 .0404 WATER PRESSURE

- (a) For systems on a municipal or community water supply, an irrigation contractor shall provide allowances in the design for a reduction in static pressure of up to 10 pounds per square inch (psi) to accommodate possible expansion in the supply network.
- (b) Where variable or excessive static pressure exists, an irrigation contractor shall specify pressure regulation.
- (c) At the maximum design flow rate of the system an irrigation contractor shall specify the recommended operating pressure for the irrigation system.

History Note: Authority G.S. 89G-5;
Eff. August 1, 2011.

21 NCAC 23 .0406 COMPONENTS AND ZONE DESIGN

- (a) An irrigation contractor shall design the layout of heads and other emission devices to reduce evaporation loss, reduce surface run-off and limit overspray across or onto a street, public driveway or sidewalk, parking area, building, fence, or adjoining property.
- (b) When changes are required an irrigation contractor shall specify in the plan notes that any required equipment shall meet or exceed the design standards of the system.
- (c) An irrigation contractor shall design sprinkler head spacing with an approximate "head-to-head" coverage, unless the coverage is designed for wind derating. Wind derating shall be based on wind criteria for the time period that the system is normally operated.
- (d) An irrigation contractor shall use separate station/zones (hydrozones) for areas with dissimilar environmental conditions or dissimilar water or scheduling requirements. These conditions include sun exposure, plant type, soil type, varying wind conditions, grades, and dimensional issues. When not practicable due to accessibility, dimensional issues or other constraints, practical modifications to this standard are acceptable.
- (e) An irrigation contractor shall, when selecting system components:
 - (1) Select components to avoid surface runoff;
 - (2) Select components to keep the sprinkler precipitation rate below the infiltration rate of the soil;
 - (3) Specify the use of repeat cycles to allow the water to soak into the root zone; and
 - (4) Specify stations or zones for sprinklers at the top and toe of sloped areas.

(f) An irrigation contractor shall locate sprinkler heads based on an evaluation of physical, environmental, and hydraulic site conditions, including typical wind conditions during the normal irrigation period.

(g) An irrigation contractor shall divide the irrigation systems into zones consistent with the types of sprinkler heads and nozzles being used in order to achieve an approximate matched precipitation rate.

(h) An irrigation contractor shall utilize water-conserving equipment as follows:

- (1) Check valves to minimize low-head drainage when grades exceed five percent;
- (2) Pressure regulators or pressure compensating devices when pressures exceed manufacturer's recommendations;
- (3) Rain sensors to suspend irrigation during rain or other forms of precipitation;
- (4) A controller that has multi-program capability with at least four start times (for multiple repeat soak cycles) and run time adjustments in one-minute increments; and
- (5) Low-trajectory sprinkler nozzles and modified head spacings to mitigate the effects of wind.

(i) An irrigation contractor shall select components that do not mist when manufacturer's pressure specifications are met.

(j) An irrigation contractor shall design irrigation systems having control wire splices made with a waterproof wire splice kit that is UL listed for underground applications. The design shall specify the manufacturer's recommended splice kits for two-wire control systems.

(k) An irrigation contractor shall offset turf grass sprinklers from pavement edges a minimum of two inches to allow for edging of the turf.

(l) An irrigation contractor shall offset sprinklers from vertical walls to limit spray on the walls.

(m) An irrigation contractor shall locate valves so as not to be visually intrusive while being easy to locate.

(n) An irrigation contractor shall protect the roots of existing trees by:

- (1) Planning pipe system layout to limit its effect on existing trees and other planting.
- (2) Maintaining a distance of one foot between trenches and tree trunks for every inch of tree diameter at a height of four feet six inches above the ground, maintain a distance of one foot between pipes and the tree trunk. For example, piping shall be kept at least 20 feet away from the trunk of a tree having a 20 inch diameter at four feet six inches above the ground.
- (3) Using direct boring or hand-trenching where it is necessary to trench in the root protection zone. If possible an irrigation contractor shall dig trenches in a line perpendicular to the tree trunk, but maintain a distance from the trunk that is at least one-half feet for each inch of tree diameter at a height of four feet six inches above the ground. When direct boring, an irrigation contractor shall bore to a minimum

of 36 inches. An irrigation contractor shall not bore within five feet of a tree trunk. An irrigation contractor shall use hand trenching techniques that dig a trench without damaging roots having a diameter of one-half inch or more.

- (4) Avoiding placing sprinklers in a position to directly spray water on tree trunks of mature trees by placing them no closer to a tree than one-third of the sprinkler spray radius.

(o) An irrigation contractor shall use the appropriate size American Wire Gauge ("AWG") wire, as noted by the manufacturer, to operate a valve.

(p) An irrigation contractor shall:

- (1) Place control wires along the same line and along side of the main line;
- (2) Allow slack in the wiring; and
- (3) Bundle an expansion coil for all wires at each valve location.

(q) An irrigation contractor shall indicate common wiring (wire that runs through the entire circuit of valves) by using a different colored wire from all other wire connections.

(r) An irrigation contractor shall provide additional wire along the irrigation wire path for future expansion or replacement of damaged wires.

(s) An irrigation contractor shall use valve boxes that are large enough to allow for easy maintenance of the valve housed inside. Valve boxes shall be at least 10 inches in diameter for both manual and automatic valves.

(t) An irrigation contractor shall follow the manufacturer's recommendation for all wiring and grounding, including two-wire control systems.

*History Note: Authority G.S. 89G-5;
Eff. August 1, 2011.*

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0303 EXISTING NURSING PROGRAM

(a) All nursing programs under the authority of the Board may obtain national program accreditation by a nursing accreditation body as defined in 21 NCAC 36 .0120(29).

(b) Full Approval

- (1) The Board shall review approved programs at least every eight years as specified in G.S. 90-171.40. Reviews of individual programs shall be conducted at shorter intervals upon request from the individual institution or as considered necessary by the Board. National accreditation self study reports shall provide basis for review for accredited programs.
- (2) The Board shall send a written report of the review no more than 20 business days following the completion of the review process. Responses from a nursing education program regarding a review report or Board Warning Status as referenced in Paragraph (c)

of this Rule shall be received in the Board office by the deadline date specified in the letter accompanying the report or notification of Warning Status. If no materials or documents are received by the specified deadline date, the Board shall act upon the findings in the review report and testimony of the Board staff.

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

(c) Warning Status

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

shall remain on Warning Status. A review by the Board shall be conducted during that time.

NOTE: The Board recommends but does not require that all nursing programs under the authority of the Board pursue and maintain national nursing accreditation.

History Note: Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40; Eff. February 1, 1976; Amended Eff. August 1, 2011; July 3, 2008; March 1, 2006; January 1, 2004; June 1, 1992; January 1, 1989.

21 NCAC 36 .0318 FACULTY

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

within the curriculum implementation, objectives to be met and evaluated, review of strategies for identified student population and expectations of student and faculty performance;

- (4) If employed prior to July 1, 2006, faculty shall meet the requirements in Subparagraph (f)(3) of this Rule by December 31, 2010. If employed on or after July 1, 2006 faculty members have three years from date of employment to meet the requirements in Subparagraph (f)(3) of this Rule.
 - (5) maintain competence in the areas of assigned responsibility; and
 - (6) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.
- (g) Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.
- (h) Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities and serve as role models to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold a current, unrestricted license to practice as a registered nurse in North Carolina.
- (i) Nurse faculty members shall have the authority and responsibility for:
- (1) student admission, progression, and graduation requirements; and
 - (2) the development, implementation, and evaluation of the curriculum.
- (j) Nurse faculty members shall be sufficient in number to implement the curriculum as demanded by the course objectives, the levels of the students, and the nature of the learning environment, and shall be sufficient to provide for teaching, supervision and evaluation. The faculty-student clinical ratio shall be 1:10 or less.
- (k) There shall be a written evaluation of each nurse faculty member by the program director or a designee and a written evaluation of the program director according to the institutional policy.

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

Eff. February 1, 1976;

Amended Eff. August 1, 2011; November 1, 2008; July 1, 2006; July 1, 2000; January 1, 1996; June 1, 1992; January 1, 1989; January 1, 1984.

CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

21 NCAC 56 .0401 RECORDS OF BOARD PROCEEDINGS

Records of all proceedings of the Board such as rule-making proceedings, declaratory rulings and contested cases and all other records are retained at the office of the Board or are disposed of in accordance with the records retention and disposition schedule filed with the Department of Cultural Resources.

History Note: Authority G.S. 89C-10(a); 89C-12;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2011; August 1, 1998; April 1, 1989; January 1, 1982.

21 NCAC 56 .0501 REQUIREMENTS FOR LICENSING

(a) Education. The education of an applicant shall be considered in determining eligibility for licensing as a Professional Engineer. The following terms used by the Board for the specific educational requirements to be eligible to be licensed as a Professional Engineer are defined by the Board as follows:

- (1) Engineering Curriculum of Four or More Years Approved by the Board is defined as a program that has been accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). This program is incorporated by reference including subsequent amendments and editions. This material is available for inspection at the office of the North Carolina Board of Examiners for Engineers and Surveyors. Copies may be obtained at the Board office at a cost of five dollars (\$5.00) per copy.
- (2) Engineering or Related Science Curriculum of Four or More Years Other than Ones Approved by the Board is defined as a curriculum, although not accredited by ABET, of technical courses which contains engineering or scientific principles.
- (3) Equivalent Education Satisfactory to the Board:
 - (A) A graduate degree in Engineering from an institution in which the same discipline undergraduate engineering program has been accredited by ABET (EAC) is considered equivalent to an engineering curriculum of four or more years approved by the Board.
 - (B) A bachelor's degree in Engineering Technology, whether or not accredited by the Technology Accreditation Commission (TAC) of ABET, is considered equivalent to an engineering or related science curriculum of four or more years

other than one approved by the Board.

- (C) Until June 30, 2016, an associate degree in an engineering related curriculum with an additional two years of progressive engineering experience is considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board and may be used until that date as a basis for admission to the principles and practice of engineering examination. Once admitted to the examination an applicant may continue to re-take the examination until required to submit a new application as set out in Rule .0503. After June 30, 2016 an associate degree shall no longer be used as a basis for admission to that examination.
- (D) Foreign degrees are considered equivalent only after receipt of an evaluation report that the degree is substantially equivalent to an EAC/ABET accredited engineering curriculum from the Center for Professional Engineering Education Services, an affiliate of the National Council of Examiners for Engineering and Surveying (NCEES), or from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The Board shall equate the degree to an EAC/ABET accredited engineering curriculum of four or more years approved by the Board in Subparagraph (a)(1) of this Rule if it receives a substantially equivalent evaluation.

(b) Experience:

- (1) General. The experience of an applicant shall be considered in determining whether an applicant is eligible to be licensed as a Professional Engineer.
- (2) Required Experience. In evaluating the work experience required, the Board shall consider the total experience record and the progressive nature of the record. Not less than half of required engineering experience shall be of a professional grade and character, and shall be performed under the responsible charge of a licensed Professional Engineer, or if not, a written explanation shall be submitted showing why the experience should be considered acceptable and the Board shall approve if satisfied of the grade and character

of the progressive experience. Experience gained under the technical supervision of an unlicensed individual shall be considered if the appropriate credentials of the unlicensed supervisor are submitted to the Board. Experience gained in the armed services, usually while serving in an engineering or engineering related group, shall be considered if of a character equivalent to that which would have been gained in the civilian sector doing similar work.

- (3) Definition. The terms "progressive engineering experience" or "progressive experience on engineering projects" mean that during the period of time in which an applicant has made a practical utilization of acquired knowledge, continuous improvement, growth and development have been shown in the utilization of that knowledge as revealed in the complexity and technical detail of the work product or work record. The applicant must show continuous assumption of greater individual responsibility for the work product over that period of time. The progressive experience on engineering projects shall be of a grade and a character which indicates to the Board that the applicant is competent to practice engineering.
- (4) Specific Credit for Experience. In evaluating progressive engineering experience, the Board shall give credit for experience in the following areas of work:
 - (A) Graduate schooling or research in an engineering program resulting in award of a master's degree from an institution that offers EAC/ABET-accredited programs – one year;
 - (B) Graduate schooling or research in an engineering program resulting in award of an earned doctoral degree in engineering from an institution that offers EAC/ABET-accredited programs – two years, with or without a master's degree, but includes the one year for the master's degree, if obtained;
 - (C) Progressive land surveying - maximum two years; and
 - (D) Teaching of engineering subjects at the university level in an engineering program offering a four year or more degree approved by the Board.

The Board, however, shall not accept combinations, in the categories in this Subparagraph, as fulfilling all the necessary statutory experience requirements. Every applicant for licensure as a Professional Engineer, as part of the total experience requirement, shall show a minimum of one year experience of a progressive engineering nature in industry, or government, or under

a licensed Professional Engineer offering service to the public.

Full-time engineering faculty members who teach in an engineering program offering a four year or more degree approved by the Board, may request and shall be granted waiver of the minimum one year experience in industry, government, or private practice if they demonstrate consulting or research work of at least one year's duration, which was pursued to fruition, and which is of a progressive engineering nature. The faculty applicant shall document the work and demonstrate that the work meets the Board's requirement.

- (5) Other Experience is Considered if it is:
- (A) Experience obtained prior to graduation as part of an ABET accredited engineering program which must be shown on the transcript, with a maximum credit of one year; or
 - (B) Experience obtained in a foreign country that is performed under direct supervision of a Professional Engineer licensed with a member Board of the National Council of Examiners for Engineering and Surveying (NCEES).

*History Note: Authority G.S. 89C-10; 89C-13;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 2011; May 1, 2009; August 1, 2002;
August 1, 2000; August 1, 1998; November 2, 1992; April 1, 1989; January 1, 1982.*

21 NCAC 56 .0505 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Engineer Licensure. An annual renewal fee of seventy-five dollars (\$75.00) for certificates of licensure for Professional Engineers shall be payable to the Board. The Board shall provide each licensed Professional Engineer a form that requires the licensee to provide the Board the physical places of business and residential addresses, report compliance with continuing education requirements, and report criminal convictions or disciplinary actions. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change. The licensee shall give notice to the Board of any criminal convictions, including DWI but not including minor traffic offenses (offenses that are not a misdemeanor or felony) or of any disciplinary actions in any jurisdiction on any license, within 30 days of the conviction or disciplinary action. A nolo contendere plea is equated to a conviction for reporting purposes.

(b) Engineering Intern Certificate. The Engineering Intern certificate does not expire and, therefore, does not have to be renewed.

(c) "Professional Engineer, Retired." The Board shall approve the application for use of the title for a person who has been duly licensed as a professional engineer by the Board, who chooses to

relinquish or not to renew a license and has had no disciplinary action or criminal conviction that would support a determination that the licensee is not of good character and reputation.

*History Note: Authority G.S. 89C-10; 89C-17; 89C-3(8a);
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. August 1, 2011; July 1, 2010; July 1, 2009;
December 4, 2002; August 1, 2000; August 1, 1998; May 1, 1994.*

21 NCAC 56 .0506 WAIVER FOR LICENSEES SERVING ON ACTIVE DUTY IN THE ARMED FORCES OF THE US

(a) All Professional Engineers currently licensed by and in good standing with the Board (whose license is not suspended or revoked) who are serving in the armed forces of the United States and who are eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2 are granted a waiver of their mandatory continuing education requirements and annual renewal fee for the time period disregarded pursuant to the Internal Revenue Code 26 U.S.C. 7508.

(b) Request for waiver by an eligible licensee, meeting requirements in Paragraph (a) of this Rule, of renewal fee and waiver of continuing education requirements:

- (1) The licensee shall notify the Board of eligibility before the current license expires. Upon such notification, the Board shall maintain the license in active status through the extension period.
- (2) If the licensee fails to notify the Board of eligibility for the extension period before the current license expires, upon receipt and acceptance of a renewal application within the extension period and presentation of proof that the licensee was eligible on the date that is the deadline for renewal, the expired license or registration shall be deemed retroactively to have not expired.
- (3) The licensee who submits a renewal application within the extension period shall not be deemed to hold a lapsed license subject to reinstatement fees.
- (4) The licensee may renew the license within the extension period despite failing to complete the specified continuing education requirements.
- (5) A licensee shall provide proof of eligibility for the extension period when the licensee or registrant submits the renewal application.

*History Note: Authority G.S. 89C-10; 89C-17; 93B-15;
Eff. August 1, 2011.*

21 NCAC 56 .0606 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Land Surveyor Licensure. An annual renewal fee of seventy-five dollars (\$75.00) for certificates of licensure for Professional Land Surveyors is payable to the Board. The

Board shall provide each Professional Land Surveyor a form that requires the licensee to provide to the Board the physical places of business and residential addresses, report compliance with continuing education requirements, and report criminal convictions or disciplinary actions. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change. The licensee shall give notice to the Board of any criminal convictions, including DWI but not including minor traffic offenses (offenses that are not a misdemeanor or felony) of any disciplinary actions in any jurisdiction on any license, within 30 days of the conviction or disciplinary action. A nolo contendere plea is equated to a conviction for reporting purposes.

(b) Surveyor Intern Certificate. The surveyor intern certificate does not expire and, therefore, does not have to be renewed.

(c) "Professional Land Surveyor, Retired." The Board shall approve the application for use of the title for a person who has been duly licensed as a Professional Land Surveyor by the Board, who chooses to relinquish or not to renew a license and has had no disciplinary action that would support a determination that the licensee is not of good character and reputation.

History Note: Authority G.S. 89C-17; 89C-3(9a); Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2011; July 1, 2010; July 1, 2009; December 4, 2002; August 1, 2000; August 1, 1998; May 1, 1994.

21 NCAC 56 .0607 WAIVER FOR LICENSEES SERVING ON ACTIVE DUTY IN THE ARMED FORCES OF THE US

(a) All Professional Land Surveyors currently licensed by and in good standing with the Board (whose license is not suspended or revoked) who are serving in the armed forces of the United States and who are eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2 are granted a waiver of their mandatory continuing education requirements and annual renewal fee for the time period disregarded pursuant to the Internal Revenue Code 26 U.S.C. 7508.

(b) Request for waiver by an eligible licensee, meeting requirements in Paragraph (a) of this Rule, of renewal fee and waiver of continuing education requirements:

- (1) The licensee shall notify the Board of eligibility before the current license expires. Upon such notification, the Board shall maintain the license in active status through the extension period.
- (2) If the licensee fails to notify the Board of eligibility for the extension period before the current license expires, upon receipt and acceptance of a renewal application within the extension period and presentation of proof that the licensee was eligible on the date that is the deadline for renewal, the expired license or registration shall be deemed retroactively to have not expired.

(3) The licensee who submits a renewal application within the extension period shall not be deemed to hold a lapsed license subject to reinstatement fees.

(4) The licensee may renew the license within the extension period despite failing to complete the specified continuing education requirements.

(5) A licensee shall provide proof of eligibility for the extension period when the licensee or registrant submits the renewal application.

History Note: Authority G.S. 89C-10; 89C-17; 93B-15; Eff. August 1, 2011.

21 NCAC 56 .0804 ANNUAL RENEWAL

(a) Renewal. The certificate of licensure for a business entity, including a professional corporation, limited liability company, Chapter 87 corporation, or business firm shall be renewed annually.

(b) Expiration. The certificate of licensure expires on the last day of June following its issuance by the Board and becomes invalid on that date unless renewed.

(c) Written Application. Upon written application on a renewal form provided by the Board that requires the physical place of business address and report of disciplinary actions accompanied by a fee of seventy-five dollars (\$75.00) the Board shall renew the certificate of licensure providing that the firm has complied with all Rules of the Board and applicable General Statutes of North Carolina. The form shall be provided to all licensees in good standing no later than June 1st. The licensed entity shall give notice to the Board of a change of business address within 30 days of the change. The firm shall give notice to the Board of any disciplinary actions in any jurisdiction on any license within 30 days of the disciplinary action.

(d) If a firm fails to renew its certificate of licensure within one year of the expiration date, the firm shall submit a new application for a new certificate of licensure in accordance with all requirements of 21 NCAC 56 .0802.

(e) If any business entity that holds a current certificate of licensure ceases business because the professional licensee receives a waiver from paying the individual renewal fee under 21 NCAC 56 .0506 or 21 NCAC 56 .0607 the annual renewal fee for the business shall be waived for the same time period.

History Note: Authority G.S. 55B-11; 57C-2-01; 89C-10; 89C-14; 89C-17; 89C-24;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2011; July 1, 2010; July 1, 2009; December 4, 2002; April 1, 2001; February 1, 1996; May 1, 1994.

21 NCAC 56 .1103 STANDARD CERTIFICATION REQUIREMENTS

(a) Certification of Final Drawings. Drawings or maps not subject to the exceptions in Paragraph (c) of this Rule shall conform to the following:

- (1) Certification is required on reproducibles or original drawings;
- (2) The seal may be a rubber stamp, embossed seal, computer-generated seal, or other facsimile that becomes a permanent addition to a plan sheet or map;
- (3) The licensee's written signature must be placed over, or adjacent to, the seal on the original document. A facsimile signature is not acceptable;
- (4) The date of signing must be annotated on the original document;
- (5) All sheets of engineering and surveying drawings must be certified;
- (6) The name, address and license number of the licensee's firm shall be included on each sheet of engineering drawings. For surveys, the name, address and license number of the licensee's firm shall be included on the first sheet of the survey or title sheet. The individual license number of the sole proprietor shall be used as the license number for an exempt sole proprietorship that meets the requirements of 21 NCAC 56 .0802(b)(1); and
- (7) Any revision on a drawing after a licensee's certification is affixed shall be described and dated and if not done under the responsible charge of the same licensee shall be separately certified.

(b) Certification of Specifications and Reports. All specifications, reports, or other documents, including letter reports and calculations, not subject to the exceptions in Paragraph (c) of this Rule shall conform to the following:

- (1) Certification is required on original specifications, reports, or other documents, including letter reports and calculations;
- (2) The seal may be a rubber stamp, or other facsimile;
- (3) The licensee's written signature must be placed over, or adjacent to, the seal on the original document. A facsimile signature is not acceptable;
- (4) The date of signing must be annotated on the original document;
- (5) The title sheet of engineering specifications or other reports must be certified and bear the name, address and license number of the licensee's firm. The title sheet of any survey report or written description of property shall include the name, address and license number of the licensee's firm. The individual license number of a sole proprietor shall be used as the license number for an exempt sole proprietorship that meets the requirements of 21 NCAC 56 .0802(b)(1); and
- (6) Any revision in the document after a licensee's certification is affixed shall be described and dated and if not done under the responsible

charge of the same licensee shall be separately certified.

(c) Exceptions to Required Certification. The certification of a licensee on a map, drawing, plan, specification, plat, document, or report shall signify that it is the final work of the licensee unless the work is stamped or marked substantially as follows so as to put the public on notice not to use as a final product, in which case certification is optional:

- (1) "Preliminary - Do not use for construction";
- (2) "Progress Drawings - Do not use for construction";
- (3) "Preliminary Plat - Not for recordation, conveyances, or sales";
- (4) "Final Drawing - Not released for construction";
- (5) "Final Drawing - For Review Purposes Only";
- (6) "Not a Certified Document - This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document shall not be considered a certified document";
- (7) "Not a Certified Document as to the Original Document but Only as to the Revisions - This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document is only certified as to the revisions".

(d) Electronically Transmitted Documents. Documents, including drawings, specifications and reports, that are transmitted electronically beyond the direct control of the licensee shall have the computer-generated seal removed from the original file, unless signed with a digital signature as defined in Paragraph (e) of this Rule. After removal of the seal the electronic media shall have the following inserted in lieu of the signature and date: "This document originally issued and sealed by (name of sealer), (license number), on (Date of sealing). This medium shall not be considered a certified document." Hardcopy documents containing the original seal, signature and date of the licensee may be duplicated by photocopy or electronic scanning processes and distributed either in hardcopy or electronic medium. The scanned digital files of certified documents are not subject to the requirements of this Paragraph. The electronic transmission beyond the direct control of the licensee of CAD, vector or other files subject to easy editing are subject to the requirements of this paragraph. Easy editing is based on the file consisting of separate elements that can be individually modified or deleted. Documents that are excepted from certification by a statement meeting the requirements of Subparagraphs (c)(1) through (c)(5) of this Rule are not subject to the requirements of this Paragraph.

(e) Documents to be electronically transmitted beyond the direct control of the licensee that are signed using a digital signature, shall contain the authentication procedure in a secure mode and a list of the hardware, software and parameters used to prepare the document(s). Secure mode means that the authentication procedure has protective measures to prevent alteration or overriding of the authentication procedure. The term "digital signature" shall be an electronic authentication process that is

attached to or logically associated with an electronic document. The digital signature shall be:

- (1) Unique to the licensee using it;
- (2) Capable of verification;
- (3) Under the sole control of the licensee; and
- (4) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(f) A digital signature process may be submitted to the Board for approval that it meets the criteria set forth in Subparagraphs (e)(1) through (4) of this Rule. The licensee shall confirm that if another process is used, that it meets the criteria.

History Note: Authority G.S. 89C-10; 89C-16;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2011; July 1, 2009; May 1, 2009; August 1, 2002; August 1, 2000; August 1, 1998; February 1, 1996; May 1, 1994; April 1, 1989; December 1, 1984.

21 NCAC 56 .1301 IMPROPER PRACTICE BY A LICENSEE

(a) General. Alleged practice that may violate the rules in this Chapter or G.S. 89C by a licensee is subject to Board investigation and disciplinary action by the Board.

(b) Preferring Charges. Any person who believes that any licensed Professional Engineer, Professional Land Surveyor or firm holding a certificate of authorization is in violation of the provisions of G.S. 89C or the rules in this Chapter may prefer charges against that person or firm by setting forth in writing those charges and swearing to their authenticity, along with providing corroborative evidence. The charges shall be filed with the Board's office in Raleigh, North Carolina.

(c) Preliminary Review:

- (1) Upon receipt of a properly filed charge, a case shall be opened.
- (2) A field investigation may be performed if determined necessary by the Executive Director.
- (3) If the Executive Director determines that the charges are corroborated by evidence, a written notice and explanation of the charge shall be forwarded to the person or firm against whom the charge is made and a response is requested of the person or firm so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt request.
- (4) After preliminary evidence has been obtained, the matter shall be referred to the Board's review committee which is made up of the following individuals:
 - (A) one member of the Board who is licensed in the respective profession,
 - (B) the legal counsel of the Board, and

(C) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.

(5) Upon review of the available evidence, the review committee shall present to the Board a written recommendation that:

(A) the charge be dismissed as unfounded or trivial;

(B) when the charge is admitted as true, the Board accept the admission of guilt by the person charged and order that person not to commit in the future the specific act or acts admitted and also not to violate any of the provisions of the Board Rules or the statutes at any time in the future;

(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 .1400 of this Chapter and the provisions of G.S. 150B; or

(D) whether the charge is admitted or denied, the Board give notice to the licensee of a contemplated action as set out in Rule .1403(b) of this Chapter.

(d) Consultant. A consultant to the review committee shall be designated by the Board Chair if a board member is a complainant, witness or respondent in a case. The consultant shall be a licensed professional engineer or professional land surveyor, depending on the nature of the case, and selected from a list provided by the Executive Director of former Board members or other licensed professionals who are knowledgeable with the Board's processes. The consultant shall review all case materials and make a recommendation for consideration by the review committee as to the merits of the case. The consultant shall review any new information presented in the event of a settlement conference and make a recommendation to the settlement conference committee.

(e) Board Decision. Notice of the decision by the Board on recommendations of the review committee shall be given to the party against whom the charges have been brought and the party submitting the charge. Though it is not forbidden to do so, the Board is not required to notify the parties of the reasons of the Board in making its determination.

(f) Settlement Conference. When the Board issues a citation for hearing or notice of a contemplated action, the licensee may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the licensee and Board's settlement committee do not agree to a resolution of the dispute for the full Board's consideration, the original administrative proceeding shall commence. During the course of the settlement conference, no sworn testimony shall be taken nor shall any witnesses be cross-examined.

- (1) The Board's settlement committee shall be made up of the following individuals:
 - (A) the member of the Board who served on the review committee or the replacement if the member is not available,
 - (B) one public member from the Board,
 - (C) the legal counsel of the Board, and
 - (D) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.
- (2) Upon review of the available evidence, the settlement committee shall present to the Board a written recommendation that:
 - (A) the charge be dismissed as unfounded or trivial;
 - (B) when the charge is admitted as true, the Board accept the admission of guilt by the person charged and order the person not to commit in the future the specific act or acts admitted and, also, not to violate any provisions of the Board Rules or the statutes at any time in the future;
 - (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 .1400 of this Chapter and the provisions of G.S. 150B; or
 - (D) whether the charge is admitted or denied, the Board give notice to the licensee of a contemplated action as set out in Rule .1403(b) of this Chapter.

History Note: Authority G.S. 89C-10; 89C-21; 89C-22; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2011; July 1, 2009; May 1, 2009; August 1, 2000; August 1, 1998; March 1, 1996; April 1, 1989; December 1, 1984; January 1, 1982.

21 NCAC 56 .1302 UNLAWFUL PRACTICE BY AN UNLICENSED PERSON

- (a) General. Alleged unlawful practice by an unlicensed person shall be subject to Board investigation and referral to an agency of the state for appropriate legal action.
- (b) Preferring Charges. Any person who believes that any person or firm is in violation of the acts specified in G.S. 89C may prefer charges against that person or firm by setting forth in writing those charges and swearing to their authenticity. The charges shall be filed at the Board's office in Raleigh, North Carolina.
- (c) Preliminary or Threshold Determination:

- (1) Upon receipt of a properly filed charge, an investigation shall be initiated,
- (2) At the discretion of the executive director, a field investigation may be performed without notifying any of the parties involved,
- (3) After preliminary evidence has been obtained, the matter shall be referred to the Board's review committee which is made up of the following individuals:
 - (A) one member of the Board;
 - (B) the legal counsel of the Board; and
 - (C) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.
- (4) The review committee shall recommend to the Board 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. 89C.
- (5) Upon review of the available evidence, the review committee shall make a threshold determination of the charges brought. The review committee shall then present to the Board written recommendations that:
 - (A) The investigation be continued;
 - (B) The charge be dismissed as unfounded or trivial; or
 - (C) The matter be referred to an appropriate agency for necessary legal action.
- (d) Board Decision. Notice of decision by the Board on recommendations of the review committee shall be given to the party submitting the charge.

History Note: Authority G.S. 89C-10; 89C-23; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2011; August 1, 2000; August 1, 1998; May 1, 1994; April 1, 1989; January 1, 1982.

21 NCAC 56 .1605 CLASSIFICATION OF VERTICAL CONTROL SURVEYS

(a) General. Vertical control surveys are defined as measurements taken by surveying methods (differential leveling, trigonometric leveling, and global positioning surveys) to determine elevation with respect to vertical datum, usually National Geodetic Vertical Datum of 1929 (NGVD29) or North American Vertical Datum of 1988 (NAVD88). Global Position Surveys shall only be used to obtain Class C surveys. For the purpose of specifying minimum allowable surveying standards, the following three general classifications of vertical control surveys are established.

- (1) For Class A vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.10 times the square root of the number of miles run from the reference datum.
- (2) For Class B vertical control surveys in North Carolina, the vertical error in feet shall not

exceed 0.20 times the square root of the number of miles run from the reference datum.

- (3) For Class C vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.30 times the square root of the number of miles run from the reference datum. The vertical error in global position surveys shall not exceed five centimeters relative to the referenced benchmark(s) at the 95 percent confidence level (2 sigma) accuracy as defined in Federal Geographic Data Committee Standards.

(b) A certificate, substantially in the following form, shall be affixed to all maps or reports:

" I, _____, certify that this vertical control survey was completed to the Class ____ standard [(21 NCAC 56.1605(a)] under my direct and responsible charge from an actual survey made under my supervision."

History Note: Authority G.S. 89C-10; 89C-20; Eff. November 2, 1992; Amended Eff. August 1, 2011; August 1, 2002; August 1, 2000.

21 NCAC 56 .1606 SPECIFICATIONS FOR TOPOGRAPHIC AND PLANIMETRIC MAPPING, INCLUDING GROUND, AIRBORNE, AND SPACEBORNE SURVEYS

(a) General.

- (1) Topographic surveys are defined as surveys that have as their major purpose the determination of the configuration (relief) of the earth (ground) and the location of natural or artificial objects thereon.
- (2) Planimetric mapping is defined as producing a map that presents the horizontal positions only for the features represented; distinguished from a topographic map by the omission of relief in measurable form.
- (3) Airborne and spaceborne surveys are defined as the use of photogrammetry, LIDAR, IFSAR, or other similar measurement technologies for obtaining reliable information about physical objects and the environment, including terrain surface, through the process of recording, measuring, and interpreting images and patterns of electromagnetic radiant energy and other phenomena. This Rule establishes minimum allowable photogrammetric production procedures and standards for photogrammetric mapping and digital data production.

(b) Production procedures for topographic and planimetric mapping surveys shall be in accordance with the standards established by Part 3 of the Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standard and applicable extensions and revisions. These standards are incorporated by reference including subsequent amendments and editions. The material is available from the Board office at the cost of reproduction as a public record or from the FGDC at

www.fgdc.gov at no cost. Reporting accuracy shall be in accordance with Part 1 of the FGDC geospatial standards.

(c) Topographic or planimetric maps, orthophotos, and related electronic data, unless marked as "Preliminary Map," shall meet contractually specified FGDC Standards for horizontal and vertical accuracies (in the absence of specified standards, the National Map Accuracy Standards apply) and shall be certified by the licensee.

(d) When the resulting product is a digital (electronic) data set, or a map or document consists of more than one sheet or otherwise cannot be certified, a project report shall be certified. The report shall be marked "Preliminary" if applicable.

(e) Ground control for topographic and planimetric mapping projects shall be in North Carolina State Plane Coordinate System grid coordinates and distances when the project is tied to Grid. A minimum of one permanent project vertical control point shall be shown.

(f) The project map or report shall contain the following information:

- (1) Date of original data acquisition;
- (2) Altitude of sensor and sensor focal length, as applicable;
- (3) Date of document or data set compilation;
- (4) If hard copy product is produced, the maps shall contain a north arrow, map legend, final document scale, including bargraph, and contour interval, as applicable;
- (5) Coordinate system for horizontal and vertical denoting SI or English units (i.e., NAD83, assumed, or other coordinate system);
- (6) A list or note showing the control points used for the project. The minimum data shown for each point shall include: physical attributes e.g. iron rod, railroad spike), latitude and longitude (or X and Y Grid coordinates), and elevation, as applicable;
- (7) If other data is included, the source and accuracy of those items must be indicated;
- (8) A statement of horizontal and vertical accuracy at the 95 percent confidence level (2 sigma) complying with contractually specified FGDC standards consistent with Paragraph (c) of this Rule;
- (9) For topographic maps or data sets, contours in areas obscured by man-made or natural features shall be uniquely identified or enclosed by a polygon identifying the obscured area. The accuracies of the contours or of features in this obscured area shall be noted "No reliance is to be placed on the accuracy of these contours;"
- (10) A vicinity map depicting the project location on the first sheet of all hard copy maps or in the report accompanying digital files; and
- (11) The name of the client for whom the project was conducted.

(g) Nothing in this Section shall be construed to negate or replace the relative accuracy standards found in Rules .1601 through .1608.

(h) A certificate, substantially in the following form, shall be affixed to all maps or reports:

" I, _____, certify that this project was completed under my direct and responsible charge from an actual survey made under my supervision; that this _____ (insert as appropriate: ground, airborne or spaceborne) survey was performed at the 95 percent confidence level (2 sigma) to meet Federal Geographic Data Committee Standards; that the horizontal accuracy is _____, that the vertical accuracy is _____ and that the original data was obtained on _____ (date) _____; that the survey was completed on _____ (date) _____; that contours shown as [broken lines] may not meet the stated standard; and all coordinates are based on _____ (NAD 83 (NSRS 2007), NAD 83/2001, or other); and all elevations are based on _____ (NGV 29, NAVD 88, or other)."

(i) Documents transmitted electronically shall have the computer-generated seal removed from the original file and a copy of the project report shall be certified and sent to the client. The electronic data shall have the following inserted in lieu of the signature and date:

"This document originally issued and sealed by (name of sealer), (license number), on (date of sealing). This electronic media shall not be considered a certified document. See the project report for certificate and seal."

History Note: Authority G.S. 89C-10; 89C-20;

Eff. November 2, 1992;

Amended Eff. August 1, 2011; May 1, 2009; August 1, 2002; August 1, 2000.

21 NCAC 56 .1607 GLOBAL POSITIONING SYSTEMS SURVEYS

(a) General. Global Positioning Systems (GPS) are defined as the navigation and positioning systems that comprise the Global Navigation Satellite System (GNSS), which includes NAVSTAR, GLONASS, GALILEO, COMPASS, and any other satellite-based navigation and positioning systems.

(b) The Professional Land Surveyor in responsible charge of the GPS survey shall certify all prepared documents. When a map or document consists of more than one sheet, only one sheet must contain the certificate and all others must be certified. The certificate or metadata notes shall contain the following information:

- (1) Class of GPS survey as defined in the Standards of Practice (or list the sections);
- (2) Type of GPS field procedure, such as Static, Kinematic, Pseudo-Kinematic, Real-time Kinematic, Real-time Kinematic networks, and Online Position User Service;
- (3) Positional accuracy;
- (4) Dates of survey;
- (5) What datum and epoch coordinates or geographic positions are based on;
- (6) Designation of fixed-control stations and their positional data;
- (7) Geoid model used;
- (8) Combined grid factor(s); and
- (9) Units.

The certificate shall be substantially in the following form:

"I, _____, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision and the following information was used to perform the survey:

- (1) Class _____ of _____ survey:
- (2) Positional _____ accuracy:
- (3) Type of GPS field procedure:
- (4) Dates _____ of _____ survey:
- (5) Datum/Epoch: _____
- (6) Published/Fixed-control _____ use:
- (7) Geoid _____ model:
- (8) Combined grid factor(s): _____
- (9) Units: _____ "

(c) GPS surveys performed to provide control networks shall be performed in such a manner that a 95 percent confidence level of the positional accuracy of each point relative to the published positions of the control points used and shall meet the accuracy standards of a Class AA survey as set out in Rule .1603.

(d) GPS surveys performed to provide local horizontal or vertical Grid control on a parcel of land where the boundary or topography of that parcel will be shown relative to NC Grid horizontal or vertical datum shall be performed using techniques that will provide the standards of accuracy for the class of survey being performed while determining the horizontal or vertical positions of objects as set out in Rule .1603 or Rule .1606 as applicable.

(e) Fixed station(s) used for the project shall appear on the map, plat, or report. The minimum data shown for each fixed station shall be station name, horizontal position (northing and easting) or latitude, longitude, elevation (ellipsoid or orthometric), and datum and epoch.

History Note: Authority G.S. 89C-10; 89C-20;

Eff. November 2, 1992;

Amended Eff. August 1, 2011; May 1, 2009; August 1, 2002; August 1, 2000.

21 NCAC 56 .1608 CLASSIFICATION/LAND INFORMATION SYSTEM/GEOGRAPHIC INFORMATION SYSTEM SURVEYS

(a) General: Land Information System/Geographic Information System (LIS/GIS) surveys are defined as the measurement of existing surface and subsurface features for the purpose of determining their accurate geospatial location for inclusion in an LIS/GIS database. All LIS/GIS surveys as they relate to property lines, rights-of-way, easements, subdivisions of land, the position for any survey monument or reference point, the determination of the configuration or contour of the earth's surface or the position of fixed objects thereon, and geodetic

surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry, shall be performed by a Land Surveyor who is a licensee of this Board unless exempt by G.S. 89C-25. For the purpose of specifying minimum allowable surveying standards, five general classifications of LIS/GIS surveys are established, any of which may be specified by the client. In the absence of a specified standard, the surveyor shall conform the survey to the requirements for a Class B survey. The five general classifications are:

- (1) Class AA LIS/GIS Surveys. For Class AA LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or no less than 0.033 meter (0.10 feet);
- (2) Class A LIS/GIS surveys. For Class A LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 0.5 meter (1.64 feet);
- (3) Class B LIS/GIS surveys. For Class B LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 1.0 meter (3.28 feet);
- (4) Class C LIS/GIS surveys. For Class C LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 2 meters (6.56 feet); and
- (5) Class D LIS/GIS surveys. For Class D LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 5 meters (16.40 feet).

(b) Nothing in this Rule negates or replaces the relative accuracy standards found in Rules .1601 through .1607 of this Chapter.

(c) The Professional Land Surveyor in responsible charge of the LIS/GIS boundary or geodetic control survey shall certify to all of the following in either written or digital form:

- (1) Class of LIS/GIS survey. Method used to evaluate the accuracy shall be described as either statistical testing or least squares adjustment results, comparison with values of higher accuracy, and repeat measurements. The reporting standard in the horizontal component is the radius of a circle of uncertainty, such that the true or theoretical location of the point falls within that circle 95 percent of the time. For vertical accuracy requirements, see 21 NCAC 56 .1605;
- (2) Method of measurement (i.e. global navigation satellite systems, electronic scanners, theodolite and electronic distance meter, transit and tape);
- (3) Date(s) of the survey; and
- (4) Datum used for the survey.

(d) A certificate, substantially in the following form, shall be affixed to all maps or reports:

"I, _____, certify that this project was completed under my direct and responsible charge from an

actual survey made under my supervision; that this survey was performed to meet the requirements for an LIS/GIS survey [21 NCAC 56.1608] to the accuracy of Class ____ and vertical accuracy; when applicable to the Class ____ standard [(21 NCAC 56.1605(a)); method used to evaluate the accuracy was _____; method of measurement _____; date(s) of survey _____; datum used for survey _____; and all coordinates are based on _____(NAD 83 (NSRS 2007), NAD 83/2001, or other); and all elevations are based on _____(NGV 29, NAVD 88, or other)."

History Note: Authority G.S. 89C-10; 89C-20;

Eff. February 1, 1996;

Amended Eff. August 1, 2011; July 1, 2009; May 1, 2009; August 1, 2002; August 1, 2000.

21 NCAC 56 .1703 REQUIREMENTS

Every licensee shall obtain 15 PDH units during the renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal period. Selection of courses and activities which meet the requirements of Rule .1702(4) of this Section is the responsibility of the licensee. Licensees may select courses other than those offered by sponsors. Post evaluation of courses may result in non-acceptance. PDH units may be earned as follows:

- (1) Completion of college courses;
- (2) Completion of continuing education courses, seminars, or workshops;
- (3) Completion of correspondence, televised, internet, videotaped, audiotaped, and other courses or tutorials provided an exam is required for completion. No exam is required for attendance at a webinar presentation if attendance is documented;
- (4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;
- (5) Teaching or instructing in Items (1) through (4) of this Rule;
- (6) Authoring published papers, articles, or books;
- (7) Active participation in professional or technical societies as defined in Rule .1705(f) of this Section;
- (8) Patents; and
- (9) Authoring exam questions accepted for use in the engineering or land surveying exams.

History Note: Authority G.S. 89C-10(a); 89C-17;

Eff. December 1, 1994;

Amended Eff. August 1, 2011; May 1, 2009; August 1, 2000; August 1, 1998.

21 NCAC 56 .1705 DETERMINATION OF CREDIT

(a) The Board of Examiners has final authority with respect to approval of courses, sponsors, credit, PDH value for courses, and other methods of earning credit.

- (b) Credit for college or community college courses shall be based upon course credit established by the college.
- (c) Credit for continuing education courses, seminars and workshops shall be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and technical society meetings shall earn PDH units for the actual time of each program.
- (d) Credit for correspondence, televised, internet, videotaped, audiotaped, and other courses or tutorials, provided an exam is required for completion, shall be based upon one PDH unit for each hour assigned to the course, provided such hours are a reasonably estimated time for an average professional to complete the course.
- (e) Credit determination, as allowed in 21 NCAC 56 .1704(6), for published papers, articles and books and obtaining patents is the responsibility of the licensee.
- (f) Credit for active participation in professional and technical societies (limited to 2 PDH per organization), requires that a licensee serve as an officer or participate in a committee of the organization. PDH credits are not earned until the end of each year of service is completed.

History Note: Authority G.S. 89C-10(a); 89C-17; Eff. December 1, 1994; Amended Eff. August 1, 2011; May 1, 2009; August 1, 2000; August 1, 1998.

21 NCAC 56 .1707 EXEMPTIONS

A licensee is exempt from the professional development educational requirements for the following reasons:

- (1) New licensees by way of examination or comity are exempt for their first renewal period.
- (2) If currently licensed by and in good standing (license is not suspended or revoked) with the Board a licensee who is serving in the armed forces of the United States and who is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2 is granted a waiver of the mandatory continuing education requirements for the time period disregarded pursuant to the Internal Revenue Code 26 U.S.C. 7508.

The licensee shall request the waiver as follows:

- (a) The licensee shall notify the Board of eligibility before the current license expires. Upon such notification, the Board shall maintain the license in active status through the extension period.
- (b) If the licensee fails to notify the Board of eligibility for the extension period before the current license expires, upon receipt and acceptance of a renewal application within the extension period and presentation of proof that the licensee was eligible on the date that is the deadline for

renewal, the expired license or registration shall be deemed retroactively to have not expired.

- (c) The licensee who submits a renewal application within the extension period shall not be deemed to hold a lapsed license subject to reinstatement fees.
 - (d) The licensee may renew the license within the extension period despite failing to complete the specified continuing education requirements.
 - (e) A licensee shall provide proof of eligibility for the extension period when the licensee or registrant submits the renewal application.
- (3) The Board shall exempt a licensee if the Board determines that the licensee is experiencing physical disability, illness, or other extenuating circumstances that prevent the licensee from obtaining professional development hours. Supporting documentation must be furnished to the Board.
- (4) Licensees who list their occupation as "Inactive" on the Board approved renewal form and who are no longer providing professional engineering or land surveying services are exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or land surveying, professional development hours must be earned in accordance with the requirements of Rule .1708 in this Section before returning to active practice for each year exempted not to exceed the annual requirement for two years.

History Note: Authority G.S. 89C-10(a); 89C-17; 93B-15; Eff. December 1, 1994; Amended Eff. August 1, 2011; May 1, 2009; August 1, 2000; February 1, 1996.

21 NCAC 56 .1713 SPONSORS

(a) The Board shall approve sponsors of Continuing Professional Competency (CPC) activities. The Board shall maintain a list of sponsors which have agreed to conduct programs in accordance with the standards of CPC activities set forth in 21 NCAC 56. 1700. Such sponsors shall indicate their agreement with the requirements by executing a Sponsor Agreement on a form provided by the Board. These sponsors shall be designated as "Approved Sponsors" based upon approval by the Board of the sponsor application and payment of a one hundred fifty dollar (\$150.00) application fee.

(b) By entering into an agreement with the Board to be designated as an "Approved Sponsor," the sponsor shall agree to:

- (1) Allow persons designated by this Board to attend any or all courses, without fee or charge, for the purpose of determining that said course meets the standards of the Board;

- (2) Allow persons designated by this Board to review course material for the purpose of determining that the course meets the standards of the Board;
 - (3) State in every brochure, publication or announcement concerning the course, the general content of the course and the specific knowledge or skill to be taught or addressed, as well as the credit to be earned in Professional Development Hours (PDH);
 - (4) Ensure that the instructors or presenters of the course or program are qualified to teach the subject matter;
 - (5) Provide persons completing the course with written documentation attesting to that person's attendance to the course, as well as the name of the course, the date and location held, the instructor's name and the number of PDHs earned;
 - (6) Provide attendees an evaluation form as provided by the Board that is to be collected and retained for audit by the Board;
 - (7) Have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPC program and who has the responsibility for assuring and demonstrating to the Board compliance with this Rule, as well as for any other organization working with the sponsor for the development, distribution or presentation of CPC courses or activities; and
 - (8) Retain for a period of three years a copy of the documentation required by this Paragraph.
- (c) Sponsors shall renew annually on a form provided by the Board.
 - (d) Failure of an approved sponsor to comply with the terms of the CPC sponsor agreement is grounds for the Board to revoke, suspend or terminate the agreement, to remove the sponsor's name from the list of approved sponsors and to notify the public of such action. A sponsor that is given notice of revocation, suspension or termination may request an administrative hearing to be conducted as provided in 21 NCAC 56 .1400 Contested Cases.
 - (e) Approval of a sponsor is equivalent to the language of licensing a sponsor in G.S. 89C-10(h).
- History Note: Authority G.S. 89C-10; 89C-17;
Eff. February 1, 1996;
Amended Eff. August 1, 2011; July 1, 2009; August 1, 2002.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday July 21, 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

Addison Bell
Margaret Currin
Pete Osborne
Bob Rippy
Faylene Whitaker

Appointed by House

Ralph A. Walker
Curtis Venable
George Lucier
Garth K. Dunklin
Stephanie Simpson

COMMISSION COUNSEL

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

RULES REVIEW COMMISSION MEETING DATES

September 15, 2011 October 20, 2011
November 17, 2011 December 15, 2011

AGENDA

RULES REVIEW COMMISSION Thursday, September 15, 2011 10:00 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. Home Inspector Licensure Board – 11 NCAC 08 .1006 (Bryan)
 - B. Private Protective Services Board – 12 NCAC 07D .1303 (Bryan)
 - C. Environmental Management Commission – 15A NCAC 02B .0313 (DeLuca)
 - D. Marriage and Family Therapy Licensure Board – 21 NCAC 31 .0201, .0501, .0801 (Bryan)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between July 21, 2011 and August 22, 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: October 20, 2011

Commission Review Log of Permanent Rule Filings July 21, 2011 through August 22, 2011

*

AGRICULTURE, BOARD OF

The rules in Chapter 38 are enforced by the standards division and include purpose and definitions (.0100); approval of weighing and measuring devices (.0200); package and labeling requirements (.0300); method of sale and commodities

(.0400); leaf tobacco (.0500); sale of petroleum products (.0600); standards for storage, handling and installation of LP gas (.0700); and liquid fertilizers (.0800).

Price Posting/Cash Discounts for Retail Motor Fuel Sales 02 NCAC 38 .0604
Amend/*

Adoption by Reference 02 NCAC 38 .0701
Amend/*

The rules in Chapter 43 are enforced by the Markets Division in the Department of Agriculture and Consumer Services.

The rules in Subchapter 43L concern markets including fees: western North Carolina horse and livestock facility fee and schedule (.0300); fees: western North Carolina farmers market (.0400); authority: duties and responsibility of manager (.0500); and operational rules (.0600).

Admission Regulations 02 NCAC 43L .0309
Amend/*

The rules in Chapter 48 are Board of Agriculture rules governing the plant industry, including plant protection, fertilizer, seeds, liming materials and landplaster, and genetically engineered organisms.

The rules in Subchapter 48A are plant protection rules directed at specific plant problems or methods of protection including regulations incorporated by reference (.0100); the honey and bee industry (.0200); exterior pests (.0300); white pine blister rust (.0400); witchweed (.0500); protection against the boll weevil (.0600); imported fire ant (.0700); potato virus y (.0800); sweet potato weevil (.0900); vegetable plant certification (.1000); tobacco plant certification (.1100); nursery certification (.1200); movement for scientific purposes (.1300); forms (.1400); gypsy moth (.1500); phytophagous snails (.1600); and control of noxious weeds (.1700).

Noxious Weeds 02 NCAC 48A .1702
Amend/*

Regulated Areas 02 NCAC 48A .1703
Amend/*

BANKS, OFFICE OF THE COMMISSIONER OF

The rules in Subchapter 3C concern banks including organization and chartering (.0100); branches and limited service facilities (.0200); change of location (.0300); consolidation of banks (.0400); work week (.0500); examination of banks (.0600); reports required by commissioners of banks (.0700); miscellaneous reports and approvals (.0800); operations (.0900); loan administration and leasing (.1000); capital (.1100); deposits (.1200); bank personnel (.1300); legal reserve (.1400); automation and data processing (.1500); fees (.1600); nonresident banks (.1700); and courier service (.1800).

Subsidiary Investment Approval 04 NCAC 03C .0807
Amend/*

Loan Documentation 04 NCAC 03C .1001
Amend/*

Share Purchase and Option Plans 04 NCAC 03C .1302
Amend/*

The rules in Subchapter 3F concern licensees under money transmitters act including administrative (.0200); licensing (.0300); operations (.0400); reporting and notifications (.0500); examination books and records (.0600); and license revocation (.0700).

Permissible Investments 04 NCAC 03F .0202
Repeal/*

Issuance of a License 04 NCAC 03F .0302
Repeal/*

License Fees 04 NCAC 03F .0303
Repeal/*

Agent Location Fee 04 NCAC 03F .0304

Repeal/*				
<u>Certificate of Authority</u>	04	NCAC	03F	.0401
Repeal/*				
<u>Statement of Net Worth</u>	04	NCAC	03F	.0502
Repeal/*				
<u>Annual Statement</u>	04	NCAC	03F	.0503
Repeal/*				
<u>Hearings</u>	04	NCAC	03F	.0701
Repeal/*				

The rules in Chapter 16 concern the Savings Institutions Division.

The rules in Subchapter 16A concern general provisions (.0100); rule-making hearings (.0200); declaratory rulings (.0300); and administrative hearings (.0400).

<u>Savings Institution Division</u>	04	NCAC	16A	.0101
Amend/*				
<u>Restrictions: Payment of Dividends and Repurchase of Stock</u>	04	NCAC	16A	.0105
Amend/*				
<u>Petition for Adoption, Amendment or Repeal of Rules</u>	04	NCAC	16A	.0201
Amend/*				
<u>Notice of Rule-Making Hearings</u>	04	NCAC	16A	.0202
Amend/*				
<u>Petition for Declaratory Ruling</u>	04	NCAC	16A	.0301
Amend/*				
<u>Response of Commissioner of Banks to Petition</u>	04	NCAC	16A	.0302
Amend/*				
<u>Right to Hearing</u>	04	NCAC	16A	.0401
Amend/*				
<u>Informal Settlement</u>	04	NCAC	16A	.0402
Amend/*				
<u>Request for Hearing</u>	04	NCAC	16A	.0403
Amend/*				
<u>Intervention in an Administrative Hearing</u>	04	NCAC	16A	.0405
Amend/*				
<u>Subpoenas</u>	04	NCAC	16A	.0407
Amend/*				
<u>Objection to Subpoena</u>	04	NCAC	16A	.0409
Amend/*				

The rules in Subchapter 16C concern applications including charter application (.0100); branch office application (.0200); application to change location of branch office or principal office (.0300); remote service units (.0400); and interstate reciprocal acquisitions (.0500).

<u>Charter Application Restrictions</u>	04	NCAC	16C	.0102
Amend/*				
<u>Corporate Name</u>	04	NCAC	16C	.0103
Amend/*				
<u>Branch Office Application Restrictions</u>	04	NCAC	16C	.0202
Amend/*				
<u>Forfeiture of Branch Office Final Approval</u>	04	NCAC	16C	.0203
Amend/*				
<u>Temporary Closing of Office</u>	04	NCAC	16C	.0304
Amend/*				

<u>Purchase of Branch</u> Amend/*	04	NCAC	16C	.0305
The rules in Subchapter 16D concern the operation of savings associations including directors, officers and employees (.0100); proxies (.0200); records (.0300); loans (.0400); withdrawable accounts (.0500); and investments (.0900).				
<u>Bylaws</u> Amend/*	04	NCAC	16D	.0103
<u>General Policies</u> Amend/*	04	NCAC	16D	.0301
<u>Loans to One Borrower</u> Amend/*	04	NCAC	16D	.0407
<u>Securities</u> Amend/*	04	NCAC	16D	.0901
<u>Stock in Other Depository Institutions</u> Amend/*	04	NCAC	16D	.0902
The rules in Subchapter 16E concern the operation of savings banks including directors, bylaws and charter (.0100); proxies (.0200); records and policies (.0300); loans (.0400); deposit accounts (.0500); liquidity and net worth (.0600); and investments (.0700).				
<u>Bylaws</u> Amend/*	04	NCAC	16E	.0104
<u>General Policies</u> Amend/*	04	NCAC	16E	.0301
<u>Loans to One Borrower</u> Amend/*	04	NCAC	16E	.0405
<u>Stock in Other Depository Institutions</u> Amend/*	04	NCAC	16E	.0702
The rules in Subchapter 16F concern service corporations and finance subsidiaries.				
<u>Amendments to Articles of Incorporation or Bylaws</u> Amend/*	04	NCAC	16F	.0105
<u>Finance Subsidiary Transactions with Parent</u> Amend/*	04	NCAC	16F	.0108
<u>Issuance of Securities by Finance Subsidiaries</u> Amend/*	04	NCAC	16F	.0109
<u>Holding Company Subsidiaries and Financial Subsidiaries</u> Amend/*	04	NCAC	16F	.0111
<u>Notification to the Administrator</u> Amend/*	04	NCAC	16F	.0112
<u>Examination of Financial Subsidiaries</u> Amend/*	04	NCAC	16F	.0113

SOCIAL SERVICES COMMISSION

The rules in Chapter 70 relate to children's services.

The rules in Subchapter 70M concern adoption standards including general provisions (.0100); organization and administration (.0200); functions of an adoption agency (.0300); adoption assistance (.0400); out-of-state adoption fees (.0500); and non-recurring adoption costs (.0600).

<u>Procedures/Reimbursement of Adoption Assistance Benefits</u> Amend/*	10A	NCAC	70M	.0403
--	-----	------	-----	-------

INSURANCE, DEPARTMENT OF

The rules in Chapter 13 are from the Agent Services Division - Non-Insurance Entities including general provisions (.0100); insurance premium finance companies (.0300); motor clubs (.0400); and bail bondsmen and runners (.0500).

Annual Statement

11 NCAC 13 .0308

Amend/*

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 18 cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration mechanical purification facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants, meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); rules governing the sanitation of resident camps (.3600); and private drinking water well sampling (.3800).

Advanced Wastewater Pretreatment System

15A NCAC 18A .1970

Amend/*

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

The rules in Chapter 25 are from the Interpreter and Transliteratoor Board including general provisions (.0100); licensing (.0200); moral fitness for licensure (.0300); reporting and disclosure requirements (.0400); continuing education (.0500); administrative procedure (.0600); and sanctions (.0700).

Persons Who Are Ineligible to Apply for a License

21 NCAC 25 .0209

Amend/*

ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

The rules in Chapter 39 are from the Onsite Wastewater Contractors and Inspectors Certification Board and include definitions (.0100); certification of onsite wastewater contractors or inspectors (.0200); onsite wastewater contractor or inspector fees (.0300); certification by examination (.0400); certification renewal (.0500); continuing education requirements (.0600); procedures for disciplinary actions (.0700); code of conduct (.0800) and inspector's standards of practice (.1000).

Code of Ethics

21 NCAC 39 .0801

Adopt/*

Definitions

21 NCAC 39 .1001

Adopt/*

General Requirements

21 NCAC 39 .1002

Adopt/*

General Limitations

21 NCAC 39 .1003

Adopt/*

General Exclusions of an Inspection

21 NCAC 39 .1004

Adopt/*

<u>On-Site Wastewater System Components</u> Adopt/*	21	NCAC	39	.1005
<u>Minimum On-Site Wastewater System Inspection</u> Adopt/*	21	NCAC	39	.1006

PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS FOR

The rules in Chapter 50 are from the Plumbing, Heating and Fire Sprinkler Contractors including rules about organization (.0100); forms (.0200); examinations (.0300); general procedures (.0400); policy statements and interpretative rules (.0500); contested cases (.1000); fees (.1100); petitions for rules (.1200); declaratory rulings (.1300); and continuing education (.1400).

<u>Petition for Rulemaking Hearings</u> Amend/*	21	NCAC	50	.1201
<u>Disposition of Petitions</u> Amend/*	21	NCAC	50	.1203
<u>Request to Participate</u> Amend/*	21	NCAC	50	.1207
<u>Written Submissions</u> Amend/*	21	NCAC	50	.1210
<u>Submission of Request for Ruling</u> Amend/*	21	NCAC	50	.1302

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
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. Universal Entertainment, LLC T/A Zoo City Saloon	11 ABC 2294	07/05/11	
ABC Commission v. Quick Quality Inc., T/A Quick Quality	11 ABC 2543	07/19/11	
ABC Commission v. GK Mart Inc., T/A GK Mart	11 ABC 02647	07/22/11	
ABC Commission v. CH Pub LLC, T/A Kildares Irish Pub	11 ABC 07109	08/16/11	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Dianne Moody Costello v. Victim and Justice Services	11 CPS 05780	06/20/11	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Scott M. Jensen, DMD v. DHHS, Division of Medical Assistance	09 DHR 3252	06/21/11	
Patricia Anne Edwards v. DHHS, Division of Child Development	10 DHR 0292	06/06/11	
Marchell Gunter, The Home of Marchell F Gunter v. DHHS	10 DHR 0557	06/03/11	
Theracare Home Health and Staffing, LLC v. DHHS, Division of Medical Assistance Program Integrity	10 DHR 1455	06/01/11	
Alternative Life Programs, Inc. Marchell F Gunter v. DHHS	10 DHR 3583	06/03/11	
Carolyn Rucker v. DHHS, Division of Medical Assistance	10 DHR 3717	05/19/11	
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc, d/b/a Rex Healthcare, Holly Springs Surgery Center, LLC and Novant Health, Inc	10 DHR 5274	05/17/11	26:04 NCR 274
Rex Hospital Inc d/b/a Rex Healthcare v. DHHS, Division of Health Service Regulation, CON Section And WakeMed, Springs Surgery Center, LLC and Novant Health, Inc	10 DHR 5275	05/17/11	26:04 NCR 274
Angela Mackey v. DHHS, Division of Health Service Regulation	10 DHR 5499	06/01/11	
Cynthia Dawn Sloope v. DHHS	10 DHR 5500	06/07/11	
Alternative Life Programs, Inc. Marchell F Gunter	10 DHR 6204	06/03/11	
Cherie L Russell v. DHHS, Division of Health Services Regulation	10 DHR 6240	05/17/11	
Grover L. Hunt v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	10 DHR 6710	05/25/11	
Christopher Sanders v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	10 DHR 7511	06/23/11	
Raymond Taylor Mabe Jr. v. OAH, Debbie Odette/Glana Surles	10 DHR 8094	05/26/11	
Shanta M. Collins v. DHHS, Division of Health Service Regulation	10 DHR 8444	06/22/11	
Marcell Gunter, Alternative Life Programs Inc. v. DHHS, Durham Center LME and DMA (CSCEVC NC Medicaid Provider)	10 DHR 03827	06/23/11	
Yolanda M. Brown v. Health Care Registry Personnel	10 DHR 09708	07/14/11	
James L. Graham v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	11 DHR 0303	06/28/11	
Angela Clark v. DHHS	11 DHR 1565	06/03/11	
April G. Cooper v. Edgecombe County, Dept. of Social Services (DHHS) Food Stamps	11 DHR 2146	06/15/11	
Patricia Anne Edwards v. DHHS, Division of Child Development	11 DHR 2149	06/06/11	
Demetrius L. Brooks v. DHHS, Division of Health Service Regulation	11 DHR 2441	06/30/11	

CONTESTED CASE DECISIONS

Danielle Whitman v. DHHS	11 DHR 2709	08/08/11
Cyonna Hallums v. DHHS, Healthcare Registry	11 DHR 2858	06/30/11
Angela L. Jordan v. DHHS, Division of Health Service Regulation	11 DHR 2920	06/30/11
Creative Hands Occupational Therapy v. Susan Olmschenk v. Office of Administrative Hearings	11 DHR 2924	06/10/11
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2990	05/27/11
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2993	05/27/11
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2994	05/27/11
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2995	05/27/11
Nellie v. Mitchell, Little Lamb's Daycare v. DHHS, Division of Child Development	11 DHR 3391	06/13/11
Yolanda McKinnon v. DHHS, Division of Child Development	11 DHR 4117	06/09/11
Kenneth Dellinger Executive Office KD Support Services d/b/a Kellys Care #5 v. DHHS, Division of Health Care Service Regulation Adult Care Licensure Section	11 DHR 4755	07/14/11
Amy Robinson v. DHHS, Division of Facility Services	11 DHR 4758	07/27/11
Angelicia Linney v. Alexander County DSS	11 DHR 4965	06/21/11
Robin Whittsett-Crite/RJ Whittsett Residential Services v. DHHS	11 DHR 5146	07/12/11
Kathy Daniels v. CNS Registry	11 DHR 6318	08/04/11
Joyce Muhammad v. DHHS	11 DHR 00198	07/11/11
Support Staff v. DHHS, Division of Medical Assistance	11 DHR 01449	07/11/11
Maithily H Patel v. Nutrition Service Branch, DHHS	11 DHR 02144	06/30/11
Kishja Marlin v. DHHS	11 DHR 03313	07/07/11
Wonne Mills v. Department of Social Services/Fraud Department, Office of Administrative Hearings	11 DHR 03389	06/27/11
Beau A. Davis v. DHHS	11 DHR 03691	06/20/11
Bertha's Place Inc, Wayne Louis Garriss v. Mecklenburg County LME	11 DHR 04186	06/17/11
Nicole McGee v. Health Care Personnel Registry	11 DHR 04475	06/17/11
Nyanga G. (Godee) Lumumba v. DHHS	11 DHR 01387	06/24/11
Nyanga G. (Godee) Lumumba v. DHHS	11 DHR 01913	06/24/11
Dondra R. Sugg v. Carteret County Social Services Food Stamp	11 DHR 04958	07/15/11
Stepping Stones Group Homes Inc v. DHHS, Division Of Health Service Regulation Mental Health Licensure and Certification	11 DHR 05068	07/19/11
Jerris McPhail v. Department of Health and Human Services	11 DHR 05518	07/19/11
Cynthia Neely v. Dept. of Social Services	11 DHR 05786	07/28/11
Bobby F Huskey v. Dept. of Health and Human Service Division Health Service Regulation	11 DHR 06238	08/04/11
Silverette Denise Swindell v. DHHS	11 DHR 06429	08/11/11
Family Intervention & Prevention Services LLC, a North Carolina limited liability company	11 DHR 09243	08/05/11

DEPARTMENT OF CORRECTION

John Channon Engle v. Department of Correction	11 DOC 07333	07/11/11
--	--------------	----------

DEPARTMENT OF JUSTICE

Aaron R Taylor v. Company Police Program	10 DOJ 5356	05/27/11
Dustin Clark v. Department of Justice, Company Police Program	10 DOJ 5877	05/24/11
Travis Mark Caskey v. Sheriffs' Education and Training Standards Commission	10 DOJ 6966	06/02/11
Robert Scott MacFayden v. Sheriffs' Education and Training Standards Commission	10 DOJ 7773	06/01/11
Clifford Allan Jones v. Sheriffs' Education and Training Standards Commission	11 DOJ 2018	06/28/11
Heath Dwayne Kinney v. Alarm Systems Licensing Board	11 DOJ 4957	06/28/11
Eric Steven Britt v. Alarm Systems Licensing Board	11 DOJ 5515	07/21/11
Darren Jay Taylor v. Alarm Systems Licensing Board	11 DOJ 5516	07/21/11
Laduan Vinyah Jacobs v. Private Protective Services Board	11 DOJ 7650	07/21/11
Charles William Evagan v. Sheriffs' Education and Training Standards Commission	11 DOJ 02016	06/03/11
Darius Antuan McLean v. Sheriffs' Education and Training Standards Commission	11 DOJ 04824	07/11/11
Drew Wayne Adkins v. Sheriffs' Education and Training Standards Commission	11 DOJ 06780	08/15/11
Robert Wayne Gregg v. Criminal Justice Education and Training Standards Commission	11 DOJ 06787	08/04/11
Rodney Dale; Class (John Doe) Health Taylor Gerard v. State of North Carolina, Department of Justice, Charlotte Mecklenburg Police Department, Mecklenburg County Superior Court, Mecklenburg County Sheriffs' Office, Mecklenburg County Attorney's Office	11 DOJ 09708	08/10/11

DEPARTMENT OF LABOR

Hilliard Glass Company, Inc v. Department of Labor, Wage and Hour Bureau	11 DOL 07329	07/15/11
--	--------------	----------

STATE BOARD OF EDUCATION

Jeffery Covington v. State Board of Education	10 EDC 7273	06/21/11
Joseph Dawson v. State Board of Education	10 EDC 06744	07/25/11
Charla Ann Lewallen v. State Board of Education	11 EDC 04191	07/20/11

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Superior Realty, LLC v. DENR	09 EHR 6631	06/10/11
Floyd A. Rager, Jr., and Marianne Rager v. Cherokee Co. Health Department, DENR	10 EHR 6163	07/20/11
Farmington Square LLC, Jawahar Muniyandi v. City of Raleigh Stormwater Management	10 EHR 01613	07/14/11
Kevan Busik v. DENR, Division of Coastal Management and 1118 Longwood Avenue, Realty	10 EHR 08355	06/01/11 26:05 NCR 427

CONTESTED CASE DECISIONS

Corporation		
Jeff Snavely/Triad Siteworks Inc v. NCDENR	11 EHR 2475	06/06/11
Mary Louies Haggins v. Environmental Service, Terra Jane Barnhill	11 EHR 03694	07/21/11
Chris & Mary Ricksen v. Swain County Health Department, DENR	11 EHR 05427	08/05/11

OFFICE OF STATE PERSONNEL

Sandra J. Barile v. Dare County Department of Social Services	10 OSP 0469	07/11/11
Mary Bach v. Gaston County DSS	10 OSP 3419	06/23/11
Daniel Wayne Creson v. DOC	10 OSP 4113	06/16/11
Robert Lindsey v. Department of Correction	10 OSP 5362	07/05/11
Christopher Sanders v. DHHS	10 OSP 5943	06/23/11
Charlotte Boyd v. DOT	10 OSP 6533	06/17/11
Cynthia White v. School of Science and Math	10 OSP 06491	07/21/11
Melissa A McLean v. Ms. Gerri Robinson, MSW Social Services Director, Durham County, Dept. of Social Services	11 OSP 1379	06/03/11
Vickie D. Randleman v. NCSU	11 OSP 3838	06/09/11
Mary K. Severt v. Iredell Dept. of Social Services	11 OSP 4757	06/27/11
Carol Ann Melton v. Allen Reed Rutherford Correctional Center	11 OSP 5143	07/14/11
Dr. Arlise McKinney v. UNC at Greensboro	11 OSP 6163	07/14/11
Henry Dennis Tysor III v. Dept. of Corrections, Fountain Corrections	11 OSP 02643	07/12/11
Jessie M Chambers v. Brown Creek Correctional Institution	11 OSP 03747	06/23/11
David Wesley Vondiford v. DOT	11 OSP 04954	07/29/11
Kimberly B. Allison v. Office of Administrative Office of the Courts	11 OSP 08847	08/15/11

OFFICE OF SECRETARY OF STATE

Husayn Ali Bey v. Department of Secretary of State	10 SOS 09195	06/28/11
Christopher R. Eakin v. Department of Secretary of State	11 SOS 0139	06/08/11

Filed

STATE OF NORTH CAROLINA JUL -1 AM 9:12

COUNTY OF BRUNSWICK Office of
Administrative Hearings

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10 EHR 08355

Kevan Busik)
Petitioner)
)
vs.)
)
North Carolina Department of Environment)
and Natural Resources Division of Coastal)
Management)
Respondent,)
)
and)
)
1118 Longwood Avenue)
Realty Corporation,)
)
Respondent-Intervenor.)

ORDER AND DECISION
GRANTING PETITIONER'S
MOTION FOR SUMMARY
JUDGMENT

THIS MATTER is before the undersigned Senior Administrative Law Judge, Fred G. Morrison Jr., pursuant to a Petition for Contested Case Hearing filed by third party Petitioner Kevan Busik, pursuant to the Third Party Provisions in the Coastal Area Management Act ("CAMA") found at N.C. GEN. STAT. § 113A-121.1(b), regarding Respondent NCDENR Division of Coastal Management's issuance of a minor CAMA permit for development on Respondent-Intervenor's oceanfront property located in the Village of Bald Head Island, Brunswick County, North Carolina.

AND Respondent NCDENR Division of Coastal Management ("DCM") having filed a *Motion for Summary Judgment* on March 31, 2011, and Petitioner Kevan Busik having filed a *Motion for Summary Judgment* on April 4, 2011; and the Undersigned having considered all of the materials submitted by counsel, including the affidavits, exhibits, supporting memoranda and authorities; and having heard oral arguments from counsel on April 15, 2011, via telephone

conference call before the Undersigned; the Undersigned finds that there is no genuine issue of material fact in this matter, and this matter is ripe for summary judgment.

BASED UPON careful consideration of the entire record in this proceeding, the Undersigned finds and determines as follows:

APPEARANCES

Appearing on behalf of Petitioner Kevan Busik ("Petitioner"):

Kenneth A. Shanklin
Cynthia W. Baldwin
Shanklin & Nichols, LLP
214 Market Street
P.O. Box 1347
Wilmington, NC 28402-1347

Appearing on behalf of Respondent Division of Coastal Management ("DCM"):

Christine A. Goebel
Assistant Attorney General
N.C. Department of Justice
P. O. Box 629
Raleigh, NC 27602

Appearing on behalf of Respondent-Intervenor 1118 Longwood Avenue Realty Corporation ("Longwood" or "Respondent-Intervenor"):

William A. Raney, Jr.
Wessell & Raney, L.L.P.
P.O. Box 1049
Wilmington, NC 28402-1049

EXHIBITS

Petitioner's Exhibits:

1. Certified copy of the Plat of Single Family 14, Cape Fear Station, recorded in Map Book 23 at Page 538 of the Brunswick County Registry.
2. Certified copy of the General Warranty Deed from Howard M. Long and wife, Diane T. Long, to 1118 Longwood Avenue Realty Corporation, recorded March 24, 2003, in Book 1720 Page 60 of the Brunswick County Registry.

3. Certified copy of the General Warranty Deed from Homesales, Inc. d/b/a/ Homesales, Inc. of Delaware to Kevin J. Busik, recorded May 11, 2009, in Deed Book 2924 Page 904 of the Brunswick County Registry.
4. Order Reversing Final Agency Decision, The Honorable Charles H. Henry, November 29, 2010.
5. Site Plan, building plans, and Village of Bald Head Island Building Permit Application submitted by Longwood to the Village of Bald Head Island LPO as part of its application for CAMA Minor Permit 2010-05.
6. Certified copy of the Code of Ordinances for the Village of Bald Head Island, Chapter 6 Zoning, Chapter 14 Floods, Chapter 32 Zoning.
7. Affidavit of John B. Parker, Architect, dated April 1, 2011.
8. Certified copy of Routine Program Change to the North Carolina Coastal Management Program, submitted by Respondent DCM to the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM), dated May 2010.
9. The Record of Proceedings in Brunswick County File No. 10 CVS 1524.
10. Affidavit of J. Kevan Busik, Petitioner, dated May 13, 2011.

Respondent's Exhibits:

1. Longwood's Certificate of Authority, filed with the North Carolina Secretary of State on February 15, 2010.
2. General Warranty Deed from Howard M. Long and wife, Diane T. Long to 1118 Longwood Avenue Realty Corporation, recorded in Book 1720 at Page 60 on March 24, 2003, in the Brunswick County Registry.
3. Application for CAMA Minor Permit 2010-05 dated March 4, 2010.
4. AEC Hazard Notice from Application for CAMA Minor Permit 2010-05.
5. Site Plan for Proposed Development on Lot 4030 Cape Fear Station, Single Family 14, Bald Head Island.
6. Agent Authorization Forms.
7. Site Photographs taken by LPOs.
8. Copy of CAMA Minor Permit 2010-05.
9. Objection Letter from Petitioner, dated April 23, 2010.

10. Final Agency Decision with cover letter, dated May 20, 2010.
11. Affidavit of Jim Gregson, Director of Respondent DCM, dated March 28, 2011.
12. Affidavit of Doug Huggett, Major Permits Coordinator for Respondent DCM, dated March 25, 2011.
13. Affidavit of Heather Coats, Respondent DCM Field Representative, dated April 8, 2011.
 - a. Photograph of crofter construction on Lot 4030, 230 Station House Way, dated April 6, 2011.
 - b. Photograph of Petitioner's single family residence on Lot 4032, Bald Head Island, dated April 6, 2011.
14. Blank copy of the Village of Bald Head Island Building Permit Application.
15. Affidavit of Stephen Boyett, Building Inspector and CAMA LPO for the Village of Bald Head Island, dated April 8, 2011.
 - a. Building Permit issued to "Kuey/Lambert" for construction on Lot 4030, 230 Station House Way.
 - b. Village of Bald Head Island Building Permit Application for construction on Lot 4030, 230 Station House Way.
 - c. Two Photographs of construction on Lot 4030, 230 Station House Way, showing elevation measurements for the Garage.

Respondent-Intervenor's Exhibit:

Affidavit of John Farabow, Architect and President of HR Associates, PA, dated April 8, 2011

ISSUE PRESENTED

The issue presented in this case is whether the Local Permit Officer ("LPO") for the Village of Bald Head Island, acting on behalf of Respondent DCM, exceeded her authority, acted erroneously, acted arbitrarily or capriciously, or failed to act as required by law or rule in applying CRC Rule 15A NCAC 7H .0306 and issuing the subject CAMA permit to Respondent-Intervenor for the construction of a single family residence with appurtenances within 60 feet of the vegetation line instead of requiring a 120-foot setback from the vegetation line under that Rule.

UNDISPUTED FACTS AND FINDINGS
FROM THE RECORD

PARTIES

1. Petitioner holds legal title to Lot 4032 of Cape Fear Station Single Family 14 Subdivision on Bald Head Island, as recorded in Map Book 23 at Page 538 of the Brunswick County Registry, pursuant to that certain special warranty deed recorded in Book 2924 at Page 904 of the Brunswick County Registry ("Lot 4032"). Petitioner timely filed a Petition for a Contested Case Hearing in the Office of Administrative Hearings on December 6, 2010.

2. Respondent DCM regulates the coastal areas of the State pursuant to authority conferred upon it by the 1974 Coastal Area Management Act ("CAMA") which is found in Chapter 113A, Article 7 of the North Carolina General Statutes and various regulations promulgated thereunder by the CRC and codified at Title 15A, Chapter 7 of the North Carolina Administrative Code (collectively, the "CRC Rules").

3. Respondent-Intervenor holds legal title to Lot 4030 of Cape Fear Station Single Family 14 Subdivision on Bald Head Island, as recorded in Map Book 23 at Page 538 of the Brunswick County Registry, pursuant to that certain general warranty deed recorded in Book 1720 at Page 60 of the Brunswick County Registry ("Lot 4030" or "Subject Property").

4. The Village of Bald Head Island has an approved "Implementation and Enforcement Program" pursuant to N.C. GEN. STAT. §§ 113A-116 and -117 and has been delegated the responsibility to process CAMA Minor Permits.

5. The Village of Bald Head Island's LPO acted as an agent of the State of North Carolina pursuant to N.C. GEN. STAT. § 113A-116 and N.C. GEN. STAT. § 113A-121 with regard to CAMA Minor Permit 2010-05.

6. All parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.

PROPERTY

7. The Subject Property is located on the eastern shoreline of Bald Head Island, Brunswick County, North Carolina, and has an address of 230 Station House Way.

8. Lot 4032 directly adjoins the Subject Property, and both Lot 4032 and the Subject Property lie adjacent to the Atlantic Ocean.

9. Both lots are within the High Hazard Flood and Ocean Erodible Area sub-categories of the Ocean Hazard AEC. Pursuant to N.C. GEN. STAT. § 113A-118, any development on these properties requires a CAMA permit.

10. Pursuant to 15A NCAC 7H.0304, the long-term annual erosion rate for this area is 2.0 feet per year.

11. Protective Covenants restrict these lots to use only for single family residential purposes, including construction of any appurtenant structure to any residence such as decks, walkways, crofter's cottages, or cart storage facilities.

12. Black's Law Dictionary, Fifth Edition, defines appurtenance as: That which belongs to something else; an adjunct; an appendage; accessory or incident to.

13. Respondent-Intervenor proposes to build a single family residence (4,292 square feet) with appurtenant structures (a 586 square foot crofter/garage apartment above a golf-cart garage; a 150 square foot elevated mechanical platform; an elevated walkway connecting the house and the crofter; an 800 square foot raised decking parking area) on the Subject Property ("Proposed Development"). The appurtenances belong to and are part of the single family residence.

14. On December 7, 2009, the Village of Bald Head Island issued one building permit, authorizing the construction of the Proposed Development.

15. On April 16, 2010, the LPO issued CAMA Minor Permit 2010-05 to Respondent-Intervenor, which authorized construction of a new single family residence with appurtenances.

THE "NEW" SETBACK RULES

16. On August 11, 2009, new setback rules went into effect regarding the total floor area, as defined in 15A NCAC 07H.0306 ("Total Floor Area").

17. The new rules no longer required inclusion of roof-covered porches in the total enclosed floor area ("New Setback Rules").

18. The New Setback Rules are different from the prior setback rules in that use is no longer considered when determining the applicable setback rule; instead, the Total Floor Area of the development is the sole determining factor.

19. The New Setback Rules apply equally to commercial and residential uses.

20. On November 2, 2009, Daralyn Spivey and Chris McCall, LPOs for the Village of Bald Head Island, flagged the vegetation line for the Subject Property.

21. The LPOs applied a 60-foot setback to the Proposed Development.

22. Petitioner contends that the LPOs applied the incorrect setback to the Proposed Development and should have applied the 120-foot setback.

23. At issue is the appropriate reading of 15A NCAC 07H.0306, which applies to "all development not otherwise specifically exempted." 15A NCAC 07H.0306(a).

24. According to 15A NCAC 07H.0306(a)(1), "[t]he setback distance is determined by both the size of the development and the shoreline erosion rate," which for this section of Bald Head Island is 2 feet per year.

25. The regulation, 15A NCAC 07H.0306(a)(1), also states:

Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

- (A) The total square footage of heated or air-conditioned living space;
- (B) The total square footage of parking elevated above ground level; and
- (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load bearing.

26. Petitioner contends that the “development size” and Total Floor Area include more than just the first and second floors of the main living space in the calculation of square footage for the “development.”

27. Petitioner contends that the LPO did not include all proposed appurtenances in her determination of the size of the Proposed Development. If the LPO had done so, according to Petitioner, then the Proposed Development would have had a Total Floor Area of more than 5,000 square feet, which would cause the single family residence with appurtenances to have a 120-foot setback—not a 60-foot setback.

28. Petitioner moved for Summary Judgment based on this argument.

29. The regulation 15A NCAC 7H .0306(a)(2)(A) and (B) states:

- (2) With the exception of those types of development defined in ISA . NCAC 7H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

(B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater.

30. Respondent contends that 15A NCAC 7H .0306(a)(2)(A) uses the singular and disjunctive phrase "a building or structure" in the part of the Rule that actually prescribes the specific setback factor to be used in the setback calculation.

31. Respondent contends that the LPO appropriately calculated the size of the development by conducting separate calculations of Total Floor Area for each building or structure within the development.

32. Respondent moved for Summary Judgment based on this argument.

33. Respondent-Intervenor did not move for Summary Judgment but issued a Response to Respondent's and Petitioner's Motions for Summary Judgment with arguments in support of Respondent's Motion, adopting by reference the argument in Respondent's Motion and the arguments in opposition to Petitioner's Motion.

BASED UPON the foregoing undisputed facts and findings in the record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction to hear this case pursuant to N.C. GEN. STAT. § 113A-121.1 and N.C. GEN. STAT. § 150B-23.

2. All parties have been correctly designated and are properly before the Office of Administrative Hearings.

3. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter.

4. A CAMA Minor Development Permit is required in order for Respondent-Intervenor to construct the proposed single-family residence with appurtenances on the property.

5. Rules regarding oceanfront development setbacks are designed to increase the life of oceanfront buildings, and building in accordance with oceanfront setback rules decreases the risk of property loss, decreases the encroachment of development onto public beaches, and decreases the amount of tax money spent responding to problems that are aggravated by poorly-sited development.

6. The New Setback Rules require development totaling less than 5,000 square feet to be located 30 times the 2-foot erosion rate, or 60 feet, from the line of vegetation, as set by the LPO. 15A NCAC 7H .0306(a)(2)(A).

7. The New Setback Rules require development totaling more than 5,000 square feet and less than 10,000 square feet to be located 60 times the 2-foot erosion rate, or 1,200 feet, from the line of vegetation, as set by the LPO. 15A NCAC 7H .0306(a)(2)(B).

8. When calculating the total square footage of the Proposed Development under the CRC Rules, the square footage of all proposed structures and buildings are to be added together, pursuant to the definition of "Total Floor Area" found in 15A NCAC 7H .0306(a)(1).

9. The "development size" and Total Floor Area include more than just the first and second floors of the main living area in the calculation of square footage for the "development."

10. The LPO acted erroneously in not including all proposed appurtenances in her determination of the size of the single family residence to be constructed on the Subject Property.

11. The Total Floor Area of the single family residence with appurtenances totals more than 5,000 square feet, and Respondent DCM, through the LPO, erred in its determination that the Total Floor Area totaled less than 5,000 square feet.

12. Pursuant to 15A NCAC 7H .0306(a)(2)(B), the appropriate setback for the single family residence with appurtenances is 120 feet from the established line of vegetation, as that line is determined by the LPO.

13. CAMA Minor Permit 2010-05 improperly allows the single family residence with appurtenances to be placed 60 feet from the line of vegetation.

14. Respondent DCM, through the LPO, acted erroneously in determining that the appropriate setback for the Proposed Development is 60 feet from the line of vegetation.

15. Petitioner's rights have been substantially prejudiced by the improper issuance of CAMA Minor Permit 2010-05 to Respondent-Intervenor.

DECISION

The Undersigned finds and holds that there are sufficient undisputed facts, findings and evidence in the record to support the Conclusions of Law stated above and the entry of Summary Judgment; that Petitioner's *Motion for Summary Judgment* has merit and should be granted; and that Respondent DCM's *Motion for Summary Judgment* should be denied.

ACCORDINGLY, based upon the foregoing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. Petitioner's *Motion for Summary Judgment* is hereby GRANTED. Petitioner's Motion in Limine and Motion to Strike are denied.

2. Respondent NCDENR Division of Coastal Management's *Motion for Summary Judgment* is hereby DENIED. Respondent's Motion to Strike Affidavit is also denied.

3. The decision by Respondent DCM, acting through the LPO, to issue CAMA Minor Permit 2010-05 to Respondent-Intervenor should be REVERSED, and the subject CAMA permit issued to Respondent-Intervenor should be REVOKED, or modified appropriately.

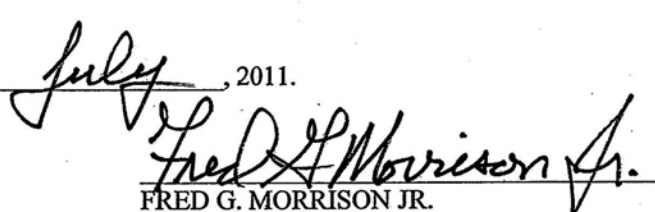
ORDER AND NOTICE

The North Carolina Coastal Resources Commission will make the Final Decision in this contested case. N.C. GEN. STAT. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures that the agency must follow in making its Final Decision, and adopting and/or not adopting the undisputed facts and findings from the record and the Decision of the Administrative Law Judge.

Pursuant to N.C. GEN. STAT. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. GEN. STAT. § 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and to furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

IT IS SO ORDERED.

This the 1st day of July, 2011.


FRED G. MORRISON JR.
SENIOR ADMINISTRATIVE LAW JUDGE

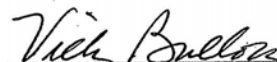
A copy of the foregoing was mailed to:

Kenneth A. Shanklin
Shanklin & Nichols LLP
Attorneys at Law
PO Box 1347
214 Market St
Wilmington, NC 28402-1347
ATTORNEY FOR PETITIONER

Christine A. Goebel
Assistant Attorney General
NC Department of Justice
400 Commerce Avenue
Morehead City, NC 28557
ATTORNEY FOR RESPONDENT

William A. Raney Jr.
WESSELL & RANEY, LLP
Attorneys at Law
P. O. Box 1049
Wilmington, NC 28402
ATTORNEY FOR RESPONDENT-INTERVENOR

This the 1st day of July, 2011.



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