

NORTH CAROLINA REGISTER

VOLUME 26 • ISSUE 10 • Pages 847 - 868

November 15, 2011

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

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

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Office of State Budget and Management

116 West Jones Street

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Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

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215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Rebecca Troutman

rebecca.troutman@ncacc.org

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(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

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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

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Karen.cochrane-brown@ncleg.net

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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.

Albemarle-Pamlico National Estuary Program seeks input on draft management plan

The Albemarle-Pamlico National Estuary Program (APNEP) is seeking feedback from partners and the public on its draft Comprehensive Conservation and Management Plan to protect and restore the Albemarle-Pamlico estuarine system. The plan aims to provide an overarching vision and direction to advance ecosystem management and protection for the Albemarle-Pamlico estuary during the next 10 years.

APNEP is a federally funded program that supports ecosystem-based management of the Albemarle-Pamlico estuary and its watershed, an area that spans parts of North Carolina and Virginia. APNEP's mission is to identify, protect and restore the significant resources of the Albemarle-Pamlico estuarine system. The program pursues its mission by working closely with residents, scientists, universities, businesses, non-profit organizations and all levels of government. The program is supported by the N. C. Department of Environment and Natural Resources, the Environmental Protection Agency, and the Virginia Department of Conservation and Recreation.

To facilitate public input and dialogue, APNEP will conduct public meetings in eastern North Carolina and southeastern Virginia in November and December (see below). The objectives of the meetings are to:

- Present an overview of the draft plan and the process to develop it.
- Provide members of the public with an opportunity to ask clarifying questions about the draft strategic action plan and offer comments and suggestions.

The meetings will include a presentation and a public comment session, hosted in an open house format where participants will have informal opportunities to engage with APNEP staff on specific topics. Please note, these are not regulatory hearings, and advertisement of these meetings in the North Carolina Register is for notification purposes only.

Participants can submit their comments in writing at a public meeting, through an online comment form, by e-mail, or by mail at any time during the public comment period.

The comment period is open through Jan. 17, 2011.

The public meeting dates, times and venues are as follows:

Neuse River basin- Monday, Nov. 21, 2011 (6 p.m. – 8 p.m.)

Neuseway Education and Training Center
401 West Caswell St.
Kinston, N.C.

Tar-Pamlico River basin - Tuesday, Nov. 22, 2011 (6 p.m. -8 p.m.)

N.C. Department of Environment and Natural Resources
Washington Regional Office
943 Washington Square Mall
Washington, N.C.

Pasquotank River basin - Tuesday, Nov. 29, 2011 (6 p.m. – 8 p.m.)

Pasquotank-Camden Library
100 East Colonial Ave.
Elizabeth City, N.C.

Roanoke River basin - Wednesday, Nov. 30, 2011 (6 p.m. – 8 p.m.)

Washington County Cooperative Extension Center
128 East Water St.
Plymouth, N.C.

Neuse River basin- Tuesday, Dec. 6 (4 p.m. - 6 p.m.)

Archdale Building Ground Floor Hearing Room
512 North Salisbury St.
Raleigh, N.C.

Chowan River basin - Wednesday, Dec. 7, 2011 (4 p.m. – 6 p.m.)

Ruth Camp Campbell Memorial Library
280 North College Drive

Franklin, Va.

The draft plan and online comment form are available at: <http://portal.ncdenr.org/web/apnep/2011ccmp>. A print version of the plan may also be obtained for free by contacting Jim Hawhee, APNEP's community specialist, at jim.hawhee@ncdenr.gov or (919) 707-8632.

If you are unable to attend a meeting, please submit comments online through the website, e-mail comments to jim.hawhee@ncdenr.gov or mail comments to:

Albemarle-Pamlico National Estuary Program
c/o Jim Hawhee
1601 Mail Service Center
Raleigh, NC 27699-1601



STATE BOARD OF ELECTIONS

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

GARY O. BARTLETT
Executive Director

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

October 21, 2011

Mr. Carlos E. Vidales
P.O. Box 80423
Raleigh, North Carolina 27623

Re: Request for expedited opinion regarding whether November 8 municipal runoff is a "new election" for campaign finance purposes

Dear Mr. Vidales:

I am in receipt of your October 18, 2011, request for an advisory opinion pursuant to N. C. Gen. Stat. § 163-278.23, Article 22, in which you seek clarification as to whether a candidate involved in the November 8, 2011 runoff election may receive \$4,000 for that election in addition to the \$4,000 received for the October 11, 2011 election.

N.C. Gen. Stat. § 163-278.13(a) provides: "No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars (\$4,000) for that election." The term "election" is defined for purposes of this statute in N.C. Gen. Stat. § 163-278.13(d) as "any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate." The term "election" is also defined in N.C. Gen. Stat. § 163-278.6(8) as "any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy." Note that "runoff election" is included in this definition, but is not included in the definition specific to contribution limitations.

However, N. C. Gen. Stat. § 163-298 provides in pertinent part: "The words 'general election,' as used in this Article [24], shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries." N. C. Gen. Stat. § 163-293(e), which also in Article 24, provides in pertinent part: "Persons whose registrations become valid between the date of the first election and the runoff election shall be entitled to vote in the runoff election, but in all other respects the runoff election shall be held under the laws, rules, and regulations provided for the first election."

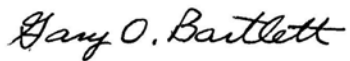
LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

A logical interpretation of these seemingly contrary provisions is that a runoff election is the same as a general election except where specifically noted. Given that N.C. Gen. Stat. § 163-278.13(d) does not refer to a "runoff election," and the fact that elsewhere the term "general election" is defined to encompass a "runoff election," we infer that "runoff election" is included in the term "general election" in N. C. Gen. Stat. § 163-278.13(d) as well. Therefore a candidate in a runoff election, for purposes of campaign contribution limits, treats this as a "new election."

This opinion is based upon the information provided in your October 18, 2011, request for advisory opinion. If any information in that request should change, you should consult with our office to ensure that this opinion would still be binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

If you have any further questions, please contact me or Kim Strach, Deputy Director-Campaign Finance.

Sincerely,



Gary O. Bartlett
Executive Director

cc: Julian Mann, Codifier of Rules

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

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

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Gasoline and Oil Inspection Board intends to amend the rule cited as 02 NCAC 42 .0401.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncagr.gov/ProposedRules/index.htm>

Proposed Effective Date: March 1, 2012

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than November 30, 2011, to Stephen Benjamin, Secretary, NC Gasoline and Oil Inspection Board, 1050 Mail Service Center, Raleigh, NC 27699-1011.

Reason for Proposed Action: As required by S.L. 2011-25, these amendments provide labeling requirements for all fuel dispensing pumps which offer ethanol blended gasoline for retail sale in NC. This requires labeling indicating that the gasoline contains either 10% or less ethanol by volume or greater than 10% ethanol by volume.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objections(s) to Stephen Benjamin, Secretary, NC Gasoline and Oil Inspection Board, 1050 Mail Service Center, Raleigh, NC 27699-1050.

Comments may be submitted to: Stephen Benjamin, 1050 Mail Service Center, Raleigh, NC 27699-1050, phone (919)733-3313, email steve.benjamin@ncdenr.gov

Comment period ends: January 17, 2012

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
- ☒ No fiscal note required

CHAPTER 42 - GASOLINE AND OIL INSPECTION BOARD

SECTION .0400 - DISPENSING DEVICES AND PUMPS

02 NCAC 42 .0401 LABELING OF DISPENSING DEVICES

(a) For the purpose of product identity, each dispensing device used in the retailing of any motor fuel shall be ~~plainly and~~ conspicuously labeled with the following:

- (1) For ~~gasoline and gasoline-alcohol blends of up to 10 percent ethanol, gasoline,~~ the registered brand name;
- (2) For diesel fuel, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type or grade of product;
- (3) For biodiesel and biodiesel blends, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type or grade of product;
- (4) For gasoline-oxygenate blends ~~containing at least one percent by volume of methanol, the registered brand name plus an additional label which states that the blend "contains methanol." The label shall be composed of letters at least one inch in height, minimum one eighth inch stroke, which contrast distinctly with the label background and shall be affixed to the dispenser front panel in a position clear and conspicuous from the driver's position. Exceptions to this Rule are:~~ containing:

~~(A) For fuels not covered by an EPA waiver, the additional label shall identify the percent by volume of ethanol or methanol in the blend; and~~

~~(B) For fuels meeting the EPA's "Substantially Similar" rule and which do not contain methanol, no additional label is required;~~

~~(A) At least one percent (1%) by volume of methanol, the registered brand name plus an additional label which states that the blend "contains methanol."~~

~~(B) Ten percent (10%) or less by volume of ethanol, the registered brand name plus an additional label which states that the blend "contains 10% ethanol," "may contain up to 10% ethanol," "contains 10% or less ethanol" or similar wording.~~

~~(C) Greater than ten percent (10%) by volume of ethanol, the registered brand name plus an additional label that states the volume percentage of ethanol present in the blend, such as "contains 15% ethanol."~~

(5) For E85 fuel ethanol, the registered brand name.

(b) The additional labels required by Subparagraph (a)(4) of this Rule shall be composed of letters at least one inch in height, minimum one-eighth inch stroke, which contrast with the label background and shall be affixed to the dispenser front panel in a position conspicuous from the driver's position. Exceptions to the requirements in Subparagraph (a)(4) of this Rule are:

(1) For fuels not covered by an EPA waiver, the additional label shall identify the percent by volume of ethanol or methanol in the blend; and

(2) For fuels meeting the EPA's "Substantially Similar" rule and which do not contain methanol, no additional label is required.

~~(b)(c)~~ Each dispensing device used in the retailing of products other than motor fuel shall be ~~plainly and~~ conspicuously labeled as follows:

(1) Kerosene shall be labeled as either 1-K Kerosene or 2-K Kerosene. In addition, each dispenser shall contain one of the following legends as appropriate:

(A) On 1-K kerosene dispensers, the legend "Suitable For Use In Unvented Heaters"; or

(B) On 2-K kerosene dispensers, the legend "May Not Be Suitable For Use In Unvented Heaters";

(2) Other products shall be labeled with either the applicable generic name or a brand name which identifies the type of product.

~~(c)(d)~~ Whenever a motor fuel or other product provided for in this Section is offered for sale, sold, or delivered at retail in

barrels, casks, cans, or other containers, each container shall be labeled in accordance with this Section and in accordance with 15 U.S.C. 1451 et. seq., the Fair Packaging and Labeling Act.

~~(d)(e)~~ If a dispenser is so designed so that one or more hoses connected to a common housing dispense more than one type or grade of product, means shall be provided to indicate the identity of the product being dispensed from the hose.

Authority G.S. 119-27.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commissioner of Insurance intends to amend the rule cited as 11 NCAC 13 .0308.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncdoi.com/LS/>

Proposed Effective Date: March 1, 2012

Public Hearing:

Date: December 16, 2011

Time: 10:00 p.m.

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

Reason for Proposed Action: *The rule revision removes a burden both from ASD and the licensees as the annual report is due at the different time than the renewal application and causes both parties problems as a result. This rule revision is at the recommendation of the NC Premium Finance Association.*

Procedure by which a person can object to the agency on a proposed rule: *The North Carolina Department of Insurance will accept written objections to this rule until the expiration of the comment period on January 17, 2012.*

Comments may be submitted to: Karen Waddell, 1201 Mail Service Center, Raleigh, NC 27619-1201, phone (919)733-4529, email karen.waddell@ncdoi.gov

Comment period ends: January 17, 2012

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
- ☒ No fiscal note required

CHAPTER 13 - AGENT SERVICES DIVISION – NON-INSURANCE ENTITIES

SECTION .0300 - INSURANCE PREMIUM FINANCE COMPANIES

11 NCAC 13 .0308 ANALYSIS OF CONTRACTS

Each licensee shall file a special regular report entitled "Annual Statement" "Analysis of Contracts" with the Commissioner ~~on or before March 1 of each year along with the annual renewal application required by G.S. 58-35-15(c).~~ The ~~annual statement~~ analysis of contracts shall be a record of the premium finance company's business for the calendar year ~~(January-December)~~ (January to December) immediately preceding the filing date. The ~~annual statement~~ analysis of contracts form ~~will~~ shall be supplied by the commissioner and shall ~~include the name and address of the licensee, a list of the officers and directors of the licensee, instructions for filing the report, a statement of income, expenses, assets, and liabilities, a reconciliation of the licensee's net worth, schedules of pertinent balance sheet items, general interrogatories concerning the licensee's operation in North Carolina, an analysis of premium finance contracts written in North Carolina and all other pertinent information include:~~

- (1) the name and address of the licensee;
- (2) a list of the officers and directors of the licensee;
- (3) the number of contracts written by month;
- (4) the total premium for written contracts by month;
- (5) the total down payment on contracts by month;
- (6) the total principal balance of contracts by month; and
- (7) the total service charges pertaining to written contracts by month.

Authority G.S. 58-2-40; 58-35-15(c); 58-35-30(a).

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 rules cited as 15A NCAC 02B .0315.

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

Proposed Effective Date: July 1, 2012

Public Hearing:

Date: December 13, 2011

Time: 7:00 p.m.

Location: Princeton Town Hall – Meeting Room, 503 Doctor Donnie H. Jones Jr. Boulevard West, Princeton, NC 27569

Reason for Proposed Action: *Portions of the Neuse River and an abandoned quarry in Johnston County (Neuse River Basin) are proposed to be reclassified. Johnston County requested this reclassification. The quarry is to receive water from a proposed Neuse River intake, and is to be reclassified from Class C to WS-IV CA. The subject portions of the Neuse River are to be reclassified from WS-V and WS-IV (PA) to WS-IV (PA) and WS-IV CA, respectively. The reclassification is needed to construct a public water supply intake and utilize the quarry's water as a public water supply, in order to meet water demands projected through 2050.*

Division of Water Resources staff concur with the proposed reclassification, and a Finding of No Significant Impact (FNSI) has been issued for this project. The waters to be reclassified meet water supply standards according to 2011 DWQ studies, except for high chloride levels in the quarry, which are likely due to high evaporation rates and residence times. Dilution and reduced residence times in the quarry, which will occur once river water is pumped in it, should result in lowered chloride levels.

The quarry is located about two miles north of the Town of Princeton, and along the western bank of the Little River; the boundary of its proposed CA consists of the top of the quarry. The riverine CA would extend along the river from the intake proposed at Richardson Bridge Road (SR 1201) to a point nearly 0.5 miles upstream of that intake. There is a portion of one named tributary to the Neuse River in the proposed CA, which is to be reclassified to WS-IV CA. The PA would extend along the river from a point about 1.7 miles upstream of Bawdy Creek to a point nearly 1.4 miles downstream of Gar Gut. A portion of one named tributary to the Neuse River exists in the proposed PA, and this water is to be reclassified to WS-IV (PA). Approximately 19 acres, 136 acres, and 7,500 acres are included in the subject quarry's CA, river's CA, and river's PA, respectively. There is a portion of the watershed draining to the intake, which exists between the proposed CA and the proposed PA, that is already classified as PA for an existing downstream WS-IV intake on the Neuse River.

If reclassified, regulations affecting wastewater discharges and new development would apply. Other requirements, which would apply only in the CA, are additional treatment for new industrial process wastewater discharges, and no new landfills and new land application sites. There are currently no wastewater discharges in the entire proposed area. There are not any known

planned land application sites in the proposed CA, or known planned wastewater discharges or developments in the entire proposed area.

Johnston County is the only local government with jurisdiction in the reclassification area, and the only local government that would need to, and has agreed to, modify its water supply watershed protection ordinance within the required 270 days after the reclassification effective date. A fiscal analysis for this proposal has been completed and approved, and the analysis' quantifiable results revealed a one-time cost of approximately \$600 to the state and \$500 to Johnston County.

Procedure by which a person can object to the agency on a proposed rule: *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. 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 Neuse River watershed and a quarry for the purpose of protecting the 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.*

You may attend the public hearing and provide verbal comments, and/or submit written comments, data or other information by January 17, 2012. The comments, data and information provided during the comment period should specifically address the proposed reclassification and its fiscal note for the two segments of the Neuse River and associated quarry. 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. 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 Neuse River and associated quarry may be submitted to Elizabeth Kountis of the Water Quality Planning Section at 1617 Mail Service Center, Raleigh, NC 27699-1617, elizabeth.kountis@ncdenr.gov, fax (919)807-6497.

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

Comment period ends: *January 17, 2012*

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**
- ☐ **Substantial economic impact (≥\$500,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required**

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0315 NEUSE RIVER BASIN

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

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina;
 - (B) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina;
 - (C) Wilmington Regional Office
127 Cardinal Drive
Wilmington, North Carolina;
 - (D) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

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

- (1) March 1, 1977 see Paragraph (c) of this Rule;
- (2) December 13, 1979 see Paragraph (d) of this Rule;
- (3) September 14, 1980 see Paragraph (e) of this Rule;
- (4) August 9, 1981 see Paragraph (f) of this Rule;

- (5) January 1, 1982 see Paragraph (g) of this Rule;
 - (6) April 1, 1982 see Paragraph (h) of this Rule;
 - (7) December 1, 1983 see Paragraph (i) of this Rule;
 - (8) January 1, 1985 see Paragraph (j) of this Rule;
 - (9) August 1, 1985 see Paragraph (k) of this Rule;
 - (10) February 1, 1986 see Paragraph (l) of this Rule;
 - (11) May 1, 1988 see Paragraph (m) of this Rule;
 - (12) July 1, 1988 see Paragraph (n) of this Rule;
 - (13) October 1, 1988 see Paragraph (o) of this Rule;
 - (14) January 1, 1990 see Paragraph (p) of this Rule;
 - (15) August 1, 1990;
 - (16) December 1, 1990 see Paragraph (q) of this Rule;
 - (17) July 1, 1991 see Paragraph (r) of this Rule;
 - (18) August 3, 1992;
 - (19) April 1, 1994 see Paragraph (t) of this Rule;
 - (20) July 1, 1996 see Paragraph (u) of this Rule;
 - (21) September 1, 1996 see Paragraph (v) of this Rule;
 - (22) April 1, 1997 see Paragraph (w) of this Rule;
 - (23) August 1, 1998 see Paragraph (x) of this Rule;
 - (24) August 1, 2002 see Paragraph (y) of this Rule;
 - (25) July 1, 2004 see Paragraph (z) of this Rule;
 - (26) November 1, 2007 see Paragraph (aa) of this Rule;
 - (27) January 15, 2011 see Paragraph (bb) of this ~~Rule~~ Rule; and
 - (28) July 1, 2012 see Paragraph (cc) of this Rule.
- (c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective March 1, 1977 with the a total of 179 streams in the Neuse River Basin reclassified from Class D to Class C.
- (d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective December 13, 1979 as follows: Little River [Index No. 27-57-(21.5)] from source to the dam at Wake Forest Reservoir has been reclassified from Class A-II to Class A-II and B.
- (e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective September 14, 1980 as follows: T he Eno River from Durham County State Road 1003 to U.S Highway 501 [Index No. 27-2-(16)] was reclassified from Class C and B to Class A-II and B.
- (f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 9, 1981 to remove the swamp water designation from all waters designated SA in the Neuse River Basin.
- (g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1982 as follows: The Trent River from the mouth of Brice Creek to the Neuse River [Index No. 27-101-(39)] was reclassified from Class SC Sw to Class SB Sw.
- (h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective April 1, 1982 as follows:
- (1) Longview Branch from source to Crabtree Creek [Index No. 27-33-(21)] was reclassified from Class C1 to Class C.
 - (2) Watson Branch from source to Walnut Creek [Index No. 27-34-(8)] was reclassified from Class C1 to Class C.
- (i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1983 to add the Nutrient Sensitive Waters classification to the entire river basin above Falls dam.
- (j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1985 as follows: Nobel Canal from source to Swift Creek [Index No. 27-97-(2)] was reclassified from Class C1 to Class C.
- (k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective August 1, 1985 as follows:
- (1) Southeast Prong Beaverdam Creek from source to Beaverdam Creek [Index No. 27-33-15(2)] was reclassified from Class C1 to Class C.
 - (2) Pigeon House branch from source to Crabtree Creek [Index No. 27-33-(18)] was reclassified from Class C1 to Class C.
 - (3) Rocky Branch from source to Pullen Road [Index No. 27-34-6-(1)] was reclassified from Class C1 to Class C.
 - (4) Chavis Branch from source to Watson Branch [Index No. 27-37-8-1] was reclassified from Class C1 to Class C.
- (l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective February 1, 1986 to reclassify all Class A-I and Class A-II streams in the Neuse River Basin to WS-I and WS-III.
- (m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective May 1, 1988 to add the Nutrient Sensitive Waters classification to the waters of the Neuse River Basin below the Falls Lake dam.
- (n) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:
- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
 - (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
 - (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.
- (o) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:
- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and

Lake Raleigh have been reclassified from Class WS-III to Class WS-III B.

- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

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

- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.
- (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(q) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(r) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(s) The Schedule of Classifications and Water Quality Standards for the Neuse 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.

(t) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV B NSW.
- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III B NSW.

(u) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(v) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(w) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(x) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries is the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as .5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(y) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County

proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

(z) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 2004 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-21, 27-21-1] from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake (former water supply intake for Burlington Mills Wake Finishing Plant) from Class C NSW to Class WS-IV NSW and from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake [Index No. 27-(20.1)] from Class C NSW to Class WS-IV NSW CA. Fantasy Lake [Index No. 27 -57-3-1-1], a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.

(aa) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective November 1, 2007 with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.

(bb) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin is amended effective January 15, 2011 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at Falls 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 Falls Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rules 15A NCAC 02B .0275 through .0283.

(cc) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin is amended effective July 1, 2012 as follows:

- (1) Johnston County owned quarry near Little River [Index No. 27-57-(20.2)] from Class C NSW to Class WS-IV NSW CA. The Division of Water Quality maintains a Geographic Information Systems data layer of this quarry;
- (2) a portion of the Neuse River [Index Number 27-(41.7)] from a point approximately 1.4 miles downstream of Gar Gut to a point approximately 1.7 miles upstream of Bawdy Creek from Class WS-V NSW to Class WS-IV NSW; and
- (3) a portion of the Neuse River [Index No. 27-(49.5)] from a point approximately 0.5 mile upstream of S.R. 1201 (Johnston County intake) to S.R. 1201 (Johnston County intake) from Class WS-IV NSW to Class WS-IV NSW CA.

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

This Section contains information for the meeting of the Rules Review Commission on Thursday October 20, 2011 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. 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

November 17, 2011 December 15, 2011
January 19, 2012 February 16, 2011

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

The Rules Review Commission met on Thursday, October 20, 2011, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Margaret Currin, Garth K. Dunklin, George Lucier, Bob Rippy, Stephanie Simpson, Ralph Walker.

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

The meeting was called to order at 10:02 a.m. with Judge Walker presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

APPROVAL OF MINUTES

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the September 15, 2011 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

02 NCAC 38 .0701 – Board of Agriculture. The Commission approved the rewritten rule submitted by the agency.

02 NCAC 43L .0309 – Board of Agriculture. The Commission approved the rewritten rule submitted by the agency. David McLeod from the Board addressed the Commission.

04 NCAC 03C .0807, .1001; 16A .0101, .0105, .0201, .0202, .0401, .0402, .0403, .0405, .0407, .0409; 16C .0102, .0103, .0202, .0203, .0304, .0305; 16D .0103, .0301, .0407, .0901, .0902; 16E .0104, .0301, .0405, .0702; 16F .0105, .0108, .0109, .0111, .0112, .0113 – Office of the Commissioner of Banks. No rewritten rules were submitted by the agency and no action was taken.

04 NCAC 16A .0301, .0302 – Office of Commissioner of Banks. No rewritten rules were submitted by the agency and no action was taken.

21 NCAC 25 .0209 – Interpreter and Transliterator Licensing Board. No rewritten rule was submitted by the agency and no action was taken.

21 NCAC 39 .0801 – Onsite Wastewater Contractors and Inspectors Certification Board. The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

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

Alcoholic Beverage Control Commission

Prior to the review of the rules from the Alcoholic Beverage Control Commission, Commissioner Rippey, recused himself and did not participate in any discussion or vote concerning these rules because his business has an ABC Permit.

All rules were approved unanimously with the following exception:

04 NCAC 02R .1711 — The Commission extended its period of review on this rule.

Social Services Commission

Anna Carter from the Child Care Commission addressed the Commission.

All rules were approved unanimously with the following exceptions:

10A NCAC 10 .0102 - The Commission objected to this Rule based on ambiguity. There are terms in Chapter 10 that are not defined and it is therefore not clear what they mean. It is not clear what is meant by "private agency" and it is not clear if a "decision" includes a statement of reasons. Those terms should be defined in the rule.

10A NCAC 10 .0203 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (b), it is not clear what the "net cost study rates" are or how they are determined. There is also no authority cited for them to be established by an oversight committee. The cited authority is for the Social Services Commission to establish rates. This objection applies to existing language in this rule.

10A NCAC 10 .0308 - The Commission objected to this Rule based on ambiguity. In (b)(1), (2) and (4), it is not clear what standards the local purchasing agency is to use in determining that a recipient or provider is not capable of paying in full.

10A NCAC 10 .0309 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (d), it is not clear what standards the Division of Child Development and Early Education will use in requiring the correction of an underpayment or overpayment. Pursuant to G.S. 150B-19(6), there is no authority to adopt this modification provision without setting out the specific guidelines to be used.

10A NCAC 10 .0310 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (a), there is no authority cited to set requirements in a records retention schedule rather than by rule. In (c), it is not clear what standards the Division is to use in determining whether to require an agency to pay back funds improperly spent. This objection applies to existing language in this rule.

10A NCAC 10 .0311 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. The review process established in this Rule is unclear. If a provider is entitled to a contested case hearing based on a decision of a local purchasing agency, there is no authority cited for the Commission to add in additional steps. If a provider is only entitled to a contested case hearing after a decision by the Review Panel mentioned in (g), that is unclear. Notice in accordance with G.S. 150B-23 is only relevant to filing a contested case with the Office of Administrative Hearings. There is no authority to establish by rule if a person is entitled to a contested case hearing. In (c), it is not clear what

standards a local purchasing agency is to use in granting a delay. In (d), and other places it is not clear if a "statement of decision" must include the reasons for the decision.

10A NCAC 10 .0312 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (b), it is not clear who appoints any alternates. In (e), there is no authority cited for the Panel to convene in closed session. This would appear to be a public meeting. In (m), it is not clear what standards the Secretary is to use in setting the time for the Panel to make its decision. As with Rule .0311, this rule is ambiguous on who is the agency making the decision subject to a contested case hearing. The last sentence in (n) implies it is the Local purchasing agency immediately after saying it is the Panel.

10A NCAC 10 .0506 - The Commission objected to this Rule based on lack of statutory authority. In (b), there is no authority cited to set requirements in a records retention schedule rather than by rule. It is also not clear what is meant by "private agency." This objection applies to existing language in the rule.

HHS/Division of Services for the Deaf and Hard of Hearing

10A NCAC 17D .0217 was approved unanimously.

Commission for Mental Health

All rules were approved unanimously with the following exception:

10A NCAC 26E .0603 was withdrawn by the agency.

Department of Insurance

11 NCAC 17 .0103 was approved unanimously.

Medical Board

All rules were approved unanimously with the following exceptions:

The rules in 21 NCAC 32C were withdrawn by the agency and refiled for the November meeting.

21 NCAC 32R .0106 - The Commission objected to this Rule based on ambiguity. In (3), it is not clear how to determine if a member of the General Assembly is engaged in activities requiring the study and analysis of issues related to the practice of medicine in North Carolina.

Medical Board/Perfusion Advisory Committee

All rules were approved unanimously.

Board of Podiatry Examiners

21 NCAC 52 .0208 was approved unanimously.

State Personnel Commission

All rules were approved unanimously.

Building Code Council

All rules were approved unanimously with the following exceptions:

2012 Fuel Gas Code – 311, 2012 Mechanical Code – 313, 2012 Plumbing Code – 315, 2009 Residential Code – 313.1, 2012 Residential Code – 315 - The commission voted to extend the period of review on these rules. It did so in order for Commission and agency staff to discuss the effects an objection to those rules, based on the recommendations in counsel's October staff opinion, would have on the existing rules. It is anticipated that the Commission will take action to approve or object to those rules at its November meeting. Counsel was instructed to present an updated staff opinion based on that discussion.

TEMPORARY RULES

There were no temporary rules filed for review.

COMMISSION PROCEDURES AND OTHER BUSINESS

Joe DeLuca discussed the amendments to RRC Rule 26 NCAC 05 .0108 and adoption of 26 NCAC 05 .0114. Two options of rule 26 NCAC 05 .0108 were discussed and the Commission voted to proceed with option #2.

The Commission will hold a public hearing on the proposed rules at 10:00 a.m., November 17, 2011, prior to the Commission meeting.

Molly Masich discussed upcoming rulemaking training that the Office of Administrative Hearing will be having.

The meeting adjourned at 11:53 p.m.

The next scheduled meeting of the Commission is Thursday, November 17 at 10:00 a.m.

Respectfully Submitted,

Julie Edwards
Editorial Assistant

Rules Review Commission

Meeting

Please Print Legibly

OCTOBER 20, 2011

Name	Agency
KAREN WADDELL	DOT
Lynn Floyd	OSP
Bob Ham. Hon	ABC
BARRY GUNTON	NCDOT/NCBCC
DEBRA ARTHUR	DCDEE
Kim Miller	DCDEE
Anna Carter	DCDEE
Dan McLeod	NCDASCS
Rinney DePas	NCBPE
May Miller Ashli	SELC
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**LIST OF APPROVED PERMANENT RULES
October 20, 2011 Meeting**

AGRICULTURE, BOARD OF

<u>Adoption by Reference</u>	02	NCAC 38	.0701
<u>Admission Regulations</u>	02	NCAC 43L	.0309

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Maintenance of Working Capital</u>	04	NCAC 02R	.0902
<u>Stores: Appearance and State List</u>	04	NCAC 02R	.1703
<u>Customer Service</u>	04	NCAC 02R	.1706
<u>General Guidelines</u>	04	NCAC 02S	.0201
<u>Advertising of Mixed Beverages</u>	04	NCAC 02S	.1010
<u>Advertising of Spirituous Liquors</u>	04	NCAC 02S	.1011

SOCIAL SERVICES COMMISSION

<u>Effect of Administrative Action</u>	10A	NCAC 10	.0313
<u>Definition of Start-up Funds</u>	10A	NCAC 10	.0401
<u>Review Criteria for Start-up Funds</u>	10A	NCAC 10	.0402
<u>Appeals</u>	10A	NCAC 10	.0603
<u>Appeals</u>	10A	NCAC 10	.0703
<u>Local Purchasing Agency Responsibility</u>	10A	NCAC 10	.0803
<u>Definition of a Special Needs Child</u>	10A	NCAC 10	.0910

HHS - DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE

<u>Reports from Local Agencies</u>	10A	NCAC 17D	.0217
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MENTAL HEALTH, COMMISSION FOR

<u>Definition of Goals</u>	10A	NCAC 27B	.0601
<u>Eligibility Requirements</u>	10A	NCAC 27B	.0602
<u>Criteria</u>	10A	NCAC 27B	.0603
<u>Scope</u>	10A	NCAC 27G	.2501
<u>Definitions</u>	10A	NCAC 27G	.2502
<u>Staff Requirements</u>	10A	NCAC 27G	.2503
<u>Follow-along</u>	10A	NCAC 27G	.2504

INSURANCE, DEPARTMENT OF

<u>Location, Mailing Address, and Telephone</u>	11	NCAC 17	.0103
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MEDICAL BOARD

<u>Application for Physician License</u>	21	NCAC 32B	.1303
<u>Reinstatement of Physician License</u>	21	NCAC 32B	.1350
<u>Application of Resident's Training License</u>	21	NCAC 32B	.1402

NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEEContinuing Education

21 NCAC 32V .0105

Fees

21 NCAC 32V .0115

ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARDCode of Ethics

21 NCAC 39 .0801

PODIATRY EXAMINERS, BOARD OFContinuing Education

21 NCAC 52 .0208

STATE PERSONNEL COMMISSIONAgency and Employee Responsibilities

25 NCAC 01H .0904

Office of State Personnel Responsibilities

25 NCAC 01H .0905

Agency and Employee Responsibilities

25 NCAC 01H .1003

Office of State Personnel Responsibilities

25 NCAC 01H .1004

Policy

25 NCAC 01N .0602

BUILDING CODE COUNCILNC Administrative Code and Procedures - Permits

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2012 Building Code - Floors

1210.1

2012 NC Building Code - Installed Stairway Chairlifts

3409.8.3

2012 NC Plumbing Code - Separate Facilities

403.2

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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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. Lead C. Corp v. T/A Burger King/Shell Convenience Store	11 ABC 5066	10/19/11	
ABC Commission v. GK Mart Inc., T/A GK Mart	11 ABC 02647	07/22/11	
ABC Commission v. Triangle Food and Fun LLC, T/A Six Forks Pub	11 ABC 07107	09/16/11	
ABC Commission v. CH Pub LLC, T/A Kildares Irish Pub	11 ABC 07109	08/16/11	
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Marchell Gunter, The Home of Marchell F Gunter v. DHHS	10 DHR 0557	06/03/11	
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Theracare Home Health and Staffing, LLC v. DHHS, Division of Medical Assistance Program Integrity	10 DHR 1455	06/01/11	
Brenda P Simms v. Longleaf Neuromedical Treatment Center, Dept. of Health and Human Services	10 DHR 01572	10/14/11	
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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	
Qingxia Chen and Chen Family Child Care Home Inc v. Division of Child Development	10 DHR 4182	07/29/11	
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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
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