

NORTH CAROLINA REGISTER

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January 17, 2012

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
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Rule Review and Legal Issues

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

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

Fiscal Notes & Economic Analysis 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 2012 – December 2012

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
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
26:14	01/17/12	12/21/11	02/01/12	03/19/12	03/20/12	05/01/12	05/16/12	10/13/12
26:15	02/01/12	01/10/12	02/16/12	04/02/12	04/20/12	06/01/12	01/30/13	10/28/12
26:16	02/15/12	01/25/12	03/01/12	04/16/12	04/20/12	06/01/12	01/30/13	11/11/12
26:17	03/01/12	02/09/12	03/16/12	04/30/12	05/21/12	07/01/12	01/30/13	11/26/12
26:18	03/15/12	02/23/12	03/30/12	05/14/12	05/21/12	07/01/12	01/30/13	12/10/12
26:19	04/02/12	03/12/12	04/17/12	06/01/12	06/20/12	08/01/12	01/30/13	12/28/12
26:20	04/16/12	03/23/12	05/01/12	06/15/12	06/20/12	08/01/12	01/30/13	01/11/13
26:21	05/01/12	04/10/12	05/16/12	07/02/12	07/20/12	09/01/12	01/30/13	01/26/13
26:22	05/15/12	04/24/12	05/30/12	07/16/12	07/20/12	09/01/12	01/30/13	02/09/13
26:23	06/01/12	05/10/12	06/16/12	07/31/12	08/20/12	10/01/12	01/30/13	02/26/13
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27:01	07/02/12	06/11/12	07/17/12	08/31/12	09/20/12	11/01/12	01/30/13	03/29/13
27:02	07/16/12	06/22/12	07/31/12	09/14/12	09/20/12	11/01/12	01/30/13	04/12/13
27:03	08/01/12	07/11/12	08/16/12	10/01/12	10/22/12	12/01/12	01/30/13	04/28/13
27:04	08/15/12	07/25/12	08/30/12	10/15/12	10/22/12	12/01/12	01/30/13	05/12/13
27:05	09/04/12	08/13/12	09/19/12	11/05/12	11/20/12	01/01/13	01/30/13	06/01/13
27:06	09/17/12	08/24/12	10/02/12	11/16/12	11/20/12	01/01/13	01/30/13	06/14/13
27:07	10/01/12	09/10/12	10/16/12	11/30/12	12/20/12	02/01/13	05/2014	06/28/13
27:08	10/15/12	09/24/12	10/30/12	12/14/12	12/20/12	02/01/13	05/2014	07/12/13
27:09	11/01/12	10/11/12	11/16/12	12/31/12	01/22/13	03/01/13	05/2014	07/29/13
27:10	11/15/12	10/24/12	11/30/12	01/14/13	01/22/13	03/01/13	05/2014	08/12/13
27:11	12/03/12	11/07/12	12/18/12	02/01/13	02/20/13	04/01/13	05/2014	08/30/13
27:12	12/17/12	11/26/12	01/01/13	02/15/13	02/20/13	04/01/13	05/2014	09/13/13

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 NUMBER 112

EXTENDING THE JUVENILE JUSTICE PLANNING COMMITTEE


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

Executive Order Number 40, *Replacing Executive Order No. 133, Juvenile Justice Planning Committee*, is hereby extended until December 13, 2015.

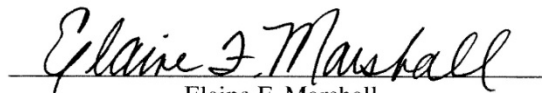
This order is effective immediately.

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 fourteenth day of December 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

Correction to Third Amended COPA

The Third Amended Certificate of Public Advantage, issued on August 31, 2011, is hereby corrected to remove language that was inadvertently added. Other than as set forth herein, the provisions of the Third Amended COPA remain in full force and effect. Provision 8.1, as corrected, is as follows:

8.1 Notwithstanding Section 6.1, Mission Health may employ or enter into exclusive contracts with no more than 30% of the physicians in its primary service area of Buncombe and Madison Counties, except those practicing in the following areas: cardiology, genetics, hospitalist, neuro-hospitalist, and neurology. This percentage limit shall apply to each area of practice. In calculating this percentage, full-time residency faculty members employed by Mission Health shall be included, and physicians whose primary employment is at Mission Health's community access clinics shall be excluded.

Department of Health and Human Services



Date: January 3, 2012

Drexdal R. Pratt, Director
Division of Health Service Regulation

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

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

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce intends to amend the rules cited as 04 NCAC 01I .0101, .0105 and repeal the rules cited as 04 NCAC 01J .0101-.0102, .0201, .0301, .0401, .0501; 01K .0202, .0204, .0207; 14B .0109-.0116, .0211-.0220; 19L .1301-.1303; 20B .0402-.0403, .0901-.0902, .0904, .0906-.0907, .0909-.0911.

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

Proposed Effective Date: May 1, 2012

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A demand for a public hearing shall be directed in writing to Tina A. Krasner at NC Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629.*

Reason for Proposed Action: *All of these rules are obsolete.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to any of these rules shall be sent in writing to Tina A. Krasner at NC Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629.*

Comments may be submitted to: Tina A. Krasner, NC Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629.

Comment period ends: March 19, 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 01 - DEPARTMENTAL RULES

SUBCHAPTER 01I – INDUSTRIAL DEVELOPMENT FUND

SECTION .0100 – PURPOSE AND DEFINITIONS

04 NCAC 01I .0101 BACKGROUND AND OBJECTIVES

(a) **BASIC**—The purpose of the North Carolina Industrial Development Fund is to assist town, city or county governments with incentive industrial financing in areas of the state that have been designated as eligible tier areas by NC General Statutes. This assistance is intended to help units of government offer to its new and expanding industry, new or improved infrastructure, or funds for building renovation and equipment in exchange for commitments to create new, full-time jobs in industries currently eligible under NC General Statutes. (The fund is not designed to be used for the acquisition of land and buildings or constructing new buildings.) If the assistance is used for infrastructure, it shall be granted to local governments with no repayment; however, if it is used to purchase equipment or to renovate industrial buildings, then the funds must be repaid. But whether a grant or a loan, the amount of funds to be made available for a project shall be determined by the number of new jobs committed, with a maximum job limit and project limit as currently authorized for the program by NC General Statutes.

(b) **EMERGENCY ECONOMIC DEVELOPMENT ASSISTANCE** - This special assistance from the Industrial Development Fund is available to units of government that have, or shall imminently experience, a loss of 500 or more manufacturing jobs in the county, or a number of manufacturing jobs equal to at least 10% of the manufacturing workforce in the county. Where a unit of government relies on the 500 jobs loss as the threshold for obtaining this special assistance, it must submit convincing evidence that the loss seriously impacts the county's economy, taking into account the county's tier ranking under Rule .0701 of this Subchapter. The funding obtainable under this emergency assistance category shall not necessarily be determined by the number of new jobs to be created, although the project should lead to new jobs, or save jobs, or both, and

help alleviate a jobs dislocation problem. The Secretary shall determine the amount of funds for a project, up to the maximum currently authorized for the program by NC General Statutes. This assistance shall be in the form of a low interest loan to the governmental unit, amortized over five years with repayment beginning at the end of the second year.

(c) **UTILITY ACCOUNT** - Within the IDF structure, the Utility Account provides financing to units of government for jobs creation and investment in the tier area(s), and for benefiting firms currently authorized by NC General Statutes. Funds may be used for construction or improvements to water, sewer, gas, or electrical utility lines and equipment for existing or proposed industrial buildings. There is no specific amount of funding specified for each new job or project, but the impact of the funding should lead to the creation of new jobs and new investment. As with basic IDF financing, if Utility Account funds are spent for public property, the assistance shall be a grant; for private property, it shall be a loan.

~~(d) **CLEAN WATER BONDS PROCEEDS** — Clean Water bonds proceeds from the IDF shall be used to make grants to local government units to pay the cost of clean water projects for economic development with regard to the locating of industry to, and the expansion of industry in the State. These funds shall be administered in the manner permitted in the Basic IDF and the Utility Account except the following limitations shall apply:~~

- ~~(1) — The funds shall be used for grants; not loans.~~
- ~~(2) — Grants shall be made only for projects that will have a favorable impact on the clean water objectives of the State.~~
- ~~(3) — Projects shall be located in economically distressed counties or those that have a population of less than 50,000 determined from the data derived at the time of the last December ranking of economically distressed counties.~~
- ~~(4) — Grants may be made only with respect to the industries specified by the Clean Water and Natural Gas Critical Needs Bond Act of 1998 as amended.~~
- ~~(5) — The water or sewer utility lines or facilities for which bond funds are disbursed shall not necessarily be located on the site of a building or proposed building at which an industrial activity occurs if the utility lines or facilities will further the clean water objectives of the State.~~

Authority G.S. 143B-437.01.

SUBCHAPTER 01J - NORTH CAROLINA JOBS TAX CREDIT

SECTION .0100 - PURPOSE AND DEFINITIONS

04 NCAC 01J .0101 BACKGROUND AND OBJECTIVES

G.S. 105-130.40 and G.S. 105-151.17, as amended, provide that certain employers may be eligible for and may qualify for a credit against the tax proposed by the North Carolina

~~Department of Revenue. This credit of two thousand eight hundred dollars (\$2,800) may be claimed when qualifying full-time employees are added by an eligible employer in a severely distressed county. The legislation sets out particular responsibilities for two separate departments of State Government; this Section is to set how the Department of Commerce will conduct activities and responsibilities assigned to it under this act.~~

Authority G.S. 105-130.40(a),(c) and (d); 105-151.17(a),(c) and (d); Chapter 568, 1987 S.L.; Chapter 111 and 753, 1989 S.L.

04 NCAC 01J .0102 DEFINITIONS

- ~~(a) "Distress factor": a distress factor is defined as the sum of:~~
- ~~(1) — the county's rank in a ranking of counties by rate of unemployment from lowest to highest; and~~
 - ~~(2) — the county's rank in a ranking of counties by per capita income from highest to lowest.~~
- ~~(b) "Date of signing" shall be defined as the date on which the Secretary of Economic and Community Development, his designee, or the Commerce Finance Center receives and accepts as complete, a commitment under Paragraph (d) of G.S. 105-130.40 and G.S. 105-151.17. Such a commitment will not be so defined unless it is signed by a officer of the corporation or by the taxpayer.~~
- ~~(c) "Department" means the North Carolina Department of Economic and Community Development.~~
- ~~(d) "Eligible employer" is defined as a corporation or taxpayer that is located or proposes to locate in a distressed county and has received an approved "Determination of Eligibility" from the Department of Economic and Community Development.~~
- ~~(e) "Full time employee" is defined as an employee who holds a full time job.~~
- ~~(f) "Full time job" is defined as a position that is located in the distressed county and requires at least 1600 hours of work per year and is intended to be held by one person during the entire year.~~
- ~~(g) "Letter of Commitment" is defined as an agreement between the department and a corporation or a taxpayer. This letter of commitment will set out:~~
- ~~(1) — the name of the corporation or the individual taxpayer entity that will file the North Carolina tax return under Chapter 105;~~
 - ~~(2) — the name that will be used in the conduct of business, if different from Paragraph (g)(1) of this Rule;~~
 - ~~(3) — the permanent or Home Office address of the management group directing the operation of the business;~~
 - ~~(4) — the location(s) of the qualifying business operations within the distressed county;~~
 - ~~(5) — a schedule showing the number of permanent full time positions to be created and the time sequence for their being filled;~~
 - ~~(6) — an estimate of the cost of new capital expenditures within the distressed county over the two year time period of the commitment;~~

- (7) ~~an official contact with the operating firm to whom inquiries pertinent to the agreement can be directed;~~
- (8) ~~the date of signing, as defined in Paragraph (b) of this Rule.~~

(h) ~~"Determination of Eligibility" is defined as the finding made by the Department of Economic and Community Development that the corporation or taxpayer which is creating jobs is eligible to participate in the Job Tax Credit program. Such finding will be based on information, submitted on a format prescribed by the Secretary, which shows:~~

- (1) ~~Corporation or taxpayer name, local (NC) address, county, telephone number; and~~
- (2) ~~Evidence offered by the corporation or taxpayer that its firm is eligible to participate in the Job Tax Credit based on one of the following criteria:~~
 - (A) ~~Firm obtained a Job Tax Credit for the year 1988.~~
 - (B) ~~Firm is listed in the Directory of Manufacturing Firms in North Carolina, published by the North Carolina Department of Economic and Community Development.~~
 - (C) ~~Firm has a primary SIC Code in the manufacturing group numbered 20-299 as listed in the Standard Industrial Classification Manual, 1987, published by the Executive Office of the President, Office of Management and Budget.~~
 - (D) ~~Firm otherwise documents in narrative form, on form provided by Department, its position that it is engaged in the manufacturing of goods or is engaged in an industrial activity such as the processing of foods, raw materials, chemicals or process agents, goods in process, or finished goods.~~

(i) ~~"Severely Distressed County" is defined as a county designated as such by the Secretary of the Department of Economic and Community Development. The Secretary will make such a designation only if a county has a distressed factor that is one of the 25 highest in the state.~~

Authority G.S. 105-130.40(a),(c) and (d); 105-151.17(a),(c) and (d); Chapter 568, 1987 S.L.; Chapter 111 and 753, 1989 S.L.

SECTION .0200 - DESIGNATION OF SEVERELY DISTRESSED COUNTIES

04 NCAC 01J .0201 DESIGNATION OF SEVERLY DISTRESSED COUNTIES

(a) ~~On or before December 31 of each calendar year, the Secretary of the Department shall designate which counties are considered as severely distressed, and shall provide that information to the Secretary of Revenue. The Department will obtain from the North Carolina Employment Security~~

~~Commission the adjusted monthly estimates of unemployment for the most recent 36 month period for which data is available. Those monthly estimates will be averaged and those averages used to rank the counties by arranging them in numerical order of the county with the lowest unemployment as number 1 to the county with the highest unemployment as number 100.~~

~~(b) The Department will obtain from the United States Department of Commerce the latest available annual per capita income figures, by county, for the most recent 36 month percent for which data is available. Those annual figures will be averaged and those averages used to rank the counties in numerical order of the county with the highest per capita income average as number 1 to the county with the lowest per capita income average as number 100. These two rankings will be totaled so as to provide a sum which will be the county's distress factor. Those 25 counties with the highest distress factors will be designated as severely distressed by the Secretary of Economic and Community Development. The list of counties so designated will be provided to the Secretary of the North Carolina Department of Revenue. In addition, written notice of that designation will be given to the chairman of elected governing board in each county so designated.~~

Authority G.S. 105-130.40(a),(c) and (d); 105-151.17(a),(c) and (d); Chapter 568, 1987 S.L.; Chapter 111 and 753, 1989 S.L.

SECTION .0300 - LETTER OF COMMITMENT

04 NCAC 01J .0301 LETTER OF COMMITMENT

~~"Letter of Commitment" will be made in the form prescribed by the Department of Commerce. They will complete as defined in Rule .0102 (g) of this Section. When accepted and signed by the secretary, or his designee, that acceptance will be given in writing to the person(s) or entity offering the commitment. These commitments will be received and will be kept on record at the Commerce Finance Center, Room 2174, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina 27611. A summary listing of those commitments made available to the Department of Revenue within 90 days after the close of each calendar year.~~

Authority G.S. 105-130.40(c) and (d); 105-151.17(c) and (d); Chapter 568, 1987 S.L.

SECTION .0400 - SUBSTANTIATION OF CREDIT CLAIMED

04 NCAC 01J .0401 SUBSTANTIATION OF CREDIT CLAIMED

~~Every taxpayer claiming the Jobs Tax Credit shall maintain and make available for inspection by the Secretary of Revenue such records as may be necessary to determine and verify the amount of credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests with the taxpayer, and no credit will be allowed to the taxpayer who fails to maintain adequate records or to make them available for inspection.~~

Authority G.S. 105-130.40(f); 105-151.17(f); Chapter 111, 1989 S.L.

SECTION .0500 - DETERMINATION OF ELIGIBILITY

04 NCAC 01J .0501 DETERMINATION OF ELIGIBILITY

~~"Determination of Eligibility" will be made in the form prescribed by the Department of Economic and Community Development. The Corporation or taxpayer will complete that form as defined in Rule .0102 (h) of this Subchapter. When accepted, approved or disapproved, and signed by the Secretary or his designee, that action will be given to the corporation or taxpayer requesting the Determination. Such actions will be kept on record at the Commerce Finance Center, Room 2174, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina 27611.~~

Authority G.S. 105-130.40(b1); 105-151.17(b1); Chapter 753, 1989 S.L.

**SUBCHAPTER 01K - ECONOMIC DEVELOPMENT
ACTIVITY OF THE COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM**

SECTION .0100 - GENERAL PROVISIONS

**04 NCAC 01K .0105 PROJECTS NOT TO BE
CONSIDERED FOR FUNDING**

(a) Projects that have evidence of prior major financial commitment by the local government applicant or the proposed project business. After an operator or beneficiary becomes economically committed to a project, it shall not be eligible for funding and the unit of government shall not be eligible to request any funding assistance to serve that project with utilities or CDBG loan assistance. "Economic commitment" is not a quantitative measure, but those types of prohibited situations shall include the following:

- (1) when construction contracts have been signed;
- (2) when equipment purchase orders for site specific installations have been issued;
- (3) when true, simple options for the purchase of an existing facility are bound with deposits that are so large that the option constitutes a sales contract; or
- (4) when conditions or contingencies in a contract of sale have all been met; or met.
- (5) ~~when public announcements include no expression of the need for CDBG participation.~~

(b) Proposed projects that are specifically prohibited by current State and HUD rules due to lack of public benefit and potential failure to meet required program objectives shall not be eligible for CDBG assistance when the following occurs:

- (1) provide general, non-specific promotion of a community as a whole;
- (2) assist professional sports teams;
- (3) assist privately-owned recreational facilities that would serve a predominantly higher-

income clientele, where such recreational benefit clearly outweighs employment or other benefits to LMI persons;

- (4) acquire land for which no specific purpose has yet been identified; or
- (5) assist a for-profit business while that business or any other business owned by the same person, persons or entity is the subject of unresolved findings of non-compliance relating to present or previous CDBG assistance provided by the applicant.

Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301.

SECTION .0200 - APPLICATION PROCEDURE

**04 NCAC 01K .0202 PRE-APPLICATION
CONFERENCE**

~~(a) Local units of government may advise the Department when they enter into serious consideration of an economic development project which may lead to an application. The Department shall assist the community as requested within the limits of available resources. Technical advice, liaison and coordination shall be effected by the Department through the Commerce Finance Center. Available services include:~~

- (1) ~~forms and documents relating to the application process with informative comments;~~
- (2) ~~advice on the type of projects that are considered eligible for CDBG program assistance;~~
- (3) ~~examination of, and comment on, assembled facts and data which might be used in the preparation of application, and~~
- (4) ~~analysis of approach to likely or potential procedural or environmental problems.~~

~~(b) Prior to submission to the Department of a project application, the unit of government shall arrange for a pre-application conference with the Commerce Finance Center. Parties whose presence are required at the pre application conference shall include a member of the elected governing board for the unit of government, or an authorized designee, a corporate official, or authorized designee, from the employer or project company and a representative from a participating bank — if the proposed project will involve a loan and a bank has been selected.~~

~~(c) The purpose of the conference is to ensure that the application procedures are clearly understood so that the application, shall be complete when submitted and all parties involved will be made aware of the application process and its anticipated time frame.~~

~~(d) The operator shall offer written project descriptions whenever possible and may provide data relative to the character and volume of process wastes, water and air discharges of pollutants, as well as any comment or permits already received from the Division of Environmental Management.~~

~~(e) The applicant will provide documentation of the first required public hearing if such a public hearing has been held within the most recent six months.~~

~~(f) The Department will make no funding decision regarding a prospective project prior to a full consideration of the completed application. However, the Commerce Finance Center may issue a Letter of Encouragement or a Letter of Concerns if so requested by the unit of government. This letter will convey comments pertinent to the project and the preparation of the application and will enumerate any points of concern which are developed as a result of the information made available at the conference. These points of concern will be generated so that the applicant's response may include pertinent facts and data. The issuance of a letter of encouragement will not preclude the Secretary or the Commerce Finance Center from raising new questions or areas of concern after an application is received.~~

Authority G.S. 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.496.

04 NCAC 01K .0204 DISCRETIONARY PUBLIC HEARING BY THE DEPARTMENT

~~(a) The Secretary may hold a public hearing on the proposed project.~~

~~(b) If a public hearing is held, the applicant shall give at least 10 days notice prior to the hearing. The notice shall specify the date, time, place and subject matter of the hearing and be published in the non legal section of a newspaper of general circulation in the applicant's county.~~

~~(c) A transcript of the hearing shall be prepared by the Secretary and, along with any exhibits, made a part of the application.~~

Authority G.S. 143B-431; 42 U.S.C.A. 5301.

04 NCAC 01K .0207 REIMBURSEMENT OF DEPARTMENT EXPENSE

~~Where the Department finds it necessary to incur expense pertinent to the consideration of an application, the expenditure shall not be made unless the unit of government or its proposed beneficiary agrees to reimburse the Department. Such expenditures shall be limited to out of pocket costs of the Department such as travel and advertising.~~

Authority G.S. 143B-431; 24 C.F.R. 570-489.

**CHAPTER 14 - ECONOMIC DEVELOPMENT
DIVISIONS: DIVISION OF BUSINESS ASSISTANCE**

**SUBCHAPTER 14B - GOVERNOR'S COMMUNITY OF
EXCELLENCE AWARD PROGRAM**

SECTION .0100 - PURPOSE AND PROCEDURE

04 NCAC 14B .0109 PURPOSE

~~The purpose of the Governor's Community of Excellence Award Program is to motivate communities to prepare for economic development, and to develop an inventory of prepared communities which could be presented to industrial clients. This is an annual awards program.~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0110 INITIAL CONTACT

~~Any individual, organization or community may initiate contact with the department, through the Director, Small Community Economic Development Task Force, Department of Commerce, 430 North Salisbury Street, Raleigh, North Carolina 27611. The initial contact should be in writing and express the desire to have the community enter the Governor's Community of Excellence Award Program.~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0111 STAFF PRESENTATION

~~Within a reasonable time after the initial contact is made, the appropriate staff members of the division will make a presentation to the responsible community officials and/or any other interested residents on the subsequent procedures to continue in consideration for the award, the requirement of an inspection, the community journal requirement, and the award criteria used by the program staff.~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0112 ENTRY FORM

~~(a) Within a reasonable time after the staff presentation and no later than April 15th, the community must complete the official entry form. An incomplete entry form will be returned for completion and will not be considered until it is completed.~~

~~(b) The entry form requests the name of the official organization sponsoring the city, the coordinator, the name of the chairperson of the following required committees: sponsoring organization committee, livability committee, industrial site committee, promotional materials committee, community profile committee, existing industry committee, community planning committee and the development team committee. (See 14B .0200 of rules filed.) The entry deadline is April 15th.~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0113 STATUS REPORT

~~The chairperson of each committee must provide the appropriate field services representative a summary of information data and pictorial evidence, where appropriate, on each of the award criteria. Requirements must be completed by September 15th.~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0114 INSPECTION

~~(a) Within a reasonable time after the form is returned and all necessary status reports are submitted, the appropriate field services representative shall decide whether or not a community inspection should take place. This decision is based on whether or not the responses in the entry form and status reports indicate that the specified requirements in seven different categories are being met.~~

~~(b) The Director, Small Community Economic Development Task Force, North Carolina Department of Commerce, upon request of the community through the field services representative, will cause to be assembled an inspection team, consisting of professional industrial developers and associated~~

persons. The team will visit the community and will inspect all aspects of the community's responses to the program requirements.

(e) For the inspection, the entrant must provide a community journal to the inspection team. The community journal is to contain information, data, and pictorial evidence of compliance with the categorized requirements. The community journal will be returned to the community.

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0115 AGENCY DECISION

(a) If the inspection team verifies upon the basis of its investigations and other evidence that the community in fact meets the requirements in all seven categories, a recommendation is made by the Director, Small Community Economic Development Task Force, to the Governor that the award be presented. The Governor, thereafter will forward a letter of designation to the successful community.

(b) If the inspection team finds on the basis of its investigation that the community does not meet one or more of the requirements, then the Director, Small Community Economic Development Task Force, shall notify the community in writing of the deficiencies and indicate that the community may apply for a re-inspection. All inspections are to be completed by October 15th.

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0116 GOVERNOR'S COMMUNITY OF EXCELLENCE PLAQUE

Successful communities will be presented with a Governor's Community of Excellence plaque as evidence of their achievement.

Authority G.S. 143B-432; 143B-10(j).

SECTION .0200 - AWARD CRITERIA

04 NCAC 14B .0211 MAXIMUM SIZE OF COMMUNITY

This program is limited to communities with population of 15,000 or less (based on latest North Carolina Department of Administration estimates).

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0212 SPONSORING ORGANIZATION

A community to be eligible for the Governor's Community of Excellence Award must be represented by a sponsoring organization (city council, civic club, chamber of commerce, etc.). This organization must have as one of its purposes the promotion of economic development in the community. "In addition a chartered development corporation must exist that is capable, among other things, of financing of construction of industrial building that can be leased to industrial clients." An industrial facilities and pollution control financing authority must exist.

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0213 COMMUNITY PROFILE

A current community profile on the community must be completed on a form provided by the division. The profile must bear the signature of a designated official of the municipality or of the recognized local development organization, attesting to the authenticity of the data contained therein. Plans to correct any deficiencies or weaknesses as identified in the profile must be presented.

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0214 INDUSTRIAL SITES

(a) A specified number of industrial sites must be developed and full information on each submitted on the industrial site forms of the division of industrial development.

(b) To qualify, each site must have a minimum size of 10 acres. Industrial site information must include topographical maps, aerial photographs, and plat maps. There is no maximum size limitation. Some element of control over these sites must be shown. This could be ownership by the development corporation, an option, letter of first refusal, etc. The critical factor is that the site could be sold to a prospect at a definite price. Requirements by population are as follows:

- (1) population under 3,000 submit at least two industrial sites; If the community is served by rail, at least one of these sites must be able to be served by rail;
- (2) population from 3,001 to 7,000 submit at least three industrial sites; If the community is served by rail, at least one of these sites must be able to be served by rail;
- (3) population from 7,001 to 15,000 submit at least five industrial sites; If the community is served by rail, at least three of these sites must be able to be served by rail.

(c) To qualify, an industrial site does not have to be newly developed. Existing qualified sites are acceptable.

(d) To assist the industrial site committee, an information sheet is provided listing the normal requirements of an industrial site.

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0215 PROMOTION MATERIALS

(a) Brochure

- (1) An up to date brochure or other form of promotional literature must be prepared for the community. In addition to the usual local information normally contained in such publications, it should contain information on industrial sites, utilities and a statement on the interest and ability of the local development corporation to finance construction of industrial buildings.
- (2) In order to be effective, promotional literature need not be expensive and elaborate. What is needed is a concise presentation on the various aspects of community makeup. The field

~~services representative of the division of industrial development is available for guidance at all times.~~

~~(b) A 10-15 minute slide presentation must be prepared on the community.~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0216 EXISTING INDUSTRY COMMITTEE

~~Each industry within the town will be visited, preferably by a two-man visitation team. The purpose of this contact is to gain existing industry's awareness and support of the community's effort to promote economic development and to offer assistance to problems encountered by existing industry. The list of industries will be obtained from the North Carolina Directory of Manufacturing Firms plus any which have located since the directory was published. The list should include those firms normally associated with a town, even if they are not located inside the city limits. A copy of the suggested call sheet or record form to be used is provided. A copy for each industry visit will be included in the materials to be submitted in the judging process.~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0217 COMMUNITY PLANNING REQUIREMENT

~~An organized, functioning planning board, appointed by the governmental unit is a requirement in the Governor's Community of Excellence Award Program. Field office personnel of the divisions of community assistance and industrial development will meet with the chairperson for this category and determine the actual planning requirement for the community. This will ensure flexibility for individual communities rather than set state-wide requirements which might not be meaningful to certain communities.~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0218 LIVABILITY REQUIREMENT: CLEANUP-FIXUP

~~(a) An organized cleanup fixup campaign, involving all sectors of the populous, must be conducted. A well organized campaign to improve the visual aspects of the community can have a dramatic effect in developing a positive attitude toward overall community improvement. The ability "to see ourselves as others see us" will spotlight many things that need to be done in a cleanup fixup campaign.~~

~~(b) The cleanup fixup must be publicized as a part of the community's efforts to achieve the Governor's Community of Excellence Award.~~

~~(c) Information to assist in conducting a campaign is available through the following address:~~

~~Keep North Carolina Beautiful Inc.
401 Oberlin Road
Raleigh, North Carolina 27605~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0219 RECREATION

~~(a) Field office recreational personnel of the divisions of parks and recreation and industrial development will meet with the chairperson of the recreation category to determine the recreation requirement for the community.~~

~~(b) Potential tourist attractions for the community must be identified.~~

Authority G.S. 143B-432; 143B-10(j).

04 NCAC 14B .0220 DEVELOPMENT TEAM REQUIREMENT

~~(a) A development team is comprised of local citizens who are knowledgeable about such things as transportation, utilities, government services and taxes, labor resources, and other factors that are important in a client's selection of a community. It is this group which meets with industrial clients visiting the community; or, perhaps, visits potential clients. Teams have also been used to attract doctors and retail stores.~~

~~(b) The Department of Commerce encourages the establishment of a development team with designated individuals responsible for specific categories of information. For the purpose of fulfilling the community of excellence requirement for a development team, the field services representative may, in conjunction with the Chairman of the Development Team Committee, certify that the community's existing effort fulfills this requirement.~~

Authority G.S. 143B-432; 143B-10(j).

CHAPTER 19 - DIVISION OF COMMUNITY ASSISTANCE

SUBCHAPTER 19L - NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SECTION .1300 - HOUSING DEVELOPMENT PROJECTS

04 NCAC 19L .1301 DESCRIPTION

~~Grants under this category shall support the development of housing opportunities for low and moderate income persons. The Division may limit the use of program funds to specific eligible activities.~~

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

04 NCAC 19L .1302 ELIGIBILITY REQUIREMENTS

~~(a) Applications for Housing Development funds must show that:~~

- ~~(1) At least 51 percent of the CDBG funds proposed for each project will benefit low and moderate income persons; and~~
- ~~(2) CDBG funds proposed for each activity shall meet a national objective as specified in HUD regulations previously incorporated by reference, except that funds shall not be used to meet the national objective of urgent need~~

~~which is covered by Rule .0801 of this Subchapter.~~

~~Applicants that do not meet these requirements will not be rated or funded.~~

~~(b) Applicants shall have the capacity to administer a Community Development Block Grant Program. The Division may examine the following areas to determine capacity:~~

- ~~(1) audit and monitoring findings on previously funded Community Development Block Grant Programs, and the applicant's fiscal accountability as demonstrated in other state or federal Programs or local government financial reports; and~~
- ~~(2) the rate of expenditure of funds in previously funded Community Development Block Grant Programs.~~

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482; 24 C.F.R. 570.483.

04 NCAC 19L .1303 SELECTION CRITERIA

~~(a) The Division may accept applications at any time after the beginning of the program year.~~

~~(b) Housing Development projects shall be rated by the Division against the following specific criteria:~~

- ~~(1) 85% of the project rating shall be based upon the project design including the feasibility of the project, its financial design, the capacity and experience of the applicant and other parties involved, the amount of leveraging other funds, the suitability of the site and surrounding amenities, and the demand from the market; and~~
- ~~(2) 15% of the project rating shall be based upon the benefit to low and moderate income persons both immediate and long term.~~

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489.

CHAPTER 20 - EMPLOYMENT AND TRAINING

SUBCHAPTER 20B - ADMINISTRATIVE PROVISIONS

SECTION .0400 - PERSONNEL STANDARDS FOR SUBRECIPIENTS

04 NCAC 20B .0402 FEDERAL PERSONNEL STANDARDS

~~(a) Under the subgrant agreement and the contract document, subrecipients are required to comply with "Standards for a Merit System of Personnel Administration" established by the Office of Personnel Management of the federal government. A copy of these standards is available from the Division or from the Office of State Personnel located at 116 West Jones Street, Raleigh, North Carolina, 27611.~~

~~(b) All subrecipients are responsible for determining the applicability of the provisions of the federal Fair Labor Standards Act to its employees and participants. Technical assistance in the interpretation and application of the act is~~

~~available from the Wage and Hour Division of USDOL located in the Federal Building, Raleigh, North Carolina, 27611. The Division may require written verification if it is determined that participants are not covered by the act.~~

Authority G.S. 143-16; 143-16.1; 143-341; 143B-430(b); 5 C.F.R. 900, Subpart F; 20 C.F.R. 629.1.

04 NCAC 20B .0403 STATE PERSONNEL STANDARDS FOR SUBRECIPIENTS

~~(a) State standards, published by the State Personnel Commission, which are compatible with the federal personnel standards, may be applicable to some subrecipients. The standards may be found in the Manual of Personnel Policies for Local Government Employees Subject to the State Personnel Act (Local Personnel Manual), which is available from the Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina, 27611.~~

~~(b) Local educational agencies that receive JTPA funds administered by the State Board of Education must comply with the applicable provisions of Subchapter V, Personnel, of Chapter 115C of the General Statutes and the rules and regulations of the State Board of Education.~~

Authority G.S. 115C, Subchapter V; 126-1; 143-16; 143-16.1; 143-341; 143B-430(b).

SECTION .0900 - EMPLOYMENT AND TRAINING GRANT PROGRAM

04 NCAC 20B .0901 PURPOSE

~~The purpose of this state funded program is to make grants available to local agencies operating on behalf of the Private Industry Council serving Job Training Partnership Act service delivery areas. Funds shall be used to upgrade the foundation of basic skills of the adult population and the existing workforce in North Carolina.~~

Authority G.S. 143B-438.6.

04 NCAC 20B .0902 GRANT APPLICATIONS

~~Service delivery areas will submit plans for the use of these funds as part of the Job Training Plan, in accordance with Rule .0201 of this Subchapter.~~

Authority G.S. 143B-438.6.

04 NCAC 20B .0904 COORDINATION WITH OTHER EMPLOYMENT AND TRAINING FUNDS

~~These funds will become part of the strategic process implemented through the Governor's Coordination Criteria and the strategic planning process used for development of Job Training Plans by the Private Industry Councils. These PICs combine the private sector and public sector in an employment and training service delivery system that is based on local control, local problem solving, coordination of services and accountability.~~

Authority G.S. 143B-438.6.

04 NCAC 20B .0906 USE OF FUNDS

~~Services that may be provided include participant programs currently available under the federal Job Training Partnership Act that are appropriate for adults. Services include but will not be limited to on the job training, work experience, adult basic education, skill training, upgrading and retraining, counseling and screening for job placement, service corps, and supportive services necessary to enable individuals to participate in the program and to assist them in retaining employment for a period of one service year following completion of training. PICs have flexibility to use funds to fill gaps in current training/self-sufficiency services.~~

Authority G.S. 143B-438.6.

04 NCAC 20B .0907 COST LIMITATIONS/CATEGORIES

~~(a) Administrative costs will be limited to five percent of allocation. Administrative costs represent indirect and other costs associated with general management and support functions of an agency or organization as well as secondary management and support functions not directly related to program operations.~~
~~(b) All non administrative costs shall be classified as program costs.~~

Authority G.S. 143B-438.6.

04 NCAC 20B .0909 PERFORMANCE STANDARDS

~~Program performance will be evaluated by the Division using a process patterned after the system of performance standards and measures required by the JTPA. Local performance measures will be entered employment rate at termination; average wage at placement; welfare entered employment rate at termination.~~

Authority G.S. 143B-438.6.

04 NCAC 20B .0910 MONITORING/OVERSIGHT

~~The Division will monitor for fiscal and programmatic compliance, for proper management, for civil rights compliance and for such other purposes as are reasonable for administration of these funds as specified in Rule .0502(a) and (b) of this Subchapter. Oversight includes both on-site visits and in-house reviews of participant and financial reports.~~

Authority G.S. 143B-438.6.

04 NCAC 20B .0911 FUND AVAILABILITY/REDISTRIBUTION

~~Funds appropriated that are not expended at the end of the program year will not revert but will remain available to the Department for continued program purposes.~~

- ~~(1) Voluntary Transfer. A voluntary transfer process will be available to redistribute funds. If a service delivery area volunteers to transfer funds to another service delivery area, these funds can be removed from the SDA's Notice of Fund Availability and redistributed by the State to another SDA. An SDA opting to transfer funds to another SDA that wishes to~~

~~accept those funds may transfer any portion of its monies, including those exclusively from one cost category.~~

- ~~(2) Voluntary transfers may be negotiated any time with the approval of the PICs and Chief Local Elected Officials from the SDAs involved, contingent on subsequent Division approval. An SDA may only transfer funds if there is another SDA(s) willing to accept the funds. The Division will act as a clearinghouse for requests to transfer funds. Requests to transfer funds must be signed by the PIC Chairman and Chief Local Elected Official(s). The Division will consider requests made by PICs and CEOs to release funds to a specific SDA.~~
- ~~(3) If funds are released by an SDA to a specific SDA, the releasing SDA must obtain a letter from the designated recipient that states that the SDA accepts the conditions that the releasing SDA specifies. Such conditions shall include timing of release and cost categories. The Division retains the right to approve or disapprove all negotiated fund transfers. SDAs are required to adjust their local Job Training Plans.~~
- ~~(4) Funds must be released by May 1 in order to be effective for that program year.~~

Authority G.S. 143B-438.6.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Private Protective Services Board intends to amend the rule cited as 12 NCAC 07D .0107.

Link to agency website pursuant to G.S. 150B.19.1(c): www.ncdoj.gov

Proposed Effective Date: *May 1, 2012*

Public Hearing:

Date: *February 2, 2012*

Time: *2:00 p.m.*

Location: *4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612*

Reason for Proposed Action: *These proposed changes are to set a statute of limitations for Board complaints as licensees need only maintain records for three years.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rule changes shall be submitted before the end of the comment period in writing to Anthony Bonapart, Deputy Director, Private Protective Services Board, 4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612.*

Comments may be submitted to: *Anthony Bonapart, PPSB Deputy Director, 4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612*

Comment period ends: *March 19, 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 07 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

12 NCAC 07D .0107 DISCIPLINARY ACTIONS

(a) The Board may ~~deny, suspend, or revoke~~ deny a license, trainee permit, registration or firearms trainer certificate for any violation of G.S. Chapter 74C or 12 NCAC 07D. The Board may suspend or revoke a license, trainee permit, registration or firearms trainer certificate for any violation of G.S. Chapter 74C or 12 NCAC 07D, provided that the violation occurred within three years of the initiation of the Board investigation of such violation.

(b) The Board may issue a written reprimand to a holder of a license, trainee permit, registration identification card or firearms trainee certificate when the Board determines:

- (1) the holder has violated any of the provision of 12 NCAC 07D or G.S. Chapter 74C that were applicable to the holder;
- (2) the violation did not result in the physical injury of or property loss to any person; ~~and~~

- (3) the holder expresses an intention to or already has corrected the improper ~~activity~~ activity; and
- (4) the violation occurred within three years of the initiation of the Board investigation of such violation.

(c) A notice of any disciplinary action shall be sent to the employer of the holder if the holder is employed by a licensee.

(d) Evidence of disciplinary action may be presented and considered at any subsequent disciplinary proceeding of the holder.

Authority G.S. 74C-5; 74C-8.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Hearing Aid Dealers and Fitters Board intends to amend the rules cited as 21 NCAC 22F .0101, .0103, .0107, .0114.

Link to agency website pursuant to G.S. 150B-19.1(c): www.nchalb.org/Rules/Proposed.21NCAC22F.pdf

Proposed Effective Date: *May 1, 2012*

Public Hearing:

Date: *February 1, 2012*

Time: *9:45 a.m.*

Location: *Commission Room, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609*

Reason for Proposed Action: *The Board voted to remove the Exam Prep Workshop requirement as a pre-requisite to taking the exam. It shall be the duty of the sponsor to provide exam preparation to apprentice. Extending the dates for registration, notification of exam results, and dates upon which an exam can be given will give the Board more flexibility in contracting with an Exam Administrator for the lowest cost.*

Procedure by which a person can object to the agency on a proposed rule: *A person can object to the agency by speaking at the public hearing on February 1, 2012 or by submitting written comments to the following address no later than March 19, 2012: NC State Hearing Aid Dealers and Fitters Board, Attn: Rulemaking 22F, P.O. Box 97833, Raleigh, NC 27624.*

Comments may be submitted to: *Catherine Jorgensen, Rulemaking Coordinator, NC State Hearing Aid Dealers and Fitters Board, P.O. Box 97833, Raleigh, NC 27624*

Comment period ends: *March 19, 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

**SUBCHAPTER 22F - GENERAL EXAMINATION AND
LICENSE PROVISIONS**

21 NCAC 22F .0101 TIME OF EXAMINATIONS

The Board shall hold ~~the~~ qualifying examination ~~examinations~~ as set forth in G.S. 93D-8 ~~on by publicizing each exam at least 90 days in advance, with one exam being offered on a day during the first Saturday week in May of each year year, and may hold an, and additional examinations offered during the year examination on the first Saturday in November of each year if a sufficient number of timely filed applications are received to justify, in at the Board's discretion, discretion, holding such additional examination.~~

Authority G.S. 93D-3(c); 93D-8.

**21 NCAC 22F .0103 SUBMISSION OF
APPLICATIONS AND FEES**

(a) A duly made application for issuance or renewal of an apprentice registration certificate shall be submitted to the Board no later than ten working days after the date that any of the following conditions exist:

- (1) Whenever a registered apprentice is separated from his sponsor for any reason and such individual wishes to obtain a new certificate to replace the invalidated certificate;
- (2) Whenever a registered apprentice is notified by the Board that he failed to pass the qualifying examination and such individual wishes to renew his certificate;

- (3) Whenever the Board notifies the individual that his apprentice registration certificate has been invalidated for any reason and such individual wishes to obtain a new certificate to replace the invalidated certificate; and
- (4) Whenever an Audiologist duly makes application for issuance of a license by examination and that individual elects to become a registered apprentice in order to engage in the fitting and selling of hearing aids, under the supervision of a licensee approved by the Board, while waiting to take the next scheduled qualifying examination.

(b) A registered apprentice who holds a masters degree in Audiology and is not an Audiologist, as defined in 21 NCAC 22A .0301(2), must complete 250 clock hours of supervision by a licensee approved by the Board. However, no later than ten working days after any registered apprentice who is not an Audiologist has held a valid apprentice registration certificate for 365 calendar days, the apprentice shall submit a duly made application for issuance of a license by examination and shall take the next scheduled qualifying examination. All registered apprentices shall reapply for a license by examination, within the time prescribed in Paragraph (c) of this Rule, each time they take and fail to pass the qualifying examination.

(c) Whenever a registered applicant is required to take the qualifying examination as a condition for issuance of a license or reissuance of a suspended license, the duly made application shall be considered by the Board to be timely if it is received by the Board no later than ~~30~~45 consecutive days prior to the examination date. The Board shall have the right to refuse any person admission to the qualifying examination if such individual has not submitted the duly made application, as defined in 21 NCAC 22A .0309, ~~for issuance or reissuance of a license, has not attended an examination preparation workshop as set forth in 21 NCAC 22F .0014(b), or has not made a timely filing.~~

(d) All fees shall be made payable to the N.C. Hearing Aid Dealers and Fitters Board. When a company or personal check is received in payment of any fee, the Board shall wait until final credit on the check is received before providing the license or other document requested. A processing fee of twenty dollars (\$20.00) (or any greater amount allowed by law) shall be charged for any check on which payment is refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank at the time the check was presented to the Board.

Authority G.S. 25-3-506; 93D-3(c); 93D-5; 93D-9.

**21 NCAC 22F .0107 COMMUNICATION OF
RESULTS OF EXAMINATIONS**

The office of the Board shall issue written notification to each registered applicant, by mailing exam results to the physical address provided by the applicant, concerning only ~~his own~~ the applicant's performance on the qualifying examination, no later than ~~40~~30 working days after the date of the examination.

Authority G.S. 93B-8; 93D-3(c).

21 NCAC 22F .0114 TRAINING AND SUPERVISION

~~(a)~~ Each registered apprentice, excluding those Audiologists who elect to be a registered apprentice while waiting to take the qualifying examination for the first time, shall submit to direct supervision by a licensee who is approved by the Board and who shall be responsible for the apprentice's training and supervision in the following areas:

- (1) Anatomy, physiology, and pathology of the auditory mechanism;
- (2) Measurement techniques and test interpretation for assessment of hearing impairment and hearing handicap;
- (3) Hearing aid technology including instrument circuitry and acoustic performance data;
- (4) Design, selection, and modification of earmold/shell coupling systems;
- (5) Hearing aid selection procedures, and fitting and adjustment techniques;
- (6) Post-delivery care including hearing aid orientation and counseling techniques, and hearing aid servicing;
- (7) Ethical conduct and regulatory issues concerning the fitting and selling of hearing aids; and
- (8) Other related topics that the sponsor or apprentice deem necessary.

~~(b) Before taking the qualifying examination for the first time, each registered apprentice who is not an Audiologist shall attend an examination preparation workshop, approved or sponsored by the Board, which consists of one 3 day session. The workshop dates shall be scheduled in conjunction with the dates for the qualifying examinations. Information concerning the scheduled times, dates, and topics for each workshop may be obtained from the office of the Board. Written notice of intent to attend any or all of the daily sessions shall be received by the Board at least 10 working days prior to the starting date of each workshop.~~

~~(c) The Board shall have the right to refuse any person admission to the workshop sessions if the individual is not a registered apprentice or a registered applicant, or if timely notification of intent to attend was not made in accordance with Paragraph (b) of this Rule.~~

Authority G.S. 93D-3(c); 93D-5; 93D-9.

CHAPTER 63 – SOCIAL WORK CERTIFICATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Work Certification and Licensure Board intends to amend the rules cited as 21 NCAC 63 .0208, .0210, .0403-.0404.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncswboard.org

Proposed Effective Date: July 1, 2012

Public Hearing:

Date: March 8, 2012

Time: 9:30 a.m.

Location: 1207 S. Cox Street, Suite F, Asheboro, NC 27203

Reason for Proposed Action: Pursuant to authority under G.S. 90B-6.2, the Board proposes to increase fees for select services. The Board operates from the fees collected for services and has not increased fees since October 1999. The proposed increases follow a yearlong analysis of the Board's expenses, revenues, and staffing needs as they relate to ensuring quality operations and fiscal solvency for the coming years.

21 NCAC 63 .0208 – proposes to increase the application fee from \$100 to \$115. In addition the language of the rule is improved to accurately reflect applicant's responsibility for payment.

21 NCAC 63 .0210 – requires amendment to remove redundant and ambiguous language.

21 NCAC 63 .0403 – proposes to increase the biennial renewal fees. Two sections are included to provide clear fee information for individuals whose credential expires 06/30/11 but who renew within the sixty-days allowed for late renewal pursuant to G.S. 90B-9(c). The increases are based on the degree and employment potential for the different credential levels: CSW from \$60 to \$70, CMSW from \$75 to \$90, P-LCSW from \$125 to \$140, and both CSWM and LCSW from \$125 to \$150.

21 NCAC 63 .0404 – proposes to increase the reinstatement fee from \$100 to \$125 for certificates or licenses retired or suspended for failure to renew; and redundant language already addressed by (G.S. 90B-4) is removed to improve the rule.

Procedure by which a person can object to the agency on a proposed rule: State the objection and reasons for the objection. Specify the text of the rule to which the objection pertains. Submit the text of the rule, stated objection, and reason for the objection in writing to the Rule Making Coordinator, Micki Lilly, Executive Director, NCSWCLB, P.O. Box 1043, Asheboro, NC 27204.

Comments may be submitted to: Micki Lilly, Executive Director, NCSWCLB, P.O. Box 1043, Asheboro, NC 27204, fax (336)625-4246, email mswboard@asheboro.com

Comment period ends: March 19, 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**

SECTION .0200 - CERTIFICATION

21 NCAC 63 .0208 APPLICATION FEE

~~An initial application fee of one hundred dollars (\$100) will be assessed for processing each application. Each applicant for certification or licensure by the Board shall submit an initial application fee of one hundred and fifteen dollars (\$115.00) with the application.~~

Authority G.S. 90B-6; 90B-6.2.

21 NCAC 63 .0210 PROVISIONAL LICENSES

(a) The Board shall issue a provisional license to any person who meets the requirements in G.S. 90B-7(f).

(b) Applications and forms shall be obtained from and returned to the Board Office.

~~(c) The Board shall assess an application fee of one hundred dollars (\$100.00) for processing each application.~~

~~(d)(c)~~ Prior to practicing clinical social work, applicants must demonstrate in writing that, in the event of a clinical emergency they have immediate access to a licensed mental health professional who has agreed to provide to them emergency clinical consultation to assure that standards of clinical social work practice are maintained. Provisionally- licensed clinical social workers shall ~~immediately~~ notify the Board in writing of any change in such access.

~~(e)(d)~~ Each provisional licensee must be supervised as set forth in G.S. 90B-7(f), and, shall receive on-going appropriate supervision, as defined in Rule .0211(a)(2) of this Chapter, until the provisional licensee is licensed as a Licensed Clinical Social Worker.

~~(f)(e)~~ All provisional licensees shall submit reports of their clinical social work experience and supervision on the appropriate Board form(s) every six months for review and evaluation by the Board.

~~(g)(f)~~ To prevent a lapse in licensure, provisional licensees who desire to become Licensed Clinical Social Workers shall complete the application process for the Licensed Clinical Social Worker classification and submit the application fee of one hundred dollars (\$100.00) early enough to allow 30 days for administrative processing and Board action prior to the expiration of the provisional license.

Authority G.S. 90B-6; 90B-7.

SECTION .0400 – RENEWAL OF CERTIFICATION

21 NCAC 63 .0403 RENEWAL FEES

(a) Fees for renewal of certificates or licenses: licenses which are due for renewal on or before June 30, 2012 shall be as follows:

- (1) For Certified Social Workers (CSW's) the renewal fee shall be sixty dollars (\$60.00).
- (2) For Certified Master Social Workers (CMSW's) the renewal fee shall be seventy-five dollars (\$75.00)
- (3) For Licensed Clinical Social Workers (LCSW's) the renewal fee shall be one hundred twenty-five dollars (\$125.00).
- (4) For Certified Social Work Managers (CSWM's) the renewal fee shall be one hundred twenty-five dollars (\$125.00).

(b) Fees for renewal of certificates or licenses which are due for renewal after June 30, 2012 shall be as follows:

- (1) For Certified Social Workers (CSW's) the renewal fee shall be seventy dollars (\$70.00).
- (2) For Certified Master Social Workers (CMSW's) the renewal fee shall be ninety dollars (\$90.00).
- (3) For Licensed Clinical Social Workers (LCSW's) the renewal fee shall be one hundred and fifty dollars (\$150.00).
- (4) For the provisionally Licensed Clinical Social Workers (P-LCSW's) the renewal fee shall be one hundred and forty dollars (\$140.00).
- (5) For Certified Social Work Managers (CSWM's) the renewal fee shall be one hundred and fifty dollars (\$150.00).

~~(b)(c)~~ Persons whose applications for renewal are received by the Board after the renewal date of their certificate or license, but no later than 60 days after the renewal date, shall be assessed a late renewal fee of fifty dollars (\$50.00) in addition to any other applicable fees.

Authority G.S. 90B-6; 90B-6.2; 90B-9(b).

21 NCAC 63 .0404 REINSTATEMENT

~~(a) Persons whose certificate or license is suspended for failure to renew, pursuant to G.S. 90B-9(e), are prohibited from engaging in the practice of clinical social work and from holding themselves out as certified or licensed by the Board until they apply for and receive reinstatement of their certificate or license by the Board.~~

~~(b) Persons who apply for reinstatement~~ Each applicant for reinstatement of a certificate or license issued by the Board after temporary retirement from the practice of social work pursuant to G.S. 90B-9(d), or after their certificate or license was suspended for failure to renew, shall ~~be assessed a reinstatement fee of one hundred dollars (\$100.00) in addition to any other applicable fees.~~ submit to the Board a reinstatement fee of one hundred and twenty-five dollars (\$125.00) in addition to any other applicable fees with the application.

Authority G.S. 90B-6; 90B-6.2; 90B-9.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01B .0436-.0438.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.osp.state.us/rtable.comm/spc.htm>

Proposed Effective Date: June 1, 2012

Public Hearing:

Date: March 19, 2012

Time: 10:00 a.m.

Location: Third Floor Conference Room, Administration Building, 116 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action:

25 NCAC 01B .0436 – This Rule is being updated to reflect the processes that have changed in State government as a result of the implementation of electronic processing of personnel actions. Systems such as BEACON and other centralized human resources/payroll information management systems have largely replaced the processing of paper forms.

25 NCAC 01B .0437 – This Rule is being proposed due to the recent statutory changes resulting from Senate Bill 781, whereas the State Personnel Commission no longer makes the final decision in contested cases brought under Chapter 126. This Rule will remain effective for petitions filed in the Office of Administrative Hearings prior to January 1, 2012.

25 NCAC 01B .0438 – This Rule is proposed to be amended as a result of recent statutory changes resulting from Senate Bill 781, the Regulatory Reform Act. The State Personnel Commission will no longer be making findings or issuing orders under that portion of General Statutes 126-4(11) which makes Commission review a prerequisite to one situation in which the Commission may award attorney's fees.

Procedure by which a person can object to the agency on a proposed rule: A public hearing will be held on March 19, 2012 at 10:00 a.m. The hearing will be held in the third floor conference room, Administration Building, 116 West Jones Street, Raleigh, NC. The purpose of the hearing is to receive oral and written comments/objections regarding the proposed action of the following rules: 25 NCAC 01B .0436, .0437 and .0438. Written comments/objections not submitted during the public hearing should be sent to: Mr. Ken Litowsky, Human Resources Partner, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. The public comment period will end on March 19, 2012.

Comments may be submitted to: Mr. Ken Litowsky, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (919) 807-4800; fax (919) 733-0653; email ken.litowskyi@osp.nc.gov

Comment period ends: March 19, 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 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01B - STATE PERSONNEL COMMISSION

SECTION .0400 - APPEAL TO COMMISSION

25 NCAC 01B .0436 SETTLEMENTS/CONSENT AGREEMENTS IN GRIEVANCES, CONTESTED CASES

(a) Any settlement or consent agreement in a grievance or contested case which requires the ~~processing of personnel action forms by the Office of State Personnel~~ input of data into BEACON must be approved by the Office of State Personnel before such personnel action forms will be processed. Approval by the Office of State Personnel shall be indicated by the signature of the State Personnel Director or his designee in an appropriate place on the settlement or consent agreement. This provision shall not be construed to require Office of State Personnel approval of a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the State Personnel Commission. This provision shall also not be construed to require approval of any settlement the terms of which allow an employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.

(b) The provisions of 25 NCAC 01A .0104 (EXCEPTIONS AND VARIANCES) must be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from existing personnel policy. This compliance shall be in addition to the requirements of this Rule. Any settlement or consent agreement which contains a provision which requires an exception to or variance

from existing personnel policy must be reviewed and approved by the State Personnel Commission prior to the processing of any personnel action forms by the Office of State Personnel.

(c) ~~Personnel action forms, Requests to input data into the State's human resources and payroll system which are required by the provisions of any settlement or consent agreement which has not been approved by the Office of State Personnel or the State Personnel Commission as required by this Rule, shall not be processed by the Office of State Personnel~~ BEACON and shall be returned to the agency without action.

(d) Any settlement or consent agreement which does not require action by the Office of State Personnel or ~~the State Personnel Commission~~ BEACON or which falls within the exception set forth in Paragraph (a) of this Rule does not require the approval of either body to be effective.

Authority G.S. 126-4.

25 NCAC 01B .0437 STATE PERSONNEL COMMISSION: PROCEDURES

(a) The rule applies to contested cases commenced prior to January 1, 2012.

~~(b)(a)~~ The State Personnel Commission Administrator, on behalf of the State Personnel Commission, shall receive the record in the contested cases forwarded by the Office of Administrative Hearings and the State Personnel Commission shall make a final administrative decision in the case. Any record received by the Administrator on the day of a Commission meeting shall be deemed to have been received after the Commission meeting and the time in which the Commission has to review and decide the case shall run from the Commission meeting. The Office of State Personnel shall be responsible for the administrative management of contested cases coming before the Commission for its review and decision.

~~(c)(b)~~ Oral Argument. Either party to a contested case may request the opportunity to appear before the State Personnel Commission and make oral argument in all cases. Such arguments shall be based solely on the information contained in the record submitted by the OAH. Oral arguments shall be requested or waived in writing no more than 10 calendar days after the filing date of the decision of the Administrative Law Judge and the parties shall attach a copy of the Administrative Law Judge's decision to the request or waiver. After the Commission has received either a request or waiver of oral argument from the parties, the Commission shall send a notice of review which shall contain the date, time and place of the Commission meeting at which the case may be reviewed. If a party has failed to request or waive oral argument in a timely fashion, that party may not be allowed to present oral argument or file legal briefs or memoranda to the Commission. Each party requesting oral argument shall be allotted a maximum of 10 minutes for the presentation, unless the time period is extended by a vote of the Commission. Time may be extended by the Commission for good cause shown as defined in 25 NCAC 01B .0439. All requests to speak for more than 10 minutes shall be made in writing in the same document which requests the opportunity to make oral argument. The party which did not prevail before the Administrative Law Judge is entitled to make the first oral argument and to present a rebuttal. If both parties

are seeking changes in the Administrative Law Judge's decision, both parties may present a rebuttal and the party with the burden of proof in the contested case is entitled to the last rebuttal.

~~(d)(e)~~ Briefs, Legal Memoranda, Attorney's Fees Requests. All briefs and legal memoranda in cases other than those arising under G.S. 14.4 shall be received by the Office of State Personnel no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. Such document shall also be served upon the opposing party and a copy of the decision of the Administrative Law Judge shall be attached to the document. Such a document received after the deadline shall be presented to the Commission only after the party has shown that the opposing party was served with the document no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. Attorney's fees requests must be presented to the Commission by the prevailing party to a Commission Decision and Order at least one month before the meeting at which the matter is to be considered. Such requests must also be served upon the opposing party. The Commission shall notify the parties upon receipt of a request for attorneys fees and provide an opportunity for the opposing party to file objections to the fees requested. If the parties wish to make oral argument on an attorney's fees request, a request for oral argument must be received by the Office of State Personnel within two weeks after the filing of the attorney's fees request and at least one month prior to the meeting at which such oral argument is requested. Parties shall submit 25 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B .0439.

~~(e)(d)~~ Written Exceptions. Proposed Alternative Findings, Conclusions and Recommendations. Each party shall submit written exceptions to the decision of the Administrative Law Judge, unless the party accepts the decision in its entirety. Any party may choose to submit proposed alternative findings of fact and conclusion of law. Exceptions and alternative findings of fact and conclusions shall be received by the Office of State Personnel no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. Written exceptions shall be specifically drawn. Each exception and proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence, the specific reason(s) the Commission should not adopt the Administrative Law Judge's finding of fact or conclusion of law and the specific evidence in the record which supports the rejection of the Administrative Law Judge's finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence which shall be set forth in support of the new finding of fact. Any new decision proposed to the Commission must be supported by a preponderance of the admissible evidence in the record and the reason that the Administrative Law Judge's decision is clearly contrary to the preponderance of the admissible evidence in the record must be

set forth in detail. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the Administrative Law Judge's decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail. Reference must be made to the transcript (and volumes, where applicable), if the transcript of the hearing was made and is available. Where a party excepts to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion, or recommendation shall be made. Such a document received after the deadline shall be presented to the Commission only after the party has shown that the opposing party was served with the document no later than 30 calendar days after the filing date of the Administrative Law Judge's decision. The Commission may adopt the findings of fact and conclusions of law of the Administrative Law Judge, or amend the same, or adopt alternative findings of fact and conclusion of law, either from those submitted by the parties or drawn from its own review of the whole record. Parties shall submit 25 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B .0439.

~~(f)(e)~~ Proposed Decision and Order. Each party to a contested case shall submit a proposed Decision and Order for consideration by the Commission in that case. The proposed Decision and Order shall be received by the Office of State Personnel no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. The Commission may delay decision in a case until all parties have submitted a proposed Decision and Order. The Proposed Decision and Order shall indicate which findings, conclusions, and recommendations of the Administrative Law Judge are being deleted or amended and why, and specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence. The Proposed Decision and Order must include the specific reason(s) the Commission should not adopt the Administrative Law Judge's finding of fact or conclusion of law and the specific evidence in the record which supports the rejection of the Administrative Law Judge's finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence which shall be set forth in support of the new finding of fact in the Proposed Decision and Order. Any new conclusions of law or decision proposed to the Commission must be supported by a preponderance of the admissible evidence in the record and the reason that the Administrative Law Judge's decision is clearly contrary to the preponderance of the admissible evidence in the record must be set forth in detail in the Proposed Decision and Order. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the Administrative Law Judge's decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail in the Proposed Decision and

Order. The proposed Decision and Order shall contain an order in the case for the signature of the Administrator to the Commission, consistent with and supported by the findings and conclusions. Parties shall submit 25 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B .0439.

~~(g)(f)~~ Service on Opposing Parties. Copies of all documents permitted or required by this Rule shall be served on the opposing party, but no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. If a document is filed electronically with the Commission as permitted in 25 NCAC 01B .0437(h), the document must also be served electronically on the opposing party if the opposing party has an electronic address. Electronic service must be followed by service of printed copies of any document filed electronically within 24 hours of electronic filing.

~~(h)(g)~~ Notification. The parties or when applicable, the legal representative of record for a party, shall be notified by certified mail, return receipt requested, of the Commission's decision. The Commission's decision shall be prepared and sent out by the Office of State Personnel. Copies or the content of a specific decision and order shall not be released to non-parties until the Office of State Personnel has knowledge that all parties have received a copy of the Decision and Order.

~~(i)(h)~~ Electronic Filing. Any documents which are required or permitted to be filed under 25 NCAC 01B .0437, may be filed electronically by midnight of the filing date with the State Personnel Commission Administrator in a format readable by the Administrator. Printed copies of any documents filed electronically must also be filed with the Administrator in accordance with 25 NCAC 01B .0437(c), (d) and (e) within 24 hours of the electronic filing.

Authority G.S. 126-4.

25 NCAC 01B .0438 ESTABLISHMENT OF REASONABLE ATTORNEY FEES BY THE COMMISSION

(a) This Paragraph applies to contested cases commenced prior to January 1, 2012.

(1) The Commission shall award the reimbursement of legal fees and costs as follows:

~~(A)(1)~~ Attorney fees incurred in connection with the contested case proceeding before the Commission and with any successful appeal of a Commission decision in the General Courts of Justice at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;

~~(B)(2)~~ Law Clerk, Paralegal, or Legal Assistant fees at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;

~~(C)(3)~~ Travel time at a maximum rate of one-half the applicable hourly attorney or legal support staff fee rate;

~~(D)(4)~~ Costs at the actual cost.

(2) Fees shall not be awarded unless requested by an attorney or the Petitioner and documented by an itemized, per activity, accounting of the hours expended, in addition to a copy of the fee agreement between the parties and any relevant receipts or other documentation of prior payment.

(b) This Paragraph applies to contested cases commenced on or after January 1, 2012.

(1) The Commission shall award the reimbursement of legal and witnesses' fees and costs as follows:

(A) Attorney fees incurred in connection with the contested case proceeding before the Office of Administrative Hearings (OAH) and with any successful appeal of an OAH decision in the General Courts of Justice at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;

(B) Law Clerk, Paralegal, or Legal Assistant fees at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;

(C) Travel time at a maximum rate of one-half the applicable hourly attorney or legal support staff fee rate; or

(D) Costs at the actual cost.

(2) Fees shall not be awarded unless requested by an attorney or the Petitioner and documented by an itemized, per activity, accounting of the hours expended, in addition to a copy of the fee agreement between the parties and any relevant receipts or other documentation of prior payment.

(3) An agency and a petitioner may jointly submit a request to the State Personnel Commission to award attorney's fees, witnesses' fees, and costs in a case where a case arising under Chapter 126 has been settled either at the agency level prior to a contested case hearing in OAH or resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01D .0303, .0308, .0605, .0611, .0808 and repeal the rules cited as 25 NCAC 01D .0107, .0403, .1205; 01E .0102.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.osp.state.us/rtable.comm/spc.htm>

Proposed Effective Date: June 1, 2012

Public Hearing:

Date: March 19, 2012

Time: 10:00 a.m.

Location: Third Floor Conference Room, Administration Building, 116 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action:

25 NCAC 01D .0107, .0403, .1205 – These rules are being repealed because they are unnecessary.

25 NCAC 01D .0303, .0308, .0605 – These rules are proposed to be amended in order to reflect the processes that have changed in State government as a result of the implementation of electronic processing of personnel actions.

25 NCAC 01D .0611, .0808 – These rules are proposed to be amended in order to reflect the deletion of the reference to the hiring rate. A "hiring rate" no longer exists on the State salary schedule.

25 NCAC 01E .0102 – This rule is unnecessary and repetitive.

Procedure by which a person can object to the agency on a proposed rule: A public hearing will be held on March 19, 2012 at 10:00 a.m. The hearing will be held in the third floor conference room, Administration Building, 116 West Jones Street, Raleigh, NC. The purpose of the hearing is to receive oral and written comments/objections regarding the proposed action of the following rules: 25 NCAC 01D .0107, .0403, .1205, .0303, .0308, .0605, .0611, .0808; and 01E .0102. Written comments/objections not submitted during the public hearing should be sent to: Ms. Shari G. Howard, Human Resources Partner, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. The public comment period will end on March 19, 2012.

Comments may be submitted to: Ms. Shari G. Howard, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (919) 807-4800; fax (919) 733-0653; email shari.g.howard@osp.nc.gov

Comment period ends: March 19, 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

Authority G.S. 126-4(11).

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 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01D - COMPENSATION

SECTION .0100 - ADMINISTRATION OF THE PAY PLAN

25 NCAC 01D .0107 CROSS HIRING

~~It is necessary that the practice of cross hiring in state government be carefully controlled. Such arrangements must take into consideration such factors as the character of the services to be performed, the effect on the morale of other state employees, the ethical considerations involved, the temporary loss of the services of the individual to the parent agency, the possible reduced efficiency of the individual as a result of fatigue or inattention to primary responsibilities, the urgency of the situation, possible alternative arrangements and other pertinent factors.~~

Authority G.S. 126-4.

SECTION .0300 - PROMOTION

25 NCAC 01D .0303 EFFECTIVE DATE

~~(a) Permanent promotions shall be made effective on the first day of the pay period. Such requests cannot be made effective earlier than the first day of the following month when received after the tenth of the month.~~

~~(a)(b) The required~~ A promotional increase shall be given on the effective date of the a promotion, unless a specific salary limitation is published in advance.

~~(b)(e) If the desired amount of increase is not given on the effective date of the promotion, an additional increase(s), up to the full allowable amount, may be given at a later date(s) on a current basis. Additional increases are limited to two occurrences after the initial promotional increase and must be awarded within 24 months of the original effective date of the action.~~ If a subsequent promotion, reallocation up or down, demotion or reassignment occurs, this cancels the authorization to grant additional increases as a result of the previous promotion. If increases are to be given at later dates, a notation

must be entered ~~on the form~~ in the comments section on the personnel action stating the reason the increase is being delayed and showing the dollar amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must state "Promotional Increase" in the description of action block, which will denote that this is a delayed increase.

~~(c)(d)~~ If no additional increase is to be given at a later date, no notation is necessary.

~~(d)(e)~~ Temporary promotions may be made effective on the date that an employee is officially placed in an "acting" capacity.

Authority G.S. 126-4.

25 NCAC 01D .0308 SALARY INCREASES

The purpose of a promotional pay increase is to reward the employee for the assumption of duties more responsible and more difficult than those in the current position. Subject to the availability of funds, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

(1) Permanent Promotion:

~~(a) Salaries at the hiring rate shall be increased to the new hiring rate.~~

~~(a)(b)~~ Salaries at the minimum rate or within the range shall be increased to the new minimum rate of the grade to which promoted or by five percent, whichever is larger. Exceptions:

(i) A promotional increase is not required if a specific salary rate or limitation is published in advance of a promotional offer because of internal salary equity or budget considerations in the receiving work unit or agency. If this occurs, a salary increase above the salary rate posted may not be paid. If conditions change that eliminate the equity problem or if additional funds become available that can be used for this purpose, agency management may consider an additional increase in accordance with the provisions outlined under Rule .0303 of this Section.

(ii) If the employee's salary is above the maximum as a result of a reallocation down, no increase can be given, but the salary may remain above the maximum.

~~(b)(e)~~ If the employee is promoted to a position within the same class series or occupational group:

- (i) the salary may be increased by up to five percent for each grade provided by the promotion, or
 - (ii) the salary may be established in accordance with the rules at 25 NCAC 01D .0200, New Appointments.
 - ~~(c)~~(d) If the employee is promoted to a position in a different occupational area, the salary may be established in accordance with the rules at 25 NCAC 01D .0200, New Appointments. The nature and magnitude of the change in jobs, the need to maintain equity of salaries within the work unit, and other management needs must be given consideration when making salary decisions. Agency management is responsible for assuring that inequities are not created. When establishing salaries in accordance with 25 NCAC 01D .0200, ~~the~~ personnel action forms the comments section of the personnel action must include the justification for the salary decision. If an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary, and the employee is later promoted to a position with a higher grade, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in the salary setting procedure in this Rule. If the reduction in grade occurred as much as 12 months previously, the agency may give consideration to granting a salary increase within the provisions of this policy. Factors to be considered are the nature of the change in jobs and the need to maintain equity of salaries within the work unit.
 - ~~(d)~~(e) Only with the prior approval of the State Personnel Director and only in well-documented cases which involve circumstances such as severe labor market conditions, unusual change in the scope of work, extraordinary qualifications, or resolution of serious equity problems will salary increases above that allowed by the provisions in this Sub-item be considered.
- ~~Personnel forms~~ The comments section on the personnel action must include the justification.
- ~~(e)~~(f) If the employee is to receive a performance salary increase on the same date as the promotion, the increase may be given before the promotional increase.
 - ~~(f)~~(g) If an employee is promoted from a class for which there is no special entry rate into a class which has a special entry rate, the employee's salary may be increased by the amount of the promotional increase plus the percent difference between the minimum and the special entry rate authorization.
- (2) Temporary Promotion:
- (a) Temporary promotions may be made when an employee is placed in an "acting" capacity for a period of time. When an employee is placed in an "acting" capacity, at the discretion of management, one of the following may occur:
 - (i) The employee may be placed in the higher level position (if vacant) with an understanding that he will return to the former position and salary when the position is filled.
 - (ii) A salary adjustment may be given in the present position with the understanding that the salary will be decreased when the "acting" capacity terminates. ~~Indicate in Section 21 of the PD-105~~ The comments section of the personnel action must include the position number and classification for which the employee is serving in an as "acting" capacity. ~~Also include and the expected duration of "acting" capacity.~~
 - (b) The provisions for salary increases for permanent promotions apply in either case, except that the provision for a mandatory increase may not be applicable.
 - (c) The length of time that an employee is in an acting capacity should be limited, and the amount of promotional salary increase determined by the degree of assumption of the higher level duties.

Authority G.S. 126-4.

SECTION .0400 - DEMOTION OR REASSIGNMENT

25 NCAC 01D .0403 EFFECTIVE DATE

~~Demotions or reassignments shall be made effective on the first day of the pay period.~~

Authority G.S. 126-4.

SECTION .0600 - REALLOCATION

25 NCAC 01D .0605 EFFECTIVE DATE

~~(a) Reallocations shall be made effective on the first day of the pay period. Forms PD-118 A request to reallocate a position should be submitted to the Office of State Personnel 30 days prior to the proposed effective date to allow adequate time for study and processing of the requests. Requests received after the first day of the month are subject to be made effective no earlier than the first of the following month and requests can be effective only after complete information is available to make a decision. If any party is delayed in carrying out its responsibilities, the employee should not be caused to suffer delay and the effective date will be revised to the most reasonable date consistent with the time that complete information would have been available to make the decision on reallocation of the position.~~

(b) Salary increases to the minimum rate (or hiring, if applicable) shall be given on the effective date of the reallocation. If funds are not available, the increase shall be given from the first available funds and made retroactive to the effective date of the ~~reallocation.~~ reallocation, so long as a notation is entered on the comments section of the personnel action at the time the reallocation occurs. Employees who are denied increases because of poor performance may receive the increase on a current basis if/when the performance becomes satisfactory. ~~issue is resolved and a notation should be entered on the comments section of the personnel action at the time of the reallocation indicating that a review of performance will take place on or before a specific date in the future.~~

(c) Salary increases within the range are optional and, if recommended, should be given on the effective date of the reallocation. If the desired amount of increase is not given on the effective date because of unavailable funds, equity considerations or performance, the increase(s), up to the full allowable amount, may be given at a later date(s) on a current ~~basis.~~ basis, so long as the required notation is entered on the comments section of the personnel action at the time of the reallocation. Total increases are limited to three occurrences and must be awarded within 24 months of the original effective date of the action. If a subsequent promotion, reallocation up or down, demotion or reassignment occurs, this cancels the authorization to grant additional increases as a result of the previous reallocation.

(d) If increases are to be given at later dates, a notation must be entered ~~on the form in the comments section of the personnel action~~ stating the reason the increase is being delayed and showing the dollar amount of the allowable increase, the amount given, and the balance that may be given later. The personnel

~~actions submitted later must state "Reallocation Increase" in the description of action block, which will denote that this is a delayed salary increase. If no increase is to be given at a later date, no notation is necessary.~~ necessary at the time of the reallocation.

Authority G.S. 126-4.

25 NCAC 01D .0611 REALLOCATION/SALARY RATE

(a) When an employee's position is assigned to a higher grade as a result of reallocation, subject to the availability of funds and satisfactory employee performance, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

- ~~(1) Salaries at the hiring rate shall be increased to the new hiring rate.~~
- ~~(1)(2)~~ (2) Salaries at the minimum rate shall be increased to the minimum rate of the new range, and may be increased further in accordance with Paragraph (3) of this Rule.
- ~~(2)(3)~~ (3) If it is determined that a salary increase is justified, with the exception of Paragraph (b) of this Rule, the salary shall be established as follows:
 - (A) in accordance with the rules for New Appointments (See 25 NCAC 01D .0200), or
 - (B) up to five percent for each grade provided by the reallocation, if reallocated to a position within the same classification series or occupational group.

The amount of increase shall be determined consistent with the employee's related training and experience and the nature and magnitude of the change in jobs, and take into consideration prior performance increases, work unit equity, and any other salary related considerations. When establishing salaries in accordance with the New Appointment Rules (See 25 NCAC 01D .0200), the personnel action forms must include the justification for the salary decision.

(b) If an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary, and within 12 months of the reduction the employee is reallocated:

- (1) The employee shall not be entitled to a reallocation increase unless the reallocation is to a grade higher than the grade held prior to the reduction.
- (2) If reallocated to a higher grade, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in setting the salary pursuant to Part (a)(3)(B) of this Rule.

(Example: If an employee is demoted with no change in salary and reallocated back to the same level, the salary shall remain unchanged and treated as if the demotion had not occurred; or if reallocated back to a level higher than before the demotion, the difference in the grade before the demotion and the new higher

grade will be the basis for determining the reallocation increase.) Agency management is responsible for assuring that inequities are not created.

(c) Only with the prior approval of the State Personnel Director and in circumstances relating to critical positions and well-documented labor market conditions will salary increases be considered which equate to more than five percent for each grade provided by the reallocation. Personnel forms must include the justification.

(d) If the employee is to receive a performance salary increase on the same day as the reallocation, the performance increase shall be given before a reallocation increase is considered.

(e) When an employee's position is assigned to a lower grade, one of the following options will be implemented:

- (1) When reduction in level of the position results from management's removal of duties and responsibilities from the employee because of change in demonstrated motivation, capability, acceptance of responsibility, or lack of performance, the effect is the same as a demotion and the salary must be reduced at least to the maximum as required by the policy on demotion.
- (2) When reduction in level of the position results from position redesign because of management decisions on program changes, reorganization, or other management needs not associated with the employee's demonstrated motivation, capability, acceptance of responsibility or lack of performance, the salary of the employee may remain above the new maximum as long as the employee remains in the same classification or is promoted to a higher level position. No further increases, other than legislative increases, may be granted as long as the salary remains above the maximum.
- (3) When reduction in level of the position results from a change in the labor market or some other reason not related to change in the duties and responsibilities of the position, though the position must be reallocated to the approved classification and grade, management may elect to maintain the employee's current classification and grade by working the employee against the lower level position, so long as the employee continues to occupy the same position or is in the same classification.
- (4) Once the position is vacated, it shall be filled at the lower level.

(f) It is a management responsibility to avoid creation of salary inequities among employees. Each case must be evaluated to

determine which of the salary administration alternatives is most appropriate, based on the circumstances as documented to the Office of State Personnel, on appropriate forms, by the employing agency.

(g) When an employee's position is assigned to the same grade level, the employee's salary shall remain unchanged.

Authority G.S. 126-4.

SECTION .0800 - INITIAL CLASSIFICATION

25 NCAC 01D .0808 SALARY RATE

(a) If the employee is given probationary status and the salary is below the ~~hiring minimum~~ rate for the range assigned, it shall be adjusted to the new hiring minimum rate. If the employee is given a permanent or time-limited permanent appointment and the salary is below the minimum rate, it shall be adjusted to the minimum rate of the range assigned.

(b) If the employee's salary falls within the range assigned to the position, it shall remain unchanged.

Authority G.S. 126-4.

SECTION .1200 - LONGEVITY PAY

25 NCAC 01D .1205 AGENCY RESPONSIBILITY

~~Each state agency head shall be responsible for determining the quantity of qualifying service of each employee of that agency. When an employee is eligible for longevity pay, the agency head shall submit Form PD 135 for payment and certify the length of qualifying service to the Office of State Personnel.~~

Authority G.S. 126-4.

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0100 - LEAVE: GENERAL PROVISIONS

25 NCAC 01E .0102 TYPES OF LEAVE

~~Various types of leave recognized by the State Personnel Commission are set up in Sections .0200 to .1600 of this Subchapter. They are: vacation leave, sick leave, workers' compensation leave, military leave, holidays, miscellaneous leave, voluntary shared leave, family and medical leave, community service leave, and leave without pay.~~

Authority G.S. 126-4; 126-8.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Department of Health and Human Services/Division of Health Service Regulation*

Rule Citation: 10A NCAC 14D .0101-.0102, .0201-.0219, .0301-.0303, .0401-.0402, .0501-.0502, .0601-.0603, .0701, .0801

Effective Date: *January 1, 2012*

Date Approved by the Rules Review Commission: *December 15, 2011*

Reason for Action: *The Department of Health and Human Services was directed to pilot an overnight respite program in facilities that offer adult day care by Senate Bill 512 in Session Law 2011-104. These temporary rules are being proposed in response to this act by the General Assembly with the establishment of a new Subchapter entitled "Overnight Respite in Certified Adult Day Care Programs."*

CHAPTER 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14D - OVERNIGHT RESPITE IN CERTIFIED ADULT DAY CARE PROGRAMS

SECTION .0100 – SCOPE AND DEFINITIONS

10A NCAC 14D .0101 SCOPE

This Subchapter sets forth rules for certified adult day care programs offering overnight respite services pursuant to S.L. 2011-104.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012.

10A NCAC 14D .0102 DEFINITIONS

The following definitions apply throughout this section Subchapter:

- (1) "Adult day care program" means a facility certified by the Department of Health and Human Services, Division of Aging and Adult Services pursuant to G.S. 131D-6.
- (2) "Overnight respite services" means services that consist of 24-hour supervision and personal care services provided for persons on a temporary basis for caregiver relief, not to exceed 14 consecutive days or no more than

60 total calendar days in a 365-day period and is provided by an adult day care program.

- (3) "Personal care" means tasks such as assistance with personal hygiene and grooming, feeding, ambulation and other health care needs.
- (4) "Resident" means the recipient of the overnight respite services.
- (5) "Supervision" means visual monitoring of residents to determine the need for assistance.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012.

SECTION .0200 – PHYSICAL PLANT RULES

10A NCAC 14D .0201 SUBMISSION OF INFORMATION TO THE DIVISION OF HEALTH SERVICE REGULATION CONSTRUCTION SECTION

(a) Prior to operation, an applicant for overnight respite services shall submit the following forms and reports to the Division of Health Service Regulation (DHSR) Construction Section:

- (1) an approval letter from the local zoning jurisdiction for the proposed location;
- (2) a photograph of each side of the existing structure and at least one of each of the interior spaces if an existing structure; and
- (3) a set of blueprints of each level indicating the layout of all rooms, room dimensions (including closets), door widths (exterior, bedroom, bathroom and kitchen doors), window sizes and window sill heights, type of construction, the proposed resident bedroom locations including the number of occupants in each bedroom.

(b) The Construction Section shall review the information and notify the applicant in letter of required changes that must be made to the building to meet the rules of this Section along with the North Carolina State Building Code. The letter shall also contain a list of final documentation required from the local jurisdiction that must be submitted upon completion of any required changes to the building or completion of construction.

(c) Any changes made during construction that were not proposed during the initial review shall require the approval of the Construction Section to assure physical plant rule requirements are met.

(d) Upon receipt of the required final documentation from the local jurisdiction, the Construction Section shall review the information and may either make an on-site visit or approve the overnight respite services for construction by documentation. If all items are met, the Construction Section shall notify the

DHSR Adult Care Licensure Section of its recommendation for approval.

(e) Following review of the application, references, all forms and the Construction Section's recommendation for use, a pre-approval visit shall be made by a consultant of the DHSR Adult Care Licensure Section. The consultant shall report findings and recommendations to the Adult Care Licensure Section which shall notify, in writing, the Division of Aging and Adult Services and the applicant of the decision to approve or deny overnight respite services as a part of the adult day care program that is planning to provide the services.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0202 CAPACITY

(a) The capacity of the overnight respite services shall not be approved for more than six residents. The Department shall not approve a capacity for an overnight respite service of more than six residents.

(b) The total number of residents shall not exceed the capacity approved by the Construction Section.

(c) A request for an increase in capacity by adding rooms, remodeling or without any building modifications shall be submitted to the Construction Section, accompanied by two copies of blueprints or floor plans. One of the plans shall show the existing building with the current use of rooms and the second plan shall indicate the addition, remodeling or change in use of spaces showing the use of each room. If new construction, plans shall show how the addition will be tied into the existing building and all proposed changes in the structure.

(d) When the overnight respite services program increases its designed capacity by the addition to or remodeling of the existing physical plant, the entire program shall meet all current fire safety regulations.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0203 DESIGN AND CONSTRUCTION

(a) Any adult day care program intending to provide overnight respite services for the first time shall meet the applicable requirements of the North Carolina State Building Code. All new construction, additions and renovations to existing buildings shall meet the requirements of the North Carolina State Building Code. All applicable volumes of The North Carolina State Building Code, which is incorporated by reference, including all subsequent amendments, may be purchased from the North Carolina Department of Insurance Engineering Division for six hundred fifty three dollars and twenty five cents (\$653.25).

(b) Each facility, in which overnight respite services is provided, shall be constructed, equipped and maintained to provide the services offered.

(c) Any existing building converted from another use that the adult day care program intends to use for overnight respite services shall meet all the requirements contained in this subchapter and the requirements for a certified adult day care program.

(d) For any overnight respite care services program that was terminated by DHSR pursuant to Section 1(c) of S.L. 2011-104, if the space remains terminated for at least 60 days, the space shall meet all applicable requirements for a new service facility prior to again being allowed to offer services.

(e) Any existing adult day care program intending to offer overnight respite care services that is planning new construction, remodeling or physical changes done to the facility shall have drawings submitted by the owner or his or her appointed representative to the Construction Section for review and approval prior to commencement of the work.

(f) If the building to be used for overnight respite care services is two stories in height, it shall meet the following requirements:

- (1) construction, shall not exceed the allowable area for occupancy in the North Carolina State Building Code;
- (2) aged or disabled persons/residents shall not be housed on any floor above or below grade level; and
- (3) required resident facilities shall not be located on any floor above or below grade level.

(g) The basement and the attic shall not to be used for storage or sleeping.

(h) The ceiling shall be at least seven and one-half feet from the floor.

(i) Steps between levels are not permitted.

(j) The door width shall be a minimum of two feet and six inches in the kitchen, dining room, living room, bedrooms and bathrooms.

(k) All windows shall be maintained operable.

(l) The local code enforcement official shall be consulted before starting any construction or renovations for information on required permits and construction requirements.

(m) The building shall meet sanitation requirements as determined by the North Carolina Department of Health and Human Services, Division of Public Health, rules adopted by the Commission for Public Health.

(n) The building shall have current sanitation and fire and building safety inspection reports which shall be maintained in the facility and available for review.

(o) A complete fire alarm system with pull stations on each floor and sounding devices which are audible throughout the building shall be provided. The fire alarm system shall be able to transmit an automatic signal to the local emergency fire department dispatch center, either directly or through a central station monitoring company connection. Fire alarm system shall be installed in accordance with National Fire Protection Association (NFPA) 72, which is incorporated by reference with all subsequent amendments and can be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of seventy nine dollars (\$79.00).

(p) The facility shall be equipped with a wet pipe sprinkler system in accordance with NFPA 13, which is incorporated by reference with all subsequent amendments and can be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of seventy nine dollars (\$79.00).

History Note: Authority S.L. 2011-104;

Temporary Adoption Eff. January 1, 2012.

10A NCAC 14D .0204 LOCATION

(a) An adult day care program offering overnight respite care services shall be in a location approved by local zoning boards.

(b) The facility shall be located so that hazards will not threaten the health, safety and welfare of the residents and staff.

(c) The site where overnight respite care services are to be provided shall:

- (1) be accessible by streets, roads and highways and be maintained for motor vehicles and emergency vehicle access;
- (2) be accessible to fire fighting and other emergency services;
- (3) have a water supply, sewage disposal system, garbage disposal system and trash disposal system approved by the local health department having jurisdiction;
- (4) meet all local ordinances; and
- (5) be free from exposure to waste material that contaminates the air, soil or water known to the applicant or licensee.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0205 LIVING ARRANGEMENT

An adult day care program offering overnight respite care services shall provide living arrangements to meet the individual needs of the residents.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0206 LIVING ROOM

(a) An adult day care program offering overnight respite care services shall have a living area of at least ~~200~~ 40 square feet per person. This area may be shared with the adult day care program. ~~Activities activities and Craft areas~~ ~~once if the adult day care program requirements are met.~~

(b) All living rooms shall have operable windows to meet the North Carolina State Building Code and be lighted to provide 30 foot candles of light at floor level.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0207 DINING ROOM

(a) An adult day care program offering overnight respite care services shall have a dining room or area of at least ~~120~~ 20 square feet per person. The dining room may be used for other activities during the day. This area may be shared with the adult day care program. ~~Activities activities and Craft areas~~ ~~once if the adult day care program requirements are met.~~

(b) When the dining area is used in combination with a kitchen, an area five feet wide shall be allowed as work space in front of the kitchen work areas. The work space shall not be used as the dining area.

(c) The dining room shall have operable windows and be lighted to provide 30 foot candles of light at floor level.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0208 KITCHEN

(a) The kitchen shall be large enough to provide for the preparation and preservation of food and the washing of dishes. This requirement may be shared with the adult day care program. ~~Kitchen areas once the adult day care program requirements are met.~~

(b) The cooking unit shall be mechanically ventilated to the outside or be an unvented, recirculation fan provided with any filter as required by manufacturers' instructions for ventless use.

(c) The kitchen floor shall have a non-slippery water-resistant covering.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0209 BEDROOMS

(a) There shall be bedrooms sufficient in number and size to meet the individual needs according to age and sex of the residents.

(b) Only rooms authorized by the Construction Section as bedrooms shall be used for bedrooms.

(c) A room where access is through a bathroom, kitchen or another bedroom shall not be approved for a resident's bedroom.

(d) There shall be a minimum area of 100 square feet, ~~excluding~~ including vestibule, closet or wardrobe space, in rooms occupied by one person and a minimum area of 160 square feet, ~~excluding~~ including vestibule, closet or wardrobe space, in rooms occupied by two persons.

(e) The total number of residents assigned to a bedroom shall not exceed the number authorized by the Construction Section for that particular bedroom.

(f) A bedroom shall not be occupied by more than two residents.

(g) Each resident bedroom must have one or more operable windows and be lighted to provide 30 foot candles of light at floor level. The window area shall be equivalent to at least eight percent of the floor space. The windows shall have a maximum of 44 inch sill height.

(h) Bedroom closets or wardrobes shall be large enough to provide each resident with a minimum of ~~48~~ 22 cubic feet of clothing storage of which at least one-half shall be for hanging clothes with an adjustable height hanging bar.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0210 BATHROOM

(a) An adult day care program offering overnight respite care services shall have one ~~full~~ bathroom for each six or fewer respite persons. The bathroom may be shared with the adult day care program ~~once if the adult day care program requirements are met.~~

(b) The bathrooms shall be designed to provide privacy. A bathroom with two or more water closets (commodes) shall have

privacy partitions or curtains for each water closet. Each tub or shower shall have privacy partitions or curtains.

(c) Entrance to the bathroom shall not be through a kitchen, another person's bedroom, or another bathroom.

(d) The required residents' bathrooms shall be located so that there is no more than 40 feet from any residents' bedroom door to a resident use bathroom door.

(e) Hand grips shall be installed at all commodes, tubs and showers used by the residents.

(f) Nonskid surfacing or strips must be installed in showers and bath areas.

(g) The bathrooms shall be lighted to provide 30 foot candles of light at floor level and have mechanical ventilation at the rate of two cubic feet per minute for each square foot of floor area. These vents shall be vented directly to the outdoors.

(h) The bathroom floor shall have a non-slippery water-resistant covering.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0211 STORAGE AREAS

(a) Storage areas shall be adequate in size and number for separate storage of clean linens, soiled linens, food and food service supplies, and household supplies and equipment.

(b) There shall be separate locked areas for storing cleaning agents, bleaches, pesticides, and other substances which may be hazardous if ingested, inhaled or handled.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0212 CORRIDOR

(a) Corridors shall be lighted with night lights providing one foot-candle power at the floor.

(b) Corridors shall be free of all equipment and other obstructions.

(c) Corridors shall be equipped with smoke detection that are connected to the building fire alarm system. Heat detectors are required in attics and basements and connected to the fire alarm system.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0213 OUTSIDE ENTRANCE AND EXITS

(a) An adult day care program offering overnight respite care services shall have at least two exits on all floor levels. If there are only two, the exit or exit access doors shall be so located and constructed to minimize the possibility that both may be blocked by any one fire or other emergency condition.

(b) At least one entrance and one exit door shall have a minimum width of three feet and another shall be a minimum width of two feet and eight inches.

(c) At least one principal outside entrance and exit for the residents' use shall be at grade level or accessible by ramp with a one inch rise for each 12 inches of length of the ramp. For the purposes of this Rule, a principal outside entrance/exit entrance

and exit is one that is most often used by residents for vehicular access. If the home has any resident that must have physical assistance with evacuation, the home shall have two outside entrances and exits at grade level or accessible by a ramp.

(d) All exit door locks shall be easily operable, by a single hand motion, from the inside all times without keys. Existing deadbolts or turn buttons on the inside of exit doors shall be removed or disabled.

(e) All entrances and exits shall be free of all obstructions or impediments to allow for full instant use in case of fire or other emergency.

(f) All steps, porches, stoops and ramps shall be provided with handrails and guardrails.

(g) In adult day care programs offering overnight respite care services, with at least one resident who is determined by a physician or is otherwise known to be disoriented or a wanderer, each exit door for resident use shall be equipped with a sounding device that is activated when the door is opened. The sound shall be of sufficient volume that it can be heard by staff. If a central system of remote sounding devices is provided, the control panel for the system shall be located in the bedroom of the person on call, the office area or in a location accessible only to staff authorized by the administrator to operate the control panel.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0214 LAUNDRY ROOM

If the facility uses laundry equipment, the equipment shall be located out of the living, dining, and bedroom areas.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0215 FLOORS

(a) All floors shall be of smooth, non-skid material and so constructed as to be cleanable.

(b) Scatter or throw rugs shall not be used.

(c) All floors shall be kept in good repair.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0216 HOUSEKEEPING AND FURNISHINGS

(a) Each adult day care program offering overnight respite care services shall:

- (1) have walls, ceilings, and floors or floor coverings kept clean and in good repair;
- (2) have no lingering unpleasant odors;
- (3) have furniture clean and in good repair;
- (4) have a North Carolina Division of Public Health approved sanitation classification at all times;
- (5) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;

- (6) have supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets, and additional coverings adequate for resident use on hand at all times;
- (7) make available the following items as needed through any means other than charge to the personal funds:
 - (A) protective sheets and clean, absorbent, soft and smooth pads;
 - (B) bedpans, urinals, hot water bottles, and ice caps; and
 - (C) bedside commodes, walkers, and wheelchairs;
- (8) have television and radio, each in good working order;
- (9) have curtains, draperies or blinds at windows in resident use areas to provide for resident privacy;
- (10) have recreational equipment, supplies for games, books, magazines and a current newspaper available for residents;
- (11) have a clock that has numbers at least 1½ inches tall in an area commonly used by the residents; and
- (12) have at least one telephone that does not depend on electricity or cellular service to operate.

(b) Each bedroom shall have the following furnishings in good repair and clean for each resident:

- (1) Beds shall be equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. A hospital bed shall be arranged for as needed. A water bed is allowed if requested by a resident and permitted by the program. Each bed shall have the following:
 - (A) at least one pillow with clean pillow case;
 - (B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and
 - (C) clean bedspread and other clean coverings as needed;
- (2) a bedside type table;
- (3) chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents;
- (4) a wall or dresser mirror that can be used by each resident;
- (5) a minimum of one comfortable chair (rocker or straight, arm or without arms, as preferred by resident), high enough from floor for easy rising;
- (6) additional chairs available, as needed, for use by visitors;
- (7) individual clean towel, wash cloth, and towel bar within bedroom or adjoining bathroom; and

- (8) a light overhead of bed with a switch within reach of person lying on bed; bed or a lamp. The light shall provide a minimum of 30 foot-candle power of illumination for reading.

(c) The living room shall have functional living room furnishings for the comfort of ~~aged and disabled persons~~ residents with coverings that are easily cleanable.

(d) The dining room shall have the following furnishings:

- (1) tables and chairs to seat all residents eating in the dining room; and
- (2) chairs that are sturdy, non-folding, without rollers unless retractable or on front legs only, and designed to minimize tilting.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0217 FIRE SAFETY AND DISASTER PLAN

(a) Fire extinguishers shall be provided which meet these minimum requirements:

- (1) one five pound or larger (net charge) "A-B-C" type centrally located;
- (2) one five pound or larger "A-B-C" or CO/2 type located in the kitchen; and
- (3) at any other location as determined by the code enforcement official.

(b) The building shall be provided with smoke detectors as required by the North Carolina State Building Code and Underwriters Laboratory (U.L.) listed heat detectors connected to a dedicated sounding device located in the attic and basement. These detectors shall be interconnected and be provided with battery backup.

(c) Any fire safety requirements required by city ordinances or county building inspectors shall be met.

(d) A written fire evacuation plan (including a diagrammed drawing) which has the approval of the local code enforcement official shall be prepared and posted in a central location on each floor. The plan shall be reviewed with each resident on enrollment and shall be a part of the orientation for all new staff.

(e) There shall be at least four rehearsals of the fire evacuation plan each year. Records of rehearsals shall be maintained. The records shall include the date and time of the rehearsals, staff members present, and a description of what the rehearsal involved.

(f) A written disaster plan which has the written approval of, or has been documented as submitted to, the local emergency management agency and the local agency designated to coordinate special needs sheltering during disasters, shall be prepared and updated at least annually and shall be maintained in the adult day care programs offering overnight respite care services. This written disaster plan requirement applies to new and existing programs.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0218 BUILDING SERVICE EQUIPMENT

- (a) The building and all fire safety, electrical, mechanical and plumbing equipment shall be maintained in a safe and operating condition.
- (b) There shall be a central heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. Built-in electric heaters, if used, shall be installed or protected so as to avoid hazards to residents and room furnishings. Unvented fuel burning room heaters and portable electric heaters are prohibited.
- (c) Air conditioning shall provide conditions not to exceed 81 degrees F (27 degrees C).
- (d) The hot water tank shall be of such size to provide as much hot water as is needed by the kitchen, bathrooms, and laundry. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).
- (e) All resident areas shall be well lighted for the safety and comfort of the residents. The minimum lighting required is:
- (1) 30 foot-candle power for reading;
 - (2) 10 foot-candle power for general lighting; and
 - (3) one foot-candle power at the floor for corridors at night.
- (f) Fireplaces, fireplace inserts and wood stoves shall be designed or installed so as to avoid a burn hazard to residents. Fireplace inserts and wood stoves must be U.L. listed.
- (g) Gas logs may be installed if they are of the vented type, installed according to the manufacturers' installation instructions, approved through the local building department and protected by a guard or screen to prevent residents and furnishings from burns.
- (h) Alternate methods, procedures, design criteria and functional variations from the requirements of this Rule or other rules in this Section, shall be approved by the Construction Section when the facility can effectively demonstrate to the Section's satisfaction that the intent of the requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0219 OUTSIDE PREMISES

- (a) The outside grounds of any adult day care program offering overnight respite care services shall be maintained in a clean and safe condition.
- (b) If the facility has a fence around the premises, the fence shall not prevent residents from exiting or entering freely or be hazardous.
- (c) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

SECTION .0300 - PROGRAM MANAGEMENT

10A NCAC 14D .0301 PLANNING PROGRAM ACTIVITIES

Enrollment Policies and Procedures:

- (1) Each adult day care program offering overnight respite care services shall have enrollment policies. Enrollment policies shall be in writing as a part of the program policies and shall define the population served. These policies shall serve as the basis for determining who will be accepted into the program and for planning activities appropriate for the residents. The policies shall prevent enrolling people whose needs cannot be met by the planned activities and shall provide for discharge of residents whose needs can no longer be met or who can no longer be cared for safely. If an adult day care program offering overnight respite care services serves semi-ambulatory or non-ambulatory persons, it shall be stated in the enrollment criteria.
- (2) Prior to enrollment, the applicant, family members or other caregiver shall have a minimum of one personal interview with a minimum of one program staff member. During the interview, the staff shall complete initial documentation identifying social and medical care needs, any designated spiritual, religious or cultural needs, and a determination of whether the program can meet the individual's expressed needs. The staff person doing the interviewing shall sign the determination of needs and the applicant, family member or other caregiver shall sign the application for enrollment. These signed documents shall be obtained before the individual's first day of attendance as a resident in the program.
- (3) A medical examination report signed by a physician, nurse practitioner or physician's assistant, completed within the prior three months, shall be obtained by the program at the time of enrollment. The report must be updated annually no later than the anniversary date of the initial report.
- (4) At enrollment, or in the initial interview, the program policies shall be discussed with the applicant, family member or other caregiver and a copy of the program policies shall be provided.
- (5) Documentation of receipt of and agreement to abide by the program policies by the applicant, family member or other caregiver shall be obtained by the program and kept in the resident's file.
- (6) The program policies shall contain:
 - (A) a discharge policy outlining the criteria for discharge and notification procedures for discharge, the timeframe and procedures for

notifying the applicant, family member or other caregiver of discharge, and referral or follow-up procedures;

- (B) a medication policy as specified in Section .0600 of this Subchapter;
- (C) a description of resident's rights;
- (D) grievance policies and procedures for families;
- (E) advance directives policy;
- (F) non-discrimination policies;
- (G) procedure to maintain confidentiality;
- (H) policy on reporting suspected abuse or neglect;
- (I) policy on reporting of resident accidents or incidents to family members or medical providers;
- (J) policy on infection control and universal precautions;
- (K) description of the geographical area served by the program; and
- (L) inclement weather policies.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0302 ADMINISTRATOR

- (a) An administrator shall be responsible for the total operations of the adult day care program offering overnight respite care services.
- (b) At all times, there shall be one administrator or supervisor-in-charge who is directly responsible for assuring that all required duties are carried out and for assuring that at no time is a resident left alone without a staff member.
- (c) The administrator must:

- (1) be at least 18 years old;
- (2) be at least a high school graduate or certified under the General Educational Development (GED) Program;
- (3) work with bona fide inspectors and DHSR consultants;
- (4) be free of tuberculosis disease that poses a direct threat to the health or safety of others;
- (5) have no substantiated findings listed on the North Carolina Health Care Personnel Registry;
- (6) have documented evidence of managing or supervising personal care to others, for at least 6 months, from a previous employer; and
- (7) be able to apply all accident, fire safety and emergency procedures for the protection of the recipients of the respite care services.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0303 SUPERVISOR IN CHARGE

- (a) The supervisor-in-charge is responsible to the administrator for carrying out the overnight respite care program in the absence of the administrator.
- (b) The supervisor-in-charge must meet the same requirements as the administrator.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

SECTION .0400 – ENROLLMENT TO OVERNIGHT RESPIRE SERVICES

10A NCAC 14D .0401 ENROLLMENT OF RESIDENTS

- (a) Any adult (18 years of age or over) who, because of a physical condition or mental disability, needs a substitute home for purpose of respite for the caregiver, may be enrolled for overnight respite services, when, in the opinion of the caregiver or family, resident, physician, or social worker and the administrator, the services and accommodations of the facility will meet the respite needs of the resident.
- (b) Individuals shall not be admitted:
 - (1) for treatment of mental illness, or alcohol or drug abuse;
 - (2) for maternity care;
 - (3) for professional nursing care under continuous medical supervision;
 - (4) for lodging, when the personal assistance and supervision offered for the ~~aged and disabled~~ resident are not needed; or
 - (5) who pose a direct threat to the health or safety of others.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0402 PLANNING SERVICES FOR INDIVIDUAL RESIDENTS

- (a) At enrollment of a new resident, the program shall perform a assessment and written service plan for each individual. The assessment shall address the individual's ability to perform activities of daily living while in the program. The mental and physical health status of the individual shall also be assessed. The service plan shall be signed and dated by the administrator or designee. The health component of the service plan shall be written and signed by a registered nurse.
- (b) In developing the written service plan, the program shall include input from the enrollee, family members, or other caregiver and other agency professionals with knowledge of the individual's needs. The service plan shall be based on strengths, needs and abilities identified in the assessment. The assessment and service plan shall be reviewed to assure continued accuracy at each enrollment. The service plan shall include:
 - (1) the needs and strengths of the resident;
 - (2) the interests of the resident;
 - (3) the measurable service goals and objectives of care for the resident while in the overnight respite program;

- (4) the type of interventions to be provided by the program in order to reach desired outcomes;
- (5) the services to be provided by the program to achieve the goals and objectives;
- (6) the roles of resident, family, caregiver, volunteers and program staff; and
- (7) the time limit for the plan, with provision for review and renewal.

(c) Progress notes in the resident's record shall be updated every 24 hours while in the program.

(d) The resident, caregiver, and other service providers may contribute to the development, implementation and evaluation of the service plan.

(e) Any unusual behavior, change in mood, change in attitude or need for help or services shall be reported by the program. The report shall be made to the resident's family, caregiver, or responsible party. A note shall be made in the resident's record of action taken.

(f) The resident or the responsible party may choose the days and number of days the resident will attend, with the administrator's approval.

(f) The reason for any unscheduled resident absence shall be determined by the program staff and documented on the day it occurs. The program shall attempt to contact the absent resident or the responsible party.

(g) The overnight respite care program is responsible for the resident while the resident is enrolled. A resident leaving the program for part of a day shall sign out relieving the staff of further responsibility. If a resident has emotional or mental impairment which requires supervision and that person needs or wants to leave the program during the day, the social worker, family, caregiver, friend, or responsible party shall sign the person out.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

SECTION .0500 - STAFFING

10A NCAC 14D .0501 STAFFING

(a) The staffing pattern shall be adequate to meet the needs of each overnight respite services program resident, with a minimum of at least one staff present at all times.

(b) Services required beyond personal care and supervision shall be provided by the a licensed professional if required by law.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

10A NCAC 14D .0502 STAFF

(a) Each staff person must:

- (1) have a job description that reflects actual duties and responsibilities and is signed by the administrator and the employee;
- (2) be able to apply all of the home's accident, fire safety and emergency procedures for the protection of the residents;
- (3) be informed of the confidential nature of resident information and shall protect and

preserve such the information from unauthorized use and disclosure;

(4) not hinder or interfere with the exercise of the rights as defined by program policy;

(5) have no substantiated findings listed on the North Carolina Health Care Personnel Registry according to G.S. 131E-256;

(6) have a criminal background check in accordance with G.S. 114-19.10 and G.S. 131D-40; and

(7) work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter.

(b) Any staff member left in charge of the care of residents shall be 18 years or older.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

SECTION .0600 - MEDICATION ADMINISTRATION

10A NCAC 14D .0601 MEDICATION ADMINISTRATION

(a) All adult day care programs offering overnight respite services shall develop and implement policies and procedures on resident medication use, medication administration, order changes and medication disposal.

(b) Medications shall be administered according to the resident's medication schedule. The medication schedule shall list all medications with dosages and times medications are to be administered.

(c) A record of all medications given to each participant shall be updated as needed and shall document the following:

- (1) resident's name;
- (2) name, dosage, quantity and route of the medication;
- (3) instructions for giving medication;
- (4) date and time medication is administered; and
- (5) name or initials of person giving the medication. If initials are used, a signature equivalent to those initials shall be entered on this record.

(d) Medications shall be kept in the original pharmacy containers in which they were dispensed. The containers shall be labeled with the resident's full name, the name and strength of the medicine, and dosage and instructions for administration. Medicines shall be kept in a locked location.

(e) Only adult day health or adult day care and day health combination programs shall enroll or serve residents who require intravenous, intramuscular or subcutaneous medications while attending the program.

~~(f) If the staff person administering medications is not a licensed health professional, a registered nurse must perform and document validation of each staff person's competency to administer medications before administering medications.~~

~~(g) A licensed health professional must be available for consultation with staff if needed and shall be documented.~~

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

**10A NCAC 14D .0602 MEDICATION
ADMINISTRATION COMPETENCY EVALUATION**

(a) A registered nurse must perform and document validation of each ~~medication~~ staff's competency to administer medications before administering medications.

(b) A licensed health professional must be available for consultation with a ~~medication aide~~ staff if needed and shall be documented.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

**10A NCAC 14D .0603 MEDICATION
ADMINISTRATION DOCUMENTATION**

An adult day care program offering overnight respite care services must develop and implement written policies and procedures regarding processes used for:

- (1) written directions provided for staff administering medications;
- (2) documentation of medication administration;
- (3) maintenance of documentation;
- (4) documentation and reporting of medication errors; and
- (5) medication disposition.

*History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012.*

SECTION .0700 - NUTRITION

**10A NCAC 14D .0701 NUTRITION AND FOOD
SERVICE**

(a) Food Procurement and Safety:

- (1) The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination;
- (2) All food and beverage being procured, stored, prepared or served by the facility shall be protected from contamination;
- (3) All meat processing shall occur at a United States Department of Agriculture (USDA) approved processing plant; and
- (4) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food in the facility based on the menus, for both regular and therapeutic diets.

(b) Food Preparation and Service:

- (1) Sufficient staff, space and equipment shall be provided for safe and sanitary food storage, preparation and service;
- (2) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate and beverage containers. Exceptions may be made on an individual basis and shall be based on

documented needs or preferences of the resident; and

- (3) If residents require feeding assistance, food shall be maintained at serving temperature until assistance is provided.

(c) Menus:

- (1) Menus shall be prepared according to the USDA Dietary Guidelines for Americans which is incorporated by reference with all subsequent amendments and is available at no cost on the internet website, <http://www.health.gov/dietaryguidelines>;
- (2) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff;
- (3) any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to residents;
- (4) Menus shall be planned to take into account the food preferences and customs of the residents;
- (5) All menus including all therapeutic diets shall be planned or reviewed by a licensed ~~dietitian~~ dietitian/nutritionist as required by G.S. Chapter 90, Article 25. The facility shall maintain verification of the dietitian's approval of the therapeutic diets which shall include an original signature by the dietitian and the licensure number of the dietitian; and
- (6) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets for guidance of food service staff.

(d) Food Requirements:

- (1) Each adult day care program offering overnight respite care services shall be served a minimum of three meals a day at regular hours with at least 10 hours between the breakfast and evening meals; and
- (2) Foods and beverages that are appropriate to overnight respite residents' diets shall be offered or made available to overnight respite residents as snacks between each meal for a total of three snacks per day and shown on the menu as snacks.

(e) Therapeutic Diets:

- (1) All therapeutic diet orders including thickened liquids shall be in writing from the resident's physician;
- (2) Where applicable, the therapeutic diet order shall be specific to calorie, gram or consistency, such as for calorie controlled American Diabetic Association diets, low sodium diets or thickened liquids, unless there are written orders which include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a

~~registered dietitian licensed dietitian/nutritionist; and required by law; and~~
 (2)(3) The facility shall maintain an accurate and current listing of overnight respite residents with physician-ordered therapeutic diets for guidance of food service staff.

~~(f) Individual feeding assistance in an adult day care program offering overnight respite care services:~~ Feeding Assistance:

- (1) Sufficient staff shall be available for individual feeding assistance as needed; and
- (2) Residents needing help in eating shall be assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each resident's dignity and respect.

(g) Variations from the required three meals or time intervals between meals to meet individualized needs or preferences of residents shall be documented in the overnight respite resident's record.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012.

SECTION .0800 - PROGRAM ACTIVITIES

10A NCAC 14D .0801 ACTIVITIES PROGRAM

(a) Each adult day care program offering overnight respite care services shall develop a program of activities designed to promote the residents' active involvement with each other, their families, and the community.

(b) If there is a question about a resident's ability to participate in an activity, the resident, the resident's physician, family or responsible party shall be consulted to obtain a statement regarding the resident's capabilities.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Environmental Management Commission*

Rule Citation: *15A NCAC 02D .0544*

Effective Date: *December 23, 2011*

Date Approved by the Rules Review Commission: *December 15, 2011*

Reason for Action: *On July 20, 2011, the United States Environmental Protection Agency (EPA) promulgated a three year deferral period for consideration of carbon dioxide(CO₂) emissions from bioenergy and other biogenic sources when determining whether a stationary source meets the prevention of significant deterioration (PSD) and Title V applicability*

thresholds, including those for the application of best available control technology (BACT). Stationary sources that combust biomass (or otherwise emit biogenic CO₂ emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO₂ emissions resulting from those actions. This deferral applies only to biogenic CO₂ emissions and does not affect non-greenhouse pollutants or other greenhouse gases (GHG) (e.g., methane (CH₄) and nitrous oxide (N₂O)) emitted from the combustion of biomass fuel. Also, this deferral only pertains to biogenic CO₂ emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program. EPA intends for the deferral to be temporary while the agency completes its science and technical review of the issue of accounting for the net atmospheric impact of biogenic CO₂ emissions.

The adoption of the deferral for biogenic CO₂ emissions from PSD permitting programs in 40 CFR 51.166 is optional for any state, local, or tribal permitting authority. Although the biogenic CO₂ emissions deferral is optional, EPA wrote in the promulgation that it expected states to need more time to determine how best to address technical, scientific and practical issues related to biogenic CO₂ without disrupting the proper functioning and timeliness of the permitting programs. Until EPA's review is completed, a temporary rule is being presented to ensure that stationary sources will not have to complete a BACT analysis for biogenic CO₂ and possibly be required to install equipment to control emissions while the permanent rule is being amended through the permanent rule process.

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0544 PREVENTION OF SIGNIFICANT DETERIORATION REQUIREMENTS FOR GREENHOUSE GASES

(a) The purpose of this Rule is to implement a program for the prevention of significant deterioration of air quality for greenhouse gases as required by 40 CFR 51.166. For purposes of greenhouse gases, the provisions of this Rule shall apply rather than the provisions of Rule .0530 of this Section. For all other regulated NSR pollutants, the provisions of Rule .0530 of this Section apply.

(b) For the purposes of this Rule, the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions." "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Subparagraphs (1) through (3) of this Paragraph:

- (1) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately

preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following shall apply:

- (A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
- (B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
- (C) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;
- (D) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;
- (E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR

pollutant can be used for each regulated NSR pollutant; and

- (F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Parts (B) and (C) of this Subparagraph;
 - (2) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and
 - (3) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Subparagraph (1) of this Paragraph and for a new emissions unit in accordance with the procedures contained in Subparagraph (2) of this Paragraph.
- (c) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.
- (d) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.
- (e) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).
- (f) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.
- (g) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(h) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(i) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(j) Permits may be issued based on innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(k) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(l) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(m) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a

report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(n) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule is that ~~published in the Federal Register June 3, 2010 and effective August 2, 2010~~ as of July 20, 2011 and does not include any subsequent amendments or editions to the referenced material. This Rule is applicable ~~as of its effective date~~ in accordance with 40 CFR 51.166(b)(48) and (b)(49)(iv) and (v).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6;

Eff. January 28, 2011 pursuant to E.O. 81, Beverly E. Perdue; Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule; Temporary Amendment Eff. December 23, 2011.

Rule-making Agency: *Wildlife Resources Commission*

Rule Citation: *15A NCAC 10B .0303-.0304*

Effective Date: *December 29, 2011*

Date Approved by the Rules Review Commission: *December 15, 2011*

Reason for Action: *G.S. 113-129 and G.S. 113-291 were amended by S.L. 2011-369, which became effective relevant to these rules on October 1, 2011. The intent of this bill was to delegate regulatory authority for feral swine to WRC. WRC proposes to enact temporary rules to clarify that there are no bag limits on trapping feral swine, and to establish a season and regulations for the trapping of swine.*

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0300 - TRAPPING

15A NCAC 10B .0303 OPEN SEASONS

(a) General. Following are the seasons for taking by trapping fur-bearing animals as defined in G.S. 113-129(7a), coyotes, armadillos, and groundhogs, all dates being inclusive:

- (1) November 1 through the last day of February except for that part of the state described in Subparagraph (2) of this Paragraph.

- (2) December 1 through the last day of February in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties.
 - (3) Trapping coyotes is allowed during times and with methods described by local laws in counties where local laws have established fox trapping seasons even when those seasons fall outside the regular trapping seasons described above.
 - (4) Nutria may be trapped east of I-77 at any time.
- (b) Feral Swine. There is no closed season for trapping feral swine subject to the following restrictions:
- (1) In addition to a hunting or trapping license, a permit issued by the Wildlife Resources Commission is required to trap feral swine. Individuals exempted from license requirements under the provisions specified in G.S. 113-276 may trap feral swine without a hunting or trapping license, but must acquire the permit.
 - (2) Feral swine may be live-trapped using only corral or box traps. Corral and box traps must be constructed in a manner such that a non-target animal can be easily released or can escape without harm. The permit number must be displayed on all traps.
 - (3) Feral swine must be euthanized while in the trap and may not be removed alive from any trap.

Note: See 15A NCAC 10D .0102(f) for other trapping restrictions on game lands.

*History Note: Authority G.S. 113-134; 113-291.1; 113-291.2;
Eff. February 1, 1976;
Amended Eff. July 1, 1996; July 1, 1984; July 1, 1983; August 1, 1982; August 1, 1981;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. June 1, 2003;
Amended Eff. August 1, 2010; May 1, 2009; November 1, 2008;
May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005; August 1, 2004;
Recodified from Rule 10B .0302 Eff. January 1, 2011;
Temporary Amendment Eff. December 29, 2011.*

15A NCAC 10B .0304 BAG LIMITS

There ~~are shall be~~ no restrictions on bag limits of furbearers, coyotes, ~~or groundhogs. groundhogs, and feral swine.~~

Note: Where local laws govern trapping, or are in conflict with these regulations, the local law shall prevail.

*History Note: Authority G.S. 113-134; 113-291.2;
Eff. August 1, 1977;
Amended Eff. May 1, 2009; May 1, 2008; June 1, 2005; July 1, 1996; July 1, 1984;*

*Recodified from Rule 10B .0303 Eff. January 1, 2011;
Temporary Amendment Eff. December 29, 2011.*

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Rule-making Agency: *Office of Administrative Hearings*

Rule Citation: *26 NCAC 03 .0101-.0102, .0105, .0127, .0131*

Effective Date: *January 1, 2012*

Date Approved by the Rules Review Commission: *December 15, 2011*

Reason for Action:

26 NCAC 03 .0101, .0105, .0127, .0131 - The General Assembly enacted S.L. 2011-398 which gives OAH Administrative Law Judges final decision making in contested cases commenced on or after January 1, 2012 under Article 3 of G.S. 150B. OAH is amending rules that are affected by this legislative change.

26 NCA 03 .0102 – The General Assembly enacted S.L. 2011-398 which gives OAH Administrative Law Judges final decision making in contested cases commenced on or after January 1, 2012 under Article 3 of G.S. 150B. OAH intends to serve final decisions issued on and after January 1, 2012 by electronic mail. OAH will no longer forward the entire record to the agency therefore OAH will utilize electronic mail for cost savings and expedited service.

CHAPTER 03 - HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

26 NCAC 03 .0101 GENERAL

(a) The rules in this Chapter in effect on January 1, 2012 shall apply to contested cases commenced on or after January 1, 2012. The rules in this Chapter in effect on December 31, 2011 shall apply to contested cases commenced on or before December 31, 2011.

~~(a)(b)~~ The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.

~~(b)(c)~~ The Office of Administrative Hearings shall supply forms for use in contested cases. These forms shall conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.

~~(c)(d)~~ The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings by facsimile (fax) or electronic mail by an attached file either in PDF format or a document compatible with Microsoft Word 2007. Electronic mail with attachment shall be sent by electronic transmission to: oah.clerks@oah.nc.gov. The faxed or electronic documents shall be deemed a "filing" within the

meaning of 26 NCAC 03 .0102(a)(2) provided the original signed document, one copy and the appropriate filing fee (if a fee is required by G.S. 150B-23.2) is received by OAH within seven business days following the faxed or electronic transmission. Other electronic transmissions, for example, electronic mail without attached file as specified in this Paragraph, shall not constitute a valid filing with the Office of Administrative Hearings.

~~(d)~~(e) Every pleading and other documents filed with OAH shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.

~~(e)~~(f) Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

History Note: Authority G.S. 7A-750; 7A-751(a); 150B-23.2; 150B-40(c);

Eff. August 1, 1986;

Amended Eff. May 1, 2009; January 1, 2006; April 1, 2004; April 1, 2001; August 1, 2000; February 1, 1994; July 1, 1992; May 1, 1989; January 1, 1989;

Emergency Amendment Eff. October 1, 2009;

Temporary Amendment Eff. December 1, 2009;

Amended Eff. October 1, 2010;

Temporary Amendment Eff. January 1, 2012.

26 NCAC 03 .0102 DEFINITIONS AND CONSTRUCTION

(a) The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition, the following definitions apply:

- (1) "Chief Administrative Law Judge" means the person appointed according to G.S. 7A-752.
- (2) "File or Filing" means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Office of Administrative Hearings, and acceptance thereof by him, except that the administrative law judge may permit the papers to be filed with him in which event the administrative law judge shall note thereon the filing date. All documents filed with the Office of Administrative Hearings, except exhibits, shall be in duplicate in letter size 8 1/2" by 11".
- (3) ~~"Service or Serve" means personal delivery or, unless otherwise provided by law or rule, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the person to be served at his or her last known address. A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules. Service by mail or licensed overnight express mail is complete upon~~

~~placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service or upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.~~

~~"Service or Serve" [unless otherwise provided by law or rule] means:~~

- ~~(A) delivery by electronic mail with an attached file [either in PDF format or a document compatible with Microsoft Word 2007;] in a format that is readily accessible to the recipient;~~
- ~~(B) facsimile (fax);~~
- ~~(C) personal delivery;~~
- ~~(D) delivery by first class United States Postal Service mail; or~~
- ~~(E) delivery by overnight express mail service.~~

(b) A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules.

(c) Service by mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service.

(d) Service by overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in the custody of an overnight express mail service.

~~(b)~~(e) Service by electronic mail or fax is deemed to occur one hour after it is sent, provided that:

- (1) documents sent after 5pm are deemed sent at 8am the following day; and
- (2) documents sent by electronic mail that are not in a format in which the content is readily accessible to the recipient are not deemed served until actually received in a form in which the content is readily accessible to the receiving party.

Service by electronic mail or fax is treated the same as service by mail for the purpose of adding three days to the prescribed period to respond under N.C.R. Civ.P.6(e).

~~(b)~~(f) The rules of statutory construction contained in Chapter 12 of the General Statutes shall be applied in the construction of these Rules.

History Note: Authority G.S. 7A-752; 150B-23;

Eff. August 1, 1986;

Amended Eff. October 1, 1991; January 1, 1989; November 1, 1987; September 1, 1986;

Temporary Amendment Eff. January 1, 2012.

26 NCAC 03 .0105 DUTIES OF THE ADMINISTRATIVE LAW JUDGE

In conjunction with the powers of administrative law judges prescribed by G.S. 150B-33 and ~~G.S. 150B-36, G.S. 150B-~~

34, the administrative law judge shall perform the following duties, consistent with law:

- (1) Hear and rule on motions;
- (2) Grant or deny continuances;
- (3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
- (4) Examine witnesses when deemed necessary to make a complete record and to aid in the full development of material facts in the case;
- (5) Make preliminary, interlocutory, or other orders as deemed appropriate;
- (6) Grant dismissal when the case or any part thereof has become moot or for other reasons;
- (7) Order the State of North Carolina, when it is the losing party as determined by the presiding Administrative Law Judge, to reimburse the filing fee to the petitioner; and
- (8) Apply sanctions in accordance with Rule .0114 of this Section.

History Note: Authority G.S. 7A-751(a); 8C-1, Rule 614; 150B-23.2; 150B-33; 150B-34;

Eff. August 1, 1986;

Amended Eff. April 1, 2001; February 1, 1994; November 1, 1987;

Emergency Amendment Eff. October 1, 2009;

Temporary Amendment Eff. December 1, 2009;

Amended Eff. October 1, 2010;

Temporary Amendment Eff. January 1, 2012.

26 NCAC 03 .0127 ADMINISTRATIVE LAW JUDGE'S DECISION

(a) An administrative law judge shall issue a final decision or order in a contested case within 45 days after the later of the date the administrative law judge receives any proposed findings of fact and written arguments submitted by the parties and the date the contested case hearing ends. ~~The administrative law judge shall serve a copy of the decision on each party. When an administrative law judge issues a decision, the Office of Administrative Hearings shall promptly serve a copy of the official record on the agency making the final decision by hand delivery or certified mail.~~

(b) An administrative law judge's final decision shall be based exclusively on:

- (1) competent evidence and arguments presented during the hearing and made a part of the official record;
- (2) stipulations of fact;
- (3) matters officially noticed;
- (4) any proposed findings of fact and written arguments submitted by the parties under Paragraph (g) of Rule .0119 of this Section; and
- (5) other items in the official record that are not excluded by G.S. 150B-29(b).

(c) An administrative law judge's final decision shall fully dispose of all issues required to resolve the case and shall contain:

- (1) a caption;
- (2) the appearances of the parties;
- (3) a statement of the issues;
- (4) references to specific statutes or rules at issue;
- (5) findings of fact;
- (6) conclusions of law based on the findings of fact and applicable constitutional principles, statutes, rules, or federal regulations;
- (7) in the discretion of the administrative law judge, a memorandum giving reasons for his findings of fact and conclusions of law; and
- ~~(8) a statement identifying the agency that will make the final decision; and~~
- ~~(9)(8) a statement that each party has the right to file exceptions to the administrative law judge's decision with the agency making the final decision and has the right to present written arguments on the decision to the agency making the final decision. an appeal of the administrative law judge's final decision by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides.~~

(d) The chief administrative law judge may extend the 45-day time limit for issuing a decision. An administrative law judge who needs an extension must submit a request for extension to the chief administrative law judge before the 45-day period has expired.

History Note: Authority G.S. 7A-751(a); 150B-34; 150B-47; *Eff. August 1, 1986;*

Temporary Amendment Eff. August 26, 1987 For a Period of 120 Days to Expire on December 24, 1987;

Temporary Amendment Eff. December 24, 1987 For a Period of 8 Days to Expire on January 1, 1988;

Amended Eff. February 1, 1994; October 1, 1991; April 1, 1990; January 1, 1989;

Recodified from Rule .0126 Eff. August 1, 2000;

Amended Eff. April 1, 2001;

Temporary Amendment Eff. January 1, 2012.

26 NCAC 03 .0131 FINAL DECISIONS IN CONTESTED CASES

A copy of a final decision issued by an administrative law judge shall be served on each party in accordance ~~with G.S. 150B-36, with Rule [.0102(a)(3),] .0102(a)(3) and (b) through (f) of this Section.~~

History Note: Authority G.S. 150B-45; *ARRC Objection Lodged November 17, 1988; Eff. April 1, 1989;*

ARRC Objection Removed Eff. April 1, 1990;

Amended Eff. October 1, 1991; April 1, 1990;

Recodified from Rule .0130 Eff. August 1, 2000;

Temporary Amendment Eff. January 1, 2012.

This Section contains information for the meeting of the Rules Review Commission on Thursday December 15, 2011 and January 19, 2012 10:00 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

January 19, 2012 February 16, 2012
March 15, 2012 April 19, 2012

RULES REVIEW COMMISSION**December 15, 2011****MINUTES**

The Rules Review Commission met on Thursday, December 15, 2011, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Margaret Currin, Garth Dunklin, George Lucier, Bob Rippy, Stephanie Simpson, Ralph Walker and Faylene Whitaker. Commissioner Venable joined via Skype.

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

The meeting was called to order at 10:01 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 November 17, 2011 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

10A NCAC 09 .0102, .2819, .2820, .2822 – Child Care Commission. No action was taken.

10A NCAC 10 .0203 – Social Services Commission. The agency was unable to complete rules responsive to the Commission's objections prior to the deadline for submitting rewritten rules. No action was taken and the rules will be carried over to the next meeting.

21 NCAC 50 .0107, .0301, .0306, .0505, .0516, .1401. Board of Examiners for Plumbing, Heating and Fire Sprinkler Contractors. The Commission approved the rewritten rules submitted by the agency.

The Commission received more than 10 written letters of objection to 21 NCAC 50 .0301, .0306, .0505, .1401. These rules are now subject to legislative review and a delayed effective date.

The agency intends to respond to Commission objections to the following five rules at the January meeting:

2012 Fuel Gas Code – Sections 311.1 and 311.2 – Building Code Council. – No action was taken.
2012 Mechanical Code – Sections 313.1 and 313.2 – Building Code Council. No action was taken.
2012 Plumbing Code – Sections 315.1 and 315.2 – Building Code Council. No action was taken.
2009 Residential Code – Sections 313.1.1 and 313.1.2 – Building Code Council. No action was taken.
2012 Residential Code – Sections 311.1 and 311.2 – Building Code Council. No action was taken.

LOG OF FILINGS

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

HHS – Health Service Regulation, Division of

The agency has withdrawn all of the rules.

Mental Health, Commission for

10A NCAC 26E .0603 was approved unanimously.

Wildlife Resources Commission

Norman Young representing the Wildlife Resources Commission addressed the Commission.

All rules were approved unanimously with the following exceptions:

15A NCAC 10B .0223 – The Commission objected to the above-captioned rule based on ambiguity in accordance with G.S. 150B-21.10. This Rule appears to conflict with 15A NCAC 10B .0204 regulating the taking of wild boar. It appears that both feral swine and wild boar are defined as "free ranging mammals of the species *Sus rofa*." It is not clear how to determine when each rule applies.

Commissioner Simpson was not present during the vote.

Cosmetic Art Examiners, Board of

Lynda Elliot from the board addressed the Commission.

All rules were approved unanimously with the following exceptions:

21 NCAC 14T .0704 and .0801 have been withdrawn by the agency.

21 NCAC 14T .0614 - The Commission objected to this Rule based on ambiguity. In both items (5) and (6) of this rule there are some general standards that cosmetic arts schools and students must follow. The first concerns performing work services on clients in (5) and the second concerns student conduct in general in (6). Both rules provide that violations of these rules “may result” in some sort of discipline against either the school or the student. The standards to be used in deciding the discipline are unclear since they are not set out in the rule.

21 NCAC 14T .0701 - The Commission objected to this Rule based on ambiguity. The rule is unclear as to the teacher-student ratios required under the rule. In (j) the rule requires “one teacher for every 25 enrolled students” in a cosmetic arts school. However the rule in (k) states that the teacher student ratio “may exceed 1:25” for theory or demonstration classes. It is unclear whether the rule in (j) would still require that ratio to be met if the rule in (k) resulted in a need for less than one teacher to every 25 enrolled students.

Medical Board

Christina Apperson and Marcus Jimison from the Board addressed the Commission.

All rules were approved unanimously with the following exceptions:

21 NCAC 32C .0102 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In Item (1), it is not clear what ethical customs have been defined by the North Carolina Medical Board. There is no authority cited to do so outside of rulemaking.

21 NCAC 32C .0105 - The Commission objected to this Rule based on lack of statutory authority and lack necessity. There is no authority cited for the Board to adopt Items (1), (3) and (5) of this Rule. Items (6) and (7) basically just repeat portions of G.S. 55B-6, 55B-7, 55B-8 and 55B-14 and thus are not necessary to be included in the rules.

21 NCAC 32C .0106 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the agency to adopt this Rule.

21 NCAC 32C .0109 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the agency to adopt this Rule.

TEMPORARY RULES

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

HHS – Health Service Regulation, Division of

All rules were approved unanimously.

Environmental Management Commission

15A NCAC 02D .0544 was approved unanimously.

Wildlife Resources Commission

All rules were approved unanimously.

Administrative Hearings, Office of

Commissioner Walker reviewed the rules from the Office of Administrative Hearings. He did not participate in any discussion or vote concerning these rules.

All rules were approved unanimously.

COMMISSION PROCEDURES AND OTHER BUSINESS

The meeting adjourned at 11:27 p.m.

The next scheduled meeting of the Commission is Thursday, January 19 at 10:00 a.m.

Respectfully Submitted,

Julie Edwards, Editorial Assistant

Rules Review Commission

Meeting

Please Print Legibly

DECEMBER 15, 2011

Name	Agency
MICHAEL S. Boggs	NC PROPANE GAS ASSOCIATION
Therese Vick	Blue Ridge Environmental Defense League
Joelle Burleson	NC DAQ
Patrick Knowlton	NC DAQ
Glenda Artis	NC DAAS
HEATHER CARTER	NC DAAS
Jeff Horton	NC DAAS
Megan Lamphorne	11
Kate Pipkin	NCWRC
Christian Waters	NCWRC
Amelia Elliott	Board of Cosmetic Arts
Reed Foutan	Young Men's
Christine Apperson	NC Med Bd.
Marcus J. M. Son	NC Med Bd.
Betsy Ford	NCWRC
Anca GROZAV	OSBM
Reed Foutan	YMCA
Tressa Johnson	NC Adult Day Services Assn
Phillip Reynolds	NC DOS
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly

**LIST OF APPROVED PERMANENT RULES
December 15, 2011 Meeting**

MENTAL HEALTH, COMMISSION FORRequirements for Transmission of Data

10A NCAC 26E .0603

WILDLIFE RESOURCES COMMISSIONWildlife Taken for Depredations or Accidentally

15A NCAC 10B .0106

Dog Training and Field Trials

15A NCAC 10B .0114

Prohibited Taking and Manner of Take

15A NCAC 10B .0201

Bear

15A NCAC 10B .0202

Deer (White Tailed)

15A NCAC 10B .0203

Crows

15A NCAC 10B .0215

Falconry

15A NCAC 10B .0216

Coyote

15A NCAC 10B .0219

Public Mountain Trout Waters

15A NCAC 10C .0205

Open Seasons: Creel and Size Limits

15A NCAC 10C .0305

Open Seasons: Creel and Size Limits

15A NCAC 10C .0305

Manner of Taking Non-game Fishes: Purchase and Sale

15A NCAC 10C .0401

Special Device Fishing

15A NCAC 10C .0404

General Regulations Regarding Use

15A NCAC 10D .0102

Hunting On Game Lands

15A NCAC 10D .0103

Possession and Removal of Animals, Plants and Materials

15A NCAC 10D .0105

Use of Areas Regulated

15A NCAC 10E .0104

Hyde County

15A NCAC 10F .0313

Davidson County

15A NCAC 10F .0324

Definitions

15A NCAC 10H .0801

Permit and License Requirements

15A NCAC 10H .0802

Application for License Requirements

15A NCAC 10H .0803

Examination

15A NCAC 10H .0804

Duration of License

15A NCAC 10H .0805

Acquisition, Sale and Status Change

15A NCAC 10H .0806

Levels of Licenses

15A NCAC 10H .0807

Facilities and Equipment

15A NCAC 10H .0808

Marking

15A NCAC 10H .0809

Taking Raptors

15A NCAC 10H .0810

Other Restrictions and Conditions

15A NCAC 10H .0811

Interstate Transportation

15A NCAC 10H .0812

Raptor Propagation Permit

15A NCAC 10H .0813

Release of Raptors or Moved to Other Permit

15A NCAC 10H .0814

Other Uses and Allowed Activities

15A NCAC 10H .0815

Protection of Endangered/Threatened/Special Concern

15A NCAC 10I .0102

General Regulations Regarding Use of Conservation Areas

15A NCAC 10J .0102

COSMETIC ART EXAMINERS, BOARD OF

<u>Scope</u>	21	NCAC 14T .0101
<u>New School Applications</u>	21	NCAC 14T .0102
<u>All Cosmetic Art Schools</u>	21	NCAC 14T .0201
<u>Cosmetology Schools</u>	21	NCAC 14T .0202
<u>Esthetics Schools</u>	21	NCAC 14T .0203
<u>Manicuring Schools</u>	21	NCAC 14T .0204
<u>Natural Hair Care Schools</u>	21	NCAC 14T .0205
<u>Equipment for All Cosmetic Art Schools</u>	21	NCAC 14T .0301
<u>Equipment for Cosmetology Schools</u>	21	NCAC 14T .0302
<u>Equipment for Esthetics Schools</u>	21	NCAC 14T .0303
<u>Equipment for Manicuring Schools</u>	21	NCAC 14T .0304
<u>Equipment for Natural Hair Care Styling Schools</u>	21	NCAC 14T .0305
<u>Cosmetology and Apprentice Student Equipment</u>	21	NCAC 14T .0401
<u>Esthetics Student Equipment</u>	21	NCAC 14T .0402
<u>Manicuring Student Equipment</u>	21	NCAC 14T .0403
<u>Natural Hair Care Styling Student Equipment</u>	21	NCAC 14T .0404
<u>Submission of Records</u>	21	NCAC 14T .0501
<u>Permanent Records, Forms and Documentation</u>	21	NCAC 14T .0502
<u>Cosmetic Art Curriculum</u>	21	NCAC 14T .0601
<u>Cosmetology Curriculum</u>	21	NCAC 14T .0602
<u>Apprentice Cosmetology Curriculum</u>	21	NCAC 14T .0603
<u>Esthetics Curriculum</u>	21	NCAC 14T .0604
<u>Manicuring Curriculum</u>	21	NCAC 14T .0605
<u>Natural Hair Care Styling Curriculum</u>	21	NCAC 14T .0606
<u>Cosmetology Teacher Trainee Curriculum</u>	21	NCAC 14T .0607
<u>Esthetic Teacher Trainee Curriculum</u>	21	NCAC 14T .0608
<u>Manicurist Teacher Trainee Curriculum</u>	21	NCAC 14T .0609
<u>Natural Hair Care Teacher Curriculum</u>	21	NCAC 14T .0610
<u>Online Instruction</u>	21	NCAC 14T .0611
<u>Instruction Guidelines</u>	21	NCAC 14T .0612
<u>Uniforms and Identification</u>	21	NCAC 14T .0613
<u>Field Trips</u>	21	NCAC 14T .0615
<u>Additional Hours</u>	21	NCAC 14T .0616
<u>Teacher Trainees</u>	21	NCAC 14T .0617
<u>Transfer of Credit</u>	21	NCAC 14T .0702
<u>Expiration of Student Credit</u>	21	NCAC 14T .0703
<u>School Performance Requirements</u>	21	NCAC 14T .0705
<u>School Approval Changes and School Closing</u>	21	NCAC 14T .0706
<u>School Sanitation Grades</u>	21	NCAC 14T .0802
<u>School Inspections</u>	21	NCAC 14T .0803
<u>School Probation</u>	21	NCAC 14T .0901
 MEDICAL BOARD		
<u>Application for Physician License</u>	21	NCAC 32B .1303
<u>Prerequisites for Incorporation</u>	21	NCAC 32C .0103
<u>Certification of Registration</u>	21	NCAC 32C .0104

<u>Documents</u>	21	NCAC 32C .0107
<u>Fees</u>	21	NCAC 32C .0108

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

<u>Board Committees</u>	21	NCAC 50 .0107
<u>Qualifications Determined by Examination</u>	21	NCAC 50 .0301
<u>Applications: Issuance of License</u>	21	NCAC 50 .0306
<u>General Supervision and Standard of Competence</u>	21	NCAC 50 .0505
<u>Residential Fire Sprinkler Installation License</u>	21	NCAC 50 .0516
<u>Continuing Education Requirements</u>	21	NCAC 50 .1401

**LIST OF APPROVED TEMPORARY RULES
December 15, 2011 Meeting**

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Scope</u>	10A	NCAC 14D .0101
<u>Definitions</u>	10A	NCAC 14D .0102
<u>Submission of Information to the Division of Health Servi...</u>	10A	NCAC 14D .0201
<u>Capacity</u>	10A	NCAC 14D .0202
<u>Design and Construction</u>	10A	NCAC 14D .0203
<u>Location</u>	10A	NCAC 14D .0204
<u>Living Arrangement</u>	10A	NCAC 14D .0205
<u>Living Room</u>	10A	NCAC 14D .0206
<u>Dining Room</u>	10A	NCAC 14D .0207
<u>Kitchens</u>	10A	NCAC 14D .0208
<u>Bedrooms</u>	10A	NCAC 14D .0209
<u>Bathroom</u>	10A	NCAC 14D .0210
<u>Storage Areas</u>	10A	NCAC 14D .0211
<u>Corridor</u>	10A	NCAC 14D .0212
<u>Outdoor Entrance and Exits</u>	10A	NCAC 14D .0213
<u>Laundry Room</u>	10A	NCAC 14D .0214
<u>Floors</u>	10A	NCAC 14D .0215
<u>Housekeeping and Furnishings</u>	10A	NCAC 14D .0216
<u>Fire Safety and Disaster Plan</u>	10A	NCAC 14D .0217
<u>Building Service and Equipment</u>	10A	NCAC 14D .0218
<u>Outside Premises</u>	10A	NCAC 14D .0219
<u>Planning Program Activities</u>	10A	NCAC 14D .0301
<u>Administrator</u>	10A	NCAC 14D .0302
<u>Supervisor in Charge</u>	10A	NCAC 14D .0303
<u>Enrollment to Overnight Respite Services</u>	10A	NCAC 14D .0401
<u>Planning Services for Individual Residents</u>	10A	NCAC 14D .0402
<u>Staffing</u>	10A	NCAC 14D .0501
<u>Staff</u>	10A	NCAC 14D .0502
<u>Medication Administration</u>	10A	NCAC 14D .0601
<u>Medication Administration Competency Evaluation</u>	10A	NCAC 14D .0602

RULES REVIEW COMMISSION

<u>Medication Administration Documentation</u>	10A NCAC 14D .0603
<u>Nutrition and Food Service</u>	10A NCAC 14D .0701
<u>Activities Program</u>	10A NCAC 14D .0801

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Prevention of Significant Deterioration Requirements for ...</u>	15A NCAC 02D .0544
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WILDLIFE RESOURCES COMMISSION

<u>Bag Limits</u>	15A NCAC 10B .0303
<u>Traps</u>	15A NCAC 10B .0304

ADMINISTRATIVE HEARINGS, OFFICE OF

<u>General</u>	26 NCAC 03 .0101
<u>Definitions and Construction</u>	26 NCAC 03 .0102
<u>Duties of the Administrative Law Judge</u>	26 NCAC 03 .0105
<u>Administrative Law Judge's Decision</u>	26 NCAC 03 .0127
<u>Final Decisions in Contested Cases</u>	26 NCAC 03 .0131

AGENDA
RULES REVIEW COMMISSION
Thursday, January 19, 2012 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. Child Care Commission – 10A NCAC 09 .0102, .2819, .2820, .2822 (DeLuca)
 - B. Social Services Commission – 10A NCAC 10 .0203 (Bryan)
 - C. Wildlife Resources Commission – 15A NCAC 10B .0223 (Bryan)
 - D. Board of Cosmetic Art Examiners – 21 NCAC 14T .0614, .0701 (DeLuca)
 - E. Medical Board – 21 NCAC 32C .0102, .0105, .0106, .0109 (Bryan)
 - F. Building Code Council – 2012 Fuel Gas Code - 311 (DeLuca)
 - G. Building Code Council – 2012 Mechanical Code – 313 (DeLuca)
 - H. Building Code Council – 2012 Plumbing Code – 315 (DeLuca)
 - I. Building Code Council – 2009 Residential Code – 313.1 (DeLuca)
 - J. Building Code Council – 2012 Residential Code – 315 (DeLuca)
 - V. Review of Log of Filings (Permanent Rules) for rules filed between November 22, 2011 and December 20, 2011
 - VI. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
 - VII. Review of the 2012 State Medical Facilities Plan
 - VIII. Commission Business
 - Next meeting: February 16, 2012
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**Commission Review
Log of Permanent Rule Filings
November 22, 2011 through December 20, 2011**

ALCOHOLIC BEVERAGE CONTROL COMMISSION

The rules in Chapter 2 are from the Alcoholic Beverage Control Commission.

The rules in Subchapter 2R are organizational rules, policies and procedures including general provisions (.0100); structure (.0200); publications, records and copies (.0300); rule-making (.0400); emergency rules (.0500); declaratory rulings (.0600); personnel policies: commission (.0700); adjudication: contested cases (.0800); fiscal rules for local boards (.0900); local abc board: personnel policies (.1000); local ABC Boards: relationship with state commission (.1100); opening and discontinuance of stores (.1200); storage and distribution of spirituous liquors: commercial transportation (.1300); purchase of alcoholic beverages by local boards (.1400); pricing of spirituous liquor (.1500); warehouse storage of spirituous liquors (.1600); retail sales of alcoholic beverages (.1700); purchase-transportation permits for individuals and mix beverages for permittees (.1800); and sales of liquor to mixed beverages permittees (.1900).

Notice of Alleged Violation
Amend/*

04 NCAC 02R .0802

The rules in Subchapter 2S concern retail beer, wine, mixed beverages, brownbagging, advertising, and special permits. The rules include definitions and permit application procedures (.0100); general rules affecting retailers and brownbagging permittees (.0200); malt beverages and the wine retailer/wholesaler relationship (.0300); additional requirements for brownbagging permittees (.0400); additional requirements for mixed beverages permittees (.0500); special requirements for convention centers, community theatres, sports clubs, and nonprofit and political organizations (.0600); special occasions permits (.0700); culinary permits (.0800); wine and beer tastings (.0900); advertising (.1000); and effect of administrative action, fines, and offers in compromise (.1100).

Advertising of Malt Beverages, Wine and Beverages by Reta...
Amend/*

04 NCAC 02S .1008

CHILD CARE COMMISSION

The rules in Chapter 9 are child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age and developmentally appropriate environments for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); requirements for voluntary enhanced program standards (.1600); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); voluntary rated licenses (.2800); and developmental day services (.2900).

General Safety Requirements
Amend/*

10A NCAC 09 .0604

Accident/Liability Insurance
Adopt/*

10A NCAC 09 .1725

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 10 are from the Sheriffs' Education and Training Standards Commission.

Rules in Subchapter 10B are from the N. C. Sheriffs' Education and Training Standards Commission. These rules govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice

officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

<u>Limited Lecturer Certification</u>	12	NCAC 10B .0908
Amend/*		
<u>Instructors</u>	12	NCAC 10B .2004
Amend/*		
<u>Minimum Training Requirements</u>	12	NCAC 10B .2005
Amend/*		

ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 11 are from the N.C. Alarm Systems Licensing Board and cover the organization and general provisions (.0100); license applications and requirements (.0200); registration of employees of licensees (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

<u>Application for License</u>	12	NCAC 11 .0201
Amend/*		
<u>Renewal or Re-issue of License</u>	12	NCAC 11 .0204
Amend/*		
<u>Application for Registration</u>	12	NCAC 11 .0301
Amend/*		
<u>Renewal or Reregistration of Registration</u>	12	NCAC 11 .0306
Amend/*		

MARINE FISHERIES COMMISSION

The rules in Subchapter 3M cover harvesting of finfish including general rules (.0100); striped bass (.0200); mackerel (.0300); menhaden and Atlantic herring (.0400); and other finfish (.0500).

<u>Trout</u>	15A	NCAC 03M .0504
Repeal/*		
<u>Shad</u>	15A	NCAC 03M .0519
Amend/*		

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

<u>Surrender of Licenses</u>	15A	NCAC 03O .0111
Amend/*		
<u>Suspension, Revocation and Reissuance of Licenses</u>	15A	NCAC 03O .0114
Adopt/*		

SEDIMENTATION CONTROL COMMISSION

The rules in Chapter 4 concern sedimentation control.

The rules in Subchapter 4B concern erosion and sediment control.

<u>Design Standards for the Upper Neuse River Basin</u>	15A	NCAC 04B .0132
Adopt/*		

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and

water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Wild Boar (Both Sexes)</u>	15A NCAC 10B .0204
<u>Repeal/*</u>	

WATER TREATMENT FACILITY OPERATORS CERTIFICATION BOARD

The rules in Chapter 18 deal with environmental health.

The rules in Subchapter 18D concern water treatment facility operators including general policies (.0100); qualification of applicants and classification of facilities (.0200); applications and fees (.0300); issuance of certificate (.0400); rule-making procedures (.0500); contested cases (.0600) and operation and management (.0700).

<u>Grades of Certification</u>	15A NCAC 18D .0201
<u>Amend/*</u>	
<u>Fee Schedule</u>	15A NCAC 18D .0304
<u>Amend/*</u>	
<u>Certification Reinstatement</u>	15A NCAC 18D .0309
<u>Amend/*</u>	

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

The rules in Subchapter 8G are the continuing professional education requirements including general provisions (.0100); responsibilities to clients and colleagues (.0200); and other responsibilities and requirements (.0300 and .0400).

<u>Computation of CPE Credits</u>	21 NCAC 08G .0409
<u>Amend/*</u>	
<u>Professional Ethics and Conduct CPE</u>	21 NCAC 08G .0410
<u>Amend/*</u>	

The rules in Subchapter 8J concern renewals and registrations.

<u>Retired and Inactive Status: Change of Status</u>	21 NCAC 08J .0105
<u>Amend/*</u>	

MEDICAL BOARD

The rules in Subchapter 32N concern formal and informal proceedings.

<u>Initiation of Formal Hearings</u>	21 NCAC 32N .0101
<u>Repeal/*</u>	
<u>Continuances</u>	21 NCAC 32N .0102
<u>Repeal/*</u>	
<u>Disqualification for Personal Bias</u>	21 NCAC 32N .0103
<u>Repeal/*</u>	
<u>Discovery</u>	21 NCAC 32N .0104
<u>Repeal/*</u>	
<u>Informal Proceedings</u>	21 NCAC 32N .0105
<u>Repeal/*</u>	
<u>Definitions</u>	21 NCAC 32N .0106
<u>Adopt/*</u>	
<u>Investigations and Complaints</u>	21 NCAC 32N .0107

Adopt/*	
<u>Investigative Interviews by Board Members</u>	21 NCAC 32N .0108
Adopt/*	
<u>Pre-Charge Conference</u>	21 NCAC 32N .0109
Adopt/*	
<u>Initiation of Disciplinary Hearings</u>	21 NCAC 32N .0110
Adopt/*	
<u>Conducting Disciplinary Hearings</u>	21 NCAC 32N .0111
Adopt/*	
<u>Post Hearing Motions</u>	21 NCAC 32N .0112
Adopt/*	
<u>Correction of Clerical Mistakes</u>	21 NCAC 32N .0113
Adopt/*	

PODIATRY EXAMINERS, BOARD OF

The rules in Chapter 52 concern Board of Podiatry Examiners including organization of the Board (.0100); examination and licensing (.0200); professional corporations (.0300); revocation or suspension of license (.0400); certification of podiatric assistants (.0500); general provisions (.0600); petitions for rules (.0700); notice of rulemaking hearings (.0800); rulemaking hearings (.0900); declaratory rulings (.1000); administrative hearing procedures (.1100); administrative hearings decisions related rights and procedures (.1200); nominations for podiatrist members of the board of podiatry examiners; the board of podiatry examiners constituting a board of podiatry elections; and procedures for holding an election (.1300); and scope of practice (.1400).

<u>Continuing Education</u>	21 NCAC 52 .0208
Amend/*	

REAL ESTATE COMMISSION

The rules in Chapter 58 are from the North Carolina Real Estate Commission.

The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate recovery fund (.1400); forms (.1500); discriminatory practices prohibited (.1600); mandatory continuing education (.1700); limited nonresident commercial licensing (.1800); post-licensure education (.1900); annual reports (.2000); and brokers in military service (.2100).

<u>Active and Inactive License Status</u>	21 NCAC 58A .0504
Amend/*	
<u>Licensing of Persons Licensed in Another Jurisdiction</u>	21 NCAC 58A .0511
Amend/*	

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. TruVisions Enterprises, LLC, T/A Touch	10 ABC 7025	06/29/11	26:06 NCR 509
Elm Street Connection LLC, DBA Bella Mea Coal Fired Pizza v. ABC Commission	10 ABC 06298	11/07/11	
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. Universal Entertainment, LLC T/A Zoo City Saloon (name changed to El Patron Night Club and Bar)	11 ABC 06892	11/04/11	
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	
ABC Commission v. MBM of NC Inc, T/A Super Mart 3	11 ABC 10549	11/15/11	
ABC Commission v. Octobers, Inc., T/A Toxaway House Restaurant	11 ABC 10955	12/20/11	
ABC Commission v. Charles Franklin Liles, T/A Leather Pockets Billiards and Lounge	11 ABC 11584	11/15/11	
ABC Commission v. Stanley Ray Edwards, T/A Woogies	11 ABC 12968	01/04/12	
<u>BOARD OF MASSAGE AND BODYWORK THERAPY</u>			
Byung Yoon Kim v. Board of Massage and Bodywork Therapy	11 BMT 09241	09/30/11	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Donnie R. Holbrook, Susan R Holbrook v. Victim and Justice Service	09 CPS 0449	08/19/11	
Felicia G. Awaritoma v. Crime Victims Compensation Commission	10 CPS 01451	09/01/11	
Larry Overby v. Department of Crime Control Victim Compensation Division	10 CPS 06106	10/14/11	
Dianne Moody Costello v. Victim and Justice Services	11 CPS 05780	06/20/11	
Kimberly A. Whiteside v. Crime Victims Compensation Commission	11 CPS 08900	12/12/11	
Judy D. Hinson v. Department of Crime Control and Public Safety	11 CPS 08984	11/14/11	
Angie T. Hawkins v. Victims Compensation Commission	11 CPS 09142	12/19/11	
Gregory Keith Moseley v. Crime Victim Compensation	11 CPS 09309	11/14/11	
Rosalena Merriam v. Victims Compensation	11 CPS 09780	09/19/11	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Gail Taylor-Hilliard v. DHHS	09 DHR 2455	11/02/11	
Scott M. Jensen, DMD v. DHHS, Division of Medical Assistance	09 DHR 3252	06/21/11	
Association of Home and Hospice Care of North Carolina, Inc., v. DMA, DHHS	09 DHR 6765	10/12/11	
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	
Qingxia Chen and Chen Family Child Care Home Inc v. Division of Child Development	10 DHR 0790	07/29/11	
Theracare Home Health and Staffing, LLC v. DHHS, Division of Medical Assistance Program Integrity	10 DHR 1455	06/01/11	
Ronnie Newton v. DHHS, Division of Health Service Regulation	10 DHR 2172	08/22/11	

CONTESTED CASE DECISIONS

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	
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	
Carteret Family Practice Clinic, P.A., v. DHHS, DMA, Program Integrity Section	10 DHR 5859	07/13/11	26:06 NCR 516
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	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	10 DHR 8735	07/08/11	
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