

NORTH CAROLINA REGISTER

VOLUME 26 • ISSUE 24 • Pages 1967 - 2011

June 15, 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
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

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Rule Review and Legal Issues

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

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

Fiscal Notes & Economic Analysis and Governor's Review

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

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: Amy Bason amy.bason@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
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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
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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 NO. 118

HIGH STANDARDS FOR SHALE GAS DEVELOPMENT IN NORTH CAROLINA

WHEREAS, North Carolina seeks to develop an energy policy that creates jobs, reduces costs on businesses and families, and lessens our reliance on foreign oil while balancing the need to protect the public health and safety of our citizens and to maintain our state's natural resources; and

WHEREAS, the North Carolina Geological Survey has identified potential shale gas resources in North Carolina; and

WHEREAS, studies suggest that drilling for shale gas resources using hydraulic fracturing in the Sanford sub-basin will yield economic benefits, including an average of 387 jobs per annum over seven years; and

WHEREAS, despite its potential economic benefits, oil and gas exploration and production can lead to the disturbance of large areas of land to develop access roads, well pads, impoundments and other infrastructure; and

WHEREAS, water quality problems have been associated with oil and gas operations; and

WHEREAS, North Carolina statutes and rules have not been written to address natural gas development using hydraulic fracturing; and

WHEREAS, it is important that any regulatory framework for hydraulic fracturing reflect high standards that will protect the public health and safety of the citizens of North Carolina and protect the environment, while allowing for the development our state's shale gas resources and this industry.

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

Section 1. Regulatory Workgroup

The Department of Commerce Division of Energy, in conjunction with the Department of Environment and Natural Resources, shall organize a workgroup to develop recommendations for a regulatory framework and interagency protocols for oil and gas exploration and development including, but not limited to environment, commercial, logistics/transportation, public safety, and worker safety regulations. The workgroup shall include representatives from the Department of Health and Human Services Division of Public Health, the Department of Revenue, the Department of Transportation, and the State Highway Patrol. In addition, the workgroup organizers shall invite representatives of the North Carolina Utilities Commission, the Department of Labor, and the Office of Attorney General Consumer Protection Division to participate in the workgroup. The workgroup organizers shall also invite the Speaker of the North Carolina House of Representatives, the President Pro Tempore of the North Carolina Senate, the Minority Leader of the North Carolina House of Representatives, and the Minority Leader of the North Carolina Senate to each appoint a representative to participate in the workgroup. The workgroup organizers shall use their reasonable best efforts to ensure that all invited representatives have an opportunity to participate in a meaningful way in all workgroup activities. The workgroup organizers shall also reach out to stakeholders to collaborate in implementing this Executive Order.

Section 2. Guiding Principles

In developing recommendations, the Regulatory Workgroup shall consider the following guiding principles:

A. Public Health and Safety

1. Precautions must be implemented to protect the state's drinking water and to safeguard the health and safety of all North Carolinians.
2. Studies must be employed to allow long-term tracking of health impacts in areas with shale gas development.
3. State and local first responders and industry must be prepared for any industry-related emergencies, and a statewide law enforcement agency must be identified as the lead responder in such emergencies.

B. Environmental Impacts and Regulatory Framework

1. In establishing environmental standards for an effective oil and gas regulatory framework, the recommendations from the Department of Environment and Natural Resources' *North Carolina Oil and Gas Study Under Session Law 2011-276* report and from the *State Review of Oil and Natural Gas Environmental Regulations (STRONGER)* report must be adopted as a baseline.

2. Full disclosure of hydraulic fracturing chemicals and prior certification of components must be studied.
3. Sensitive areas, such as floodplains, must be identified where oil and gas exploration and production activities should be prohibited.

C. Public Input

The public must be afforded the opportunity to provide significant input regarding the creation of regulations for the oil and gas industry.

D. Consumer Protection

Restrictions must be considered that would provide protections to the consumer, such as limiting the lengths of lease terms, requiring registration of certain company representatives, requiring leases to be registered to allow public access, requiring notification of lease transfers, and determining whether to allow forced pooling.

E. Worker Safety

Adequate training must be provided for regulatory personnel, across disciplines, on distinct regulations for the oil and gas industry.

F. Logistics, Transportation and Local Government Impacts

1. Resources and regulations must be adopted to protect the billions of dollars invested in North Carolina's transportation system and to ensure that the transportation infrastructure is prepared for the additional usage created by the industry.
2. Appropriate consideration must be given to address the impact on local governments and local infrastructure.

G. Commercial Industry Standards

1. To provide for the orderly development of the oil and gas industry, the protection of correlative property rights for owners to ensure that owners have a fair and reasonable opportunity to obtain and produce an equitable share of oil and gas resources must be studied.
2. Industry must be held accountable for damages related to exploration and production, including damage to neighboring properties.
3. Companies must be required to make commercial and financial disclosures to the State that are consistent with disclosures that are made to the federal government.

H. Adequate Resources and Revenue Structures

1. Adequate resources must be provided across all agencies to support effective regulation of the oil and gas industry and to support proper and robust enforcement of those regulations.
2. Any licensing or operating fees and industry taxes that are implemented must appropriately reflect impacts related to the industry including, but not limited to, infrastructure, emergency preparedness, public safety, environmental programs, local governments, preservation and reclamation of water, records management, worker training, the judicial system, and social services.

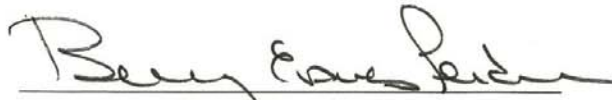
Section 3. Report

Approximately six months after the effective date of this order, and approximately every six months thereafter, the Department of Commerce Division of Energy shall report the progress, findings, and any recommendations of the Regulatory Workgroup to the Governor.

Section 4. Effect and Duration

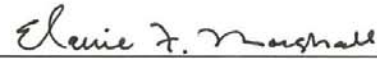
This Executive Order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-first day of May in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.



 Beverly Eaves Perdue
 Governor

ATTEST:



 Elaine F. Marshall *by and through*
Chief Deputy Secretary of State *Rodney S. Maddox*



NORTH CAROLINA DEPARTMENT OF LABOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
RALEIGH, NORTH CAROLINA

Order 2011-V-01
DSM Dyneema, LLC
Permanent Variance

Order:

In accordance with N.C. Gen. Stat. § 95-132 and 13 NCAC 07A .0700, DSM Dyneema LLC (DSM Dyneema) is hereby granted permission to use an Alternative Supplied Air Respirator System (Alt. SAR System) for entry into and escape from certain immediately dangerous to life and health (IDLH) atmospheres as requested in their August 23, 2011 application for a permanent variance from OSH General Industry Standard, 29 CFR 1910.134(d)(1)(ii), Selection of Respirators, and 29 CFR 1910.134(d)(2)(i)(B), Respirators for IDLH atmospheres. This permission is limited to the DSM Dyneema site located at 5900 Martin Luther King Jr. Hwy, Greenville, NC, and only applies to the situations and areas of the facility that are specifically described and identified in the variance application.

Confidentiality of Trade Secrets

In accordance with N.C. Gen. Stat. § 95-152, all information reported to the North Carolina Department of Labor Occupational Safety and Health Division (NCDOL OSH) in DSM Dyneema's Application For Permanent Variance relating to (1) production and process information relating to the manufacture of Dyneema® fiber; and (2) information relating to the design and operation of the Alternative Supplied Air System (Alt. SAR System) that contains or might reveal a trade secret shall be considered and treated as confidential.

Discussion:

DSM Dyneema is located in Greenville, NC and is owned by DSM which is headquartered in the Netherlands. DSM Dyneema is the global manufacturer and supplier of Dyneema® fiber.

On August 23, 2011, DSM Dyneema filed with the Commissioner of the North Carolina Department of Labor an application in accordance with N.C. Gen. Stat. § 95-132 for a permanent variance. The application was for a permanent variance from the requirements of Occupational Safety and Health General Industry Standard, 29 CFR 1910.134(d)(1)(ii), Selection of Respirators, and 29 CFR 1910.134(d)(2)(i)(B), Respirators for IDLH atmospheres, which were adopted by reference by the North Carolina Department of Labor at 13 NCAC 07F .0101.

A Notice of Application for a Permanent Variance was published in the January 3, 2012 edition of the *N.C. Register* (Volume 26, Issue 13) allowing all interested parties to comment on the proposed variance application. The Notice of Application for a Permanent Variance was also posted at DSM Dyneema's place of business for a prescribed period of time in order to give affected employees notice of the variance application and an opportunity to participate in any applicable hearing. The North Carolina Department of Labor did not receive any comments or hearing requests regarding DSM Dyneema's variance application.

Approval of the variance application will allow DSM Dyneema to use an Alternative Supplied Air Respirator System (Alt. SAR System) for entry into and escape from certain immediately dangerous to life and health (IDLH) atmospheres. Without approval of the variance application, usage of the Alt. SAR System would be prohibited by Occupational Safety and Health General Industry Standard, 29 CFR 1910.134(d)(1)(ii), Selection of Respirators, and 29 CFR 1910.134(d)(2)(i)(B), Respirators for IDLH atmospheres, which were adopted by reference by the North Carolina Department of Labor at 13 NCAC 07F .0101.

DSM Dyneema has demonstrated by a preponderance of evidence that the conditions, practices, means, methods, operations, and processes proposed to be used by DSM Dyneema will provide employment and employment conditions to DSM Dyneema employees which are as safe and healthful as those that would prevail if DSM Dyneema was required to comply with the current standards set forth in 29 CFR 1910.134(d)(1)(ii) and 29 CFR 1910.134(d)(2)(i)(B).

Therefore, based upon the information provided, the Commissioner of the North Carolina Department of Labor believes that with strict adherence to the information/procedures contained in the Application for Permanent Variance dated August 23, 2011, and the additional provisions contained in this Order; the Alt. SAR System as described will reliably provide a higher degree of protection for DSM Dyneema LLC employees.

Conditions:

This Order is contingent upon DSM Dyneema's adoption, utilization and compliance with the practices, means, methods, operations, and processes set forth in the Application for Permanent Variance, dated August 23, 2011, and the following additional provisions:

- (1) DSM Dyneema shall build, install and test 1 initial Alt. SAR System at the site approved above in accordance with the description, mode of operation, preventive maintenance program and employee training information set forth in the Application for Permanent Variance, along with any additional procedures necessary for the safe building, installation and testing of the initial Alt. SAR system.

- (2) DSM Dyneema shall notify NCDOL OSH immediately upon completion of (1) above;
- (3) After receiving notice pursuant to (2) above, NCDOL OSH representative(s) shall visit the plant and conduct an inspection of the initial Alt. SAR System. The initial system shall not be used in any IDLH atmosphere by employees until the referenced inspection is conducted and approval is received in writing from NCDOL OSH.
- (4) After receiving written approval from NCDOL OSH, DSM Dyneema shall notify NCDOL OSH as to the specific date on which they plan to begin official use of the initial system. The initial Alt. SAR System shall be used for at least 6 months during which time detailed written records must be maintained and available for review by NCDOL OSH. The written records shall include, but not be limited to, the following information:
 - (a) date(s) and time(s) when the system is used;
 - (b) name(s) of the employee(s) who use the system;
 - (c) date(s) and time(s) when daily/periodic system tests are conducted;
 - (d) date(s) and time(s) of, along with reason(s) for, any system alarm(s) that occur;
 - (e) date(s), time(s) and reason(s) for any maintenance performed;
 - (f) date(s), time(s) and detail(s) of employee complaints or concerns; and
 - (g) any other information pertinent to the system operation.
- (5) The NCDOL OSH Division may visit the approved site at any time during this 6 month period, with or without notice, and will visit as needed or requested to review the system records and to interview employees with regards to use of the initial system.
- (6) At the expiration of the initial 6 month period, and upon satisfactory review of the initial system by NCDOL OSH, NCDOL OSH shall approve the installation and use of 5 additional Alternative Supplied Air Respirator Systems (Alt. SAR Systems) at the site as described in DSM Dyneema's August 23, 2011 Application For Permanent Variance.

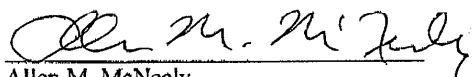
Action:

To that end, DSM Dyneema's request for a permanent variance from Occupational Safety and Health General Industry Standard, 29 CFR 1910.134(d)(1)(ii), Selection of Respirators, and 29 CFR 1910.134(d)(2)(i)(B), Respirators for IDLH atmospheres is hereby granted, provided DSM Dyneema strictly complies with the information provided to NCDOL OSH on the Alt. SAR System in the August 23, 2011 Application for Permanent Variance and the additional conditions outlined in this Order.

This Order shall remain in effect until or unless modified or revoked upon application by an affected employer, affected employee(s), or by the Commissioner on her own motion, in the manner prescribed for its issuance under N.C. Gen. Stat. § 95-132 and 13 NCAC 07A .0709(a)(2) at any time after six months from its issuance.

Approved and effective,

This the 16th day of May, 2012.



Allen M. McNeely
Director, Occupational Safety & Health Division
North Carolina Department of Labor

Public Notice
North Carolina Environmental Management Commission/NPDES Unit
1617 Mail Service Center
Raleigh, NC 27699-1617
Notice of Intent to Issue a General NPDES Wastewater Permit

The North Carolina Environmental Management Commission proposes to reissue an expiring general NPDES wastewater discharge permit for point source discharges for the following type of discharges:

NPDES General Permit No. NCG550000 for wastewater discharges associated with discharges of domestic wastewater from single family residences and other 100% domestic discharges with similar characteristics. The Division is noticing intent to reissue a revised version of the permit with changes in conditions. This draft will be available for public comment and written comments regarding the proposed permit will be accepted until 30 days after the publish date of this notice. Further, the Division is noticing the existing permit with the expectation that it might be reissued with an expiration date of July 31, 2013, or until the revised permit draft is finalized, whichever comes first. Please refer to the information below for directions on obtaining the full text of the draft permit or the existing permit.

The Director of the NC Division of Water Quality (DWQ) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to DWQ at the above address. Interested persons may visit the DWQ at 512 N. Salisbury Street, Raleigh, NC to review information on file. Additional information on NPDES permit(s) and this notice may be found on our website: <http://portal.ncdenr.org/web/wq/swp/ps/npdes/calendar>, or by calling (919) 807-6304.

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

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to amend the rule cited as 10A NCAC 13P .0511.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: January 1, 2013

Public Hearing:

Date: August 7, 2012

Time: 11:00 a.m.

Location: Room 131 Wright Building, NC Division of Health Service Regulation, Dorothea Dix Campus, Umstead Drive, Raleigh, NC 27603

Reason for Proposed Action: *This rule is being amended to update the process to conform to industry standards for obtaining fingerprints required for issuance and maintenance of an EMS credential to include electronic fingerprinting.*

Procedure by which a person can object to the agency on a proposed rule: *An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.*

Comments may be submitted to: *Megan Lamphere, Division of Health Service Regulation, 2708 Mail Service Center, Raleigh, NC 27699-2708, fax (919)733-9379, email dhsr.rulescoordinator@dhhs.nc.gov.*

Comment period ends: August 14, 2012

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13P – EMERGENCY MEDICAL SERVICES AND TRAUMA RULES

SECTION .0500 – EMS PERSONNEL

10A NCAC 13P .0511 CRIMINAL HISTORIES

(a) The criminal background histories for all individuals who apply for EMS credentials, seek to renew EMS credentials, or hold EMS credentials shall be reviewed pursuant to G.S. 131E-159(g).

(b) In addition to Paragraph (a) of this Rule, the OEMS shall carry out the following for all EMS Personnel whose primary residence is outside North Carolina, individuals who have resided in North Carolina for 60 months or less, and individuals under investigation that may be subject to administrative enforcement action by the Department under the provisions of Rule .0701(e) of this Subchapter:

- (1) obtain a signed consent form for a criminal history check;
- (2) obtain fingerprints on an SBI identification card; ~~and card or live scan electronic fingerprinting system at an agency approved by the North Carolina Department of Justice, State Bureau of Investigation;~~
- (3) obtain the criminal history from the Department of ~~Justice~~; ~~Justice~~; and
- (4) ~~collect any processing fees from the individual identified in Paragraph (a) or (b) as required by the Department of Justice pursuant to G.S. 114-19.21 prior to conducting the criminal history background check.~~

(c) An individual is not eligible for initial or renewal of EMS credentials if the applicant refuses to consent to any criminal history check as defined in Rule .0701(e)(13) of this Subchapter

and as required by G.S. 131E-159(g). Since payment is required before the fingerprints may be processed by the State Bureau of Investigation, failure of the applicant or credentialed EMS personnel to pay the required fee in advance shall be considered a refusal to consent as defined in Rule .0701(e)(13) of this Subchapter for the purposes of issuance or retention of an EMS credential.

Authority G.S. 143-508(d)(3),(10); 131E-159(g); 114-19.21.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Health and Human Services intends to adopt the rules cited as 10A NCAC 14D .0101-.0102, .0201-.0219, .0301-.0303, .0401-.0402, .0501-.0502, .0601-.0603, .0701-.0707, and .0801.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: October 1, 2012

Public Hearing:

Date: August 7, 2012

Time: 10:00 a.m.

Location: NC Division of Health Service Regulation, Dorothea Dix Campus, Wright Building, Room 131, 1201 Umstead Drive, Raleigh, NC 27603

Reason for Proposed 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 permanent rules are being proposed for adoption 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."

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

Comments may be submitted to: Megan Lamphere, DHSR Rule-making Coordinator, 2708 Mail Service Center, Raleigh, NC 27699; fax (919) 733-9379; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: August 14, 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 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. These rules expire June 1, 2015.

Authority S.L. 2011-104.

10A NCAC 14D .0102 DEFINITIONS

The following definitions apply throughout this Subchapter:

- "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.
"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 per individual resident in a 365-day period and is provided by an adult day care program.
"Personal care" means tasks such as assistance with personal hygiene and grooming, feeding, ambulation and other health care needs.
"Resident" means the recipient of the overnight respite services.
"Supervision" means visual monitoring of residents to determine the need for assistance.

Authority S.L. 2011-104.

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:
 - (A) the layout of all rooms;
 - (B) room dimensions (including closets);
 - (C) door widths (exterior, bedroom, bathroom and kitchen doors);
 - (D) window sizes and window sill heights;
 - (E) type of construction; and
 - (F) 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 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.

Authority S.L. 2011-104.

10A NCAC 14D .0202 CAPACITY

(a) 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.

Authority S.L. 2011-104.

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 as specified in 10A NCAC 06R.

(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) 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 rules adopted by the Commission for Public Health.

(n) The building shall have current sanitation and fire and building safety inspection reports which are 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. The 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).

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

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 40 square feet per person. This area may be shared with the adult day care program activities and craft areas 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.

Authority S.L. 2011-104.

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 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 and craft areas 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.

Authority S.L. 2011-104.

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.

(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.

Authority S.L. 2011-104.

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, including vestibule, closet or wardrobe space, in rooms occupied by one person and a minimum area of 160 square feet, 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 22 cubic feet of clothing storage of which at least one-half shall be for hanging clothes with an adjustable height hanging bar.

Authority S.L. 2011-104.

10A NCAC 14D .0210 BATHROOM

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

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

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 and exit is one that is most often used by residents for vehicular access. If the program serves any resident that must have physical assistance with evacuation, the building 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 office area or in a location accessible only to staff authorized by the administrator to operate the control panel.

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

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 a 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 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) a 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 the 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 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.

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

SECTION .0300 - PROGRAM MANAGEMENT

10A NCAC 14D .0301 PLANNING PROGRAM ACTIVITIES

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) The program policies shall contain:

- (1) a discharge policy outlining:
 - (A) the criteria for discharge;
 - (B) notification procedures for discharge;
 - (C) the timeframe and procedures for notifying the applicant, family member or other caregiver of discharge;
 - (D) referral or follow-up procedures; and

- (2) a medication policy as specified in Section .0600 of this Subchapter;
- (3) a description of resident's rights;
- (4) grievance policies and procedures for families;
- (5) the advance directives policy;
- (6) non-discrimination policies;
- (7) the procedure to maintain confidentiality;
- (8) the policy on reporting suspected abuse or neglect;
- (9) the policy on reporting of resident accidents or incidents to family members or medical providers;
- (10) the policy on infection control and universal precautions;
- (11) a description of the geographical area served by the program; and
- (12) inclement weather policies.

Authority S.L. 2011-104.

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 six 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.

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

SECTION .0400 – ENROLLMENT TO OVERNIGHT RESPITE 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, 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 resident are not needed; or
- (5) who pose a direct threat to the health or safety of others.

Authority S.L. 2011-104.

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

(a) At enrollment of a new resident, the program shall perform an 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.

(g) 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.

(h) 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.

Authority S.L. 2011-104.

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 a licensed professional if required by law.

Authority S.L. 2011-104.

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 protect and preserve 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.

Authority S.L. 2011-104.

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) the resident's name;
- (2) the name, dosage, quantity and route of the medication;
- (3) instructions for giving medication;
- (4) the date and time medication is administered; and
- (5) the 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.

Authority S.L. 2011-104.

10A NCAC 14D .0602 MEDICATION ADMINISTRATION COMPETENCY EVALUATION

(a) The competency evaluation for medication administration shall include the staff person having passed the standardized written exam established by the Department and a clinical skills validation by a registered nurse or registered pharmacist consist with the North Carolina occupational licensing laws.

(b) Validation of each staff's competency to administer medications must be completed prior to administering medications.

(c) In lieu of meeting Paragraphs (a) and (b) of this Rule, the staff may demonstrate completion of the medication aide requirements as established by G.S. 131E-114.2 and applicable rules.

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

Authority S.L. 2011-104.

**10A NCAC 14D .0603 MEDICATION
ADMINISTRATION POLICIES AND PROCEDURES**

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.

Authority S.L. 2011-104.

SECTION .0700 – NUTRITION AND FOOD SERVICE

10A NCAC 14D .0701 FOOD PROCUREMENT AND SAFETY

- (a) The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination.
- (b) All food and beverage being procured, stored, prepared or served by the facility shall be protected from contamination.
- (c) All meat processing shall occur at a United States Department of Agriculture (USDA) approved processing plant.
- (d) 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.

Authority S.L. 2011-104.

10A NCAC 14D .0702 FOOD PREPARATION AND SERVICE

- (a) Sufficient staff, space and equipment shall be provided for safe and sanitary food storage, preparation and service.
- (b) 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.
- (c) If residents require feeding assistance, food shall be maintained at serving temperature until assistance is provided.

Authority S.L. 2011-104.

10A NCAC 14D .0703 MENUS

- (a) 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>.
- (b) 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.
- (c) 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.

(d) Menus shall be planned to take into account the food preferences and customs of the residents.

(e) All menus including all therapeutic diets shall be planned or reviewed by a licensed 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.

(f) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets for guidance of food service staff.

Authority S.L. 2011-104.

10A NCAC 14D .0704 FOOD REQUIREMENTS

(a) 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.

(b) 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.

Authority S.L. 2011-104.

10A NCAC 14D .0705 THERAPEUTIC DIETS

(a) All therapeutic diet orders including thickened liquids shall be in writing from the resident's physician.

(b) 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 licensed dietitian/nutritionist.

(c) The facility shall maintain an accurate and current listing of overnight respite residents with physician-ordered therapeutic diets for guidance of food service staff.

Authority S.L. 2011-104.

10A NCAC 14D .0706 FEEDING ASSISTANCE

(a) Sufficient staff shall be available for individual feeding assistance as needed.

(b) 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.

Authority S.L. 2011-104.

10A NCAC 14D .0707 ACCOMMODATION OF RESIDENT NEEDS AND PREFERENCES

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.

Authority S.L. 2011-104.

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.

Authority S.L. 2011-104.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10B .0303 and .0304.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncwildlife.org (Click link "Public Notices & Pending Rules")

Proposed Effective Date: November 1, 2012

Public Hearing:

Date: July 18, 2012

Time: 7:00 p.m.

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

Reason for Proposed Action: The purpose of these rules is to permanently amend the rules which were previously temporarily amended on December 29, 2011 pursuant to S.L. 2011-369. This provides for the continued practice of trapping of feral swine with no bag limits under WRC regulation.

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

Comments may be submitted to: Kate Pipkin, 1722 Mail Service Center, Raleigh, NC 27699-1722; phone (919) 707-0065; email kathryn.pipkin@ncwildlife.org

Comment period ends: August 14, 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 10 - WILDLIFE RESOURCES COMMISSION

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.

Authority G.S. 113-134; 113-291.1; 113-291.2.

15A NCAC 10B .0304 BAG LIMITS

There are 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.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 39 - ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the On-Site Wastewater Contractors and Inspectors Certification Board intends to adopt the rule cited as 21 NCAC 39 .0202 and amend the rules cited as 21 NCAC 39 .0101, .0601, .1005.

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

Proposed Effective Date: January 1, 2013

Public Hearing:

Date: August 1, 2012

Time: 9:00 a.m.

Location: Emerald's View Event Center, 1426 Peter Mabe Road, Danbury, NC 27016

Reason for Proposed Action:

21 NCAC 39 .0101 – This rule change is proposed to clarify the meaning of "ancillary" as it is used in the Board's practice act.

21 NCAC 39 .0202 – This rule is proposed for adoption to facilitate transition of a certified contractor to another employee.

21 NCAC 39 .0601 – The proposed changes to this rule are intended to reduce continuing education requirements to reflect requirements that other industry related certifications impose, which have a long term history and are sufficient to protect the environment and the public welfare; to remove carry over of continuing education if the continuing education requirements are reduced as proposed; to require each certificate holder to be

present for a minimum amount of time at each class, to be verified by the provider.

21 NCAC 39 .1005(c)(1) – This change is intended to correct a word error that was overlooked in the current version of the rule.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit an objection to these rules by contacting Connie S. Stephens, PO Box 132, Lawsonville, NC 27022.

Comments may be submitted to: Connie S. Stephens, PO Box 132, Lawson, NC 27022, Phone (336)202-3126, fax (336)651-8102, csstephens@ncowcicb.info

Comment period ends: August 14, 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 .0100 - DUTIES AND DEFINITIONS

21 NCAC 39 .0101 DEFINITIONS

- (a) "Inspection" means an inspection as defined in G.S. 90A-71(5a).
(b) "Repair" means repair construction activity or alteration to an existing onsite wastewater system that is necessary to comply with a Construction Authorization for a repair permit issued by the Local Health Department.
(c) "Wastewater Treatment Facility" means a wastewater treatment facility as defined in G.S. 90A-71(8).
(d) "College course" means a semester unit or quarter based unit of instruction given at a college or university, which is relevant to on-site wastewater contractor or inspector activities and pre-approved by the board.

(e) "Course/activity" means any course of activity with a clear purpose and objective that will maintain, improve or expand skills and knowledge relevant to the practice of on-site wastewater contractor or inspector activities and pre-approved by the board.

(f) "Personally supervise" means the direction and control of all on-site wastewater contractor or inspector activities during the time those activities are being conducted.

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

(h) "Employee" means a person who receives an Internal Revenue Service W2 form for record of compensation.

(i) "Ancillary" means an on-site wastewater system that is included or auxiliary to a primary construction project.

Authority G.S. 90A-71; 90A-72; 90A-74.

SECTION .0200 - CERTIFICATION OF ON-SITE WASTEWATER CONTRACTOR OR INSPECTORS

21 NCAC 39 .0202 BUSINESS SUCCESSION

(a) A non-certified person who wishes to replace the current and living Certified Contractor or Inspector within a certified firm may do so by satisfying the following conditions:

- (1) A person who is in continued employment, and able of providing supporting documentation such as Wage and Tax information, of a firm certified under NCOWCICB for a minimum of three years;
- (2) Provides three affidavits from local health department, engineers, or customers that show integral involvement with the installation and operation of the business;
- (3) Provides the NCOWCICB with Application for Certification, including appropriate initial fees;
- (4) Provides NCOWCICB with proof of attendance at approved classes for a minimum of two years;
- (5) Passes the applicable test for the level requested; and
- (6) Provides a notarized document from the current Certified Person requesting the transfer and instructing the NCOWCICB to retire their own Certification.

(b) The only exclusion is the requirement of the approved Basic Onsite Wastewater Education program.

Authority G.S. 90A-74.

SECTION .0600 - CONTINUING EDUCATION REQUIREMENTS

21 NCAC 39 .0601 REQUIREMENTS

(a) Every certified on-site wastewater contractor or inspector is required to obtain Professional Development Hours (PDH) units during the renewal period as described in the following Table:

Level	Annual PDH Units Required
I	3
II	6 (3)
III	9 (6)
IV	12 (6)
Inspector	12 (6)
Inspector/Grade IV Combo	12 (6)

~~(b) If a registrant exceeds the annual requirement in any renewal period, a maximum of six PDH units may be carried forward into the subsequent renewal period.~~

~~(c)(b)~~ Selection of courses and activities which meet the requirements of 21 NCAC 39 .0602 is the responsibility of the certified on-site wastewater contractor or inspector. Evaluation of courses pursuant to 21 NCAC 39 .0603 could result in non-acceptance of courses for the purpose of meeting the continuing education requirements.

(c) Professional Development Hours (PDH) shall be accepted for approved courses pursuant to 21 NCAC 39 .0603. Hours for all other courses must be submitted to the board for approval. If not approved, no PDH shall be granted for the course.

(d) The class provider or authorized representative must certify that each class attendee was present for at least 85 percent of the class. Any attendee present for less time shall not receive credit for the class.

Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79.

SECTION .1000 - NC ON-SITE WASTEWATER INSPECTOR STANDARDS OF PRACTICE

21 NCAC 39 .1005 ON-SITE WASTEWATER SYSTEM COMPONENTS

(a) The inspector shall inspect on-site wastewater system components including:

- (1) Any part of the system located more than five feet from the primary structure that is part of the operations permit;
- (2) Septic tank;
- (3) Pump tank;
- (4) Distribution device;
- (5) Dispersal field;
- (6) Treatment unit;
- (7) Control panel;
- (8) Other component(s) required as part of on-site wastewater system permit, including drainage; and
- (9) Vegetation and grading with respect only to their effect on the condition of the system or system components.

(b) The inspector shall describe:

- (1) Any part of the system located more than five feet from the primary structure that is part of the operations permit;
- (2) Septic tank;
- (3) Pump tank;
- (4) Distribution device;
- (5) Dispersal field;
- (6) Treatment unit;
- (7) Control panel;
- (8) Other component(s) required as part of on-site wastewater system permit, including drainage; and
- (9) Vegetation and grading with respect only to their effect on the condition of the system or system components.

(c) The inspector shall:

- (1) Uncover tank lids and distribution devices so as to gain access, unless blocked as described in Rule .1004(b)(5). The distribution box may remain ~~uncovered~~ covered if the inspector has an alternate method of observing its condition;
- (2) Probe system components where deterioration is suspected;
- (3) Report the methods used to inspect the on-site wastewater system;
- (4) Open readily accessible and readily openable components except when access is obstructed or when access could damage the system or property; and
- (5) Report signs of abnormal or harmful water entry into or out of the system or components.

(d) The inspector is not required to:

- (1) Conduct dosing volume calculations;
- (2) Evaluate soil conditions beyond saturation or ponding;
- (3) Evaluate for the presence or condition of buried fuel storage tanks;
- (4) Evaluate the system for proper sizing, design, or use of proper materials; or
- (5) Perform a hydraulic load test on the system.

Authority G.S. 90A-72; 90A-74.

TITLE 24 – INDEPENDENT AGENCIES

CHAPTER 01 - N.C. HOUSING FINANCE AGENCY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Housing Finance Agency intends to repeal the rules cited as 24 NCAC 01F .0101-.0102, .0201-.0203, .0301-.0302, .0401-.0403, .0501-.0505; 01H .0101-.0105, .0201-.0206, .0301-.0305, .0401-.0404, .0501-.0503; 01J .0101-.0105, .0107, .0201-.0202; 01K .0101-.0103, .0201-.0204, .0301-.0304, .0401-.0405, .0501-.0504, .0601-.0605; 01L .0101-.0102, .0201-.0202; 01O .0101-.0102, .0201-.0203; 01P .0101-.0103, .0201-.0203.

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

Proposed Effective Date: November 1, 2012

Public Hearing:

Date: July 12, 2012

Time: 10:00 a.m. – 10:30 a.m.

Location: 3508 Bush Street, Raleigh, NC 27609

Reason for Proposed Action: Programs not active.

Procedure by which a person can object to the agency on a proposed rule: Attend the scheduled public hearing and submit written objections, or submit written objections via email to Patricia Amend, Director of Policy, Planning & Technology, plamend@nchfa.com

Comments may be submitted to: Patricia Amend, NC Housing Finance Agency, PO Box 28066, Raleigh, NC 27611, email plamend@nchfa.com

Comment period ends: August 14, 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

NOTE: Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.

SUBCHAPTER 01F - NORTH CAROLINA APPALACHIAN HOUSING PROGRAM

SECTION .0100 - GENERAL DESCRIPTION

24 NCAC 01F .0101 PURPOSE OF ASSISTANCE
24 NCAC 01F .0102 BACKGROUND OF ASSISTANCE

Authority G.S. 122A-5.

SECTION .0200 - TYPES OF ASSISTANCE

24 NCAC 01F .0201 PROJECT PLANNING LOANS
24 NCAC 01F .0202 SITE DEVELOPMENT AND OFF-SITE IMPROVEMENTS GRANTS
24 NCAC 01F .0203 TECHNICAL ASSISTANCE GRANTS

Authority G.S. 122A-5.

SECTION .0300 - ELIGIBILITY STANDARDS

24 NCAC 01F .0301 ELIGIBLE HOUSING PROGRAMS
24 NCAC 01F .0302 ELIGIBLE COUNTIES

Authority G.S. 122A-5.

SECTION .0400 - APPROVAL PROCESS FOR ASSISTANCE

24 NCAC 01F .0401 STATE APPALACHIAN DEVELOPMENT PLAN
24 NCAC 01F .0402 IDENTIFICATION IN ANNUAL INVESTMENT PROGRAM
24 NCAC 01F .0403 APPROVAL OF INDIVIDUAL PROJECTS

Authority G.S. 122A-5.

SECTION .0500 - ADMINISTRATIVE REQUIREMENTS

24 NCAC 01F .0501 DUTIES AND FUNCTIONS OF STATE IMPLEMENTING AGENCY
24 NCAC 01F .0502 REQUIREMENTS FOR ACCOUNTING: AUDITS: AND REPORTS
24 NCAC 01F .0503 REPORTS ON DISPOSITION OF FUNDS
24 NCAC 01F .0504 WAIVER OF LOAN REPAYMENT
24 NCAC 01F .0505 AGREEMENT BETWEEN AGENCY AND SPONSOR

Authority G.S. 122A-5.

SUBCHAPTER 01H - MULTIFAMILY SUBSIDIZED RENTAL PROGRAM

SECTION .0100 - GENERAL INFORMATION

24 NCAC 01H .0101 OBJECTIVES

Authority G.S. 122A-2; 122A-5.

24 NCAC 01H .0102 PERSONS AND FAMILIES OF LOWER INCOME

Authority G.S. 122A-5; 122A-5.1.

24 NCAC 01H .0103 PERSONS AND FAMILIES OF MODERATE INCOME

Authority G.S. 122A-3; 122A-5; 122A-5.4.

24 NCAC 01H .0104 METHOD

Authority G.S. 122A-2; 122A-3; 122A-5; 122A-5.4.

24 NCAC 01H .0105 NOTICE OF FUNDS AVAILABILITY

Authority G.S. 122A-5; 122A-5.1.

SECTION .0200 - REQUIREMENTS

24 NCAC 01H .0201 ELIGIBLE PROJECTS
24 NCAC 01H .0202 APPLICATION PROCEDURE
24 NCAC 01H .0203 FAIR MARKET RENTS

Authority G.S. 122A-5; 122A-5.1.

24 NCAC 01H .0204 LOCAL GOVERNMENT REQUEST
24 NCAC 01H .0205 PUBLIC HOUSING AGENCY

Authority G.S. 122A; 122A-5.1.

24 NCAC 01H .0206 MORTGAGE INSURANCE COMMITMENT

Authority G.S. 122A; 122A-5.1.

SECTION .0300 - SELECTION PROCESS

24 NCAC 01H .0301 FUNDS AVAILABILITY

Authority G.S. 122A-5.

24 NCAC 01H .0302 PROJECT FEASIBILITY
24 NCAC 01H .0303 AGENCY APPROVAL

Authority G.S. 122A-5.

24 NCAC 01H .0304 FEDERAL APPROVAL
24 NCAC 01H .0305 PROJECT EVALUATION

Authority G.S. 122A-5; 122A-5.1.

SECTION .0400 - PROJECT FINANCING

24 NCAC 01H .0401 INTERIM FINANCING
24 NCAC 01H .0403 MORTGAGE PURCHASE
PROCEDURE
24 NCAC 01H .0403 MORTGAGE PURCHASE
PROCEDURE
24 NCAC 01H .0404 MORTGAGE LOAN SERVICING

Authority G.S. 122A-5; 122A-5.1; 122A-5.5.

SUBCHAPTER 01K - MULTIFAMILY UNSUBSIDIZED RENTAL PROGRAM

SECTION .0100 - GENERAL INFORMATION

Authority G.S. 122A-5.1.

SECTION .0500 - MULTIFAMILY RENTAL ASSISTANCE FUND AND PROGRAM

24 NCAC 01H .0501 CREATION OF FUND
24 NCAC 01H .0502 ELIGIBILITY
24 NCAC 01H .0503 FUND OPERATION AND
ADMINISTRATION

24 NCAC 01K .0101 OBJECTIVES

Authority G.S. 122A-2; 122A-5.

24 NCAC 01K .0102 DEFINITIONS

Authority G.S. 122A-5(12).

24 NCAC 01K .0103 METHOD

Authority G.S. 122A-5(2); 122A-5(3); 122A-5.1; S.L. 1984, c.971, s.133.

Authority G.S. 122A; 122A-5.1.

SUBCHAPTER 01J - HOME IMPROVEMENT LOAN PURCHASE PROGRAM

SECTION .0200 - REQUIREMENTS

SECTION .0100 - GENERAL INFORMATION

24 NCAC 01J .0101 OBJECTIVES

Authority G.S. 122A-2; 122A-3; 122A-5.1; 122A-5.2; 122A-5.5; 122A-8.

24 NCAC 01J .0102 INCOME ELIGIBLE PERSONS AND FAMILIE

Authority G.S. 122A-5.5.

24 NCAC 01J .0103 ELIGIBLE BORROWER

Authority G.S. 122A-2; 122A-5; 122A-5.5.

24 NCAC 01J .0104 ELIGIBLE PROPERTY

Authority G.S. 122A-5.5.

24 NCAC 01J .0105 ELIGIBLE LOAN

Authority G.S. 122A-5; 122A-5.5.

24 NCAC 01J .0107 COMPLIANCE WITH TAX ACT

Authority 122A-5.5.

SECTION .0200 - CONTRACTS AND FORMS

24 NCAC 01J .0201 ELIGIBLE LENDER CONTRACT FORMS

Authority G.S. 122A-5; 122A-5.5.

24 NCAC 01J .0202 SERVICING AGREEMENT

SECTION .0200 - REQUIREMENTS

24 NCAC 01K .0201 ELIGIBLE PROJECTS

Authority G.S. 122A-5; 122A-5.1.

24 NCAC 01K .0202 LOCAL GOVERNMENT REQUEST

24 NCAC 01K .0203 RESIDENT CERTIFICATION

Authority G.S. 122A-5.

24 NCAC 01K .0204 RENT REQUIREMENTS

Authority G.S. 122A-5; 122A-5.1.

SECTION .0300 - PROJECT FINANCING

24 NCAC 01K .0301 INTERIM FINANCING

Authority G.S. 122A-5.1.

24 NCAC 01K .0302 FINANCING

Authority G.S. 122A-5; 122A-5.1.

24 NCAC 01K .0303 MORTGAGE PURCHASE PROCEDURE

Authority G.S. 122A-5; 122A-5.1.

24 NCAC 01K .0304 MORTGAGE LOAN SERVICING

Authority G.S. 122A-5; 122A-5.1.

SECTION .0400 - SELECTION PROCESS

PROPOSED RULES

24 NCAC 01K .0401 NOTIFICATION OF PROPOSED FINANCING

Authority G.S. 122A-5; 122A-5.1.

24 NCAC 01K .0402 APPLICATION PROCEDURE
Authority G.S. 122A-5.1.

24 NCAC 01K .0403 PROJECT FEASIBILITY

Authority G.S. 122A-5.

24 NCAC 01K .0404 PROJECT EVALUATION

Authority G.S. 122A-5.1.

24 NCAC 01K .0405 AGENCY APPROVAL

Authority G.S. 122A-4.

SECTION .0500 - DISTRESSED PROJECTS

24 NCAC 01K .0501 PURPOSE
24 NCAC 01K .0502 DISTRESSED RENTAL HOUSING PROJECT DEFINED
24 NCAC 01K .0503 DETERMINATION BY BOARD OF DIRECTORS
24 NCAC 01K .0504 PROCEDURE

Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

SECTION .0600 - CATALYST PROGRAM FOR NOT-FOR-PROFIT ORGANIZATIONS

24 NCAC 01K .0601 GENERAL INFORMATION
24 NCAC 01K .0602 OBJECTIVES
24 NCAC 01K .0603 TYPES OF ASSISTANCE
24 NCAC 01K .0604 REQUIREMENTS
24 NCAC 01K .0605 PROCEDURES

Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

SUBCHAPTER 01L - RENTAL REHABILITATION PROGRAM

SECTION .0100 - GENERAL INFORMATION

24 NCAC 01L .0101 OBJECTIVES
24 NCAC 01L .0102 ADMINISTRATION BY THE AGENCY

Authority G.S. 122A-5(1).

SECTION .0200 - PROGRAM IMPLEMENTATION

24 NCAC 01L .0201 ADOPTION OF HUD PROGRAM BY REFERENCE

Authority G.S. 122A-5(1); 150B-14(c);

24 NCAC 01L .0202 MEMORANDUM OF UNDERSTANDING

Authority G.S. 122A-5(1).

SUBCHAPTER 01O - HOMELESSNESS PREVENTION DEMONSTRATION PROGRAM

SECTION .0100 - GENERAL INFORMATION

24 NCAC 01O .0101 PURPOSE
24 NCAC 01O .0102 ELIGIBILITY

Authority G.S. 122A-5; 122A-5.1; S.L. 1991, c. 582, s. 1.

SECTION .0200 - ADMINISTRATION

24 NCAC 01O .0201 APPLICATION PROCEDURES
24 NCAC 01O .0202 SELECTION PROCEDURES

Authority G.S. 122A-5; 122A-5.1; S.L. 1991, c. 582, s. 1.

SUBCHAPTER 01P - FIRE PROTECTION FUND

SECTION .0100 - GENERAL INFORMATION

24 NCAC 01P .0101 PURPOSE
24 NCAC 01P .0102 ELIGIBILITY
24 NCAC 01P .0103 TYPES OF ASSISTANCE

Authority G.S. 122A-5; 122A-5.1; 122A-5.13.

SECTION .0200 - ADMINISTRATION

24 NCAC 01P .0201 APPLICATION PROCEDURES
24 NCAC 01P .0202 SELECTION PROCEDURE
24 NCAC 01P .0203 DISBURSEMENT OF FUNDS

Authority G.S. 122A-5; 122A-5.1; 122A-5.13.

TITLE 30 – STATE ETHICS COMMISSION

Notice is hereby given in accordance with G.S. 120C-101 that the State Ethics Commission intends to adopt the rules cited as 30 NCAC 05B .0105; 08 .0101; 10A .0101; 10C .0104-.0105, .0302; and 10D .0101-.0108.

Link to agency website: <http://www.ethicscommission.nc.gov>

Proposed Effective Date: *January 1, 2013*

Public Hearing:

Date: *August 10, 2012*

Time: *9:00 a.m.*

Location: *Capehart Crocker House, Commission Meeting Room, 424 N. Blount Street, Raleigh, NC 27601*

Reason for Proposed Action:

30 NCAC 05B .0105 – to define types of income that must be reported on a filer's SEI

30 NCAC 08 .0101 – to define "advertising" for purposes of use of public title

30 NCAC 10A .0101 – to define "significant part" of an employee's job for purposes of registering as a lobbyist

30 NCAC 10C .0104-.0105 – to establish what information must be provided for a "description of" and "connected with" a reportable expenditure

30 NCAC 10C .0302 – to establish even costs that must be reported for lobbying events

30 NCAC 10D .0101-.0108 – to establish lobbying law complaint procedures

Comments may be submitted to: Mary Shuping, 1324 Mail Service Center, Raleigh, NC 27699-1324; phone (919) 715-2071; fax (919) 715-1644; email mary.shuping@doa.nc.gov

Comment period ends: September 30, 2012

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 05 - STATEMENTS OF ECONOMIC INTEREST

SUBCHAPTER 05B - CONTENTS

30 NCAC 05B .0105 DEFINITION OF INCOME

In addition to the types of income listed in G.S. 138A-24(a)(3) that must be reported on the Statement of Economic Interest, income shall also include all income reported on the filer's federal tax return.

Authority G.S. 138A-10(a)(2); 138A-10(a)(10); G.S. 138A-24(a)(3).

CHAPTER 08 – CONFLICTS OF INTEREST AND OTHER ETHICAL STANDARDS

30 NCAC 08 .0101 USE OF TITLE

(a) For purposes of G.S. 138A-31(b), the following definitions shall apply:

- "Advertising" means a written or oral communication that is published, disseminated, circulated, or placed before the public for the purpose of attracting public attention to a product, business, or service. "Advertising" excludes a letter sent to an individual or business concerning the qualifications or characteristics of an

individual or business and that is not otherwise publicly distributed.

- "Nongovernmental advertising" means that the funding or resources used to produce and publicize the advertisement was not derived from the State, a political subdivision of the State, or the federal government.

(b) For purposes of G.S. 138A-31(b), an advertisement "advances the private interest" of a covered person or others when its primary purpose is to benefit a private, rather than a public, interest.

Authority G.S. 138A-10(a)(2); 138A-10(a)(10); 138A-31(b).

CHAPTER 10 - LOBBYING

SUBCHAPTER 10A - REGISTRATION

30 NCAC 10A .0101 SIGNIFICANT PART

(a) For purposes of G.S. 120C-100(a)(10)d., a "significant part" of an employee's job duties include lobbying if during any rolling 30 day period either:

- five percent or more of an employee's actual duties included direct lobbying; or
five percent or more of an employee's actual duties included goodwill lobbying.

(b) In making this determination:

- The amount of time an employee spends engaged in direct lobbying activities and in goodwill lobbying activities shall not be aggregated; and
The amount of an employee's time spent on those activities that are otherwise exempt under G.S. 120C-700 shall be excluded.

(c) Once the amount of time spent by an employee engaged in direct lobbying or in goodwill lobbying during the prior 30 day period equals or exceeds five percent of his or her actual hours worked, the employee must register as a lobbyist within one business day.

Authority G.S. 120C-100(a)(10)d.; 120C-101(a).

SUBCHAPTER 10C - REPORTING

SECTION .0100 - GENERAL

30 NCAC 10C .0104 DESCRIPTION OF REPORTABLE EXPENDITURE

(a) For purposes of G.S. 120C-401(b)(3), which requires that "a description" of the reportable expenditure be set forth on each report, the following information should be provided where applicable:

- An identification of the tangible item given;
An identification of the third party recipient of an item or monetary contribution made at the request of or on behalf of a designated individual or a member of his or her immediate family; or,

(3) An identification of the name or title of the event or meeting and the date(s) of the event or meeting.

(b) The information required by G.S. 120C-403(b)(3) is in addition to the requirement in G.S. 120C-401(c) that the report list particular expenditure categories.

Authority G.S. 120C-101(a); 120C-401(b)(3).

30 NCAC 10C .0105 CONNECTED WITH REPORTABLE EXPENDITURE

For purposes of G.S. 120C-401(b)(5), the name of the designated individual or member of the designated individual's immediate family "connected with" a reportable expenditure means the designated individual or the immediate family member who:

- (1) Received or benefited from the reportable expenditure, if the designated individual or immediate family member was the ultimate recipient of the expenditure; or,
- (2) Requested the reportable expenditure or on whose behalf the reportable expenditure was made, if a third party other than the designated individual or immediate family member was the ultimate recipient of the expenditure.

Authority G.S. 120C-101(a); 120C-401(b)(5).

SECTION .0300 - LOBBYIST PRINCIPAL REPORTING

30 NCAC 10C .0302 REPORTABLE EXPENDITURES MADE FOR LOBBYING

For purposes of G.S. 120C-402(b)(1) and 120C-403(b)(1), when reporting expenditures for events held for lobbying, the entire cost of the event must be reported. This includes the cost of food service supplies, printing, facility rental, name badges, and flowers and other decorations, in addition to the fair market value or face value of food and beverages provided at the event.

Authority G.S. 120C-101(a); 120C-402(b)(1); 120C-403(b)(3).

SUBCHAPTER 10D – LOBBYING COMPLAINTS

30 NCAC 10D .0101 SCOPE

The rules in this Subchapter apply only to complaints filed or investigations initiated pursuant to the Lobbying Law, Chapter 120C of the North Carolina General Statutes.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0102 COMPLAINTS

(a) Complaints.

- (1) Complaints shall be filed in accordance with these rules. Complaints may be:
 - (A) Written. A form for filing a complaint is available on the Commission's website at www.ethicscommission.nc.gov or by contacting the Commission at (919)

715-2071, or any successive phone numbers published on the Commission's website.

(B) Verbal. All verbal complaints shall be confirmed in writing by the Commission staff.

(2) Anonymous complaints shall not be accepted.

(3) Complaints shall include the following information:

- (A) Contact information for the complainant;
- (B) The name and affiliation of the person against whom the complaint is filed (respondent); and,
- (C) A clear basis for the complainant's allegations, including specific facts indicating that a violation over which the Commission has jurisdiction has occurred.

(b) Referrals. The Commission may accept referrals from other state or federal agencies. For purposes of the rules in this Subchapter, a referral from another state or federal agency shall be treated as a complaint.

(c) Upon receipt of a lobbying complaint, the Commission staff may either make the initial determination as to whether the complaint contains sufficient information to allege a violation of Chapter 120C and whether the Commission has jurisdiction over the matter or refer the matter to a panel for the initial determination.

(d) A lobbying complaint that does not clearly allege facts sufficient to constitute a violation under any provision of Chapter 120C shall be declined.

(e) A lobbying complaint that relates solely to Article 2, Article 4, or Article 8 of Chapter 120C shall be referred to the North Carolina Secretary of State.

(f) A lobbying complaint that alleges information that, if true, may violate Article 3, Article 5, or Article 7 of Chapter 120C shall be accepted.

(g) The Commission shall notify the complainant if the lobbying complaint is either declined or referred.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0103 COMMISSION INITIATED INVESTIGATIONS

Notwithstanding Rule .0102 of this Subchapter, the Commission may initiate an investigation:

- (1) On its own motion; or,
- (2) Upon the request of any Commission member.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0104 INVESTIGATION OF AN ACCEPTED COMPLAINT

(a) Upon acceptance of a lobbying complaint pursuant to Rule .0102 of this Subchapter or upon a Commission-initiated investigation pursuant to Rule .0103 of this Subchapter, the Commission staff shall investigate the allegations to determine whether the respondent committed a violation within the

Commission's jurisdiction under Article 3, Article 5, or Article 7 of Chapter 120C.

(b) The Commission shall notify the respondent of the initiation of an investigation, including the general allegations and potential statutory violations. The notice shall also request that the respondent preserve all potentially relevant information, including documents, correspondence, notes, electronic communication, and emails. The notice shall also include notification of the Commission's subpoena power.

(c) The respondent shall have 30 calendar days after receiving the notice in which to respond. The Executive Director may extend this deadline for up to 30 calendar days upon good cause shown.

(d) Upon completion of the investigation, Commission staff shall prepare an investigation report which includes the allegations, investigative findings, statutory violations, and any responses from the respondent.

(e) Commission staff shall provide the respondent with the investigation report and offer to engage in settlement discussion if appropriate.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0105 SETTLEMENT OF COMPLAINTS

(a) At any time after a complaint has been accepted or an investigation has been initiated by the Commission and before the Commission's determination pursuant to Rule .0107 of this Subchapter, the respondent and/or his or her legal counsel may meet by mutual consent with the staff of the Commission to discuss the possibility of settlement of the complaint or Commission-initiated investigation.

(b) Staff shall present any proposed settlement to a panel. The panel may accept, reject, or modify the terms of the proposed settlement. The panel shall make a final recommendation regarding the settlement to the Commission.

(c) A proposed settlement of a complaint is subject to the approval of the Commission.

(d) Upon the Commission's approval of a settlement, the complaint shall be closed subject to re-opening by the Commission if the settlement agreement is breached.

(e) The Commission shall provide written notice of the fact of settlement to the individual who filed the complaint.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0106 PANEL REVIEW AND RECOMMENDATION

(a) For complaints filed pursuant to Rule .0102 of this Subchapter, the Chair shall appoint two Commission members, who shall not be of the same political party, and the Executive Director to serve on a complaint review panel on a rotating basis. The Chair may appoint substitute panel members. Commission members who serve on a panel shall not participate in any other proceeding involving a complaint which was considered by the panel.

(b) The Commission panel shall review the investigation report and shall take one or more of the following actions:

- (1) Direct Commission staff to conduct further investigation or obtain additional information.
- (2) Recommend to the Commission that the lobbying complaint be dismissed for lack of a violation of Article 3, Article 5, or Article 7 of Chapter 120C.
- (3) Recommend to the Commission that a violation has occurred and that a specific sanction or sanctions should be imposed. A violation must be shown to exist by a preponderance of the evidence.
- (4) Refer the lobbying complaint to another agency when appropriate.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0107 COMMISSION DETERMINATION

(a) If a proposed settlement is not approved by the Commission,

- (1) For complaints filed pursuant to Rule .0102 of this Subchapter, upon receipt of a recommendation from the panel, the remaining Commission members excluding the panel members shall review the panel's recommendations and determine appropriate action.
- (2) For complaints filed pursuant to Rule .0103 of this Subchapter, the Commission shall review the investigation report and determine appropriate action.

(b) If the Commission dismisses the lobbying complaint, the complainant and respondent shall be notified of the Commission's dismissal.

(c) If the Commission finds that a violation has occurred, the respondent shall be notified of the following:

- (1) The Commission's decision;
- (2) Any sanctions imposed pursuant to Rule .0108 of this Subchapter;
- (3) The respondent's right to appeal the determination by filing a petition with the Office of Administrative Hearings and that the Commission's determination will become final upon a failure to appeal; and,
- (4) The requirement that pursuant to G.S. 120C-603(a) apparent criminal violations of Chapter 120C of the General Statutes must be reported to the district attorney.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0108 SANCTION CRITERIA AND IMPOSITION OF SANCTIONS

(a) The Commission shall issue only a warning letter if it finds the violation:

- (1) Involves a violation of G.S. 120C-303 and the prohibited gift had a fair market value of less than ten dollars (\$10.00); and,
- (2) The violation is the respondent's first violation of G.S. 120C-303.

(b) For all other violations, the Commission may elect to impose one or both of the following of the following sanctions:

- (1) A letter of warning.
- (2) A fine ranging in the amount of two hundred fifty dollars (\$250.00) to five thousand dollars (\$5,000) per violation.

(c) The Commission may consider one or more of the following criteria in imposing sanctions:

- (1) The length of time the respondent has been engaged in lobbying for payment.
- (2) The length of time the respondent has been paying an individual to lobby on its behalf.
- (3) The length of time the respondent has been registered as a lobbyist or liaison personnel.
- (4) The length of time the respondent has been registered as a lobbyist principal.
- (5) The number of past violations of Chapter 120C of the North Carolina General Statutes.
- (6) The number of times the respondent has received a warning letter.

(7) Whether the respondent knew or should have known that the conduct or activity was a violation of Article 3, Article 5, or Article 7 of Chapter 120C.

(8) The nature and number of violations in the matter.

(9) The duration of the violation.

(10) Whether the respondent attempted to correct the violation prior to a complaint being filed.

(11) The result or effect of the violation.

(12) Whether the violation was inadvertent or intentional.

(13) Whether the respondent has received advice, informal or formal, from the Commission regarding the conduct or activity giving rise to the violation.

Authority G.S. 120C-101(a); 120C-601.

This Section contains information for the meeting of the Rules Review Commission on Thursday May 17, 2012 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

July 19, 2012 August 16, 2012
September 20, 2012 October 18, 2012

RULES REVIEW COMMISSION

May 17, 2012

MINUTES

The Rules Review Commission met on Thursday, May 17, 2012, 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. Curtis Venable joined via Skype.

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

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

APPROVAL OF MINUTES

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the April 19, 2012 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

19A NCAC 02D .0531, .0532 – Department of Transportation. The rules will be returned to the agency at its request. No action is necessary.

25 NCAC 01J .1101 – State Personnel Commission. The Commission approved the re-written rule submitted by the agency.

Nellie Riley addressed the Commission.

LOG OF FILINGS

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

Gasoline and Oil Inspection Board

02 NCAC 42 .0401 was approved unanimously.

Commission for Public Health

10A NCAC 41A .0205 – The Commission objected to this rule based on lack of statutory authority and ambiguity. In (g), it is not clear when the State Tuberculosis Medical Director will approve a regimen other than a standard multi-day regimen. G.S. 150B-19(6) prohibits an agency from adopting a rule that allows the agency to waive or modify a requirement set in a rule when a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.

Criminal Justice Education and Training Standards Commission

Teresa Marella addressed the commission.

All rules were approved unanimously with the following exception:

12 NCAC 09E .0102 – The Commission objected to this rule based on lack of necessity. This rule is entirely replicated in 09E .0105(a) and one of the two rules is unnecessary. Rule 09E .0102 should be repealed since there is other content in Rule 09E .0105.

Hearing Aid Dealers and Fitters Board

Catherine Jorgensen addressed the Commission.

All rules were approved unanimously with the following exception:

21 NCAC 22F .0103 - The Commission objected to Rule .0103 due to lack of authority. There is no authority cited for Subparagraph (a)(4) for treating an audiologist who is a registered apprentice any different than any other apprentice. G.S. 93D-14(b) exempts licensed audiologists who have a doctoral degree in Audiology from licensure requirements, but without the doctorate, an audiologist is subject to the same requirements as any other apprentice. There is no authority cited for the first sentence in Paragraph (b). Pursuant to G.S. 93D-5(c) with limited exceptions a person must serve a one-year apprenticeship as a prerequisite for a license. The 250-hour exception (arguably) only applies to licensed audiologists who have undergone supervision in another state. There is no authority cited for any exception for a person with a master's degree in audiology.

21 NCAC 22F .0114 - The Commission objected to Rule .0114 based on lack of authority. There is no authority cited for the exception for Audiologists in the first sentence.

These objections apply to existing language in the rules.

Real Estate Commission

21 NCAC 58A .0114 was approved unanimously.

Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning this rule because he practices before the Real Estate Commission.

OTHER BUSINESS

The Commission discussed the possibility of adding a sunset requirement for rules in the Administrative Procedure Act. Staff was directed to send a letter to the Speaker of the House of Representatives and President Pro-Tempore of the Senate containing suggestions from the Commission about proposed legislative changes the Commission considers helpful. The letter and suggested language for a sunset provision are attached to the minutes.

The Commission also briefly discussed proposed legislation establishing an expedited rulemaking procedure for Department of Revenue rules dealing with forced combinations and the Regulatory Reform Act of 2012 along with suggested amendments from the Office of Administrative Hearings.

The meeting adjourned at 12:24 p.m.

The next scheduled meeting of the Commission is Wednesday, June 20 at 10:00 a.m.

Respectfully Submitted,

Julie Edwards
Editorial Assistant

Minutes approved by the Rules Review Commission.



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

Senator Phil Berger
President Pro-Tempore
NC Senate
16 W. Jones Street, Room 2008
Raleigh, NC 27601-2808

Representative Thom Tillis
Speaker of the House of Representatives
NC House of Representatives
16 W. Jones Street, Room 2304
Raleigh, NC 27601-1096

Dear President Pro-Tempore Berger and Speaker Tillis,

You recently asked Commissioner Addison Bell and other members of the Rules Review Commission (RRC) to submit any suggestions they had concerning legislation involving the Rules Review Commission and the Administrative Procedure Act (APA) and the rulemaking process.

They would like to specifically recommend for your consideration the establishment of a sunset provision for all rules. We have attached the draft of such a proposal that would require agencies to review their rules at least every ten years for obsolete, invalid, unnecessary or changed provisions and repeal or amend them as required. It is the opinion of the RRC that among the 23,000+ rules in the administrative code there are many, many rules that would meet those standards. It would also give the public an opportunity to call their legislators' attention to rules that met those conditions or were unnecessarily oppressive or burdensome.

RRC Chairman, the Honorable Ralph Walker, notes that such a law would significantly benefit the public by ensuring that rules are up-to-date. This would perhaps also result in savings to the public by having rules and enforcement using the latest technologies and controls, which is almost always less costly.

Our commissioners wish for us to express some other concerns as well. One of their desires is to be able to refer back to the legislature in some sort of systematic or formal way rules that they feel obligated to approve, based on the limited statutory scope of their review, but rules that they believe should come under additional legislative scrutiny. The commissioners are also concerned about the additional costs of rules and whether these additional costs are receiving adequate review and acknowledgement by the Office of State Budget and Management.

While the commissioners believe that it is necessary for a regular review of an agency's entire

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer


body of rules, and they would not like to see numerous exceptions to this review, they would also be open to finding some workable system for limiting an agency's obligations under this sunset provision. They would not be opposed to some reasonable way of allowing an agency to propose some alternative review or some exemption to the review. Although they do not have any specific limiting language in mind at this time, if an agency could show good cause perhaps they should be allowed some limited exemption to the periodic review and sunset process.

If you have any questions, problems or concerns please contact any of the members of the RRC or our staff. Our contact information is attached as well as the proposal.

Sincerely,



Joseph J DeLuca
Commission Counsel
919-431-3081
Joe.deluca@Oah.nc.gov



Robert A Bryan
Commission Counsel
919-431-3079
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AN ACT TO ESTABLISH AN EXPIRATION DATE FOR RULES.

The General Assembly enacts:

SECTION 1. G.S. 150B-21.2(c) reads as rewritten:

- (c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:
- (1) The text of the proposed rule, rule unless the rule is a readoption without changes to the existing rule proposed to keep a permanent rule from expiring.
 - (2) A short explanation of the reason for the proposed rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).
 - (3) A citation to the law that gives the agency the authority to adopt the rule.
 - (4) The proposed effective date of the rule.
 - (5) The date, time, and place of any public hearing scheduled on the rule.
 - (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
 - (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
 - (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
 - (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

Section 2. Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

§ 150B- 21.3A. Expiration date of permanent rules.

(a) Unless readopted pursuant to the provisions in G.S. 150B-21.2 and approved by the Commission pursuant to the provisions of Part 3 of Article 2A of this Chapter, a permanent rule expires on the latest of:

- (1) December 31, 2015 for rules in Title 10A of the North Carolina Administrative Code;
- (2) December 31, 2016 for rules in Title 15A of the North Carolina Administrative Code;
- (3) December 31, 2017 for all remaining rules unless and to the extent the agencies that adopted the rules are exempt from the rulemaking requirements in this Article;
- (4) 10 years after its effective date or readopted effective date; or
- (5) 10 years from the effective date of the latest amendment to the rule.

(b) The Commission shall establish a timeline for the submission of rules subject to expiration after consultation with the adopting agency.

(c) The Codifier of Rules shall annually notify agencies of rules that will expire within the next two years.

SECTION 3. This act is effective when it becomes law.

RULES REVIEW COMMISSION

Rules Review Commission
Meeting

Please Print Legibly **MAY 17, 2012**

Name	Agency
Curtis Aldendifer	NCRFC
Jeff Sellers	NCRFC
Clayton Frasier	NC DACS
Chad Rhoades	NC DACS
Teresa Marrella	NC DOS
Cathy Jordan	NC DOJ
RAY STARLING	NCDA
Delores Joyner	NCOSP/State Personnel Comm.
Sid Fowler	GAH Extern
Bob Martin	DDY
Catherine Jorgensen	HADF Board
Jean-Marie Mailand	NC DPH
Nella Ruby	OSP
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LIST OF APPROVED PERMANENT RULES
May 17, 2012 Meeting

GASOLINE AND OIL INSPECTION BOARD

Labeling of Dispensing Devices 02 NCAC 42 .0401

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Documentation of Educational Requirements 12 NCAC 09B .0106

Admission of Trainees 12 NCAC 09B .0203

Terms and Conditions of Specialized Instructor Certification 12 NCAC 09B .0305

General Provisions 12 NCAC 09D .0102

General Provisions 12 NCAC 09D .0202

Minimum Training Specifications: Annual In-Service Training 12 NCAC 09E .0105

Moral Character 12 NCAC 09G .0206

Terms and Conditions of General Instructor Certification 12 NCAC 09G .0309

Terms and Conditions of Specialized Instructor Certification 12 NCAC 09G .0311

General Provisions 12 NCAC 09G .0602

HEARING AID DEALERS AND FITTERS BOARD

Time of Examinations 21 NCAC 22F .0101

Communication of Results of Examinations 21 NCAC 22F .0107

REAL ESTATE COMMISSION

Residential Property and Owners' Association Disclosure S... 21 NCAC 58A .0114

STATE PERSONNEL COMMISSION

Policy 25 NCAC 01J .1101

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>
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ABC Commission v. Universal Entertainment, LLC T/A Zoo City Saloon	11 ABC 2294	07/05/11	
ABC Commission v. Quick Quality Inc., T/A Quick Quality	11 ABC 2543	07/19/11	
ABC Commission v. Lead C. Corp v. T/A Burger King/Shell Convenience Store	11 ABC 5066	10/19/11	
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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	
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ABC Commission v. CH Pub LLC, T/A Kildares Irish Pub	11 ABC 07109	08/16/11	
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ABC Commission v. Andrea Michelle Douglas T/A Hot Spot Convenience	11 ABC 10547	02/03/12	
ABC Commission v. MBM of NC Inc, T/A Super Mart 3	11 ABC 10549	11/15/11	
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