

# ***NORTH CAROLINA REGISTER***

**VOLUME 27 • ISSUE 05 • Pages 549 - 627**

**September 4, 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

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

### **Rule Review and Legal Issues**

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

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

### **Fiscal Notes & Economic Analysis and Governor's Review**

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

NC Association of County Commissioners  
215 North Dawson Street (919) 715-2893  
Raleigh, North Carolina 27603  
contact: 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 <sup>th</sup> day from publication in the Register
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
26:14	01/17/12	12/21/11	02/01/12	03/19/12	03/20/12	05/01/12	05/16/12	10/13/12
26:15	02/01/12	01/10/12	02/16/12	04/02/12	04/20/12	06/01/12	01/30/13	10/28/12
26:16	02/15/12	01/25/12	03/01/12	04/16/12	04/20/12	06/01/12	01/30/13	11/11/12
26:17	03/01/12	02/09/12	03/16/12	04/30/12	05/21/12	07/01/12	01/30/13	11/26/12
26:18	03/15/12	02/23/12	03/30/12	05/14/12	05/21/12	07/01/12	01/30/13	12/10/12
26:19	04/02/12	03/12/12	04/17/12	06/01/12	06/20/12	08/01/12	01/30/13	12/28/12
26:20	04/16/12	03/23/12	05/01/12	06/15/12	06/20/12	08/01/12	01/30/13	01/11/13
26:21	05/01/12	04/10/12	05/16/12	07/02/12	07/20/12	09/01/12	01/30/13	01/26/13
26:22	05/15/12	04/24/12	05/30/12	07/16/12	07/20/12	09/01/12	01/30/13	02/09/13
26:23	06/01/12	05/10/12	06/16/12	07/31/12	08/20/12	10/01/12	01/30/13	02/26/13
26:24	06/15/12	05/24/12	06/30/12	08/14/12	08/20/12	10/01/12	01/30/13	03/12/13
27:01	07/02/12	06/11/12	07/17/12	08/31/12	09/20/12	11/01/12	01/30/13	03/29/13
27:02	07/16/12	06/22/12	07/31/12	09/14/12	09/20/12	11/01/12	01/30/13	04/12/13
27:03	08/01/12	07/11/12	08/16/12	10/01/12	10/22/12	12/01/12	01/30/13	04/28/13
27:04	08/15/12	07/25/12	08/30/12	10/15/12	10/22/12	12/01/12	01/30/13	05/12/13
27:05	09/04/12	08/13/12	09/19/12	11/05/12	11/20/12	01/01/13	01/30/13	06/01/13
27:06	09/17/12	08/24/12	10/02/12	11/16/12	11/20/12	01/01/13	01/30/13	06/14/13
27:07	10/01/12	09/10/12	10/16/12	11/30/12	12/20/12	02/01/13	05/2014	06/28/13
27:08	10/15/12	09/24/12	10/30/12	12/14/12	12/20/12	02/01/13	05/2014	07/12/13
27:09	11/01/12	10/11/12	11/16/12	12/31/12	01/22/13	03/01/13	05/2014	07/29/13
27:10	11/15/12	10/24/12	11/30/12	01/14/13	01/22/13	03/01/13	05/2014	08/12/13
27:11	12/03/12	11/07/12	12/18/12	02/01/13	02/20/13	04/01/13	05/2014	08/30/13
27:12	12/17/12	11/26/12	01/01/13	02/15/13	02/20/13	04/01/13	05/2014	09/13/13

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

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

### **GENERAL**

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

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

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

### **FILING DEADLINES**

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

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

### **NOTICE OF TEXT**

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

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

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

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

PUBLIC NOTICE  
STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION

**The Division of Water Quality (DWQ) invites public comment on, or objections to, the stormwater permitting actions listed below.** Persons wishing to comment or object may submit written comments to the below addresses no later than October 1, 2012. All comments received prior to that date will be considered in the final determinations regarding permit issuance. All comments should reference the specific permitting actions listed below and the permit number. The six draft industrial General Permits and Fact Sheets may be viewed at <http://portal.ncdenr.org/web/wq/ws/su/public-notice>

**1)** Nine local governments have applied for coverage under a Phase II NPDES Permit for small MS4s, nine more local governments and one non-traditional MS4 have applied to renew their Phase II NPDES permit for small MS4s, and six local governments have applied to renew their Phase I NPDES Permit for large MS4s. A complete list of the local governments and their respective draft permits is available at:  
<http://portal.ncdenr.org/web/wq/ws/su/npdessw>

Copies of the draft permits, application and Comprehensive Stormwater Management Program Report, are available by contacting:  
Mike Randall

NC Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
Telephone Number: (919)-807-6374  
[mike.randall@ncdenr.gov](mailto:mike.randall@ncdenr.gov)

For website:

New Phase II Permits

Benson NCS000558  
Butner NCS000544  
Clayton NCS000559  
Creedmoor NCS000545  
Elizabeth City NCS000563  
Roxboro NCS000547  
Shelby NCS000560  
Wendell NCS000564  
Zebulon NCS000557

Phase II Permit Renewals

Carolina Beach NCS000389  
China Grove NCS000515  
Jacksonville NCS000399  
Kure Beach NCS000499  
Leland NCS000416  
Navassa NCS000518  
Oak Island NCS000455  
Wilmington NCS000406  
Wrightsville Beach NCS000445  
Sandy Point NCS000517 in Chowan County

Phase I Permits Renewals

Raleigh NCS000245  
Winston Salem NCS000247  
Charlotte NCS000240  
Durham NCS000249  
Fayetteville NCS000246  
Greensboro NCS000248

**2)** DWQ intends to renew the current General Permit NCG030000 for the discharge of stormwater from metal fabrication activities. Please direct comments or objections to:

Brian Lowther

NC Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
Telephone Number: (919) 807-6368  
[brian.lowther@ncdenr.gov](mailto:brian.lowther@ncdenr.gov)

3) DWQ intends to renew the current General Permit NCG060000 for the discharge of stormwater from food and kindred products industries. Please direct comments or objections to:

Robert Patterson

NC Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
Telephone Number: (919) 807-6375  
[robert.patterson@ncdenr.gov](mailto:robert.patterson@ncdenr.gov)

4) DWQ intends to renew the current General Permit NCG080000 for the discharge of stormwater from transportation related activities. Please comments or objections to:

Mike Randall

NC Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
Telephone Number: (919) 807-6374  
[mike.randall@ncdenr.gov](mailto:mike.randall@ncdenr.gov)

5) DWQ intends to renew the current General Permit NCG090000 for the discharge of stormwater from paint and varnish manufacturing activities. Please direct comments or objections to:

Ken Pickle

NC Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
Telephone Number: (919) 807-6376  
[ken.pickle@ncdenr.gov](mailto:ken.pickle@ncdenr.gov)

6) DWQ intends to renew the current General Permit NCG100000 for the discharge of stormwater from used auto parts and automobile scrap operations. Please direct comments or objections to:

Bethany Georgoulas

NC Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
Telephone Number: (919) 807-6372  
[bethany.georgoulas@ncdenr.gov](mailto:bethany.georgoulas@ncdenr.gov)

7) DWQ intends to renew the current General Permit NCG120000 for the discharge of stormwater from landfill operations. Please direct comments or objections to:

Ken Pickle

NC Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
Telephone Number: (919) 807-6376  
[ken.pickle@ncdenr.gov](mailto:ken.pickle@ncdenr.gov)

Please note the following corrected information to the Notice of Text published by the Wildlife Resource Commission that includes 15A NCAC 10B .0101; 10H .0301-.0302, .0304 in the NC Register, August 15, 2012, starting on page 409:

**Fiscal impact (check all that apply).**

- X** State funds affected -- **15A NCAC 10B .0101; 10H .0301-.0302, .0304**  
Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation  
Local funds affected  
Date submitted to OSBM:  
Substantial economic impact ( $\geq$ \$500,000)  
**X** Approved by OSBM  
No fiscal note required

The fiscal note for these four rules was approved by OSBM, and is available on the OSBM website at:  
[http://www.osbm.state.nc.us/files/pdf\\_files/WRC08162012.pdf](http://www.osbm.state.nc.us/files/pdf_files/WRC08162012.pdf)



**STATE BOARD OF ELECTIONS**  
6400 Mail Service Center • Raleigh, North Carolina 27699-6400

**GARY O. BARTLETT**  
Executive Director

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

August 8, 2012

Mr. Van Braxton  
1512 Surry Street  
Kinston, North Carolina 28504

Re: Request for Advisory Opinion pursuant to N.C. Gen. Stat. § 163-278.23

Dear Mr. Braxton:

I am in receipt of your letter received July 23, 2012, in which you seek guidance as to whether you need to establish a legal expense fund pursuant to Article 22M of Chapter 163 of the North Carolina General Statutes. As provided in your letter and is evidenced by disclosure reports and other documents filed with our office, your candidate committee is closed and you are not a candidate for elective office. Individuals serving in or seeking elective office are required to organize a legal expense fund committee if they are going to be raising donations to fund an existing legal action or a potential legal action. Your letter indicates you desire to raise funds to "defray" some of your legal costs arising from a lawsuit that was filed in connection with your 2010 candidacy. Since you are not by definition an "elected officer", you are not required to establish a legal expense fund committee and therefore those donations raised are not subject to disclosure or limitations. However, if in the future you decide to seek elective office and continue raising donations for the purposes of a legal expense fund, you would be required to organize such a committee.

This opinion is based upon the information provided in your July 23, 2012 letter. If any information in that letter should change, you should consult with our office to ensure that this opinion would still be binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code. If you should have any questions, feel free to contact myself or Kim Strach with the Campaign Finance Division.

Sincerely,

*Gary O. Bartlett*  
Gary O. Bartlett

cc: Julian Mann, Codifier of Rules

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



Van Braxton  
1512 Surry Street  
Kinston, NC 28504

Mr. Gary Bartlett  
Director SBOE  
PO Box 27255  
Raleigh, NC 27611

Received

JUL 23 2012

Campaign Finance

Dear Mr. Bartlett,

My name is Van Braxton. I served in the NC House of Representatives from 2007-2010. I sought re-election in 2010 but was defeated. During the 2010 campaign I was sued, along with the Democratic Party, by my opponent for defamation of character. The suit stemmed from a campaign flyer that the Democratic Party and I mailed. The suit was settled approximately six months ago. My opponent and I settled the suit with him paying \$17,200 in contempt charges and me agreeing to let him drop the charges. My defense was that the flyers were true and I still stand by that.

Since then, the information we gathered and other information gathered by authorities has brought indictments against this opponent. I now consider the case closed.

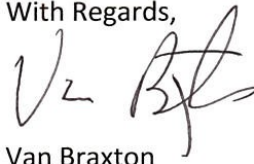
I have been out of the legislature for two years. I am not seeking re-election nor do I intend to seek re-election in the foreseeable future and probably never. I have depleted and closed my campaign account. There is nothing left of the campaign organization and I am personally in debt for legal fees.

My question to you and the reason for this letter is this: Since the events of the past few weeks concerning my former opponent are in the news and since many people in my area have supported my efforts, I am in the process of sending a letter asking for donations to help me defray some of my legal costs. Since I am not a legislator and have not been for two years and am not seeking re-election I wanted to make sure that I did not have to set up a legal defense fund for reporting any donations I might receive.

I called and spoke with an individual with the State Board of Elections and asked for an answer to this question. He suggested I make a request in writing and an

answer in writing would be sent to me. Thank you for taking the time to read and respond to my request.

With Regards,

A handwritten signature in black ink, appearing to read 'V. Braxton', written over the typed name.

Van Braxton

Cc: Ms. Kim Strach  
Deputy Director SBOE

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

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

## **TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC DHHS/Division of Health Service Regulation intends to amend the rules cited as 10A NCAC 14C .0102, .1701-.1705; and repeal the rules cited as 10A NCAC 14C .0302, .3301-.3303, .3305.

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

**Proposed Effective Date:** January 1, 2013

### **Public Hearing:**

**Date:** October 31, 2012

**Time:** 10:00 a.m.

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

### **Reason for Proposed Action:**

**10A NCAC .0102, .3301, .3302, .3303, .3305** – The proposed rule amendment and repeals are a result of the agency's Executive Order 70 rule review. The amendment is a technical change updating the Section's physical address. The repeals eliminate rules that are obsolete and unenforceable as the statutory authority no longer exists.

**10A NCAC .1701, .1702, .1703, .1704, .1705** – The proposed rule amendments are a result of a petition to the agency to address the performance standards for heart-lung bypass machines when they are not operated specifically to provide open-heart surgery. Additionally, some technical changes have been made to the rules.

**Procedure by which a person can object to the agency on a proposed rule:** An individual may object to the agency on the proposed rules by submitting written comments on the proposed rules. 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, 2719 Mail Service Center, Raleigh, NC 27699-2719; fax (919) 733- 9379; email [DHSR.RulesCoordinator@dhhs.nc.gov](mailto:DHSR.RulesCoordinator@dhhs.nc.gov)

**Comment period ends:** November 5, 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** 10A NCAC 14C .1701, .1702, .1703, .1704, .1705
- ☐ **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** 10A NCAC 14C .0102, .3301, .3302, .3303, .3305

## **CHAPTER 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION**

### **SUBCHAPTER 14C - CERTIFICATE OF NEED REGULATIONS**

#### **SECTION .0100 - GENERAL**

#### **10A NCAC 14C .0102 LOCATION OF THE AGENCY**

As used in this Subchapter, the agency is the Certificate of Need Section in the Division of Health Service Regulation, North Carolina Department of Health and Human Services. The location of the agency is ~~701 Barbour Drive~~, 809 Ruggles Drive, Raleigh, North Carolina, 27603. The mailing address of the agency is Certificate of Need Section, Division of Health Service Regulation, 2704 Mail Service Center, Raleigh, NC 27699-2704. The telephone number of the agency is 919-855-3873.

Authority G.S. 131E-177.

#### **SECTION .0300 - EXEMPTIONS**

**10A NCAC 14C .0302 HEALTH MAINTENANCE ORGANIZATIONS**

(a) Applications for an exemption under G.S. 131E-180 shall be reviewed pursuant to the review schedule in this Subchapter that is applicable for the new institutional health service for which the inpatient health service facility is requesting the exemption.

(b) An applicant proposing to request an exemption under G.S. 131E-180 shall complete the certificate of need application form for the new institutional health service for which the exemption is requested and the supplemental form for a health maintenance organization exemption.

(c) Applications for an exemption shall be filed and reviewed in accordance with 10A NCAC 14C .0203 .0205.

(d) The Agency shall determine whether the applicant for the exemption is a qualified applicant as defined in G.S. 131E-180(b).

(e) If the Agency decision is to not grant the exemption, the applicant shall not develop or offer the new institutional health service without first obtaining a certificate of need.

(f) If a decision is made that a certificate of need is required, the review for the certificate of need shall be conducted in the same review period as for the exemption. The Agency shall determine if the application conforms with the applicable review criteria of G.S. 131E-183(a) and G.S. 131E-183(b). The Agency shall determine which plans, standards and criteria are applicable to the review of the proposal. If the proposal is not consistent with all applicable criteria in G.S. 131E-183(a), the Agency may approve or conditionally approve the proposal for a certificate of need if it conforms with the criteria set forth in G.S. 131E-180(e)(i)-(ii) and G.S. 131E-183(a)(10).

*Authority G.S. 131E-177; 131E-180.*

**SECTION .3300 - CRITERIA AND STANDARDS FOR AIR AMBULANCE**

**10A NCAC 14C .3301 DEFINITIONS**

The following definitions shall apply to all rules in this Section:

- (1) ~~"Air ambulance" as defined in G.S. 131E-176(1a).~~
- (2) ~~"Air ambulance service" means an entity engaged in the operation of an air ambulance transporting patients.~~
- (3) ~~"Air ambulance service area" means a geographic area defined by the applicant from which the project's patients originate.~~
- (4) ~~"Approved air ambulance" means either a rotary air ambulance or a fixed wing air ambulance that was not operational prior to the beginning of the review period but which had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c.7, s. 12.~~
- (5) ~~"Capacity of fixed wing air ambulance" means the maximum number of hours the aircraft can be operated as defined by the aircraft manufacturer.~~
- (6) ~~"Existing air ambulance" means either a rotary air ambulance or a fixed wing air ambulance in~~

~~operation prior to the beginning of the review period.~~

- (7) ~~"Inter-facility patient transport" means the transport of a patient from one facility to another facility.~~
- (8) ~~"Level 2 trauma center" as defined in North Carolina's Trauma Center Criteria developed by the OEMS pursuant to 10A NCAC 03D .3201(16).~~
- (9) ~~"Patient" as defined in G.S. 131E-155(16).~~
- (10) ~~"Scene transport" means the transport of a patient from the scene of a medical emergency.~~
- (11) ~~"Base of an air ambulance service" means the site at which medical control and operation of an air ambulance is located. Unless otherwise specified, if an air ambulance service provider is a health service facility, the base of an air ambulance service is presumed to be the facility itself. Notwithstanding anything in this regulation, an air ambulance service provider may station its air ambulance at an airport within the county of its base facility or within 25 miles of its base facility.~~

*Authority G.S. 131E-177(1); 131E-183(b).*

**10A NCAC 14C .3302 INFORMATION REQUIRED OF APPLICANT**

(a) An applicant proposing to acquire an air ambulance shall use the Acute Care Facility/Medical Equipment Application Form.

(b) The applicant shall also provide the following additional information:

- (1) ~~the number of air ambulance aircraft by type and make currently operated and to be operated in the "air ambulance" service area following completion of the proposed project;~~
- (2) ~~if the applicant is a current air ambulance service provider, documentation of the applicant's experience in transporting patients via air ambulance during the past 12 months, including:~~
  - (A) ~~the number of scene transports by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing); and~~
  - (B) ~~the number of inter-facility patient transports by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing);~~
- (3) ~~if the applicant is a health service facility proposing to establish a new air ambulance service, the applicant shall provide documentation of:~~
  - (A) ~~the number of scene transports to their facility by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing) during the past 12 months; and~~

- (B) ~~the number of inter facility patient transports during the past 12 months by air ambulance by type of air ambulance (i.e., fixed wing and rotary wing) to their facility from other facilities and from their facility to other facilities;~~
- (4) ~~the number of patients from the proposed air ambulance service area that are projected to require air ambulance service by type of aircraft and the patients' county of residence and county from which transported in each of the first 12 calendar quarters of operation following completion of the project, including the methodology and assumptions used for the projections;~~
- (5) ~~the projected utilization of the air ambulance service per aircraft for each of the first 12 calendar quarters following completion of the proposed project by type of patient (e.g., neonatal, pediatric, cardiac), including the methodology and assumptions used for these projections;~~
- (6) ~~documentation which demonstrates that existing air ambulance services in the State are unable to accommodate the applicant's projected need for an additional air ambulance;~~
- (7) ~~as appropriate to the type of aircraft proposed, documentation of referral sources for air ambulance patients and evidence of the willingness of hospitals to participate;~~
- (8) ~~documentation which demonstrates the applicant's capability to communicate with and access emergency transportation resources including, but not limited to ground mobile intensive care ambulance services;~~
- (9) ~~evidence of the applicant's capability to provide air ambulance services on a 24 hour per day, seven day per week basis except as precluded by weather, maintenance and other factors as applicable;~~
- (10) ~~documentation of in service training or continuing education programs for staff;~~
- (11) ~~documentation of written policies and procedures for the operation of the air ambulance service, which shall be in effect at the time the proposed air ambulance becomes operational, for at least the following:~~
  - (A) ~~alternative arrangements for transport of a patient when patient transport cannot be provided by the applicant; e.g. a current Mutual Aid Agreement with one or more permitted air ambulance services;~~
  - (B) ~~written criteria for patient transport;~~
  - (C) ~~medical crew contact with medical control;~~
  - (D) ~~operation of an audit and review panel;~~
  - (E) ~~patient treatment protocols;~~
  - (F) ~~patient transfer protocols;~~
  - (G) ~~communication, including incoming calls, dispatch, and on going communication with air ambulance flight and medical crew and other emergency medical service providers;~~
  - (H) ~~role in disaster plans;~~
  - (I) ~~coordination with local emergency medical service systems in the proposed air ambulance service area or other providers as appropriate given the type of aircraft and service proposed;~~
- (12) ~~if the applicant is an existing air ambulance service provider, copies of the following, as applicable:~~
  - (A) ~~the current permit(s) issued by the OEMS and evidence that the permit(s) has not been denied or revoked;~~
  - (B) ~~the current FAA Part 135 or Part 91 Certificate, and~~
  - (C) ~~the current FCC radio license;~~
- (13) ~~if an applicant does not currently operate an air ambulance, evidence that the OEMS, FCC and FAA are aware of the proposed air ambulance and that the applicant expects to be able to obtain all required permits, licenses or certifications;~~
- (14) ~~documentation of the aircraft selection analysis used by the applicant and reason for selection of the aircraft proposed;~~
- (15) ~~documentation of a financial analysis of a lease versus purchase option for acquisition of the proposed aircraft and the method (e.g., hire own versus contract) of providing personnel to fly the aircraft and the reason for selection of the option proposed; and~~
- (16) ~~if the applicant proposes the acquisition of a fixed wing air ambulance, documentation of the capacity of each existing fixed wing air ambulance based in the state.~~

*Authority G.S. 131E-177(1); 131E-183(b).*

#### **10A NCAC 14C .3303 PERFORMANCE STANDARDS**

An applicant proposing to acquire an air ambulance shall demonstrate that the project meets the following standards:

- (1) ~~For the acquisition of a rotary air ambulance [unless 10A NCAC 14C .3303(6) is applicable or unless the applicant is proposing to acquire an air ambulance that will be based at a site that is 75 air miles or more from the base of another air ambulance service], each rotary air ambulance proposed to be acquired by the applicant shall be utilized at an average rate of at least 60 patient requests per month, measured during the fourth quarter of the~~

- second year following completion of the project (the applicant shall document the assumptions and provide data supporting the methodology used for the projections).
- (2) For the acquisition of a rotary air ambulance [unless 10A NCAC 14C .3303(6) is applicable], an applicant proposing to add a rotary air ambulance to an existing rotary air ambulance service shall demonstrate that all of its existing rotary air ambulances have had at least 60 patient requests per month in the last year.
- (3) For the acquisition of a fixed wing air ambulance [unless 10A NCAC 14C .3303(6) is applicable or unless the applicant is proposing to acquire an air ambulance that will be based at a site that is 75 air miles or more from the base of another air ambulance service], each fixed wing air ambulance proposed to be acquired by the applicant shall be utilized at an average of no less than 60% of capacity transporting patients (determined based on the type aircraft), measured during the fourth quarter of the second year following completion of the project (the applicant shall document the assumptions and provide data supporting the methodology used for the projections).
- (4) For the acquisition of a fixed wing air ambulance [unless 10A NCAC 14C .3303(6) is applicable], an applicant proposing to add a fixed wing air ambulance to an existing fixed wing air ambulance service shall demonstrate that all of its existing fixed wing air ambulances have been utilized at no less than 60% of capacity transporting patients for the last year.
- (5) For all proposed projects involving the development of a new air ambulance service (rotary or fixed wing), the new service shall be developed with either a Level I trauma center as designated by the North Carolina Office of Emergency Medical Services pursuant to 10A NCAC 13P .0901 or .0902 that reported more than 1500 trauma patients to the North Carolina Trauma Registry during the most recent 12 month reporting period; or a Level I or Level II trauma center as designated by the North Carolina Office of Emergency Medical Services pursuant to 10A NCAC 13P .0901 or .0902 that shall not be based within 60 miles of the base of an existing air ambulance service.
- (6) For acquisition of an air ambulance that shall be utilized less than 25 percent of the time flown for purposes defined in G.S. 131E-176(1a), the applicant shall provide the following information:

- (a) documentation that the aircraft shall be utilized less than 25 percent of the time flown in any given quarter for purposes defined in G.S. 131E-176(1a) (the applicant shall document the assumptions and provide data supporting the methodology used for the projections); and
- (b) a detailed description of all circumstances and conditions under which the aircraft will be utilized including the number of hours the aircraft will be flown for each of these circumstances.

*Authority G.S. 131E-177(1); 131E-183(b).*

#### **10A NCAC 14C .3305 STAFFING AND STAFF TRAINING**

- (a) The applicant shall demonstrate that the following staff shall be available to provide air ambulance services:
- (1) if applicable, personnel available as needed for transport of special care patients (e.g., neonatal, cardiac); and
  - (2) personnel that are trained to operate the ground communication network.
- (b) The applicant shall provide an organized program of staff education and training which is integral to the air ambulance service and ensures improvements in technique and the proper training of personnel.

*Authority G.S. 131E-177(1); 131E-183(b).*

### **SECTION .1700 – CRITERIA AND STANDARDS FOR OPEN-HEART SURGERY SERVICES AND HEART-LUNG BYPASS MACHINES**

#### **10A NCAC 14C .1701 DEFINITIONS**

The following definitions shall will apply to all rules in this Section:

- (1) "Approved heart-lung bypass machine" means a heart-lung bypass machine that was not operational prior to the beginning of the review period.
- (1)(2) "Capacity" of a heart-lung bypass machine means 400 adult-equivalent open heart surgical procedures per year. One open heart surgical procedure on persons age 14 and under is valued at two adult open heart surgical procedures. For purposes of determining capacity, one open heart surgical procedure is defined to be one visit or trip by a patient to an operating room for an open heart operation.
- (2)(3) "Cardiac Surgical Intensive Care Unit" means an intensive care unit as defined in 10A NCAC 14C .1201(2) and which that is for exclusive use by post-surgical open heart patients.

- (4) "Existing heart-lung bypass machine" means a heart-lung bypass machine in operation prior to the beginning of the review period.
- ~~(3)~~(5) "Heart-lung bypass machine" shall have has the same meaning as defined in G.S. 131E-176(10a).
- (4) "Open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, except that the open heart surgery service area of an academic medical center teaching hospital designated in the State Medical Facilities Plan shall not be limited to 90 road miles.
- ~~(5)~~(6) "Open heart surgery services" shall have has the same meaning as defined in G.S. 131E-176(18b).
- ~~(6)~~(7) "Open heart surgical procedures" means specialized surgical procedures ~~which:~~ that:
- (a) utilize a heart-lung bypass machine (the "pump"); and
  - (b) are designed to correct congenital or acquired cardiac and coronary disease ~~and;~~ by opening the chest for surgery on the heart muscle, valves, arteries, or other parts of the heart.
  - (c) are identified by Medicare Diagnostic Related Group ("DRG") numbers 104, 105, 106, 108, 547, 548, 549, and 550.
- (7) "Primary open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, except that the primary open heart surgery service area of an academic medical center teaching hospital designated in the State Medical Facilities Plan shall not be limited to 45 road miles.

Authority G.S. 131E-177(1); 131E-183.

#### 10A NCAC 14C .1702 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant that proposes to add an open heart surgery room or to acquire a heart-lung bypass machine shall use the acute care facility/medical equipment application form.
- (b) An applicant shall define the service area for the proposed project which shall be like the applicant's service area for other health services, unless the applicant documents that other providers are expected to refer patients to the applicant, including the methodology and assumptions used to define the service area.
- ~~(b)~~(c) The An applicant shall ~~also~~ provide the following additional information:
- (1) the ~~projected~~ number of open heart surgical procedures ~~to be performed~~ on each heart-lung bypass machine owned by or operated in the facility ~~for each of the first 12 calendar~~

- ~~quarters following completion of the proposed project, including the methodology and assumptions used to make these projections; during the 12-month period prior to the submission of the application, identified by ACD-9, ACD-10, or CPT code;~~
- ~~(2) the projected number of cardiac catheterization procedures to be completed in the facility for each of the first 12 calendar quarters following completion of the proposed project, including the methodology and assumptions used for these projections;~~
- ~~(3) the applicant's experience in treating cardiovascular patients at the facility during the past 12 months, including:~~
- ~~(A) the number of patients receiving stress tests;~~
  - ~~(B) the number of patients receiving intravenous thrombolytic therapies;~~
  - ~~(C) the number of patients presenting in the Emergency Room or admitted to the hospital with suspected or diagnosed acute myocardial infarction;~~
  - ~~(D) the number of cardiac catheterization procedures performed, by type of procedure;~~
  - ~~(E) the number of patients referred to other facilities for cardiac catheterization or open heart surgical procedures, by type of procedure;~~
  - ~~(F) the number of patients referred to the applicant's facility for cardiac catheterization or open heart surgical procedures, by type of procedure; and~~
  - ~~(G) the number of open heart surgery procedures performed by type of procedure during the twelve month period reflected in the most recent licensure form on file with the Division of Health Service Regulation;~~
- ~~(4)~~(2) a projection of the number of patients from the proposed open heart surgery service area who are projected to receive open heart surgical procedures by patient's county of residence procedures using the applicant's existing, approved and proposed heart-lung bypass machines in each of the first 12 quarters of operation three years following completion of the proposed project identified by ACD-9, ACD-10, or CPT code, including the methodology and assumptions used to make the projections;
- ~~(5)~~(3) the number of patients from the proposed primary open heart surgery service area who are projected to receive open heart surgical procedures using the applicant's existing, approved, and proposed heart-lung bypass

- equipment by patient's county of residence in each of the first ~~12~~ quarters, ~~three~~ years following completion of the proposed project, including the methodology and assumptions used to make these projections;
- (6)(4) the projected patient referral sources;
- (7)(5) evidence of the applicant's capability to communicate efficiently with emergency transportation agencies and with all hospitals serving the proposed service area;
- (8)(6) the number and composition of open heart surgical teams available to the ~~applicant~~; applicant; and
- (9) ~~a brief description of the applicant's in-service training or continuing education programs for open heart surgical team members; and~~
- (10)(7) evidence of the applicant's capability to perform both cardiac catheterization and open heart surgical procedures 24 hours per day, 7 days per week.

Authority G.S. 131E-177(1); 131E-183.

#### **10A NCAC 14C .1703 PERFORMANCE STANDARDS**

(a) An applicant that proposes to develop open-heart surgery services shall:

~~The applicant shall demonstrate that the proposed project is capable of meeting the following standards:~~

- (1) ~~an applicant's existing and new or additional heart-lung bypass machines shall be utilized at an annual rate of 200 open heart surgical procedures per machine, measured during the twelfth quarter following completion of the project;~~
- (2) ~~at least 50 percent of the projected open heart surgical procedures shall be performed on patients residing within the primary open heart surgery service area;~~
- (3)(1) ~~the applicant's demonstrate that the projected utilization and proposed staffing patterns are such that each open heart surgical team shall perform at least 150 open heart surgical procedures in the third year following completion of the project; project; and~~
- (4)(2) ~~the applicant shall document the assumptions and provide data supporting the methodology used to make these projections; and projections.~~
- (5) ~~heart lung bypass machines that have been acquired for non surgical use or for non heart surgical procedure use shall not be utilized in the performance of open heart surgical procedures.~~

(b) An applicant that proposes to acquire a heart-lung bypass machine shall demonstrate either:

- (1) that the applicant's projected annual utilization of its existing, approved, and proposed heart-lung bypass machines (other than a machine acquired pursuant to Subparagraph (3) of this

- Paragraph) will be at least 200 open heart surgical procedures per machine during the third year following completion of the project;
- (2) that the projected annual utilization of its existing, approved, and proposed heart-lung bypass machines (other than a machine acquired pursuant to Subparagraph (3) of this Paragraph), will be at least 900 hours per year during the third year following completion of the project, as measured in minutes used or staffed on standby for all procedures; or
- (3) that the proposed machine is needed to provide coverage for open-heart surgery emergencies and will not be scheduled for use at the same time as the applicant's equipment used to support scheduled open heart surgical procedures.

Authority G.S. 131E-177(1); 131E-183(b).

#### **10A NCAC 14C .1704 SUPPORT SERVICES**

(a) ~~The An~~ An applicant that proposes to acquire a heart-lung bypass machine shall demonstrate that the following services ~~shall will~~ be available in the facility 24 hours per day, 7 days per week:

- (1) electrocardiography laboratory and testing services, including stress testing and continuous cardiogram monitoring;
- (2) echocardiography service;
- (3) blood gas laboratory;
- (4) nuclear medicine laboratory;
- (5) pulmonary function unit;
- (6) staffed blood bank;
- (7) hematology laboratory or coagulation laboratory;
- (8) microbiology ~~laboratory; laboratory; and~~
- (9) clinical pathology laboratory with facilities for blood ~~chemistry; chemistry.~~
- (10) ~~a dedicated cardiac surgical intensive care unit that shall be a distinct intensive care unit and shall meet the requirements of 10A NCAC 14C .1200;~~
- (11) ~~for facilities performing pediatric open heart surgery services, a pediatric intensive care unit that shall be a distinct intensive care unit and shall meet the requirements of 10A NCAC 14C .1300;~~
- (12) ~~emergency room with full-time director, staffed for cardiac emergencies with acute coronary suspect surveillance area and voice communication linkage to the ambulance service and the coronary care unit; and~~
- (13) ~~cardiac catheterization services including both diagnostic and interventional cardiac catheterization capabilities.~~

(b) The An applicant that proposes to develop open-heart surgery services shall demonstrate that the following services ~~shall will~~ be available in the facility 24 hours per day, 7 days per week: ~~to the applicant.~~



- (1) ~~a preventive maintenance program for all biomedical devices, electrical installations and environmental controls; a dedicated cardiac surgical intensive care unit;~~
- (2) ~~a cardiac rehabilitation program; and for facilities performing pediatric open heart surgery services, a pediatric intensive care unit that will be a distinct intensive care unit and will meet the requirements of 10A NCAC 14C .1300;~~
- (3) ~~a community outreach and education program; an emergency department with full-time director, staffed for cardiac emergencies with acute coronary suspect surveillance area and voice communication linkage to the ambulance service and the coronary care unit; and~~
- (4) ~~cardiac catheterization services including both diagnostic and interventional cardiac catheterization capabilities.~~

Authority G.S. 131E-177(1); 131E-183(b).

#### **10A NCAC 14C .1705 STAFFING AND STAFF TRAINING**

(a) An applicant that proposes to acquire a heart-lung bypass machine shall demonstrate that it can meet the following staffing requirements:

- (1) at least two cardiovascular surgeons on the medical staff, at least one of whom is certified by the American Board of Thoracic Surgery; and
- (2) one perfusionist certified by the American Board of Cardiovascular Perfusion and licensed by the North Carolina Medical Board per operational heart lung bypass machine and an additional licensed, certified perfusionist on standby;

~~(a)(b)~~ The An applicant that proposes to develop open-heart surgery services shall demonstrate that it can meet the following staffing requirements:

- (1) one cardiovascular surgeon who has been designated to serve as director of the open heart surgery program and who has the following special qualifications:
  - (A) certification by the American Board of Thoracic Surgery; and
  - (B) thorough understanding of and experience in basic medical and surgical knowledge and techniques of cardiac surgery, cardiopulmonary bypass and methods of myocardial management; licensed by the North Carolina Medical Board to practice medicine; and
- (2) at least one specialized open heart surgical team composed of at least the following professional and technical personnel:

- (A) one cardiovascular surgeon board certified by the American Board of Thoracic Surgery;
  - (B) one assistant surgeon, preferably a cardiovascular or thoracic surgeon;
  - (C) one board-certified anesthesiologist certified by The American Board of Anesthesiology and trained in open heart surgical procedures;
  - (D) one certified registered nurse anesthetist;
  - (E) one circulating nurse or scrub nurse, with recent specialized training in open heart surgical procedures;
  - (F) one operating room technician or nurse with recent specialized training in open heart surgical procedures;
  - (G) one certified pump technician per operational heart lung bypass machine and an additional certified pump technician on standby; one licensed, certified perfusionist;
  - (H) staff for the dedicated cardiac surgical intensive care unit to ensure the availability of 1 RN registered nurse for every 2 patients during the first 48 hours of post-operative care;
  - (I) if pediatric open heart surgical procedures are performed, at least one cardiac surgeon trained to perform pediatric open heart surgical procedures.
- ~~(3) at least two fully qualified cardiac surgeons on the staff, at least one of whom is board-certified; one of these surgeons shall be on call at all times; if pediatric open heart surgical procedures are performed, one of these surgeons shall be specially trained and clinically competent to perform pediatric open heart surgical procedures.~~

~~(b)(c)~~ The An applicant that proposes to acquire a heart-lung bypass machine or to develop open-heart surgery services shall demonstrate that it can provide the following staff training for members of open heart surgical teams: following:

- (1) staff training for certification in cardiopulmonary resuscitation and advanced cardiac life support; and
- (2) an organized a program of staff education and training which is integral to the open heart surgery program and which that ensures improvements in technique and the proper training of new personnel.

Authority G.S. 131E-177(1); 131E-183(b).

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities*

and Substance Abuse Services intends to amend the rule cited as 10A NCAC 27G .0504.

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

<http://www.ncdhhs.gov/mhddsas/MHDDSAScommission/propos edrules.htm>

**Proposed Effective Date:** February 1, 2013

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request to Amanda J. Reeder, 3018 Mail Service Center, Raleigh, NC 27699-3018.

**Reason for Proposed Action:** The proposed revision to the rule is necessary to delineate the changing role and functions of the Local Management Entities in Mental Health Reform and to outline procedures for the Local Management Entity – Managed Care Organization Clients Rights and Provider Clients Rights committees.

**Procedure by which a person can object to the agency on a proposed rule:** The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted to Amanda J. Reeder, 3018 Mail Service Center, Raleigh, NC 27699-3018.

**Comments may be submitted to:** Amanda J. Reeder, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919)715-2780, fax (919)508-0973, email amanda.reeder@dhhs.nc.gov.

**Comment period ends:** November 5, 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: November 16, 2011
- ☐ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM

☐ No fiscal note required

**CHAPTER 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES**

**SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES**

**SECTION .0500 - AREA PROGRAM REQUIREMENTS**

**10A NCAC 27G .0504 LOCAL MANAGEMENT ENTITY CLIENT RIGHTS COMMITTEES AND PROVIDER CLIENT RIGHTS COMMITTEES**

~~(a) The area board shall bear ultimate responsibility for the assurance of client rights.~~

~~(b) Each area board shall establish at least one Client Rights Committee, and may require that the governing body of a contract agency also establish a Client Rights Committee. The area board shall also develop and implement policy which delineates:~~

- ~~(1) composition, size, and method of appointment of committee membership;~~
- ~~(2) training and orientation of committee members;~~
- ~~(3) frequency of meetings, which shall be at least quarterly;~~
- ~~(4) rules of conduct for meetings and voting procedures to be followed;~~
- ~~(5) procedures for monitoring the effectiveness of existing and proposed methods and procedures for protecting client rights;~~
- ~~(6) requirements for routine reports to the area board regarding seclusion, restraint and isolation time out; and~~
- ~~(7) other operating procedures.~~

~~(c) The area board established Client Rights Committee shall oversee, for area operated services and area contracted services, implementation of the following client rights protections:~~

- ~~(1) compliance with G.S. 122C, Article 3;~~
- ~~(2) compliance with the provisions of 10A NCAC 27C, 27D, 27E, and 27F governing the protection of client rights, and 10A NCAC 26B governing confidentiality;~~
- ~~(3) establishment of a review procedure for any of the following which may be brought by a client, client advocate, parent, legally responsible person, staff or others:~~
  - ~~(A) client grievances;~~
  - ~~(B) alleged violations of the rights of individuals or groups, including cases of alleged abuse, neglect or exploitation;~~
  - ~~(C) concerns regarding the use of restrictive procedures; or~~
  - ~~(D) failure to provide needed services that are available in the area program.~~

~~(d) Nothing herein stated shall be interpreted to preclude or usurp the authority of a county Department of Social Services to~~

~~conduct an investigation of abuse, neglect, or exploitation or the authority of the Governor's Advocacy Council for Persons with Disabilities to conduct investigations regarding alleged violations of client rights.~~

~~(e) If the area board requires a contract agency to establish a Client Rights Committee, that Committee shall carry out the provisions of this Rule for the contract agency.~~

~~(f) Each Client Rights Committee shall be composed of a majority of non-area board members, with a reasonable effort made to have all applicable disabilities represented, with consumer and family member representation. Staff who serve on the committee shall not be voting members.~~

~~(g) The Client Rights Committee shall maintain minutes of its meetings and shall file at least an annual report of its activities with the area board. Clients shall not be identified by name in minutes or in written or oral reports.~~

~~(h) The area board Client Rights Committee shall review grievances regarding incidents which occur within a contract agency after the governing body of the agency has reviewed the incident and has had opportunity to take action. Incidents of actual or alleged Client Rights violations, the facts of the incident, and the action, if any, made by the contract agency shall be reported to the area director within 30 days of the initial report of the incident, and to the area board within 90 days of the initial report of the incident.~~

(a) The Local Management Entity (LME) governing board shall establish at least one client right committee in its catchment area and require that provider governing bodies establish a client rights committee according to Paragraph (d) in this Rule. The LME client rights committee shall be responsible for client rights protections in accordance with the LME's role as manager of public mental health, developmental disabilities, and substance abuse (mh/dd/sa) services. The provider client rights committee shall be responsible for client rights protection in accordance with the provider's role as provider of services.

(b) The LME governing board shall ratify policies governing client rights committee membership and operating procedures including:

- (1) each LME committee shall be comprised of a majority of non-board members, with disability representation that reflects the clients served and at least 50 percent of the membership shall consist of individuals who are either consumers or family members;
- (2) staff support to assist the committee to meet the requirements of the provisions of this Rule;
- (3) minimize travel barriers for consumers and families to enhance participation;
- (4) LME staff members who serve on the committee shall not be voting members;
- (5) minimum and maximum committee size, composition, terms of office, quorum necessary to conduct business, method for open nomination process and method of appointment of committee membership including assurance of representation from each county;
- (6) procedure for removal for good cause;

- (7) training and orientation of committee members at least annually;
- (8) attendance requirements;
- (9) frequency of meetings which shall be at least quarterly;
- (10) location of meetings which shall be in North Carolina;
- (11) rules of conduct for meetings and voting procedures to be followed;
- (12) assurance against any conflicts of interest;
- (13) compliance with confidentiality rules according to 10A NCAC 26B;
- (14) the collection of information and the submission of reports requested by the LME, its governing board or the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) regarding the rights of consumers receiving public services; and
- (15) other committee operating procedures required to protect clients' rights and to assure compliance with this Rule.

(c) The duties of the LME client rights committee shall be to work with the governing board to oversee, for individuals receiving mh/dd/sa services in its catchment area, client rights protections including:

- (1) assurance that the requirements of this Rule and other client rights protections are reviewed through routine provider monitoring in accordance with 10A NCAC 27G .0601 - .0610;
- (2) compliance with G.S. 122C, Article 3 regarding clients' rights and advance instruction;
- (3) compliance with the protection of clients' rights in the community according to 10A NCAC 27C, 27D, 27E and 27F;
- (4) assurance of confidentiality according to 10A NCAC 26B;
- (5) review of aggregate and descriptive complaint and appeal data in accordance with 10A NCAC 27G .7001 - .7004 and 10A NCAC 27I .0601 - .0609, respectively;
- (6) apprise the LME governing board or a designated officer, at any time during the year, of issues that relate to the assurance of clients' rights; and
- (7) authorize employees to collect and analyze information that the committee or the LME governing board require to fulfill the requirements of this Rule.

(d) Provider governing bodies shall establish client rights committees through one of the options below:

- (1) a provider shall form its own committee(s); or
- (2) multiple providers may enter into written agreements to form a committee(s) to meet the requirements of this Rule.

(e) The provider governing body shall adopt policies governing committee membership and operating procedures including:

- (1) each committee shall be comprised of a majority of non-board members, with disability representation that reflects the clients served and at least 50 percent of the membership shall consist of individuals who are either consumers or family members;
- (2) minimum and maximum committee size, composition, terms of office, quorum necessary to conduct business, method for open nomination process and method of appointment of committee membership;
- (3) procedure for removal for good cause; and
- (4) operation procedures of the committee including:
  - (A) attendance requirements;
  - (B) frequency of meetings at least quarterly;
  - (C) location of meetings which shall be in North Carolina;
  - (D) rules of conduct for meetings and voting procedures;
  - (E) training and orientation of committee members at least annually;
  - (F) assurance against any conflicts of interest;
  - (G) compliance with confidentiality rules according to 10A NCAC 26B;
  - (H) staff support to the committee required to meet the provisions of this Rule;
  - (I) minimize travel barriers for consumers and families to enhance participation; and
  - (J) other committee operating procedures required to protect client rights and to assure compliance with this Rule.

(f) The provider committee shall assure clients' rights protections including the following:

- (1) compliance with applicable requirements of this Rule;
- (2) compliance with G.S. 122C, Article 3 regarding clients' rights and advance instruction;
- (3) compliance with incident reporting and other applicable clients' rights provisions of 10A NCAC 27G .0601 - .0610;
- (4) compliance with the protection of clients' rights in the community enumerated in 10A NCAC 27C, 27D, 27E and 27F;
- (5) review of clients' rights data including incidents, complaints, appeals and investigations; and
- (6) apprise the governing body or a designated officer, at any time during the year, of issues that relate to the assurance of clients' rights.

(g) If an LME provides a service or services, the LME client rights committee shall follow the requirements of the provider client rights committee for the LME service or services.

(h) The LME client rights committee and the provider(s) client rights committee shall work with state and local agencies to protect clients' rights for individuals receiving md/dd/sa services and nothing herein stated shall be interpreted to preclude the legal authority of local and state agencies including:

- (1) a county Department of Social Services to conduct an investigation of abuse, neglect or exploitation;
- (2) North Carolina's protection and advocacy system to conduct investigations regarding alleged violations of clients' rights; and
- (3) law enforcement agencies' investigations of criminal allegations that pertain to rights violations.

(i) The LME client rights committee and the provider(s) client rights committee shall document initial orientation of committee members and annual training thereafter on topics to fulfill their duties as described in this Rule including:

- (1) applicable North Carolina statutes and rules codified in the North Carolina Administrative Code;
- (2) the organization of the North Carolina public system for mental health, developmental disabilities and substance abuse services;
- (3) the duties of the local and state consumer family advisory committee according to G.S. 122C-170 and 171, respectively;
- (4) principles of advocacy, self-determination and recovery; and
- (5) customer service strategies.

(j) A LME client rights committee and a provider(s) client rights committee shall maintain meeting minutes. Clients shall not be identified by name in minutes or in written or oral reports.

(k) A provider(s) client rights committee shall complete an annual report and send it to the LME(s) with whom the provider has a service agreement(s).

(l) A LME client rights committee shall complete an annual report and send it to the DMH/DD/SAS which shall publish an annual analysis of the LME committee reports.

(m) The reports noted in Paragraphs (k) and (l) of this Rule shall be submitted on forms provided by the DMH/DD/SAS.

*Authority G.S. 122C-64; 143B-147.*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rules cited as 10A NCAC 43D .0707-.0710 and amend the rules cited as 10A NCAC 43D .0202 and .0706.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://cph.publichealth.nc.gov/>

**Proposed Effective Date:** *January 1, 2013*

**Public Hearing:**  
**Date:** *September 27, 2012*  
**Time:** *10:00 a.m.*

**Location:** Cardinal Room, 5605 Six Forks Road, Raleigh, NC 27609

**Reason for Proposed Action:**

**10A NCAC 43D .0202** – The proposed rule amendments update selected terms to reflect updates to the WIC federal rules that have been incorporated into the revised WIC administrative rules.

**10A NCAC 43D .0706** – The proposed rule amendments perform the following actions:

- (1) Change title of rule to "Vendor Peer Groups;"
- (2) Transfers Paragraphs (b) through (r) of this Rule to Rules .0707, .0708, .0709 and .0710;
- (3) Eliminate predominantly WIC vendors (vendor type). Elimination of PWVs would significantly decrease the State's administrative burden and risk associated with the complex calculations, processes, reviews and reports required to manage this vendor type. Additionally, the presence of this vendor type does not provide significant benefit to the community to justify the administrative costs of consistently monitoring these vendors. Added language which references federal cost containment regulations for methodology used to determine PWV status for vendor applicants and current vendors in addition to consequences of falling into this vendor type; and
- (4) Additional minor changes made to improve administration of vendor management for the WIC Program, including removing the common ownership provision as this provision is not federally required.

**10A NCAC 43D .0707** – The proposed rule performs the following actions:

- (1) Adopt separate rule entitled "Vendor Applicants." This Rule is currently Paragraphs (b), (e) and (f) of 10A NCAC 43D .0706;
- (2) Vendor purchases and provision of infant formula to WIC customers;
  - (A) Amend current language 10A NCAC 43D .0706(b)(3)(A) and incorporate federal language by reference to ensure compliance with federal regulations;
  - (B) Add a waiting period to re-apply for vendor authorization of one year for previously failing to provide infant formula, exempt infant formula and WIC-eligible medical foods from authorized supplier to the WIC participant;
  - (C) Amended language regarding what is acceptable for receipts/invoices (referenced Subparagraph (c)(30) of the current rule). Subparagraph (c)(30) is more specific regarding what is acceptable documentation.
- (3) Additional minor changes to improve vendor management and ensure compliance with federal regulations.

**10A NCAC 43D .0708, .0710** – The proposed rules perform the following actions:

- (1) Adopt separate rules entitled "Authorized Vendors," which is currently Paragraph (c) of 10A NCAC 43D .0706 and "Vendor Violations and Sanctions," which is currently Paragraphs (g) through (r) of 10A NCAC 43D .0706;
- (2) Remove provisions related to predominantly WIC vendors (vendor type);

(3) Additional minor changes to improve vendor management and ensure compliance with federal regulations; and

(4) Adopt patterns to disqualify vendors for State-established violations. Federal regulations now require patterns to disqualify vendors for State-established violations. Changes to this Rule have been made to ensure compliance with federal regulations.

**10A NCAC 43D .0709** – The proposed rule performs the following actions: Adopt separate rule entitled "Local WIC Agency." This Rule is currently Paragraph (d) of 10A NCAC 43D .0706. Only minor technical changes have been made within the Paragraph.

**Procedure by which a person can object to the agency on a proposed rule:** Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for these rules.

**Comments may be submitted to:** Chris Hoke, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 707-5006; email Chris.Hoke@dhhs.nc.gov

**Comment period ends:** November 5, 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** 10A NCAC 43D .0706, .0707, .0708, .0710
- ☐ **Environmental permitting of DOT affected Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Date submitted to OSBM:**
- ☒ **Substantial economic impact (≥\$500,000)** 10A NCAC 43D .0706, .0707, .0708, .0710
- ☒ **Approved by OSBM:**
- ☒ **No fiscal note required** 10A NCAC 43D .0709

**CHAPTER 43 – PERSONAL HEALTH**

**SUBCHAPTER 43D – WIC/NUTRITION**

**SECTION .0200 - WIC PROGRAM GENERAL INFORMATION**

**10A NCAC 43D .0202 DEFINITIONS**

For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and additions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor or potential authorized WIC vendor may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement.
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the WIC Program. This process must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B.
- (6) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- (7) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
- (8) The "local WIC agency" is the local agency which enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- (9) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch in accordance with instructions issued by the Branch.
- (10) A "predominantly WIC vendor" is an 'above-50-percent vendor' as defined in 7 C.F.R. 246.2.
- (11) "Redemption" is the process by which a vendor deposits for payment a food instrument or cash-value voucher ~~for payment~~ transacted at that vendor and the state agency (or its financial agent) makes payment to the vendor for the food instrument or cash-value voucher.
- (12) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
- (13) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.
- ~~(13)~~(14) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, Department of Health and Human Services.
- ~~(14)~~(15) "Store" means the physical building located at a permanent and fixed site that operates as a food retailer or free-standing pharmacy.
- ~~(15)~~(16) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 10A NCAC 43D .0501.
- ~~(16)~~(17) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- ~~(17)~~(18) "Transaction" is the process by which a WIC customer tenders a food instrument or a cash-value voucher to a vendor in exchange for authorized supplemental foods.
- ~~(18)~~(19) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized as a WIC vendor. authorized.
- ~~(19)~~(20) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- ~~(20)~~(21) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- ~~(21)~~(22) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument or a cash-value voucher to a vendor in exchange for WIC supplemental food.
- ~~(22)~~(23) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C.

1786 of the Child Nutrition Act of 1966 as amended.

A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

*Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.*

## **SECTION .0700 - WIC PROGRAM FOOD DELIVERY SYSTEM**

### **10A NCAC 43D .0706 VENDOR PEER GROUPS**

(a) Vendor applicants and authorized vendors shall be placed into peer groups as follows:

- (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, ~~predominantly WIC vendors,~~ and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until ~~six months of~~ annual WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:

Peer Group I - - zero to two cash registers;

Peer Group II - - three to five cash registers; and

Peer Group III - - six or more cash registers.

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in a peer group in accordance with the dollar thresholds of ~~Subparagraph (a)(2) Item (2)~~ Item (2) of this Rule.

- (2) Authorized vendors for which annual WIC supplemental food sales ~~is~~ are available, excluding chain stores, stores under a WIC corporate agreement, military commissaries, ~~predominantly WIC vendors,~~ and free-standing pharmacies, shall be placed into peer groups as follows, except as provided in ~~Subparagraph (a)(8) Item (9)~~ Item (9) of this ~~Rule.~~ Rule:

Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;

Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;

Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and

Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the ~~store;~~ store.

- (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, ~~predominantly WIC vendors,~~ and free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:

Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), and military ~~commissaries;~~ commissaries; and ~~predominantly WIC vendors;~~ and

Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate ~~agreement;~~ agreement.

- (4) Annual WIC supplemental food sales is the dollar amount ~~in sales of WIC supplemental foods at the store~~ an authorized vendor redeems in WIC food instruments and cash-value vouchers within a 12-month period.

- (5) In determining a vendor's peer group designation based on annual WIC supplemental food sales under ~~Subparagraph (a)(2) Item (2)~~ Item (2) of this Rule, the state agency shall look at the most recent 12-month period of sales redemption data.

- ~~(6) All stores held under common ownership shall be placed in the highest peer group among those commonly held. Common ownership is ownership of 30 percent or more in each of the stores commonly held.~~

- ~~(7)~~ (6) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's ~~agreement~~ Agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

- (7) If the state agency determines that a vendor applicant is expected to be a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor application shall be denied. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(E) for determining whether a vendor applicant is expected to be a predominantly WIC vendor.
- (8) If at any time during a vendor's authorization the state agency determines that the vendor has become a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor's WIC Vendor Agreement shall be terminated. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(F) for determining whether an authorized vendor has become a predominantly WIC vendor.
- (8)(9) A vendor applicant previously authorized in a peer group under Subparagraph (a)(2) Item (2) of this Rule that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification or withdrawal from the WIC Program shall be placed into the same peer group the vendor applicant was previously in under Subparagraph (a)(2) Item (2) of this Rule, provided that no more than one year has passed since the nonrenewal, termination, disqualification or withdrawal. If more than one year has passed, the vendor applicant shall be placed into a peer group in accordance with Subparagraph (a)(1) Item (1) of this Rule.
- (b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:
- (1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List.
  - (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall agree to purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:
- (A) Infant formula manufacturers registered with the U.S. Food and Drug Administration;
  - (B) Food and drug wholesalers registered with the North Carolina Secretary of State and inspected or licensed by the North Carolina Department of Agriculture and Consumer Services;
  - (C) Retail food stores that purchase directly from suppliers described in Part (b)(3)(A) or Part (b)(3)(B) of this Rule; or
  - (D) A supplier on another state's list of approved infant formula suppliers as verified by that state's agency.
- Authorized vendors shall agree to make available to the state or local WIC agency, upon request, invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical foods. Acceptable receipts include company letterhead or name of wholesaler or manufacturer with date(s) of purchase and itemization of purchases reflecting infant formula, exempt infant formula, and WIC-eligible medical food purchases.
- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(4)(B) of this Rule. The maximum price for each supplemental food shall be established as follows:
- (A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The WIC Price Lists of predominantly WIC vendors shall be excluded from the maximum price determination. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Subparagraph (c)(31) of this Rule. The other two



- price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year. The sample of vendors shall exclude predominantly WIC vendors.
- (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization.
- (5) A vendor applicant shall pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(24) of this Rule. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer.
- (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (10) The store shall not use the acronym "WIC" or the WIC logo, including close facsimiles, in total or in part, in the official name in which the business is registered or in the name under which it does business.
- (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency.
- (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash value vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.
- (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.
- (14) A vendor applicant shall not be authorized if it is currently disqualified from the Special Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period

that otherwise would have been imposed has not expired.

- (15) ~~A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:~~

(A) ~~a SNAP vendor which is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or~~

(B) ~~another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A 22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.~~

The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Part (b)(15)(A) of this Subparagraph prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Subparagraph shall apply until the time the SNAP vendor disqualification otherwise would have expired.

- (16) ~~A vendor applicant, excluding free standing pharmacies, must have SNAP authorization for the store as a prerequisite for WIC vendor authorization and must provide its SNAP authorization number to the state agency.~~

- (17) ~~A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.~~

(c) ~~By signing the WIC Vendor Agreement, the vendor agrees to:~~

- (1) ~~Process WIC program food instruments and cash value vouchers in accordance with the terms of the Vendor Agreement and state and federal WIC program rules, regulations and applicable law;~~

- (2) ~~Accept WIC program food instruments and cash value vouchers in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D .0501;~~

- (3) ~~Provide only the authorized supplemental foods listed on the food instrument, or authorized fruits and vegetables with a cash-value voucher, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument or cash-value voucher prior to obtaining the signature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument or the full dollar value of the cash-value voucher. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a cash value voucher if the WIC customer pays the difference;~~

- (4) ~~Enter in the "Pay Exactly" box on the food instrument or cash value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;~~

- (5) ~~Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;~~

- (6) ~~Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(4)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument. Payment to predominantly WIC vendors for a food instrument shall not exceed the statewide average for that food instrument. This average excludes data from predominantly WIC vendors;~~

- (7) ~~Accept payment from the state WIC Program only up to the full dollar value of the cash-value voucher;~~

- (8) ~~Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;~~

- (9) ~~For non contract brand milk based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC~~

- Program only up to the maximum price established for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;
- (10) For free standing pharmacies, provide only exempt infant formula and WIC-eligible medical foods;
  - (11) Excluding free standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
  - (12) Accept WIC program food instruments and cash value vouchers only on or between the "Date of Issue" and the "Participant Must Use By" dates;
  - (13) Prior to obtaining the signature, enter in the "Date Transacted" box the month, day and year the WIC food instrument or cash value voucher is exchanged for supplemental food;
  - (14) Ensure that the food instrument or cash value voucher is signed in the presence of the cashier;
  - (15) Refuse to transact any food instrument or cash value voucher that has been altered;
  - (16) Not transact food instruments or cash value vouchers in whole or in part for cash, credit, unauthorized foods, or non food items;
  - (17) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash value vouchers, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
  - (18) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument or cash value voucher to enable the vendor number to be read during the Program editing process;
  - (19) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
  - (20) Deposit WIC program food instruments and cash value vouchers in the vendor's bank. All North Carolina WIC program food instruments and cash value vouchers must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument or cash value voucher;
  - (21) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;
  - (22) Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local agency;
  - (23) Notify the local WIC agency of misuse (attempted or actual) of WIC program food instruments or cash value vouchers;
  - (24) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors in Peer Group IV of Subparagraph (a)(3) of this Rule:

<b>Food Item</b>	<b>Type of Inventory</b>	<b>Quantities Required</b>
Milk	Whole fluid: gallon	2 gallons
	and	
	Skim/lowfat fluid: gallon	4 gallons
Cheese	1 pound package	2 pounds
Cereals	2 types: whole grain	
	(minimum package size 12 ounce)	6 packages
Eggs	Grade A,	2 dozen
	large, white: one dozen	
	size carton	
Juices	Single strength:	
	48 ounce container	4 containers
	64 ounce container	4 containers
Dried Peas and Beans	one pound package	2 packages

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**PROPOSED RULES**

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Peanut Butter	16 to 18 ounce container	2 containers
Infant Cereal	8 ounce box	6 boxes
Infant Formula	milk-based concentrate; 13 ounce	34 cans
	-and-	
	soy-based concentrate; 13 ounce	17 cans
	-and-	
	milk-based powder; 12.9 to 14.3 ounce	10 cans
	-and-	
	soy-based powder; 12.9 to 14.3 ounce	5 cans
	Brands must be the primary contract infant formulas	
Fruits	14 to 16 ounce can: 2 varieties	6 cans
Vegetables	14 to 16 ounce can: 2 varieties	6 cans

All vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, Peer Groups I through IV of Subparagraph (a)(2) of this Rule and Peer Groups IV and V of Subparagraph (a)(3) of this Rule shall supply milk, soy based or lactose free infant formula in 32 ounce ready-to-feed or lactose free powder within 48 hours of request by the state or local WIC agency;

- (25) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (26) Permit the purchase of supplemental food without requiring other purchases;
- (27) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local agency;
- (28) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (29) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (30) Allow monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes allowing access to all WIC food instruments and cash value vouchers at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory audit shall be deemed

a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (g)(1) of this Rule;

- (31) Submit a current accurately completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
- (32) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);
- (33) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments or cash value vouchers not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments or cash value vouchers;
- (34) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash value vouchers;

- (35) ~~Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;~~
- (36) ~~Return the authorized WIC vendor stamp to the local WIC agency upon termination of the Agreement or disqualification from the WIC Program;~~
- (37) ~~Offer WIC customers the same courtesies as offered to other customers;~~
- (38) ~~Not provide incentive items to WIC customers unless each incentive item is less than two dollars (\$2.00) in cost to the vendor in accordance with 42 USC 1786(h)(14). If incentive items are offered to WIC customers, no more than one incentive item per visit is permitted. Vendors shall not provide to WIC customers transportation to or from the vendor's premises, delivery of supplemental foods, lottery tickets, or cash gifts. The limitations of this Subparagraph apply only to predominantly WIC vendors;~~
- (39) ~~Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor selection criteria of Paragraph (b) of this Rule; and~~
- (40) ~~Comply with all the requirements for vendor applicants of Subparagraphs (b)(3), (b)(4) and (b)(7) through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(3), (b)(7), (b)(10), (b)(11), (b)(14) or (b)(16) of this Rule during the vendor's period of authorization.~~
- (d) ~~By signing the WIC Vendor Agreement, the local agency agrees to the following:~~
  - (1) ~~Provide annual vendor training on WIC procedures and rules;~~
  - (2) ~~Monitor the vendor's performance under the Agreement to ensure compliance with the Agreement and state and federal WIC program rules, regulations, and applicable law. A minimum of one third of all authorized vendors shall be monitored within a contract year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive contract years. Any vendor shall be monitored within one week of written request by the state agency;~~
  - (3) ~~Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement; and~~
  - (4) ~~Assist the vendor with questions which may arise under the Agreement or through the vendor's participation in the WIC Program.~~
- (e) ~~For a food retailer or free standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.~~
- (f) ~~If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.~~
- (g) ~~Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv), shall be established as follows:~~
  - (1) ~~claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60 day period. The six or more days do not have to be consecutive days within the 60 day period. Failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;~~
  - (2) ~~two occurrences of vendor overcharging within a 12 month period;~~
  - (3) ~~two occurrences of receiving, transacting or redeeming food instruments or cash value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12 month period;~~

- (4) ~~two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;~~
- (5) ~~two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash value vouchers within a 12-month period; or~~
- (6) ~~three occurrences of providing unauthorized food items in exchange for food instruments or cash value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.~~
- (h) ~~Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule:~~
- (1) ~~When a vendor commits any of the following violations, the state established disqualification period is:~~
- (A) ~~90 days for each occurrence of failure to properly transact a WIC food instrument or cash value voucher by not completing the date or purchase price on the WIC food instrument or cash value voucher before obtaining the signature, by not obtaining the signature in the presence of the cashier, or by accepting a WIC food instrument or cash value voucher prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument or cash value voucher;~~
- (B) ~~60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument or cash value voucher;~~
- (C) ~~30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and~~
- (D) ~~30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule.~~
- (2) ~~When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:~~
- (A) ~~2.5 points for:~~
- (i) ~~stocking WIC supplemental foods outside of the manufacturer's expiration date; or~~
- (ii) ~~unauthorized use of the "WIC" acronym or the WIC logo.~~
- (B) ~~5 points for:~~
- (i) ~~failure to attend annual vendor training;~~
- (ii) ~~failure to stock minimum inventory;~~
- (iii) ~~failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or~~
- (iv) ~~failure of a predominantly WIC vendor to comply with Subparagraph (c)(38) of this Rule regarding incentive items and services.~~
- (C) ~~7.5 points for:~~
- (i) ~~discrimination on the basis of WIC participation (separate WIC lines, denying trading stamp); or~~
- (ii) ~~contacting a WIC customer in an attempt to recoup funds for a food instrument or a cash value voucher or contacting a WIC customer outside the store regarding the transaction or redemption of a WIC food instrument or a cash value voucher.~~
- (D) ~~15 points for:~~
- (i) ~~failure to allow monitoring of a store by WIC staff when required;~~
- (ii) ~~failure to provide WIC food instruments or cash value vouchers for review when requested;~~
- (iii) ~~failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(30) and Subparagraph (g)(1) of this Rule for failure or inability to provide records for an inventory audit;~~
- (iv) ~~nonpayment of a claim assessed by the state agency;~~
- (v) ~~providing false information on vendor records~~

(application, \_\_\_\_\_ vendor agreement, price list, WIC food instruments, cash value vouchers or monitoring forms), except as provided in Subparagraph (e)(30) and Subparagraph (g)(1) of this Rule for providing false records for an inventory audit; or

(vi) failure to purchase infant formula, exempt infant formula, and WIC-eligible medical food from an authorized supplier as required by Subparagraphs (b)(3) and (c)(40) of this Rule.

(3) For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (h)(2) of this Rule, are used to calculate the period of disqualification. The formula used to calculate the disqualification period is the number of points assigned to the violation carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points.

(i) For investigations pursuant to this Section, a single investigation is:

(1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:

- (A) buying or selling food instruments or cash value vouchers for cash (trafficking);
- (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash value vouchers;
- (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments or cash value vouchers;
- (D) vendor overcharging;
- (E) receiving, transacting, or redeeming food instruments or cash value vouchers outside of authorized channels, including the use of an

unauthorized vendor or an unauthorized person;

- (F) charging for supplemental food not received by the WIC customer;
- (G) providing credit or non food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash value vouchers;
- (H) providing unauthorized food items in exchange for food instruments or cash value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument;
- (I) failure to properly transact a WIC food instrument or cash value voucher;
- (J) requiring a cash purchase to transact a WIC food instrument or cash value voucher; or
- (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.

(2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:

- (A) failure to stock minimum inventory;
- (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
- (C) failure to allow monitoring of a store by WIC staff when required;
- (D) failure to provide WIC food instruments or cash value vouchers for review when requested;
- (E) failure to provide store inventory records when requested by WIC staff;
- (F) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case;
- (G) failure of a predominantly WIC vendor to comply with Subparagraph (c)(38) of this Rule regarding incentive items and services; or
- (H) unauthorized use of the "WIC" acronym or the logo.

(3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:

- (A) failure to attend annual vendor training;
- (B) failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule;

- (C) ~~discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps);~~
  - (D) ~~contacting a WIC customer in an attempt to recoup funds for food instruments or cash value vouchers or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash value vouchers;~~
  - (E) ~~nonpayment of a claim assessed by the state agency;~~
  - (F) ~~providing false information on vendor records (application, vendor agreement, price list, WIC food instruments, cash value vouchers or monitoring forms);~~
  - (G) ~~claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit; or~~
  - (H) ~~failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from an authorized supplier.~~
- (j) ~~The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.~~
- (k) ~~The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.~~
- (l) ~~The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:~~
- (1) ~~The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six month period ending with the month immediately preceding the month during which the notice of administrative action is dated.~~
  - (2) ~~The state agency may also impose civil money penalties in accordance with G.S. 130A-22(e1) in lieu of disqualification of a vendor for the state established violations listed in Paragraph~~
  - ~~(h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (l)(3) of this Rule.~~
  - (3) ~~In determining whether to disqualify a WIC vendor for the state established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:~~
    - (A) ~~the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;~~
    - (B) ~~the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or~~
    - (C) ~~a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments or cash value vouchers.~~
  - (4) ~~The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.~~
  - (m) ~~The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.~~
  - (n) ~~The provision in 42 USC 1786 (f)(26) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.~~
  - (o) ~~The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(32) of this Rule.~~
  - (p) ~~In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal or state law.~~
  - (q) ~~Notwithstanding other provisions of this Rule, for the purpose of providing a one time payment to a non authorized store for WIC food instruments or cash value vouchers accepted by the store, an agreement for a one time payment need only be signed by the store manager and the state agency. The store may request such one time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument or as allowed with the cash value voucher, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement~~



~~entered into in this manner shall automatically terminate upon payment of the food instruments or cash value vouchers. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments or cash value vouchers accepted thereafter.~~

~~(f) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.~~

*Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.*

#### **10A NCAC 43D .0707 VENDOR APPLICANTS**

To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:
  - (a) the sources specified in 42 U.S.C. 1786(h)(8)(A)(ix), which is incorporated by reference with all subsequent amendments and editions;
  - (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of this Rule; or
  - (c) A source on another state's list of approved infant formula sources as verified by that state's agency.

A vendor applicant shall make available to the state or local WIC agency invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical foods. Receipts and invoices must satisfy the requirements of Sub-items (30)(a) through (30)(c) of Rule .0708. A vendor applicant shall not be authorized if within the

last year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt infant formula, or WIC-eligible medical food from the sources specified in this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC eligible medical food to WIC customers that was not purchased from the sources specified in this Item.

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Rule. The maximum price for each supplemental food shall be established as follows:

(a) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Item (32) of Rule .0708. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year.

(b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of this Item. If any of

- the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization.
- (5) A vendor applicant shall pass a monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item (24) of Rule .0708. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
  - (6) A vendor applicant shall attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC agency prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements.
  - (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
  - (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer.
  - (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
  - (10) The store shall not use the acronym "WIC" or the WIC logo, including close facsimiles, in total or in part, in the official name in which the business is registered or in the name under which it does business.
  - (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.
  - (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.
  - (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Item, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.
  - (14) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
  - (15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
    - (a) a SNAP vendor which is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
    - (b) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed a monetary or civil money

penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 as the result of violation of Paragraphs (a) or (b) of Rule .0710, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (15)(a) of this Rule prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.

- (16) A vendor applicant, excluding free-standing pharmacies, must have SNAP authorization for the store as a prerequisite for WIC vendor authorization and must provide its SNAP authorization number to the state agency.
- (17) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full.
- (18) For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.
- (19) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

*Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.*

#### **10A NCAC 43D .0708 AUTHORIZED VENDORS**

By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC program food instruments and cash-value vouchers in accordance with the terms of the Vendor Agreement and state and federal WIC program rules, regulations and applicable law;
- (2) Accept WIC program food instruments and cash-value vouchers in exchange for WIC supplemental foods. Supplemental foods are

those foods which satisfy the requirements of 10A NCAC 43D .0501;

- (3) Provide only the authorized supplemental foods listed on the food instrument, or authorized fruits and vegetables with a cash-value voucher, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument or cash-value voucher prior to obtaining the signature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument or the full dollar value of the cash-value voucher. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a cash-value voucher if the WIC customer pays the difference;
- (4) Enter in the "Pay Exactly" box on the food instrument or cash-value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Sub-item (4)(a) of Rule .0707, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument;
- (7) Accept payment from the state WIC Program only up to the full dollar value of the cash-value voucher;
- (8) Not charge the state WIC Program more than the maximum price set by the state agency under Item (4)(a) of Rule .0707 for each supplemental food within the vendor's peer group;
- (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible medical food purchased only from the sources specified in Item (3) of Rule .0707. Providing infant formula, exempt infant formula, or WIC eligible medical food that has not been purchased from the sources specified in Item (3) of Rule .0707 shall result in termination of the WIC Vendor Agreement;

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| <p>(10) <u>For free-standing pharmacies, provide only exempt infant formula and WIC-eligible medical foods;</u></p> <p>(11) <u>Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;</u></p> <p>(12) <u>Accept WIC program food instruments and cash-value vouchers only on or between the "Issue Date" and the "Participant Must Use By" dates;</u></p> <p>(13) <u>Prior to obtaining the WIC customer's signature, enter in the "Date Transacted" box the month, day and year the WIC food instrument or cash-value voucher is exchanged for supplemental food;</u></p> <p>(14) <u>Ensure that the WIC customer signs the food instrument or cash-value voucher in the presence of the cashier;</u></p> <p>(15) <u>Refuse to transact any food instrument or cash-value voucher that has been altered;</u></p> <p>(16) <u>Not transact food instruments or cash-value vouchers in whole or in part for cash, credit, unauthorized foods, or non-food items;</u></p> <p>(17) <u>Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;</u></p> | <p>(18) <u>Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument or cash-value voucher to enable the vendor number to be read during the Program editing process;</u></p> <p>(19) <u>Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;</u></p> <p>(20) <u>Deposit WIC program food instruments and cash-value vouchers in the vendor's bank. All North Carolina WIC program food instruments and cash-value vouchers must be deposited in the vendor's bank within 60 days of the "Issue Date" on the food instrument or cash-value voucher;</u></p> <p>(21) <u>Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;</u></p> <p>(22) <u>Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local WIC agency;</u></p> <p>(23) <u>Notify the local WIC agency of misuse (attempted or actual) of WIC program food instruments or cash-value vouchers;</u></p> <p>(24) <u>Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Item (1) of Rule .0706, vendors in Peer Groups I through IV of Item (2) of Rule .0706 and vendors in Peer Group IV of Item (3) of Rule .0706:</u></p> |
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<u>Food Item</u>	<u>Type of Inventory</u>	<u>Quantities Required</u>
<u>Milk</u>	<u>Whole fluid: gallon</u>	<u>2 gallons</u>
	<u>-and- Skim/lowfat fluid: gallon</u>	<u>4 gallons</u>
<u>Cheese</u>	<u>1 pound package</u>	<u>2 pounds</u>
<u>Cereals</u>	<u>2 types: whole grain (minimum package size 12 ounce)</u>	<u>6 packages total</u>
<u>Eggs</u>	<u>Grade A, large, white: one dozen size carton</u>	<u>2 dozen</u>
<u>Juices</u>	<u>Single strength:</u>	
	<u>48 ounce container 64 ounce container</u>	<u>4 containers 4 containers</u>

**PROPOSED RULES**

<u>Dried Peas and Beans</u>	<u>one pound package</u>	<u>2 packages</u>
<u>Peanut Butter</u>	<u>16 to 18 ounce container</u>	<u>2 containers</u>
<u>Infant Cereal</u>	<u>8 ounce box</u>	<u>6 boxes</u>
<u>Infant Formula</u>	<u>milk-based concentrate; 12 to 13 ounce</u>	<u>34 cans</u>
	<u>-and-</u>	
	<u>soy-based concentrate; 12.0 to 13 ounce</u>	<u>17 cans</u>
	<u>-and-</u>	
	<u>milk-based powder; 11.0 to 14.0 ounce</u>	<u>10 cans</u>
	<u>-and-</u>	
	<u>soy-based powder; 11.0 to 14.0 ounce</u>	<u>5 cans</u>
	<u>Brands must be the primary contract infant formulas</u>	
<u>Fruits</u>	<u>14 to 16 ounce can: 2 varieties</u>	<u>6 cans total</u>
<u>Vegetables</u> <u>(Excludes foods in</u> <u>Dried Peas and Beans</u> <u>category)</u>	<u>14 to 16 ounce can: 2 varieties</u>	<u>6 cans total</u>

- All vendors in Peer Groups I through III of Item (1) of Rule .0706, Peer Groups I through IV of Item (2) of Rule .0706 and Peer Groups IV and V of Item (3) of Rule .0706 shall supply milk, soy-based or lactose-free infant formula in 32 ounce ready-to-feed or lactose-free powder within 48 hours of request by the state or local WIC agency;
- (25) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (26) Permit the purchase of supplemental food without requiring other purchases;
- (27) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local WIC agency. Failure to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement;
- (28) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (29) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (30) Allow monitoring and inspection of the store premises and procedures to ensure compliance with the Agreement and state and federal WIC Program rules, regulations and applicable law. This includes providing access to all Program-related records, including access to all WIC food instruments and cash-value vouchers at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase, federal and state corporate and

individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any other provision of this Rule and Rules .0707 and .0710, failure or inability to provide these records for an inventory audit or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of Rule .0710. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:

- (a) the name of the seller and be prepared entirely by the seller or on the seller's business letterhead;
- (b) the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and
- (c) a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity;
- (31) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a statement of the total amount of revenue derived from SNAP-eligible food sales and written documentation to support the amount of sales claimed by the vendor, such as sales records, financial statements, reports, tax documents or other verifiable documentation;

- (32) Submit a current accurately completed WIC Price List when signing this Agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency;
- (33) Reimburse the state agency in full or agree to a repayment schedule with the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. Failure to reimburse the state agency in full or agree to a repayment schedule within 30 days of written notification of a claim shall result in termination of the WIC Vendor Agreement. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash-value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 for the vendor violation(s);
- (34) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments or cash-value vouchers not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments or cash-value vouchers;
- (35) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;
- (36) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- (37) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the Agreement or disqualification from the WIC Program;
- (38) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies offered to other customers or requiring separate WIC lines;
- (39) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria of Rule .0706 and the vendor selection criteria of Rule .0707; and
- (40) Comply with all the requirements for vendor applicants of Items (3), (4) and (7) through (16) of Rule .0707 throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), (13) or (15) of Rule .0707 during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Items (7), (14) or (16) of Rule .0707 during the vendor's period of authorization.

*Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.*

#### **10A NCAC 43D .0709 LOCAL WIC AGENCY**

By signing the WIC Vendor Agreement, the local WIC agency agrees to the following:

- (1) Provide annual vendor training on WIC procedures and rules;
- (2) Monitor the vendor's performance under the Agreement to ensure compliance with the Agreement and state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a fiscal year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive fiscal years. Any vendor shall be monitored within one week of written request by the state agency;
- (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement; and
- (4) Assist the vendor with questions which may arise under the Agreement or through the vendor's participation in the WIC Program.

*Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.*

**10A NCAC 43D .0710 VENDOR VIOLATIONS AND SANCTIONS**

(a) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 C.F.R. 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv)(A), shall be established as follows:

- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Item (30) of Rule .0708 for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;
- (2) two occurrences of vendor overcharging within a 12-month period;
- (3) two occurrences of receiving, transacting or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
- (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
- (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers within a 12-month period; or
- (6) three occurrences of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.

(b) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the number of occurrences and sanctions set forth below. If during the course of a single investigation the state agency determines that a vendor has committed multiple state-established violations, the disqualification periods shall be cumulative, provided that the total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (c) of this Rule:

- (1) One year for two occurrences within a 12-month period of discrimination on the basis of

WIC participation as referenced in Item (38) of Rule .0708. Each date this violation is detected is a separate occurrence;

- (2) One year for three occurrences within a 12-month period of failure to properly transact a WIC food instrument or cash-value voucher by not completing the date and purchase price on the WIC food instrument or cash-value voucher before obtaining the WIC customer's signature, by not obtaining the WIC customer's signature in the presence of the cashier, or by accepting a WIC food instrument or cash-value voucher prior to the "Issue Date" or after the "Participant Must Use By" dates on the food instrument or cash-value voucher. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each improperly transacted food instrument or cash-value voucher is a separate occurrence;
- (3) One year for three occurrences within a 12-month period of requiring a cash purchase to transact a WIC food instrument or cash-value voucher. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each transacted food instrument or cash-value voucher requiring a cash purchase is a separate occurrence;
- (4) 270 days for three occurrences within a 12-month period of contacting a WIC customer in an attempt to recoup funds for a food instrument or cash-value voucher or contacting a WIC customer outside the store regarding the transaction or redemption of a WIC food instrument or cash-value voucher. Each contact with any WIC customer is a separate occurrence, whether each contact is with the same or different WIC customers;
- (5) 180 days for three occurrences within a 12-month period of failure to provide Program-related records referenced in Item (30) of Rule .0708 when requested by WIC staff, except as provided in Item (30) of Rule .0708 and Subparagraph (a)(1) of this Rule for failure or inability to provide records for an inventory audit. Each request for records is a separate occurrence, whether each request is for the same or different records;
- (6) 180 days for three occurrences within a 12-month period of failure to provide the information referenced in Item (31) of Rule .0708 when requested by WIC staff. Each request for information is a separate occurrence, whether each request is for the same or different information;
- (7) 180 days for three occurrences within a 12-month period of failure to stock the minimum inventory specified in Item (24) of Rule .0708. Each date this violation is detected is a separate occurrence;

- (8) 90 days for three occurrences within a 12-month period of stocking WIC supplemental foods outside of the manufacturer's expiration date. Each date this violation is detected is a separate occurrence;
  - (9) 90 days for three occurrences within a 12-month period of failure to allow monitoring of a store by WIC staff. Each attempt to monitor the store is a separate occurrence;
  - (10) 90 days for five occurrences within a 12-month period of failure to submit a WIC Price List as required by Item (32) of Rule .0708. Each written request by the state or local WIC agency for submission of a WIC Price List is a separate occurrence, whether each request is for the same or different WIC Price Lists;
  - (11) 60 days for three occurrences within a 12-month period of failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case. Each date this violation is detected is a separate occurrence; and
  - (12) 60 days for five occurrences within a 12-month period of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each transacted food instrument or cash-value voucher requiring the purchase of a specific brand when more than one WIC supplemental food brand is available is a separate occurrence.
- (c) For investigations pursuant to this Section, a single investigation is:
- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
    - (A) buying or selling food instruments or cash-value vouchers for cash (trafficking);
    - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
    - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments or cash-value vouchers;
    - (D) vendor overcharging;
    - (E) receiving, transacting, or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
    - (F) charging for supplemental food not received by the WIC customer;
  - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
  - (H) providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument;
  - (I) failure to properly transact a WIC food instrument or cash-value voucher;
  - (J) requiring a cash purchase to transact a WIC food instrument or cash-value voucher; or
  - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.
- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
- (A) failure to stock the minimum inventory specified in Item (24) of Rule .0708;
  - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
  - (C) failure to allow monitoring of a store by WIC staff;
  - (D) failure to provide Program-related records referenced in Item (30) of Rule .0708 when requested by WIC staff;
  - (E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
  - (F) unauthorized use of the "WIC" acronym or the logo.
- (3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
  - (B) failure to submit a WIC Price List as required by Item (32) of Rule .0708;
  - (C) discrimination on the basis of WIC participation as referenced in Item (38) of Rule .0708.
  - (D) contacting a WIC customer in an attempt to recoup funds for food instruments or cash-value vouchers or contacting a WIC customer outside the store regarding the transaction or



redemption of WIC food instruments or cash-value vouchers;

(E) nonpayment of a claim assessed by the state agency;

(F) providing false, erroneous, or misleading information to the state or local WIC agency;

(G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Item (30) of Rule .0708 for an inventory audit;

(H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from the sources specified in Item (3) of Rule .0707; or

(I) providing WIC customers infant formula, exempt infant formula, or WIC eligible medical food that was not purchased from the sources specified in Item (3) of Rule .0707.

(d) The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.

(e) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (f)(3)(A), (f)(3)(B) or (f)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Parts. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

(f) The following provisions apply to monetary and civil money penalties assessed in lieu of disqualification of a vendor:

(1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.

(2) The state agency may also impose monetary penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (b) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in

accordance with Subparagraph (3) of this Paragraph.

(3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (b) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:

(A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;

(B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or

(C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments or cash-value vouchers.

(4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions. These provisions also apply to a vendor that fails to pay a monetary penalty imposed under G.S. 130A-22(c1).

(g) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.

(h) The provisions of 42 U.S.C. 1786 (f)(26) and 7 C.F.R. 246.12(l)(3) regarding vendor notification of violations are incorporated by reference with all subsequent amendments and editions.

(i) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Item (33) of Rule .0708.

(j) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal or state law.

(k) Notwithstanding other provisions of this Rule and Rules .0707 and .0708, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments or cash-value vouchers accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument or as allowed with the cash-value voucher, charged current shelf prices or less than current

shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instruments or cash-value vouchers. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments or cash-value vouchers accepted thereafter.

(l) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 48B .0103.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://cph.publichealth.nc.gov/>

**Proposed Effective Date:** January 1, 2013

**Public Hearing:**

**Date:** October 2, 2012

**Time:** 10:00 a.m.

**Location:** Cardinal Room, 5605 Six Forks Road, Raleigh, NC

**Reason for Proposed Action:** The proposed change to the current rule is anticipated to "reduce the burden upon those persons or entities who must comply with the rule" (G.S. 150B-19.1 Requirements for agencies in the rule-making process). Under current rule, in order to designate a benchmark as "Met," the agency must carry out ALL of the activities prescribed for a given benchmark, which can include up to 10 activities. Failure to complete any ONE activity associated with the benchmark means that benchmark is "Not Met." This method of scoring has caused several health departments to not meet the minimal accreditation requirements with only two "Not Met" activities.

**Procedure by which a person can object to the agency on a proposed rule:** Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for this rule.

**Comments may be submitted to:** Chris Hoke, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919)-707-5006, email [chris.hoke@dhhs.nc.gov](mailto:chris.hoke@dhhs.nc.gov)

**Comment period ends:** November 5, 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 48 - LOCAL HEALTH DEPARTMENT ACCREDITATION

### SUBCHAPTER 48B - LOCAL HEALTH DEPARTMENT ACCREDITATION STANDARDS

#### SECTION .0100 - GENERAL PROVISIONS

#### 10A NCAC 48B .0103 ACCREDITATION REQUIREMENTS

(a) To receive an accreditation status of "accredited," a local health department must satisfy all of the accreditation standards contained in this Subchapter. In order to satisfy the accreditation standards, the local health department shall satisfy ~~33 of the 41 benchmarks. Two of the 33 benchmarks may come from any of the three standards listed below. 31 of the benchmarks shall be met activities under the standards~~ according to the following proportions:

- (1) Standard 1. Agency core functions and essential services:
  - (A) The local health department must satisfy at least ~~six of the 26 of the 29 activities listed in the benchmarks~~ contained in Sections .0200 and .0300 of this Subchapter;
  - (B) The local health department must satisfy at least ~~five of the 23 of the 26 activities listed in benchmarks~~ contained in Sections .0400 through .0600 of this Subchapter;
  - (C) The local health department must satisfy at least ~~11 of the 34 of 38 activities listed in the benchmarks~~ contained in Sections .0700 through .1100 of this Subchapter;

- (2) Standard 2. Facilities and administrative services: The local health department must satisfy at least ~~three of the 24 of the 27 activities listed in the~~ benchmarks contained in Section .1200 of this Subchapter; and
- (3) Standard 3. Board of health: The local health department must satisfy at least ~~six of the 25 of the 28 activities listed in the~~ benchmarks contained in Section .1300 of this Subchapter.

(b) In order to satisfy ~~a benchmark, an activity,~~ the local health department must ~~carry out~~ satisfy all of the ~~activities requirements~~ prescribed for that ~~benchmark activity~~. Failure to complete any activity requirement associated with an benchmark activity means that the benchmark activity is not satisfied.

*Authority G.S. 130A-34.1.*

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 29 – LOCKSMITH LICENSING BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Locksmith Licensing Board intends to amend the rule cited as 21 NCAC 29 .0702.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.nclocksmithboard.org](http://www.nclocksmithboard.org)

**Proposed Effective Date:** *January 1, 2013*

**Public Hearing:**

**Date:** *October 24, 2012*

**Time:** *11:00 a.m.*

**Location:** *K&W Cafeteria, 2629 Ramada Road, Burlington, NC*

**Reason for Proposed Action:** *The NCLLB has voted to reduce the time required for timely submission of license renewal from 90 days to 30 days prior to expiration. The 90 days deadline was prohibitory on licensed locksmiths and resulted in a late fee penalty following submission after with 90 days to expiration.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections can be made by emailing Board Director, Barden Culbreth [bardeen@recanc.com](mailto:bardeen@recanc.com), or mail to NCLLB, PO Box 10972, Raleigh, NC 27605*

**Comments may be submitted to:** *Barden Culbreth, Director, PO Box 10972, Raleigh, NC 27605, email [bardeen@recanc.com](mailto:bardeen@recanc.com)*

**Comment period ends:** *November 5, 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 .0700 – LICENSE RENEWAL REQUIREMENTS**

#### **21 NCAC 29 .0702 DUE DATE**

Applications for license renewal shall be submitted at least ~~90~~ 30 days prior to the date of license expiration. Licensees who submit their application for renewal after the due date but before the license expiration date shall pay a late fee of one hundred fifty dollars (\$150.00) in addition to the license renewal fee specified in .0404 of these Rules. Applications shall be deemed submitted on the date of their postmark or upon receipt by staff at the Board's offices, whichever is earlier.

*Authority G.S. 74F-6; 74F-9; 74F-10.*

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## **CHAPTER 61 - NORTH CAROLINA RESPIRATORY CARE BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Respiratory Care Board intends to amend the rule cited as 21 NCAC 61 .0202.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncrcb.org](http://www.ncrcb.org)

**Proposed Effective Date:** *January 1, 2013*

**Public Hearing:**

**Date:** *September 24, 2012*

**Time:** *1:00 p.m.*

**Location:** *NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609*

**Reason for Proposed Action:** *To clarify the tasks an unlicensed support tech may perform under the oversight of a licensed practitioner.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person may object to the Board on a proposed rule by sending a written objection addressed to Floyd Boyer, RCP Executive Director, North Carolina Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, North Carolina, phone (919)878-5595, fax (919)878-5565, fboyer@ncrcb.org.*

**Comments may be submitted to:** *Floyd E. Boyer, RCP, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609, phone (919)878-5595, fax (919)878-5565, email fboyer@ncrcb.org*

**Comment period ends:** *November 5, 2012*

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

**Fiscal impact (check all that apply).**

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

## SECTION .0200 – APPLICATION FOR LICENSE

### 21 NCAC 61 .0202 EXEMPTIONS

The Board shall exempt the following persons from the requirement of obtaining a license:

- (1) A respiratory care practitioner who is on active duty in the Armed Forces of the United States or serving in the United States Public Health Service, or employed by the Veterans Administration; but this exemption shall only apply to activities and services provided in the course of such service or employment.
- (2) A student or trainee who is working under the direct supervision of a respiratory care

practitioner to fulfill an experience requirement or to pursue a course of study to meet licensure requirements. For purposes of this subpart, direct supervision shall mean that a respiratory care practitioner licensed by the Board is present in the same facility to supervise a respiratory care student at any time while the student is engaged in the practice of respiratory care. The supervising respiratory care practitioner must be specifically assigned to the particular student, but more than one practitioner may be assigned to a particular student. A respiratory care student shall not engage in the performance of respiratory care activities without direct supervision by a respiratory care practitioner licensed by the Board.

- (3) A person who provides only support activities as defined in G. S. 90-648(13). ~~Unlicensed individuals who deliver, set up, and calibrate prescribed respiratory care equipment may give instructions on the use, fitting and application of apparatus, including demonstrating its mechanical operation for the patient, or caregiver, but may not engage in the teaching, administration, or performance of respiratory care. Instructions to the patient or caregiver regarding the clinical use of the equipment, and any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment, must be performed by a respiratory care practitioner licensed by the Board or other licensed practitioner operating within their scope of practice. Unlicensed individuals may provide each of the following support activities, after receiving documented training and competency review, and with the oversight of a licensed practitioner, who is acting within his or her scope of practice:~~

- (a) Deliver respiratory equipment and respiratory supplies to a patient's residence or to a healthcare facility where a patient is located;
- (b) Demonstrate basic features of the operation of respiratory equipment including:
  - (i) the power switch and the equipment's connections to power;
  - (ii) the components of the equipment, connections among the components of the equipment and the mechanical features of its operation, that do not

- involve assessments of the prescribed modalities;
- (iii) the location and function of equipment settings and adjustment features;
- (iv) techniques for the cleaning and maintenance of equipment;
- (v) evaluation of equipment components which need replacement, and procedures to follow in obtaining and replacing those components;
- (vi) procedures to follow in ordering expendable supplies that are used in the operation of equipment;
- (vii) basic procedures to use in evaluating malfunctioning equipment; and
- (viii) emergency procedures and emergency contacts in the event of equipment malfunction;
- (c) Assisting a patient, who is under treatment for obstructive sleep apnea, with the placement of a CPAP mask on the patient.

Except as specifically set forth above, unlicensed individuals may not engage in any of the following activities: the teaching, administration, or performance of respiratory care. Instructions to the patient or caregiver regarding the clinical use of the equipment, application of respiratory equipment to the patient and any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment, must be performed by a respiratory care practitioner licensed by the Board or other licensed practitioner operating within their scope of practice.

- (4) A person who is licensed by another North Carolina licensing board to carry on an occupation, who is acting within the recognized scope of practice for the license issued by that other board, or who otherwise is carrying out functions recognized as appropriate for the licensed person by that board; and any other person who is working under the supervision of such a licensed person, provided that the supervision of the other person also is recognized as being within the appropriate scope of practice or functions of the licensed person. With regard to other persons who are not licensed by a North Carolina licensing board, the Board shall

consider whether there is evidence establishing that such persons meet the requirements of G. S. 90-664 (1).

*Authority G.S. 90-648(13); 90-652(2); 90-664.*

\* \* \* \* \*

## **CHAPTER 65 – BOARD OF RECREATIONAL THERAPY LICENSURE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Recreational Therapy Licensure intends to amend the rules cited as 21 NCAC 65 .0601, .0602 and .0901.*

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

**Proposed Effective Date:** *January 15, 2013*

**Public Hearing:**

**Date:** *September 24, 2012*

**Time:** *4:30 p.m.*

**Location:** *NCRTA Conference Crowne Plaza Hotel, Newton Room Piedmont Center, 1385 Lenoir Rhyne Blvd. SE, Hickory, NC 28602*

### **Reason for Proposed Action:**

**21 NCAC 65 .0601** – *To move due dates away from holidays to licensees birthdays.*

**21 NCAC 65 .0602** – *To clarify language and expand continuing education opportunities and value.*

**21 NCAC 65 .0901** – *To add military exemption and clarify language.*

**Procedure by which a person can object to the agency on a proposed rule:** *Attend public hearing, write NCBRTL at PO Box 67, Saxapahaw, NC 27340 or email becky@ncbrtl.org.*

**Comments may be submitted to:** *Becky Garrett, PO Box 67, Saxapahaw, NC 27340; phone (336) 212-1133; email becky@ncbrtl.org*

**Comment period ends:** *November 5, 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

☐  
☐  
☐  
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- 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 .0600 – CONTINUING EDUCATION REQUIREMENTS**

**21 NCAC 65 .0601 CONTINUING EDUCATION REQUIREMENTS FOR LICENSED RECREATIONAL THERAPIST AND LICENSED RECREATIONAL THERAPY ASSISTANT**

(a) During the two-year licensing period, a recreational therapist or recreational therapy assistant who is licensed by the North Carolina Board of Recreation Therapy Licensure shall complete continuing education as outlined below. Candidates for license renewal must complete a minimum of 20 ~~points~~ hours of continuing education to renew the license. The renewal cycle is two years prior to your expiration date, 20 hours or 2.0 CEUs must be earned within these two years. Content of continuing education must be directly related to the practice of recreational therapy or therapeutic recreation and must be consistent with the current Job Analysis conducted by the National Council for Therapeutic Recreation Certification. A licensee shall acquire credit through continuing education courses, academic courses, and professional publications and presentations.

(b) ~~Point~~ Values will be awarded as the following: follows:

- One CEP (Continuing Education Point) = one contact hour  
0.1 CEU (Continuing Education Unit) = one contact hour  
10 CEPs = 10 contact hours = 1.0 CEU 1.0 CEU (Continuing Education Unit) = ten hours  
2.0 CEUs = 20 Hours of Continuing Education every two years  
Renewal Cycle is two years back from renewal due date

(c) Continuing education is accepted if provided by an organization that adheres to the National or International Council on Continuing Education Standards or by other approved providers of continuing education as defined by Board. The content of the continuing education experiences must be linked directly to the knowledge areas from the most recent National Job Analysis Study conducted by the National Council for Therapeutic Recreation Certification and any subsequent amendments or changes.

(d) Academic Courses: Credit equivalents for completing academic coursework are: three semester hours equals 45 Hours ~~CEPs~~ or 4.5 CEUs.

(e) Professional Publications and Presentations: No more than 10 CEPs in the area of professional publications and presentations shall be accepted for each renewal period according to the following point value: Repeat presentations are limited to the current renewal cycle and does not apply to their use in subsequent cycles.

- |  |   |
|--|---|
| Editorials                                 | one <del>CEP</del> <u>Hour</u>                            |
| Articles on original research              | six <del>CEPs</del> <u>Hours</u>                          |
| Professional newsletter article            | one <del>CEP</del> <u>Hour, Maximum 4 Hours per cycle</u> |
| Editing a textbook                         | <del>three CEPs</del> <u>4 Hours</u>                      |
| Authoring a textbook chapter               | <del>four CEPs</del> <u>6 Hours</u>                       |
| Journal article                            | four <del>CEPs</del> <u>Hours</u>                         |
| Journal reviews or book review             | one <del>CEP</del> <u>Hours</u>                           |
| Poster presentation                        | one <del>CEP</del> <u>Hours</u>                           |
| Research abstract                          | one <del>CEP</del> <u>Hours</u>                           |
| Textbook                                   | <del>eight CEPs</del> <u>10 Hours</u>                     |
| Unpublished masters or doctoral thesis     | <del>four CEPs</del> <u>8 Hours</u>                       |
| Presentations at professional meetings     | two <del>CEPs</del> <u>Hours</u>                          |
| Field placement supervision                | three <del>CEPs</del> <u>Hours</u>                        |
| Professional Board Member Service (1 year) | one <u>Hour</u>   |

(f) Credit shall not be given for repeat or multiple presentations of same seminar, publication, in-service, original paper or poster presentation during the renewal cycle.

(g) Field placement supervisors shall be granted credit for supervision of no more than two field placement students during the renewal cycle. Submission of Clinical Appraisal and Reference Summary Form is accepted documentation.

(h) First year Licensees shall attend Board directed Compliance and Ethics Training for four hours credit.

(i) Submission for on-line training documentation shall show value awarded, content, sponsoring body and submit link to website for verification. Maximum of ten hours may be awarded.

(j) Professional Recreational Therapy Board Member service shall be documented by letter of service from the professional board.

*Authority G.S. 90C-2; 90C-24(a)(3).*

**21 NCAC 65 .0602 RENEWAL REQUIREMENTS FOR LICENSED RECREATIONAL THERAPIST AND LICENSED RECREATIONAL THERAPY ASSISTANT**

- (a) A renewal notice shall be ~~mailed~~-emailed to the licensee 60 days prior to the expiration date at their last known address.
- (b) Licenses issued shall be subject to renewal every two years upon completion of continuing education requirements as defined in Rule .0601.
- (c) Each Licensee must complete and submit a renewal application package. All materials must be postmarked by ~~December 15<sup>th</sup>~~ the 15<sup>th</sup> of the month of your birth date of the year ~~prior to~~ of the applicant's expiration date printed on their license. The renewal application package must be submitted to the Board and must be accompanied by the proper ~~fees~~. fees, updated color photo and documentation.
- (d) Unless a person has advised the Board that he or she does not intend to renew the license, a renewal notification shall be sent to the person's last known ~~home~~ email address.

*Authority G.S. 90C-2; 90C-24(a)(3).*

## SECTION .0900 – RECIPROCITY

### 21 NCAC 65 .0901 ENDORSEMENT

- (a) The applicant for licensure by ~~endorsement~~ endorsement, possessing a current license from another state, must make application to and be evaluated by the Board in accordance to the procedures outlined in the requirements for licensure.
- (b) The application package shall be accompanied by:
- (1) One current head and shoulders color photograph of the applicant identification;
  - (2) Official college transcripts;
  - (3) Verification of current state licensure;
  - (4) Verification of successful passage of the National Council for Therapeutic Recreation Certification Therapeutic Recreation Exam; and
  - (5) Licensure Fees stated in Rule .0500.
- (c) The Board shall issue a license to practice as a licensed recreational therapist or a licensed recreational therapy assistant to any applicant who:
- (1) Meets all licensure requirements, and
  - (2) Is currently licensed as a recreational therapist or recreational therapy assistant by a state with requirements substantially equivalent to the North Carolina Board of Recreational Therapy Licensure requirements at the time of application.
  - (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (d) The applicant for licensure by endorsement, to a military-trained applicant, must make application to and be evaluated by

the Board in accordance to the procedures outlined in the requirements for licensure who:

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to the education requirements in Rule .0301 or .0302 of this Chapter;
- (2) Has engaged in the active practice of the recreational therapy in North Carolina for at least two of the five years preceding the date of the application under this Section;
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) One current head and shoulders color photograph of the applicant identification
- (5) Verification of successful passage of the National Council for Therapeutic Recreation Certification Therapeutic Recreation Exam; and
- (6) Licensure Fees stated in Rule .0500.

(e) The applicant for licensure by endorsement, to a military-trained spouse, must make application to and be evaluated by the Board in accordance to the procedures outlined in the requirements for licensure who:

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to the education requirements in Rule .0301 or .0302 of this Chapter;
- (2) Has engaged in the active practice of the recreational therapy in North Carolina for at least two of the five years preceding the date of the application under this Section;
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed;
- (4) One current head and shoulders color photograph of the applicant identification;
- (5) Verification of successful passage of the National Council for Therapeutic Recreation Certification Therapeutic Recreation Exam; and
- (6) Licensure Fees stated in Rule .0500.

*Authority G.S. 90C-24(a)(3); 90C-33; 93B-15.1.*

**Note from the Codifier:** The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website ([www.ncogh.com/rules](http://www.ncogh.com/rules)) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60<sup>th</sup> day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

## TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES

**Rule-making Agency:** Department of Cultural Resources

**Rule Citation:** 07 NCAC 04N .0202

**Effective Date:** August 10, 2012

**Findings Reviewed and Approved by the Codifier:** August 1, 2012, Codifier of Rules determined findings of need does not meet the criteria for emergency rulemaking.

**Reason for Action:** The purpose of the amended rule is to increase an admission fee to offset the loss of appropriations resulting from Session Law 2012-142 effective July 1, 2012, and Session Law 2011-145 (appropriation bills for the fiscal biennium ending June 30, 2013).

Session Law 2011-145 Section 21.1 established the North Carolina Transportation Museum special fund (enterprise fund), which shall be used to pay all costs associated with the operation and maintenance Transportation Museum. All receipts derived from admissions and fee shall be credited to the fund.

The 2011-12 Senate Appropriations Committee Report cut the appropriation by 50% (\$576,258) in FY 2012-13 Conference Report cut the appropriation by 74% (\$852,515). The Governor's Recommended Budget for 2012-13 requested an additional \$100,000 in appropriations for the Museum; however, the request was not approved by the legislature. Because the additional \$100,000 in appropriations was not approved, the North Carolina Transportation museum must increase the admission fee immediately in order to cover operating expenses.

Session Law 2012-142 Section 6.10 (a) states that "an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee to the level authorized or anticipated in this act." Furthermore, Section 6.10(b) allows an agency to adopt an emergency rule in accordance with G.S. 150B-21.1A to establish or increase a fee as authorized by this act.

- (2) Aycock Birthplace,
- (3) Bennett Place,
- (4) Bentonville Battleground,
- (5) Brunswick Town,
- (6) Caswell-Neuse,
- (7) Duke Homestead,
- (8) Fort Dobbs,
- (9) Fort Fisher,
- (10) Historic Halifax,
- (11) House in the Horseshoe,
- (12) Polk Memorial,
- (13) Reed Gold Mine,
- (14) Somerset Place,
- (15) Town Creek Indian Mound,
- (16) Vance Birthplace,
- (17) Charlotte Hawkins Brown Memorial,
- (18) Horne Creek Living History Farm.

(b) The following site charges an admission fee of five dollars (\$5.00) for adults, two dollars (\$2.00) for children, and one half off the regular admission price for groups of ten or more: Thomas Wolfe Memorial.

(c) The following site charges an admission fee of one dollar (\$1.00) for adults, twenty-five cents (\$0.25) for children: James Iredell House.

(d) The following site charges an admission fee of two dollars (\$2.00) for adults, one dollar (\$1.00) for children and one half off the regular admission price for groups of ten or more to each historic structure:

- (1) Historic Bath, Bonner House;
- (2) Historic Bath, Palmer-Marsh House.

(e) The following site charges an admission fee of three dollars (\$3.00) for adults, one dollar and fifty cents (\$1.50) for students, two dollars (\$2.00) for senior citizens, and fifty cents (\$0.50) off the regular admission price for groups of ten or more: Elizabeth II.

(f) The North Carolina Transportation Museum at Spencer charges admission fees as follows:

- (1) General Admission: ~~Five dollars (\$5.00)~~ Six dollars (\$6.00) for adults; ~~four dollars (\$4.00)~~ five dollars (\$5.00) for seniors and active military; ~~three dollars (\$3.00)~~ four dollars (\$4.00) for students (ages 3 to 12); and free for children (ages 0 to 2).
- (2) Group Admission (15 or more visitors): ~~Four dollars (\$4.00)~~ Five dollars (\$5.00) for adults; ~~three dollars and fifty cents (\$3.50)~~ four dollars and fifty cents (\$4.50) for seniors and active military; ~~one dollar and fifty cents (\$1.50)~~ two dollars and fifty cents (\$2.50) for students (ages 3 to 12); and free for children (ages 0 to 2).

## CHAPTER 04 - DIVISION OF ARCHIVES AND HISTORY

### SUBCHAPTER 04N – HISTORIC SITES REGULATIONS

#### SECTION .0200 - SITE HOURS: ADMISSION FEES

#### 07 NCAC 04N .0202 STATE HISTORIC SITES FEES

(a) The following sites do not charge an admission fee:

- (1) Alamance Battleground,



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**EMERGENCY RULES**

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(g) The following site charges a gold panning fee of three dollars (\$3.00) per person and two dollars (\$2.00) for groups of ten or more: Reed Gold Mine.

*History Note:* Authority G.S. 121-4(8); 121-4(9);  
*Eff. February 1, 1985;*  
*Amended Eff. January 1, 1990; June 1, 1989;*  
*Emergency Amendment Eff. July 14, 2011;*

*Temporary Amendment Eff. September 23, 2011;*  
*Amended Eff. August 1, 2012;*  
*Codifier determined that findings of need did not meet the*  
*criteria for emergency rule on August 2, 2012;*  
*Emergency Amendment Eff. August 10, 2012.*

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**APPROVED RULES**

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

*Rules approved by the Rules Review Commission at its meeting on July 19, 2012.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT****CULTURAL RESOURCES, DEPARTMENT OF**

<u>Admission Fees</u>	07	NCAC	04N	.0202	26:19 NCR
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**MEDICAL CARE COMMISSION**

<u>Provision of Nutrition and Dietetic Services</u>	10A	NCAC	13D	.2701*	26:15 NCR
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**LABOR, DEPARTMENT OF**

<u>Address</u>	13	NCAC	12	.0901*	26:19 NCR
<u>Definitions</u>	13	NCAC	12	.0902*	26:19 NCR
<u>Presumption of Compliance</u>	13	NCAC	12	.0903*	26:19 NCR
<u>Filing of Complaints</u>	13	NCAC	12	.0904*	26:19 NCR
<u>Hearings</u>	13	NCAC	12	.0905*	26:19 NCR
<u>Civil Penalties</u>	13	NCAC	12	.0906*	26:19 NCR

**ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF**

<u>Department Head</u>	15A	NCAC	01A	.0101	26:18 NCR
<u>Councils and Committees</u>	15A	NCAC	01A	.0103	26:18 NCR
<u>Model Rules</u>	15A	NCAC	01B	.0101	26:18 NCR
<u>Definitions</u>	15A	NCAC	01B	.0201	26:18 NCR
<u>Request for Contested Case Hearing</u>	15A	NCAC	01B	.0202	26:18 NCR
<u>Request for Contested Case Hearing</u>	15A	NCAC	01B	.0203	26:18 NCR
<u>Final Agency Decision in Contested Case Proceedings</u>	15A	NCAC	01B	.0204	26:18 NCR
<u>Scope of Section</u>	15A	NCAC	01B	.0301	26:18 NCR
<u>Definitions</u>	15A	NCAC	01B	.0302	26:18 NCR
<u>Concession Contracts</u>	15A	NCAC	01B	.0303	26:18 NCR
<u>Definitions</u>	15A	NCAC	01B	.0401	26:18 NCR
<u>Public Access</u>	15A	NCAC	01B	.0402	26:18 NCR
<u>Application of Resolution Procedure</u>	15A	NCAC	01G	.0201	26:18 NCR
<u>Initial Review of Claim</u>	15A	NCAC	01G	.0202	26:18 NCR
<u>Letter of Notification</u>	15A	NCAC	01G	.0203	26:18 NCR
<u>Response to Letter of Notification</u>	15A	NCAC	01G	.0204	26:18 NCR
<u>Follow-Up to Unserved Notification</u>	15A	NCAC	01G	.0205	26:18 NCR
<u>Claims Deemed Complete</u>	15A	NCAC	01G	.0206	26:18 NCR
<u>Claim Determination</u>	15A	NCAC	01G	.0207	26:18 NCR
<u>Introduction</u>	15A	NCAC	01G	.0301	26:18 NCR

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**APPROVED RULES**

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<u>Filled Lands</u>	15A	NCAC	01G	.0302	26:18 NCR
<u>Privately Owned Beds</u>	15A	NCAC	01G	.0303	26:18 NCR
<u>Marshlands and Swamplands</u>	15A	NCAC	01G	.0304	26:18 NCR
<u>Limited Rights</u>	15A	NCAC	01G	.0305	26:18 NCR
<u>Purpose</u>	15A	NCAC	01J	.1401	26:18 NCR
<u>Definitions</u>	15A	NCAC	01J	.1402	26:18 NCR
<u>Eligible Project Costs</u>	15A	NCAC	01J	.1501	26:18 NCR
<u>Application Filing Deadlines</u>	15A	NCAC	01J	.1601	26:18 NCR
<u>General Provisions</u>	15A	NCAC	01J	.1602	26:18 NCR
<u>Common Criteria</u>	15A	NCAC	01J	.1701	26:18 NCR
<u>Assignment of Category to Wastewater System Applications</u>	15A	NCAC	01J	.1801	26:18 NCR
<u>Existing Conditions</u>	15A	NCAC	01J	.1901	26:18 NCR
<u>Water Quality Improvement Criteria</u>	15A	NCAC	01J	.1902	26:18 NCR
<u>Public Necessity: Health: Safety: and Welfare</u>	15A	NCAC	01J	.2001	26:18 NCR
<u>Project Planning</u>	15A	NCAC	01J	.2002	26:18 NCR
<u>Source Water Protection</u>	15A	NCAC	01J	.2003	26:18 NCR
<u>Criteria for Loan Adjustments</u>	15A	NCAC	01J	.2101	26:18 NCR
<u>Repayment of Principal and Interest on Loans</u>	15A	NCAC	01J	.2201	26:18 NCR
<u>General</u>	15A	NCAC	01K	.0101	26:18 NCR
<u>Applicability</u>	15A	NCAC	01K	.0102	26:18 NCR
<u>Definitions</u>	15A	NCAC	01K	.0103	26:18 NCR
<u>Eligibility</u>	15A	NCAC	01K	.0201	26:18 NCR
<u>Application Procedures</u>	15A	NCAC	01K	.0202	26:18 NCR
<u>Bank Eligibility</u>	15A	NCAC	01K	.0301	26:18 NCR
<u>Loan Processing by Banks</u>	15A	NCAC	01K	.0302	26:18 NCR
<u>Duties of the Loan Fund Coordinato</u>	15A	NCAC	01K	.0303	26:18 NCR
<u>Loan Approval Criteria</u>	15A	NCAC	01K	.0304	26:18 NCR
<u>Delinquent Accounts</u>	15A	NCAC	01K	.0305	26:18 NCR
<u>Loan Administration Fees and Costs</u>	15A	NCAC	01K	.0401	26:18 NCR
<u>Interest and Term</u>	15A	NCAC	01K	.0402	26:18 NCR
<u>Additional Conditions</u>	15A	NCAC	01K	.0403	26:18 NCR
<u>Funding of Loan</u>	15A	NCAC	01K	.0404	26:18 NCR

**PUBLIC HEALTH, COMMISSION FOR**

<u>Sources of Food</u>	15A	NCAC	18A	.2608	26:18 NCR
<u>Refrigeration Thawing and Preparation of Food</u>	15A	NCAC	18A	.2609	26:18 NCR
<u>Storage Handling and Display of Food</u>	15A	NCAC	18A	.2610	26:18 NCR
<u>Re-Serving of Food</u>	15A	NCAC	18A	.2611	26:18 NCR
<u>Shellfish</u>	15A	NCAC	18A	.2612	26:18 NCR
<u>Food</u>	15A	NCAC	18A	.2653*	26:18 NCR

**TRANSPORTATION, DEPARTMENT OF**

<u>Permits-Weight, Dimensions and Limitations</u>	19A	NCAC	02D	.0607*	26:19 NCR
<u>Employment of Specialized Services</u>	19A	NCAC	02E	.0701*	n/a G.S. 150B-21.5(a)(2)

**ARCHITECTURE, BOARD OF**

<u>Forms of Practice</u>	21	NCAC	02	.0204*	n/a G.S. 150B-21.5(a)(5)
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**ATHLETIC TRAINER EXAMINERS**

<u>Fees</u>	21	NCAC	03	.0201*	26:17 NCR
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**HEARING AID DEALERS AND FITTERS BOARD**

<u>Submission of Applications and Fees</u>	21	NCAC	22F	.0103*	26:14 NCR
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<u>Training and Supervision</u>	21	NCAC	22F	.0114*	26:14 NCR
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**MEDICAL BOARD**

<u>Authority to Prescribe</u>	21	NCAC	32B	.1001*	26:18 NCR
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<u>Application of Resident's Training License</u>	21	NCAC	32B	.1402*	26:18 NCR
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<u>Continuing Medical Education (CME) Required</u>	21	NCAC	32R	.0101	26:18 NCR
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<u>Approved Categories of CME</u>	21	NCAC	32R	.0102	26:18 NCR
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<u>Exceptions</u>	21	NCAC	32R	.0103*	26:18 NCR
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<u>Reporting</u>	21	NCAC	32R	.0104	26:18 NCR
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<u>Waiver for Licensees Serving on Active Duty in the Armed ...</u>	21	NCAC	32R	.0105	26:18 NCR
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<u>Prescriptive Authority</u>	21	NCAC	32S	.0212*	26:18 NCR
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**FUNERAL SERVICE, BOARD OF**

<u>Purpose of Board</u>	21	NCAC	34A	.0102	26:18 NCR
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<u>Public Inspection of Materials</u>	21	NCAC	34A	.0105	26:18 NCR
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**OPTOMETRY, BOARD OF EXAMINERS IN**

<u>Application for Licensure by Reciprocity</u>	21	NCAC	42B	.0104	26:16 NCR
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<u>Application</u>	21	NCAC	42D	.0103	26:16 NCR
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<u>Registration</u>	21	NCAC	42D	.0104	26:16 NCR
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<u>Annual Renewal</u>	21	NCAC	42D	.0105	26:16 NCR
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<u>Accreditation</u>	21	NCAC	42D	.0106	26:16 NCR
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<u>Termination of Registration</u>	21	NCAC	42D	.0108	26:16 NCR
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**SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

<u>Application Fee</u>	21	NCAC	63	.0208*	26:14 NCR
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<u>Provisional Licenses</u>	21	NCAC	63	.0210*	26:14 NCR
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<u>Renewal Fees</u>	21	NCAC	63	.0403*	26:14 NCR
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<u>Reinstatement</u>	21	NCAC	63	.0404*	26:14 NCR
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**STATE PERSONNEL COMMISSION**

<u>State Personnel Commission: Procedures</u>	25	NCAC	01B	.0437*	26:14 NCR
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<u>Establishment of Reasonable Attorney Fees by the Commission</u>	25	NCAC	01B	.0438*	26:14 NCR
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**TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES**

**07 NCAC 04N .0202 STATE HISTORIC SITES FEES**

(a) The following sites do not charge an admission fee:

- (1) Alamance Battleground,
- (2) Aycock Birthplace,
- (3) Bennett Place,
- (4) Bentonville Battleground,
- (5) Brunswick Town,
- (6) Caswell-Neuse,
- (7) Duke Homestead,
- (8) Fort Dobbs,
- (9) Fort Fisher,
- (10) Historic Halifax,
- (11) House in the Horseshoe,
- (12) Polk Memorial,
- (13) Reed Gold Mine,
- (14) Somerset Place,
- (15) Town Creek Indian Mound,
- (16) Vance Birthplace,
- (17) Charlotte Hawkins Brown Memorial,
- (18) Horne Creek Living History Farm.

(b) The following site charges an admission fee of five dollars (\$5.00) for adults, two dollars (\$2.00) for children, and one half off the regular admission price for groups of ten or more: Thomas Wolfe Memorial.

(c) The following site charges an admission fee of one dollar (\$1.00) for adults, twenty-five cents (\$0.25) for children: James Iredell House.

(d) The following site charges an admission fee of two dollars (\$2.00) for adults, one dollar (\$1.00) for children and one half off the regular admission price for groups of ten or more to each historic structure:

- (1) Historic Bath, Bonner House;
- (2) Historic Bath, Palmer-Marsh House.

(e) The following site charges an admission fee of three dollars (\$3.00) for adults, one dollar and fifty cents (\$1.50) for students, two dollars (\$2.00) for senior citizens, and fifty cents (\$0.50) off the regular admission price for groups of ten or more: Elizabeth II.

(f) The North Carolina Transportation Museum at Spencer charges admission fees as follows:

- (1) General Admission: Five dollars (\$5.00) for adults; four dollars (\$4.00) for seniors and active military; three dollars (\$3.00) students (ages 3 to 12); and free for children (ages 0 to 2).
- (2) Group Admission (15 or more visitors): Four dollars (\$4.00) for adults; three dollars and fifty cents (\$3.50) for seniors and active military; one dollar and fifty cents (\$1.50) for students (ages 3 to 12); and free for children (ages 0 to 2).

(g) The following site charges a gold panning fee of three dollars (\$3.00) per person and two dollars (\$2.00) for groups of ten or more: Reed Gold Mine.

*History Note: Authority G.S. 121-4(8);  
Eff. February 1, 1985;  
Amended Eff. January 1, 1990; June 1, 1989;  
Emergency Amendment Eff. July 14, 2011;  
Temporary Amendment Eff. September 23, 2011;  
Amended Eff. August 1, 2012.*

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**10A NCAC 13D .2701 PROVISION OF NUTRITION AND DIETETIC SERVICES**

(a) A facility shall ensure that each patient is provided with a palatable diet that meets his or her daily nutritional and specialized nutritional needs.

(b) The facility shall designate a person to be known as the director of food service who shall be responsible for the facility's dietetic service and for supervision of dietetic service personnel.

(c) Based on a resident's assessment, the nursing home must ensure that a patient maintains nutritional status, such as body weight and protein levels, unless the patient's clinical condition demonstrates that it is not possible.

(d) There shall be sufficient personnel employed to meet the nutritional needs of all patients in the areas of therapeutic diets, food preparation and service, principles of sanitation, and resident's preferences as related to food services.

(e) The facility shall ensure that menus are followed which meet the nutritional needs of patients in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences which are incorporated by reference, including subsequent amendments. Copies of this publication may be obtained by contacting The National Academy Press, 500 Fifth St. N.W., Washington, D.C. 20001 or accessing it at [http://www.nap.edu/catalog.php?record\\_id=1349](http://www.nap.edu/catalog.php?record_id=1349). Menus shall:

- (1) be planned at least 14 days in advance,
- (2) provide for substitutes of similar nutritive value for patients who refuse food that is served, and
- (3) be provided to patients orally or written through such methods as posting and daily announcements.

(f) Food must be prepared to conserve its nutritive value and appearance.

(g) Food shall be served at the preferred temperature as discerned by the resident and customary practice, in a form to meet the patient's individual needs and with assistive devices as dictated by the patient's needs. Hot foods shall leave the kitchen (or steam table) above 135 degrees F; and cold foods below 41 degrees F. The freezer must keep frozen foods frozen solid.

(h) If patients require assistance in eating, food shall be maintained at the appropriate temperature until assistance is provided.

(i) All diets, including enteral and parenteral nutrition therapy, shall be as ordered by the physician or other legally authorized person, and served as ordered.

- (j) At least three meals shall be served daily to all patients in accordance with medical orders.
- (k) No more than 14 hours shall elapse between an evening meal containing a protein food and a morning meal containing a protein food.
- (l) Hour-of-sleep (hs) nourishment shall be available to patients upon request or in accordance with nutritional plans.
- (m) Between-meal fluids for hydration shall be available and offered to all patients in accordance with medical orders.
- (n) The facility shall have a current online or hard copy nutrition care manual or handbook approved by the dietitian, medical staff and the Administrator which shall be used in the planning of the regular and therapeutic diets and be accessible to all staff.
- (o) Food services shall comply with Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments (15A NCAC 18A .1300) as promulgated by the Commission for Public Health which are incorporated by reference, including subsequent amendments, assuring storage, preparation, and serving of food under sanitary conditions. Copies of these Rules can be accessed online at <http://www.deh.enr.state.nc.us/rules.htm>.

*History Note: Authority G.S. 90-368(4); 131E-104; RRC objection due to lack of statutory authority Eff. July 13, 1995; Eff. January 1, 1996; Amended Eff. August 1, 2012.*

### **TITLE 13 – DEPARTMENT OF LABOR**

#### **13 NCAC 12 .0901 SCOPE AND ADDRESS**

- (a) The Commissioner of Labor or her designee administers the provisions of Chapter 64, Article 2 of the North Carolina General Statutes and is responsible for receiving and investigating complaints, conducting hearings and issuing and enforcing orders as required by G.S. 64-27 through G.S. 64-34.
- (b) Correspondence relating to Chapter 64, Article 2 of the North Carolina General Statutes or this Section shall be addressed to:

North Carolina Department of Labor  
Attn: E-Verify Complaint Administrator  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101

*History Note: Authority G.S. 64-37; Eff. October 1, 2012.*

#### **13 NCAC 12 .0902 DEFINITIONS**

In addition to the definitions contained in G.S. 64-25, the following definitions apply throughout this Section:

- (1) "Anonymous" means having an unknown or unacknowledged name or origin;
- (2) "Date of hire" means the first day that an individual meets the definition of being an "employee" of an "employer" as set forth in

G.S. 64-25. When calculating an employee's "date of hire", the days between the employer's offer and the employee's first day of work performance are not counted.

- (3) "Determines that the complaint is not false and frivolous," as stated in G.S. 64-30, means the Commissioner or her designee determines there is evidence, beyond mere suspicion or allegation and not based solely on race, religion, gender, ethnicity, or national origin, that the employer has in fact violated G.S. 64-26;
- (4) "Employs 25 or more employees" in G.S. 64-25(4), means the employer employs 25 or more employees in this State as of the date of hire of the person for whom it has been alleged that E-Verify was not used for verification of work authorization. When calculating the number of employees, seasonal temporary workers shall not be counted if those workers meet the requirements for exemption as set forth in G.S. 64-26(c);
- (5) "Good faith belief" means having some basis in fact or credible information to believe that the employer has violated the provisions of G.S. 64-26.

*History Note: Authority G.S. 64-37; Eff. October 1, 2012.*

#### **13 NCAC 12 .0903 PRESUMPTION OF COMPLIANCE**

- (a) The Commissioner or her designee shall presume that an employer has complied with the provisions of G.S. 64-26 and this Section if the employer verified the work authorization of an employee using E-Verify within three employer business days after the employee's date of hire.
- (b) If the Commissioner of Labor or her designee finds that a presumption of compliance exists in accordance with Paragraph (a) of this Rule, the complaint shall be closed by the Commissioner or her designee.

*History Note: Authority G.S. 64-37; Eff. October 1, 2012.*

#### **13 NCAC 12 .0904 FILING OF COMPLAINTS**

- (a) Complaints may be made on the form available at [www.nclabor.com](http://www.nclabor.com), or verbally by contacting the North Carolina Department of Labor at 1-800-625-2267.
- (b) All verbal complaints or complaints filed on a form other than the one prescribed in this Rule shall include the following information:

- (1) Complainant's name, address, telephone number, email address (if applicable), and relationship to the employer, unless the complaint is filed anonymously;
- (2) Employer's name;
- (3) Employer's physical address, mailing address, and telephone number, if available;

- (4) Name of business owner or other contact, telephone number, and email address, if available;
  - (5) Approximate number of employees employed by the employer in the State of North Carolina;
  - (6) Name(s) of the employee(s) in North Carolina whom the complainant is alleging the employer failed to verify the work authorization of in accordance with G.S. 64-26, if available;
  - (7) Information which leads the complainant to believe that the employer failed to verify work authorization(s) in accordance with G.S. 64-26; and
  - (8) Any additional information the complainant considers relevant to support the allegations set forth in the complaint.
- (c) A complaint shall not be investigated if:
- (1) it is filed against an employer who employs less than 25 employees;
  - (2) it is based solely on race, religion, gender, ethnicity, or national origin;
  - (3) sufficient information to proceed with an investigation is not provided at the time of filing pursuant to the provisions of Chapter 64, Article 2 of the North Carolina General Statutes and the provisions of this Section;
  - (4) within 48 hours of being notified that a complaint has been filed, the employer provides the Commissioner or her designee with written proof of compliance with Chapter 64, Article 2 of the North Carolina General Statutes and the provisions of this Section;
  - (5) it is based solely upon an employee who was hired prior to the effective date of G.S. 64, Article 2; or
  - (6) it is based solely upon an employee who meets the criteria of a seasonal temporary worker as set forth in G.S. 64-26(c).

*History Note: Authority G.S. 64-37; Eff. October 1, 2012.*

**13 NCAC 12 .0905 HEARINGS**

- (a) If after an investigation the Commissioner or her designee determines that a complaint is not false and frivolous, the matter shall be referred to hearing before a hearing officer designated by the Commissioner. The hearing officer shall conduct a hearing to determine if a violation of G.S. 64-26 has occurred.
- (b) If, after a hearing, it is determined that a violation of G.S. 64-26 has occurred, one of the following actions shall be taken:
  - (1) If the employee is currently employed, or has been discharged since commencement of the investigation, and it is found that the employer verified the employee's work authorization through the use of E-Verify after initiation of the investigation, the hearing officer shall:
    - (A) Issue a written order setting forth the violation;

- (B) Order the employer to file the affidavit required by G.S. 64-31(a); and
  - (C) Order payment of any applicable civil penalty as set forth in G.S. 64-31 through G.S. 64-33.
- (2) If the employee is currently employed by the employer and the employer has not verified the employee's work authorization through the use of E-Verify since initiation of the investigation, the hearing officer shall:
- (A) Issue a written order setting forth the violation;
  - (B) Order the employer to file the affidavit required by G.S. 64-31(a); and
  - (C) Order payment of any applicable civil penalty as set forth in G.S. 64-31 through G.S. 64-33.
- (3) If the employee is no longer employed by the employer and it is found during the investigation that the employer did not verify the employee's work authorization through the use of E-Verify at any time, the hearing officer shall:
- (A) Issue a written order setting forth the violation;
  - (B) Order the employer to file, within three business days, a signed sworn affidavit stating that the employee is no longer employed by the employer, setting forth the employee's beginning and ending dates of employment, and acknowledging that the employer did not verify the employee's work authorization through the use of E-Verify during the period of employment or otherwise; and
  - (C) Order payment of any applicable civil penalty as set forth in G.S. 64-31 through G.S. 64-33.

- (c) When an order is issued in accordance with Paragraph (b) of this Rule and the employer fails to submit the affidavit required by G.S. 64-31(a) or Part (b)(3)(B) of this Rule within three business days, the hearing officer shall issue a written order for the employer to pay a civil penalty in accordance with G.S. 64-31(b).
- (d) If the hearing officer determines that no violation of G.S. 64-26(a) exists, the complaint shall be dismissed. Written evidence of the dismissal shall be entered into the case file, the file shall be closed, and no further action shall be taken.
- (e) Hearings may be conducted in person or via telephone, at the discretion of the hearing officer.

*History Note: Authority G.S. 64-37; 64-38; Eff. October 1, 2012.*

**13 NCAC 12 .0906 CIVIL PENALTIES**

(a) In civil penalty cases, the Commissioner shall notify the employer by certified mail of the following:

- (1) the nature of the violation;
- (2) the amount of the civil penalty; and
- (3) that the civil penalty is final, unless the employer takes exception to the penalty determination as set forth in G.S. 64-36 and Paragraph (b) of this Rule.

(b) An employer may take an exception to a civil penalty determination by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

(c) An employer who takes exception in accordance with Paragraph (b) of this Rule to a civil penalty determination shall serve a copy of the written petition for a contested case on the Commissioner of Labor at the following address:

N.C. Department of Labor  
Attn: Commissioner of Labor/2nd Floor, Labor Building  
1101 Mail Service Center  
Raleigh, N.C. 27699-1101

*History Note:* Authority G.S. 64-37;  
*Eff. October 1, 2012.*

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

**15A NCAC 01A .0101 DEPARTMENT HEAD**

*History Note:* Authority G.S. 143A-11; 143B-279.1;  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 1984; February 23, 1979;*  
*Transferred from T15.01A .0001 Eff. November 1, 1989;*  
*Amended Eff. March 1, 1990;*  
*Repealed Eff. August 1, 2012.*

**15A NCAC 01A .0103 COUNCILS AND COMMITTEES**

*History Note:* Authority G.S. 143B-10(d);  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 1984; February 23, 1979;*  
*Transferred from T15.01A .0009 Eff. November 1, 1989;*  
*Repealed Eff. August 1, 2012.*

**15A NCAC 01B .0101 MODEL RULES**

*History Note:* Authority G.S. 143B-10(j); 150B-11; 150B-14(c);  
*Eff. August 1, 1982;*  
*Amended Eff. May 1, 1988; October 1, 1984;*  
*Transferred from T15.01B .0120 Eff. November 1, 1989;*  
*Amended Eff. March 1, 1990;*  
*Repealed Eff. August 1, 2012.*

**15A NCAC 01B .0201 DEFINITIONS**

**15A NCAC 01B .0202 AVAILABILITY OF  
CONTESTED CASE HEARING**

**15A NCAC 01B .0203 REQUEST FOR CONTESTED  
CASE HEARING**

**15A NCAC 01B .0204 FINAL AGENCY DECISION IN  
CONTESTED CASE PROCEEDINGS**

*History Note:* Authority G.S. 143B-10; 150B-2(2); 150B-11;  
150B-23(a); 150B-36;  
*Eff. February 1, 1976;*  
*Readopted (w/change) Eff. October 31, 1980;*  
*Legislative Objection Lodged Eff. July 20, 1982;*  
*Amended Eff. March 1, 1983; August 1, 1982;*  
*Objection Removed Eff. March 9, 1983;*  
*Amended Eff. September 1, 1988; August 1, 1988; July 1, 1988;*  
*Transferred from T15.01B .0201 Eff. November 1, 1989;*  
*Transferred from T15.01B .0202 Eff. November 1, 1989;*  
*Transferred from T15.01B .0204 Eff. November 1, 1989;*  
*Transferred from T15.01B .0221 Eff. November 1, 1989;*  
*Amended Eff. March 1, 1990;*  
*Repealed Eff. August 1, 2012.*

**15A NCAC 01B .0301 SCOPE OF SECTION**  
**15A NCAC 01B .0302 DEFINITIONS**

*History Note:* Authority G.S. 143B-10;  
*Eff. February 1, 1976;*  
*Readopted (w/change) Eff. August 1, 1982;*  
*Amended Eff. October 1, 1984;*  
*Transferred from T15.01B .0401 Eff. November 1, 1989;*  
*Transferred from T15.01B .0402 Eff. November 1, 1989;*  
*Amended Eff. March 1, 1990;*  
*Repealed Eff. August 1, 2012.*

**15A NCAC 01B .0303 CONCESSION CONTRACTS**

*History Note:* Authority G.S. 143B-10; 143-49(2),(3),(4);  
143-53; 143B-276;  
*Eff. August 1, 1982;*  
*Amended Eff. October 1, 1984;*  
*Transferred from T15.01B .0407 Eff. November 1, 1989;*  
*Repealed Eff. August 1, 2012.*

**15A NCAC 01B .0401 DEFINITIONS**

**15A NCAC 01B .0402 PUBLIC ACCESS**

*History Note:* Authority G.S. 132-1; 132-1.1; 132-2; 132-6;  
132-9; 143B-10(j); 150B-11;  
*Eff. August 1, 1982;*  
*Amended Eff. July 1, 1988; October 1, 1984;*  
*Transferred from T15.01B .0607 Eff. November 1, 1989;*  
*Transferred from T15.01B .0608 Eff. November 1, 1989;*  
*Amended Eff. March 1, 1990;*  
*Repealed Eff. August 1, 2012.*



**15A NCAC 01G .0201 APPLICATION OF  
RESOLUTION PROCEDURE**

*Eff. September 1, 2006;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01G .0202 INITIAL REVIEW OF CLAIM**

**15A NCAC 01G .0203 LETTER OF NOTIFICATION**

**15A NCAC 01G .0204 RESPONSE TO LETTER OF  
NOTIFICATION**

**15A NCAC 01G .0205 FOLLOW-UP TO UNSERVED  
NOTIFICATION**

**15A NCAC 01G .0206 CLAIMS DEEMED COMPLETE**

**15A NCAC 01G .0207 CLAIM DETERMINATION**

**15A NCAC 01J .1901 EXISTING CONDITIONS**

**15A NCAC 01J .1902 WATER QUALITY  
IMPROVEMENT CRITERIA**

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006;  
Repealed Eff. August 1, 2012.*

*History Note: Authority G.S. 113-205; 113-206(f); 143B-  
10(a);  
Eff. June 1, 1986;  
Amended Eff. October 1, 1987;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01G .0301 INTRODUCTION**

**15A NCAC 01G .0302 FILLED LANDS**

**15A NCAC 01G .0303 PRIVATELY OWNED BEDS**

**15A NCAC 01G .0304 MARSHLANDS AND  
SWAMPLANDS**

**15A NCAC 01G .0305 LIMITED RIGHTS**

**15A NCAC 01J .2001 PUBLIC NECESSITY: HEALTH:  
SAFETY AND WELFARE**

**15A NCAC 01J .2002 PROJECT PLANNING**

**15A NCAC 01J .2003 SOURCE WATER PROTECTION**

*History Note: Authority G.S. 159G-4; 159G-44;  
Eff. September 1, 2006;  
Repealed Eff. August 1, 2012.*

*History Note: Authority G.S. 1-35; 113-205; 113-206; 113-  
206(f); 143B-10(a); 146-6; 146-20.1;  
Eff. June 1, 1986;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01J .1401 PURPOSE**

**15A NCAC 01J .1402 DEFINITIONS**

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01J .2101 CRITERIA FOR LOAN  
ADJUSTMENTS**

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01J .2201 REPAYMENT OF PRINCIPAL  
AND INTEREST ON LOANS**

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01J .1501 ELIGIBLE PROJECT COSTS**

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01K .0101 GENERAL  
15A NCAC 01K .0102 APPLICABILITY  
15A NCAC 01K .0103 DEFINITIONS**

*History Note: Authority G.S. 143-215.94A; 143-215.94P;  
143-215.94T; 143B-279.2;  
Eff. December 1, 1992;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01J .1601 APPLICATION FILING**

**15A NCAC 01J .1602 GENERAL PROVISIONS**

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01K .0201 ELIGIBILITY  
15A NCAC 01K .0202 APPLICATION PROCEDURES**

*History Note: Authority G.S. 143-215.94C; 143-215.94P;  
143-215.94T;  
Eff. December 1, 1992;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01J .1701 COMMON CRITERIA**

*History Note: Authority G.S. 159G-44;  
Eff. September 1, 2006;  
Repealed Eff. August 1, 2012.*

**15A NCAC 01K .0301 BANK ELIGIBILITY  
15A NCAC 01K .0302 LOAN PROCESSING BY BANKS  
15A NCAC 01K .0303 DUTIES OF THE LOAN FUND  
COORDINATOR**

**15A NCAC 01J .1801 ASSIGNMENT OF CATEGORY  
TO WASTEWATER SYSTEM APPLICATIONS**

**15A NCAC 01K .0304 LOAN APPROVAL CRITERIA  
15A NCAC 01K .0305 DELINQUENT ACCOUNTS**

*History Note: Authority G.S. 159G-44;*

*History Note: Authority G.S. 143-215.94O(g); 143-215.94P;*

Eff. December 1, 1992;  
 Repealed Eff. August 1, 2012

**15A NCAC 01K .0401 LOAN ADMINISTRATION FEES  
 AND COSTS**

**15A NCAC 01K .0402 INTEREST AND TERM**

**15A NCAC 01K .0403 ADDITIONAL CONDITIONS**

**15A NCAC 01K .0404 FUNDING OF LOAN**

*History Note:* Authority G.S. 143-215.94P; 143-215.94T;  
 Eff. December 1, 1992;  
 Temporary Amendment Eff. June 1, 1993 for a period of 180  
 days or until the permanent rule becomes effective, whichever is  
 sooner;  
 Amended Eff. October 1, 1993;  
 Repealed Eff. August 1, 2012.

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**15A NCAC 18A .2608 SOURCES OF FOOD**

**15A NCAC 18A .2609 REFRIGERATION: THAWING:  
 AND PREPARATION OF FOOD**

**15A NCAC 18A .2610 STORAGE: HANDLING: AND  
 DISPLAY OF FOOD**

**15A NCAC 18A .2611 RE-SERVING OF FOOD**

**15A NCAC 18A .2612 SHELLFISH**

*History Note:* Authority G.S. 130A-248;  
 Eff. May 5, 1980;  
 Amended Eff. July 1, 1994; April 1, 1994; October 1, 1993; July  
 1, 1992; May 1, 1991; October 1, 1990; July 1, 1984;  
 Temporary Amendment Eff. February 1, 1998;  
 Amended Eff. August 1, 1998;  
 Temporary Amendment Eff. October 12, 1998;  
 Amended Eff. November 1, 2007; January 1, 2006; May 1, 2005;  
 April 1, 2005; October 1, 2004; April 1, 1999;  
 Repealed Eff. September 1, 2012.

**15A NCAC 18A .2653 FOOD**

The provisions of this Rule make amendments, additions, and  
 deletions to the Food Code incorporated by reference in Rule  
 .2650 of this Section. In Chapter 3, the following apply:

- (1) In Paragraph 3-201.11(A), add at the end:  
 "Food from food establishments in states  
 adjacent to North Carolina may be sold within  
 North Carolina if the food establishments are  
 under jurisdiction of the local or state  
 enforcement body in that state and approved  
 by the regulatory authority in North Carolina.  
 To determine the extent of compliance with  
 this Code, the regulatory authority shall obtain  
 reports regarding compliance and compliance  
 history from responsible authorities in other  
 jurisdictions where the food establishments are  
 located."
- (2) In Paragraph 3-301.11(B), amend to read:  
 "Except when washing fruits and vegetables as  
 specified under Section 3-302.15 or as  
 specified in Paragraphs (D) and (E) of this

section, food employees may not contact  
 exposed ready-to-eat food with their bare  
 hands and shall use suitable utensils such as  
 deli tissue, spatulas, tongs, single-use gloves,  
 or dispensing equipment."

- (3) In Paragraph 3-301.11(D), amend to read:  
 "Paragraph (B) of this section does not apply  
 to a food employee who contacts exposed,  
 ready-to-eat food with bare hands at the time  
 the ready-to-eat food is being added as an  
 ingredient to a food that is to be cooked in the  
 food establishment to heat all parts of the food  
 to a temperature of at least 74°C (165°F)."
- (4) In Section 3-301.11, redesignate existing  
 Paragraph (D) as new Paragraph (E).
- (5) In Subparagraph 3-301.11(D)(7), replace  
 "(D)(1)-(6)" with "(E)(1)-(6)."
- (6) Delete Section 3-305.13.
- (7) In Section 3-306.12, delete (B).
- (8) In Paragraph 3-403.11(D), amend to read:  
 "Reheating for hot holding as specified under  
 Paragraphs (A) through (C) of this section  
 shall be completed within 2 hours and the time  
 the food is between 5°C (41°F) or 7°C (45°F)  
 and the temperatures specified under  
 Paragraphs (A) through (C) of this section may  
 not exceed 2 hours."
- (9) In Paragraph 3-501.12(A), amend to read:  
 "Under refrigeration that maintains the food  
 temperature at 5°C (41°F) or less, or at 7°C  
 (45°F) or less as specified under Subparagraph  
 3- 501.16(A)(2)(b)."
- (10) In Paragraph 3-501.13(A), amend to read:  
 "Under refrigeration that maintains the food  
 temperature at 5°C (41°F) or less, or at 7°C  
 (45°F) or less as specified under Subparagraph  
 3-501.16(A)(2)(b)."
- (11) In Paragraph 3-501.13(B), amend to read:  
 "Completely submerged under running water:  
 (1) At a water temperature of 21°C  
 (70°F) or below,  
 (2) With sufficient water velocity to  
 agitate and float off loose particles in  
 an overflow,  
 (3) Such that for ready-to-eat food,  
 the temperature of thawed portions do  
 not rise above 5°C (41°F), or 7°C  
 (45°F) as specified under  
 Subparagraph 3-501.16(A)(2)(b), and  
 (4) Such that for raw animal food  
 requiring cooking as specified under  
 Paragraph 3-401.11(A) or (B),  
 thawed portions are not above 5°C  
 (41°F), or 7°C (45°F) as specified  
 under Subparagraph 3-  
 501.16(A)(2)(b), for more than 4  
 hours including:  
 (a) The time the food is  
 exposed to the running water

- and the time needed for preparation for cooking, or  
 (b) The time it takes under refrigeration to lower the food temperature to 5°C (41°F), or 7°C (45°F) as specified under Subparagraph 3-501.16(A)(2)(b);"
- (12) In Subparagraph 3-501.14(A)(2), amend to read: "Within a total of 6 hours from 57°C (135°F) to 5°C (41°F) or less, or to 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b)."
- (13) In Paragraph 3-501.14(B), amend to read: "Potentially hazardous food (time/temperature control for safety food) shall be cooled within 4 hours to 5°C (41°F) or less, or to 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b) if prepared from ingredients at ambient temperature such as reconstituted foods and canned tuna."
- (14) In Subparagraph 3-501.16(A)(2), amend to read:  
 "At a temperature specified in the following:  
 (a) 5°C (41°F) or less; or  
 (b) 7°C (45°F) or between 5°C (41°F) and 7°C (45°F) in existing refrigeration equipment that is not capable of maintaining the food at 5°C (41°F) or less if:  
 (i) The equipment is in place and in use in the food establishment; and  
 (ii) On or before, January 1, 2019, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less."
- (15) In Paragraph 3-501.17(A), amend to read:  
 "(A) Except when packaging food using a reduced oxygen packaging method as specified under Section 3-502.12, and except as specified in Paragraphs (D) and (E) of this section, refrigerated, ready-to eat, potentially hazardous food (time/temperature control for safety food) prepared and held in a food establishment for more than 24 hours shall be marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified below. The day of preparation shall be counted as Day 1.  
 (1) 5°C (41°F) or less for a maximum of 7 days; or  
 (2) 7°C (45°F) or between 5°C (41°F) and 7°C (45°F) for a maximum of 4 days in existing refrigeration equipment that is not capable of maintaining the food at 5°C (41°F) or less if:  
 (a) The equipment is in place and in use in the food establishment, and  
 (b) On or before, January 1, 2019, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less."
- (16) In Paragraph 3-501.19(B), amend to read: "If time without temperature control is used as the public health control up to a maximum of 4 hours:"
- (17) In Subparagraph 3-501.19(B)(1), amend to read: "The food shall have an initial temperature of 5°C (41°F) or less, or 7°C (45°F) or less when removed from cold holding temperature control, or 57°C (135°F) or greater when removed from hot holding temperature control;"
- (18) In Paragraph 3-801.11(D), amend to read: "Food employees may not contact ready-to-eat food as specified under Paragraphs 3-301.11(B) and (E)."

*History Note:* Authority G.S. 130A-248; S.L. 2011-394, Section 15(a);  
 Eff. September 1, 2012.

## TITLE 19A – DEPARTMENT OF TRANSPORTATION

### 19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS

(a) The State Highway Administrator or his designee may issue a vehicle specific single trip permit for vehicle and vehicle combinations with non-divisible overwidth loads limited to a maximum width of 15 feet under the conditions specified in this Rule. The State Highway Administrator or his designee may authorize the issuance of a permit for movement of load width in excess of 15 feet in accordance with 19A NCAC 02D .0600 after analysis of the proposed load and evaluation of the proposed route of travel. However, a mobile or modular unit is limited to a maximum width of 16 feet and a 3 inch gutter edge.

(b) An annual oversize and overweight permit may be issued as follows:

- (1) for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for vehicle and vehicle combinations transporting a general non-divisible commodity which has a minimum extreme wheelbase of 51 feet and does not exceed:  
 (A) width of 12 feet;

- (B) height of 13 feet, 6 inches;
  - (C) length of 105 feet;
  - (D) gross weight of 90,000 pounds; and
  - (E) axle weights of 20,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, 60,000 pounds tridem axle and 68,000 pounds for a four or more axle grouping.
- (2) for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for four or five axle self-propelled equipment or special mobile equipment, defined as a non-property hauling vehicle, which has permanently attached equipment, that is operated on the highway only for the purpose of traveling to and from a non-highway job and is licensed as special mobile equipment by the Division of Motor Vehicles, capable of traveling at a highway speed of 45 miles per hour which has a minimum wheel base of 30 feet and which does not exceed:
- (A) width of 12 feet;
  - (B) height of 13 feet, 6 inches;
  - (C) length of 105 feet;
  - (D) gross weight of 90,000 pounds; and
  - (E) axle weights of 20,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, 60,000 pounds tridem axle and 68,000 pounds for a four or more axle grouping.
- (3) for unlimited movement with the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted bridge and load limits, for vehicles and vehicle combinations transporting farm equipment and which does not exceed:
- (A) a width of 14 feet;
  - (B) a height of 13 feet 6 inches; and
  - (C) a weight as set forth in G.S. 20-118(b)(3).
- (4) with the requirement of an escort for mobile or modular homes with a maximum height of 13 feet 6 inches being transported from a manufacturer to a North Carolina mobile or modular home dealership with a unit width not to exceed 14 feet with an allowable roof overhang not to exceed a total unit width of 12 inches or 16 feet with a 3 inch gutter edge. These mobile or modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement.
- (5) with the requirement of an escort to a North Carolina licensed mobile or modular home retail dealer and the transporter for delivery of mobile or modular homes not to exceed a maximum unit width of 14 feet with a total roof overhang not to exceed 12 inches and a height of 13 feet 6 inches. The annual permit shall be valid for delivery of mobile or modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery shall be carried in the permitted towing unit readily available for law enforcement inspection.
- (6) for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for vehicle and vehicle combinations transporting non-divisible commodities which do not exceed:
- (A) width of 12 feet;
  - (B) length as set forth in G.S. 20-115.1(b) and G.S. 20-116(e) but not to exceed 105 feet;
  - (C) height of 13 feet 6 inches;
  - (D) gross weight and axle weights as set forth in G.S. 20-118(b)(1)(2)(3).
- (c) A 14 foot-wide mobile or modular home unit may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12 inches of roof overhang or the total width of overhang on the applicable side of the home. An extender shall be placed on the front and rear of the mobile or modular home with a length to extend horizontally equal to but not beyond the extreme outermost edge of the home's extension. The extenders shall have retro-reflective sheeting, a minimum of 4 inches, which shall be Type III high intensity (encapsulated lens) or Type IV high performance (prismatic) with alternating fluorescent yellow and black diagonal stripes sloping towards the outside of the home with a minimum area of 288 square inches. The bottom of the extenders shall be 6 feet to 8 feet above the road surface with a 5 inch amber flashing beacon mounted on the top of each extender.
- (d) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. The route traveled from an origin to a destination must be included within one permitted route of travel. Moves exceeding weight limits for highways or bridge structures shall be denied if considered by the issuing agent to be unsafe or if they may cause damage to the highway or structure. A surety bond shall be required if the Department determines it is necessary to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.
- (e) The maximum permissible weights for non-divisible loads are as follows:
- (1) The maximum single trip and annual permit weight allowed for a vehicle or vehicle combination not including off highway construction equipment is:
    - (A) Steer Axle 20,000 pounds;

- (B) Single axle 25,000 pounds;
  - (C) Tandem axle 50,000 pounds;
  - (D) Tridem axle 60,000 pounds;
  - (E) Four or more axle group 68,000 pounds;
  - (F) Five or more axle group exceeding 68,000 pounds requires an engineering study;
  - (G) Three axle single vehicle may have a maximum gross weight up to 70,000 pounds;
  - (H) Four axle single vehicle may have a maximum gross weight up to 90,000 pounds;
  - (I) Five axle single vehicle may have a maximum gross weight up to 94,500 pounds;
  - (J) Five axle vehicle combination may have a maximum gross weight up to 112,000 pounds;
  - (K) Six axle single vehicle may have a maximum gross weight up to 108,000 pounds;
  - (L) Six axle vehicle combination may have a maximum gross weight up to 120,000 pounds;
  - (M) Seven axle single vehicle may have a maximum gross weight up to 122,000 pounds;
  - (N) Seven axle vehicle combination may have a maximum gross weight up to 132,000 pounds; and
  - (O) Seven or more axle vehicle combination with a gross weight exceeding 132,000 pounds requires an engineering study.
- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure or low flotation tires is:
- (A) Single axle 37,000 pounds;
  - (B) Tandem axle 50,000 pounds;
  - (C) Two axle single vehicle may have a maximum gross weight up to 70,000 pounds;
  - (D) Three axle single vehicle may have a maximum gross weight up to 80,000 pounds; and
  - (E) Four axle single vehicle may have a maximum gross weight up to 90,000 pounds.
- (3) A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit provided the vehicle:
- (A) Is going to or from a designated seaport (to include in state and out of state) and has been or shall be transported by marine shipment;
- (B) Is licensed for the maximum allowable weight for a 51 feet extreme wheelbase measurement specified in G.S. 20-118;
  - (C) Does not exceed maximum dimensions of width, height and length specified in G.S. 20-116;
  - (D) Is a vehicle combination with at least five axles; and
  - (E) Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.
- (f) Overlength permits shall be limited as follows:
- (1) Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of geographic route of travel, consideration of local construction projects and other dimensions of the load;
  - (2) Mobile or modular home units shall not exceed a length of 76 feet and a total overall length inclusive of the towing vehicle of 105 feet; and
  - (3) Annual (blanket) permits shall not be issued for lengths to exceed 105 feet.
- (g) An Overheight Permit Application for heights in excess of 14 feet must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. An Overheight Permit Application for heights 14 feet and less must be submitted in writing or verbally to the Central Permit Office. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.
- (h) Movement of all vehicles and vehicle combinations subject to this Rule shall be made as follows:
- (1) Movement shall be made between sunrise and sunset Monday through Saturday. Sunday travel may be authorized from sunrise to sunset after consideration of the overall permitted dimensions. Exception: A 16 foot-wide mobile or modular home unit with a maximum 3 inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Saturday. A 16 foot-wide unit is authorized to continue operation after 2:30 p.m., but not beyond sunset, when traveling on an approved route as determined by an engineering study and the unit is being exported out-of-state. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic.
  - (2) No movement is permitted for a vehicle and vehicle combination after noon on the weekday preceding the six holidays of New

- Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday until 12:00 noon on the following Monday.
- (3) Continuous travel (24 hours a day, 7 days a week, 365 days per year) is authorized for any vehicle and vehicle combination up to but not to exceed a permitted gross weight of 112,000 pounds provided the permitted vehicle has no other over legal dimension of width, height or length included in the permitted move. Exception: Self-propelled equipment may be authorized for continuous travel with overhang (front or rear or both) not to exceed a total of 10 feet provided overhang is marked with high intensity glass bead retro-reflective sheeting tape measuring 2 inches by 12 inches displayed on both sides and the end of the extension and on each side of the self-propelled vehicle 24 inches from the road surface at nearest feasible center point between the steer and drive axles. Any rear overhang must display a mounted brake light and a flashing amber light, 8 inches in diameter with a minimum candlepower of 800 watts.
- (4) Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by law enforcement escort.
- (5) If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14 feet across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured may be removed and hauled with the equipment without being considered a divisible load.
- (6) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile or modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs.
- (7) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without permission from the office issuing the permit after confirmation of an emergency condition.
- (8) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile or modular unit exceeding a width of 10 feet is prohibited when wind velocities exceed 25 miles per hour in gusts.
- (9) All obstructions, including traffic signals, signs and utility lines shall be removed prior to and replaced after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. Trees, shrubs, or official signs shall not be cut, trimmed or removed without approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the area.
- (10) The Department of Transportation may require escort vehicles to accompany oversize or overweight loads. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel shall be considered to determine escort requirements.
- (i) Additional safety measures are as follows:
- (1) A yellow banner measuring a total length of 7 feet x 18 inches high bearing the legend "Oversize Load" in 10 inch black letters 1.5 inch wide brush stroke shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle and vehicle combination with a width greater than 10 feet. A towing unit mobile or modular home combination shall display banners of the size specified bearing the legend "Oversize ----- feet Load" identifying the actual width of the unit in transport. Escort vehicles shall display banners as specified in this Subparagraph with the exception of length to extend the entire width of the bumpers;
- (2) Red or orange flags measuring 18 inches square shall be displayed on all sides at the widest point of load for all loads in excess of 8 feet 6 inches wide but the flags shall be mounted so as not to increase the overall width of the load;
- (3) All permitted vehicles and vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good

working condition as provided in North Carolina Statutes and Motor Carrier and Housing and Urban Development (HUD) regulations;

- (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing or hauling such vehicle or load; and
- (5) Flashing amber lights shall be used as determined by the issuing permit office.

*History Note:* Authority G.S. 20-116; 20-118; 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978;  
*Eff.* July 1, 1978;  
*Amended Eff.* October 1, 1994; December 29, 1993; October 1, 1991; October 1, 1990;  
*Temporary Amendment Eff.* January 10, 2002; December 31, 2000; October 1, 2000;  
*Amended Eff.* August 1, 2012; June 1, 2010; April 1, 2009; August 1, 2002.

#### **19A NCAC 02E .0701 EMPLOYMENT OF PROFESSIONAL/SPECIALIZED FIRM: AUTHORIZATION**

(a) Except as set out Paragraph (b) of this Rule the employment by contract of any agency, firm or individual may be authorized and executed by any of the business unit managers listed under any of the following conditions:

- (1) The required work necessitates engineering or professional expertise and services not available on the staff of the department;
- (2) The required work can be accomplished more effectively, more efficiently, and more economically than by staff of the department;
- (3) The required work cannot be undertaken and accomplished by the staff of the department in time to meet the established schedule for development of the project; or
- (4) An emergency situation exists which requires expedient action to alleviate or minimize a condition representing a danger or economic loss to the public.

(b) Such employment shall not be considered when other agencies of the state which have staff with the necessary expertise are available to accomplish the required work in a satisfactory manner on a schedule and at a cost suitable to meet the department's requirements.

*History Note:* Authority G.S. 136-28.1(f); 143B-350(f)(13) and (g);  
*Temporary Rule Eff.* June 11, 1982 for a Period of 51 Days to Expire on August 1, 1982;  
*Eff.* August 1, 1982;  
*Amended Eff.* August 1, 2012; December 1, 1993; October 1, 1991; April 1, 1986; February 1, 1983.

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 02 - BOARD OF ARCHITECTURE**

#### **21 NCAC 02 .0204 FORMS OF PRACTICE**

(a) The practice of architecture shall be carried out by one of the following types of entities:

- (1) sole practitioners;
- (2) professional limited liability companies that are established under the provisions of G.S. 57C;
- (3) limited liability partnerships that are established under the provisions of G.S. 59-84.2;
- (4) professional corporations that are established under the provisions of G.S. 55B; or
- (5) general partnerships.

Each limited liability partnership and each general partnership engaged in the practice of architecture in North Carolina shall keep a current list of all resident and non-resident partners of the partnership. One annual listing by a representative of the partnership shall satisfy the requirement of this Paragraph for all partners in the firm; however, each partner shall remain responsible for compliance with the rules. Changes in the information required by this Paragraph shall be filed with the Board office within 30 days after the change occurs.

(b) All individuals who practice through entities described in Subparagraphs (a)(1) through (a)(4) of this Rule shall be licensed to practice architecture.

*History Note:* Authority G.S. 55B; 57C; 59-84.2; 83A-4; 83A-6; 83A-8;  
*Eff.* February 1, 1976;  
*Readopted Eff.* September 29, 1977;  
*Amended Eff.* October 1, 2012; December 1, 2010; June 1, 1995.

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### **CHAPTER 03 - NORTH CAROLINA BOARD OF ATHLETIC TRAINER EXAMINERS**

#### **21 NCAC 03 .0201 FEES**

(a) The following fees are payable to the Board by cash, check or money order:

- |     |                                     |          |
|-----|-------------------------------------|----------|
| (1) | License issuance fee                | \$200.00 |
| (2) | License renewal fee                 | \$75.00  |
| (3) | Reinstatement of lapsed license fee | \$100.00 |

(b) Copies of any public documents filed in the Board Office are available at the "actual cost" as defined in G.S. 132-6.2(b) for making the copy and the mailing cost if applicable. The Board shall provide its "actual cost" on the Board website.

*History Note:* Authority G.S. 90-525; 90-534;  
*Temporary Adoption Eff.* March 16, 1998;  
*Eff.* May 1, 1999;

Amended Eff. August 1, 2012.

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## CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

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

(a) An Application for Renewal or Replacement of Apprentice Certificate shall be submitted to the Board no later than ten working days after the date that any of the following conditions exist:

- (1) a registered apprentice is separated from his sponsor for any reason and the individual wishes to obtain a new certificate to replace the invalidated certificate;
- (2) a registered apprentice is notified by the Board that he or she failed to pass the qualifying examination and the individual wishes to renew his or her certificate; and
- (3) the Board notifies an individual that his apprentice registration certificate has been invalidated for any reason and the individual wishes to obtain a new certificate to replace the invalidated certificate.

(b) No later than ten working days after a registered apprentice has held a valid apprentice registration certificate for 365 calendar days, the apprentice shall submit an Application for License and shall take the next scheduled licensing examination. All registered apprentices shall reapply for a license by examination, within the time prescribed in Paragraph (c) of this Rule, each time they take and fail to pass the licensing examination.

(c) When a registered applicant makes application to take an examination, the duly-made application shall be considered by the Board to be timely if it is received by the Board no later than 45 consecutive days prior to the examination date. An untimely application is grounds for denying an applicant admission to an examination.

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

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

Eff. April 23, 1976;

Amended Eff. August 1, 2012; February 1, 1996; January 1, 1992; May 1, 1988.

### 21 NCAC 22F .0114 TRAINING AND SUPERVISION

Each registered apprentice shall submit to direct supervision by a Registered Sponsor who shall be responsible for the apprentice's training and supervision in the following areas:

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

*History Note:* Authority G.S. 93D-3(c); 93D-5; 93D-9;

Eff. April 23, 1976;

Amended Eff. August 1, 2012; February 1, 1996; January 1, 1992; May 1, 1988; November 4, 1980.

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## CHAPTER 32 – MEDICAL BOARD

### 21 NCAC 32B .1001 AUTHORITY TO PRESCRIBE

(a) A license to practice medicine issued under this Subchapter allows the physician to prescribe medications, including controlled substances, so long as the physician complies with all state and federal laws and regulations governing the writing and issuance of prescriptions.

(b) A physician must possess a valid United States Drug Enforcement Administration ("DEA") registration in order for the physician to supervise any other health professional (physician assistant, nurse practitioner, clinical pharmacist practitioner) with prescriptive authority for controlled substances. The DEA registration of the supervising physician must include the same schedule(s) of controlled substances as the supervised health professional's DEA registration.

(c) A physician shall not prescribe controlled substances, as defined by the state and federal controlled substance acts for:

- (1) the physician's own use;
- (2) the use of the physician's immediate family;
- (3) the use of any other person living in the same residence as the licensee; or
- (4) the use of any person with whom the physician is having a sexual relationship.

As used in this Paragraph, "immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law or daughter-in-law, brother-in-law or sister-in-law, step-parent, step-child, step-sibling.



*History Note: Authority G.S. 90-2(a); 90-5.1;  
Eff. June 1, 2007;  
Amended Eff. August 1, 2012.*

**21 NCAC 32B .1402 APPLICATION FOR  
RESIDENT'S TRAINING LICENSE**

(a) In order to obtain a Resident's Training License, an applicant shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) submit a photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (4) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. The applicant's date of graduation from medical school shall be written in the designated space, and the school seal shall be stamped on the form; the dean or other official of the applicant's medical school shall sign the form verifying the information;
- (5) If a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
  - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
  - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (6) submit an appointment letter from the program director of the GME program or his appointed agent verifying the applicant's appointment and commencement date;
- (7) submit two completed fingerprint record cards supplied by the Board;
- (8) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (9) pay a non-refundable fee pursuant to G.S. 90-13.1(b), plus the cost of a criminal background check;
- (10) provide proof that the applicant has taken and passed:

- (A) the COMLEX Level 1 within three attempts and each component of COMLEX Level 2 (cognitive evaluation and performance evaluation) within three attempts; or
- (B) the USMLE Step 1 within three attempts and each component of the USMLE Step 2 (Clinical Knowledge and Clinical Skills) within three attempts; and

- (11) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(b) An applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character, if the Board needs more information to complete the application.

*History Note: Authority G.S. 90-8.1; 90-12.01; 90-13.1;  
Eff. August 1, 2010;  
Amended Eff. August 1, 2012; November 1, 2011.*

**21 NCAC 32R .0101 CONTINUING MEDICAL  
EDUCATION (CME) REQUIRED**

(a) Continuing Medical Education (CME) is defined as education, training and activities to increase knowledge and skills generally recognized and accepted by the profession as within the basic medical sciences, the discipline of clinical medicine, and the provision of healthcare to the public. The purpose of CME is to maintain, develop, or improve the physician's knowledge, skills, professional performance and relationships which physicians use to provide services for their patients, their practice, the public, or the profession.

(b) Each person licensed to practice medicine in the State of North Carolina shall complete at least 60 hours of Category 1 CME relevant to the physician's current or intended specialty or area of practice every three years.

(c) The three year period described in Paragraph (b) of this Rule begins on the physician's first birthday following initial licensure.

*History Note: Authority G.S. 90-14(a)(15);  
Eff. January 1, 2000;  
Amended Eff. August 1, 2012; January 1, 2001.*

**21 NCAC 32R .0102 APPROVED CATEGORIES OF  
CME**

(a) Category 1 CME providers are:

- (1) Institutions or organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME) and reciprocating organizations;
- (2) The American Osteopathic Association (AOA);
- (3) A state medical society or association;
- (4) The American Medical Association (AMA); and

- (5) Specialty boards accredited by the American Board of Medical Specialties (ABMS), the AOA or Royal College of Physicians and Surgeons of Canada (RCPSC).

(b) Category 1 CME education shall be presented, offered, or accredited by a Category 1 provider as defined above and shall include:

- (1) Educational courses;
- (2) Scientific or clinical presentations or publications;
- (3) Printed, recorded, audio, video, online or electronic educational materials for which CME credits are awarded by the publisher;
- (4) Skill development;
- (5) Performance improvement activities; or
- (6) Journal-based CME activities within a peer-reviewed, professional journal.

*History Note: Authority G.S. 90-14(a)(15); Eff. January 1, 2000; Amended Eff. August 1, 2012; July 1, 2007; January 1, 2001.*

#### **21 NCAC 32R .0103 EXCEPTIONS**

(a) A physician is exempt from the requirements of Rule .0101 of this Section if the licensee is:

- (1) Currently enrolled in an AOA or Accreditation of Council of Graduate Medical Education (ACGME) accredited graduate medical education program;
- (2) In good standing with the Board, serving in the armed forces of the United States or serving in support of such armed forces, and serving in a combat zone, or serving with respect to a military contingency operation as defined by 10 U.S.C. 101(a)(13); or
- (3) Serving as a member of the General Assembly's House or Senate Health Committee.

(b) A physician who obtains initial certification from an ABMS, AOA or RCPSC specialty board shall be deemed to have satisfied his or her entire CME requirement for the three year cycle in which the physician obtains board certification.

(c) A physician who attests that he or she is continuously engaged in a program of recertification, or maintenance of certification, from an ABMS, AOA or RCPSC specialty board shall be deemed to have satisfied his or her entire CME requirement for that three year cycle.

*History Note: Authority G.S. 90-14(a)(15); 90B-15; Eff. January 1, 2000; Amended Eff. August 1, 2012; January 1, 2001.*

#### **21 NCAC 32R .0104 REPORTING**

At the time of annual renewal, each Licensee shall report on the Board's annual renewal form compliance with, or exemption from, Rule .0101 of this Section. Records documenting compliance or exemption must be maintained for six consecutive years and may be inspected by the Board or its agents.

*History Note: Authority G.S. 90-14(a)(15); Eff. January 1, 2000; Amended Eff. August 1, 2012; January 1, 2001.*

#### **21 NCAC 32R .0105 WAIVER FOR LICENSEES SERVING ON ACTIVE DUTY IN THE ARMED SERVICES OF THE US**

*History Note: Authority G.S. 105-249.2; S. L. 2009-458; Section 7508 of the Internal Revenue Code; 10 U.S.C. 101; Eff. August 1, 2010; Repealed Eff. August 1, 2012.*

#### **21 NCAC 32S .0212 PRESCRIPTIVE AUTHORITY**

A physician assistant may prescribe, order, procure, dispense and administer drugs and medical devices subject to the following conditions:

- (1) The physician assistant complies with all state and federal laws regarding prescribing including G.S. 90-18.1(b);
- (2) Each supervising physician and physician assistant incorporates within his or her written supervisory arrangements, as defined in Rule .0201(8) of this Subchapter, instructions for prescribing, ordering, and administering drugs and medical devices and a policy for periodic review by the physician of these instructions and policy;
- (3) In order to compound and dispense drugs, the physician assistant complies with G.S. 90-18.1(c);
- (4) In order to prescribe controlled substances,
  - (a) the physician assistant must have a valid Drug Enforcement Administration (DEA) registration and prescribe in accordance with DEA rules;
  - (b) all prescriptions for substances falling within schedules II, IIN, III, and IIIN, as defined in the federal Controlled Substances Act, shall not exceed a legitimate 30 day supply; and
  - (c) the supervising physician must possess the same schedule(s) of controlled substances as the physician assistant's DEA registration;
- (5) Each prescription issued by the physician assistant contains, in addition to other information required by law, the following:
  - (a) the physician assistant's name, practice address and telephone number;
  - (b) the physician assistant's license number and, if applicable, the physician assistant's DEA number for controlled substances prescriptions; and

- (c) the responsible supervising physician's (primary or back-up) name and telephone number;
- (6) The physician assistant documents prescriptions in writing on the patient's record, including the medication name and dosage, amount prescribed, directions for use, and number of refills;
- (7) A physician assistant who requests, receives, and dispenses medication samples to patients complies with all applicable state and federal regulations; and
- (8) A physician assistant shall not prescribe controlled substances, as defined by the state and federal controlled substances acts for:
  - (a) the physician assistant's own use;
  - (b) the use of the physician assistant's supervising physician;
  - (c) the use of the physician assistant's immediate family;
  - (d) the use of any person living in the same residence as the physician assistant; or
  - (e) the use of any anyone with whom the physician assistant is having a sexual relationship.

As used in this Paragraph, "immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law or daughter-in-law, brother-in-law or sister-in-law, step-parent, step-child, step-sibling.

*History Note: Authority G.S. 90-18(c)(13); 90-18.1; 90-18.2A; 90-171.23(14); 21 C.F.R. 301; Eff. September 1, 2009; Amended Eff. August 1, 2012.*

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## **CHAPTER 34 - BOARD OF FUNERAL SERVICE**

### **21 NCAC 34A .0102 PURPOSE OF BOARD**

*History Note: Authority G.S. 90-210.23(a),(i); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. August 1, 2004; May 1, 1993; July 1, 1991; Repealed Eff. August 1, 2012.*

### **21 NCAC 34A .0105 PUBLIC INSPECTION OF MATERIALS**

*History Note: Authority G.S. 90-210.23(a),(i); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. August 1, 1988; September 1, 1979; Repealed Eff. August 1, 2012.*

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## **CHAPTER 42 - BOARD OF EXAMINERS IN OPTOMETRY**

### **21 NCAC 42B .0104 APPLICATION FOR LICENSURE BY RECIPROCITY**

*History Note: Authority G.S. 90-117.5; 90-118.5; Eff. February 1, 1976; Readopted Eff. May 30, 1978; Amended Eff. April 1, 1993; June 1, 1989; September 30, 1981; Repealed Eff. August 1, 2012.*

### **21 NCAC 42D .0103 APPLICATION 21 NCAC 42D .0104 REGISTRATION 21 NCAC 42D .0105 ANNUAL RENEWAL 21 NCAC 42D .0106 ACCREDITATION**

*History Note: Authority G.S. 90-115.1(6); 90-117.5; Eff. February 1, 1976; Readopted Eff. May 30, 1978; Amended Eff. June 1, 1989; September 30, 1981; Repealed Eff. August 1, 2012.*

### **21 NCAC 42D .0108 TERMINATION OF REGISTRATION**

*History Note: Authority G.S. 90-115.1(6); 90-117.5; Eff. February 1, 1976; Readopted Eff. May 30, 1978; Amended Eff. June 1, 1989; September 30, 1981; Repealed Eff. August 1, 2012.*

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## **CHAPTER 63 – SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

### **21 NCAC 63 .0208 APPLICATION FEE**

Each applicant for certification or licensure by the Board shall submit an initial application fee of one hundred and fifteen dollars (\$115.00) with the application.

*History Note: Authority G.S. 90B-6; 90B-6.2; Eff. August 1, 1987; Temporary Amendment Eff. October 1, 1999; Amended Eff. August 1, 2012; July 1, 2000.*

### **21 NCAC 63 .0210 PROVISIONAL LICENSES**

- (a) The Board shall issue a provisional license to any person who meets the requirements in G.S. 90B-7(f).
- (b) Applications and forms shall be obtained from and returned to the Board Office. The application fee set in Rule .0208 of this Chapter shall be submitted with the application.
- (c) Prior to practicing clinical social work, applicants must demonstrate in writing that, in the event of a clinical emergency, they have immediate access to a licensed mental health professional who has agreed to provide to them emergency clinical consultation to assure that standards of clinical social work practice are maintained. Provisionally- licensed clinical

social workers shall notify the Board in writing of any change in such access.

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

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

(f) To prevent a lapse in licensure, provisional licensees who desire to become Licensed Clinical Social Workers shall complete the application process for the Licensed Clinical Social Worker classification and submit the application fee as set in Rule .0208 of this Chapter early enough to allow 30 days for administrative processing and Board action prior to the expiration of the provisional license.

*History Note:* Authority G.S. 90B-6; 90B-7;  
Eff. August 1, 1993;  
Temporary Amendment Eff. October 1, 1999;  
Amended Eff. August 1, 2012; September 1, 2005; April 1, 2001.

**21 NCAC 63 .0403 RENEWAL FEES**

(a) Fees for renewal of certificates or licenses are as follows:

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

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

*History Note:* Authority G.S. 90B-6; 90B-6.2; 90B-9(b);  
Eff. August 1, 1987;  
Amended Eff. August 1, 1990;  
Temporary Amendment Eff. October 1, 1999;  
Amended Eff. August 1, 2012; January 1, 2009; March 1, 2006;  
July 1, 2000.

**21 NCAC 63 .0404 REINSTATEMENT**

Persons who apply for reinstatement after temporary retirement from the practice of social work pursuant to G.S. 90B-9(d), or after their certificate or license was suspended for failure to renew, shall pay a reinstatement fee of one hundred and twenty five dollars (\$125.00) in addition to any other applicable fees.

*History Note:* Authority G.S. 90B-6; 90B-6.2; 90B-9;  
Temporary Adoption Eff. October 1, 1999;  
Eff. July 1, 2000;  
Amendment Eff. August 1, 2012.

**TITLE 25 – OFFICE OF STATE PERSONNEL**

**25 NCAC 01B .0437 STATE PERSONNEL  
COMMISSION: PROCEDURES**

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

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

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

(d) Briefs, Legal Memoranda, Attorney's Fees Requests. All briefs and legal memoranda in cases other than those arising under G.S. 126-14.4 shall be received by the Office of State Personnel no later than 30 calendar days after the filing date of

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

(e) Written Exceptions. Proposed Alternative Findings, Conclusions and Recommendations. Each party shall submit written exceptions to the decision of the Administrative Law Judge, unless the party accepts the decision in its entirety. Any party may choose to submit proposed alternative findings of fact and conclusion of law. Exceptions and alternative findings of fact and conclusions shall be received by the Office of State Personnel no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. Written exceptions shall be specifically drawn. Each exception and proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence, the specific reason(s) the Commission should not adopt the Administrative Law Judge's finding of fact or conclusion of law and the specific evidence in the record which supports the rejection of the Administrative Law Judge's finding of fact or conclusion of law, including references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence which shall be set forth in support of the new finding of fact. Any new decision proposed to the Commission must be supported by a preponderance of the admissible evidence in the record and the reason that the Administrative Law Judge's decision is clearly contrary to the preponderance of the admissible evidence in the record must be set forth in detail. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the Administrative Law Judge's decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail. Reference must be made to the transcript (and volumes, where applicable), if the transcript of the hearing was made and is available. Where

a party excepts to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion, or recommendation shall be made. Such a document received after the deadline shall be presented to the Commission only after the party has shown that the opposing party was served with the document no later than 30 calendar days after the filing date of the Administrative Law Judge's decision. The Commission shall adopt the findings of fact and conclusions of law of the Administrative Law Judge, or amend the same, or adopt alternative findings of fact and conclusion of law, either from those submitted by the parties or drawn from its own review of the whole record. Parties shall submit 25 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission shall be granted by the Administrator for good cause shown as defined in 25 NCAC 01B .0439.

(f) Proposed Decision and Order. Each party to a contested case shall submit a proposed Decision and Order for consideration by the Commission in that case. The proposed Decision and Order shall be received by the Office of State Personnel no later than 30 calendar days after the filing date of the decision of the Administrative Law Judge. The Commission may delay decision in a case until all parties have submitted a proposed Decision and Order for good cause shown as defined in 25 NCAC 01B .0439. The Proposed Decision and Order shall indicate which findings, conclusions, and recommendations of the Administrative Law Judge are being deleted or amended and why, and specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence. The Proposed Decision and Order must include the specific reason(s) the Commission should not adopt the Administrative Law Judge's finding of fact or conclusion of law and the specific evidence in the record that supports the rejection of the Administrative Law Judge's finding of fact or conclusion of law, including references to the testimony of witnesses, any evidentiary exhibits, and any exercise of discretion by the agency to which deference should be accorded. Any new findings of fact proposed to the Commission must be supported by a preponderance of the evidence that shall be set forth in support of the new finding of fact in the Proposed Decision and Order. Any new conclusions of law or decision proposed to the Commission must be supported by a preponderance of the admissible evidence in the record and the reason that the Administrative Law Judge's decision is clearly contrary to the preponderance of the admissible evidence in the record must be set forth in detail in the Proposed Decision and Order. If the Administrative Law Judge has recommended granting summary judgment or judgment on the pleadings and a party proposes that the Commission reject the Administrative Law Judge's decision, the party shall set forth the basis for rejecting the Administrative Law Judge's decision in detail in the Proposed Decision and Order. The proposed Decision and Order shall contain an order in the case for the signature of the Administrator to the Commission, consistent with and supported by the findings and conclusions. Parties shall submit 25 copies of each pleading (with three holes in the left margin) filed with the Commission. An extension of time to file documents with the Commission

may be granted by the Administrator for good cause shown as defined in 25 NCAC 01B .0439.

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

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

(i) Electronic Filing. Any documents that are required or permitted to be filed under this Rule, may be filed electronically by midnight of the filing date with the State Personnel Commission Administrator in a format readable by the Administrator. Printed copies of any documents filed electronically must also be filed with the Administrator in accordance with Paragraphs (d), (e), and (f) of this Rule within 24 hours of the electronic filing.

*History Note: Authority G.S. 126-4; 150B-36;  
Eff. September 1, 1991;  
Amended Eff. August 1, 2000; March 1, 1996;  
Temporary Amendment Eff. January 1, 2001;  
Amended Eff. August 1, 2012; July 18, 2002.*

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

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

(1) The Commission shall award the reimbursement of legal fees and witnesses' fees incurred in connection with a contested case hearing before the Commission or in connection with a successful appeal of a Commission decision in the General Courts of Justice where discrimination or harassment is found or there is an order of reinstatement or back pay, as follows:

(A) Attorney fees at a reasonable hourly rate based on the prevailing market

rate but at a rate no higher than the fee agreement between the parties;

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

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

(2) Fees shall be documented by an itemized, per activity, accounting of the hours expended, in addition to a copy of the fee agreement between the parties and any relevant receipts or other documentation of prior payment.

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

(1) The Commission shall award the reimbursement of legal and witnesses' fees incurred in connection with a settlement or an internal appeal where discrimination or harassment has been alleged or where the settlement contains a provision for reinstatement or back pay, upon the joint request of an agency and a petitioner as follows:

(A) Attorney fees at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;

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

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

(2) Fees shall be documented by an itemized, per activity, accounting of the hours expended, in addition to a copy of the fee agreement between the parties and any relevant receipts or other documentation of prior payment.

*History Note: Authority G.S. 126-4(11); 150B-33(b)(11);  
Eff. March 1, 1996;  
Temporary Amendment Eff. May 11, 2001;  
Amended Eff. August 1, 2012; August 1, 2002.*

*This Section contains information for the meeting of the Rules Review Commission on Thursday August 16, 2012 and September 20, 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 2<sup>nd</sup> 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  
Anna Baird Choi  
Jeanette Doran  
Garth K. Dunklin  
Stephanie Simpson

**COMMISSION COUNSEL**

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

**RULES REVIEW COMMISSION MEETING DATES**

September 20, 2012      October 18, 2012  
November 15, 2012      December 20, 2012

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**RULES REVIEW COMMISSION****August 16, 2012****MINUTES**

The Rules Review Commission met on Thursday, August 16, 2012, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Pete Osborne, Bob Rippy, Faylene Whitaker.

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

The meeting was called to order at 10:03 a.m. with Vice-Chairman Currin presiding. She 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**

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

**FOLLOW-UP MATTERS**

10A NCAC 09 .0901, .0902, .1702, .1706, .1718 – Child Care Commission –The agency has not yet met and responded to the objection and no action was taken.

12 NCAC 09E .0102 – Criminal Justice Education and Training Standards Commission. The agency has not yet met and responded to the objection and no action was taken.

**LOG OF FILINGS**

Vice-Chairman Currin presided over the review of the log of permanent rules.

**Child Care Commission**

All rules were approved unanimously.

**Commission for the Blind**

10A NCAC 63F .0403 was approved unanimously.

Vice-Chairman Currin recognized Mary Flanagan, the Rulemaking Coordinator, on her upcoming retirement.

**Board of Cosmetic Art Examiners**

All rules were approved unanimously.

**Medical Board**

All rules were approved unanimously.

**Board of Nursing**

Prior to the discussion of these Rules, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because the law firm where she is employed represents the Board.

All rules were approved unanimously.

**TEMPORARY LOG OF FILINGS**

There were no temporary rules filed for review.

**OTHER BUSINESS**

The staff showed the Commission the form that will be used for the G.S. 150B-19.1 certification and discussed with the Commission the new role the Commission has in certifying that Council of State agencies have complied with the principles in G.S.150B-19.1 before publishing rules in the North Carolina Register.

The Commission also reviewed State Budget Director Andy Willis's response to the Commission's May 17<sup>th</sup> letter to Speaker Tillis and President Pro-Tempore Berger. The Commission drafted a response to that letter clarifying that the original letter was sent in response to a request from the legislative leadership that the Commission submit to them suggestions for needed legislation and was not meant to be critical of the work of the Office of State Budget and Management. The letter also expressed a desire for an open dialogue with that office to understand better the work both agencies do in assisting agencies in adopting rules beneficial to citizens of the State and invited Anca Grozav to make a presentation to the Commission to explain the fiscal analysis process.

The meeting adjourned at 11:08 p.m.

The next scheduled meeting of the Commission is Thursday, September 20th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings / Rules Division.

Respectfully Submitted,

---

Julie Edwards  
Editorial Assistant



Rules Review Commission  
Meeting

Please Print Legibly

**AUGUST 16, 2012**

Name	Agency
BARRY GURTON	NCPOI - NCBCC
Eileen Kugler	NC Board of Nursing
Angela Ellis	NC Board of Nursing
Lynda Elliott	NC Bd of Cosmetic Arts
Dede Ann	DCDEE
Jani Kozlowski	DCDEE
Laura Hewitt	"
William Creech	NCORA
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**LIST OF APPROVED PERMANENT RULES  
August 16, 2012 Meeting**

**CHILD CARE COMMISSION**

<u>Definitions</u>	10A NCAC 09 .0102
<u>Application for a Voluntary Rated License</u>	10A NCAC 09 .2802
<u>Quality Points Options</u>	10A NCAC 09 .2829

**BLIND, COMMISSION FOR THE**

<u>Economic Needs Schedule</u>	10A NCAC 63F .0403
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**COSMETIC ART EXAMINERS, BOARD OF**

<u>Fees</u>	21 NCAC 14A .0404
<u>Application for Salon License</u>	21 NCAC 14F .0101
<u>Separation of Beauty Salon</u>	21 NCAC 14F .0104
<u>Newly Established Residential Salons</u>	21 NCAC 14F .0105
<u>Dimensions of Beauty Salon</u>	21 NCAC 14F .0107
<u>Inspection of Cosmetic Art Shops</u>	21 NCAC 14F .0108
<u>Signs</u>	21 NCAC 14F .0109
<u>Failure to Permit Inspection</u>	21 NCAC 14F .0113
<u>Sanitary Ratings and Posting of Ratings</u>	21 NCAC 14H .0105
<u>Water Supply</u>	21 NCAC 14H .0107
<u>Floor Coverings</u>	21 NCAC 14H .0108
<u>Ventilation and Light</u>	21 NCAC 14H .0109
<u>Bathroom Facilities</u>	21 NCAC 14H .0110
<u>Cleanliness of Operators</u>	21 NCAC 14H .0111
<u>Cleanliness of Clinic Area</u>	21 NCAC 14H .0112
<u>Cleanliness of Scissors, Shears, Razors and Other Equipment</u>	21 NCAC 14H .0113
<u>Care of Creams: Lotions: and Cosmetics</u>	21 NCAC 14H .0114
<u>First Aid</u>	21 NCAC 14H .0115
<u>Animals</u>	21 NCAC 14H .0117
<u>Systems of Grading Beauty Establishments</u>	21 NCAC 14H .0118
<u>Whirlpool, Footspa and Facial Steamer Sanitation</u>	21 NCAC 14H .0120
<u>Prohibited Practices</u>	21 NCAC 14H .0121
<u>Revocation of Licenses and Other Disciplinary Measures</u>	21 NCAC 14P .0108
<u>Establishment of Cosmetic Art Schools</u>	21 NCAC 14P .0111
<u>Sanitary Ratings and Posting of Ratings - Applicable to E...</u>	21 NCAC 14P .0112
<u>Operations of Schools of Cosmetic Art</u>	21 NCAC 14P .0113
<u>Cosmetology Curriculum</u>	21 NCAC 14P .0114
<u>Continuing Education Requirements</u>	21 NCAC 14R .0101
<u>Application Criteria and Continuing Education Course Appr...</u>	21 NCAC 14R .0102
<u>Criteria for Continuing Education Courses</u>	21 NCAC 14R .0103
<u>License Renewal Procedures</u>	21 NCAC 14R .0104
<u>Apprentice Cosmetology Curriculum</u>	21 NCAC 14T .0603
<u>School Performance Requirements</u>	21 NCAC 14T .0705

**MEDICAL BOARD**

<u>Definitions</u>	21	NCAC 32M .0101
<u>Nurse Practitioner Registration</u>	21	NCAC 32M .0103
<u>Process for Approval to Practice</u>	21	NCAC 32M .0104
<u>Inactive Status</u>	21	NCAC 32M .0108

**NURSING, BOARD OF**

<u>Definitions</u>	21	NCAC 36 .0801
<u>Nurse Practitioner Registration</u>	21	NCAC 36 .0803
<u>Process for Approval to Practice</u>	21	NCAC 36 .0804
<u>Inactive Status</u>	21	NCAC 36 .0808

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**AGENDA**  
**RULES REVIEW COMMISSION**  
**Thursday, September 20, 2012 10:00 A.M.**  
**1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
  - II. Approval of the minutes from the last meeting
  - III. Follow-Up Matters:
    - A. Child Care Commission – 10A NCAC 09 .0901, .0902, .1702, .1706, .1718 (DeLuca)
    - B. Criminal Justice Education and Training Standards Commission – 12 NCAC 09E .0102 (DeLuca)
  - IV. Review of Log of Filings (Permanent Rules) for rules filed between July 23, 2012 and August 20, 2012
  - V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
  - VI. Commission Business
    - Next meeting: October 18, 2012
- 

**Commission Review**  
**Log of Permanent Rule Filings**  
**July 23, 2012 through August 20, 2012**

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

The rules in Chapter 14 are from the Director of the Division of Health Service Regulation.

The rules in Subchapter 14D concern overnight respite in certified day care programs including scope and definitions (.0100); physical plant rules (.0200); program management (.0300); enrollment to overnight respite services (.0400); staffing (.0500); medication administration (.0600); nutrition and food service (.0700); and program activities (.0800).

<u>Scope and Definitions</u>	10A NCAC 14D .0101
<u>Adopt/*</u>	
<u>Definitions</u>	10A NCAC 14D .0102
<u>Adopt/*</u>	
<u>Submission of Information to the Division of Health Servi...</u>	10A NCAC 14D .0201
<u>Adopt/*</u>	

<u>Capacity</u>	10A NCAC 14D .0202
Adopt/*	
<u>Design and Construction</u>	10A NCAC 14D .0203
Adopt/*	
<u>Location</u>	10A NCAC 14D .0204
Adopt/*	
<u>Living Arrangement</u>	10A NCAC 14D .0205
Adopt/*	
<u>Living Room</u>	10A NCAC 14D .0206
Adopt/*	
<u>Dining Room</u>	10A NCAC 14D .0207
Adopt/*	
<u>Kitchen</u>	10A NCAC 14D .0208
Adopt/*	
<u>Bedrooms</u>	10A NCAC 14D .0209
Adopt/*	
<u>Bathroom</u>	10A NCAC 14D .0210
Adopt/*	
<u>Storage Areas</u>	10A NCAC 14D .0211
Adopt/*	
<u>Corridor</u>	10A NCAC 14D .0212
Adopt/*	
<u>Outdoor Entrance and Exits</u>	10A NCAC 14D .0213
Adopt/*	
<u>Laundry Room</u>	10A NCAC 14D .0214
Adopt/*	
<u>Floors</u>	10A NCAC 14D .0215
Adopt/*	
<u>Housekeeping and Furnishings</u>	10A NCAC 14D .0216
Adopt/*	
<u>Fire Safety and Disaster Plan</u>	10A NCAC 14D .0217
Adopt/*	
<u>Building Service Equipment</u>	10A NCAC 14D .0218
Adopt/*	
<u>Outside Premises</u>	10A NCAC 14D .0219
Adopt/*	
<u>Planning Program Activities</u>	10A NCAC 14D .0301
Adopt/*	
<u>Administrator</u>	10A NCAC 14D .0302
Adopt/*	
<u>Supervisor in Charge</u>	10A NCAC 14D .0303
Adopt/*	
<u>Enrollment of Residents</u>	10A NCAC 14D .0401
Adopt/*	
<u>Planning Services for Individual Residents</u>	10A NCAC 14D .0402
Adopt/*	
<u>Staffing</u>	10A NCAC 14D .0501
Adopt/*	
<u>Staff</u>	10A NCAC 14D .0502
Adopt/*	
<u>Medication Administration</u>	10A NCAC 14D .0601
Adopt/*	

<u>Medication Administration Competency Evaluation</u> Adopt/*	10A NCAC 14D .0602
<u>Medication Administration Policies and Procedures</u> Adopt/*	10A NCAC 14D .0603
<u>Food Procurement and Safety</u> Adopt/*	10A NCAC 14D .0701
<u>Food Preparation and Services</u> Adopt/*	10A NCAC 14D .0702
<u>Menus</u> Adopt/*	10A NCAC 14D .0703
<u>Food Requirements</u> Adopt/*	10A NCAC 14D .0704
<u>Therapeutic Diets</u> Adopt/*	10A NCAC 14D .0705
<u>Feeding Assistance</u> Adopt/*	10A NCAC 14D .0706
<u>Accommodation of Resident Needs and Preferences</u> Adopt/*	10A NCAC 14D .0707
<u>Activities Program</u> Adopt/*	10A NCAC 14D .0801

## **PUBLIC HEALTH, COMMISSION FOR**

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

<u>Reporting of Healthcare Associated Infections</u> Adopt/*	10A NCAC 41A .0106
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The rules in Chapter 43 concern personal health.

Subchapter 43I concerns the summer food service program.

<u>Incorporation by Reference: 7 C.F.R. Part 225</u> Amend/*	10A NCAC 43I .0101
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Subchapter 43J concerns the child and adult care food program.

<u>Incorporation by Reference: 7 C.F.R. Part 226</u> Amend/*	10A NCAC 43J .0101
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## **ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF**

The rules in Chapter 1 are departmental rules.

The rules in Subchapter 1A concern the general organization of the department.

<u>How to Contact the Department</u> Amend/*	15A NCAC 01A .0102
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## **PUBLIC HEALTH, COMMISSION FOR**

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

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

Fences  
Amend/\*

15A NCAC 18A .2528

## **ARCHITECTURE, BOARD OF**

The rules in Chapter 2 are from the Board of Architecture and include general provisions (.0100); practice of architecture (.0200); examination procedures (.0300); rules, petitions, and hearings (.0400); declaratory rulings (.0500); administrative hearings: procedures (.0600); administrative hearings: decisions and related rights (.0700); judicial review (.0800); and continuing education (.0900).

Definitions  
Amend/\*

21 NCAC 02 .0109

Definitions  
Repeal/\*

21 NCAC 02 .0902

Requirements  
Amend/\*

21 NCAC 02 .0903

Determination of Credit  
Amend/\*

21 NCAC 02 .0904

Record Keeping  
Amend/\*

21 NCAC 02 .0905

Exceptions  
Amend/\*

21 NCAC 02 .0906

Forms  
Amend/\*

21 NCAC 02 .0909

Non-Compliance  
Amend/\*

21 NCAC 02 .0910

## **COSMETIC ART EXAMINERS, BOARD OF**

The rules in Subchapter 14A are the Cosmetic Art Board of Examiners departmental rules including organizational rules (.0100); and license renewal waiver for armed forces (.0400).

Definitions  
Amend/\*

21 NCAC 14A .0101

Duplicate Licenses  
Adopt/\*

21 NCAC 14A .0402

Additional Salon Chairs  
Adopt/\*

21 NCAC 14A .0403

The rules in Subchapter 14T concern cosmetic art schools including school applications (.0100); physical requirements

of cosmetic art schools (.0200); school equipment and supplies (.0300); student equipment (.0400); record keeping (.0500); curriculum (.0600); school licensure, operations, closing and relocating schools (.0700); school inspections (.0800); and disciplinary actions (.0900).

<u>Natural Hair Care Schools</u>	21	NCAC 14T .0205
Amend/*		
<u>Equipment for Esthetics Schools</u>	21	NCAC 14T .0303
Amend/*		
<u>Equipment for Manicuring Schools</u>	21	NCAC 14T .0304
Amend/*		
<u>Equipment for Natural Hair Care Styling Schools</u>	21	NCAC 14T .0305
Amend/*		
<u>Cosmetology Curriculum</u>	21	NCAC 14T .0602
Amend/*		
<u>Instruction Guidelines</u>	21	NCAC 14T .0612
Amend/*		
<u>Uniforms and Identification</u>	21	NCAC 14T .0613
Amend/*		
<u>School Operations/Licensure Maintenance</u>	21	NCAC 14T .0701
Amend/*		

#### **PODIATRY EXAMINERS, BOARD OF**

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

<u>Practice Orientation</u>	21	NCAC 52 .0205
Amend/*		
<u>Continuing Education</u>	21	NCAC 52 .0208
Amend/*		
<u>Payment of Fees</u>	21	NCAC 52 .0612
Adopt/*		

#### **SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

The rules in Chapter 63 deal with Social Work Certification including general rules (.0100); certification (.0200); examinations (.0300); renewal of certification (.0400); ethical guidelines (.0500); disciplinary procedures (.0600); adoption of rules (.0700); and professional corporations and limited liability companies.

<u>Definitions</u>	21	NCAC 63 .0102
Amend/*		
<u>Provisional Licenses</u>	21	NCAC 63 .0210
Amend/*		
<u>Work Experience</u>	21	NCAC 63 .0211
Amend/*		

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**CONTESTED CASE DECISIONS**

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*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

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>			
Bright Haven Residential and Community Care d/b/a New Directions Group Home v. Division of Medical Assistance, DHHS	10 DHR 00232	04/27/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home, v. DHHS/Division of Health Service Regulation, Adult Care Licensure Section	10 DHR 01666	05/18/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12	
Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12	
Mary Ann Barnes v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 6488	07/16/12	
Powell's Medical Facility and Eddie N. Powell, M.D., v. DHHS, Division of Medical Assistance	11 DHR 01451	03/05/12	27:01 NCR 75
Julie Sadowski v. DHHS, Division of Health Service Regulation	11 DHR 01955	04/03/12	
Cherry's Group Home, Alphonso Cherry v. DHSR Michelle Elliot	11 DHR 09590	07/12/12	
Teresa Diane Marsh v. DHHS, Division of Health Service Regulation	11 DHR 11456	04/27/12	
Betty Parks v. Division of Child Development, DHHS	11 DHR 11738	06/20/12	
Lorrie Ann Varner v. DHHS, Regulation Health Care Personnel Registry Section	11 DHR 11867	08/02/12	
Timothy John Murray v. DHHS, Division of Health Service Regulation	11 DHR 12594	06/15/12	
Holly Springs Hospital II, LLC v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Harnett Health System, Inc. and WakeMed	11 DHR 12727	04/12/12	27:04 NCR 486
Rex Hospital, Inc., v. DHHS, Division of Health Service Regulation, CON Section and WakeMed, Holly Springs Hospital II, LLC, and Harnett Health System, Inc.	11 DHR 12794	04/12/12	27:04 NCR 486



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Harnett Health System, Inc., v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Holly Springs Hospital II, LLC, and WakeMed	11 DHR 12795	04/12/12	27:04 NCR 486
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Holly Springs Hospital II, LLC, Rex Hospital, Inc., and Harnett Health System, Inc	11 DHR 12796	04/12/12	27:04 NCR 486
Sandra Ellis v. DHHS	11 DHR 12959	07/11/12	
Vendell Haughton v. DHHS, Division of Medical Assistance	11 DHR 13616	07/05/12	
Tarsand Denise Morrison v. DHHS, Division of Health Service Regulation	11 DHR 13906	07/11/12	
Care Well of Charlotte Inc, Joy Steele v. DHHS	11 DHR 13909	08/02/12	
Michael Timothy Smith, Jr. v. DHHS, Division of Health Service Regulation	11 DHR 14184	08/01/12	
Cynthia Tuck Champion v. DHHS, Division of Health Service Regulation	11 DHR 14283	06/15/12	
Lauren Stewart v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 14570	06/08/12	
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Jerri Long v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	12 DHR 00361	07/06/12	
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Trinity Child Care II & I v. DHHS, Division of Public Health, Child and Adult Care Food Program	12 DHR 00861	04/20/12	27:04 NCR 518
Faith Home Care of NC, Bonita Wright v. DHHS, DMA	12 DHR 00928	07/25/12	
Angela C Jackson v. DHHS	12 DHR 01097	06/19/12	
Paula N Umstead v. DHHS	12 DHR 01098	05/11/12	
ACI Support Specialists Inc. Case #2009-4249 v. DHHS	12 DHR 01141	06/06/12	
AriLand Healthcare Service, LLC, NCMHL #018-092, Shawn Kuhl Director of Operations v. DHHS, Emery E. Milliken, General Counsel	12 DHR 01165	05/25/12	
Kenneth Holman v. DHHS	12 DHR 01244	06/05/12	
Hillcrest Resthome Inc. (\$2000 penalty) v. DHHS	12 DHR 01289	05/30/12	
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First Path Home Care Services Gregory Locklear v. DHHS	12 DHR 01878	06/22/12	
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Marco Evans v. DHHS, Division of Health Service Regulation	12 DHR 04110	07/30/12	
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Myron Roderick Nunn v. Jennifer O'Neal, Accountant DOC	12 DOC 01022	07/12/12	
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Barbara Renay Whaley v. Criminal Justice Education and Training Standards Commission	11 DOJ 10316	04/25/12	
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Leroy Wilson Jr., Private Protective Services Board	12 DOJ 01293	04/18/12	
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Pamlico-Tar River Foundation, NC Coastal Federation, Environmental Defense Fund, and Sierra Club v. DENR, Division of Water Quality and PCS Phosphate Company, Inc	09 EHR 1839	04/26/12	27:01 NCR 87
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Don Hillebrand v. County of Watauga County Health Dept	10 EHR 00933	05/10/12	
House of Raeford Farms, Inc., v. DENR	10 EHR 05508	05/31/12	27:01 NCR 99

Lacy H Caple DDS v. Division of Radiation Protection Bennifer Pate	11 EHR 11454	05/09/12	
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Save Mart of Duplin LLC v. DENR	12 EHR 02328	07/25/12	
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**DIVISION OF EMPLOYMENT SECURITY**

Dwight Marvin Wright v. Department of Commerce, Division of Employment Security	12 ESC 05042	07/27/12	
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Daniel Chase Parrott v. Crime Control and Public Safety, Butner Public Safety Division	10 OSP 04792	05/30/12	
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John Fargher v. DOT	11 OSP 08111	04/18/12	
Fredericka Florentina Demmings v. County of Durham	11 OSP 11498	06/12/12	
William C. Spender v. Dept. of Agriculture & Consumer Services, Veterinary Division	11 OSP 12479	04/27/12	
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Terrence McDonald v. DHHS, Emery Milliken	11 OSP 12683	05/18/12	
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Bon-Jerald Jacobs v. Pitt County Department of Social Services	12 OSP 00634	06/12/12	
Diane Farrington v. Chapel Hill-Carrboro City Schools	12 OSP 01300	07/12/12	
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**CONTESTED CASE DECISIONS**

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Jeffrey L Wardick, v. Employment Securities Commission of NC	12 OSP 02027	07/17/12
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Sheila Bradley v. Community College System Sandhills Community College	12 OSP 02473	06/06/12
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