

# NORTH CAROLINA REGISTER

VOLUME 27 • ISSUE 17 • Pages 1772 - 1807

March 1, 2013

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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

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(919) 431-3073

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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

Amanda Reeder, Commission Counsel

amanda.reeder@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 2013 – December 2013

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

## 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.

Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Health and Human Services (DHHS) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DHHS:

Application by: Robert B. Mayer, P.E.  
American Manufacturing Company, Inc.  
PO Box 97  
Elkwood VA 22718

For: Modification of Innovative Approval for American Perc-Rite Subsurface Drip System, Anaerobic

DHHS Contact: Terry Pierce  
1-919-707-5875  
Fax: 919-845-3973  
[terry.pierce@dhhs.nc.gov](mailto:terry.pierce@dhhs.nc.gov)

These applications may be reviewed by contacting the applicant or at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Terry Pierce, Interim Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or [terry.pierce@dhhs.nc.gov](mailto:terry.pierce@dhhs.nc.gov), or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

North Carolina Department of Labor  
Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101

(919) 807-2875

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**NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS**

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In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC .0101, .0201, .0501, and .0502 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1910 promulgated as of January 22, 2013, Part 1915 promulgated as of November 16, 2012, Part 1917 promulgated as of November 16, 2012, and Part 1926 promulgated as of November 16, 2012, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses the following recent verbatim adoptions:

- Updating OSHA Standards Based On National Consensus Standards; Head Protection (77 FR 37587 - 37600, June 22, 2012) (77 FR 68684 – 68685, November 16, 2012)
- Updating OSHA Construction Standards Based On National Consensus Standards; Head Protection; Correction of Direct Final Rule (77 FR 42988 - 42989, July 23, 2012)
- Respiratory Protection; Mechanical Power Presses; Scaffold Specifications; Correction and Technical Amendment (77 FR 46948 - 46950, August 7, 2012)
- Occupational Exposure to Hazardous Chemicals in Laboratories (Non-Mandatory Appendix); Technical Amendment (78 FR 4324 - 4331, January 22, 2013)

The *Federal Registers* (FR), as cited above, contain both technical and economic discussions that explain the basis for the changes.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance  
Occupational Safety and Health Division  
North Carolina Department of Labor  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

Erin T. Gould, Agency Rulemaking Coordinator  
North Carolina Department of Labor  
Legal Affairs Division  
1101 Mail Service Center  
Raleigh, NC 27699-1101



U.S. Department of Justice  
Civil Rights Division

TCH:RSB:RPL:SHH:tst  
DJ 166-012-3  
2013-0045

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

January 22, 2013

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

Dear Mr. Holec:

This refers to the annexation (Ordinance No. 12-064 (2012)) and its designation to District 2 of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on January 8, 2013.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Christian Herren, Jr.", written over a faint horizontal line.

T. Christian Herren, Jr.  
Chief, Voting Section



*State of North Carolina*  
*Department of the Secretary of State*

ELAINE F. MARSHALL  
SECRETARY OF STATE

**ORDER ADOPTING OF NORTH CAROLINA TECHNICAL SPECIFICATIONS  
FOR LIGHT DETECTION AND RANGING (LIDAR) BASE MAPPING**

WHEREAS, the Department of the Secretary of State is required by G.S. § 147-54.3(c) to adopt technical standards and detailed specifications to be used to achieve a greater degree of statewide standardization of land mapping in land records, and

WHEREAS, during the past year the Department has worked with stakeholders and has produced the proposed North Carolina Technical Specifications for **Light Detection And Ranging (LiDAR) Base Mapping**, and

WHEREAS, the North Carolina Land Records Advisory Committee and the North Carolina Geographic Information Coordinating Council have passed motions recommending that the Secretary of State adopt these specifications, and

WHEREAS, notice of the proposed adoption of the North Carolina Technical Specifications for LiDAR Base Mapping was published in the North Carolina Register on January 2, 2013, allowing time and opportunity for public comment.

NOW, THEREFORE, IT IS ORDERED AND DECREED that pursuant to the authority granted by G.S. § 147-54.3(c) effective on this date the North Carolina Technical Specifications for LiDAR Base Mapping are hereby adopted.

This is the 30<sup>th</sup> day of January, 2013

  
Elaine F. Marshall  
North Carolina Secretary of State

PO Box 29622 • RALEIGH, NC 27626-0622



**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 12 – DEPARTMENT OF JUSTICE**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to adopt the rules cited as 12 NCAC 07D .0115 and amend the rules cited as 12 NCAC 07D .0104, .0203, .0301-.0302, .0401, .0501, .0601, .0807, .0901, .0909.

**Agency obtained G.S. 150B-19.1 certification:**

- OSBM certified on:
- RRC certified on: *January 17, 2013*
- Not Required

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

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

**Public Hearing:**

**Date:** *March 25, 2013*

**Time:** *2:00 p.m.*

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

**Reason for Proposed Action:**

*12 NCAC 07D .0104 – To amend the definitions section to conform to other rule changes.*

*12 NCAC 07D .0115 – To require licensees, registrants and trainers to report administrative proceedings from other states.*

*12 NCAC 07D .0203 – To conform this rule to other rule amendments previously adopted to meet a statutory change regarding length of residency for a local criminal history records check.*

*12 NCAC 07D .0301-.0302, .0401, .0501, .0601, .0901, .0909 – To create a procedure to comply with recently enacted G.S. 93B-15.1 regarding military experience and active duty military spouses.*

*12 NCAC 07D .0807 – To allow an armed security guard to be employed by more than one company and provide a procedure for firearms qualification for this "dual" employment.*

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

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

**Comment period ends:** *April 30, 2013*

**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 by G.S. 150B-21.4

**CHAPTER 07 – PRIVATE PROTECTIVE SERVICES BOARD**

**SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD**

**SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS**

**12 NCAC 07D .0104 DEFINITIONS**

In addition to the definitions under G.S. 74C, the following definitions shall apply throughout this Subchapter:

- (1) "Applicant" means any person, firm or corporation applying to the Board for a license, trainee permit, registration or firearms trainer certificate.
- (2) "Armed Private Security Officer" means an individual employed, full time or part time, by a contract security company or a proprietary security organization:

- (a) who at any time wears, carries, or possesses a firearm in the performance of his duties; and
- (b) whose principal duty is that of:
  - (i) an armed security guard, officer, patrol, or watchman;
  - (ii) an armed armored car service guard;
  - (iii) a private detective; or
  - (iv) an armed courier service guard.
- (3) "Board" means the Private Protective Services Board established by G.S. 74C.
- (4) "Branch Manager or Operator" means the individual endowed with the responsibility and liability for a branch office.
- (5) "Branch Office" means a separate but dependent part of a central organization engaged in the business of providing private protective services established for the purpose of extending the activities of the central organization. The establishment of a telephone number or mailing address in the company name constitutes prima facie evidence of a branch office. If an out of state person, firm, association, or corporation opens an office in North Carolina, the North Carolina office shall be deemed the principal place of business and shall have a resident licensed qualifying agent.
- (6) "Chairman" means the Chairman of the Private Protective Services Board.
- (7) "Contract Security Company" means any person, firm, association, or corporation engaging in a private protective services business as defined in G.S. 74C-3 which provides said services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.
- (8) "Direct Supervision" means personal, face to face contact and direction of the trainee's activities on a frequent and reasonable basis.
- (9) "Investigative Capacity" means any law enforcement agency position for which the duties include conducting investigations and interviews, completing reports, and testifying in courts, or administrative hearings, administrative hearings or military tribunals.
- (10) "Law Enforcement Officer" means a sworn peace officer who has the power of arrest, and who is an employee of the United States, any state, or any political subdivision of a state.
- (11) "Licensee" means any person licensed to perform private protective services in North Carolina in accordance with G.S. 74C.
- (12) "Proprietary Security Organization" means any person, firm, association, corporation or department thereof:
  - (a) which employs any of the following:
    - (i) watchmen,
    - (ii) security guards or officers,
    - (iii) patrol personnel,
    - (iv) armored car personnel, or
    - (v) couriers; and
  - (b) which employs these persons regularly and exclusively as an employee in connection with the business affairs of such employer.
- (13) "Qualifying Agent" means the individual licensee who is responsible for the private protective services business.
- (14) "Restored" means that an individual is no longer in need of psychiatric care as determined by a physician.
- (15) "Temporary unarmed security guard" means one who is hired for a period of 30 days or less within a calendar year and who is designated as a temporary security guard at the start of employment.
- (16) "Agency Head" means the Chairman of the Board.

*Authority G.S. 74C-3; 74C-5.*

**12 NCAC 07D .0115 INVOLVEMENT IN ADMINISTRATIVE HEARING**

All licensees registrants and trainers shall report to the Board any administrative proceedings which are commenced against them which involve any potential revocation or suspension of, or other disciplinary action against, any private protective service license, permit, certification or registration that they hold in another state. The Board must receive written notice of any such administrative proceeding within 30 days of the date the licensee, registrant or trainer is notified of the administrative proceeding.

*Authority G.S. 74C-5; 74C-12.*

**SECTION .0200 - LICENSES: TRAINEE PERMITS**

**12 NCAC 07D .0203 RENEWAL OR RE-ISSUE OF LICENSES AND TRAINEE PERMITS**

(a) Each applicant for a license or trainee permit renewal shall submit an original and one copy of a renewal form. This form shall be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be accompanied by:

- (1) a head and shoulders digital color photograph of the applicant in JPG format of a quality sufficient for identification, taken within six months of the application and submitted by e-mail to PPSASL-Photos@ncdoj.gov or by compact disc;
- (2) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided

within the ~~immediate~~-immediately preceding 12 24 months or a criminal record check from a third party criminal record check provider;

- (3) the applicant's renewal fee; and
(4) proof of liability insurance as set out in G.S. 74C-10(e).

(b) If a licensee has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within three years of the expiration date and the following documentation is submitted to the Board:

- (1) an Application For Reinstatement of an Expired License;
(2) one set of classifiable fingerprints on an applicant fingerprint card;
(3) one head and shoulders digital color photograph of the applicant in JPG format of a quality sufficient for identification, taken within six months of the application and submitted by e-mail to PPSASL-Photos@ncdoj.gov or by compact disc;
(4) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate-immediately preceding 60 months or a criminal record check from a third party criminal record check provider;
(5) the applicant's non-refundable application fee;
(6) proof of liability insurance as set out in G.S. 74C-10(e); and
(7) a separate check or money order made payable to the State Bureau of Investigations to cover criminal record checks performed by the State Bureau of Investigations.

(c) Members of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the license renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74C-5; 74C-8; 74C-9.

SECTION .0300 - SECURITY GUARD AND PATROL: GUARD DOG SERVICE

12 NCAC 07D .0301 EXPERIENCE REQUIREMENTS/SECURITY GUARD AND PATROL LICENSE

(a) In addition to the requirements of 12 NCAC 07D .0200, applicants for a security guard and patrol license shall:

- (1) establish to the Board's satisfaction three years experience as a manager, supervisor, or administrator with a contract security company or a proprietary security organization performing guard and patrol functions; or

- (2) establish to the Board's satisfaction three years experience as a manager, supervisor, or administrator in security with any federal, U.S. Armed Forces, state, county, or municipal law enforcement agency performing guard and patrol functions; or
(3) establish to the Board's satisfaction a military occupational specialty and two year's experience within the past five years in the U.S. Armed Forces as a manager, supervisor, or administrator performing guard and patrol functions.

(b) For the spouse of an active duty member of the U.S. Armed Forces, establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification or registration from another jurisdiction and the other jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements, or
(2) two years verifiable experience within the past five years in the U.S. Armed Forces as a manager, supervisor, or administrator performing guard and patrol functions.

(c)(b) Board shall give credit toward the experience requirements set forth in (a)(1) and (2) of this Rule as follows:

- (1) An applicant shall receive a minimum of 400 hours of experience credit for an associate's degree. The Administrator or the Board shall grant up to 100 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the associate's degree.
(2) An applicant shall receive 800 hours of experience credit for a bachelor's degree. The Administrator or the Board shall grant up to 200 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the bachelor's degree.
(3) An applicant shall receive 1,200 hours of experience credit for a graduate degree. The Administrator or the Board shall grant an additional 300 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the graduate degree.

(d)(e) Persons licensed under Chapter 74D of the General Statutes of North Carolina may be issued a limited guard and patrol license exclusively for providing armed alarm responders.

Authority G.S. 74C-5; 74C-8; 74C-13; 93B-15.1.

12 NCAC 07D .0302 EXPERIENCE REQUIREMENTS FOR GUARD DOG SERVICE LICENSE

(a) In addition to the requirements of 12 NCAC 07D .0200, applicants for a guard dog service license shall:

- (1) establish to the Board's satisfaction two years experience as a manager, supervisor, administrator, or dog handler with a contract security company or proprietary security organization performing guard dog functions; ~~or~~
- (2) establish to the Board's satisfaction two years experience as a manager, supervisor, administrator, or dog handler with any federal, ~~U.S. Armed Forces,~~ state, county, or municipal agency performing guard dog ~~functions;~~ functions; or
- (3) establish to the Board's satisfaction a military occupational specialty and two years experience within the past five years in the U.S. Armed Forces as a manager, supervisor, or administrator or dog handler performing guard dog functions.

(b) For a spouse of an active duty member of the U.S. Armed Forces, establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification or registration from another jurisdiction and the other jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements, or
- (2) two years verifiable experience within the past five years as a manager, supervisor, or to administrator or dog handler performing guard dog functions.

Authority G.S. 74C-5; 74C-8; 93B-15.1.

**SECTION .0400 - PRIVATE INVESTIGATOR:  
ELECTRONIC COUNTERMEASURES**

**12 NCAC 07D .0401 EXPERIENCE REQUIREMENTS FOR A PRIVATE INVESTIGATOR LICENSE**

(a) In addition to the requirements of G.S. 74C-8 and 12 NCAC 07D .0200, applicants for a private investigator license shall:

- (1) establish to the Board's satisfaction three years of experience while conducting investigations as defined in G.S. 74C-3(a)(8) with a contract security company or with a private person, firm, association or corporation; ~~or~~
- (2) establish to the Board's satisfaction three years of verifiable experience while conducting investigations as defined in G.S. 74C-3(a)(8) while serving in an investigative capacity as defined in 12 NCAC 07D .0104(9) with any Federal, ~~U.S. Armed Forces,~~ state, county, municipal law enforcement agency or other governmental ~~agency;~~ agency; or
- (3) establish to the Board's satisfaction a military occupational specialty and two years verifiable experience within the past five years in the U.S. Armed Forces while conducting investigations as defined in G.S. 74C-3(a)(8) while serving in an investigative capacity as defined in 12 NCAC 07D .0104(9).

(b) For the spouse of an active duty member of the U.S. Armed Forces, establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification or registration from another jurisdiction and the other jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements, or
- (2) two years verifiable experience within the past five years in the U.S. Armed Forces while conducting investigations as defined in G.S. 74C-3(a)(8) while serving in an investigative capacity as defined in 12 NCAC 07D .0104(9).

~~(c)(b)~~ The Board shall give credit toward the experience requirements set forth in Paragraph (a) of this Rule as follows:

- (1) An applicant shall receive of 400 hours of experience credit for an associate's degree. The Administrator or the Board shall grant up to 100 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the associate's degree.
- (2) An applicant shall receive 800 hours of experience credit for a bachelor's degree. The Administrator or the Board shall grant up to 200 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the bachelor's degree.
- (3) An applicant shall receive 1,200 hours of experience credit for a graduate degree. The Administrator or the Board shall grant an additional 300 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the graduate degree.

Authority G.S. 74C-5(2); 93D-15.1.

**SECTION .0500 - POLYGRAPH**

**12 NCAC 07D .0501 EXPERIENCE REQUIREMENTS FOR A POLYGRAPH LICENSE**

(a) In addition to the requirements of 12 NCAC 07D .0200, applicants for a polygraph license shall:

- (1) pass an examination and a performance test administered by a panel of polygraph examiners designated by the Board;
- (2) successfully complete a course of instruction at any polygraph school approved by the American Polygraph Association; and
- (3) have one year of polygraph experience or successfully complete at least six months of training as a holder of a polygraph trainee permit, and administer no less than 50 polygraph ~~examinations~~ examinations; or

- (4) establish to the Board's satisfaction a military occupational specialty and two years verifiable experience within the past five years in the U.S. Armed Forces as a manager, supervisor, or administrator performing polygraph examinations.

(b) For the spouse of an active duty member of the U.S. Armed Forces, establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification or registration from another jurisdiction and the other jurisdictions requirements are substantially equivalent to or exceed the Board's requirements, or
- (2) two years verifiable experience within the past five years as a manager, supervisor, or administrator performing polygraph examinations.

(c)(b) Applicants for a polygraph license may take the examination required in Paragraph (a) of this Rule no more than twice in any calendar year and any applicant who fails the polygraph examination four times shall retake the polygraph school required in Paragraph (a) of this Rule before taking the polygraph examination again.

(d)(e) Polygraph operators who are duly licensed in another state may run up to three examinations in this state without being licensed, provided that those examinations are for the purpose of an evaluation of that examiner and provided that the administrator has given authorization for this evaluation in advance.

*Authority G.S. 74C-5; 93B-15.1.*

**SECTION .0600 - PSYCHOLOGICAL STRESS EVALUATOR (P.S.E.)**

**12 NCAC 07D .0601 EXPERIENCE REQUIREMENTS FOR A PSYCHOLOGICAL STRESS EVALUATOR LICENSE**

(a) In addition to the requirements of 12 NCAC 07D .0200, applicants for a Psychological Stress Evaluator license shall:

- (1) successfully complete a course of instruction at any P.S.E. school approved by the Board; or
- (2) establish to the Board's satisfaction a military occupational specialty and two years verifiable experience within the past five years in the U.S. Armed Forces as a manager, supervisor, or administrator conducting psychological stress evaluations.

(b) For the spouse of an active duty member of the U.S. Armed Forces, establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification or registration from another jurisdiction and the other jurisdictions requirements are substantially equivalent to or exceed the Board's requirements, or
- (2) two years verifiable experience within the past five years as a manager, supervisor, or

administrator conducting psychological stress evaluations.

(c)(b) A P.S.E. school must consist of not less than 40 hours of actual classroom instruction in psychological stress evaluation.

*Authority G.S. 74C-5; 93B-15.1.*

**12 NCAC 07D .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS**

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in 12 NCAC 07D .0707. Private Investigator Licensees applying for an armed security guard firearm registration permit shall first complete a four hour training course consisting of blocks of instruction "The Security Officer in North Carolina" and "Legal Issues for Security Officers" as set forth in 12 NCAC 07D .0707(a). Private Investigator Licensees applying for an armed security guard firearm registration permit are not required to complete the following training blocks found in the basic training course referenced in 12 NCAC 07D. 0707(a): "Emergency Response," "Communications," "Patrol Procedures," "Note Taking and Report Writing," and "Department." A Private Investigator Licensee applying for an armed security guard firearm registration permit shall meet all additional training requirements set forth in 12 NCAC 07D .0707 as well as the training requirements set forth in this Rule.

(b) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

(c) Applicants for an armed security guard firearm registration permit shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office. Should a student fail to attain a score of 80 percent accuracy as referenced above, the student will be given an additional three attempts to qualify on the course of fire they did not pass. Failure to meet the qualification after three attempts shall require the student to repeat the entire Basic Training Course for Armed Security Guards. All additional attempts must take place within 20 days of the completion of the initial 20 hour course.

(d) All armed security guard training required by 12 NCAC 07D shall be administered by a certified trainer and shall be successfully completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(e) All applicants for an armed security guard firearm registration permit must obtain training under the provisions of this Section using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(f) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(g) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards which consists of at least four hours of classroom instruction and is a review of the requirements set forth in Paragraphs (b)(1) through (b)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (c) of this Rule.

(h) An armed guard currently registered with one company may be registered with a second company. Such registration shall be considered "dual." The registration with the second company shall expire at the same time that the registration expires with the first company. An updated application shall be required, along with the digital photograph, updated criminal records checks and a forty dollar (\$40.00) registration fee. If the guard will be carrying a weapon of the same make and model, then no additional firearms training is required. The licensee shall submit a letter stating the guard will be carrying the same make a model weapon. If the guard will be carrying a weapon of a different make and model, the licensee shall submit a letter to the Board advising of the make and model of the weapon the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course.

~~(h)~~(i) To be authorized to carry a standard 12 gauge shotgun in the performance of his duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training which shall include the following:

- (1) legal limitations on the use of shotguns;
- (2) shotgun safety, including range firing procedures;
- (3) shotgun operation and maintenance; and
- (4) shotgun fundamentals.

An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit.

~~(h)~~(j) In addition to the requirements set forth in Paragraph (h) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office.

~~(h)~~(k) Applicants for shotgun recertification shall complete an additional one hour of classroom training as set forth in Paragraphs (h)(1) through (h)(4) of this Rule and shall also complete the requirements of Paragraph (i) of this Rule.

~~(k)~~(l) Applicants for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (c) of this Rule.

~~(l)~~(m) The armed security officer is required to qualify annually both day and night. If the security officer fails to qualify on either course of fire, the security officer cannot carry a firearm until such time as they meet the qualification requirements. Upon failure to qualify the firearm instructor must notify the security officer that they are no longer authorized to carry a firearm and the ~~Firearm Instructor~~ firearm instructor must notify the employer and the Private Protective Services Board staff on the next business day.

Authority G.S. 74C-5; 74C-13.

**SECTION .0900 – TRAINER CERTIFICATE**

**12 NCAC 07D .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE**

(a) Firearms trainer applicants shall:

- (1) meet the minimum standards established by 12 NCAC 07D .0703;
- (2) have a minimum of one year supervisory experience in security with a contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;
- (3) attain a 90 percent score on a firearm's prequalification course approved by the Board and the Attorney General, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
- (4) successfully complete a training course approved by the Board and the Attorney General which shall consist of a minimum of 40 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun and shotgun firing;
- (5) pay the certified trainer application fee established in 12 NCAC 07D .0903(a)(1); and
- (6) successfully complete the requirements of a Unarmed Trainer Certificate established by 12 NCAC 07D .0909.

(b) The applicant's score on the prequalification course set forth in Subparagraph (a)(3) is valid for 180 days after completion of the course.

~~(b)~~(c) In lieu of completing the training course set forth in Subparagraph (a)(4) of this Rule, an applicant may:

- (1) submit to the Board a current Criminal Justice Specialized Law Enforcement Firearms Instructor Certificate from the North Carolina Criminal Justice Education and Training Standards ~~Commission~~ Commission, or

- (2) establish to the Board's satisfaction a military occupational specialty and two years verifiable experience within the past five years in the U.S. Armed Forces as a firearms instructor. All applicants subject to this subsection shall comply with the provisions of Subparagraph (a)(3), pay one-half the course fee amount, and complete the eight hour course given by the Board on rules and regulations.

(d) For the spouse of an active duty member of the U.S. Armed Forces, establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification or registration from another jurisdiction and the other jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements, or
- (2) two years verifiable experience within the past five years in the U.S. Armed Forces as a firearms instructor.

~~(e)~~(e) A Firearms Trainer Certificate expires two years after the date of issuance.

Authority G.S. 74C-5; 74C-13; 93B-15.1.

**12 NCAC 07D .0909 UNARMED GUARD TRAINER CERTIFICATE**

(a) To receive an unarmed guard trainer certificate, an applicant shall meet the following requirements:

- (1) comply with the requirements of 12 NCAC 07D.0703;
- (2) have a minimum of one year experience in security with contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;
- (3) successfully complete a training course approved by the Board and the Attorney General which shall consist of a minimum of 24 hours classroom instruction to include the following topic areas:
  - (A) civil liability for the security trainer - two hours;
  - (B) interpersonal communications in instruction – three hours;

- (C) teaching adults – four hours;
- (D) principles of instruction - one hour;
- (E) methods and strategies of instruction - one hour;
- (F) principles of instruction: audio-visual aids - three hours; and
- (G) student performance: 45 minute presentation.

- (4) favorable recommendation from the employing or contracting licensee; and
- (5) comply with the application process for an Unarmed Trainer Certificate as set forth in 12 NCAC 07D .0910.

(b) In lieu of completing the training course set forth in Subparagraph (a)(3) of this Rule, an applicant may submit to the Board:

- (1) a Criminal Justice General Instructor Certificate from the North Carolina Criminal Justice Education and Training Standards Commission
- (2) establish to the Board's satisfaction a military occupational specialty and two years verifiable experience within the past five years in the U.S. Armed forces as an unarmed guard trainer, or
- (3) any training certification that meets or exceeds the requirements of Subparagraph (a)(3) of this Rule and is approved by the Director of PPS.

(c) For the spouse of an active duty member of the U.S. Armed Forces, establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification or registration from another jurisdiction and the other jurisdiction requirements are substantially equivalent to or exceed the Board's requirements, or
- (2) two years verifiable experience within the past five years in the U.S. Armed Forces as an unarmed guard trainer.

~~(e)~~(d) An Unarmed Guard Trainer Certificate shall expire two years after the date of issuance.

Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13; 93B-15.1.

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

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

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

**Rule-making Agency:** NC Department of Health and Human Services

**Rule Citation:** 10A NCAC 14K .0101

**Effective Date:** March 1, 2013

**Date Approved by the Rules Review Commission:** February 6, 2013

**Reason for Action:**

Session Law 2012-142 became effective on July 1, 2012. Section 10.23A.(e) of the Session Law gives the Department of Health and Human Services authority to pursue temporary rulemaking in order to utilize appropriated funds to implement the requirements of the first year of the Department's plan as dictated in its settlement agreement with the U.S. Department of Justice. The Settlement Agreement was reached on August 23, 2012.

Session Law 2012-142 appropriates \$10,300,000 to the Department for implementation of its plan to transition individuals with severe mental illness and severe and persistent mental illness into community living arrangements, including establishing a rental assistance program. In accordance with the settlement agreement, the Department's plan includes the implementation of a tool to ensure that any individual being considered for admission to an adult care home is evaluated to determine whether the individual has serious mental illness. This preadmission screening tool will prompt the determination of eligibility for mental health services and identification of the most integrated placement in the community for the individual. The tool to be used is the North Carolina Preadmission Screening and Resident Review (PASRR) Medicaid Level 1 screening form.

Immediate adoption of the rule is needed to protect the health, safety and welfare of individuals with serious mental illness and other individuals living in licensed adult care homes in North Carolina. Currently, adult care homes do not have an adequate tool to assist them in determining the mental health needs of an individual who has been referred to the facility for admission. Lack of such a tool facilitates mixing of resident populations and placement of individuals without needed mental health services. The North Carolina Preadmission Screening and Resident Review (PASRR) Medicaid Level 1 screening form will ensure that prior to admission into an adult care home, individuals will be screened to identify serious mental illness so that appropriate mental health services can be provided in an appropriate

setting, as well as providing for the safety and welfare of other individuals living in adult care homes.

Also, Session Law 2012-142 became effective on July 1, 2012 and gives authority to the Department of Health and Human Services to issue temporary rules to implement Section 10.23A.(e) of the Session Law. The law was passed in response to the State of North Carolina's Settlement Agreement with the U.S. Department of Justice as described above. The temporary rule will allow the Department of Health and Human Services to move forward with its plan to identify and address the mental health needs of potential residents in North Carolina adult care homes. Implementation of this plan is critical to the health, safety and welfare of all North Carolina citizens, but especially those who reside in adult care homes. Immediate adoption of the rule is necessary for continued compliance with the settlement agreement.

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

**SUBCHAPTER 14K - PREADMISSION SCREENING FOR ADULT CARE HOME RESIDENTS**

**SECTION .0100 - PREADMISSION SCREENING FOR ADULT CARE HOME RESIDENTS**

**10A NCAC 14K .0101 PREADMISSION SCREENING**

(a) An adult care home licensed under G.S. 131D-2.4 shall assure that any individual admitted to the home for care and services has had a determination whether the individual has serious mental illness by submitting a pre-admission screening using the North Carolina Preadmission Screening and Resident Review (PASRR) Medicaid Level I screening form, completed by a ~~person~~ screeener who is not a legal representative of the individual and is not employed or paid by, or affiliated with a licensed adult care home. The screener or the screener's designee shall submit the screening electronically to the Division of Medical Assistance at <http://www.ncmust.com>.

(b) The preadmission screening form shall be filed in the resident's record in the home.

(c) As used in this Rule:

- (1) An individual with "Serious Mental Illness" means an individual who is 18 years of age or older with a mental illness or disorder (but not a primary diagnosis of Alzheimer's disease or dementia) that is described in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, including all subsequent editions, that impairs or impedes functioning in one or more major areas of living and is unlikely to



- improve without treatment, services or supports.
- (2) "Major areas of living" means activities that include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. It also means the operation of a major bodily function

including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

*History Note: Authority S.L. 2012-142;  
Temporary Adoption Eff. March 1, 2013.*

**APPROVED RULES**

*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 January 17, 2013.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**BANKS, OFFICE OF THE COMMISSIONER OF**

<u>Change of Location of Main Office or Branch</u>	04	NCAC	03C	.0301*	n/a G.S. 150B-21.5(b)(1)
<u>Application</u>	04	NCAC	03C	.0401*	n/a G.S. 150B-21.5(b)(1)
<u>Filing with Secretary of State</u>	04	NCAC	03C	.0406*	n/a G.S. 150B-21.5(b)(1)

**MEDICAL CARE COMMISSION**

<u>Reporting and Investigating Abuse, Neglect or Misappropriation</u>	10A	NCAC	13D	.2210*	27:03 NCR
<u>Patient Assessment and Plan of Care</u>	10A	NCAC	13D	.2301*	27:03 NCR

**PUBLIC HEALTH, COMMISSION FOR**

<u>Definitions</u>	10A	NCAC	43D	.0202*	27:05 NCR
<u>Vendor Peer Groups</u>	10A	NCAC	43D	.0706*	27:05 NCR
<u>Vendor Applicants</u>	10A	NCAC	43D	.0707*	27:05 NCR
<u>Local WIC Agency</u>	10A	NCAC	43D	.0709*	27:05 NCR
<u>Vendor Violations</u>	10A	NCAC	43D	.0710*	27:05 NCR
<u>Accreditation Requirements</u>	10A	NCAC	48B	.0103	27:05 NCR

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Specialized Firearms Instructor Training</u>	12	NCAC	09B	.0226*	27:08 NCR
<u>Specialized Driver Instructor Training</u>	12	NCAC	09B	.0227*	27:08 NCR
<u>Specialized Subject Control Arrest Techniques Instructor Training</u>	12	NCAC	09B	.0232*	27:08 NCR
<u>Specialized Physical Fitness Instructor Training</u>	12	NCAC	09B	.0233*	27:08 NCR
<u>Instructors Annual In-Service Training</u>	12	NCAC	09E	.0104*	27:08 NCR
<u>Topical Areas</u>	12	NCAC	09F	.0102*	27:08 NCR

**COASTAL RESOURCES COMMISSION**

<u>AECS Within Ocean Hazard Areas</u>	15A	NCAC	07H	.0304*	27:03 NCR
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**SECRETARY OF STATE, DEPARTMENT OF**

<u>Lobbyist Compensation Shall Be Separately Reported</u>	18	NCAC	12	.0904*	n/a G.S. 150B-21.5(b)(1)
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**ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR**

<u>General</u>	21	NCAC	56	.1001*	n/a G.S. 150B-21.5(b)(1)
<u>Application Procedure</u>	21	NCAC	56	.1002*	n/a G.S. 150B-21.5(b)(1)
<u>Seal</u>	21	NCAC	56	.1003*	n/a G.S. 150B-21.5(b)(1)
<u>Certification with Temporary Permit</u>	21	NCAC	56	.1104*	n/a G.S. 150B-21.5(b)(1)

**TITLE 04 – DEPARTMENT OF COMMERCE**

**04 NCAC 03C .0301 CHANGE OF LOCATION OF  
MAIN OFFICE, BRANCH OR LTD SVC FACILITY**

*History Note:* Authority G.S. 53-62; 53-92; 53-104;  
53-122(3);

*Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; June 1, 1995; September 1,  
1990; November 1, 1982; August 1, 1978;*

*Repealed Eff. February 1, 2013.*

**04 NCAC 03C .0401 APPLICATION**

*History Note:* Authority G.S. 53-12; 53-92;

*Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; September 1, 1990; July 24,  
1979;*

*Repealed Eff. February 1, 2013.*

**04 NCAC 03C .0406 FILING WITH SECRETARY OF  
STATE**

*History Note:* Authority G.S. 53-13; 53-92;

*Eff. February 1, 1976;*

*Amended Eff. September 1, 1990;*

*Repealed Eff. February 1, 2013.*

- (3) details of the allegation and any injury;
- (4) names of the accused and any witnesses;
- (5) names of the facility staff who investigated the allegation;
- (6) results of the investigation;
- (7) and any corrective action that may have been taken by the facility.

*History Note:* Authority G.S. 131E-104; 131E-131;  
131E-255; 131E-256;

*Eff. January 1, 1996;*

*Amended Eff. February 1, 2013; August 1, 2008; October 1,  
1998.*

**10A NCAC 13D .2301 PATIENT ASSESSMENT AND  
PLAN OF CARE**

(a) At the time each patient is admitted, the facility shall ensure medical orders are available for the patient's immediate care and that, within 24 hours, a nursing assessment of immediate needs is completed by a registered nurse and measures implemented as appropriate.

(b) The facility shall perform, within 14 days of admission and at least annually, a comprehensive, accurate, documented assessment of each patient's capability to perform daily life functions. This comprehensive assessment shall be coordinated by a registered nurse and shall include at least the following:

- (1) current medical diagnoses;
- (2) medical status measurements, including current cognitive status, stability of current conditions and diseases, vital signs, and abnormal lab values and diagnostic tests that are a part of the medical history;
- (3) the patient's ability to perform activities of daily living, including the need for staff assistance and assistive devices, and the patient's ability to make decisions;
- (4) presence of neurological or muscular deficits;
- (5) nutritional status measurements and requirements, including but not limited to height, weight, lab work, eating habits and preferences, and any dietary restrictions;
- (6) special care needs, including but not limited to pressure sores, enteral feedings, specialized rehabilitation services or respiratory care;
- (7) indicators of special needs related to patient behavior or mood, interpersonal relationships and other psychosocial needs;
- (8) facility's expectation of discharging the patient within the three months following admission;
- (9) condition of teeth and gums, and need and use of dentures or other dental appliances;
- (10) patient's ability and desire to take part in activities, including an assessment of the patient's normal routine and lifetime preferences;
- (11) patient's ability to improve in functional abilities through restorative care;
- (12) presence of visual, hearing or other sensory deficits; and

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

**10A NCAC 13D .2210 REPORTING AND  
INVESTIGATING ABUSE, NEGLECT OR  
MISAPPROPRIATION**

(a) A facility shall take measures to prevent patient abuse, patient neglect, or misappropriation of patient property, including orientation and instruction of facility staff on patients' rights, and the screening of and requesting of references for all prospective employees.

(b) The facility shall ensure that the Health Care Personnel Registry Section of the Division of Health Service Regulation is notified within one working day of the facility's becoming aware of any allegation against health care personnel as defined in G.S. 131E-256(a)(1).

(c) The facility shall investigate allegations as defined in G.S. 131E-256(a)(1) and shall document all relevant information pertaining to such investigation and shall take the necessary steps to prevent further incidents of abuse, neglect or misappropriation of patient property while the investigation is in progress.

(d) The facility shall ensure that the report of investigation is printed or typed and postmarked to the Health Care Personnel Registry Section of the Division of Health Service Regulation within five working days of the allegation. The report shall include:

- (1) the date and time of the alleged incident;
- (2) the patient's full name and room number;

- (13) drug therapy.
- (c) The facility shall develop a comprehensive plan of care for each patient and shall include measurable objectives and timetables to meet needs identified in the comprehensive assessment. The facility shall ensure the comprehensive plan of care is developed within seven days of completion of the comprehensive assessment by an interdisciplinary team. To the extent practicable, preparation of the comprehensive plan of care shall include the participation of the patient and the patient's family or legal representative. The physician may participate by alternative methods, including, but not limited to, telephone or face-to-face discussion, or written notice.
- (d) The facility shall review comprehensive assessments and plans of care no less frequently than once every 90 days and make necessary revisions to ensure accuracy.

*History Note: Authority G.S. 131E-104; RRC objection due to lack of statutory authority Eff. July 13, 1995; Eff. January 1, 1996; Amended Eff. February 1, 2013.*

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

(a) 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

- (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 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.
- (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.
- (15) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.
- (16) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 10A NCAC 43D .0501.
- (17) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- (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.
- (19) "Vendor applicant" is a store that has submitted an application to become an

authorized WIC vendor but is not yet authorized.

- (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.
- (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.
- (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.
- (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.

(b) A copy of 7 C.F.R. Part 246 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.fns.usda.gov/wic/lawsandregulations/WICRegulations-7CFR246.pdf>.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2004; Temporary Amendment Eff. July 1, 2006; Amended Eff. February 1, 2013; October 1, 2009; April 1, 2007.*

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

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, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until 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 Item (2) of this Rule.

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

- (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, 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; and
- Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement.

- (4) "Annual WIC supplemental food sales" is the dollar amount 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 Item (2) of this Rule, the state agency shall look at the most recent 12-month period of redemption data.
- (6) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's 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.
- (9) A vendor applicant previously authorized in a peer group under 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 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 Item (1) of this Rule.

*Amended Eff. November 1, 2005; August 1, 2004; Temporary Amendment Eff. July 1, 2006; Amended Eff. February 1, 2013; October 1, 2009; February 1, 2008; April 1, 2007.*

**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 USC 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 Item; 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

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990; Temporary Amendment Eff. June 23, 2000; May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. September 1, 2002; July 1, 2002;*

- 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 Item. 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 Item (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 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 at a single, 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 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. Such situations present a conflict of interest.

- (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 Item 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.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786; Eff. February 1, 2013.*

**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) Conduct routine monitoring, as set forth in 7 C.F.R. 246.2 and 7 C.F.R. 246.12(j)(2), of 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.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. February 1, 2013.*

**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 CFR 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:

- (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.
- (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

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.

(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);

- (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 adequate 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 (f)(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 USC 1786 (f)(26) and 7 CFR 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.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. February 1, 2013.*

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**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 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 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 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 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 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 25 of the 28 activities listed in the benchmarks contained in Section .1300 of this Subchapter.

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

*History Note: Authority G.S. 130A-34.1; Temporary Adoption Eff. January 1, 2006; Eff. October 1, 2006; Amended Eff. February 1, 2013.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

**12 NCAC 09B .0226 SPECIALIZED FIREARMS INSTRUCTOR TRAINING**

(a) The instructor training course for specialized firearms instructor certification shall consist of a minimum of 83 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice firearms instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' In-Service Firearms Training and Qualification Program".

(c) Each applicant for specialized firearms instructor training shall:

- (1) have completed the criminal justice general instructor training course; and
- (2) present a written endorsement by either
  - (A) a certified school director indicating the student will be utilized to instruct firearms in the Basic Law Enforcement Training Course; or
  - (B) a department head, certified school director, or in-service training coordinator, indicating the student will be utilized to instruct firearms in a "Law Enforcement Officers' In-Service Firearms Training and Qualification Program."

(d) Each specialized firearms instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

- (1) Orientation/Pretest 8 Hours
- (2) Range Operations 38 Hours
- (3) Civil Liability 4 Hours

- (4) Night Firing 2 Hours
- (5) Combat Shooting 8 Hours
- (6) Mental Conditioning 1 Hours
- (7) Shotgun Operation and Firing 4 Hours
- (8) Service Handgun - Operation and Use 5 Hours
- (9) Rifle - Operation and Maintenance 4 Hours
- (10) Service Handgun - Maintenance and Cleaning 2 Hours
- (11) Range Medical Emergencies 2 Hours
- (12) In-Service Firearms Requirements 2 Hours
- (13) BLET Lesson Plan Review/Post Test 3 Hours

(e) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized firearms instructor training courses. Copies of this publication may be inspected at the:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Post Office Drawer 149  
Raleigh, North Carolina 27610

and may be obtained at no cost to the student from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

(f) The Commission-certified school that is certified to offer the "Specialized Firearms Instructor Training" course is the North Carolina Justice Academy.

*History Note: Authority G.S. 17C-6; Eff. May 1, 1986; Amended Eff. February 1, 2013; August 1, 2006; August 1, 2000; November 1, 1998; August 1, 1995; February 1, 1991; March 1, 1990; July 1, 1989.*

**12 NCAC 09B .0227 SPECIALIZED DRIVER INSTRUCTOR TRAINING**

(a) The instructor training course required for specialized driver instructor certification shall consist of a minimum of 35 hours of instruction presented during a continuous period of not more than one week.

(b) Each specialized driver instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice driver instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized driver instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a written endorsement by either
  - (A) a certified school director indicating the student will be utilized to instruct

(B) driving in Basic Law Enforcement Training Courses; or a department head, certified school director, or in-service training coordinator, indicating the student will be utilized to instruct driver training in the "Law Enforcement Officer's Annual In-Service Training Program";

- (3) possess a valid operator driver's license; and
- (4) maintain a safe driving record where no more than four points have been assigned against the driving record within the past three years.

(d) Each specialized driver instructor training course shall include the following identified topic areas and instructional hours for each area:

- (1) Orientation 1 Hours
- (2) Lesson Plan Review (BLET) 4 Hours
- (3) General Mechanical Knowledge 1 Hour
- (4) Before - Operation Inspection 1 Hours
- (5) Laws of Natural Force & Operating Characteristics 2 Hours
- (6) Driver Practicum/Pre-Test 19 Hours
- (7) Fundamentals of Professional Liability for Trainers 4 Hours
- (8) Course Review/State Exam 3 Hours

(e) The "Specialized Driver Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized driver instructor training courses. Copies of this publication may be inspected at the:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Post Office Drawer 149  
Raleigh, North Carolina 27610

and may be obtained at no cost to the student from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

(f) Commission-certified schools that are certified to offer the "Specialized Driver Instructor Training" course are: The North Carolina Justice Academy and The North Carolina State Highway Patrol.

*History Note: Authority G.S. 17C-6; Eff. May 1, 1986; Amended Eff. February 1, 2013; August 1, 2006; February 1, 2006; August 1, 2000; November 1, 1998; August 1, 1995; February 1, 1991; March 1, 1990; July 1, 1989.*

**12 NCAC 09B .0232 SPECIALIZED SUBJECT CONTROL ARREST TECHNIQUES INSTRUCTOR TRAINING**

(a) The instructor training course required for specialized subject control arrest techniques instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized subject control arrest techniques instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice subject control arrest techniques instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized subject control arrest techniques instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a letter from a licensed physician stating the applicant's physical fitness to participate in the course; and
- (3) present a written endorsement by either
  - (A) a certified school director indicating the student will be utilized to instruct subject control arrest techniques in Basic Law Enforcement Training Courses; or
  - (B) a department head, certified school director, or in-service training coordinator indicating the student will be utilized to instruct Subject Control Arrest Techniques for the "Law Enforcement Officers' In-Service Training Program."

(d) Each specialized subject control arrest techniques instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation	1 Hour
(2)	Skills Pre-Test	1 Hour
(3)	Student Instructional Practicum	3 Hours
(4)	Practical Skills Evaluation	3 Hours
(5)	Response to Injury	4 Hours
(6)	Combat Conditioning	12 Hours
(7)	Safety Guidelines/Rules	2 Hours
(8)	Practical Skills Enhancement	4 Hours
(9)	Subject Control/Arrest Techniques Practical Skills and Instructional Methods	44 Hours
(10)	Fundamentals of Professional Liability For Law Enforcement Trainers	4 Hours
(11)	State Comprehensive Examination/Course Closing	2 Hours
	<b>TOTAL</b>	<b>80 Hours</b>

(e) The "Specialized Subject Control Arrest Techniques Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized subject control arrest techniques instructor training courses. Copies of this publication may be inspected at the:

Criminal Justice Standards Division  
 North Carolina Department of Justice  
 1700 Tryon Park Drive  
 Post Office Drawer 149  
 Raleigh, North Carolina 27610

and may be obtained at no cost to the student from the Academy at the following address:

North Carolina Justice Academy  
 Post Office Box 99

Salemberg, North Carolina 28385

(f) The Commission-certified school that is certified to offer the "Specialized Subject Control Arrest Techniques Instructor Training" course is the North Carolina Justice Academy.

*History Note: Authority G.S. 17C-6; Eff. February 1, 1987;*

*Amended Eff. February 1, 2013; December 1, 2009; August 1, 2006; August 1, 2000; November 1, 1998; August 1, 1995; March 1, 1990; July 1, 1989.*

**12 NCAC 09B .0233 SPECIALIZED PHYSICAL FITNESS INSTRUCTOR TRAINING**

(a) The instructor training course required for specialized physical fitness instructor certification shall consist of a minimum of 60 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized physical fitness instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice physical fitness instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized physical fitness training shall:

- (1) qualify through one of the following three options:
  - (A) have completed the criminal justice general instructor training course; or
  - (B) hold a current and valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be teaching in physical education topics;
  - (C) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education; and
- (2) present a written endorsement by either
  - (A) a school director indicating the student will be utilized to instruct physical fitness in Basic Law Enforcement Training Courses; or
  - (B) a certified school director, or in-service training coordinator indicating the student will be utilized to instruct physical fitness for the "Law Enforcement Officers' In-Service Training Program";
- (3) present a letter from a physician stating fitness to participate in the course.

(d) Each specialized physical fitness instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation	5 Hours
(2)	Lesson Plan Review	4 Hours
(3)	Physical Fitness Assessments, Exercise Programs and Instructional Methods	31 Hours

- (4) Injury Care and Prevention 4 Hours
- (5) Nutrition 6 Hours
- (6) Civil Liabilities for Trainers 2 Hours
- (7) CVD Risk Factors 2 Hours
- (8) Developing In-Service Wellness Programs and Validating Fitness Standards 4 Hours
- (9) State Examination 2 Hours
- TOTAL 60 Hours

(e) The "Physical Fitness Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized physical fitness instructor training courses. Copies of this publication may be inspected at the:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Post Office Drawer 149  
Raleigh, North Carolina 27610

and may be obtained at no cost to the student from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

(f) The Commission-certified school that is certified to offer the "Specialized Physical Fitness Instructor Training" course is the North Carolina Justice Academy.

*History Note: Authority G.S. 17C-6; Eff. July 1, 1989; Amended Eff. February 1, 2013; December 1, 2009; August 1, 2006; August 1, 2002; August 1, 2000; November 1, 1998; March 1, 1990; August 1, 1985.*

**12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING**

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program:

- (1) The instructor shall hold Instructor Certification issued by the Commission as outlined in 12 NCAC 09B .0302, 09B .0304, and 09B .0306, except for instructors delivering Incident Command System training for NIMS (National Incident Management System) compliance. Those instructors must be certified through FEMA (Federal Emergency Management Agency) as Incident Command Instructors. In addition, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his or her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.
- (2) Instructors who teach a required in-service training topic must achieve a passing grade on a topic specific test developed by the North

Carolina Justice Academy or by the agency delivering the training. Instructors who teach a required in-service training topic online, in addition to meeting the above testing requirement, must also complete the in-service training for the topic he or she will be teaching. Instructors who teach an in-service training topic in a traditional classroom format will receive credit toward their own in-service training requirements, provided that they pass all required tests and have their instruction documented once completed.

- (3) The instructor shall deliver the training consistent with the specifications as established in Rules 09E .0105 and .0106.
- (4) The instructor shall report the successful or unsuccessful completion of training for each officer to the Department head. Such reporting shall be on a Commission form.
- (5) Where the officer fails to qualify with a weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a Commission form to the officer which shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department head or designated representative within 24 hours of the failure to qualify. The instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

*History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. February 1, 2013; April 1, 2008; January 1, 2006; January 1, 2005.*

**12 NCAC 09F .0102 TOPICAL AREAS**

The course entitled "Concealed Carry Handgun Training" shall consist of eight hours of instruction and shall include the following identified topical areas:

- (1) Legal Issues (two hours): The student shall be able to demonstrate a general knowledge of North Carolina law on concealed handguns, handgun safety, and use of deadly force. The instructor shall use the lesson plan produced by the North Carolina Justice Academy. The instructor shall determine the student's level of understanding of the relevant legal issues by a written examination.
- (2) Handgun Nomenclature: The students shall be able either verbally or in writing to list the primary parts of their personal handguns.
- (3) Handgun Safety: The students shall be able to:
  - (a) list at least four rules of safe gun handling and demonstrate all of these procedures during range exercises;

- (b) list four methods of safely storing a handgun and choose the method most appropriate for their personal use;
  - (c) describe safety issues relating to the safe carry of a handgun; and
  - (d) determine the proper storage of their handguns when there are minors in the home.
- (4) Handgun Fundamentals: The students shall be able to:
- (a) demonstrate how to properly load both a revolver and a semiautomatic handgun;
  - (b) demonstrate how to properly unload both a revolver and a semiautomatic handgun;
  - (c) describe the operational characteristics of their handguns; and
  - (d) successfully complete a proficiency test administered by the instructor as prescribed in 12 NCAC 09F .0105.
- (5) Marksmanship Fundamentals: The student shall be able to:
- (a) demonstrate a proper handgun grip;
  - (b) demonstrate either the Weaver or Isosceles Stance;
  - (c) describe the elements of sight alignment and sight picture; and
  - (d) demonstrate trigger control in a dry fire exercise.
- (6) Presentation Techniques: The students shall be able to demonstrate the draw or presentation with their handguns.
- (7) Cleaning and Maintenance: The students shall be able to:
- (a) demonstrate how to "field strip" the handguns if their handguns can be field stripped;
  - (b) describe how to perform a "Function Check" on their personal handguns; and
  - (c) based on the manufacturer's recommendations, list the lubrication points of their specific handguns.
- (8) Ammunition: The students shall be able to list the four components of handgun ammunition.
- (9) Proficiency Drills: The students shall be able to:
- (a) demonstrate how to properly check a handgun in order to ensure that it is safe;
  - (b) demonstrate how to fire a handgun from a ready position;
  - (c) demonstrate the ability to fire a handgun from various distances; and
  - (d) successfully complete a proficiency test administered by the instructor as prescribed in 12 NCAC 09F .0105(7).

*History Note: Authority G.S. 14-415.12; Temporary Adoption Eff. November 1, 1995; Eff. May 1, 1996; Amended Eff. February 1, 2013; May 1, 2004.*

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

**15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS**

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The seaward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
  - (a) a distance landward from the first line of stable natural vegetation to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). The maps are available without cost from any local permit officer or the Division of Coastal Management; and
  - (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal



Insurance Administration, U.S. Department of Housing and Urban Development.

- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the normal low water line a distance sufficient to encompass that area within which the inlet shall, based on statistical analysis, migrate, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference without future changes and are hereby designated as Inlet Hazard Areas except that the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Baldhead Island marina entrance channel. These areas are extensions of the adjacent ocean erodible areas and the width of the inlet hazard area are not less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina. Photo copies are available at no charge.

- (4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an unvegetated beach area on either a permanent or temporary basis as follows:

- (a) An area appropriate for permanent designation as an unvegetated beach area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Coastal Resources Commission. These areas shall be designated on maps approved by the Commission and available without cost from any local permit officer or the Division of Coastal Management.
- (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an unvegetated beach area for a specific period of time. At the

expiration of the time specified by the Commission, the area shall return to its pre-storm designation.

The Commission designates as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on Dare County orthophotographs dated 4 February 2002 through 10 February 2002 was destroyed as a result of Hurricane Isabel on September 18, 2003 and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item 4(a) of this Rule.

*History Note: Authority G.S. 113A-107; 113A-113; 113A-124;*  
*Eff. September 9, 1977;*  
*Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;*  
*Temporary Amendment Eff. October 10, 1996;*  
*Amended Eff. April 1, 1997;*  
*Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*  
*Temporary Amendment Eff. October 22, 1997;*  
*Amended Eff. February 1, 2013; January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.*

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**TITLE 18 – DEPARTMENT OF SECRETARY OF STATE**

**18 NCAC 12 .0904 LOBBYIST COMPENSATION  
SHALL BE SEPARATELY REPORTED**

*History Note: Authority G.S. 120C-101(a); 120C-401(h); 120C-403; S.L. 2011-393, s. 2;*  
*Temporary Adoption Eff. January 1, 2007;*  
*Eff. December 1, 2007;*  
*Repealed Eff. February 1, 2013.*

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

**CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS**

**21 NCAC 56 .1001 GENERAL  
21 NCAC 56 .1002 APPLICATION PROCEDURE  
21 NCAC 56 .1003 SEAL**

*History Note: Authority G.S. 89C-10; 89C-25;*  
*Eff. February 1, 1976;*

*Readopted Eff. September 29, 1977;*  
*Amended Eff. August 1, 2000; April 1, 1989; January 1, 1982;*  
*Repealed Eff. February 1, 2013.*

**21 NCAC 56 .1104      CERTIFICATION WITH  
TEMPORARY PERMIT**

*History Note: Authority G.S. 89C-10; 89C-16; 89C-25;*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 29, 1977;*  
*Amended Eff. August 1, 2000; August 1, 1998; February 1,*  
*1996; April 1, 1989; January 1, 1982;*  
*Repealed Eff. February 1, 2013.*

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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	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Don Overby

<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	
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