

# ***NORTH CAROLINA REGISTER***

**VOLUME 28 • ISSUE 04 • Pages 300 - 372**

**August 15, 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

(919) 431-3075

Julie Brincefield, Editorial Assistant

julie.brincefield@oah.nc.gov

(919) 431-3073

Tammara Chalmers, Editorial Assistant

tammara.chalmers@oah.nc.gov

(919) 431-3083

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

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel

joe.deluca@oah.nc.gov

(919) 431-3081

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
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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.



# State of North Carolina

PAT McCRORY  
GOVERNOR

July 11, 2013

## EXECUTIVE ORDER NO. 16

### DISASTER DECLARATION FOR STANLY COUNTY

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, on June 13, 2013, Stanly County, North Carolina and the contiguous counties of Anson, Cabarrus, Montgomery, Rowan, and Union were impacted by severe weather, including high winds, rain and some flooding; and

**WHEREAS**, as a result of the severe weather Stanly County proclaimed a local state of emergency on June 14, 2013; and

**WHEREAS**, due the impact of the severe weather, a joint preliminary damage assessment was done by local, state and federal emergency management officials on June 25, 2013; and

**WHEREAS**, I have determined that a Type I disaster, as defined in N.C.G.S. §166A-19.21(b)(1), exists in the State of North Carolina, specifically in Stanly County, North Carolina and the contiguous counties of Anson, Cabarrus, Montgomery, Rowan, and Union; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) Stanly County declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. § 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.41(b), if a disaster is declared, the Governor may make State funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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

**Section 1.** Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for Stanly County, North Carolina and the contiguous counties of Anson, Cabarrus, Montgomery, Rowan, and Union.

**Section 2.** I authorize state emergency assistance funds in the form of grants to individuals and families located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(1).

**Section 3.** I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

**Section 4.** This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

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

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

PAT McCRORY  
GOVERNOR

## EXECUTIVE ORDER NO. 17

### DISASTER DECLARATION FOR ORANGE COUNTY

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, on June 30, 2013, Orange County, North Carolina and the contiguous counties of Alamance, Caswell, Chatham, Durham, and Person were impacted by severe weather that produced heavy rains which caused severe flooding; and

**WHEREAS**, as a result of the severe weather Orange County proclaimed a local state of emergency on July 2, 2013; and

**WHEREAS**, due the impact of the severe weather, a joint preliminary damage assessment was done by local, state and federal emergency management officials on July 9, 2013; and

**WHEREAS**, I have determined that a Type I disaster, as defined in N.C.G.S. §166A-19.21(b)(1), exists in the State of North Carolina, specifically in Orange County, North Carolina and the contiguous counties of Alamance, Caswell, Chatham, Durham, and Person; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) Orange County declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. § 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.41(b), if a disaster is declared, the Governor may make State funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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

**Section 1.** Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for Orange County, North Carolina and the contiguous counties of Alamance, Caswell, Chatham, Durham, and Person.

**Section 2.** I authorize state emergency assistance funds in the form of grants to individuals and families located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(1).

**Section 3.** I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

**Section 4.** This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

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

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State





NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

**Notice of Rule-making Proceedings** is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).

**Citation to Existing Rule Affected by this Rule-Making:** *North Carolina Administrative, Existing Building, Fire, and Plumbing Codes.*

**Authority for Rule-making:** *G.S. 143-136; 143-138.*

**Reason for Proposed Action:** *To incorporate changes in the NC State Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.*

**Public Hearing:** *Tuesday, September 10, 2013, 9:00AM, NCSU McKimmon Center, 1101 Gorman Street, Raleigh, NC 27606. Comments on both the proposed rule and any fiscal impact will be accepted.*

**Comment Procedures:** *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on October 14, 2013.*

**Statement of Subject Matter:**

**1. Request by Bastian Lohmann, representing Wedi Corporation, to amend the 2012 NC Plumbing Code, Section 417.1. The proposed amendment is as follows:**

**417.1 Approval.** Prefabricated showers and shower compartments shall conform to ~~ANSI Z124.2~~ ANSI Z124.1.2, ASME A112.19.9M or CSA B45.5. Shower valves for individual showers shall conform to the requirements of Section 424.3.

Motion – Al Bass/Second/Approved – The request was granted unanimously and sent to the Plumbing Committee for review. The proposed effective date of this rule is January 1, 2015.

Reason Given – This is a Standard update from the 2009 IPC to the 2012 IPC. The 2012 NC Plumbing Code is based on the 2009 IPC.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

**2. Request by Timothy Laughlin, PE, representing NC Petroleum & Convenience Marketers, to amend the 2012 NC Fire Prevention Code, Section 105.7.7. The proposed amendment is as follows:**

**105.7.7 Flammable and combustible liquids.** A construction permit is required:

1. To install, repair or modify a pipeline for the transportation of flammable or *combustible liquids*.

2. To install, construct or alter tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and *combustible liquids* are produced, processed, transported, stored, dispensed or used. Maintenance performed in accordance with this code is not considered an installation, construction or alteration and does not require a permit.

3. To install, alter, remove, abandon or otherwise dispose of a flammable or *combustible liquid* tank.

Motion – Alan Perdue/Second – David Smith/Approved – The request was granted unanimously. The proposed effective date of this rule is January 1, 2015.

Reason Given – This proposal clarifies that general maintenance on equipment that stores/handles/dispenses/transportes flammable and combustible liquids does not require a construction permit. This proposal is in step with the code sections preceding and succeeding this section.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

**3. Request by Leon Skinner, Chair of the NC Existing Building Code Ad-Hoc Committee, to adopt the 2015 NC Existing Building Code (link below) and to eliminate the 1995 NC Existing Building Code and the NC Rehabilitation Code.**

**[http://www.ncdoi.com/OSFM/Engineering\\_and\\_Codes/Default.aspx?field1=BCC - Ad\\_Hoc\\_Committee\\_Meeting\\_Information&user=Building\\_Code\\_Council&sub=BCC\\_Committees](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=BCC - Ad_Hoc_Committee_Meeting_Information&user=Building_Code_Council&sub=BCC_Committees)**

Motion – Al Bass/Second – Steve Knight/Approved – The request was granted unanimously. The proposed effective date of this rule is January 1, 2015.

Reason Given – The 1995 NC Existing Building Code is based on the SBCCI Existing Building Code. The NC Rehabilitation Code is based on the New Jersey Rehabilitation Subcode (1997). The 2015 NC Existing Building Code is based on the 2012 International Existing Building Code and provides equivalent life safety in existing buildings and references current Codes and Standards. This Code is expected to have broader acceptance and use by code officials and designers.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with minimal net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**4. Request by Dan Tingen, Chair of the Administrative Code Committee, to amend the 2012 NC Administrative Code and Policies, Section 107 as follows.**

#### **SECTION 107 INSPECTIONS**

**107.1 General.** The inspection department shall perform the following inspections:

1. Footing inspection;
2. Under slab inspection, as appropriate;
3. Foundation inspection, wood-frame construction;
4. Rough-in inspection;
5. Building framing;
6. Insulation inspection;
7. Fire protection inspection; and
8. Final inspection

**Footnote:**

1. For residential construction, inspections shall be limited to the comprehensive list above. Requirements for additional inspections must be approved by the North Carolina Building Code Council before being required by local jurisdictions except where unforeseen or unique circumstances exist. In the absence of approval by the Building Code Council the requirements for additional inspection shall have no force and effect.

Motion – David Smith / Second – Al Bass / Send back to the Administrative Codes and Policies Committee. The proposed effective date of this rule is January 1, 2015.

Reason Given – This proposal is based on the ratification of SL 2013-118, H120.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

**Brunswick County Public Utilities – Request for Interbasin Transfer Certificate**

**NOTICE OF PUBLIC HEARING**

Monday, September 9, 2013 at 7:00 PM  
Leland Town Hall  
102 Town Hall Drive  
Leland, NC 28451

The North Carolina Environmental Management Commission (EMC) will hold a public hearing to receive comments on Brunswick County Public Utilities' petition for an interbasin transfer (IBT) certificate.

Brunswick County Public Utilities currently provides water to more than 34,000 retail customers and 11 wholesale customers through its two water treatment plants (WTPs). The Northwest WTP, permitted for 24 million gallons per day (MGD), is located near the City of Northwest and receives raw water from the Cape Fear River via the Lower Cape Fear Water and Sewer Authority. The 211 WTP is permitted for 6 MGD and treats groundwater from the Castle Hayne Aquifer. Wastewater within the County is handled through individual onsite septic systems, clustered and centralized land application, reuse, and surface water discharging systems. This treatment, service, and disposal of water creates an interbasin transfer from the Cape Fear River Basin to the Shallotte and Waccamaw River Basins, both of which are subbasins to the Lumber River Basin

The County is requesting an IBT certificate to transfer 18.3 MGD, limited on a maximum daily basis, from the Cape Fear River Basin to the Shallotte River Basin. The County currently has a grandfathered transfer capacity of 10.5 MGD. This increase is based on a 30-year water demand projection (through the year 2042).

The public hearing will start at 7 pm on Monday, September 9th at the Leland Town Hall, 102 Town Hall Drive, Leland, NC 28451. The public may review the petition and supporting environmental document at the Division's web site at: [http://www.ncwater.org/Permits\\_and\\_Registration/Interbasin\\_Transfer/status/brunswick/](http://www.ncwater.org/Permits_and_Registration/Interbasin_Transfer/status/brunswick/). The document may also be viewed at the hearing or during normal business hours at the offices of the Division of Water Resources (512 N. Salisbury Street, Room 1106, Archdale Building, Raleigh).

The purpose of this announcement is to encourage interested parties to attend and/or provide relevant written and verbal comments. Division staff requests that parties submit written copies of oral comments. Based on the number of people who wish to speak, the length of oral presentations may be limited.

If you are unable to attend, you may mail written comments to Harold Brady, Division of Water Resources, 1611 Mail Service Center, Raleigh, NC 27699-1611. Comments may also be submitted electronically to [Harold.M.Brady@ncdenr.gov](mailto:Harold.M.Brady@ncdenr.gov). Mailed and emailed comments will be given equal weight. All comments must be postmarked or emailed by October 8, 2013.



U.S. Department of Justice  
Civil Rights Division

TCH:RSB:RPL:ILV:par  
DJ 166-012-3  
2013-1864

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

July 10, 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. 13-019 (2013)) and its designation to District 1 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 June 10, 2013.

On June 25, 2013, the United States Supreme Court held that the coverage formula in Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), as reauthorized by the Voting Rights Act Reauthorization and Amendments Act of 2006, is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. *Shelby County v. Holder*, 570 U.S. \_\_\_, 2013 WL 3184629 (U.S. June 25, 2013) (No. 12-96). Accordingly, no determination will be made under Section 5 by the Attorney General on the specified changes. *Procedures for the Administration of Section 5 of the Voting Rights Act*, 28 C.F.R. 51.35. We further note that this is not a determination on the merits and, therefore, should not be construed as a finding regarding whether the specified changes comply with any federal voting rights law.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Christian Herren, Jr.", is written over the typed name.

T. Christian Herren, Jr.  
Chief, Voting Section



U.S. Department of Justice  
Civil Rights Division

TCH:RSB:RPL:JDH:par  
DJ 166-012-3  
2013-1406

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

June 18, 2013

Karen M. McDonald, Esq.  
City Attorney  
Mr. David M. Nash  
City Planner  
P.O. Box 1513  
Fayetteville, North Carolina 28302-1513

Dear Ms. McDonald and Mr. Nash:

This refers to twelve annexations (Ordinance Nos. 2011-09-530 through 2012-09-0541) and their designation to districts, and the designation of 18 annexations (adopted between May 26, 2009 and December 13, 2010) to districts of the City of Fayetteville in Cumberland 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 April 26, 2013.

On June 22, 2011, the Attorney General interposed no objection to the designation of 18 annexations (adopted between May 26, 2009 and December 13, 2010). (A copy of our letter is enclosed.) Accordingly, no further determination by the Attorney General is required or appropriate under Section 5. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.35.

The Attorney General does not interpose any objection to the remaining 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. 28 C.F.R. 51.41.

Sincerely,

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

T. Christian Herren, Jr.  
Chief, Voting Section

Enclosure



U.S. Department of Justice  
Civil Rights Division

TCH:RSB:RPL:SMC:tst  
DJ 166-012-3  
2011-1866

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

June 22, 2011

Karen M. McDonald, Esq.  
City Attorney  
P.O. Box 1513  
Fayetteville, North Carolina 28302-1513

Dear Ms. McDonald:

This refers to eighteen annexations (adopted between May 26, 2009, and December 13, 2010) and their designation to districts of the City of Fayetteville in Cumberland 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 May 16, 2011.

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.", is written over the typed name.

T. Christian Herren, Jr.  
Chief, Voting Section

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

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

## TITLE 04 – DEPARTMENT OF COMMERCE

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Rural Electrification Authority intends to amend the rules cited as 04 NCAC 08 .0101-.0102, .0107, .0109, .0201-.0202, .0204, .0206, .0210, .0301-.0302, .0306, .0401, .0404; and repeal the rules cited as 04 NCAC 08 .0108, .0110-.0112, .0203, .0205, .0207-.0209, .0211-.0212, .0303, .0305, .0307-.0312.

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

- ☒ OSBM certified on: July 24, 2013
- ☐ RRC certified on:
- ☐ Not Required

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

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

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Send request in writing to Frances Liles, NCREA Administrator at 4321 Mail Service Center, Raleigh, NC 27699-4321 or [fliles@nc-rea.net](mailto:fliles@nc-rea.net).

**Reason for Proposed Action:** Change address of NCREA; combine rules for better clarity; add additional responsibilities for the NCREA that were previously omitted; Chapter 8 has not been updated since 1988 and these updates are in compliance with 150B-19.1(b).

**Comments may be submitted to:** Frances Liles, 4321 Mail Service Center, Raleigh, NC 27699-4321; phone (919) 733-7513; email [fliles@nc-rea.net](mailto:fliles@nc-rea.net)

**Comment period ends:** October 14, 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 08 - RURAL ELECTRIFICATION AUTHORITY

### SECTION .0100 - GENERAL PROVISIONS

#### 04 NCAC 08 .0101 PURPOSE

The North Carolina Rural Electrification Authority (NCREA) consists of five Board members to be appointed by the Governor of North Carolina. The NCREA Board employs an Administrator who is responsible for directing the staff with the successful completion of the required functions of the office. The purpose of the North Carolina Rural Electrification Authority NCREA is to work to secure and continue adequate and dependable electric and telephone services to customers served by the electric membership corporations (EMCs) and the telephone membership corporations (TMCs) in predominately rural areas of the state at the lowest possible cost and on a nondiscriminatory basis, as set forth in G.S. 117. To accomplish this purpose, the Authority acts as an agent in securing long-term loans or grants from any agency of the United States Government. Government for EMCs and TMCs. The Authority also serves as a forum to receive and investigate complaints from members of these electric and telephone cooperatives and arrive at a just and satisfactory solution to the complaints. The NCREA, pursuant to the 1996 Telecommunications Act, is also responsible for receiving and establishing procedural schedules for Petitions for arbitration of interconnection agreements between TMCs and other local and wireless providers. The Authority renders final decisions for these arbitrations based on information received from testimony, data requests and hearings. The Authority approves TMC interconnection agreements and their amendments.

Authority G.S. 117-2; 117-4; 117-26; 117-32.

**04 NCAC 08 .0102 ADDRESS OF THE NCREA**

The office of the ~~Rural Electrification Authority~~ NCREA is located in Raleigh, North Carolina. ~~Carolina and The the mailing address for the Rural Electrification Authority is P. O. Box 25249, is 4321 Mail Service Center, Raleigh, North Carolina 27611, 27699.~~ Correspondence and communication with the NCREA should be addressed to the attention of the Administrator or to the Chairman of the NCREA. The NCREA office is open to the public Monday through Friday during the normal business hours established for state government agencies. A copy of the NCREA Board proceedings is available to the general public upon a written request to the NCREA office.

*Authority G.S. 117-1.*

**04 NCAC 08 .0107 MEETINGS**

Members of the ~~Rural Electrification Authority~~ NCREA shall meet not more than 12 times in one year. Generally, the meetings will be held at the office; however, meetings may be scheduled in conjunction with other related activities within the state. The Administrator shall send a notice of the date of the meeting to all Board members, cooperatives and interested parties prior to the meeting. If anyone has any matter to present for the Board's consideration, the Agency must receive all pertinent documents in the NCREA office three weeks prior to the scheduled meeting.

*Authority G.S. 117-4; 117-5.*

**04 NCAC 08 .0108 NOTIFICATION OF MEETINGS**

~~A notice of the date of the meeting is mailed to all board members, cooperatives and concerned citizens prior to the meeting with a request that if anyone has anything to present for the board's consideration that they mail all documents in one week prior to the meeting.~~

*Authority G.S. 117-5.*

**04 NCAC 08 .0109 AUTHORITY STAFF**

~~The Rural Electrification Authority employs a secretary, who shall be a competent engineer, and, who also serves as chief administrator. Administrator of the NCREA is responsible for directing the staff of the authority Authority in order to carry on the functions of the authority Authority in checking loans, reviewing and presenting loans to the NCREA Board, maintaining records, and files files; and investigating and providing responses to complaints complaints and is responsible for all aspects of arbitration processes and procedures. The Administrator has been granted the authority by the Rural Electrification Authority to select and employ any additional staff as required.~~

- (1) The Administrator shall oversee the application of the electric and telephone cooperatives rules and regulations to ensure they are administered according to the manner in which they are written.
- (2) The Administrator shall investigate member complaints and request additional facts or

information from the cooperative needed by the NCREA in order to adequately respond to written and verbal member complaints.

- (3) The Administrator may attend any annual meeting or Board meeting of an individual electric or telephone cooperative, whether invited or not, if he/she feels it necessary to further better public relations or communications between the cooperative and its members and this office.
- (4) The Administrator shall review electric and telephone loan or grant applications, request any additional information from the cooperatives for those applications, prepare a summary and present the loan requests to the NCREA Board for their review and approval.
- (5) The Administrator is responsible for reviewing all petitions for arbitration from the TMCs or other telecommunications providers. Upon review of those petitions, the Administrator will provide a summary to the Board and coordinate procedural schedules and any Orders that are written in connection with those arbitrations. The Administrator is also responsible for reviewing interconnection agreements and amendments between the TMCs and other local providers and presenting those documents to the REA Board for their approval

*Authority G.S. 117-2(12); 117-4.*

**04 NCAC 08 .0110 CORRESPONDENCE AND COMMUNITCATION**

~~Correspondence and communication with the Rural Electrification Authority should be addressed to the attention of the Administrator or to the Chairman of the Rural Electrification Authority at P. O. Box 25249, Raleigh North Carolina 27611.~~

*Authority G.S. 117-2(12).*

**04 NCAC 08 .0111 BOARD PROCEEDINGS**

~~A copy of the North Carolina Rural Electrification Board proceedings is available to the general public upon a written request to the North Carolina Rural Electrification Authority Office.~~

*Authority G.S. 117-2(12).*

**04 NCAC 08 .0112 MEMBER VISITATION**

~~The administrator reserves the right to visit any member or cooperative regarding a member complaint to gain additional facts or information needed by the North Carolina Rural Electrification Authority in order to better answer a member's complaint. The administrator also reserves the right to attend any annual meeting or board meeting of an individual cooperative, whether invited or not, if he feels it necessary to further better public relations or communications between the cooperative and its members and this office.~~



Authority G.S. 117-2(12).

## SECTION .0200 - ELECTRIC MEMBERSHIP CORPORATIONS

### 04 NCAC 08 .0201 DEFINITIONS

(a) A "domestic corporation" ~~is hereby defined as~~ means an ~~electric membership corporation~~ EMC licensed by the State of North Carolina under Chapter 117 of the General Statutes to render its service to its members only in the territory assigned to it by the North Carolina Utilities Commission.

(b) A "domesticated corporation" ~~is a~~ means a foreign electric membership corporation licensed in the State of North Carolina to serve members within a defined area whose main charter is in another state.

(c) The Administrator is the person selected by the NCREA Board to oversee, manage and abide by the requirements and responsibilities of the day-to-day operation of the NCREA office.

Authority G.S. 117-28.

### 04 NCAC 08 .0202 LOAN APPLICATIONS AND CATEGORIES

All ~~EMCs, electric membership corporations,~~ both domestic and domesticated, ~~are required to must~~ petition the ~~North Carolina Rural Electrification Authority~~ NCREA for any funds in the form of grants or loans received from any agency of the United States Government for use in the State of North Carolina. All loan documents shall be presented at least three weeks prior to the scheduled North Carolina Rural Electrification Authority board meeting for review by the administrator.

Note: In the case of a domesticated corporation, only the funds for use in the State of North Carolina shall be included in the petition for the loan or grant. Loan categories shall be as defined by the United State Department of Agriculture, Rural Electrification Administration Bulletin 20-2, latest revision, and shall meet the requirements set forth in all other related bulletins covering loan policies and requirements under Section 4 of the Rural Electrification Act.

Authority G.S. 117-26; 117-28.

### 04 NCAC 08 .0203 LOAN CATEGORIES

~~Loan categories shall be as defined by the United States Department of Agriculture, Rural Electrification Administration Bulletin 20-2, latest revision, and shall meet the requirements set forth in all other related bulletins covering loan policies and requirements under Section 4 of the Rural Electrification Act.~~

Authority G.S. 117-26.

### 04 NCAC 08 .0204 DOCUMENTS REQUIRED FOR LOAN APPLICATIONS

The list of documents required for a loan application by the ~~North Carolina Rural Electrification Authority~~ NCREA are as ~~listed below:~~ follows:

	DOCUMENT	NCREA
(1)	Petition to State Authority	1
(2)	Board Resolution	1
(3)	REA Form 740a	1
(4)	REA Form 7 (Financial & Statistical Report)	1
(5)	REA Form 7a (Supplement to REA Form 7)	1
(6)	REA Form 740c	1
(7)	REA Form 325a (Financial Forecast)	1
(8)	Board Resolution Approving Financial Forecast	1
(9)	Retail Rate Schedule	1
(10)	Area Coverage Policy	1
(11)	REA Form 602 with attachment	1
(12)	Page 4 of Mortgage (if required)	1
(13)	Tabulation of New Services Connected & Retired	1
(14)	Environmental Statement	1
(15)	Statement Regarding Historic Sights Listed in National Register	1
(16)	Copy of Letter to National Rural Utilities Cooperative Finance Corporation	1
(17)	Bylaws	1

Authority G.S. 117-26; 117-2(11).

### 04 NCAC 08 .0205 PRESENTATION OF DOCUMENTS

~~All loan documents shall be presented at least one week prior to the scheduled North Carolina Rural Electrification Authority board meeting for review by the administrator. A request is made that some informed representative present the petition to the North Carolina Rural Electrification Authority; however, this is not mandatory unless in the opinion of the administrator, questions may arise regarding the loan that only such a representative of the electric cooperative could answer.~~

Authority G.S. 117-26; 117-2(10).

### 04 NCAC 08 .0206 OPERATING RULES AND REGULATIONS

(a) Each December 31 and June 30, a copy of the Financial and Statistical Report (REA Form 7) and Annual Supplement to Financial and Statistical Report (REA Form 7a) shall be filed by the EMC with the North Carolina Rural Electrification Authority NCREA.

(b) A copy of the service agreements or policies of each EMC's current operating rules and regulations shall be filed with the NCREA. As rules and regulations are modified, revised copies of all revisions shall be filed with the Authority within 30 days.

(c) A copy of the current bylaws of each EMC shall be filed with the NCREA.

(d) A copy of the current rate schedules of each EMC shall be filed with the NCREA.

(e) Each EMC shall file a data sheet at least once per year showing growth trends in miles of line, facilities, and consumers served.

(f) Each EMC is requested to keep a current operating budget report breakdown sheet on file in this office for purposes of loan reviews and reports.

*Authority G.S. 117-2(12).*

**04 NCAC 08 .0207      OPERATING RULES AND REGULATIONS**

~~A copy of the service agreements or policies of each electric membership corporation's current operating rules and regulations shall be filed with the North Carolina Rural Electrification Authority. As rules and regulations are modified, revised copies of all revisions shall be promptly filed with the authority.~~

*Authority G.S. 117-2(12).*

**04 NCAC 08 .0208      BYLAWS**

~~A copy of the current bylaws of each electric membership corporation shall be filed with the North Carolina Rural Electrification Authority.~~

*Authority G.S. 117-2(12).*

**04 NCAC 08 .0209      RATE SCHEDULES**

~~A copy of the current rate schedules of each electric membership corporation shall be filed with the North Carolina Rural Electrification Authority.~~

*Authority G.S. 117-2(12).*

**04 NCAC 08 .0210      COMPLAINTS**

Any member with a complaint against his cooperative (whether it is an electric or telephone membership corporation) may contact the Administrator of the NCREA or the his designated staff member, member, of the North Carolina Rural Electrification Authority. The administrator Administrator (or staff member) shall will contact the manager of the electric membership corporation to investigate the complaint and obtain all data necessary to negotiate a reasonable solution to the complaint. ~~In all cases, the manager of the cooperative is encouraged to settle the complaint; however, in all cases the administrator~~ The Administrator (or his appointed staff member) contacts will contact the member by phone or letter regarding the complaint. The solution to the problem is reached by factual evidence, without biased opinions or discriminations. It is the responsibility of the Administrator ~~Administrator's responsibility~~ to ascertain that all service rules and regulations are administered fairly and equally to each member, member, regardless of whether he designates someone to handle the complaint or sees to it himself. In the event no satisfactory solution can be reached between the complainant and his cooperative, and if the administrator Administrator deems it necessary, the administrator Administrator will make a trip to visit the cooperative and its member.

*Authority G.S. 117-2(12).*

**04 NCAC 08 .0211      DATA SHEETS FOR PROGRESS REPORTS**

~~Each electric membership corporation is requested to file a data sheet at least once per year showing growth trends in miles of line, facilities, and consumers served for purposes of reports which may be needed by this office.~~

*Authority G.S. 117-2(12).*

**04 NCAC 08 .0212      OPERATING BUDGET**

~~Each electric membership corporation is requested to keep a current operating budget report breakdown sheet on file in this office for purposes of loan reviews and reports.~~

*Authority G.S. 117-2(11).*

**SECTION .0300 - TELEPHONE MEMBERSHIP CORPORATIONS**

**04 NCAC 08 .0301      DEFINITIONS**

A "domestic corporation" ~~is defined as~~ means a telephone membership corporation (TMC) licensed by the State of North Carolina under Chapter 117 of the General Statutes to render its service to its members only in the territory assigned to it by the North Carolina Utilities Commission and agreed ~~on to~~ by the North Carolina Rural Electrification Authority. NCREA.

Arbitration means arbitration proceedings as set out in the United States Telecommunications Act of 1996 and subsequent amendments to that Act. Rules for arbitration are prescribed by the NCREA and the Authority is responsible for establishing procedural schedules and for rendering final decisions for arbitration Petitions.

The NCREA is responsible for the review of interconnection agreements and their amendments upon receipt and presenting the agreements and amendments to the NCREA Board for their approval. An interconnection agreement means an agreement for interconnection as set out in the United States Telecommunications Act of 1996 and subsequent amendments to that Act. Agreements and amendments are negotiated between TMCs and competing local providers (CLPs) or a Commercial Mobile Radio Service Provider (CMRS).

*Authority G.S. 117-2(12); 117-28.*

**04 NCAC 08 .0302      LOAN APPLICATIONS**

All telephone membership corporations are required to TMCs shall petition the North Carolina Rural Electrification Authority NCREA for any funds in the form of grants or loans received from any agency of the United States Government for use in the State of North Carolina.

Loan categories shall be as defined by the United States Department of Agriculture, Rural Electrification Administration Bulletin 320-4, latest revision, and shall meet the requirements set forth in all other related bulletins covering loan policies and requirements under Title II, Section 201, of the Rural Electrification Act.

All loan documents shall be presented at least three weeks prior to the scheduled (NCREA) Board meeting for review by the

Administrator. The Administrator will prepare a summary of the loan and present the loan to the Board for their approval.

*Authority G.S. 117-2(11).*

**04 NCAC 08 .0303 LOAN CATEGORIES**

~~Loan categories shall be as defined by the United States Department of Agriculture, Rural Electrification Administration Bulletin 320-4, latest revision, and shall meet the requirements set forth in all other related bulletins covering loan policies and requirements under Title II, Section 201, of the Rural Electrification Act.~~

*Authority G.S. 117-2(11).*

**04 NCAC 08 .0305 PRESENTATION OF DOCUMENTS**

~~All loan documents shall be presented at least one week prior to the scheduled North Carolina Rural Electrification Authority board meeting for review by the administrator. A request is made that some informed representative present the petition to the North Carolina Rural Electrification Authority; however, this is not mandatory unless in the opinion of the administrator, there may be questions arising regarding the loan which only such a representative of the telephone cooperative could answer.~~

*Authority G.S. 117-2(11).*

**04 NCAC 08 .0306 OPERATING RULES AND REGULATIONS**

~~All telephone membership corporations TMCs are required on each December 31 and June 30, to file a copy of the Financial and Statistical Report for Telephone Borrowers (REA Form 479), the Annual Supplement to December 31 Financial and Statistical Report (REA Form 479a) and Employment Data (REA Form 15) with the North Carolina Rural Electrification Authority NCREA by December 31<sup>st</sup> and June 30<sup>th</sup> of each calendar year.~~

~~A copy of the current policies of each TMC shall be filed with the North Carolina Rural Electrification Authority.~~

~~A copy of the current bylaws of each TMC shall be filed with the office of the REA.~~

~~A copy of the current tariffs of each TMC shall be filed with the NCREA.~~

~~Each TMC may be requested from time to time to supply this office certain data information regarding its operation for purposes of reports.~~

~~Each TMC is requested to keep a current operating budget breakdown sheet on file with this office for purposes of review and reports.~~

~~Each TMC shall provide all negotiated interconnection agreements and their amendments to the Authority for review and approval.~~

~~In situations where the TMC and other Party (i.e. other local provider or wireless provider) cannot agree to the terms of the interconnection agreement, one of the Parties may file a Petition with the Authority for an arbitration of the disputed issues. The Authority will receive and review the Petition, establish procedural schedules; the Authority may request and receive~~

data requests and testimonies and may conduct a hearing to collect additional data in order to render a final decision for the arbitration.

*Authority G.S. 117-2(11).*

**04 NCAC 08 .0307 OPERATING RULES AND REGULATIONS**

~~A copy of the current policies of each telephone membership corporation shall be filed with the North Carolina Rural Electrification Authority.~~

*Authority G.S. 117-2(11).*

**04 NCAC 08 .0308 BYLAWS**

~~A copy of the current bylaws of each telephone membership corporation shall be filed with the office of the Rural Electrification Authority.~~

*Authority G.S. 117-2(11).*

**04 NCAC 08 .0309 TARIFFS**

~~A copy of the current tariffs of each telephone membership corporation shall be filed with the North Carolina Rural Electrification Authority.~~

*Authority G.S. 117-2(11).*

**04 NCAC 08 .0310 COMPLAINTS**

~~Any member with a complaint against his telephone cooperative may contact the administrator or his designated staff member of the North Carolina Rural Electrification Authority. The administrator, or the staff member he designates, will contact the manager of the telephone membership corporation and relate the problem and request an investigation into the member complaint. The administrator, or his designated staff member, will request all data necessary to negotiate a reasonable solution to the complaint. In all cases, the manager of the cooperative is encouraged to settle the complaint; however, in all cases the administrator contacts the member by phone or by letter regarding the complaint with factual evidence and tries to maintain a good relationship in order to determine that rules and regulations are followed and that no discrimination takes place for fair and equal treatment for all members.~~

*Authority G.S. 117-2(12).*

**04 NCAC 08 .0311 DATA SHEETS FOR PROGRESS REPORTS**

~~Each telephone cooperative may be requested from time to time to supply this office certain data information regarding its operation for purposes of reports.~~

*Authority G.S. 117-2(11).*

**04 NCAC 08 .0312 OPERATING BUDGET**

~~Each telephone membership cooperative is requested to keep a current operating budget breakdown sheet on file with this office for purposes of review and reports.~~

Authority G.S. 117-2(11).

**SECTION .0400 - PETITIONS: HEARINGS:  
TEMPORARY RULES: DECLARATORY RULINGS:  
CONTESTED CASES**

**04 NCAC 08 .0401 PETITIONS FOR  
RULE-MAKING HEARINGS**

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the ~~North Carolina Rural Electrification Authority~~ NCREA shall address a petition to:

Administrator  
North Carolina Rural Electrification Authority  
~~P. O. Box 25249~~  
4321 Mail Service Center  
Raleigh, North Carolina ~~27611~~, 27699.

- (b) The petition ~~should~~ shall contain the following information:
- (1) either a draft of the proposed rule or a summary of its contents,
  - (2) reason for proposal,
  - (3) effect of the existing rules or orders,
  - (4) effect of the proposed rule on existing practices,
  - (5) any data supporting proposal,
  - (6) list of the groups or individuals most likely to be affected by the proposed rule,
  - (7) name(s) and address(es) of petitioner(s),
  - (8) the date.

(c) The authority will determine within ~~30~~ 120 days of submission ~~at the next meeting of the authority, after study of the facts stated in the petition,~~ whether the public interest will be served by granting it. The authority will consider all the contents of the submitted petition, plus any additional information it deems relevant.

(d) If the decision is to deny the petition, the ~~administrator~~ Administrator will notify the petitioner in writing, stating the reasons ~~therefor~~, therefore. If the decision is to grant the petition, the ~~authority~~ Authority ~~within 10 days of decision will~~ shall initiate a rule-making proceeding by issuing a rule-making notice, as provided in these rules. If a hearing is held, the Authority will provide the appropriate notice.

Authority G.S. 117-2(12); 150b-20.

**04 NCAC 08 .0404 DECLARATORY RULINGS**

(a) Any person substantially affected by a statute administered by a rule of the ~~NCREA North Carolina Rural Electrification Authority~~ may request a declaratory ruling as to:

- (1) whether, and if so how, that statute, or rule applies to a given factual situation; or
- (2) whether a particular agency rule is valid.

(b) The authority will have the power to make such declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

Administrator  
North Carolina Rural Electrification Authority  
~~P. O. Box 25249~~  
4321 Mail Service Center

Raleigh, North Carolina ~~27611~~, 27699.

(c) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner,
- (2) statute or rule to which petition relates,
- (3) concise statement of the manner in which petitioner is aggrieved by the statute, or rule or its potential application to him,
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing,
- (5) and the date.

(d) Whenever the authority believes for good cause that the issuance of a declaratory ruling is undesirable, it may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the authority will notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

(e) Where a declaratory ruling is deemed appropriate, the authority will issue the ruling within 45 ~~60~~ days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

Authority G.S. 117-2(12).

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rules cited as 10A NCAC 43H .0111; and 45A .0101-.0102, .0202, .0204, .0302-.0303, .0401-.0405.*

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

- ☒ **OSBM certified on:** *July 24, 2013*
- ☐ **RRC certified on:**
- ☐ **Not Required**

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

**Proposed Effective Date:** *January 1, 2014*

**Public Hearing:**

**Date:** *September 16, 2013*

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

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

**Reason for Proposed Action:** *In general, the DPH APA rules for public health payment programs were originally adopted in 1981 and need to be modified so that programs no longer in effect are removed. Also, the rules are proposed for amendment to align with Medicaid reimbursement policies, as the public health payment programs are being incorporated into the new*

*Medicaid multi-payer claims processing system. These alignments include paying claims based on date of service rather than on the date a claim is received, reimbursing inpatient services based on number of admissions versus a per diem basis, requiring pharmacies to bill third-party payers before billing the public health payment program. The proposed amendments also aligns the NC Early Intervention services with federal regulation by incorporating all subsequent editions and amendments, will allow the program to always be current with federal requirements.*

*The proposed amendment to the Sickle Cell (SC) program rule 10A NCAC 43H .0111, Medical Services Covered, to reflect the payment program rule change proposed in 10A NCAC 45A .0402, which reimburse providers based on the Medicaid Diagnostic Related Groups (DRG) rates. This will result in payment per number of admission per patient versus the number of days hospitalizations.*

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

**Comment period ends:** October 14, 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 43 - PERSONAL HEALTH

### SUBCHAPTER 43H - SICKLE CELL SYNDROME: GENETIC COUNSELING: CHILDREN AND YOUTH SECTION

#### SECTION .0100 - SICKLE CELL SYNDROME PROGRAM

## 10A NCAC 43H .0111 MEDICAL SERVICES COVERED

The following medical services are covered under the N.C. Sickle Cell Syndrome Program if the Program Supervisor determines that these services are related to sickle cell disease:

- (1) hospital outpatient care including emergency room visits. The total number of days per year for emergency room visits shall not exceed triple the Program average for each for the previous two years;
- (2) physicians' office visits;
- (3) drugs on a formulary established by the program based upon the following factors: the medical needs of sickle cell patients, the efficacy and cost effectiveness of the drugs, the availability of generic or other less costly alternatives, and the need to maximize the benefits to patients utilizing finite program dollars. A copy of this formulary may be obtained free of charge by writing to the N.C. Sickle Cell Syndrome Program, 1929 Mail Service Center, Raleigh, North Carolina, 27699-1929.
- (4) medical supplies and equipment;
- (5) preventive dentistry including education, examinations, cleaning, and X-rays; remedial dentistry including tooth removal, restoration, and endodontic treatment for pain prevention; and emergency dental care to control bleeding, relieve pain, and treat infection;
- (6) eye care (when the division of services for the blind will not provide coverage); and
- (7) inpatient care. The cost of inpatient care per client per year for a maximum of seven days two admissions per fiscal year.

*Authority G.S. 130A-129.*

## CHAPTER 45 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

### SUBCHAPTER 45A - PAYMENT PROGRAMS

#### SECTION .0100 - GENERAL PROVISIONS

## 10A NCAC 45A .0101 GENERAL

(a) The purpose of this Subchapter is to establish uniform policies and procedures for the administration of all Department of Health and Human Services' payment programs. These rules are intended to facilitate efficient financial eligibility and payment mechanisms with a mutual goal of the Department and the providers to render appropriate services to eligible patients.

(b) In the event of conflict between the rules in this Subchapter and the rules adopted by the various payment programs, the rules of this Subchapter will control.

~~(c) The rules of this Subchapter shall not apply to the North Carolina Hemophilia Assistance Plan, 10A NCAC 43F .1100 or to the Home Health Program, 10A NCAC 39A .0200.~~

~~(d) Persons who wish to receive rule-making notices concerning the rules in this Subchapter must submit a written request to Office of the Controller, Department of Health and Human Services, 1904 Mail Service Center, Raleigh, NC 27699-1904. The request must specify the calendar year during which the person wishes to receive the notices. A check for ten dollars (\$10.00) made payable to the N.C. Department of Health and Human Services must be enclosed with each request to cover the cost of printing and mailing the notices for the year specified. The fee is non-refundable if there are no notices during the year.~~

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129, 130A-205; 150B-21.2(b).*

#### **10A NCAC 45A .0102 DEFINITIONS**

The following definitions shall apply throughout this Subchapter:

- (1) "Benefits" means the purchase of medical or dental care on a fee-for-service basis. "Benefits" also means the purchase of medical or dental appliances.
- (2) "Department" means the Department of Health and Human Services, or its contractor.
- (3) "Inpatient services" means medical or dental care administered to a person who has been admitted to a hospital.
- (4) "Outpatient services" means medical or dental care administered without admission to a hospital.
- (5) "Payment programs" refers to Department program activities involving the purchase of medical or dental care on a fee-for-service basis or the purchase of medical or dental appliances, either through direct payment or through contracts with local health departments, other agencies, or private institutions. ~~These activities are administered in the following:~~
  - ~~(a) Children's Special Health Services;~~
  - ~~(b) Cancer Program;~~
  - ~~(c) Kidney Program;~~
  - ~~(d) Maternal and Child Health Program;~~
  - ~~(e) Migrant Health Program;~~
  - ~~(f) School Health Fund;~~
  - ~~(g) Sickle Cell Program;~~
  - ~~(h) HIV Medications Program; and~~
  - ~~(i) Adult Cystic Fibrosis Program.~~
- (6) "Provider" means a person or entity who administers medical or dental care or furnishes medical or dental appliances under any of the payment programs.
- (7) "Authorization" means agreement by a payment program to pay for a medical or dental service or appliance provided all requirements in 10A NCAC 45A are met.

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.*

#### **SECTION .0200 - ELIGIBILITY DETERMINATIONS**

##### **10A NCAC 45A .0202 DETERMINATION OF FINANCIAL ELIGIBILITY**

(a) A patient must meet the financial eligibility requirements of this Subchapter to be eligible for benefits provided by the payment programs. Financial eligibility shall be determined through application of income scales. The definition of annual net income in Rule .0203 of this Subchapter and the definitions of family in Rule .0204 of this Subchapter shall be used in applying the income scales, except as provided in Paragraph (c) Paragraphs (c), (e) and (f) of this Rule.

(b) A person is financially eligible for services under the Sickle Cell Program if the net family income is at or below the federal poverty level in effect on July 1 of each fiscal year.

(c) A person is financially eligible for the HIV Medications Program if the gross family income is at or below 300 percent of the federal poverty level in effect on July 1 of each fiscal year, with the following exceptions:

- (1) If a waiting list develops, priority for enrollment into the Program shall be given to those whose net family income is at or below 125 percent of the federal poverty level, and second priority to those individuals with income above 125 percent and at or below 250 percent of federal poverty guidelines; and
- (2) At any time that the Program's financial eligibility level is changed, all clients enrolled in the Program during the most recent year or at the time the eligibility level is changed shall be eligible to continue to be enrolled in and served by the Program. This shall be true even if the clients' financial status at that time places them above the newly-established level. The eligibility of these clients shall remain in force until:
  - (A) they no longer qualify for the Program other than for financial reasons; or
  - (B) they no longer require the services of the Program; or
  - (C) their income increases such that they have an income that exceeds the level under which they originally qualified for and enrolled into the Program; or
  - (D) they fail to comply with the rules of the Program.

Changes related to the Program's financial eligibility level or status shall be communicated to interested parties within North Carolina's HIV community (e.g., persons living with HIV disease, their families and caregivers, advocates and service providers, relevant local and state agencies) by the Program via electronic or print mechanisms.

~~(d) A person is financially eligible for the Kidney Program if the net family income is at or below the following scale:~~

~~Family Size 1: \$6,400;  
Family Size 2: \$8,000;  
Family Size 3: \$9,600;  
Family Size 4: \$11,000;~~

Family Size 5: \$12,000;

Family Size 6 and over: add \$800 per family member.

~~(e) A person is financially eligible for the Cancer Program if gross family income is at or below 115 percent of the federal poverty level in effect on July 1 of each year.~~

~~(f) A child is financially eligible for Children's Special Health Services if the child is approved for Medicaid when applying or reapplying for program coverage, except for children eligible under Paragraph (g) and (h) of this Rule.~~

~~(g) A child approved for Children's Special Health Services post adoption coverage pursuant to 10A NCAC 43F .0800, is eligible for services under Children's Special Health Services if the child's net income is at or below the federal poverty level in effect on July 1 of each year.~~

~~(h) A person is financially eligible for services under the Adult Cystic Fibrosis Program if the net family income is at or below the federal poverty level in effect on July 1 of each year.~~

~~(i)(d)~~ The financial eligibility requirements of this Subchapter do not apply to:

~~(1) Migrant Health Program;~~

~~(2)(1)~~ School Health Fund financial eligibility determinations performed by a local health department which has chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;

~~(3)(2)~~ Prenatal outpatient services sponsored through local health department delivery funds, 10A NCAC 43C .0200; or through Perinatal Program high risk maternity clinic reimbursement funds, 10A NCAC 43C .0300; and

~~(4)(3)~~ Diagnostic assessments for infants up to 12 months of age with sickle cell syndrome.

~~(j)(e)~~ Except as provided in Paragraphs ~~Paragraph~~ (k) and (l) of this Rule, once an individual is determined financially eligible for payment program benefits, the individual remains financially eligible for a period of one year after the date of application for financial eligibility unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or there is a change in his family's financial resources or expenses during that period. If there is a change, financial eligibility for payment program benefits must be redetermined. Financial eligibility must be redetermined at least once a year.

~~(k)(f)~~ For purposes of the ~~Kidney Program and HIV Medications Program~~, once an individual is determined to be financially eligible, if the application for financial eligibility was received by the Department in the fourth quarter of the fiscal year, the individual remains financially eligible for benefits until the end of the next fiscal year unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period.

~~(l) Children eligible for Children's Special Health Services Program benefits under Paragraph (f) of this Rule are financially eligible for a service if they were Medicaid eligible on the date the requested service was initiated.~~

~~(m)(g)~~ If the most current financial eligibility form on file with the Department shows that the patient was financially eligible on

the date an Authorization Request for payment for drugs was received, the Authorization Request shall be approved so long as the Authorization Request is received prior to the expiration of financial eligibility and the authorized service does not extend more than 30 days after the expiration of financial eligibility.

*Authority G.S. 130A-4.2; 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.*

## **10A NCAC 45A .0204 DETERMINATION OF FAMILY SIZE**

(a) For the purpose of determining eligibility for benefits provided by any of the payment programs, a patient's family shall be defined as the patient and all individuals living in the same household with the patient who are:

- (1) parents, not including step-parents, of the patient, if the patient is unmarried and less than 18 years of age;
- (2) siblings or half-siblings of the patient, but not step-siblings, if the siblings are unmarried and less than 18 years of age;
- (3) siblings or half-siblings of the patient, but not step-siblings, if the siblings are 18 years of age or over and have no income;
- (4) the spouse of the patient; and
- (5) individuals related to the patient by blood, marriage, or adoption, if the individual has no income, and if no parent(s) or spouse of the individual lives in the same household and has income;

(b) Individuals who are students and are temporarily living away from their permanent home while attending school are for the purposes of the Rule considered to be living in the household of the permanent home.

~~(c) An adopted child who has received approval for Children's Special Health Services support pursuant to 10A NCAC 43F .0800 shall be considered a family of one for purposes of this Rule.~~

(c) An adopted child shall be considered the same as a biological child and an adoptive parent shall be considered the same as a biological parent.

~~(d) Except as provided in Paragraph (e) of this Rule, an adopted child shall be considered the same as a biological child and an adoptive parent shall be considered the same as a biological parent.~~

~~(e)(d)~~ For the purpose of this Rule, a half-sibling is a child who has one biological parent in common with the patient. A step-sibling is the child of a step-parent who has no biological parent in common with the patient.

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.*

## **SECTION .0300 - ELIGIBILITY PROCEDURES**

### **10A NCAC 45A .0302 AUTHORIZATIONS AND CLAIMS PROCESSING TIME FRAMES**

The following time frames shall apply to all payment programs:

- (1) An Authorization Request must be received by the Department within one year after the date of service or it will be ~~denied, denied, except in the Migrant Health Program where authorizations are not used.~~
- (2) The Department shall respond to an Authorization Request within 45 days after receipt.
- (3) If additional information is requested, this information must be received within one year after the date of service or within 30 days after the date of the Department's request, whichever is later, or the Authorization Request will be denied.
- (4) The Department shall approve or deny an Authorization Request within 45 days after receipt of all necessary information.
- (5) A claim for payment must be received by the Department within one year after the date of service or within 45 days after the date of authorization approval, whichever is later, or the claim will be denied. Corrections to claims and requests for payment adjustment must be received by the Department within one year after the date of service or within 45 days after the date the claim is paid or returned for additional information, whichever is later, or the claim will be denied.
- (6) If there are other third party payors, a claim must show payments by those payors or it must include copies of the denials of payment from those payors. Providers must bill other payors and wait at least six months after the date of service to receive payment or denial of payment before billing the Department. If no response has been received within six months after the date of service, the provider may bill the Department, but the claim must state the date that the other payors were billed. ~~Providers of pharmacy outpatient services are required to bill Medicaid. However, they are not required to bill other third party payors and wait six months before billing the Department but are required to refund the Department if other third party payments are received.~~
- (7) The Department shall pay or deny a claim within 45 days after receipt of a completed claim.
- (8) Authorization Requests and claims for payment shall be submitted on forms approved by the Department.
  - (b) During the last six months of the fiscal year, the State Health Director may limit payment program benefits that can be authorized when the total amount of outstanding authorizations, plus the estimated authorizations for the remainder of the fiscal year, less estimated cancellations, exceeds 100 percent of the program's cash balance. The State Health Director shall rescind the limitations at the end of the fiscal year, or prior to the end of the fiscal year if sufficient funds become available to authorize full program benefits for the remainder of the fiscal year. ~~The Director of the Office of Research, Demonstrations, and Rural Health Development may limit payment program benefits for the Migrant Health Program when the cost of the services is projected to surpass the program's cash balance within the fiscal year. The Director of the Office of Research, Demonstrations, and Rural Health Development shall rescind the limitations if sufficient funds become available to reimburse for program benefits for the Migrant Health Program.~~
  - (c) Payment program benefits shall be available only for services or appliances which are not covered by another third party payor or which cannot be paid for out of funds received in settlement of a civil claim. Patients shall apply for Medicaid or Medicare benefits to which they may be entitled. ~~However, payment program benefits shall be available for Children's Special Health Services sponsored clinic patients who cannot reasonably be examined or treated by a Medicaid provider or an authorized provider for another third party payor because of transportation problems, a need for emergency care, or similar exceptional situations. All exceptions must be approved by the Children's Special Health Services program's medical director. Also, Children's Special Health Services may make payments for services provided to Medicaid patients when acting as a Medicaid provider under an agreement making the program eligible for reimbursement from Medicaid. However, Early Intervention Program payment shall be available for services based on Title 35, Code of Federal Regulations, Part 303.520, which is hereby incorporated by reference along with all subsequent amendments and editions. A copy of 34 C.F.R. Part 303.520 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Early Intervention Branch, 5605 Six Forks Road, Raleigh, North Carolina. Copies of 34 C.F.R. Part 303.520 may be downloaded and printed from the Internet at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-28/pdf/2011-22783.pdf>.~~ Providers shall take reasonable measures to collect other third party payments. For the purposes of this Subchapter, third party payor means any person or entity that is or may be indirectly liable for the cost of services or appliances furnished to a patient. Third party payors include the following:
    - (1) School services, including physical or occupational therapy, speech and language pathology and audiology services, and nursing services for special needs children;
    - (2) Medicaid;
    - (3) Medicare, Part A and Part B;
    - (4) Insurance;
    - (5) Social Services;
    - (6) Worker's compensation;
    - (7) CHAMPUS; and
    - (8) Head Start programs.

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.*

#### **10A NCAC 45A .0303 PAYMENT LIMITATIONS**

(a) Payment program payments shall be made for authorized services only when funds are available.



(d) The Department shall not pay Medicaid co-payments or in any other way supplement Medicaid payments.

(e) If prior to the Department's payment for particular services or appliances, the provider, the patient, or a person responsible for the patient receives partial or total payment for the services or appliances from a third party payor, or receives funds in settlement of a civil claim, the Department shall pay only the amount, if any, by which the Department's payment rate exceeds the amount received by the person. For the purpose of this Rule the Department's payment rate means the rate of reimbursement established in 10A NCAC 45A .0400.

(f) Notwithstanding Paragraph (e) of this Rule, when the provider, the patient or a person responsible for the patient receives other third party payments equal to or exceeding the Department's payment rate, the Department shall pay the difference between the other third party payments and the provider's charge for an adopted child that meets the requirements of 10A NCAC 43F .0801. The Department's payment shall not exceed the payment rate in Section .0400 of the Subchapter.

(g) If after the Department makes payment for particular services or appliances, the provider, the patient, or a person responsible for the patient receives partial or total payment for the services or appliances from a third party payor, or receives funds in settlement of a civil claim which are available to pay for the services or appliances, the person receiving the payment shall reimburse the Department to the extent of the amount received by the person without exceeding the amount of the Department's prior payment to the provider. This reimbursement shall be made to the Department within 45 days after receipt of the third party payment.

(h) Notwithstanding Paragraph (g) of this Rule, if after the Department makes payment for particular services or appliances for an adopted child that meets the requirements of 10A NCAC 43F .0801, the provider receives partial or total payment from a third party payor, the provider shall only be required to reimburse the Department the amount by which the total of payments exceeds the provider's charge.

(i) If the Department requests a refund of a payment made to a provider, the refund shall be made to the Department within 45 days after the date of the refund request.

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.*

## SECTION .0400 - REIMBURSEMENT

### 10A NCAC 45A .0401 GENERAL

(a) The purpose of this Section is to establish rates of reimbursement for services provided under the Department's payment programs.

(b) The reimbursement rates established in the rules of this Section shall not apply to local health department delivery funds, 10A NCAC 43C .0200, perinatal program high risk maternity clinic reimbursement funds, 10A NCAC 43C .0300, or school health funds, 10A NCAC 43E .0100. Rates of reimbursement for these programs are individually negotiated with providers by the Department's contractor, usually a local health department. These rates shall be negotiated and established in accordance

with guidelines found in the respective program rules, and shall not exceed the ~~medicaid~~ Medicaid rate of reimbursement in effect ~~at the time the claim is received by the Department.~~ on the date of service.

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.*

### 10A NCAC 45A .0402 REIMBURSEMENT FOR INPATIENT HOSPITALIZATION

~~(a) The Department shall reimburse providers of authorized inpatient hospitalization services at 80 percent of the hospital's inpatient cost rate, which is then applied to the amount billed for authorized services. The inpatient cost rate is a ratio of cost to charges that is derived from audited cost reports and is obtained from the Division of Medical Assistance. The Department shall use the cost rate in effect on the date a claim is received, and retroactive adjustments to claims paid shall not be made. If a cost rate cannot be obtained for an out of state hospital, the Department shall reimburse the hospital at 75 percent of the billed amount for authorized services. The cost rates and any subsequent amendments and editions are incorporated herein by reference in accordance with G.S. 150B-21.6. The cost rates can be obtained from the Office of the Controller, Department of Health and Human Services, 1904 Mail Service Center, Raleigh, NC 27699-1904. The Department shall reimburse providers of authorized inpatient services at the Medicaid rate in effect on the date of service.~~

~~(b) In addition to the requirements of Paragraph (a) of this Rule, in the Cancer Program there shall be a limit on the payment for an inpatient admission of 1 percent of the program's current annual budget.~~

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205; 130A-223.*

### 10A NCAC 45A .0403 REIMBURSEMENT FOR PROFESSIONAL, OUTPATIENT, OTHER SERVICES

(a) The Department shall reimburse providers of authorized outpatient services, professional services, and all other services not otherwise covered in the rules of this Section at the Medicaid rate in effect ~~at the time the claim is received by the Department, except in the Migrant Health Program.~~ on the date of service.

~~(b) The Migrant Health Program shall reimburse providers of program covered outpatient, professional, and other services at the Medicaid rate in effect at the time the claim is received minus the allowable patient copayment to a maximum program payment of one hundred fifty dollars (\$150.00) per claim, per date of service. The allowable patient copayment is six dollars (\$6.00) per claim for each prescribed drug and supply, six dollars (\$6.00) per claim for all durable medical equipment, and five dollars (\$5.00) per claim, per date of service for all other services. The one hundred fifty dollar (\$150.00) limit shall not apply to drugs, supplies, and durable medical equipment.~~

~~(c)~~ (b) In addition to the requirements of Paragraph (a) of this Rule, for professional and outpatient services under the Cancer Program, there shall be a per claim payment limit of one percent of the program's current annual budget.

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205; 130A-223.*

**10A NCAC 45A .0404 REIMBURSEMENT FOR SERVICES NOT COVERED BY MEDICAID**

(a) The Department shall reimburse providers of authorized mobility systems (including components and accessories), environmental control units, and custom seating systems for which there are no Medicaid reimbursement rates at the manufacturer's catalog price less five percent.

(b) The Department shall reimburse providers of authorized prosthetics and orthotics at the Medicare rate of reimbursement when there is no Medicaid rate of reimbursement for the item. When there is neither a Medicaid rate nor a Medicare rate for the item, the Department shall reimburse at the provider's usual charge to the general public.

(c) The Department shall reimburse providers of authorized equipment repair services for which there are no Medicaid reimbursement rates at forty five dollars (\$45.00) per hour.

(d) The Department shall reimburse physicians and dentists for authorized services for which there are no Medicaid rates at the Medicaid rate for a comparable procedure as determined by the program's medical director or at 80 percent of the amount billed, whichever is less.

(e) The Department shall reimburse providers of authorized assistive listening devices and those types of hearing aids for which there are no Medicaid rates at invoice cost plus the Medicaid dispensing fee for a new hearing aid(s).

(f) The Department shall reimburse providers of authorized amplification-related services for which there are no Medicaid rates at the rates paid for audiology services under Medicaid's Independent Practitioner Program.

(g) The Department shall reimburse providers of authorized services not otherwise specified in this Section, for which there are no Medicaid reimbursement rates, at the provider's usual charge to the general public.

~~(h) The Department shall reimburse providers under the Migrant Health Program at the rates specified in this rule. Services do not have to first be authorized; however, reimbursement is contingent upon client eligibility, the provision of services covered by the program, and availability of funds.~~

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.*

**10A NCAC 45A .0405 BILLING THE PATIENT PROHIBITED**

If a provider has accepted partial or total payment from the Department for particular services, the Department's reimbursement rate for those services shall be considered payment in full for those authorized services for all payment ~~programs programs, except the Maternal and Child Health Program Delivery Fund, the School Health Fund, and the Migrant Health Program. A provider who has accepted partial or total payment from the Department under the Maternal and Child Health Delivery Fund or the School Health Fund shall not bill the patient or his family for any amount greater than the amount by which the Medicaid rate exceeds the Department's payment for the particular services. A provider who has~~

~~accepted payment from the Department under the Migrant Health Program may bill the patient for copayments established in this Section.~~

*Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.*

**TITLE 11 – DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Home Inspector Licensure Board intends to amend the rules cited as 11 NCAC 08 .1202, .1204, .1205 and repeal the rule cited as 11 NCAC 08 .1203.*

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

- ☐ **OSBM certified on:**
- ☒ **RRC certified on: June 19, 2013**
- ☐ **Not Required**

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

**Proposed Effective Date:** *February 1, 2014*

**Public Hearing:**

**Date:** *October 11, 2013*

**Time:** *9:00 a.m.*

**Location:** *322 Chapanoke Road, Raleigh, NC 27603*

**Reason for Proposed Action:** *Occupational licensing boards receive complaints and investigate the behavior and conduct of licensees in order to maintain the public trust in the integrity of the process that also ensures the qualifications of licensees. These proposed rule changes are intended to institutionalize procedures for evaluation of evidence, disciplinary determinations and dissemination of such information.*

**11 NCAC 08 .1203** – *Is currently no longer necessary.*

**11 NCAC 08 .1202; .1204; .1205** – *As written, provide discretionary powers to investigative staff that are more properly reserved for Committee and Board review.*

**Comments may be submitted to:** *Karen Waddell, 430 N. Salisbury Street, Raleigh, NC 27603; phone (919) 807-6004; email karen.waddell@ncdoi.gov*

**Comment period ends:** *October 14, 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 08 - ENGINEERING AND BUILDING CODES  
DIVISION**

**SECTION .1200 - N.C. HOME INSPECTOR  
DISCIPLINARY ACTIONS**

**11 NCAC 08 .1202 COMPLAINTS**

- (a) Anyone who believes that a licensee is or has been engaged in any conduct set out in G.S. 143-151.56(a) may file a written complaint against that licensee. ~~The Board may, upon its own motion, initiate an investigation of a licensee.~~ The Board shall not consider complaints about a home inspection that are received by the Board more than three years from the dates of the inspection.
- (b) An information memo containing instructions for filing the complaint shall be mailed to anyone requesting complaint information from the Board.
- (c) The complaint shall specifically identify the licensee and describe the conduct complained about.
- (d) Supporting information shall be included to justify the complaint. Supporting information shall refer to specific violations of the Board's rules or of the General Statutes. If the complaint involves items included in the Standards of Practice that the licensee did not observe, a list of those items must be submitted with the complaint. This information may be provided by the complainant, an architect, professional engineer, licensed contractor, another licensed home inspector, or other person with knowledge of the Standards of Practice. A copy of the contract agreement, the inspection report, and any reports made by other consultants shall be included with the complaint.
- (e) The complaint shall be in writing, signed by the complainant, and dated. The complaint shall include the complainant's mailing address and a daytime phone number at which the complainant may be reached. The street address of the structure must be ~~included.~~ included if the complaint pertains to an inspection of a structure.
- (f) The Board shall not consider services that are under the jurisdiction of other regulatory agencies or licensing boards, such as termite ~~inspections, appraisals, inspections, appraisals;~~ or services rendered by licensed architects, engineers, or general contractors, unless the persons rendering those services claim to be home inspectors.

(g) The Board has no jurisdiction over persons who make specialized inspections as part of their repair or maintenance businesses, such as roofing repair contractors, chimney sweeps, duct cleaning, and interior environment specialists.

(h) The Board members or the Board staff may initiate an investigation without a written complaint when there is cause to believe that a licensee is or has been engaged in any conduct set out in G.S. 143-151.56(a).

*Authority G.S. 143-151.49; 143-151.56(a); 143-151.58(d); 150B-38(h).*

**11 NCAC 08 .1203 BOARD STAFF**

~~The Engineering Division shall verify whether any allegations against a licensee are violations of the Standards of Practice, Code of Ethics, or of the General Statutes.~~

*Authority G.S. 143-151.49; 150B-38(h).*

**11 NCAC 08 .1204 INVESTIGATION**

- (a) On receipt of a complaint conforming to this Section, the Engineering and Codes Division shall ~~make an investigation of the charges and issue a report.~~ The report shall address each item alleged to be a violation of these Rules or of the General Statutes. ~~conduct an investigation.~~
- (b) A copy of the complaint shall be mailed to the home inspector. The inspector shall submit a written response to the Engineering and Codes Division within two weeks after receipt of the copy of the complaint.
- ~~(c) A copy of the report shall be mailed to the complainant and to the inspector.~~
- ~~(d) The report shall state that the complaint either has or lacks sufficient evidence to support the allegations in the complaint.~~
- ~~(e) If the report states that the allegations lack sufficient evidence, the Engineering Division shall:~~
  - ~~(1) Advise the complainant in writing that the evidence was insufficient to support the allegations in the complaint.~~
  - ~~(2) Advise the complainant that the complaint may be reviewed by a committee of Board members appointed by the Chairman to determine whether the finding of the Engineering Division is correct.~~
  - ~~(3) Advise the complainant that the complainant must make a written request for the review and must state in the request the reasons why the complainant is of the opinion the Engineering Division's determination is incorrect.~~
  - ~~(4) If the complainant makes a written request for review by a committee of Board members, the chairman shall appoint the committee. The committee shall review the report and the complainant's documentation. If the committee finds that the allegations are unsupported by the evidence, the Engineering Division shall advise the complainant in writing that the committee has concurred with the Engineering Division's conclusion that the complaint lacks~~

~~sufficient evidence to support the allegations in the complaint.~~

(c) Upon completion of the investigation, the Board's Investigation Review Committee ("Committee") shall make a determination of whether there is sufficient evidence to support a violation of G.S. 143-151.56(a). Based on its determination, the Committee may:

- (1) dismiss the complaint;
- (2) dismiss the complaint with a letter of caution to the home inspector;
- (3) recommend to the Board that the complaint be resolved by consent agreement, if the home inspector agrees to the terms of the consent agreement; or
- (4) establish a time and place for a disciplinary hearing and give notice to the licensee. Prior to the matter's being heard and determined by the Board, it may be resolved by consent agreement with the approval of the Board.

(d) The Committee shall notify the complainant and the home inspector of its determination but shall not be required to notify the parties of its reasons in making its determination.

*Authority G.S. 143-151.49; 150B-38(h).*

#### **11 NCAC 08 .1205 DISCIPLINARY HEARING**

~~If there are findings in the report or by the review committee that there is sufficient evidence to support the allegations in the complaint, the Board shall fix a time and place for a disciplinary hearing and give notice to the licensee.~~ The disciplinary hearing shall be held in accordance with G.S. 150B, Article 3A and this Section.

*Authority G.S. 143-151.49; 150B-38(h).*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commissioner of Insurance intends to adopt the rule cited as 11 NCAC 11F .0505 and repeal the rules cited as 11 NCAC 11F .0501-.0504.*

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

- ☐ OSBM certified on:
- ☒ RRC certified on: *July 18, 2013*
- ☐ Not Required

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

**Proposed Effective Date:** *January 1, 2014*

**Public Hearing:**

**Date:** *September 13, 2013*

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

**Location:** *430 N. Salisbury Street, Raleigh, NC 27603 – Jim Long Hearing Room*

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

**11 NCAC 11F .0501-.0504** – *Are being repealed and are replaced by 11F .0505.*

**11 NCAC 11F .0505** – *Is proposed for adoption so that the new mortality table for use in determining reserve liabilities will be effective for policies issued January 1, 2014 and later. The January 1, 2014 implementation date has been recommended to the States by the NAIC.*

**Comments may be submitted to:** *Karen E. Waddell, 430 N. Salisbury Street, Raleigh, NC 27603; phone (919) 807-6004; email karen.waddell@ncdoi.gov*

**Comment period ends:** *October 14, 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 11 - FINANCIAL EVALUATION DIVISION**

#### **SUBCHAPTER 11F - ACTUARIAL**

#### **SECTION .0500 - NEW ANNUITY VALUATION MORTALITY TABLES**

#### **11 NCAC 11F .0501 DEFINITIONS**

~~As used in this Section:~~

- ~~(1) "1983 Table 'a' " means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the NAIC.~~
- ~~(2) "1983 GAM Table" means that mortality table developed by the Society of Actuaries~~

Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the NAIC.

- (3) "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force. The 1994 GAR Table is included in the report on pages 865-919 of Volume XLVII of the Transactions of the Society of Actuaries (1995).
- (4) "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Table is included in the report on pages 211-249 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

*Authority G.S. 58-2-40; 58-58-50(k).*

#### **11 NCAC 11F .0502 INDIVIDUAL ANNUITY OR PURE ENDOWMENT CONTRACTS**

- (a) Except as provided in Paragraphs (b) and (c) of this Rule, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 19, 1979.
- (b) Except as provided in Paragraph (c) of this Rule, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987.
- (c) Except as provided in Paragraph (d) of this Rule, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2000.
- (d) The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2000, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

- (1) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
- (2) Settlements involving similar actions such as worker's compensation claims; or
- (3) Settlements of long term disability claims where a temporary or life annuity has been issued in lieu of continuing disability payments.

*Authority G.S. 58-2-40; 58-58-50(k).*

#### **11 NCAC 11F .0503 GROUP ANNUITY OR PURE ENDOWMENT CONTRACTS**

- (a) Except as provided in Paragraphs (b) and (c) of this Rule, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR

Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after April 19, 1979, under a group annuity or pure endowment contract.

(b) Except as provided in Paragraph (c) of this Rule, the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1987, under a group annuity or pure endowment contract.

(c) The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2000, under a group annuity or pure endowment contract.

*Authority G.S. 58-2-40; 58-58-50(k).*

#### **11 NCAC 11F .0504 APPLICATION OF THE 1994 GAR TABLE**

In using the 1994 GAR Table, the mortality rate for a person age  $x$  in year  $(1994 + n)$  is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$$

where the  $q_x^{1994}$ s and  $AA_x$ s are as specified in the 1994 GAR Table.

*Authority G.S. 58-2-40; 58-58-50(k).*

#### **11 NCAC 11F .0505 MODEL RULE FOR RECOGNIZING A NEW ANNUITY MORTALITY TABLE FOR USE IN DETERMINING RESERVE LIABILITIES FOR ANNUITIES**

(a) The North Carolina Department of Insurance incorporates by reference, including subsequent amendments and editions, the National Association of Insurance Commissioners Model No. 821, NAIC Model Rule (Regulation) for Recognizing a New Annuity Mortality Table for Use in Determining Reserve Liabilities for Annuities. Copies of Model No. 821 may be obtained from: The National Association of Insurance Commissioners, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197; the North Carolina Department of Insurance, Actuarial Services Division, 1201 Mail Service Center, Raleigh, NC 27699-1201; and from the Department of Insurance web page at <http://www.ncdoi.com/>.

(b) For purposes of this Rule, Subsection A of Section 4 of Model No. 821 shall read as follows:

Except as provided in Subsections B and C of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 19, 1979.

(c) For purposes of this Rule, Subsection B of Section 4 of Model No. 821 shall read as follows:

Except as provided in Subsection C of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum

standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987.

(d) For purposes of this Rule, Subsection C of Section 4 of Model No. 821 shall read as follows:

Except as provided in Subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2000.

(e) For purposes of this Rule, Subsection D of Section 4 of Model No. 821 shall read as follows:

Except as provided in Subsection E of this section, the 2012 IAR Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2014.

(f) For purposes of this Rule, Subsection E of Section 4 of Model No. 821 shall read as follows:

The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2000, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

- (1) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
- (2) Settlements involving similar actions such as worker's compensation claims; or
- (3) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

(g) For purposes of this Rule, Subsection A of Section 6 of Model No. 821 shall read as follows:

Except as provided in Subsections B and C of this section, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after April 19, 1979, under a group annuity or pure endowment contract.

(h) For purposes of this Rule, Subsection B of Section 6 of Model No. 821 shall read as follows:

Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1987, under a group annuity or pure endowment contract.

(i) For purposes of this Rule, Subsection C of Section 6 of Model No. 821 shall read as follows:

The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2000, under a group annuity or pure endowment contract.

(j) For purposes of this Rule, Section 1, Section 8, and Section 9 of Model No. 821 are not applicable.

Authority G.S. 58-2-40; 58-58-50(k).

## TITLE 12 – DEPARTMENT OF JUSTICE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0241; 09E .0104; 09F .0107; and 09G .0415-.0416.*

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

- ☐ OSBM certified on:
- ☒ RRC certified on: June 19, 2013
- ☐ Not Required

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>

**Proposed Effective Date:** February 1, 2014

### Public Hearing:

**Date:** November 21, 2013

**Time:** 1:00 pm

**Location:** Wake Technical Community College, 321 Chapanoke Drive, Raleigh, NC 27602

**Reason for Proposed Action:** *Streamline in-service topic of choice course delivery; increase data processing fee for concealed carry handgun certificates; revise titles for Division of Juvenile Justice and Division of Adult Correction courses; revises topic names and associated numbers of instructional hours for the Basic Law Enforcement Training program.*

**Comments may be submitted to:** Trevor Allen, 1700 Tryon Park Drive, Raleigh, NC 27602; phone (919) 779-8211; fax (919) 779-8210; email [tjallen@ncdoj.gov](mailto:tjallen@ncdoj.gov)

**Comment period ends:** November 21, 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 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS**

**SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT; EDUCATION; AND TRAINING**

**SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION**

**12 NCAC 09B .0241 JUVENILE JUSTICE SPECIALIZED INSTRUCTOR TRAINING – RESTRAINTS, CONTROLS AND DEFENSIVE TECHNIQUES**

(a) The instructor training course requirement for the Department of ~~Juvenile Justice and Delinquency Prevention (DJJDP)~~ Public Safety, Division of Juvenile Justice specialized ~~Restraint, Control and Defense~~ Restraints, Controls and Defensive Techniques Instructor certification shall consist of at least 70 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each ~~DJJDP Juvenile Justice specialized Restraint, Control and Defense Techniques Instructor training~~ Specialized Instructor Training – Restraints, Controls and Defensive Techniques course shall be designed to provide the trainee with the skills and knowledge to perform the function of ~~a criminal justice Restraint, Control and Defense~~ the Juvenile Justice Restraints, Controls and Defensive Techniques Instructor in the "Basic Training for Juvenile Justice Officers" course and the "Basic Training for Juvenile and Chief Court Counselors" courses, as well as in-service training courses for juvenile justice officers and juvenile and chief court counselors.

(c) Each applicant for ~~specialized Restraint, Control and Defense Techniques Instructor training~~ Specialized Instructor Training – Restraints, Controls and Defensive Techniques shall:

- (1) Have completed the criminal justice general instructor training course; and
- (2) Possess a valid CPR certification that includes cognitive and skills testing.

(d) Each ~~DJJDP specialized Restraint, Control and Defense Techniques Instructor training~~ Juvenile Justice Specialized Instructor Training – Restraints, Controls and Defensive Techniques course shall include the following identified topical areas and minimum instructional hours for each area:

- (1) Orientation 1 Hour
- (2) Skills Pre Test 1 Hour
- (3) Physical Assessment 4 Hours

- (4) Safety Guidelines 2 Hours
- (5) Physical Fitness and Conducting Safe Warm-Up Exercises 12 Hours
- (6) Fundamentals of Professional Liability for Criminal Justice Instructors 4 Hours
- (7) Restraint, Control and Defense Techniques Instructor Guidelines 2 Hours
- (8) Restraint, Control and Defense Techniques Practical Skills and Instructional Methods 28 Hours
- (9) Practical Skills Enhancement 4 Hours
- (10) RCDT Instructional Practicum 4 Hours
- (11) Practical Skills Evaluation 4 Hours
- (12) Comprehensive Examination/Course Closing 2 Hours

- (1) Orientation;
- (2) Introduction to Restraints, Controls and Defensive techniques;
- (3) Physical Fitness/Warm-Up and Stretching Exercises;
- (4) Response to Injury;
- (5) Restraints, Controls and Defensive Techniques Basic Techniques;
- (6) Restraint Applications; and
- (7) RCDT Program Student Evaluation and Testing.

(e) ~~The Commission-certified schools~~ school that ~~are~~ is certified to offer the ~~DJJDP "Specialized Restraint, Control and Defense Techniques Instructor"~~ Juvenile Justice Specialized Instructor Training – Restraints, Controls and Defensive Techniques course ~~are: The~~ is the Office of Staff Development and Training Unit of the North Carolina Department of ~~Juvenile Justice and Delinquency Prevention; Public Safety.~~

Authority G.S. 17C-2; 17C-6; 17C-10.

**SUBCHAPTER 09E – IN-SERVICE TRAINING PROGRAMS**

**SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM**

**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.~~ delivering CPR certifications that include cognitive and skills testing, use of equipment training conducted

by a manufacturer, manufacturer's representative or a service provider and documented through a certificate of completion, or include Incident Command System training for NIMS (National Incident Management System) compliance who are 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 by the department head or in-service training coordinator 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.

*Authority G.S. 17C-6; 17C-10.*

#### **SUBCHAPTER 09F - CONCEALED HANDGUN TRAINING**

#### **SECTION .0100 - CONCEALED HANDGUN TRAINING PROGRAM**

##### **12 NCAC 09F .0107 FILING AND FEES**

(a) Each instructor of an approved course shall file a copy of the firearms course description, outline, and proof of instructor certification annually, or upon modification of the course if more frequently, with the Commission. A fee of fifty dollars (\$50.00) shall be submitted for the initial and annual filing of a course. If modification of the course occurs before the renewal filing date, a fee of twenty-five dollars (\$25.00) shall be charged.

(b) Instructors shall, in writing, request the number of certificates needed and shall remit a fee of ~~one dollar (\$1.00)~~ two dollars (\$2.00) per certificate with a minimum request of 25 certificates per instructor. ~~Certificates may be obtained at the office of the agency.~~ Requests for certificates shall be sent to:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
1700 Tryon Park Drive  
Post Office Drawer 149  
Raleigh, North Carolina 27602

All such fees shall be paid by certified check made payable to the North Carolina Department of Justice.

*Authority G.S. 14-415.12; 150B-19(5); 1995 S.L., c. 507 s. 22.*

#### **SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION**

##### **SECTION .0400 – MINIMUM STANDARDS FOR TRAINING OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE**

##### **12 NCAC 09G .0415 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING – FIREARMS**

(a) The instructor training course requirement for ~~corrections specialized firearms instructor~~ Corrections Specialized Instructor Training – Firearms certification shall consist of at least 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each ~~corrections specialized firearms instructor training~~ Corrections Specialized Instructor – Firearms course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections firearms instructor in the "Basic Training-Correctional Officer" course, "Basic Training-Probation/Parole Officer" course, ~~"Basic Training-Probation/Parole Officer Intermediate" course~~, and in-service training courses for correctional officers, ~~PERT teams, and probation/parole officers intermediate.~~ officers and probation/parole officers.

(c) Each corrections specialized firearms instructor training course shall include the following topical areas:

- ~~(1) Overview;~~
- ~~(A)(1) Course Overview~~ Overview;
- ~~(B)(2) Legal Considerations for Firearm Instructors~~ Instructors;



- ~~(C)(3)~~ Department of ~~Correction~~ Public Safety, Division of Adult Corrections Firearms Training Courses ~~Courses~~;
- ~~(2)(4)~~ Firearms Safety;
- ~~(3)(5)~~ Range Operations;
- ~~(4)(6)~~ Medical Emergencies on the Range;
- ~~(5)(7)~~ Handgun - Operation, Use and Maintenance;
  - (A) Handgun Training-Classroom and Range;
  - ~~(B)~~ ~~Standard Handgun Courses of Fire Range~~
  - ~~(C)(B)~~ ~~Introduction to Low/Limited Light (LLL) Fire Classroom and Range Handgun Low/Limited Light Fire~~;
  - ~~(D)(C)~~ ~~Handgun Care and Maintenance Maintenance~~;
- ~~(6)(8)~~ Advanced Handgun Training; Training – Classroom and Range;
  - ~~(A)~~ ~~Advanced Handgun Training Classroom~~
  - ~~(B)~~ ~~Advanced Handgun Courses of Fire Range~~
- ~~(7)~~ ~~Handgun Night Firing;~~  
~~Handgun Low/Limited Light Fire Classroom and Range~~
- ~~(8)~~ Rifle Training and Qualification;
  - ~~(A)~~ ~~Rifle Training Classroom~~
  - ~~(B)~~ ~~Rifle Training Range~~
  - ~~(C)~~ ~~Rifle Qualification and Low/Limited Light Fire Familiarization Course Range~~
- (9) Shotgun Training and Qualification; Operation, Use and Maintenance;
  - (A) Shotgun Training – Classroom and Range;
  - ~~(B)~~ ~~Shotgun Training Range~~
  - ~~(C)(B)~~ ~~Shotgun Low/Limited Light Fire – Range Range~~;
  - ~~(10)(C)~~ ~~Maintenance and Repair of Rifles and Shotguns; Shotgun Care and Maintenance~~;
- ~~(11)(10)~~ Special Techniques, Training Aids, and Methods;
  - ~~Special Techniques for the Reluctant/Frightened Shooter~~
- ~~(12)~~ ~~Chemical Weapons;~~  
~~Chemical Agents, Equipment, Tactics and Storage~~
- ~~(13)(11)~~ Situational Use of Firearms;
  - (A) The Shooting ~~Decision~~ Decision;
  - (B) Situational Use of ~~Firearms~~ Firearms;
  - (C) Situational Exercises – ~~Day~~ Day;
  - (D) Situational Exercises – Low/Limited Light Light;
- ~~(14)(12)~~ Administrative Matters, Testing, and Evaluation Evaluation;

(d) The Commission-accredited schools school that are accredited is certified to offer the "Corrections Specialized Instructor Training - Firearms" course ~~are: The is the~~ Office of

Staff Development and Training of the North Carolina Department of ~~Correction~~ of Public Safety.

Authority G.S. 17C-6.

## **12 NCAC 09G .0416 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING - CONTROLS, RESTRAINTS, AND DEFENSIVE TECHNIQUES**

(a) The instructor training course requirement for corrections specialized controls, restraints, and defensive techniques (CRDT) instructor certification shall consist of at least 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each corrections specialized controls, restraints, and defensive techniques instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections controls, restraints, and defensive techniques instructor in the "Basic Training-Correctional Officer" course, "Basic Training-Probation/Parole Officer" course, "Basic Training Probation/Parole Officer Intermediate" course, and in-service training courses for correctional officers, PERT teams, probation/parole officer intermediate, and all Department of Juvenile Justice and Delinquency Prevention ~~unarmed self-defense courses~~ course, and in-service training courses for correctional officers and probation/parole officers.

(c) Each corrections specialized controls, restraints, and defensive techniques instructor training course shall include the following topical areas:

- (1) Introduction to Controls, Restraints, and Defensive Techniques;
- (2) ~~Patterns of Movement;~~ Physical Fitness/Warm-up and Stretching;
- (3) Response to Injury;
- (4) Basic Controls and Techniques;
- (5) Advanced Controls and Techniques;
- (6) Restraint ~~Applications;~~ Applications; and
- (7) ~~Program Evaluation; and~~ CRDT Program Student Evaluations and Testing.
- ~~(8) Advanced Instructional Techniques.~~

(d) The Commission-certified schools school that are is certified to offer the "Corrections Specialized Instructor Training/Controls, Restraints, and Defensive Techniques" course ~~are: The is the~~ Office of Staff Development and Training of the North Carolina Department of ~~Correction~~ Public Safety.

Authority G.S. 17C-6.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .1002-.1003, .1005-.1006 and repeal the rule cited as 15A NCAC 02D .1009.*

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

☒ OSBM certified on: July 16, 2013

- ☐ RRC certified on:  
☐ Not Required

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

**Proposed Effective Date:** January 1, 2014

**Public Hearing:**

**Date:** September 18, 2013

**Time:** 6:00 p.m.

**Location:** Training Room (#1210), DENR Green Square Office Building, 217 West Jones Street, Raleigh, NC

**Reason for Proposed Action:** In response to statutory revisions in North Carolina Session Law 2012-199, the Division of Air Quality (DAQ) is proposing changes to its emission inspections rules. In the existing rule, only the current model year vehicles are excluded from emission inspections in the 48 counties required to have an emission inspection program under federal or State rules. The revised statute excludes from emissions inspections those vehicles in the three most recent model years with less than 70,000 miles on the odometer. Several additional minor housekeeping rule amendments are proposed to clarify definitions. Also, DAQ recommends repealing Rule .1009 and relying solely on the federal heavy-duty engine standards rules. This is based on the fact that the California rule referenced in Rule .1009 is equivalent to the EPA Heavy Duty Diesel (HDD) regulations and EPA did not delay or relax their HDD rules.

**Comments may be submitted to:** Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919)707-8720, fax (919)707-8720, joelle.burleson@ncdenr.gov

**Comment period ends:** October 14, 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: June 11, 2013  
☒ Substantial economic impact (≥\$500,000)  
☒ Approved by OSBM  
☐ No fiscal note required by G.S. 150B-21.4

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .1000 - CONTROL OF TOXIC AIR POLLUTANTS**

**15A NCAC 02D .1002 APPLICABILITY**

(a) This ~~Section~~ Rule is applicable to all gasoline-powered and hybrid-powered motor vehicles, except motorcycles and excluding the current model year, year;

- (1) until the time the criteria in Subparagraph (a)(2) are met,
- (2) as of January 1, 2014 or the first day of a month that is 30 days after the U.S. Environmental Protection Agency approves the State Implementation Plan revision and the replacement of the Motor Vehicle Inspection and Law Enforcement System being certified by the Commissioner of Motor Vehicles, whichever occurs later, this Rule is applicable to all gasoline-powered and hybrid-powered motor vehicles of a 1996 or more recent model except the vehicles in the three most recent model years with less than 70,000 miles on their odometers, plug-in and fuel-cell electric motor vehicles and motorcycles as specified in G.S. 20-183.2(b) that are:

- ~~(1)(A)~~ required to be registered by the North Carolina Division of Motor Vehicles in the counties identified in Paragraph (b) of this Rule;
- ~~(2)(B)~~ part of a fleet primarily operated within the counties identified in Paragraph (b) of this Rule; or
- ~~(3)(C)~~ operated on a federal installation located in a county identified in Paragraph (b) of this Rule and that meet the requirements of 40 CFR 51.356(a)(4).

(b) The emission control standards of this Section become effective in the counties identified in G.S. 143-215.107A on the dates specified in G.S. 143-215.107A.

*Authority* G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A; 20-183.2.

**15A NCAC 02D .1003 DEFINITIONS**

The following definitions of terms apply to Rules 02D .1002 through 02D .1006 regulating gasoline-powered and hybrid-powered motor vehicles throughout this Section:

- (1) "Heavy-duty Gasoline Vehicle" means a gasoline-powered and hybrid-powered motor vehicle which is designed primarily for:
  - (a) transportation of property and has a GVWR (Gross Vehicle Weight Rating) of more than 8,500 ~~pounds~~ pounds but less than 14,001 pounds;
  - (b) transportation of persons and has a capacity of more than 12 persons; or
  - (c) use as a recreational motor vehicle, which is designed primarily to provide temporary or permanent living quarters for travel, camping, or other recreational use and has a GVWR of more than 8,500 pounds.
- (2) "Light-duty Gasoline Vehicle" means a gasoline-powered and hybrid-powered motor vehicle which is designed primarily for:
  - (a) transportation of property and has a GVWR of 8,500 pounds or less; or
  - (b) transportation of persons and has a capacity of 12 persons or less.
- (3) "Motor Vehicle" means ~~any self-propelled vehicle used for transporting property or persons~~ every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle as defined in G.S. 20-4.01(23).
- (4) "Motorcycle" means any motor vehicle having ~~a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground~~ saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection" as defined in G.S. 20-4.01(27)d.
- (5) "Gasoline-powered Motor Vehicle" means a four-wheeled motor vehicle designed primarily to be propelled by the burning of gasoline in an internal combustion engine.
- (6) "Hybrid-powered Vehicle" means a four-wheeled motor vehicle designed to be propelled by a combination of one or more electric motors and the burning of gasoline in an internal combustion engine.
- (7) "Plug-in Electric Vehicle" as defined in G.S. 20-4.01(28a).
- (8) "Fuel-Cell Electric Vehicle" as defined in G.S. 20-4.01(12a).
- (9) "Model year" means the year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was

actually produced, provided that the production period does not exceed 24 months.

- (10) "Current model year" means the most recent year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was actually produced, provided that the production period does not exceed 24 months.

- (11) "Three most recent model years" means the current (first) model year and the second and third model years following the current model year.

- (12) "Vendor" means any person who sells or leases equipment to inspection stations that is used to perform on-board diagnostic tests to show compliance with Rule 02D .1005 of this Section.

*Authority G.S. 20-4.01(12a); 20-4.01(28a); 143-215.3(a)(1).*

#### **15A NCAC 02D .1005 ON-BOARD DIAGNOSTIC STANDARDS**

(a) This Rule applies according to Rule .1002 of this Section to all ~~1996 and later~~ gasoline-powered and hybrid-powered motor vehicles, ~~vehicles 1996 or more recent models except the vehicles in the three most recent model years with less than 70,000 miles on their odometers~~, except plug-in and fuel-cell electric motor vehicles, and motorcycles, in the counties identified in G.S. 143-215.107A.

(b) Vehicles covered under this Rule shall pass annually the on-board diagnostic test described in 40 CFR 85.2222. The vehicle shall fail the on-board diagnostic test if any of the conditions of 40 CFR 85.2207 are met. Equipment used to perform on-board diagnostic tests shall meet the requirements of 40 CFR 85.2231.

(c) The tester shall provide the owner of a vehicle that fails the on-board diagnostic test described in Paragraph (b) of this Rule a report of the test results. This report shall include the codes retrieved (these codes are listed in 40 CFR 85.2223(b)), the status of the malfunction indicator light illumination command, and the customer alert statement described in 40 CFR 85.2223(c).

(d) Persons performing on-board diagnostic tests shall provide the Division of Air Quality data necessary to determine the effectiveness of the on-board diagnostic testing program. The data submitted shall be what is necessary to satisfy the requirements of 40 CFR 51.365, Data Collection, and 40 CFR 51.366, Data Analysis and ~~Reporting~~ Reporting, and 40 CFR 51.358, Test Equipment.

*Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A(b); S.L. 1999 c. 328 s. 3.2.*

#### **15A NCAC 02D .1006 SALE AND SERVICE OF ANALYZERS**

(a) ~~Definition. For the purposes of this Rule, "vendor" means any person who sells or leases equipment to inspection stations that is used to measure emissions from motor vehicles for the purpose of showing compliance with Rule .1004 of this Section~~

or that is used to perform on board diagnostic tests to show compliance with Rule .1005 of this Section.

~~(b)(a)~~ Requirements. A vendor shall not sell or lease equipment unless it meets the requirements of 40 CFR 85.2231 Onboard Diagnostic Test Equipment Requirements, and has the software necessary to record and transmit the data required by the Division of Motor Vehicles and the Division of Air Quality to determine compliance with the inspection/maintenance program requirements of this Section.

~~(e)(b)~~ Hardware repair and software repair. When equipment hardware or software fails to meet the requirements of Paragraph ~~(b)(c)~~ of this Rule for a particular analyzer, the vendor, after receiving a call to its respective service call center, shall communicate with the impacted station within ~~24 hours; two business days and shall complete repairs within the warranty guidelines of the vendor.~~ Where the hardware problem is stopping 20 percent or more inspections for a particular analyzer or is compromising the security of the inspection system, the vendor shall repair the problem within 48 hours after the initial call to its respective service call center.

~~(1) Where the hardware problem is stopping less than 20 percent of all inspections for a particular analyzer and is not compromising the security of the inspection system, the vendor shall repair the problem within 72 hours after the initial call to its respective service call center.~~

~~(2) Where the hardware problem is not stopping inspections and is not compromising the security of the inspection system, the vendor shall repair the problem within 96 hours after the initial call to its respective service call center.~~

~~(d)(c)~~ Software repair revisions. When analyzer software fails to meet the requirements of Paragraph (b) of this Rule, the vendor, after receiving a call to its respective service call center, shall communicate with the station within ~~24 hours; two business days.~~ The vendor shall identify and characterize the software problem within 5 days. The vendor shall, within that same 5-day period, inform the station owner and the Division as to the nature of the problem and the proposed corrective course of action and ~~action.~~

~~(1) Where the software problem is stopping 20 percent or more inspections for a particular analyzer or is compromising the security of the inspection system, the vendor shall submit a new revision of the software to the Division for approval within 19 days after receiving the initial call to its service call center.~~

~~(2) Where the software problem is stopping less than 20 percent of all inspections for a particular analyzer and is not compromising the security of the inspection system, the vendor shall submit a new revision of the software to the Division for approval within 33 days after receiving the initial call to its service call center.~~

~~(3) The vendor shall distribute the new revision of the software to all impacted stations within 14~~

~~days after the vendor receives written notification from the Division that the software has been approved as meeting the requirements of Paragraph (b) of this Rule.~~

~~(e)(d)~~ Documentation of the initial service call. The vendor's service call center shall assign a unique service response number to every reported new hardware or software problem. The time and date of the initial call shall be recorded and identified with the service response number. The service response number shall be communicated to the inspection station operator at the time of the initial contact.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6),(14).*

## **15A NCAC 02D .1009 MODEL YEAR 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY DIESEL VEHICLE REQUIREMENTS**

~~(a) Applicability. This Rule applies to model year 2008 and subsequent model years heavy duty diesel vehicles.~~

~~(b) Definitions. For the purposes of this Rule the following definitions shall apply:~~

~~(1) "Heavy duty diesel vehicle" means a motor vehicle (excluding trailer(s)) with a gross vehicle weight rating (as certified by the manufacturer) of 14,001 pounds or greater that is propelled by a diesel engine.~~

~~(2) "Motor vehicle dealer" means motor vehicle dealer as defined in G.S. 20-286(11) and includes "new motor vehicle dealer" as defined in G.S. 20-286(13) and "used motor vehicle dealer" as defined in G.S. 20-286(16).~~

~~(3) "New motor vehicle" means new motor vehicle as defined in G.S. 20-286(10)(a).~~

~~(4) "Used motor vehicle" means used motor vehicle as defined in G.S. 20-286(10)(b).~~

~~(c) Exemptions. For the purposes of this Rule the exemption of military tactical vehicles and equipment as specified in Title 13 of the California Code of Regulations, Section 1905 shall apply.~~

~~(d) Requirement. No model year 2008 or subsequent model year heavy duty diesel vehicle that is a~~

~~(1) used heavy duty diesel vehicle sold by a motor vehicle dealer; or~~

~~(2) new motor vehicle, however it is sold,~~

~~may be leased or registered within North Carolina unless the vehicle or its engine has been certified by the California Air Resources Board as meeting the applicable model year requirements of Title 13 of the California Code of Regulations, Section 1956.8, California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy Duty Diesel Engines and Vehicles.~~

~~(e) Referenced Regulation. The California Code of Regulations Title 13, Division 3, Chapter 1, Article 1, Section 1905 and Article 2, Section 1956.8 are incorporated by reference in this Rule and include any later amendments thereto. A copy of the referenced materials may be obtained free of charge via the internet from the Office of Administrative Law California Code of Regulations website at <http://cer.oal.ca.gov/>, or a hard copy may be obtained at a cost of \$5.00 from the Public Information~~

~~Office, California Air Resources Board, P.O. Box 2815, Sacramento, CA, 95812.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6)-(7).

\*\*\*\*\*

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .1104; 02Q .0701-.0704, .0706, .0709, .0711 and repeal the rules cited as 15A NCAC 02Q .0705 and .0704.

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

- ☒ **OSBM certified on:** June 28, 2013
- ☐ **RRC certified on:**
- ☐ **Not Required**

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

**Proposed Effective Date:** January 1, 2014

**Public Hearing:**

**Date:** September 19, 2013

**Time:** 3:00 p.m.

**Location:** Training Room (#1210), DENR Green Square Office Building, 217 West Jones Street, Raleigh, NC

**Reason for Proposed Action:** Session Law 2012-91 provides an exemption from North Carolina's air toxics rules for certain sources of toxic air pollutants as long as the Division of Air Quality (DAQ) determines that the emissions from that facility will not pose an unacceptable risk to human health.

Section 1 of the law exempts sources subject to federal maximum achievable control technology (MACT), generally available control technology (GACT), or case-by-case emission limits for toxic air pollutants established under Section 112(j) of the Clean Air Act, and codifies the Director's Call provision of the state air toxics rules.

Section 2 of the law requires rule amendments consistent with Section 1.

Section 3 of the Session Law requires the DAQ to review the existing air toxics rules and make recommendations to the Environmental Review Commission (ERC) on whether further changes could be made that would reduce unnecessary regulatory burden and increase the efficient use of Division resources while maintaining public health protections.

The proposed recommendations include: develop additional set of toxic emission permitting rates (TPER) for unobstructed vertical stacks; exempt natural gas and propane-fired combustion sources less than 450 mm BTU/hr that are only source of benzene; exempt emergency engines less than 4843 hp that are only source of formaldehyde; repeal Standard Industrial Classification (SIC) call rule; clarify the term "actual rate of emissions"; and remove the term "unadulterated wood".

Rules in Section 15A NCAC 02Q .0700 are proposed to be amended or repealed to incorporate the Section 1 statutory

exemptions and the Section 3 report recommendations. In addition, Rule 15A NCAC 02Q .0714, Waste Water Treatment Systems At Pulp And Paper Mills, is proposed to be repealed due to applicable requirements having expired.

Existing rule numerical values for the asbestos ambient air level (AAL) in 15A NCAC 02D .1104 and the associated asbestos TPER in 15A NCAC 02Q .0711 are proposed to be revised due to a calculation error in their original development.

**Comments may be submitted to:** Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, Phone (919)707-8720, fax (919)707-8720, email [joelle.burleson@ncdenr.gov](mailto:joelle.burleson@ncdenr.gov).

**Comment period ends:** October 14, 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 02 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

#### SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

**Note:** Text in italics was previously published in 27:20 NCR 1903-1906 and has not yet been adopted by the Environmental Management Commission.

**15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES**

A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the premises (adjacent property boundary) to any significant ambient air concentration that may adversely affect human

health. In determining these significant ambient air concentrations, the Division shall be guided by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure (except for asbestos):

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)		0.03	1	
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	$2.3 \times 10^{-7}$ $2.1 \times 10^{-6}$			
asbestos (1332-21-4)	$2.8 \times 10^{-11}$ $2.8 \times 10^{-6}$ fibers/ml			
aziridine (151-56-4)		0.006		
benzene (71-43-2)	$1.2 \times 10^{-4}$			
benzidine and salts (92-87-5)	$1.5 \times 10^{-8}$			
benzo(a)pyrene (50-32-8)	$3.3 \times 10^{-5}$			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	$4.1 \times 10^{-6}$			
beryllium chloride (7787-47-5)	$4.1 \times 10^{-6}$			
beryllium fluoride (7787-49-7)	$4.1 \times 10^{-6}$			
beryllium nitrate (13597-99-4)	$4.1 \times 10^{-6}$			
bioavailable chromate pigments, as chromium (VI) equivalent	$8.3 \times 10^{-8}$			
bis-chloromethyl ether (542-88-1)	$3.7 \times 10^{-7}$			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	$4.4 \times 10^{-4}$			
cadmium (7440-43-9)	$5.5 \times 10^{-6}$			
cadmium acetate (543-90-8)	$5.5 \times 10^{-6}$			
cadmium bromide (7789-42-6)	$5.5 \times 10^{-6}$			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	$6.7 \times 10^{-3}$			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	$4.3 \times 10^{-3}$			
chloroprene (126-99-8)		0.44	3.5	
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
dichlorodifluoromethane (75-71-8)		248		
dichlorofluoromethane (75-43-4)		0.5		
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	$8.3 \times 10^{-2}$			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	$4.0 \times 10^{-4}$			

**PROPOSED RULES**

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
ethylene dichloride (107-06-2)	$3.8 \times 10^{-3}$			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	$2.7 \times 10^{-5}$			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo-p-dioxin (57653-85-7)	$7.6 \times 10^{-8}$			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)		0.12		
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	$2.4 \times 10^{-2}$		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	$2.1 \times 10^{-6}$			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
n-nitrosodimethylamine (62-75-9)	$5.0 \times 10^{-5}$			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	$8.3 \times 10^{-8}$			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	$1.9 \times 10^{-1}$			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336-36-3)	$8.3 \times 10^{-5}$			
soluble chromate compounds, as chromium (VI) equivalent		$6.2 \times 10^{-4}$		
styrene (100-42-5)			10.6	

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746-01-6)	$3.0 \times 10^{-9}$			
1,1,1,2-tetrachloro-2,2,-difluoroethane (76-11-9)		52		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		52		
1,1,2,2-tetrachloroethane (79-34-5)	$6.3 \times 10^{-3}$			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	$5.9 \times 10^{-2}$			
trichlorofluoromethane (75-69-4)			560	
1,1,2-trichloro-1,2,2- trifluoroethane (76-13-1)				950
vinyl chloride (75-01-4)	$3.8 \times 10^{-4}$			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 143B-282; S.L. 1989, c. 168, s. 45.*

## SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

### SECTION .0700 - TOXIC AIR POLLUTANT PROCEDURES

#### 15A NCAC 02Q .0701 APPLICABILITY

(a) With the exceptions in Rule .0702 of this Section, no person shall cause or allow any toxic air pollutant named in 15A NCAC 02D .1104 to be emitted from any facility into the atmosphere at a rate that exceeds the applicable rate(s) in Rule .0711 of this Section without having received a permit to emit toxic air pollutants as follows:

- (1) new facilities according to Rule .0704 of this Section;
- ~~(2) existing facilities according to Rule .0705 of this Section;~~
- ~~(3)~~(2) modifications according to Rule .0706 of this Section.

~~(b) The Division shall assess risks from all existing exempt combustion sources using exposure and risk assessment methodologies and information and report findings to the EMC no later than July 1, 2014, and every five years thereafter. Based on these findings, the EMC shall determine if amendments to this Section are appropriate and necessary.~~

~~(c) Facilities required to comply with MACT standards under 15A NCAC 02D .1109, .1111, or .1112 or 40 CFR Part 63 shall be deemed in compliance with this Subchapter and 15A NCAC 02D .1100 unless the Division determines that modeled emissions result in one or more acceptable ambient levels in 15A NCAC 02D .1104 being exceeded. This review shall be made according to the procedures in 15A NCAC 02D .1106. Once a~~

~~facility demonstrates compliance with the acceptable ambient levels in 15A NCAC 02D .1104, future demonstrations shall only be required on a five year basis. When an acceptable ambient level for a toxic air pollutant in 15A NCAC 02D .1104 is changed, any condition that has previously been put in a permit to protect the previous acceptable ambient level for that toxic air pollutant shall not be changed until the permit is renewed, at which time the owner or operator of the facility shall submit an air toxic evaluation showing that the new acceptable ambient level will not be exceeded.~~

*Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.*

#### 15A NCAC 02Q .0702 EXEMPTIONS

(a) A permit to emit toxic air pollutants shall not be required under this Section for:

- (1) residential wood stoves, heaters, or fireplaces;
- (2) hot water heaters that are used for domestic purposes only and are not used to heat process water;
- (3) maintenance, structural changes, or repairs that do not change capacity of that process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant or toxic air pollutant;
- (4) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping,



- use and associated storage of janitorial products, or non-asbestos bearing insulation removal;
- (5) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
- (6) paving parking lots;
- (7) replacement of existing equipment with equipment of the same size, type, and function if the new equipment:
  - (A) does not result in an increase to the actual or potential emissions of any regulated air pollutant or toxic air pollutant;
  - (B) does not affect compliance status; and
  - (C) fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes to the permit;
- (8) comfort air conditioning or comfort ventilation systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (9) equipment used for the preparation of food for direct on-site human consumption;
- (10) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;
- (11) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (12) use of fire fighting equipment;
- (13) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 02D .1104 if such compounds are applied according to agronomic practices acceptable to the North Carolina Department of Agriculture;
- (14) asbestos demolition and renovation projects that comply with 15A NCAC 02D .1110 and that are being done by persons accredited by the Department of Health and Human Services under the Asbestos Hazard Emergency Response Act;
- (15) incinerators used only to dispose of dead animals or poultry as identified in 15A NCAC 02D .1201(c)(4) or incinerators used only to dispose of dead pets as identified in 15A NCAC 02D .1208(a)(2)(A);
- (16) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or with air pollution control equipment;
- (17) laboratory activities:
  - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
  - (B) bench scale experimentation, chemical or physical analyses, training or instruction from nonprofit, non-production educational laboratories;
  - (C) bench scale experimentation, chemical or physical analyses, training or instruction from hospital or health laboratories pursuant to the determination or diagnoses of illnesses; and
  - (D) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;
- (18) combustion sources as defined in 15A NCAC 02Q .0703 except new or modified combustion sources permitted on or after July 10, 2010.  
~~The DAQ shall review and recommend to the EMC no later than July 1, 2014, and every five years thereafter, whether the exemption shall remain in place or be removed.~~
- (19) storage tanks used only to store:
  - (A) inorganic liquids with a true vapor pressure less than 1.5 pounds per square inch absolute;
  - (B) fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, liquefied petroleum gas, or petroleum products with a true vapor pressure less than 1.5 pounds per square inch absolute;
- (20) dispensing equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
- (21) portable solvent distillation systems that are exempted under 15A NCAC 02Q .0102(c)(1)(I).
- (22) processes:
  - (A) electric motor burn-out ovens with secondary combustion chambers or afterburners;
  - (B) electric motor bake-on ovens;
  - (C) burn-off ovens for paint-line hangers with afterburners;
  - (D) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and

- hosiery dyeing processes where bleach or solvent dyes are not used;
- (E) blade wood planers planing only green wood;
- (F) saw mills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
- (G) perchloroethylene drycleaning processes with 12-month rolling total consumption of:
- (i) less than 1366 gallons of perchloroethylene per year for facilities with dry-to-dry machines only;
  - (ii) less than 1171 gallons of perchloroethylene per year for facilities with transfer machines only; or
  - (iii) less than 1171 gallons of perchloroethylene per year for facilities with both transfer and dry-to-dry machines;
- (23) wood furniture manufacturing operations as defined in 40 CFR 63.801(a) that comply with the emission limitations and other requirements of 40 CFR Part 63 Subpart JJ, provided that the terms of this exclusion shall not affect the authority of the Director under 15A NCAC 02Q .0712;
- (24) wastewater treatment systems at pulp and paper mills for hydrogen sulfide and methyl mercaptan only;
- (25) natural gas and propane fired combustion sources with an aggregate allowable heat input value less than 450 million Btu per hour that are the only source of benzene at the facility;
- (26) emergency engines with an aggregate total horsepower less than 4843 horsepower that are the only source of formaldehyde at the facility;
- (27) an air emission source that is any of the following:
- (A) subject to an applicable requirement under 40 CFR Part 61, as amended;
  - (B) an affected source under 40 CFR Part 63, as amended; or
  - (C) subject to a case-by-case MACT permit requirement issued by the Division pursuant to Paragraph (j) of 42 U.S.C. Section 7412, as amended;
- ~~(25)~~(28) gasoline dispensing facilities or gasoline service station operations that comply with 15A NCAC 02D .0928 and .0932 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 02D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 02D .0932;
- ~~(26)~~(29) the use of ethylene oxide as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale if the emissions from all new and existing sources at the facility described in 15A NCAC 02D .0538(d) are controlled at least to the degree described in 15A NCAC 02D .0538(d) and the facility complies with 15A NCAC 02D .0538(e) and (f);
- ~~(27)~~(30) bulk gasoline plants, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0926, .0932, and .0933; unless the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline plant; ~~or~~
- ~~(28)~~(31) bulk gasoline terminals, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992; unless:
- (A) the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline terminal, or
  - (B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 02D .0927(i).
- (b) Emissions from the activities identified in Subparagraphs ~~(a)(25)~~ (a)(28) through ~~(a)(28)~~ (a)(31) of this Rule shall be included in determining compliance with the toxic air pollutant requirements in this Section and shall be included in the permit if necessary to assure compliance. Emissions from the activities identified in Subparagraphs (a)(1) through ~~(a)(24)~~ (a)(27) of this Rule shall not be included in determining compliance with the toxic air pollutant requirements in this Section.
- (c) The addition or modification of an activity identified in Paragraph (a) of this Rule shall not cause the source or facility to be evaluated for emissions of toxic air pollutants.
- (d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

*Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.*

#### **15A NCAC 02Q .0703 DEFINITIONS**

For the purposes of this Section, the following definitions apply:

- (1) "Actual rate of emissions" means:
  - (a) for existing sources:

- (i) for toxic air pollutants with an annual averaging period, the average rate or rates at which the source actually emitted the pollutant during the two-year period preceding the date of the particular modification and that represents normal operation of the source. If this period does not represent normal operation, the Director may allow the use of a different, more representative, period.
  - (ii) for toxic air pollutants with a 24-hour or one-hour averaging period, the maximum actual emission rate at which the source actually emitted for the applicable averaging period during the two-year period preceding the date of the particular modification and that represents normal operation of the source. If this period does not represent normal operation, the Director may require or allow the use of a different, more representative, period.
- (b) for new or modified sources, the average rate or rates, determined for the applicable averaging period(s), that the proposed source will actually emit the pollutant as determined by engineering evaluation.
- (2) "Applicable averaging period" means the averaging period for which an acceptable ambient limit has been established by the Commission and is listed in 15A NCAC 02D .1104.
- (3) "Bioavailable chromate pigments" means the group of chromium (VI) compounds consisting of calcium chromate (CAS No.13765-19-0), calcium dichromate (CAS No. 14307-33-6), strontium chromate (CAS No. 7789-06-2), strontium dichromate (CAS No. 7789-06-2), zinc chromate (CAS No. 13530-65-9), and zinc dichromate (CAS No. 7789-12-0).
- (4) "CAS Number" means the Chemical Abstract Service registry number identifying a particular substance.
- (5) "Chromium (VI) equivalent" means the molecular weight ratio of the chromium (VI) portion of a compound to the total molecular weight of the compound multiplied by the associated compound emission rate or concentration at the facility.
- (6) "Combustion sources" means boilers, space heaters, process heaters, internal combustion engines, and combustion turbines, which burn only ~~unadulterated~~ wood or unadulterated fossil fuel. It does not include incinerators, waste combustors, kilns, dryers, or direct heat exchange industrial processes.
- (7) "Creditable emissions" means actual decreased emissions that have not been previously relied on to comply with Subchapter 15A NCAC 02D. All creditable emissions shall be enforceable by permit condition.
- (8) "Cresol" means o-cresol, p-cresol, m-cresol, or any combination of these compounds.
- (9) "Evaluation" means:
  - (a) a determination that the emissions from the facility, including emissions from sources exempted by Rule .0702 (a) (24) through (27) of this Section, are less than the rate listed in Rule .0711 of this Section; or
  - (b) a determination of ambient air concentrations as described under 15A NCAC 02D .1106, including emissions from sources exempted by Rule .0702 (24) through (27) of this Section.
- (10) "GACT" means any generally available control technology emission standard applied to an area source or facility pursuant to Section 112 of the federal Clean Air Act.
- (11) "Hexane isomers except n-hexane" means 2-methyl pentane, 3-methyl pentane, 2,2-dimethyl butane, 2,3-dimethyl butane, or any combination of these compounds.
- (12) "MACT" means any maximum achievable control technology emission standard applied to a source or facility pursuant to Section 112 federal Clean Air Act.
- (13) "Maximum feasible control" means the maximum degree of reduction for each pollutant subject to regulation under this Section using the best technology that is available taking into account, on a case-by-case basis, human health, energy, environmental, and economic impacts and other costs.
- (14) "Modification" means any physical changes or changes in the methods of operation that result in a net increase in emissions or ambient concentration of any pollutant listed in Rule .0711 of this Section or that result in the emission of any pollutant listed in Rule .0711 of this Section not previously emitted.
- (15) "Net increase in emissions" means for a modification the sum of any increases in permitted allowable and decreases in the actual

rates of emissions from the proposed modification from the sources at the facility for which the air permit application is being filed. If the net increase in emissions from the proposed modification is greater than zero, all other increases in permitted allowable and decreases in the actual rates of emissions at the facility within five years immediately preceding the filing of the air permit application for the proposed modification that are otherwise creditable emissions may be included.

- (16) "Nickel, soluble compounds" means the soluble nickel salts of chloride ( $\text{NiCl}_2$ , CAS No. 7718-54-9), sulfate ( $\text{NiSO}_4$ , CAS No. 7786-81-4), and nitrate ( $\text{Ni(NO}_3)_2$ , CAS No. 13138-45-9).
- (17) "Non-specific chromium (VI) compounds" means the group of compounds consisting of any chromium (VI) compounds not specified in this Section as a bioavailable chromate pigment or a soluble chromate compound.
- (18) "Polychlorinated biphenyls" means any chlorinated biphenyl compound or mixture of chlorinated biphenyl compounds.
- (19) "Pollution prevention plan" means a written description of current and projected plans to reduce, prevent, or minimize the generation of pollutants by source reduction and recycling and includes a site-wide assessment of pollution prevention opportunities at a facility that addresses sources of air pollution, water pollution, and solid and hazardous waste generation.
- (20) "SIC" means standard industrial classification code.
- (21) "Soluble chromate compounds" means the group of chromium (VI) compounds consisting of ammonium chromate (CAS No. 7788-98-9), ammonium dichromate (CAS No. 7789-09-5), chromic acid (CAS No. 7738-94-5), potassium chromate (CAS No. 7789-00-6), potassium dichromate (CAS No. 7778-50-9), sodium chromate (CAS No. 7775-11-3), and sodium dichromate (CAS No. 10588-01-9).
- (22) "Toxic air pollutant" means any of those carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants listed in 15A NCAC 02D .1104.
- (23) "Unadulterated wood" means wood that is not painted, varnished, stained, oiled, waxed, or otherwise coated or treated with any chemical. Plywood, particle board, and resinated wood are not unadulterated wood.

*Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S L. 1989, c. 168, s. 45.*

#### **15A NCAC 02Q .0704 NEW FACILITIES**

(a) This Rule applies only to facilities ~~that begin construction after September 30, 1993.~~ new facilities.

(b) The owner or operator of a facility that:

- (1) ~~is required to have a permit because of applicability of a Section in Subchapter 2D of this Chapter other than Section .1100 of Subchapter 2D of this Chapter except for facilities whose emissions of toxic air pollutants result only from sources exempted under Rule .0102 of this Subchapter; Subchapter.~~
- (2) ~~has one or more sources subject to a MACT or GACT standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) or 112(j) of the Clean Air Act; or~~
- (3) ~~has a standard industrial classification code that has previously been called under Rule .0705 of this Section;~~ shall have received a permit to emit toxic air pollutants before beginning construction, and shall comply with such permit when beginning operation.

~~(c) The owner or operator of a facility subject to this Rule who has not received a permit to emit toxic air pollutants under Paragraph (b) of this Rule shall apply for a permit to emit toxic air pollutants according to Paragraph (b) or (c) of Rule .0705 of this Section.~~

(c) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 02D .1100 if emissions of any toxic air pollutant exceed the levels contained in Rule .0711 of this Section.

(d) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 02D .1104. All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation.

*Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.*

#### **15A NCAC 02Q .0705 EXISTING FACILITIES AND SIC CALLS**

~~(a) This Rule applies only to facilities that were in operation or permitted to construct before October 1, 1993 and new facilities subject to Rule .0704(c) of this Section.~~

~~(b) For sources at a facility subject to a MACT or GACT standard, or that may be subject to a MACT or GACT standard based on studies required by Section 112(n)(1) of the Clean Air Act, 42 U.S.C. Section 7412(n)(1), the owner or operator of the facility shall comply with 15A NCAC 2D .1100 as follows:~~

- (1) ~~When the owner or operator submits a permit application to comply with the last MACT or GACT, excluding the MACT or GACT for combustion sources, known to apply to the facility, he shall also submit a permit application to comply with 15A NCAC 2D~~

~~.1100. The facility shall comply with 15A NCAC 2D .1100 by the same deadline that it is required to comply with the last MACT or GACT.~~

- ~~(2) If the owner or operator does not have to submit a permit application to comply with the last MACT or GACT, excluding the MACT or GACT for combustion sources, he shall submit a permit application to comply with 15A NCAC 2D .1100 within six months after the promulgation of the last MACT or GACT, excluding the MACT or GACT for combustion sources, known to apply to the facility or by January 1, 1999, whichever is later. The facility shall comply with 15A NCAC 2D .1100 by the same deadline that it is required to comply with the last MACT or GACT.~~
- ~~(3) If the owner or operator submitted a permit application for the last MACT or GACT, excluding the MACT or GACT for combustion sources, known to apply to the facility before July 1, 1998, he shall submit a permit application to comply with 15A NCAC 2D .1100 by January 1, 1999. The facility shall comply with 15A NCAC 2D .1100 within three years from the date that the permit is issued.~~

The permit application shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for all sources at the facility, excluding those sources exempt from evaluation under Rule .0702 of this Section. The owner or operator of a facility whose actual rate of emissions from all sources are not greater than the toxic permitting emissions rates listed in Rule .0711 of this Section does not have to file a permit application to comply with 15A NCAC 2D .1100. He shall provide documentation that the facility's emissions of toxic air pollutants are below the levels in Rule .0711 of this Section if the Director requests this documentation.

~~(e) For facilities that will not be subject to a MACT or GACT standard, or that will be subject only to a MACT or GACT standard for unadulterated fuel combustion sources, the owner or operator of the facility shall have 180 days to apply for a permit or permit modification for the emissions of toxic air pollutants after receiving written notification from the Director that such permit or permit modification is required. The permit application shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for all sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section. Such facilities shall comply with 15A NCAC 2D .1100 within three years from the date that the permit is issued. The Director shall notify facilities subject to this Paragraph by calling for permit applications based on standard industrial classifications, that is, the Director shall call at one time for permits for all facilities statewide that have the same four digit standard industrial classification code, except those facilities in certified local air pollution control agency areas. (Local air pollution control agencies shall call the standard industrial classification code within their jurisdiction when the~~

~~Director calls that code. A local air pollution control agency may call a particular standard industrial classification code before the Director calls that code if the Commission approves the call by the local air pollution control agency. In deciding if it shall grant permission to a local air pollution control agency to call a particular standard industrial classification code before the Director calls that code, the Commission shall consider if the call is necessary to protect human health or to allow the local program to better implement these Rules in its jurisdiction.) Facilities with sources that will be subject to MACT that receive an SIC call shall notify the Director and shall comply with 15 NCAC 2D .1100 in accordance with Paragraph (b) of this Rule. All sources, regardless of their standard industrial classification code, excluding sources exempt from evaluation in Rule .0702 of this Section, at the facility shall be included in the call for permit applications. When the Environmental Protection Agency (EPA) promulgates MACT under Section 112(e) of the federal Clean Air Act, excluding cooling towers, the Director shall notify the owners or operators of facilities in the standard industrial classification that best corresponds to the MACT category that they are required to submit a permit application for the emissions of toxic air pollutants from their facilities. If the EPA fails to promulgate a MACT as scheduled, the Director shall notify the owners or operators of facilities 18 months after the missed promulgation date that they are required to submit a permit application for the emissions of toxic air pollutants from their facilities. The owner or operator of a facility whose actual rate of emissions from all sources are not greater than the toxic permitting emissions rates listed in Rule .0711 of this Section does not have to file a permit application to comply with 15A NCAC 2D .1100. He shall provide documentation that the facility's emissions of toxic air pollutants are below the levels in Rule .0711 of this Section if the Director requests this documentation. The Director may request this documentation if he finds that the facility's potential emissions of toxic air pollutants are above the levels in Rule .0711 of this Section.~~

~~(d) The owner or operator of a facility may request a permit to emit toxic air pollutants any time before such application is required. The permit application shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for all sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section.~~

*Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.*

## 15A NCAC 02Q .0706 MODIFICATIONS

(a) For modification of any facility undertaken after September 30, 1993, that:

- (1) is required to have a permit because of applicability of a Section, other than Section .1100, in Subchapter 02D of this Chapter except for facilities whose emissions of toxic air pollutants result only from insignificant activities as defined in 15A NCAC 02Q .0103(20) or sources exempted under Rule .0102 of this Subchapter;Subchapter,
- (2) ~~has one or more sources subject to a MACT or GACT standard that has previously been~~

~~promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) or 112(j) of the Clean Air Act; or~~

- ~~(3) has a standard industrial classification code that has previously been called under Rule .0705 of this Section; the owner or operator of the facility shall comply with Paragraphs (b) and (c) of this Rule.~~

(b) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 02D .1100 if the modification results in:

- (1) a net increase in emissions or ambient concentration of any toxic air pollutant that the facility was emitting before the modification; or
- (2) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

(c) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 02D .1104 for which there is:

- (1) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; and
- (2) emission of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation. ~~Notwithstanding 02Q .0702(a)(18), on and after July 10, 2010, an evaluation of a modification to a combustion source shall also include emissions from all permitted combustion sources as defined in 02Q .0703. A permit application filed pursuant to Subparagraph (b)(2) of this Rule shall include an evaluation for all toxic air pollutants identified by the Director as causing an acceptable ambient level in 15A NCAC 02D .1104 to be exceeded.~~

(d) If a source is included in an air toxic evaluation, but is not the source that is being added or modified at the facility, and if the emissions from this source must be reduced in order for the facility to comply with the rules in this Section and 15A NCAC 02D .1100, then the emissions from this source shall be reduced by the time that the new or modified source begins operating such that the facility shall be in compliance with the rules in this Section and 15A NCAC 02D .1100.

*Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, C. 168, S. 45.*

#### 15A NCAC 02Q .0709 DEMONSTRATIONS

(a) Demonstrations. The owner or operator of a source who is applying for a permit or permit modification to emit toxic air pollutants shall:

- (1) demonstrate to the satisfaction of the Director through dispersion modeling that the emissions of toxic air pollutants from the

facility will not cause any acceptable ambient level listed in 15A NCAC 02D .1104 to be exceeded beyond the premises (adjacent property boundary); or  
(2) demonstrate to the satisfaction of the Commission or its delegate that the ambient concentration beyond the premises (adjacent property boundary) for the subject toxic air pollutant shall not adversely affect human health (e.g., a risk assessment specific to the facility) though the concentration is higher than the acceptable ambient level in 15A NCAC 02D .1104 by providing one of the following demonstrations:

- (A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A NCAC 02D .1104 is not inhabitable or occupied for the duration of the averaging time of the pollutant of concern; or
- (B) new toxicological data that show that the acceptable ambient level in 15A NCAC 02D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the new toxicological data.

(b) Technical Infeasibility and Economic Hardship. This Paragraph shall not apply to any incinerator covered under 15A NCAC 02D .1200. The owner or operator of any source constructed before May 1, 1990, or a perchloroethylene dry cleaning facility subject to a GACT standard under 40 CFR 63.320 through 63.325, or a combustion source as defined in Rule .0703 of this Section permitted before July 10, 2010, who cannot supply a demonstration described in Paragraph (a) of this Rule shall:

- (1) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 is technically infeasible (the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 02D .1104 from being exceeded does not exist); or
- (2) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 would result in serious economic hardship. (In deciding if a serious economic hardship exists, the Commission or its delegate shall consider market impact; impacts on local, regional and state economy; risk of closure; capital cost of compliance; annual incremental compliance cost; and environmental and health impacts.)

If the owner or operator makes a demonstration to the satisfaction of the Commission or its delegate pursuant to Subparagraphs (1) or (2) of this Paragraph, the Director shall require the owner or operator of the source to apply maximum

feasible control. Maximum feasible control shall be in place and operating within three years from the date that the permit is issued for the maximum feasible control.

(c) Pollution Prevention Plan. The owner or operator of any facility using the provisions of Part (a)(2)(A) or Paragraph (b) of this Rule shall develop and implement a pollution prevention plan consisting of the following minimum elements:

- (1) statement of corporate and facility commitment to pollution prevention;
- (2) identification of current and past pollution prevention activities;
- (3) timeline and strategy for implementation;
- (4) description of ongoing and planned employee education efforts;
- (5) identification of internal pollution prevention goal selected by the facility and expressed in either qualitative or quantitative terms.

The facility shall submit along with the permit application the pollution prevention plan. The pollution prevention plan shall be maintained on site. A progress report on implementation of the plan shall be prepared by the facility annually and be made available to Division personnel for review upon request.

(d) Modeling Demonstration. If the owner or operator of a facility demonstrates by modeling that no toxic air pollutant emitted from the facility exceeds the acceptable ambient level values given in 15A NCAC 02D .1104 beyond the facility's premises, further modeling demonstration is not required with the permit application. However, the Commission may still require more stringent emission levels according to its analysis under 15A NCAC 02D .1107.

(e) Change in Acceptable Ambient Level. When an acceptable ambient level for a toxic air pollutant in 15A NCAC 02D .1104 is changed, any condition that has previously been put in a permit to protect the previous acceptable ambient level for that toxic air pollutant shall not be changed until:

- (1) The permit is renewed, at which time the owner or operator of the facility shall submit

an air toxic ~~evaluation~~ evaluation, excluding sources exempt from evaluation in Rule .0702 of this Section, showing that the new acceptable ambient level will not be exceeded (If additional time is needed to bring the facility into compliance with the new acceptable ambient level, the owner or operator shall negotiate a compliance schedule with the Director. The compliance schedule shall be written into the facility's permit and final compliance shall not exceed two years from the effective date of the change in the acceptable ambient level.); or

- (2) The owner or operator of the facility requests that the condition be changed and submits along with that request an air toxic ~~evaluation~~ evaluation, excluding sources exempt from evaluation in Rule .0702 of this Section, showing that the new acceptable ambient level shall not be exceeded.

*Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.*

**Note:** Text in italics was previously published in 27:20 NCR 1906-1908 and has not yet been adopted by the Environmental Management Commission.

#### **15A NCAC 02Q .0711 EMISSION RATES REQUIRING A PERMIT**

(a) A permit to emit toxic air pollutants is required for any facility where one or more emission release points are obstructed or non-vertically oriented whose actual ~~(or permitted if higher)~~ rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				6.8
acetic acid (64-19-7)				0.96
acrolein (107-02-8)				0.02
acrylonitrile (107-13-1)		0.4	0.22	
ammonia (7664-41-7)				0.68
aniline (62-53-3)			0.25	
arsenic and inorganic arsenic compounds	<del>0.016</del> 0.053			
asbestos (1332-21-4)	<del>1.9 X 10<sup>-6</sup></del> 5.7 X 10 <sup>-3</sup>			
aziridine (151-56-4)		0.13		
benzene (71-43-2)	8.1			
benzidine and salts (92-87-5)	0.0010			
benzo(a)pyrene (50-32-8)	2.2			
benzyl chloride (100-44-7)			0.13	
beryllium (7440-41-7)	0.28			
beryllium chloride (7787-47-5)	0.28			

**PROPOSED RULES**

beryllium fluoride (7787-49-7)	0.28			
beryllium nitrate (13597-99-4)	0.28			
bioavailable chromate pigments, as chromium (VI) equivalent	0.0056			
bis-chloromethyl ether (542-88-1)	0.025			
bromine (7726-95-6)				0.052
1,3-butadiene (106-99-0)	11			
cadmium (7440-43-9)	0.37			
cadmium acetate (543-90-8)	0.37			
cadmium bromide (7789-42-6)	0.37			
carbon disulfide (75-15-0)		3.9		
carbon tetrachloride (56-23-5)	460			
chlorine (7782-50-5)		0.79		0.23
chlorobenzene (108-90-7)		46		
chloroform (67-66-3)	290			
chloroprene (126-99-8)		9.2	0.89	
cresol (1319-77-3)			0.56	
p-dichlorobenzene (106-46-7)				16.8
dichlorodifluoromethane (75-71-8)		5200		
dichlorofluoromethane (75-43-4)		10		
di(2-ethylhexyl)phthalate (117-81-7)		0.63		
dimethyl sulfate (77-78-1)		0.063		
1,4-dioxane (123-91-1)		12		
epichlorohydrin (106-89-8)	5600			
ethyl acetate (141-78-6)			36	
ethylenediamine (107-15-3)		6.3	0.64	
ethylene dibromide (106-93-4)	27			
ethylene dichloride (107-06-2)	260			
ethylene glycol monoethyl ether (110-80-5)		2.5	0.48	
ethylene oxide (75-21-8)	1.8			
ethyl mercaptan (75-08-1)			0.025	
fluorides		0.34	0.064	
formaldehyde (50-00-0)				0.04
hexachlorocyclopentadiene (77-47-4)		0.013	0.0025	
hexachlorodibenzo-p-dioxin (57653- 85-7)	0.0051			
n-hexane (110-54-3)		23		
hexane isomers except n-hexane				92
hydrazine (302-01-2)		0.013		
hydrogen chloride (7647-01-0)				0.18
hydrogen cyanide (74-90-8)		2.9	0.28	
hydrogen fluoride (7664-39-3)		0.63		0.064
hydrogen sulfide (7783-06-4)		1.7		
maleic anhydride (108-31-6)		0.25	0.025	
manganese and compounds		0.63		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.013		
manganese tetroxide (1317-35-7)		0.13		
mercury, alkyl		0.0013		
mercury, aryl and inorganic compounds		0.013		
mercury, vapor (7439-97-6)		0.013		
methyl chloroform (71-55-6)		250		64
methylene chloride (75-09-2)	1600		0.39	
methyl ethyl ketone (78-93-3)		78		22.4
methyl isobutyl ketone (108-10-1)		52		7.6
methyl mercaptan (74-93-1)			0.013	



**PROPOSED RULES**

nickel carbonyl (13463-39-3)		0.013		
nickel metal (7440-02-0)		0.13		
nickel, soluble compounds, as nickel		0.013		
nickel subsulfide (12035-72-2)	0.14			
nitric acid (7697-37-2)				0.256
nitrobenzene (98-95-3)		1.3	0.13	
n-nitrosodimethylamine (62-75-9)	3.4			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.0056			
pentachlorophenol (87-86-5)		0.063	0.0064	
perchloroethylene (127-18-4)	13000			
phenol (108-95-2)			0.24	
phosgene (75-44-5)		0.052		
phosphine (7803-51-2)				0.032
polychlorinated biphenyls (1336-36-3)	5.6			
soluble chromate compounds, as chromium (VI) equivalent		0.013		
styrene (100-42-5)			2.7	
sulfuric acid (7664-93-9)		0.25	0.025	
tetrachlorodibenzo-p-dioxin (1746-01-6)	0.00020			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		1100		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		1100		
1,1,2,2-tetrachloroethane (79-34-5)	430			
toluene (108-88-3)		98		14.4
toluene diisocyanate, 2,4-(584-84-9) and 2,6-(91-08-7) isomers		0.003		
trichloroethylene (79-01-6)	4000			
trichlorofluoromethane (75-69-4)			140	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				240
vinyl chloride (75-01-4)	26			
vinylidene chloride (75-35-4)		2.5		
xylene (1330-20-7)		57		16.4

(b) A permit to emit toxic air pollutants is required for any facility where all emission release points are unobstructed and vertically oriented whose actual rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

<u>Pollutant (CAS Number)</u>	<u>Carcinogens</u> - <u>lb/yr</u>	<u>Chronic Toxicants</u> - <u>lb/day</u>	<u>Acute Systemic Toxicants</u> <u>lb/hr</u>	<u>Acute Irritants</u> - <u>lb/hr</u>
<u>acetaldehyde (75-07-0)</u>				<u>28.43</u>
<u>acetic acid (64-19-7)</u>				<u>3.90</u>
<u>acrolein (107-02-8)</u>				<u>0.08</u>
<u>acrylonitrile (107-13-1)</u>		<u>1.3</u>	<u>1.05</u>	
<u>ammonia (7664-41-7)</u>				<u>2.84</u>
<u>aniline (62-53-3)</u>			<u>1.05</u>	
<u>arsenic and inorganic arsenic compounds</u>	<u>0.194</u>			
<u>asbestos (1332-21-4)</u>	<u>7.748 x 10<sup>-3</sup></u>			
<u>aziridine (151-56-4)</u>		<u>0.3</u>		
<u>benzene (71-43-2)</u>	<u>11.069</u>			

**PROPOSED RULES**

benzidine and salts (92-87-5)	<u>1.384 x 10<sup>-3</sup></u>			
benzo(a)pyrene (50-32-8)	<u>3.044</u>			
benzyl chloride (100-44-7)			<u>0.53</u>	
beryllium (7440-41-7)	<u>0.378</u>			
beryllium chloride (7787-47-5)	<u>0.378</u>			
beryllium fluoride (7787-49-7)	<u>0.378</u>			
beryllium nitrate (13597-99-4)	<u>0.378</u>			
bioavailable chromate pigments, as chromium (VI) equivalent	<u>0.008</u>			
bis-chloromethyl ether (542-88-1)	<u>0.034</u>			
bromine (7726-95-6)				<u>0.21</u>
1,3-butadiene (106-99-0)	<u>40.585</u>			
cadmium (7440-43-9)	<u>0.507</u>			
cadmium acetate (543-90-8)	<u>0.507</u>			
cadmium bromide (7789-42-6)	<u>0.507</u>			
carbon disulfide (75-15-0)		<u>7.8</u>		
carbon tetrachloride (56-23-5)	<u>618.006</u>			
chlorine (7782-50-5)		<u>1.6</u>		<u>0.95</u>
chlorobenzene (108-90-7)		<u>92.7</u>		
chloroform (67-66-3)	<u>396.631</u>			
chloroprene (126-99-8)		<u>18.5</u>	<u>3.69</u>	
cresol (1319-77-3)			<u>2.32</u>	
p-dichlorobenzene (106-46-7)				<u>69.50</u>
dichlorodifluoromethane (75-71-8)		<u>10445.4</u>		
dichlorofluoromethane (75-43-4)		<u>21.1</u>		
di(2-ethylhexyl)phthalate (117-81-7)		<u>1.3</u>		
dimethyl sulfate (77-78-1)		<u>0.1</u>		
1,4-dioxane (123-91-1)		<u>23.6</u>		
epichlorohydrin (106-89-8)	<u>7655.891</u>			
ethyl acetate (141-78-6)			<u>147.41</u>	
ethylenediamine (107-15-3)		<u>12.6</u>	<u>2.63</u>	
ethylene dibromide (106-93-4)	<u>36.896</u>			
ethylene dichloride (107-06-2)	<u>350.511</u>			
ethylene glycol monoethyl ether (110-80-5)		<u>5.1</u>		<u>2.00</u>
ethylene oxide (75-21-8)	<u>2.490</u>			
ethyl mercaptan (75-08-1)			<u>0.11</u>	
fluorides		<u>0.7</u>	<u>0.26</u>	
formaldehyde (50-00-0)				<u>0.16</u>
hexachlorocyclopentadiene (77-47-4)		<u>2.5 x 10<sup>-2</sup></u>	<u>0.01</u>	
hexachlorodibenzo-p-dioxin (57653- 85-7)	<u>0.007</u>			
n-hexane (110-54-3)		<u>46.3</u>		
hexane isomers except n-hexane				<u>379.07</u>
hydrazine (302-01-2)		<u>2.5 x 10<sup>-2</sup></u>		
hydrogen chloride (7647-01-0)				<u>0.74</u>
hydrogen cyanide (74-90-8)		<u>5.9</u>	<u>1.16</u>	
hydrogen fluoride (7664-39-3)		<u>1.3</u>		<u>0.26</u>
hydrogen sulfide (7783-06-4)		<u>5.1</u>		
maleic anhydride (108-31-6)		<u>0.5</u>	<u>0.11</u>	
manganese and compounds		<u>1.3</u>		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		<u>2.5 x 10<sup>-2</sup></u>		
manganese tetroxide (1317-35-7)		<u>0.3</u>		
mercury, alkyl		<u>2.5 x 10<sup>-3</sup></u>		
mercury, aryl and inorganic compounds		<u>2.5 x 10<sup>-2</sup></u>		
mercury, vapor (7439-97-6)		<u>2.5 x 10<sup>-2</sup></u>		

**PROPOSED RULES**

<u>methyl chloroform (71-55-6)</u>		<u>505.4</u>		<u>257.98</u>
<u>methylene chloride (75-09-2)</u>	<u>2213.752</u>		<u>1.79</u>	
<u>methyl ethyl ketone (78-93-3)</u>		<u>155.8</u>		<u>93.19</u>
<u>methyl isobutyl ketone (108-10-1)</u>		<u>107.8</u>		
<u>methyl mercaptan (74-93-1)</u>			<u>0.05</u>	
<u>nickel carbonyl (13463-39-3)</u>		<u>2.5 x 10<sup>-2</sup></u>		
<u>nickel metal (7440-02-0)</u>		<u>0.3</u>		
<u>nickel, soluble compounds, as nickel</u>		<u>2.5 x 10<sup>-2</sup></u>		
<u>nickel subsulfide (12035-72-2)</u>	<u>0.194</u>			
<u>nitric acid (7697-37-2)</u>				<u>1.05</u>
<u>nitrobenzene (98-95-3)</u>		<u>2.5</u>	<u>0.53</u>	
<u>n-nitrosodimethylamine (62-75-9)</u>	<u>4.612</u>			
<u>non-specific chromium (VI) compounds, as chromium (VI) equivalent</u>	<u>0.008</u>			
<u>pentachlorophenol (87-86-5)</u>		<u>0.1</u>	<u>0.03</u>	
<u>perchloroethylene (127-18-4)</u>	<u>17525.534</u>			
<u>phenol (108-95-2)</u>			<u>1.00</u>	
<u>phosgene (75-44-5)</u>		<u>0.1</u>		
<u>phosphine (7803-51-2)</u>				<u>0.14</u>
<u>polychlorinated biphenyls (1336-36-3)</u>	<u>7.656</u>			
<u>soluble chromate compounds, as chromium (VI) equivalent</u>		<u>2.6 x 10<sup>-2</sup></u>		
<u>styrene (100-42-5)</u>			<u>11.16</u>	
<u>sulfuric acid (7664-93-9)</u>		<u>0.5</u>	<u>0.11</u>	
<u>tetrachlorodibenzo-p-dioxin (1746-01-6)</u>	<u>2.767 x 10<sup>-4</sup></u>			
<u>1,1,1,2-tetrachloro-2,2,- difluoroethane (76-11-9)</u>		<u>2190.2</u>		
<u>1,1,2,2-tetrachloro-1,2- difluoroethane (76-12-0)</u>		<u>2190.2</u>		
<u>1,1,2,2-tetrachloroethane (79-34-5)</u>	<u>581.110</u>			
<u>toluene (108-88-3)</u>				<u>58.97</u>
<u>toluene diisocyanate, 2,4-(584-84-9) and 2,6-(91-08-7) isomers</u>		<u>8.4 x 10<sup>-3</sup></u>		
<u>trichloroethylene (79-01-6)</u>	<u>5442.140</u>			
<u>trichlorofluoromethane (75-69-4)</u>			<u>589.66</u>	
<u>1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)</u>				<u>1000.32</u>
<u>vinyl chloride (75-01-4)</u>	<u>35.051</u>			
<u>vinylidene chloride (75-35-4)</u>		<u>5.1</u>		
<u>xylene (1330-20-7)</u>		<u>113.7</u>		<u>68.44</u>

~~(b)(c)~~ For the following pollutants, the highest emissions occurring for any 15-minute period shall be multiplied by four and the product shall be compared to the value in Paragraph ~~(a)~~. (a) or (b) as applicable. These pollutants are:

- (1) acetaldehyde (75-07-0);
- (2) acetic acid (64-19-7);
- (3) acrolein (107-02-8);
- (4) ammonia (7664-41-7);
- (5) bromine (7726-95-6);
- (6) chlorine (7782-50-5);
- (7) formaldehyde (50-00-0);
- (8) hydrogen chloride (7647-01-0);
- (9) hydrogen fluoride (7664-39-3); and
- (10) nitric acid (7697-37-2).

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S L. 1989, c. 168, s. 45.

# 15A NCAC 02Q .0714 WASTEWATER TREATMENT SYSTEMS AT PULP AND PAPER MILLS

~~(a) This Rule applies to wastewater collection and treatment systems at pulp and paper mills that are exempted under Rule .0702 of this Section.~~

~~(b) Except for facilities that employ activated sludge type wastewater treatment systems, the owner or operator of a wastewater collection and treatment system covered under this Rule shall:~~

- ~~(1) submit to the Director estimates of hydrogen sulfide, total reduced sulfur, and methyl mercaptan emissions from wastewater collection and treatment systems and components using estimation methods or factors developed through industry testing and analytical studies and approved by the Director by November 1, 2005. In deciding approval of the estimation methods and factors, the Director shall consider field validation procedures including the number of valid samples taken, when measurements are made, laboratory and field measurement quality assurance procedures, and other information necessary in producing accurate and precise measurements. The Director shall report to the Environmental Management Commission the information submitted under this Subparagraph by January 1, 2006;~~
- ~~(2) using the emission estimates developed under Subparagraph (b)(1), perform air dispersion modeling of all hydrogen sulfide emission sources, including all emissions associated with the wastewater collection and treatment system, as described in 15A NCAC 02D .1106 (a) through (i). If the modeling analysis demonstrates that predicted concentrations of hydrogen sulfide are below the acceptable ambient levels outlined in 15A NCAC 02D .1104, no further plan development, measurement or monitoring action is required to maintain the exemption provided by this Rule. The results of the favorable modeling demonstration must be submitted to the Director by July 1, 2006. The Director shall report to the Environmental Management Commission the information submitted under this Subparagraph by September 1, 2006;~~
- ~~(3) if the dispersion modeling performed under Subparagraph (b)(2) of this rule shows that the acceptable ambient level for hydrogen sulfide is exceeded, submit to the Director, on or before September 30, 2006, for approval by the Director, an ambient air quality monitoring plan designed to assess actual ambient levels of hydrogen sulfide typical of pulp and paper mill operations. The monitoring plan may be undertaken at each of the individual mill sites~~

~~or, at the option of the affected mill sites, it may be undertaken at a single North Carolina mill site that the Director determines to be representative of the industry. The Director shall complete review and make the decision regarding approval of the monitoring plan by December 31, 2006;~~

- ~~(4) by June 30, 2007, implement the ambient monitoring study plan required in Subparagraph (b)(3) to determine the actual ambient levels of hydrogen sulfide near pulp and paper mills;~~
- ~~(5) complete the ambient hydrogen sulfide monitoring plan and report the results to the Director and to the Chairperson of the Environmental Management Commission by December 31, 2008 and the Director shall report to the Environmental Management Commission the information submitted under this Subparagraph by February 28, 2009 for further consideration.~~

~~(c) To perform ambient monitoring for hydrogen sulfide under Subparagraph (b)(3) of this Rule, the owner or operator shall use monitoring methods and procedures approved by the Director. The Director shall approve the monitoring methods and procedures if he determines that they are an appropriate measure of ambient air concentrations of hydrogen sulfide.~~

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143B-282.

## TITLE 19A – DEPARTMENT OF TRANSPORTATION

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation intends to repeal the rule cited as 19A NCAC 02C .0208.*

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

- ☒ OSBM certified on: July 25, 2013  
☐ RRC certified on:  
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c): [www.ncdot.gov/about/regulations/rules](http://www.ncdot.gov/about/regulations/rules)

Proposed Effective Date: December 1, 2013

Public Hearing:

Date: October 1, 2013

Time: 2:00 p.m. – 3:30 p.m.

Location: Greenfield Parkway Building, Conference Room 161, 750 N. Greenfield Parkway, Garner, NC 27529

Reason for Proposed Action: G.S. 136-44 covers the requirements set out in 19A NCAC 02C .0208-Wheelchair

*Ramps. In addition, the Federal DOT adopted the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 2006 with additional requirements. These requirements require curb ramps to be installed when the pedestrian is trying to reach an accessible route, i.e. sidewalk. NCDOT is required to follow the guidelines as adopted by the Federal DOT.*

**Comments may be submitted to:** Helen Landi, NC Department of Transportation, 1578 Mail Service Center, Raleigh, NC 27699-1578; email hlandi@ncdot.gov

**Comment period ends:** October 14, 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 02 - DIVISION OF HIGHWAYS**

**SUBCHAPTER 02C - SECONDARY ROADS SECTION**

**SECTION .0200 - MINIMUM DESIGN AND CONSTRUCTION CRITERIA FOR SUBDIVISION STREETS**

**19A NCAC 02C .0208 WHEEL CHAIR RAMPS**

~~(a) All street curbs in North Carolina being constructed or reconstructed for maintenance procedures, traffic operation, repairs, correction of utilities or altered for any reason after September 1, 1973 shall provide wheel chair ramps for the physically handicapped at all intersections where curb and gutter is provided and at other major points of pedestrian flow.~~

~~(b) Wheel chair ramps and depressed curbs shall be constructed in accordance with 19A NCAC 2D .0104, "Guidelines - Curb Cuts and Ramps."~~

~~Note: A copy of a booklet entitled, "Guidelines, Curb Cuts and Ramps" may be obtained from the Manager of Highway Design, Division of Highways in Raleigh at no cost.~~

*Authority G.S. 136-18(1); 136-44.1.*

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

**CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Cosmetic Art Examiners intends to amend the rule cited as 21 NCAC 14T .0502 and repeal the rules cited as 21 NCAC 14G .0101, .0107-.0113, .0117-.0118; 14I .0101-.0110, .0201-.0205, .0301-.0304; 14J .0101-.0103, .0107, .0201-.0203, .0206, .0208, .0302-.0303, .0306-.0307, .0501; 14K .0101-.0105; 14L .0208-.0211, .0215-.0216; 14O .0101-.0105; 14P .0112; 14S .0101-.0112.*

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

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.nccosmeticarts.com/uploads/Board/July2013.pdf>

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

**Public Hearing:**

**Date:** August 30, 2013

**Time:** 9:00 a.m.

**Location:** 1207 Front Street, Suite 110, Raleigh, NC 27609

**Reason for Proposed Action:** *To repeal rules that are no longer necessary and amend a stringent regulation.*

**Comments may be submitted to:** Stefanie Kuzdrall, 1207 Front Street, Suite 110, Raleigh, NC 27609

**Comment period ends:** October 14, 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

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

**SUBCHAPTER 14G - REQUIREMENTS FOR THE ESTABLISHMENT OF COSMETIC ART SCHOOLS**

**SECTION .0100 - PERMANENT FILES**

**21 NCAC 14G .0101 REQUIREMENTS FOR OPERATING COSMETIC ART SCHOOLS**

*Authority G.S. 88-23; 88-30.*

- 21 NCAC 14G .0107 EQUIPMENT AND TEACHERS
- 21 NCAC 14G .0108 VISITATION
- 21 NCAC 14G .0109 STUDENT CREDIT
- 21 NCAC 14G .0110 TRANSFERABILITY OF LETTERS OF APPROVAL
- 21 NCAC 14G .0111 CHANGE OF LOCATION: OWNERSHIP OR MANAGEMENT
- 21 NCAC 14G .0112 CONDITION OF EQUIPMENT
- 21 NCAC 14G .0113 TEACHER/STUDENT RATIO

*Authority G.S. 88B-4; 88B-4(a)(9); 88B-11; 88B-16; 88B-22; 88-23; 88-30.*

**21 NCAC 14G .0117 CHANGES IN TEACHING STAFF**

*Authority G.S. 88-23.*

**21 NCAC 14G .0118 SCHOOL CURRICULUM APPROVAL**

*Authority G.S. 88B-4; 88B-16.*

**SUBCHAPTER 14I - OPERATIONS OF SCHOOLS OF COSMETIC ART**

**SECTION .0100 - RECORD KEEPING**

- 21 NCAC 14I .0101 PERMANENT FILES
- 21 NCAC 14I .0102 DAILY RECORD

- 21 NCAC 14I .0103 INSPECTION REPORTS AND REPORTS OF STUDENTS HOURS
- 21 NCAC 14I .0104 WITHDRAWALS
- 21 NCAC 14I .0105 TRANSFER OF CREDIT
- 21 NCAC 14I .0106 STUDENT DAILY RECORDS
- 21 NCAC 14I .0107 REPORT OF ENROLLMENT
- 21 NCAC 14I .0108 SEAL
- 21 NCAC 14I .0109 SUMMARY OF COSMETIC ART EDUCATION
- 21 NCAC 14I .0110 UNIFORM

*Authority G.S. 88B-4; 88B-4(a)(10); 88B-4(7a); 88B-7; 88B-8; 88B-9; 88B-10; 88B-10.1; 88B-16; 88-23.*

**SUBCHAPTER 14J - COSMETOLOGY CURRICULUM**

**SECTION .0100 - BEGINNERS' DEPARTMENT**

- 21 NCAC 14J .0101 DEPARTMENT SYSTEM
- 21 NCAC 14J .0102 UNIFORM
- 21 NCAC 14J .0103 TIME REQUIREMENTS ACCORDING TO HOURS

*Authority G.S. 88B-4; 88-23; 88-26(1).*

**21 NCAC 14J .0107 APPROVED FIELD TRIPS**

*Authority G.S. 88B-4.*

**SECTION .0200 - ADVANCED DEPARTMENT**

- 21 NCAC 14J .0201 ELIGIBILITY FOR ADVANCED DEPARTMENT
- 21 NCAC 14J .0202 PRACTICAL WORK FOR ADVANCED STUDENTS
- 21 NCAC 14J .0203 STORING AND LABELING OF COSMETICS

*Authority G.S. 88B-4; 88-23.*

**21 NCAC 14J .0206 EQUIPMENT IN ADVANCED DEPARTMENT**

*Authority G.S. 88B-4.*

**21 NCAC 14J .0208 INTERNSHIPS**

*Authority G.S. 88B-4.*

**SECTION .0300 - COMBINED STUDIES**

- 21 NCAC 14J .0302 EQUIPMENT
- 21 NCAC 14J .0303 STUDENTS' PERSONAL SUPPLIES

*Authority G.S. 88B-4; 88B-14.*

**21 NCAC 14J .0306 COURSE WORK  
REQUIREMENTS FOR BEGINNERS AND ADVANCED  
21 NCAC 14J .0307 TESTS**  
*Authority G.S. 88-23.*

**SECTION .0500 – CREDIT FOR COSMETOLOGY  
STUDY OUTSIDE OF NORTH CAROLINA**

**21 NCAC 14J .0501 APPROVAL OF CREDIT FOR  
COSMETOLOGY INSTRUCTION/ANOTHER STATE**

*Authority G.S. 88B-16.*

**SUBCHAPTER 14K - MANICURIST CURRICULUM**

**SECTION .0100 - MANICURIST CURRICULUM**

**21 NCAC 14K .0101 UNIFORMS  
21 NCAC 14K .0102 COURSE OF STUDY  
21 NCAC 14K .0103 EQUIPMENT AND  
INSTRUMENTS  
21 NCAC 14K .0104 SERVICES PERFORMED  
21 NCAC 14K .0105 IDENTIFICATION PINS**

*Authority G.S. 88B-4; 88B-10; 88B-14; 88B-16; 88B-23; 88-8;  
88-23.*

**SUBCHAPTER 14L - COSMETIC ART TEACHERS**

**SECTION .0200 - TEACHER PROGRAM AND  
CURRICULUM**

**21 NCAC 14L .0208 SUPERVISION OF COSMETIC  
ART TEACHER TRAINEE  
21 NCAC 14L .0209 TIME REQUIREMENTS FOR  
TEACHER TRAINEE PROGRAM  
21 NCAC 14L .0210 EFFECT ON  
STUDENT-TEACHER RATIO  
21 NCAC 14L .0211 WORK ON PUBLIC  
PROHIBITED**

*Authority G.S. 88B-4; 88B-11; 88-23.*

**21 NCAC 14L .0215 TEACHER'S MANUAL AND  
SUPERVISION  
21 NCAC 14L .0216 TEACHER TRAINING  
CURRICULUM**

*Authority G.S. 88B-4; 88B-11; 88-23.*

**SUBCHAPTER 14O - ESTHETICIAN CURRICULUM**

**SECTION .0100 - ESTHETICIAN CURRICULUM**

**21 NCAC 14O .0101 UNIFORMS  
21 NCAC 14O .0102 COURSE OF STUDY  
21 NCAC 14O .0103 EQUIPMENT AND  
INSTRUMENTS  
21 NCAC 14O .0104 SERVICES PERFORMED**

*Authority G.S. 88B-4; 88B-9; 88B-16.*

**21 NCAC 14O .0105 IDENTIFICATION PINS**

*Authority G.S. 88B-4.*

**SUBCHAPTER 14P - CIVIL PENALTY**

**SECTION .0100 - CIVIL PENALTY**

**21 NCAC 14P .0112 SANITARY RATINGS AND  
POSTING OF RATINGS - APPLICABLE TO  
ESTABLISHMENTS WITH A SANITATION GRADE OF  
LESS THAN 80%**

*Authority G.S. 88B-4; 88B-29.*

**SUBCHAPTER 14S - NATURAL HAIR CARE STYLING  
CURRICULUM**

**SECTION .0100 - NATURAL HAIR CARE**

**21 NCAC 14S .0101 UNIFORM  
21 NCAC 14S .0102 TIME REQUIREMENTS  
ACCORDING TO HOURS  
21 NCAC 14S .0103 APPROVED FIELD TRIPS  
21 NCAC 14S .0104 EQUIPMENT FOR BEGINNER  
DEPARTMENT  
21 NCAC 14S .0105 STORING AND LABELING OF  
COSMETICS  
21 NCAC 14S .0106 EQUIPMENT  
21 NCAC 14S .0107 PERFORMANCES  
21 NCAC 14S .0108 STUDENTS' PERSONAL  
SUPPLIES  
21 NCAC 14S .0109 TESTS  
21 NCAC 14S .0110 APPROVAL OF CREDIT FOR  
NATURAL HAIR CARE INSTRUCTION/ANOTHER  
STATE  
21 NCAC 14S .0111 SERVICES PERFORMED  
21 NCAC 14S .0112 LICENSING OF NATURAL  
HAIR CARE SPECIALISTS**

*Authority G.S. 88B-4; 88B-4(a)(7a); 88B-4(7a); 88B-4-7a; 88B-  
4(a)(9); 88B-4(9); 88B-4(a)(10); 88B-4(10); 88B-10.1; 88B-13;  
S.L. 2009-521.*

**SUBCHAPTER 14T - COSMETIC ART SCHOOLS**

**SECTION .0500 - RECORD KEEPING**

**21 NCAC 14T .0502 PERMANENT RECORDS,  
FORMS AND DOCUMENTATION**

(a) Cosmetic art schools must maintain a secure and locked permanent file of matriculations for all enrolled students and students who have withdrawn or graduated within the last six months together in one room within the approved square footage of the cosmetic art school. Withdrawal and graduation forms reviewed by the Board or an agent of the Board may be removed from this room. The permanent file shall include a copy of:

- (1) Board Enrollment Form;
  - (2) Documentation of student receipt of school policies, school and student contract and the Board felony policy;
  - (3) All applicable Board Withdrawal Forms;
  - (4) Social security card for any individual who has a social security number or tax ID card or student visa information;
  - (5) Government issued ID and proof of date of birth;
  - (6) Grades for all examinations and documentation for pass/fail performances;
  - (7) Documentation for any leave of absence over 30 days;
  - (8) Transfer of hours form documenting hours earned in other schools and hours accepted by current school; and
  - (9) Graduation Form.
- (b) The school shall keep records of hours earned daily including field trip hours and documentation of field trip hours (updated ~~and subtotaled weekly~~ with a running grand total):
- (1) A daily record shall be kept of the performances for each student, showing the actual date of the performance and the teacher who approved;
  - (2) A daily record shall be kept of the actual number of hours of attendance; and
  - (3) Performance Record (updated ~~and subtotaled weekly~~).
- (c) When a student enrolled in a cosmetic art school withdraws from such school, the cosmetic art school shall report to the Board its administrative decision to withdraw the student.
- (d) If a student withdraws from a cosmetic art program within the first five days, the school need not submit the enrollment to the Board.
- (e) The graduation form documentation must be signed by on site school staff or on site school administrators and must have the seal of the school affixed. The original graduation form documentation must be prepared on the Board form. The cosmetic art school shall mail the graduation form to the Board at the Board's address within 30 days of the student's graduation date with the school seal affixed.
- (f) All forms submitted to the Board must be sealed originals and a copy shall be maintained in the school file. All forms submitted to the Board must be completed, except for student signatures as necessary, by on site school staff or on site school administrators. Board forms shall be used for the sole purpose of documenting to the Board student records and shall not be used to notify students of enrollment, transfer of hours, withdrawal or graduation.
- (g) Changes or corrections made by the school to any Board form must be submitted to the Board with supporting documentation.
- (h) All cosmetic art schools must maintain on file at the school an original daily record of enrolled students' hour and performances. This record must be kept in a secured location under lock and key but made available for review by the Board or its agent at any time.
- (i) All records kept by a cosmetic art school on a student who has withdrawn or graduated must be kept in the school's locked files for future reference until the date the student is accepted for the Board examination or five years after the date the student first enrolled in the school, whichever occurs earlier. Forms reviewed by the Board or an agent of the Board may be removed from this room.
- (j) The record of all hours and performances must be documented in writing. Credit issued to students that cannot be verified may be eliminated from the student record by an agent of the Board.
- (k) Access to student records must be limited to agents of the Board, teachers and administrators of the school. Records cannot be altered offsite. Records altered onsite must have documentation supporting the change attached.
- (l) All individuals in a cosmetic art school receiving cosmetic art education, earning hours, performing or practicing cosmetic art services must be enrolled in the school.
- (m) Only teachers reported to the Board as employees of a cosmetic art school may grade practical student examinations and evaluate pass/fail of student performances. Only on site teachers, on site school administrators or on site school staff shall record student hours and performances, grade examinations and determine completion and record credit of live model and mannequin performances.
- (n) Minimum scores required for examinations and the successful completion of live model/mannequin performances as determined through the school's evaluation plan that is approved by the Board at the time of application shall be disclosed to students at the time of enrollment. Passing grades and performances cannot be credited to students who fail to meet the requirements of the evaluation plan.
- (o) Cosmetic art schools must provide to each student a copy of school policies, the Board felony policies and shall retain for the permanent file a copy of the student's acknowledgement of receipt of these policies.
- (p) The names of students with unsatisfied academic obligations shall not be submitted to the Board as graduates but may be submitted as withdrawn.
- (q) Cosmetic art schools shall not report to the Board the unsatisfied financial obligations of any cosmetic art student. Cosmetic art schools shall not prevent the graduation of students who have met the Board minimum requirements and passed all school academic requirements.
- (r) Records of hours must be rounded to no more than the nearest quarter hour. Cosmetic art schools shall not give or deduct hours or performances as a rewards or penalties.
- (s) An applicant may receive credit for instruction taken in another state if the conditions set forth in this Rule are met. In order to determine if the conditions have been met the applicant's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records on a case-by-case basis.



(t) Hours transferred between open North Carolina schools must be obtained by the submission of the Board transfer form mailed directly from the school in which the hours are earned with the school seal affixed, with grades for examinations and performances to the new school in which a student enrolls. Such original documentation shall be submitted to the Board with enrollment.

(u) A student must pass an entrance examination given by the school to which the student is transferring for the hours to be transferred from one cosmetic art school to another.

*Authority G.S. 88B-4; 88B-16.*

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## CHAPTER 57 – REAL ESTATE APPRAISAL BOARD

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Appraisal Board intends to amend the rule cited as 21 NCAC 57A .0202.*

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

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

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

**Proposed Effective Date:** *January 1, 2014*

**Public Hearing:**

**Date:** *September 10, 2013*

**Time:** *9:00 a.m.*

**Location:** *5830 Six Forks Road, Raleigh, NC 27609*

**Reason for Proposed Action:** *The Appraisal Board has been using Carolina Investigative Research for its criminal background checks and now wishes to use a different company. Rather than have to name the company to be used in this rule, the Board proposes to amend the rule to state that the Board may choose a vendor to provide this service. This gives the Board flexibility to change companies in the future when the contract for background checks is put out to bid.*

**Comments may be submitted to:** *Roberta Ouellette, 5830 Six Forks Road, Raleigh, NC 27609; phone (919) 870-4854; fax (919) 870-4859; email roberta@ncab.org*

**Comment period ends:** *October 14, 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

## SUBCHAPTER 57A - REGISTRATION LICENSING, CERTIFICATION AND PRACTICE

### SECTION .0200 - TRAINEE REGISTRATION, APPRAISER LICENSING AND CERTIFICATION

#### 21 NCAC 57A .0202 FITNESS FOR REGISTRATION OR CERTIFICATION

(a) The Appraisal Board shall consider the fitness for registration or certification of each applicant. When the fitness of an applicant is in question, action by the Board shall be deferred until the applicant has affirmatively demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.

(b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his or her competency or fitness for registration or certification at a hearing before the Board.

(c) The inquiry into fitness for registration or certification may include consideration of whether the applicant has:

- (1) had disciplinary action taken against any professional license in North Carolina or any other state;
- (2) committed or done any act which, if committed or done by any real estate trainee or appraiser, would be grounds under the provisions hereinafter set forth for disciplinary action including the suspension or revocation of registration, licensure, or certification; or
- (3) been convicted of or pleaded guilty to any criminal act, or whether any such actions or charges are pending.

(d) All applicants for registration or certification shall obtain a criminal records check from a vendor approved by the Board. ~~Carolina Investigative Research, Inc., an agency designated by the Appraisal Board to provide criminal record reports.~~ This records check must have been performed within 60 days of the date the completed application for registration or certification is received by the Board. Applicants shall pay the vendor directly ~~designated reporting service~~ for the cost of these reports.

(e) Notice to the applicant that his or her competency or fitness for registration or certification is in question shall be sent by the Board in writing, by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time constitutes a waiver of the applicant's right to a hearing

on his or her application for registration or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for registration or certification.

*Authority G.S. 93E-1-10.*

*This Section contains information for the meeting of the Rules Review Commission on July 18, 2013 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Addison Bell  
Margaret Currin  
Pete Osborne  
Bob Rippy  
Faylene Whitaker

**Appointed by House**

Ralph A. Walker  
Anna Baird Choi  
Jeanette Doran  
Garth K. Dunklin  
Stephanie Simpson

**COMMISSION COUNSEL**

Joe DeLuca (919)431-3081  
Amanda Reeder (919)431-3079

**RULES REVIEW COMMISSION MEETING DATES**

August 15, 2013      September 19, 2013  
October 17, 2013      November 21, 2013

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**RULES REVIEW COMMISSION MEETING  
MINUTES****July 18, 2013**

The Rules Review Commission met on Thursday, July 18, 2013, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Stephanie Simpson, Ralph Walker and Faylene Whitaker.

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

The meeting was called to order at 10:03 a.m. with Vice-Chairman Currin presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

**APPROVAL OF MINUTES**

Vice-Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the June 19, 2013 meeting. There were none and the minutes were approved as distributed.

Chief Administrative Law Judge Julian Mann introduced the new OAH Security officer CJ Stephens.

Commissioner Doran introduced Neal Inman and Rita Beard, interns with her office.

**FOLLOW-UP MATTERS****Office of Information Technology Services**

09 NCAC 06A .0101, .0102, .0103; 06B 0101, .0102, .0103, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0316, .0401, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0505, .0601, .0602, .0603, .0701, .0702, .0703, .0801, .0901, .0902, .1001, .1002, .1003, .1004, .1005, .1006, .1008, .1101, .1102, .1103, .1104, .1105, .1106, .1107, .1108, .1109, .1110, .1111, .1112, .1114, .1115, .1117, .1118, .1120, .1121, .1201, .1202, .1203, .1204, .1205, .1206, .1207, .1301, .1302, .1303,

.1304, .1305, .1402 – The Commission voted to object to the rules for the reasons stated below. They also included in that vote the approval of all the rewritten – either technical changes or substantive changes – rules submitted with the condition that any changes not yet received were approved contingent upon receiving the changes by Friday, August 2. The remaining rules were approved as submitted. All the rules will have an effective date of September 1, 2013.

09 NCAC 06A and 06B (All rules submitted) -- Throughout these rules it is unclear in many cases who is responsible for making decisions or enforcing the rules. Many of the rules specify the State CIO shall take some action. For instance Rule 06A .0103 leaves it to the State CIO to establish a benchmark amount over which the “Board of Awards” must review “ITS recommended action.”

Rule 06B .0101 on the other hand states that a purchasing agency must request authorization for procurement action from “ITS” and does not mention the State CIO.

There is a definition for the State CIO which is not necessary since it is a statutory office. However there is no definition for ITS and in many cases it is not clear who makes the decision for ITS. It would also seem that the State CIO could always make an ITS designated decision since he or she is the department head. At the same time some of the rules clearly give decision making authority to ITS rather than to the State CIO or his or her delegate.

This objection applies to all rules where it is unclear who has the decision making authority.

09 NCAC 06A .0102 – The Commission objected to this rule based on the ambiguity of terms in other rules. In (11) line 11, the rule is unclear as to what “respective” offers are referred to. If it simply means any of the offers that are received, then the adjective is unnecessary and may be confusing. If that is the case it could be deleted without changing the meaning. In line 14 it is unclear what is meant by or constitutes “evaluation credit.”

09 NCAC 06A .0103 – In (f) line 18, it is unclear what constitutes or is meant by “special delegation.”

09 NCAC 06B .0301 – In (b) line 14 and (b)(2) line 30, it is unclear what constitutes or is meant by “special delegation.” The term is undefined here or in the definitions rule.

In (b)(1)(A) line 25, it is unclear what the advertising approval standards are. There is no authority to make those standards outside rulemaking.

In (b)(3), page 2 line 6, it is unclear what standards shall be used to grant “approval prior to proceeding” with the procurement process. There is no authority to make those standards outside rulemaking.

It is not clear who has the authority to make awards under this rule. Rule 06A .0103 gives either the Board of Awards or the state CIO – it’s not abundantly clear which one – the decision making role for contracts exceeding the benchmark amount. This rule in (b)(3)(C) appears to give it to either ITS – the office, or to the CIO. A related issue is that it is not clear who or what constitutes ITS decision making that is separate from the CIO. If they are not separate entities for this purpose, then it is unclear why they are both referred to and whether there is any separate function for each.

09 NCAC 06B .0309 – In (b) line 12, it is unclear what standards the State CIO is going to use to determine which agency personnel’s participation is “necessary . . . in the procurement process” so as to be entitled to possess offers and otherwise conclude the award process.

09 NCAC 06B .0314 – In (b)(1)(A), page 3 lines 5 and 6, there are no specific guidelines for ITS to use in deciding whether to waive the advertising methods required by this rule. G.S. 150B-19(6) allows an agency to waive or modify the application of any of its requirements if “a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.” There are no guidelines whatsoever in this rule.

In the objection for rule 6B .0301 there is mention of a problem with the role of the office of ITS and the role of the State CIO in making certain determinations. That problem is present in this rule in (b)(1)(A). This paragraph gives ITS waiver authority and it’s not clear who is ITS if it’s not the State CIO. What makes it even murkier is the fact that paragraph (a) gives a similar waiver authority to the State CIO in (a)(2) lines 15 and 16.

As part of the same issue is the fact that the State CIO’s waiver authority in (a)(4) is limited by the conditions in (a)(4)(A) – (F) whereas in (b)(1)(A) there is no limitation on the Office of ITS’ waiver authority.

Paragraph (b)(5), page 4 lines 13 and 14, contains a waiver, “unless otherwise directed by ITS”, without specific guidelines. Paragraph (b)(7) includes a “valid reason[s] to request a waiver in (B) and what must be included in the waiver request in (C), but there are no standards set out for what ITS shall use in determining whether to grant a waiver.

09 NCAC 06B .0316 – In (a) and throughout this rule it is unclear who or what constitutes “ITS” and the “State CIO.” As mentioned earlier the distinction or difference between the two is unclear and whether one can overrule the other is unclear.

In (a) it is also unclear what standards ITS or the State CIO will use to grant “prior approval to negotiate.”

There are also no standards in (b) line 10 for approving negotiating procedures.

09 NCAC 06B .0405 – In (a) lines 5 and 6 it is unclear what standards ITS will use to determine “acceptable” communication methods.

09 NCAC 06B .0504 – In the last sentence it is unclear what standards ITS shall use in determining whether to grant approval for a purchasing agency to exceed its delegation or delegated purchasing amount. There is no authority cited to set those standards outside rulemaking.

09 NCAC 06B .0701 – This rule, when read together with the next rule, makes it unclear whether an agency is actually prohibited from soliciting an agency specific term contract when there is a statewide term contract. Subparagraph (a)(2) contains a blanket prohibition against agencies’ purchasing “goods and services included in a statewide term contract from any other source ....” The rule continues with what appears to be a waiver “... unless authorized by the State CIO.” This would appear to allow the agency to seek an agency specific term contract, overriding the specific rule prohibition by obtaining a waiver.

However the next rule contains language that makes the existence of an “available statewide term ... contract” simply a factor to be considered in deciding whether an agency may be allowed its own term contract. It also makes it a factor for the agency, not ITS, to consider.

Aside from that issue of ambiguity, if an agency is prohibited from its own contract unless a waiver is obtained, it is unclear what the guidelines are for obtaining that waiver in (a)(2). There is no authority cited to set those waiver terms outside rulemaking.

In (a)(4) line 23, it’s unclear what standards ITS will use to grant approval for an agency to issue a solicitation for its own agency specific contract.

In (f), page 2 lines 11 and 12, it is unclear what standards or guidelines the State CIO will use in deciding whether to approve a waiver of any ITS’ standard term or condition. There is no authority cited to set the waiver guidelines outside rulemaking.

09 NCAC 06B .0702 – It is unclear whether (b) of this rule when read together with the preceding Rule .0701(a) prohibits or allows agency specific contracts when there is already a statewide term contract for a good or service. (An “agency specific contract” is a contract between a single state agency and a vendor. A “statewide” contract is a contract that applies to all state agencies and a vendor.)

Rule .0701(a)(2) contains a blanket prohibition: “No purchasing agency may purchase IT goods or services included in a statewide term contract from any other source [than the statewide contracted vendor]....” It goes on and provides the possibility for a waiver: “... unless authorized by the State CIO” (There are no guidelines for the waiver in Rule .0701, but that is a separate issue since they can be set out.)

But this rule states that one of the grounds an agency shall consider for determining “whether a good or service will be included in an agency specific contract” and the agency would be allowed to seek its own contract vendor, is an “available statewide term ... contract.” This factor’s inclusion in a list in this rule makes it seem as if it is one item to consider in deciding whether to grant an agency permission to issue its own solicitation and award its own contract. The rule in .0701 starts with a blanket prohibition.

Thus, these rules are unclear as to whether the state intends as a general rule to prohibit a separate agency contract where there already exists a statewide contract or whether that is simply one of a number of factors to consider on a case-by-case basis.

It is also unclear, as mentioned in the previous analysis, whether this is a decision for the agency to make or whether this is a decision for ITS.

09 NCAC 06B .0703 – In line 7, it is unclear what the standards are for ITS approval for the increase in value; there is no authority to set those standards outside rulemaking.

09 NCAC 06B .1102 – In (a) line 5 it is unclear what “actively and consistently” means or what constitutes “actively and consistently” responding to an offeror’s protest.

There are no standards specified for determining when the State CIO will or will not impose a penalty as set out in (g). The offense – a frivolous protest or a protest filed without any substantial basis or reasonable expectation to believe that the protest was meritorious – is set out. But there are no standards set out for when the State CIO “may” choose to use his discretion and impose it. Another way to look at it is that even though such an offensive protest may have been filed, and it is determined to be such, there is no obligation to impose the penalty. Thus, even if the authority for the penalty is there, the standards for imposing it or for the period – “up to one year” – of the bar are unclear. There is no authority cited for determining the grounds or the period outside rulemaking.

09 NCAC 06B .1103 – It is unclear what the filing and service requirements are for a contested case hearing. The rule requires a request for hearing to be filed by using the U.S. Mail. Rule .1104 defines “filing” to be placing a document or

item in the “care and custody of the hearing officer and acceptance by him” which both restricts and expands the provisions of Rule .1103. It restricts the application of the previous rule by requiring “acceptance” of the paper or item. It expands the application by allowing delivery by any means that places that paper or item in the “care and custody” of the hearing officer.

Also in (3) of this rule, the definition of service includes service by other sources than the U.S. Mail required by the previous rule.

09 NCAC 06B .1104 – For the same reasons as stated in the previous rule it is unclear what constitutes “[s]ervice or serve” in (3) of this rule.

09 NCAC 06B .1121 – In (f) and (g) it is unclear what costs are referred to in each paragraph and how they are to be charged. Both paragraphs refer to “other copying costs” while (f) refers to “transcript costs” and (g) refers to costs incurred “using a professional court reporter” which would presumably include transcript costs.

It is also unclear who is to pay the cost in each case since (f) puts the charge on the party(ies) requesting the transcript and (g) makes it “apportioned equally among the parties.”

09 NCAC 06B .1201 – In (d) line 17 it is unclear whether ITS intends to state that its “departmental policy” amounts to the level of a rule or whether this means merely that this is the way a person can determine how the agency intends to apply or interpret its “policy.”

There is no authority cited to treat policy the same as a rule or to set rules by “policy” declaration.

09 NCAC 06B .1204 – In (4) line 9 it is unclear what the definition of “plainly irreconcilable” is.

Also, the agency has no authority to say that a declaratory ruling is no longer valid based on an appellate court case, at least in a case where a party to the ruling was not a party to the appellate court case. G.S. 150B-4(a) specifically addresses that issue by stating that the declaratory ruling is binding on the agency “... unless [the declaratory ruling] is altered or set aside by the court (emphasis added).”

As a general rule the only way for a specific declaratory ruling to be set aside by a court would be for the parties to the ruling to be in court over that ruling. An appellate ruling construing some statute or rule and not involving the declaratory ruling is not the basis for nullifying the declaratory ruling. If the agency feels a court ruling puts one of its declaratory rulings in jeopardy, then the solution is for the agency to take the action the APA allows: the agency can go through the process and prospectively change the declaratory ruling.

09 NCAC 06B .1206 – The rule is ambiguous in paragraph (b). There are no standards other than “for cause” set out for determining when ITS may remove or debar a vendor or for determining the period of debarment. “For cause” is a vague standard and not a sufficient guideline.

09 NCAC 06B .1303 – In lines 7 and 8 it is unclear what standards the State CIO “may [use to] approve an increase in an agency’s general delegation.” There are no standards set out in (a) or elsewhere in this rule for the CIO to use. There is no authority to set those standards outside rulemaking.

There are no standards set in (b) for when the State CIO will require “an award recommendation under such delegation [to] be sent to ITS for review....”

09 NCAC 06B .1305 – There is no authority cited for ITS to enter another agency’s premises and review its records as set out in (b) and (a) respectively without that agency’s permission and voluntary cooperation.

The rule in (c) repeats much of the content in rules .1303 and .1304. It may be unclear what the various requirements amount to or when they apply.

### **Environmental Management Commission**

15A NCAC 02B .0295 – The Commission unanimously approved the re-written rule.

The Commission has received at least 10 letters of objection for this Rule and it is now subject to legislative review.

### **Board of Barber Examiners**

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because the law firm where she is employed provides legal services to the Board.

21 NCAC 06A .0103, .0303; 06C .0907, 06F.0101, .0116; 06H .0101; 06I .0105; 06J .0101; 06K .0104; 06L .0103; .0114, .0118, .0119; 06M .0101, .0102; 06N .0104, .0105, .0108, .0109, .0112; 06Q .0101, .0103; 06S .0101 – There was a

motion to extend the period of review for these rules. Commissioners Walker, Whitaker, Doran and Currin voted in favor of the motion. Commissioners Simpson and Dunklin voted against the motion.

Bain Jones with the Board addressed the Commission

**Hearing Aid Dealers and Fitters Board:**

21 NCAC 22F .0120, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209 – There has been no response from the agency. No action was taken on these rules.

**LOG OF FILINGS**

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

**Private Protective Services Board**

Rules 12 NCAC 07D .0104, .0115, .0203 and .0807 - The Commission objected to these rules based on failure to complete the technical corrections requested to ensure compliance with the Administrative Procedure Act and clarify ambiguous language.

Rules 12 NCAC 07D .0301, .0302, .0401, .0501, .0601, .0807, .0901 and .0909 - The Commission objected to these rules finding the Board lacks statutory authority to abrogate the statute by requiring military spouses to have a license or experience, when both are required by G.S. 93B-15.1(b).

Further, the Commission found the Board lacks statutory authority to require military spouses to have military training to qualify for licensure pursuant to G.S. 93B-15.1(b), as set forth in Rules .0301, .0401, .0901 and .0909.

The Commission further objected to Rules .0501, .0601, .0901 and .0909 finding the Board lacks statutory authority to set higher licensure requirements for military trained applicants than those required for other applicants.

**Board of Dental Examiners**

Prior to the review of the rules from the Board of Dental Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because the law firm where she is employed provides legal services to the Board.

Prior to the review of the rules from the Board of Dental Examiners, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning these rules because of potential conflict with her husband's law firm.

21 NCAC 16A .0104 - The Commission objected to this Rule based on failure to complete the technical corrections requested to ensure compliance with the Administrative Procedure Act.

21 NCAC 16B .0101, .0317, .1001 and .1002 - The Commission objected to these rules based on failure to complete the technical corrections requested to ensure compliance with the Administrative Procedure Act and clarify ambiguous language.

In addition, the Commission objected to Rule 16B .1001, finding the Board lacked statutory authority to require that military trained applicants be actively serving in the military in order to qualify for licensure pursuant to G.S. 93B-15.1.

21 NCAC 16C .0101 and .0301 - The Commission objected to the rules based on failure to complete the technical corrections requested to ensure compliance with the Administrative Procedure Act and clarify ambiguous language.

21 NCAC 16G .0107 and .0108 - The Commission objected to both rules based on failure to complete the technical corrections requested to ensure compliance with the Administrative Procedure Act and clarify ambiguous language.

In addition, the Commission objected to Rule 16G .0107, finding the Board lacked statutory authority to require that military trained applicants be actively serving in the military in order to qualify for licensure pursuant to G.S. 93B-15.1.

21 NCAC 16M .0101 - The Commission objected to the rule based on failure to complete the technical corrections requested, which would ensure compliance with the Administrative Procedure Act and clarify questions regarding statutory authority to set a fee.

Caroline Bakewell with the Board addressed the Commission.

**G.S 150B-19.1(h) RRC CERTIFICATION**

**Department of Insurance**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 11 NCAC 11F .0505 and the repeal of rules .0501, .0502, .0503, .0504.

**Department of Labor**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rule 13 NCAC 13 .0401.

**COMMISSION BUSINESS**

Amanda Reeder and Molly Masich updated the Commission on H.B. 74.

Amanda Reeder updated the Commission on legislation being tracked by staff.

The meeting adjourned at 11:54 a.m.

The next scheduled meeting of the Commission is Thursday, August 15th at 10:00 a.m.

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

Respectfully Submitted,

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Julie Edwards  
Editorial Assistant

Minutes approved by the Rules Review Commission:

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Margaret Currin, Vice-Chair



Rules Review Commission

Meeting

Please Print Legibly

**JULY 18, 2013**

Name	Agency
Richard Bradford	DOJ - ITS
Karen Higgins	DENR
ERIC KULZ	DENR
ERIN GOULD	NCDOH
ROSS SMITH	POMERLEAU CORP - PCS PLASTICATE CO., INC
ROBERT POTTER	DEPT. OF INSURANCE
Brian James	NCBRE
Michael Ellison	
Carolin Bakewell	<del>BA</del> Dental BA
Bobby WHITE	DENTAL BOARD
Jennifer Everett	DENR
Neil Inman	— NCICL
Rita Beard	NCICL
Karen Wadden	NCDOH

**LIST OF APPROVED PERMANENT RULES  
July 18, 2013 Meeting**

**INFORMATION TECHNOLOGY SERVICES, OFFICE OF**

<u>Forms, Terms and Conditions</u>	09 NCAC 06A .0101
<u>Definitions</u>	09 NCAC 06A .0102
<u>Benchmark and the Board of Awards</u>	09 NCAC 06A .0103
<u>Procedure</u>	09 NCAC 06B .0101
<u>Verbal Requests</u>	09 NCAC 06B .0102
<u>Confidentiality of Solicitation Documents</u>	09 NCAC 06B .0103
<u>Development of IT Solicitation Documents and Specifications</u>	09 NCAC 06B .0201
<u>Need</u>	09 NCAC 06B .0202
<u>Development of Specifications</u>	09 NCAC 06B .0203
<u>Articles for Special Purposes</u>	09 NCAC 06B .0204
<u>Submission for Adoption</u>	09 NCAC 06B .0205
<u>Copies of Specifications</u>	09 NCAC 06B .0206
<u>Confidentiality</u>	09 NCAC 06B .0207
<u>Procurement Procedures</u>	09 NCAC 06B .0301
<u>Methods of Source Selection</u>	09 NCAC 06B .0302
<u>Electronic Offers</u>	09 NCAC 06B .0303
<u>Recall of Offers</u>	09 NCAC 06B .0304
<u>Public Opening</u>	09 NCAC 06B .0305
<u>Late Offers</u>	09 NCAC 06B .0306
<u>Clerical Errors and Clarifications</u>	09 NCAC 06B .0307
<u>Extension of Offer Validity</u>	09 NCAC 06B .0308
<u>Evaluation</u>	09 NCAC 06B .0309
<u>Notification of Award</u>	09 NCAC 06B .0310
<u>Lack of Competition</u>	09 NCAC 06B .0311
<u>Solicitation Documents</u>	09 NCAC 06B .0312
<u>Division of Commodities and Service Needs</u>	09 NCAC 06B .0313
<u>Advertisement and Notice</u>	09 NCAC 06B .0314
<u>Mandatory Conferences/Site Visits</u>	09 NCAC 06B .0315
<u>Negotiation</u>	09 NCAC 06B .0316
<u>Rejection of Offers</u>	09 NCAC 06B .0401
<u>Public Record</u>	09 NCAC 06B .0402
<u>Negotiation</u>	09 NCAC 06B .0403
<u>Notice of Rejection</u>	09 NCAC 06B .0404
<u>Debriefing Offerors</u>	09 NCAC 06B .0405
<u>Responsibility</u>	09 NCAC 06B .0501
<u>Inspection</u>	09 NCAC 06B .0502
<u>Samples</u>	09 NCAC 06B .0503
<u>Modifications of Contract Specifications</u>	09 NCAC 06B .0504
<u>Report of Discrepancy</u>	09 NCAC 06B .0505
<u>Enforcement</u>	09 NCAC 06B .0601
<u>Report to ITS</u>	09 NCAC 06B .0602
<u>Responsibility of Purchasing Agency</u>	09 NCAC 06B .0603

<u>Use and Description</u>	09 NCAC 06B .0701
<u>Determining Factors</u>	09 NCAC 06B .0702
<u>Extension of Contract Termination Dates</u>	09 NCAC 06B .0703
<u>Use</u>	09 NCAC 06B .0801
<u>Conditions for Limited or Waived Competition</u>	09 NCAC 06B .0901
<u>Approval and Documentation</u>	09 NCAC 06B .0902
<u>Confidentiality</u>	09 NCAC 06B .1001
<u>Payment Plans</u>	09 NCAC 06B .1002
<u>Change in Corporate Structure or Assignment</u>	09 NCAC 06B .1003
<u>Purchasing from or through Agency Employees</u>	09 NCAC 06B .1004
<u>Anticompetitive, Deceptive, and Fraudulent Practices</u>	09 NCAC 06B .1005
<u>Cooperative Purchasing</u>	09 NCAC 06B .1006
<u>Board of Awards</u>	09 NCAC 06B .1008
<u>Right to Hearing</u>	09 NCAC 06B .1101
<u>Protest Procedures for Award of Contracts</u>	09 NCAC 06B .1102
<u>Request for Hearing</u>	09 NCAC 06B .1103
<u>Definitions</u>	09 NCAC 06B .1104
<u>General Provisions</u>	09 NCAC 06B .1105
<u>Order for Prehearing Statements</u>	09 NCAC 06B .1106
<u>Duties of the Hearing Officer</u>	09 NCAC 06B .1107
<u>Consent Order, Settlement, Stipulation</u>	09 NCAC 06B .1108
<u>Settlement Conference</u>	09 NCAC 06B .1109
<u>Prehearing Conference</u>	09 NCAC 06B .1110
<u>Discovery</u>	09 NCAC 06B .1111
<u>Consolidation of Cases</u>	09 NCAC 06B .1112
<u>Sanctions</u>	09 NCAC 06B .1114
<u>Motions</u>	09 NCAC 06B .1115
<u>Continuances</u>	09 NCAC 06B .1117
<u>Rights and Responsibilities of Parties</u>	09 NCAC 06B .1118
<u>Evidence</u>	09 NCAC 06B .1120
<u>Final Agency Decision; Official Record</u>	09 NCAC 06B .1121
<u>Declaratory Rulings</u>	09 NCAC 06B .1201
<u>Requests for Declaratory Rulings</u>	09 NCAC 06B .1202
<u>Response to a Request for a Declaratory Ruling</u>	09 NCAC 06B .1203
<u>Effect of a Declaratory Ruling</u>	09 NCAC 06B .1204
<u>Record of Ruling</u>	09 NCAC 06B .1205
<u>Default Proceedings; Disqualification; and Debarment</u>	09 NCAC 06B .1206
<u>Faithful Performance</u>	09 NCAC 06B .1207
<u>Exemptions</u>	09 NCAC 06B .1301
<u>Emergency Situations or Pressing Need</u>	09 NCAC 06B .1302
<u>Special Delegations</u>	09 NCAC 06B .1303
<u>General Delegations</u>	09 NCAC 06B .1304
<u>Compliance Reviews</u>	09 NCAC 06B .1305
<u>Procurement File Records</u>	09 NCAC 06B .1402

**ENVIRONMENTAL MANAGEMENT COMMISSION**Mitigation Program Requirements for Protection and Maintenance...15A NCAC 02B .0295

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**LIST OF CERTIFIED RULES**  
**July 18, 2013 Meeting****INSURANCE, DEPARTMENT OF**Definitions

11 NCAC 11F .0501

Individual Annuity or Pure Endowment Contracts

11 NCAC 11F .0502

Group Annuity or Pure Endowment Contracts

11 NCAC 11F .0503

Application of the 1994 GAR Table

11 NCAC 11F .0504

Model Rule for Recognizing a New Annuity Mortality Table ...

11 NCAC 11F .0505

**LABOR, DEPARTMENT OF**Design and Construction Standards

13 NCAC 13 .0401

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

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

**Senior Administrative Law Judge**  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby

Randall May  
A. B. Elkins II  
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
ABC Commission v. Dos Perros Restaurant LLC T/A Dos Perros Restaurant	12 ABC 05312	09/25/12	
ABC Commission v. Bobby Warren Joyner T/A Hillsdale Club	12 ABC 06153	11/06/12	
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	12 ABC 07260	12/11/12	
ABC Commission v. Fat Cats Grill and Oyster Bar Inc, T/A Fat Cats Grill and Oyster Bar	12 ABC 08988	12/19/12	
ABC Commission v. Wachdi Khamis Awad T/A Brothers in the Hood	12 ABC 09188	03/06/13	
ABC Commission v. Double Zero, LLC, T/A Bad Dog	12 ABC 11398	04/08/13	
ABC Commission v. Soledad Lopez de Avilez T/A Tienda Avilez	13 ABC 00002	06/06/13	
<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>			
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Brian J. Johnson v. Department of Public Safety Victim Services	12 CPS 01664	12/21/12	
George H. Jagers, III v. Crime Victims Compensation Commission	12 CPS 01693	11/01/12	
Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12	
Jacqueline M Davis victim-Antonio T Davis v. Dept. of Public Safety	12 CPS 05919	11/06/12	
Demario J. Livingston v. Dept. of Public Safety Victim Services	12 CPS 06245	10/19/12	
Shirley Ann Robinson v. N.C. Crime Victims Compensation Commission	12 CPS 07601	12/07/12	
Harold Eugene Merritt v. State Highway Patrol	12 CPS 07852	05/24/13	
Vanda Lawanda Johnson v. Office of Victim Compensation	12 CPS 09709	04/25/13	
Latoya Nicole Ritter v. Crime Victim Compensation Commission, Janice Carmichael	12 CPS 10572	04/25/13	
Teresa F. Williams v. Crime Victims Compensation Commission	13 CPS 09790	07/11/13	

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Stonestrow Group Home Medicaid Provider #6603018 Owned by Alberta Professional Services Inc v. DHHS, Division of Mental Health/Development Disabilities/ Substance Abuse, and DMA	09 DHR 05790	01/11/13	
Bright Haven Residential and Community Care d/b/a New Directions Group Home v. Division of Medical Assistance, DHHS	10 DHR 00232	04/27/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home, v. DHHS/Division of Health Service Regulation, Adult Care Licensure Section	10 DHR 01666	05/18/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12	
Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12	
Robert T. Wilson v. DHHS, DHSR	10 DHR 07700	01/29/13	
Daniel J. Harrison v. DHHS Division of Health Service Regulation	10 DHR 07883	04/12/13	28:02 NCR 73
Mary Ann Barnes v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 6488	07/16/12	
Comprehensive PT Center v. DHHS, Division of Medical Assistance	11 DHR 9197	08/14/12	27:12 NCR 1204
Cherry's Group Home, Alphonso Cherry v. DHSR Michelle Elliot	11 DHR 09590	07/12/12	
Leslie Taylor v. DHHS, Division of Health Regulation	11 DHR 10404	10/19/12	
Powell's Medical Facility and Eddie N. Powell, M.D., v. DHHS, Division of Medical Assistance	11 DHR 01451	03/05/12	27:01 NCR 75
Julie Sadowski v. DHHS, Division of Health Service Regulation	11 DHR 01955	04/03/12	
Carlos Kendrick Hamilton v. DHHS, Division of Social Services	11 DHR 11161	10/16/12	27:16 NCR 1679
Teresa Diane Marsh v. DHHS, Division of Health Service Regulation	11 DHR 11456	04/27/12	
Betty Parks v. Division of Child Development, DHHS	11 DHR 11738	06/20/12	
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Timothy John Murray v. DHHS, Division of Health Service Regulation	11 DHR 12594	06/15/12	
Holly Springs Hospital II, LLC v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Harnett Health System, Inc. and WakeMed	11 DHR 12727	04/12/12	27:04 NCR 486
Rex Hospital, Inc., v. DHHS, Division of Health Service Regulation, CON Section and WakeMed, Holly Springs Hospital II, LLC, and Harnett Health System, Inc.	11 DHR 12794	04/12/12	27:04 NCR 486
Harnett Health System, Inc., v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Holly Springs Hospital II, LLC, and WakeMed	11 DHR 12795	04/12/12	27:04 NCR 486
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Holly Springs Hospital II, LLC, Rex Hospital, Inc., and Harnett Health System, Inc	11 DHR 12796	04/12/12	27:04 NCR 486
Sandra Ellis v. DHHS	11 DHR 12959	07/11/12	
Shirley Dowdy v. DHHS	11 DHR 13267	03/25/13	
Vendell Haughton v. DHHS, Division of Medical Assistance	11 DHR 13616	07/05/12	
Tarsand Denise Morrison v. DHHS, Division of Health Service Regulation	11 DHR 13906	07/11/12	
Care Well of Charlotte Inc, Joy Steele v. DHHS	11 DHR 13909	08/02/12	
Carrie's Loving Hands Inc. #MHL #040-047 Felicia McGee v. DHHS, DHSR, Mental Health Licensure and Certification	11 DHR 14172	01/22/13	
Carrie's Loving Hands Inc. #MHL #010-047 Felicia McGee v. DHHS, DHSR, Mental Health Licensure and Certification	11 DHR 14173	01/22/03	
Michael Timothy Smith, Jr. v. DHHS, Division of Health Service Regulation	11 DHR 14184	08/01/12	
John S. Won v. DHHS	11 DHR 14232	09/05/12	27:15 NCR 1547
Cynthia Tuck Champion v. DHHS, Division of Health Service Regulation	11 DHR 14283	06/15/12	
Leslie Taylor, and Octavia Carlton v. Mecklenburg County Department of Social Services Youth and Family Services Division	11 DHR 14335	10/12/12	
Lauren Stewart v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 14570	06/08/12	
Alice M. Oakley v. Division of Child Development, DHHS	11 DHR 14571	05/15/12	27:04 NCR 508
Andrea D. Pritchett v. DHHS Healthcare Personnel Registry Section	11 DHR 14885	01/04/13	28:02 NCR 91
McWilliams Center for Counseling Inc., v. DHHS, Division of Mental Health, Developmental Disabilities, Substance Abuse Services, and agency of the State of NC	11 DHR 15098	11/13/12	
Althea L. Flythe v. Durham County Health Department	12 DHR 00242	05/17/12	
Jerri Long v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	12 DHR 00361	07/06/12	
Renal Advantage, Inc., v. DHHS, Division of Health Service Regulation, CON Section and DVA Healthcare Renal Care, Inc	12 DHR 00518	08/28/12	27:15 NCR 1553
Angela Moye v. DHHS, Division of Health Service Regulation, Health Care Personnel	12 DHR 00642	08/23/12	27:12 NCR 1218

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**CONTESTED CASE DECISIONS**

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Registry			
Jessica Lynn Ward v. DHHS	12 DHR 00643	05/17/12	
Trinity Child Care II & I v. DHHS, Division of Public Health, Child and Adult Care Food Program	12 DHR 00861	04/20/12	27:04 NCR 518
Dr. Karen J. Williams, LPC v. DHHS, Division of Medical Assistance	12 DHR 00926	09/18/12	
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Phyllis Campbell v. DOC	11 OSP 13381	08/27/12	27:15 NCR 1579
Raeford Quick v. DOC	11 OSP 14436	05/22/12	
Tawana McLaurin v. DOC	12 OSP 00116	08/21/12	

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**CONTESTED CASE DECISIONS**

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Marva G. Scott v. Edgecombe County Social Services Board (Larry Woodley, Fate Taylor, Ernest Taylor, Viola Harris and Evelyn Johnson), Edgecombe County Commissioners and Edgecombe county manager, Lorenzo Carmon	12 OSP 00430	12/20/12	27:22 NCR 2152
Thomas B. Warren v. DAG, Forest Services Division	12 OSP 00615	11/27/12	
Bon-Jerald Jacobs v. Pitt County Department of Social Services	12 OSP 00634	06/12/12	
Sherry Baker v. Department of Public Safety	12 OSP 00841	10/09/12	
Diane Farrington v. Chapel Hill-Carrboro City Schools	12 OSP 01300	07/12/12	
Cynthia Moats v. Harnett County Health Dept	12 OSP 01536	08/10/12	
Natalie Wallace-Gomes v. Winston-Salem State University	12 OSP 01627	05/15/12	
Clark D. Whitlow v. UNC-Chapel Hill	12 OSP 01740	06/12/12	
Jeffrey L Wardick, v. Employment Securities Commission of NC	12 OSP 02027	07/17/12	
Ricco Donnell Boyd v. NC A&T University	12 OSP 02219	01/31/13	
Larry C. Goldston v. UNC-Chapel Hill	12 OSP 02222	09/26/12	27:16 NCR 1754
Larry Batton v. Dept of Public Safety	12 OSP 02320	02/18/13	
Sheila Bradley v. Community College System Sandhills Community College	12 OSP 02473	06/06/12	
Brenda S. Sessoms v. Department of Public Safety	12 OSP 02507	07/25/12	
Donnette J Amaro v. Onslow County Department of Social Services	12 OSP 02578	11/21/12	
Ronald Gilliard v. N.C. Alcoholic Law Enforcement	12 OSP 02618	09/26/12	
Kimberly Hinton v. DOT	12 OSP 02848	10/05/12	
James B. Bushardt III v. DENR, Division of Water Quality	12 OSP 02872	02/19/13	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 02950	08/01/12	
Jaymar v. Department of Corrections, Central Prison	12 OSP 03381	07/20/12	
Ronald Wayne Crabtree Jr., v. Butner Public Safety	12 OSP 03846	10/09/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 03910	10/22/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 04107	10/22/12	
Michelle Houser v. Department of Public Safety, Division of Prisons	12 OSP 04826	09/26/12	
Audrey Melissa Tate v. Department of Public Safety, Division of Juvenile Justice	12 OSP 05182	08/03/12	
Jonathan Ashley Stephenson v. UNC-Chapel Hill	12 OSP 05223	01/15/13	
Charles E. Rouse v. DMV, Dist Sup Stacey Wooten	12 OSP 05315	09/05/12	
Edwards Robert Esslinger v. DPI	12 OSP 05459	09/12/12	
Barry L. Pruett v. DMV, Driver and Vehicle Services	12 OSP 05785	09/11/12	
Joseph Sandy v. UNC Chapel Hill	12 OSP 06152	09/05/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 06309	10/22/12	
Paul Jeffrey Treadway v. Department of Public Safety, Division of Adult Supervision	12 OSP 06634	12/18/12	
Phillip W Smith v. Department of Commerce, Division of Employment Security	12 OSP 06821	09/20/12	
Asia T. Bush v. DOT	12 OSP 06980	04/23/13	28:03 NCR 293
Bonnie S. Rardin v. Craven Correctional Institution, Department of Public Safety	12 OSP 07443	04/19/13	
Shirley M. Parker v. Department of Public Safety Caledonia Correctional Institution	12 OSP 07617	04/04/13	
Christopher Rashad Pippins v. PCS BOE PCS Facility Services	12 OSP 07744	10/18/12	
Wanda Edwards v. UNC School of Dentistry	12 OSP 07851	01/09/13	
Gary C. Clement v. DHHS	12 OSP 08105	11/14/12	
Oswald Woode v. DHHS, Central Regional Hospital	12 OSP 08664	01/09/13	
Gary C. Clement v. DHHS	12 OSP 09581	01/04/13	
Judy Knox v. UNC at Charlotte	12 OSP 10856	07/11/13	
Alphonsus U. Nwadike v. DHHS, Central Regional Hospital (Butner)	13 OSP 10977	07/15/13	
Kevin D. Terry v. State of NC Office of State Controllor	13 OSP 11088	07/15/13	
Lionel James Randolph v. NC Office of State Personnel	13 OSP 11170	07/15/13	

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Jerry Lamont Lindsey v. Department of Revenue	11 REV 1914	07/25/12	
Thomas E Gust v. Department of Revenue	11 REV 13557	08/15/12	
James Cooper III Sui Juris v. Department of Revenue	11 REV 13792	11/14/12	
Brian Daniel Reeves v. Department of Revenue	12 REV 01539	06/04/12	
David Roser v. Department of Revenue	12 REV 01694	09/10/12	
Ronnie Lee Nixon v. Department of Revenue	12 REV 01881	10/03/12	
William S. Hall v. Department of Revenue	12 REV 04115	08/27/12	
Noah D. Sheffield v. Department of Revenue	12 REV 07074	11/14/12	
Jenny M. Sheffield v. Department of Revenue	12 REV 07075	11/14/12	
Jesus A. Cabrera v. Department of Revenue	12 REV 08968	01/03/13	
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**OFFICE OF SECRETARY OF STATE**

Michael Anthony Farrow-Bey v. Department of Secretary of State	12 SOS 07865	12/14/12	
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**CONTESTED CASE DECISIONS**

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Jennifer Lynn Pierce-Founder Share Our Shoes v. Secretary of State's Office	12 SOS 01653	07/11/12
Bethany Thompson v. Department of the Secretary of State	12 SOS 11648	05/02/13
Holley Shumate Knapp v. Ann Wall, General Counsel Department of the Secretary	13 SOS 09039	05/23/13
Trvuun B. Alston v. Department of the Secretary of State	13 SOS 10113	07/08/13

**UNC HOSPITALS**

Onyedika C Nwaebube v. UNC Hospitals	12 UNC 01110	06/25/12
Nephatiya Wade v. UNC Hospitals Chapel Hill NC	12 UNC 01209	07/17/12
Fredia R Wall v. UNC Physicians & Associates	12 UNC 02256	10/04/12
Carolyn A. Green v. UNC Hospitals	12 UNC 02259	09/19/12
Annie E. Jarrett v. UNC Hospitals	12 UNC 03716	10/09/12
Vikki J Goings v. UNC Hospital	12 UNC 04109	09/18/12
Elonnie Alston v. UNC Hospitals	12 UNC 04551	09/11/12
Diara Z Andrews v. UNC Hospitals	12 UNC 04827	08/15/12
David Ryan Pierce v. UNC Hospitals, Patient Account Services, SODCA	12 UNC 05306	03/20/13
Shonte Hayes v. UNC P&A	12 UNC 05746	09/10/12
Tracy A. Spaine (Currier) v. UNC Hospitals	12 UNC 06822	11/06/12

**WILDLIFE RESOURCES COMMISSION**

People for the Ethical Treatment of Animals, Inc., v. NC Wildlife Resources Commission	12 WRC 07077	11/13/12	27:22 NCR 2165
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