

NORTH CAROLINA REGISTER

VOLUME 29 • ISSUE 03 • Pages 221 – 396

August 1, 2014

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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

Tammara Chalmers, Editorial Assistant

tammara.chalmers@oah.nc.gov

(919) 431-3083

Lindsay Woy, Editorial Assistant

lindsay.woy@oah.nc.gov

(919) 431-3078

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: Amber Cronk May, Commission Counsel

amber.cronk@oah.nc.gov

(919) 431-3074

Abigail Hammond, Commission Counsel

abigail.hammond@oah.nc.gov

(919) 431-3076

Amanda Reeder, Commission Counsel

amanda.reeder@oah.nc.gov

(919) 431-3079

Julie Brincefield, Administrative Assistant

julie.brincefield@oah.nc.gov

(919) 431-3073

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: Sarah Collins

scollins@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 2014 – December 2014

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
28:13	01/02/14	12/06/13	01/17/14	03/03/14	03/20/14	05/01/14	05/2014	09/29/14
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28:15	02/03/14	01/10/14	02/18/14	04/04/14	04/21/14	06/01/14	01/2015	10/31/14
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29:11	12/01/14	11/05/14	12/16/14	01/30/15	02/20/15	04/01/15	05/2016	08/28/15
29:12	12/15/14	11/20/14	12/30/14	02/13/15	02/20/15	04/01/15	05/2016	09/11/15

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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) 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.

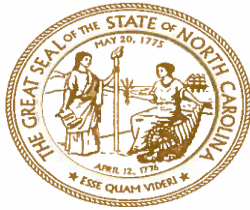
NOTICE OF TEXT

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

June 30, 2014

EXECUTIVE ORDER NO. 55

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

WHEREAS, the State of North Carolina is committed to providing equal employment opportunities to all employees and applicants for employment without regard to race, religion, color, national origin, sex, age, disability, genetic information; and

WHEREAS, the State recognizes that effective and efficient government requires the talents, skills, and abilities of all available human resources; and

WHEREAS, the State acknowledges the need for a diverse workforce; and

WHEREAS, this administration endorses a positive approach to ensure equal employment opportunity; and

WHEREAS, this administration believes that the Human Resources practices of state government should be nondiscriminatory and promote confidence in the fairness and integrity of government; and

WHEREAS, fair and impartial treatment of all employees in all terms and conditions of employment is in the best interest of the State; and

WHEREAS, this administration believes in fairness in the State work environment and that employees should be valued for their individual strengths and encouraged to achieve their fullest potential.

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

Section 1. EEO Policies and Programs.

The policies and programs that have been adopted by the State Human Resources Commission and approved by the Governor represent the commitment of the State and shall be adhered to by every state agency, department, and university.

Section 2. Administration.

Each Agency Head, Department Head, and University Chancellor is responsible for the successful implementation of these policies, programs, and this Order, and shall:

- (1) Designate an EEO Director(s) who is responsible for the operation and implementation of their EEO plan and provide the resources to implement the EEO Plan and goals. The Director may report to the Agency Head, Department Head, Chancellor or

HR Director as long as there is access to the Agency Head, Department Head, or University Chancellor on EEO matters;

(2) Ensure that the agencies, departments, or university's commitment to EEO is clearly communicated to all employees;

(3) Ensure that Human Resources policies and employment practices are implemented consistently and fairly;

(4) Ensure that each supervisory and management employee has, as a part of his or her performance plan, the responsibility to comply with EEO laws and policies and assist in achieving EEO goals;

(5) Provide reasonable accommodations for otherwise qualified individuals with disabilities who can perform the essential functions of the job in question if such accommodations are made;

(6) Provide development and training opportunities for employees on a fair and consistent basis to enhance their skills which help the state operate more efficiently and effectively.

Section 3. Office of State Human Resources.

The Office of State Human Resources Director shall:

(1) Develop state-wide EEO policies and procedures for State Human Resource Commission approval;

(2) Provide technical assistance, programs, tools, monitoring, and evaluation to assist agencies, departments, and universities in achieving their EEO plan, including consultation on staffing the EEO function;

(3) Review, approve and monitor all EEO plans and updates;

(4) Design and implement monitoring and reporting systems to measure the effectiveness of agency, department, and university EEO plans;

(5) Provide EEO training for managers, supervisors, and employees; review and approve EEO training programs agencies, departments and universities submit as equivalent to the EEO offered by the State Office of Human Resources; and

(6) Develop and promote EEO programs and best practices to encourage consistent and fair treatment of all state employees;

(7) Ensure procedures for determining reasonable accommodations that result in a uniform and fair process for applicants and employees with disabilities are in place;

(8) Develop a state government wide EEO plan to ensure commitment to and accountability for EEO;

(9) Meet with agency heads, department heads, and university chancellors, Human Resources Directors and EEO Director annually to discuss the progress made toward reaching program goals;

(10) Report annually to the Human Resources Commission and the Governor on EEO Plans and progress by agencies, departments, universities and state government.

Section 4. Effect and Duration.


All other Executive Orders or portions of Executive Orders inconsistent with this Order are hereby rescinded. This Order specifically rescinds Executive Order No.14 signed on May 7,

2009 in the year of our Lord two thousand and nine. This Executive Order shall be effective immediately and shall remain in effect until rescinded.

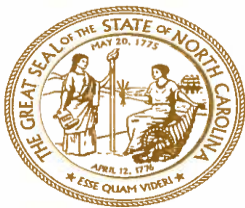
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this thirtieth day of June in the year of our Lord two thousand and fourteen and of the Independence of the United States of America the two hundred and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


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCRORY
GOVERNOR

July 1, 2014

EXECUTIVE ORDER NO. 56

DISASTER DECLARATION FOR THE TOWN OF WOODFIN

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, the Town of Woodfin in Buncombe County, North Carolina was impacted by severe weather including high winds and flooding on April 29, 2014 which caused heavy amounts of damage consisting of uprooted trees and damages to town-owned roads; and

WHEREAS, the Mayor of the Town of Woodfin declared a local state of emergency on April 29, 2014; and

WHEREAS, due the impact of the severe weather, a joint preliminary damage assessment was done by local and state emergency management officials starting on or about May 15, 2014 and is on-going; 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 the Town of Woodfin in Buncombe County; 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) the Town of Woodfin declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in N.C.G.S. § 166A-19.41(b)(2)a; 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 the Town of Woodfin in Buncombe County, North Carolina.

Section 2. I authorize state disaster assistance in the form of public assistance grants to eligible governments located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Debris clearance.
- b. Emergency protective measures.
- c. Roads and bridges.

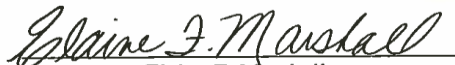
Section 3. I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of Public Safety, the Secretary of State, and the clerks of superior court in 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.

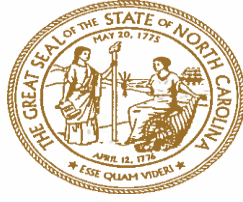
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 1st day of July in the year of our Lord two thousand and fourteen, and of the Independence of the United States of America the two hundred and thirty-eight.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrORY
GOVERNOR

July 2, 2014

EXECUTIVE ORDER NO. 57

**DECLARATION OF A STATE OF EMERGENCY
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA**

Section 1.

I hereby declare that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to the approach of Tropical Storm Arthur. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Duplin, Gates, Hertford, Hyde, Jones, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Tyrrell, and Washington counties.

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan.

Section 3.

I delegate to Frank L. Perry, the Secretary of Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and deploying the State Emergency Response Team to take the appropriate actions as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Perry, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-602.

Section 5.

I further direct Secretary Perry or his designee to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

Section 6.

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) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary 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 assure proper implementation of this declaration.

Section 7.

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

Section 8.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

Section 9.

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

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 2nd day of July in the year of our Lord two thousand and fourteen, and of the Independence of the United States of America the two hundred and thirty-eight.



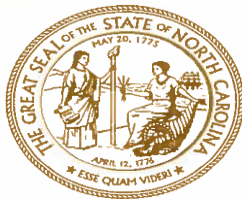
Pat McCrory
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrORY
GOVERNOR

July 2, 2014

EXECUTIVE ORDER NO. 58

**TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE
RESTORATION OF UTILITY SERVICES AND TRANSPORTING ESSENTIALS**

WHEREAS, due to the approach of Tropical Storm Arthur, vehicles bearing equipment and supplies for utility restoration, debris removal, and carrying essentials such as food and medicine, need to be moved on the highways of North Carolina; and

WHEREAS, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in portions of North Carolina due likely impact of Tropical Storm Arthur; and

WHEREAS, the prompt restoration of utility services and uninterrupted supply of electricity, gasoline and other essentials in commerce to citizens of North Carolina is essential to their safety and well-being; and

WHEREAS, under the provisions of N.C.G.S. § 166A-19.30(b)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies for utility restoration, carrying essentials and for debris removal must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116 and 20-118. I have further found that citizens in this State may suffer imminent widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b); and

WHEREAS, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Parts 390-399 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, medical supplies, and vehicles used in the restoration of utility services.

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.

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

The Department of Public Safety in conjunction with the Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116 and 20-118, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for vehicles transporting equipment and supplies for the restoration of utility services, carrying essentials and for equipment for any debris removal.

Section 3.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

Section 4.

Vehicles referenced under Sections 2 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 5.

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 6.

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 7.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

Section 8.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are being used for bearing equipment and supplies for utility restoration, debris removal, and carrying essentials in commerce in the State of North Carolina.

Section 9.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

Section 10.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

Section 11.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

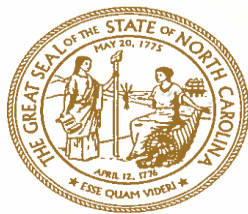
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 2nd day of July in the year of our Lord two thousand and fourteen, and of the Independence of the United States of America the two hundred and thirty-eight.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrORY
GOVERNOR

July 2, 2014

EXECUTIVE ORDER 59

AMENDMENT TO EXECUTIVE ORDER 58

**TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS RELATED TO
AGRICULTURAL VEHICLES**

WHEREAS, pursuant to N.C.G.S. § 166A-19.70(g) on the recommendation of the Commissioner of Agriculture, upon a finding that there is an imminent threat of severe economic loss of livestock, poultry or crops, the Governor shall direct the Department of Public Safety to temporarily suspend weighing those vehicles used to transport livestock, poultry and crops in the emergency area designated in Executive Order No. 57; and

WHEREAS, under N.C.G.S. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, medical supplies, feed for livestock and poultry, transporting livestock and poultry and for vehicles used in the restoration of utility services; and

WHEREAS, there is an imminent threat of severe economic loss of livestock, poultry and/or widespread or severe damage to crops without amending Executive Order No. 58.

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.

Executive Order No. 58 issued July 2, 2014 is amended by adding the following Section 1A:

Section 1A.

The maximum hours of service waiver includes vehicles used to transport or bring feed to livestock, poultry and move crops to a safe shelter in the emergency area.

Section 2.

Executive Order No. 58 issued July 2, 2014 is amended by adding the following Section 2A:

Section 2A.

The Department of Public Safety shall suspend weighing, pursuant to N.C.G.S § 20-118.1, those vehicles used to transport livestock, poultry and crops in the emergency area during the duration of the emergency.

Section 3.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 2nd day of July in the year of our Lord two thousand and fourteen, 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



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

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

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to adopt the rules cited as 12 NCAC 07D .0116, .1408, .1508 and amend the rules cited as 12 NCAC 07D .0105 and .0809.

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

- ☐ OSBM certified on:
☒ RRC certified on: June 18, 2014
☐ Not Required

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

Proposed Effective Date: December 1, 2014

Public Hearing:

Date: August 27, 2014

Time: 2:00 p.m.

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

Reason for Proposed Action: One rule amendment and two rule adoptions are to conform the Board's new rules regarding armed and unarmed armored car guards to the remainder of the rules. One rule amendment is to clarify the wording in the rule governing the caliber and type of weapon that can be carried by licensees and registrants. The fourth rule amendment makes provision for the agency to close application files based on the in-action of the applicant.

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

Comment period ends: September 30, 2014

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
☐ Substantial economic impact (≥\$1,000,000)
☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 07 – PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D – PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0100 – ORGANIZATION AND GENERAL PROVISIONS

12 NCAC 07D .0105 UNIFORMS AND EQUIPMENT

(a) No holder of a license, trainee permit, unarmed security guard registration, armed security guard registration, unarmed armored car service guard, armed armored car service guard, or firearms trainer certificate while engaged in private protective services, shall wear or display any badge, insignia, device, shield, patch or pattern that indicates or tends to indicate that the individual is a sworn law enforcement officer or that contains or includes the word "police" or the equivalent thereof, or is similar in wording to any law enforcement agency in the local area of the licensee's operations.

(b) No holder, while performing any private security service, shall have or utilize any vehicle or equipment displaying the words "law enforcement officer," "police," or the equivalent thereof, or have any sign, shield, marking, accessory or insignia that indicates that the vehicle is a vehicle of a law enforcement agency.

(c) A holder who is required to wear a military style uniform while in the performance of private security services shall have:

- (1) affixed over the left breast pocket of the uniform and on all caps or hats worn by the individual, badges or patches, distinct in design from those used by law enforcement agencies within the local area of the licensee's operations;
- (2) affixed over the right breast pocket of the uniform a metal, plastic, or cloth tag not less than three inches nor more than five inches in length and not less than three-fourths inch nor more than one inch in height containing the words "Security Guard" or "Security Officer"

- (3) ~~"Security Guard," "Security Officer," "Armored Car Guard," or "Armored Car Officer"~~ in capital letters approximately one-half inch in height; and affixed over the ~~"Security Guard" or "Security Officer," "Security Guard," "Security Officer," "Armored Car Guard," or "Armored Car Officer"~~ tag, a metal, plastic, or cloth tag bearing the name of the wearer. The name tag may be smaller than the ~~"Security Guard" or "Security Officer," "Security Guard," "Security Officer," "Armored Car Guard," or "Armored Car Officer"~~ tag if it is displayed in capital letters five-sixteenth inch to one-half inch in height.

(d) The wearing of the armed or unarmed private protective services card visible on the outermost garment (except foul weather clothing) satisfies the requirements of Subparagraphs (c)(1), (2) and (3) of this Rule.

(e) All holders who perform the duties of a security guard or security officer and who are not required to wear a military style uniform shall have affixed over the right or left breast pocket of the outermost garment (except for rainwear or other foul weather clothing) a tag as described in (c)(2) of this Rule.

Authority G.S. 74C-5; 74C-12; 74C-15.

12 NCAC 07D .0116 APPLICATION COMPLETION DEADLINE

All necessary photographs, record checks, proof of insurance, explanations, interviews or requested documents must be submitted by any applicant for a permit, license, registration or certificate within 60 days of the Board's receipt of the application form or a request from Board staff, whichever is later. Any failure to submit required or requested documents to complete the application process within this 60-day period shall void the application and require re-application.

Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1; 74C-12.

SECTION .0800 – ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

12 NCAC 07D .0809 AUTHORIZED FIREARMS

~~Armed security officers~~ Armed licensees or registrants are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard ~~.38 caliber, .32 caliber or .357 caliber revolver, revolver from .32 caliber to .357 caliber, or any a standard semi-automatic pistol of from .354 caliber and higher, to .45 caliber~~ or any standard 12 gauge shotgun, as long as the ~~officer licensee or registrant~~ has been properly trained ~~on his respective duty weapon as required pursuant to 12 NCAC 07D .0807. For purposes of this Section, "standard weapon" a "standard" firearm means a weapon-firearm~~ which has not been modified or altered from its original manufactured design.

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

SECTION .1400 – ARMORED CAR SERVICE GUARD REGISTRATION (UNARMED)

12 NCAC 07D .1408 UNIFORMS AND EQUIPMENT

The provisions of 12 NCAC 07D .0105 apply to unarmed armored car service guards.

Authority G.S. 74C-5; 74C-12; 74C-15.

SECTION .1500 – ARMED ARMORED CAR SERVICE GUARDS FIREARM REGISTRATION PERMIT

12 NCAC 07D .1508 UNIFORMS AND EQUIPMENT

The provisions of 12 NCAC 07D .0105 apply to armed armored car service guards.

Authority G.S. 74C-5; 74C-12; 74C-15.

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 .0101, .1901-.1903; 02Q .0101, .0103-.0104, .0203, .0308 and repeal the rules cited as 15A NCAC 02D .0801-.0802, .0804-.0806; 02Q .0601-.0607.

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

- ☒ **OSBM certified on:** *January 10, 2014 (15A NCAC 02D .0101, .0801-.0801, .0804-.0806; 15A NCAC 02Q .0101, .0103, .0104, .0203, .0601-.0607); June 3, 2014 (15A NCAC 02D .1901-.1903); June 20, 2014 (15A NCAC 02Q .0308)*
- ☐ **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: *Pending legislative review (15A NCAC .02D .1903); January 1, 2015 (all other rules).*

Public Hearing:

Date: *September 3, 2014*

Time: *3:00 p.m.*

Location: *DENR Green Square Office Building, 217 West Jones Street, Training Room #1210, Raleigh, NC 27603*

Reason for Proposed Action:

15A NCAC 02D .0101 – Rule 15A NCAC 02D .0101 is proposed to be amended to remove obsolete cross references that would remain due to the transportation facility permitting rules being proposed for repeal.

15A NCAC 02D .0801-.0802, .0804-.0806 – To repeal Rules in Sections 15A NCAC 02D .0800 and 02Q .0600 repeal to the transportation facility permitting requirements in Sections 15A NCAC 02D .0800 and 02Q .0600.

15A NCAC 02D .1901, .1902 – Rules 15A NCAC 02D .1901 and .1902 are also proposed for amendment to update the references to the General Statute and the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service.

15A NCAC 02D .1903 – To amend Rule 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, to incorporate requirements in Section 28(b) of S.L. 2013-413 which also allows transporting of land clearing materials over public roads for open burning to locations other than facilities permitted by the provisions of the Rule 15A NCAC 02D .1904 if the specific requirements defined in the Section 28(b) are met.

15A NCAC 02Q .0101, .0103, .0104, .0203 – Rules 15A NCAC 02Q .0101, .0103, .0104 and .0203 are proposed to be amended to remove obsolete cross references that would remain due to the transportation facility permitting rules being proposed for repeal.

15A NCAC 02Q .0308 – To amend Rule 15A NCAC 02Q .0308, Final Action on Permit Applications, to revise the permit term for non-Title V air quality permits from five years to eight years to reflect changes to G.S. 143-215.108 enacted by Session Law 2013-413.

15A NCAC 02Q .0601-.0607 – To repeal Rules in Sections 15A NCAC 02D .0800 and 02Q .0600 repeal to the transportation facility permitting requirements in Sections 15A NCAC 02D .0800 and 02Q .0600.

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 daq.publiccomments@ncdenr.gov (Please type "Transportation Facilities, Open Burning or Permit Term" in the subject line)

Comment period ends: September 30, 2014

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** 15A NCAC 02Q .0308
- ☐ **Environmental permitting of DOT affected**
- ☒ **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected** 15A NCAC 02Q .0308
- ☒ **Substantial economic impact (≥\$1,000,000)** 15A NCAC 02Q .0308

☒ **No fiscal note required by G.S. 150B-21.4** 15A NCAC 02D .0101, .0801, .0802, .0804-.0806; 15A NCAC 02Q .0101, .0103, .0104, .0203, .0601-.0607

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT COMMISSION

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 – DEFINITIONS AND REFERENCES

15A NCAC 02D .0101 DEFINITIONS

The definition of any word or phrase used in Rules of this Subchapter is the same as given in Article 21, G.S. 143, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

- (1) "Act" means "The North Carolina Water and Air Resources Act."
- (2) "Administrator" means when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:
 - (a) a specific rule in this Subchapter specifies otherwise, or
 - (b) the U.S. Environmental Protection Agency in its delegation or approval specifically states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.
- (3) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter emitted into or otherwise entering the ambient air.
- (4) "Ambient air" means that portion of the atmosphere outside buildings or other enclosed structures, stacks or ducts, and that surrounds human, animal or plant life, or property.
- (5) "Approved" means approved by the Director of the Division of Air Quality according to these Rules.
- (6) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.
- (7) "CFR" means "Code of Federal Regulations."
- (8) "Combustible material" means any substance that, when ignited, will burn in air.
- (9) "Construction" means change in method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status.
- (10) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filter

- media, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) before discharge to the ambient air.
- (11) "Day" means a 24-hour period beginning at midnight.
- (12) "Director" means the Director of the Division of Air Quality unless otherwise specified.
- (13) "Division" means Division of Air Quality.
- (14) "Dustfall" means particulate matter that settles out of the air and is expressed in units of grams per square meter per 30-day period.
- (15) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (16) "Facility" means all of the pollutant emitting activities, except ~~transportation facilities as defined under Rule .0802 of this Subchapter,~~ transportation facilities, that are located on one or more adjacent properties under common control.
- (17) "FR" means Federal Register.
- (18) "Fugitive emission" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (19) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. The equipment is generally used for, but not limited to, heating water, generating or circulating steam, heating air as in warm air furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.
- (20) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.
- (21) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.
- (22) "Opacity" means that property of a substance tending to obscure vision and is measured as percent obscuration.
- (23) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.
- (26) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.
- (27) "Permitted" means any source subject to a permit under this Subchapter or Subchapter 15A NCAC 02Q.
- (28) "Person" as defined in G.S. 143-212 includes any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent or assigns.
- (29) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.
- (30) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods specified in this Subchapter.
- (31) PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by methods specified in this Subchapter.
- (32) "Refuse" means any garbage, rubbish, or trade waste.
- (33) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.
- (34) "Rural area" means an area that is primarily devoted to, but not necessarily limited to, the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.
- (35) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metal, chemicals, motor vehicles, shipping containers, or drums.
- (36) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.
- (37) "Source" means any stationary article, machine, process equipment, or other contrivance; or any combination; or any tank-truck, trailer, or railroad tank car; from which air pollutants emanate or are emitted, either directly or indirectly.
- (38) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. The concentration of sulfur dioxide is measured by the methods specified in this Subchapter.

- (39) ~~"Transportation facility" means a complex source as defined in G.S. 143-213(22).~~
- ~~(39)~~(40) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.
- ~~(40)~~(41) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.
- ~~(41)~~(42) "ug" means micrograms.

Authority G.S. 143-213; 143-215.3(a)(1).

SECTION .0800 – COMPLEX SOURCES

15A NCAC 02D .0801 PURPOSE AND SCOPE

- (a) ~~The purpose of this Section is to set forth requirements of the Commission relating to construction or modification of a transportation facility which may result in an ambient air quality standard for carbon monoxide being exceeded.~~
- (b) ~~For purposes of this Section any transportation facility that was under construction or was the subject of a contract for construction prior to November 15, 1973, shall not be considered a new air pollution source.~~
- (c) ~~Approval to construct or modify a transportation facility shall not relieve any owner or developer of the transportation facility of the responsibility to comply with the state control strategy and all local and state regulations which are part of the North Carolina State Implementation Plan for Air Quality.~~

Authority G.S. 143-215.3(a)(1); 143-215.109.

15A NCAC 02D .0802 DEFINITIONS

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

- (1) ~~"Construction" means any activity following land clearing or grading that engages in a program of construction specifically designed for a transportation facility in preparation for the fabrication, erection, or installation of the building components which are a part of the transportation facility, e.g. curbing, footings, conduit, paving, etc.~~
- (2) ~~"Modify" or "modification" means to alter or change the facility resulting in an increase in parking capacity as defined in Rule .0805 of this Section or the number of aircraft operations from an airport as defined in Rule .0804 of this Section.~~
- (3) ~~"Peak hour aircraft operation" means the hour during the calendar year when the maximum number of aircraft operations (one operation equals one takeoff or one landing) occur.~~

- (4) ~~"Owner or developer" means any person who owns, leases, develops, or controls a transportation facility.~~
- (5) ~~"Transportation facility" means a complex source as defined in G.S. 143-213(22) which is subject to the requirements of this Section.~~

Authority G.S. 143-215.3(a)(1); 143-215.109.

15A NCAC 02D .0804 AIRPORT FACILITIES

- (a) ~~This Rule does not apply to military airfields.~~
- (b) ~~Before constructing or modifying any airport facility designed to have at least 100,000 annual aircraft operations, or at least 45 peak-hour aircraft operations (one operation equals one takeoff or one landing), the owner or developer of the airport facility shall apply for and have received a permit as described in 15A NCAC 2Q .0600, and shall comply with all terms and conditions therein.~~

Authority G.S. 143-215.3(a)(1); 143-215.109.

15A NCAC 02D .0805 PARKING FACILITIES

- (a) ~~The owner or developer of a transportation facility shall not construct or modify a parking area or associated buildings until he has applied for and received a permit under 15A NCAC 2Q .0600 where the parking area is for:~~
- ~~(1) construction of a new or expansion of an existing parking lot or combination of parking lots resulting in a parking capacity of at least 1500 spaces or a potential open parking area of at least 450,000 square feet (1500 spaces at 300 square feet per stall);~~
 - ~~(2) modification of an existing parking lot or combination of parking lots with a parking capacity of at least 1500 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces;~~
 - ~~(3) construction of a new or expansion of an existing parking deck or garage resulting in a parking capacity of at least 750 spaces or a potential parking area of at least 225,000 square feet (750 spaces at 300 square feet per stall);~~
 - ~~(4) modification of an existing parking deck or garage with a parking capacity of at least 750 spaces that will be expanded by at least 250 spaces beyond the last permitted number of spaces;~~
 - ~~(5) construction of a new or expansion of an existing combination of parking lots, decks, and garages resulting in a parking capacity of at least 1000 spaces or a potential parking area of at least 300,000 square feet; or~~
 - ~~(6) modification of an existing combination of parking lots, decks, and garages with a parking capacity of at least 1000 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces.~~

~~(b) New or modified parking lots, decks, or garages with a parking capacity of 500 or more spaces and existing or proposed parking facilities that:~~

- ~~(1) are directly adjacent to each other and the combined parking capacities are greater than those defined in Paragraph (a) of this Rule, and~~
- ~~(2) use the same public roads or traffic network; shall be considered one lot or deck. Transportation facilities shall be considered to be directly adjacent if they are within 100 meters of each other in a suburban or rural area or 50 meters of each other in an urban area and if there are no existing physical barriers, such as, buildings or terrain.~~

~~(c) Temporary barriers shall not be used to reduce the capacity of an otherwise affected transportation facility to less than the amount which requires permitting. The design and plan shall clearly show the total parking capacity.~~

~~(d) Phased construction shall be evaluated and permitted for a period not to exceed five years from the date of application.~~

Authority G.S. 143-215.3(a)(1); 143-215.109.

15A NCAC 02D .0806 AMBIENT MONITORING AND MODELING ANALYSIS

~~(a) The Director may require the owner or developer of a transportation facility subject to the requirements of this Section to conduct ambient air quality monitoring if dispersion modeling, traffic analysis, or other ambient air quality monitoring data indicates that there is a potential for the ambient air quality standard for carbon monoxide to be exceeded. If ambient air quality monitoring is required, the permit shall specify the duration of such monitoring.~~

~~(b) The Director may require the owner or developer of a transportation facility subject to the requirements of this Section to perform dispersion modeling analyses to predict the impact of proposed construction or modification of a transportation facility on ambient air quality if ambient air quality monitoring, traffic analysis, or other dispersion modeling analysis indicates that there is a potential for the ambient air quality standard for carbon monoxide to be exceeded.~~

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.109.

SECTION .1900 – OPEN BURNING

15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE

(a) Open Burning Prohibited. A person shall not cause, allow, or permit open burning of combustible material except as allowed by Rule .1903 and Rule .1904 of this Section.

(b) Purpose. The purpose of this Section is to control air pollution resulting from the open burning of combustible materials and to protect the air quality in the immediate area of the open burning.

(c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open burning which is a crime under G.S. 14-136 through G.S. 14-140.1, G.S.

14-136, G.S. 14-137, G.S. 14-138.1 and G.S. 14-140.1, or affect the authority of the Division of North Carolina Forest Resources Service to issue or deny permits for open burning in or adjacent to woodlands as provided in G.S. 113-60.21 G.S. 106-940 through G.S. 113-60.31, G.S. 106-950. This Section does not affect the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the Division of North Carolina Forest Resources Service or any local government does not relieve any person from the necessity of complying with this Section or any other air quality rule.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .1902 DEFINITIONS

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

- (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as defined in 40 CFR Part 58, Appendix G.
- (3) "Air quality forecast area" means for
 - (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;
 - (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;
 - (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
 - (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;
 - (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;
 - (f) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and
 - (g) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.
- (4) "Smoke management plan" means the plan developed following the North Carolina Division of Forest Resources' Service's smoke management program and approved by the North Carolina Division of Forest Resources Service. The purpose of the smoke management plan is to manage smoke from

- prescribed burns of public and private forests to minimize the impact of smoke on air quality and visibility.
- (5) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (6) "HHCB" means the Health Hazards Control Branch of the Division of Epidemiology.
- (7) "Initiated" means start or ignite a fire or reignite or rekindle a fire.
- (8) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- (9) "Log" means any limb or trunk whose diameter exceeds six inches.
- (10) "Nonattainment area" means an area identified in 40 CFR 81.334 as nonattainment.
- (11) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (12) "Occupied structure" means a building in which people may live or work or one intended for housing farm or other domestic animals.
- (13) "Off-site" means any area not on the premises of the land-clearing activities.
- (14) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (15) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.
- (16) "Person" as used in 02D .1901(c), means:
- (a) the person in operational control over the open burning; or
 - (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the open burning or has benefited from it.
- (17) "Pile" means a quantity of combustible material assembled together in a mass.
- (18) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency or municipal service.
- (19) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- (20) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- (21) "Refuse" means any garbage, rubbish, or trade waste.
- (22) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of Environment and Natural Resources.
- (23) "Salvageable items" means any product or material that was first discarded or damaged and then all, or part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- (24) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.
- (25) "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more than nine months.

Authority G.S. 143-212; 143-213; 143-215.3(a)(1).

15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT

(a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of this Section. Except as allowed under Paragraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in an air quality forecast area that the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.

(b) The following types of open burning are permissible without an air quality permit:

- (1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:
 - (A) The material burned originates on the premises of private residences and is burned on those premises;
 - (B) There are no public pickup services available;
 - (C) Non-vegetative materials, such as household garbage, lumber, or any other synthetic materials are not burned;
 - (D) The burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

- (E) The burning does not create a nuisance; and
 - (F) Material is not burned when the North Carolina Forest Service has banned burning for that area.
- (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:
- (A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
 - (B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:
 - (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or
 - (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at the open burning site.
- Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type,

amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied.

- (C) Only land-cleared plant growth is burned. Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;
- (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
- (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest Service has banned burning for that area; and
- (F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried ~~off site~~ or transported ~~over public roads to facilities permitted according to Rule .1904 of this Section for the operation of an air curtain burner at a permanent site; to:~~
 - (i) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or
 - (ii) A location, where the material is burned not more than four times per year, that meets all of the following criteria:
 - (I) At least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.

- (II) There are no more than two piles, each 20 feet in diameter, being burned at one time.
 - (III) The location is not a permitted solid waste management facility.
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials or refuse or salvageable materials for fuel;
- (4) fires purposely set to public or private forest land for forest management practices for which burning is acceptable to the North Carolina Forest Service and which follow the smoke management plan as outlined in the North Carolina Forest Service's smoke management program;
- (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is currently acceptable to the Department of Agriculture;
- (6) fires purposely set for wildlife management practices for which burning is currently acceptable to the Wildlife Resource Commission;
- (7) fires for the disposal of dangerous materials when it is the safest and most practical method of disposal;
- (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a standard qualification program;
- (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities;
- (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:
 - (A) the North Carolina Forest Service;
 - (B) the North Carolina Insurance Department;
 - (C) North Carolina technical institutes; or
 - (D) North Carolina community colleges, including:
 - (i) the North Carolina Fire College; or
 - (ii) the North Carolina Rescue College;
- (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
 - (A) The regional office supervisor of the appropriate regional office and the HHCB have been notified according to the procedures and deadlines contained in the appropriate regional notification form. This form may be obtained by writing the appropriate regional office at the address in Rule .1905 of this Section and requesting it, and
 - (B) The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate regional office at least one hour before the burn is scheduled; and
- (12) fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor of the appropriate regional office that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type,

amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of this Rule.

(c) The authority to conduct open burning under this Section does not exempt or excuse any person from the consequences, damages or injuries that may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2.

SUBCHAPTER 02Q – AIR QUALITY PERMITS PROCEDURES

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 02Q .0101 REQUIRED AIR QUALITY PERMITS

(a) No owner or operator shall do any of the following activities, that is not otherwise exempted, without first applying for and obtaining an air quality permit:

- (1) construct, operate, or modify a source subject to an applicable standard, requirement, or rule that emits any regulated pollutant or one or more of the following:
 - (A) sulfur dioxide,
 - (B) total suspended particulates,
 - (C) particulate matter (PM10),
 - (D) carbon monoxide,
 - (E) nitrogen oxides,
 - (F) volatile organic compounds,
 - (G) lead and lead compounds,
 - (H) fluorides,
 - (I) total reduced sulfur,
 - (J) reduced sulfur compounds,
 - (K) hydrogen sulfide,
 - (L) sulfuric acid mist,
 - (M) asbestos,
 - (N) arsenic and arsenic compounds,
 - (O) beryllium and beryllium compounds,
 - (P) cadmium and cadmium compounds,
 - (Q) chromium(VI) and chromium(VI) compounds,
 - (R) mercury and mercury compounds,
 - (S) hydrogen chloride,
 - (T) vinyl chloride,
 - (U) benzene,
 - (V) ethylene oxide,
 - (W) dioxins and furans,
 - (X) ozone, or

(Y) any toxic air pollutant listed in 15A NCAC 02D .1104; or

(2) construct, operate, or modify a facility that has the potential to emit at least 10 tons per year of any hazardous air pollutant or 25 tons per year of all hazardous air pollutants combined or that are subject to requirements established under the following sections of the federal Clean Air Act:

- (A) Section 112(d), emissions standards;
- (B) Section 112(f), standards to protect public health and the environment;
- (C) Section 112(g), construction and reconstruction;
- (D) Section 112(h), work practice standards and other requirements;
- (E) Section 112(i)(5), early reduction;
- (F) Section 112(j), federal failure to promulgate standards;
- (G) Section 112(r), accidental releases.

(b) ~~There are two types of air quality permits:~~

(4) Stationary Source Construction and Operation Permit: With the exception allowed by G.S. 143-215.108A, the owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit in accordance with the standard procedures under Section .0300 of this Subchapter. Title V facilities are subject to the Title V procedures under Section .0500 of this Subchapter including the acid rain procedures under Section .0400 of this Subchapter. A facility may also be subject to the air toxic procedures under 15A NCAC 02Q .0700.

~~(2) Transportation Facility Construction Permit. The owner or operator of a transportation facility subject to the requirements of 15A NCAC 02D .0800 shall obtain a construction only permit following the procedures under Section .0600 of this Subchapter.~~

(c) Fees shall be paid in accordance with the requirements of Section .0200 of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

15A NCAC 02Q .0103 DEFINITIONS

For the purposes of this Subchapter, the definitions in G.S. 143-212 and ~~G.S.~~ G.S. 143-213 and the following definitions apply:

- (1) "Administrator" means when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:
 - (a) a specific rule in this Subchapter specifies otherwise, or
 - (b) the U.S. Environmental Protection Agency in its delegation or approval specifically states that a specific authority of the Administrator of the

- Environmental Protection Agency is not included in its delegation or approval.
- (2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Water vapor is not considered to be an air pollutant.
- (3) "Allowable emissions" mean the maximum emissions allowed by the applicable rules contained in 15A NCAC 2D or by permit conditions if the permit limits emissions to a lesser amount.
- (4) "Alter or change" means to make a modification.
- (5) "Applicable requirements" means:
- (a) any requirement of Section .0500 of this Subchapter;
 - (b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking under Title I of the federal Clean Air Act that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;
 - (c) any term or condition of a construction permit for a facility covered under 15A NCAC 2D .0530, .0531, or .0532;
 - (d) any standard or other requirement under Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required under Section 112 of the federal Clean Air Act;
 - (e) any standard or other requirement under Title IV;
 - (f) any standard or other requirement governing solid waste incineration under Section 129 of the federal Clean Air Act;
 - (g) any standard or other requirement under Section 183(e), 183(f), or 328 of the federal Clean Air Act;
 - (h) any standard or requirement under Title VI of the federal Clean Air Act unless a permit for such requirement is not required under this Section;
 - (i) any requirement under Section 504(b) or 114(a)(3) of the federal Clean Air Act; or
 - (j) any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to 504(e) of the federal Clean Air Act.
- (6) "Applicant" means the person who is applying for an air quality permit from the Division.
- (7) "Application package" means all elements or documents needed to make an application complete.
- (8) "CFR" means Code of Federal Regulations.
- (9) "Construction" means change in the method of operation or any physical change (including on-site fabrication, erection, installation, replacement, demolition, or modification of a source) that results in a change in emissions or affects the compliance status. The following activities are not construction:
- (a) clearing and grading;
 - (b) building access roads, driveways, and parking lots, ~~except parking lots required to have a construction permit under 15A NCAC 02Q .0600; lots;~~
 - (c) building and installing underground pipe work, including water, sewer, electric, and telecommunications utilities; or
 - (d) building ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.
- (10) "Director" means the Director of the Division of Air Quality.
- (11) "Division" means the Division of Air Quality.
- (12) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.
- (13) "EPA approves" means full approval, interim approval, or partial approval by EPA.
- (14) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.
- (15) "Facility" means all of the pollutant emitting activities, ~~except transportation facilities as defined under Rule .0802 of this Subchapter, transportation facilities,~~ that are located on one or more adjacent properties under common control.
- (16) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.
- (17) "Fuel combustion equipment" means any fuel burning source covered under 15A NCAC 2D .0503, .0504, .0536, or 40 CFR Part 60 Subpart D, Da, Db, or Dc.
- (18) "Green wood" means wood with a moisture content of 18% or more.

- (19) "Hazardous air pollutant" means any pollutant which has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants listed only in 15A NCAC 02D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), are not included in this definition.
- (20) "Insignificant activities" means activities defined as insignificant activities because of category or as insignificant activities because of size or production rate under Rule .0503 of this Subchapter.
- (21) "Lesser quantity cutoff" means:
 - (a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which the following are not required:
 - (i) maximum achievable control technology (MACT) or generally available control technology (GACT), including work practice standards, requirement under Section 112(d) of the federal Clean Air Act;
 - (ii) a MACT standard established under Section 112(j) of the federal Clean Air Act; or
 - (iii) substitute MACT or GACT adopted under Section 112(l) of the federal Clean Air Act.
 - (b) for modification of a source subject to, or may be subject to, the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied under Section 112(g) of the federal Clean Air Act; or
 - (c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.
- (22) "Major facility" means a major source as defined under 40 CFR 70.2.
- (23) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.
- (26) "Permit" means the legally binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document specifies the requirements applicable to the facility or source and to the permittee.
- (27) "Permittee" means the person who has received an air quality permit from the Division.
- (28) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities because of category as defined under Rule .0503 of this Section. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants covered under that rule.
- (29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.
- (30) "Regulated air pollutant" means:
 - (a) nitrogen oxides or any volatile organic compound as defined under 40 CFR 51.100;
 - (b) any pollutant for which there is an ambient air quality standard under 40 CFR Part 50;
 - (c) any pollutant regulated under 15A NCAC 02D .0524, .1110, or .1111 or 40 CFR Part 60, 61, or 63;

- (d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or
- (e) any Class I or II substance listed under Section 602 of the federal Clean Air Act.
- (31) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more of these activities: debarking, sawing, and sawdust handling. Activities that are not considered part of a sawmill include chipping, sanding, planning, routing, lathing, and drilling.
- (32) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.
- (33) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.
- (34) "Transportation facility" means a complex source as defined at ~~G.S. 143-213(22) that is subject to the requirements of 15A NCAC 02D .0800.~~ in G.S. 143-213(22).
- (35) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that could result in the emissions of a toxic air pollutant listed under 15A NCAC 02D .1104.

Authority G.S. 143-212; 143-213; 143-215.3(a)(1).

15A NCAC 02Q .0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS

- (a) Application forms for a permit or permit modification may be obtained from and shall be filed with the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641 or any of the regional offices listed under Rule .0105 of this Section.
- (b) The number of copies of applications to be filed are specified in Rules .0305 (construction and operation permit ~~procedures~~), procedures and .0507 (Title V permit ~~procedures~~), and .0602 (transportation facility construction air permit procedures) of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

SECTION .0200 – PERMIT FEES

15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES

- (a) The owner or operator of any facility holding a permit shall pay the following permit fees:

ANNUAL PERMIT FEES			
Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V	\$22.50 upon Rule effective date; \$25.00 on 01/01/2009; \$27.50 on 01/01/2010; \$30.00 on 01/01/2011 and thereafter.	\$6,500	\$3,500
Synthetic Minor		\$1,500	
Small		\$250	
Transportation		\$0	
General	50% of the otherwise applicable fee		

A facility, other than a Title V facility, which has been in compliance is eligible for a 25 percent discount from the annual permit fees as described in Paragraph (a) of Rule .0205 of this Section. Annual permit fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements.

- (b) In addition to the annual permit fee, a permit applicant shall pay a non-refundable permit application fee as follows:

PERMIT APPLICATION FEES (FEES FOR CALENDAR YEAR 1994)				
Facility Category	New or Modification	New or Significant Modification	Minor Modification	Owners hip Change
Title V		\$7200	\$700	\$50
Title V (PSD or NSR/NAA)	\$10900			50
Title V (PSD and NSR/NAA)	21200			50
Synthetic Minor	400			50
Small	50			25
Transportation	400			50
General	50% of the otherwise applicable fee			25

Permit application fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section.

(c) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed under Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases); and
- (4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

(e) The nonattainment area added fee shall be applicable only to Title V facilities required to comply with 15A NCAC 02D .0531, 15A NCAC 02D .0900 (Volatile Organic Compounds), or 15A NCAC 02D .1400 (Nitrogen Oxides) and either:

- (1) are in a area designated in 40 CFR 81.334 as nonattainment, or
- (2) are covered by a nonattainment or maintenance State Implementation Plan submitted for approval or approved as part of 40 CFR Part 52, Subpart II.

(f) A Title V (PSD or NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) or 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

(g) A Title V (PSD and NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) and 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

(h) Minor modification permit applications that are group processed require the payment of only one permit application fee per facility included in the group.

(i) No permit application fee is required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change under Rule .0523 (Changes Not Requiring Permit Revisions) of this Subchapter, or for a construction date change,

a test date change, a reporting procedure change, or a similar change.

(j) The permit application fee paid for modifications under 15A NCAC 02Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were under 15A NCAC 02D .0500, Title V Procedures.

(k) An applicant who files permit applications pursuant to Rule .0504 of this Subchapter shall pay an application fee as would be determined by the application fee for the permit required under Section .0500 of this Subchapter; this fee will cover both applications provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued under Section .0500 of this Subchapter will be established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "02Q .0300 Only or Minor Modification" in the table in Paragraph (b) of this Rule.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6.

SECTION .0300 – CONSTRUCTION AND OPERATION PERMITS

15A NCAC 02Q .0308 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director may:

- (1) issue a permit, permit modification, or a renewal containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B;
- (2) rescind a permit upon request by the permittee;
- (3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B.

(b) Any person whose application for a permit, permit modification, renewal or letter requesting change in name or ownership, construction or test date, or reporting procedure, is denied or is granted subject to conditions which are unacceptable to him shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person shall have 30 days following receipt of the notice of the Director's decision on the application or permit in which to appeal the Director's decision. The permit becomes final if the applicant does not contest the permit within this 30-day period.

(c) The Director shall issue or renew a permit for a ~~period of time that the Director considers reasonable, but such period shall not exceed five years.~~ term of eight years.

Authority G.S. 143-215.3(a)(1); 143-215.108.

SECTION .0600 – TRANSPORTATION FACILITY PROCEDURES

15A NCAC 02Q .0601 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT

(a) ~~The purpose of this Section is to describe the procedures to be followed in applying for and issuing a permit for a transportation facility.~~

~~(b) The owner or developer of a transportation facility subject to the requirements of 15A NCAC 2D .0800 shall obtain a construction only permit following the procedures in this Section. An operation permit is not needed.~~

~~(c) The owner or developer of a transportation facility required to have a permit under this Section shall not commence construction or modification of a transportation facility until he has applied for and received a construction permit.~~

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

15A NCAC 02Q .0602 DEFINITIONS

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

- ~~(1) "Construction" means any activity following land clearing or grading that engages in a program of construction specifically designed for a transportation facility in preparation for the fabrication, erection, or installation of the building components associated with the transportation facility, e.g. curbing, footings, conduit, paving, etc.~~
- ~~(2) "Level of service" means a qualitative measure describing operational conditions within a traffic stream; generally described in terms of such factors as speed and travel time, freedom to maneuver, traffic interruptions, comfort and convenience, and safety.~~
- ~~(3) "Owner or developer" means any person who owns, leases, develops, or controls a transportation facility.~~
- ~~(4) "Transportation facility" means a complex source as defined at G.S. 143-213(22) and subject to the requirements of 15A NCAC 2D .0800.~~

Authority G.S. 143-213; 143-215.3(a)(1); 143-215.108.

15A NCAC 02Q .0603 APPLICATIONS

~~(a) A transportation facility permit application may be obtained from and shall be filed in writing in accordance with Rule .0104 of this Subchapter.~~

~~(b) Applicants shall file transportation facility permit applications at least 90 days before projected date of construction of a new transportation facility or modification of an existing transportation facility.~~

~~(c) The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.~~

~~(d) A transportation facility permit application shall be made in triplicate on forms from the Division and shall include plans and specifications giving all data and information as required by this Section and 15A NCAC 02D, .0800, Transportation Facilities.~~

~~(e) A transportation facility permit application containing dispersion modeling analyses that demonstrate compliance with ambient air quality standards for carbon monoxide or traffic analyses showing a level of service of A, B, C, or D as defined in the Highway Capacity Manual, using planned roadway and intersection improvements shall include approval for the improvements from the appropriate state or city department of~~

~~transportation. The Highway Capacity Manual is hereby incorporated by reference and shall include any later amendments and editions. This manual may be obtained from the Institute of Transportation Engineers, 1099 14th Street, NW, Suite 300 West, Washington, D.C. 20005-3438 at a cost of one hundred twenty dollars (\$120.00).~~

~~(f) Whenever the information provided on the permit application forms does not describe the transportation facility to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information as allowed or required by this Section and 15A NCAC 02D, .0800 and necessary to evaluate the transportation facility. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards including traffic level of service.~~

~~(g) A non refundable permit application fee shall accompany each transportation facility permit application. The permit application fee is described in Section .0200 of this Subchapter.~~

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

15A NCAC 02Q .0604 PUBLIC PARTICIPATION

~~(a) Before approving or disapproving a permit to construct or modify a transportation facility, the Director shall provide public notice for comments with an opportunity to request a public hearing on the draft permit.~~

~~(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the transportation facility is located.~~

~~(c) The public notice shall identify:~~

- ~~(1) the affected facility;~~
- ~~(2) the name and address of the permittee;~~
- ~~(3) the name and address of the person to whom comments and requests for public hearing are to be sent;~~
- ~~(4) the name, address, and telephone number of Divisional staff from whom interested persons may obtain additional information, including copies of the draft permit, the application, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;~~
- ~~(5) a brief description of the proposed project;~~
- ~~(6) a brief description of the public comment procedures;~~
- ~~(7) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and~~
- ~~(8) the time and place of any hearing that has already been scheduled.~~

~~(d) The public notice shall allow at least 30 days for public comments.~~

~~(e) If the Director finds that a public hearing is in the best interest of the public, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.~~

~~(f) The Director shall make available for public inspection in at least one location in the region affected, the information submitted by the permit applicant and the Division's analysis of that application.~~

~~(g) Any persons requesting copies of material identified in Subparagraph (e)(4) of this Rule shall pay ten cents (\$0.10) a page for each page copied. Confidential material shall be handled in accordance with Rule .0107 of this Subchapter.~~

Authority G.S. 143-215.3(a)(1),(3); 143-215.4(b); 143-215.108; 143-215.109.

15A NCAC 02Q .0605 FINAL ACTION ON PERMIT APPLICATIONS

~~(a) The Director may:~~

- ~~(1) issue a permit containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B;~~
- ~~(2) rescind a permit upon request by the permittee; or~~
- ~~(3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B.~~

~~(b) The Director shall issue a permit for the construction or modification of a transportation facility subject to the rules in 15A NCAC 02D .0800 if the permit applicant submits a complete application and demonstrates to the satisfaction of the Director that the ambient air quality standard for carbon monoxide shall not be exceeded.~~

~~(c) The Director shall issue a permit for a period of time necessary to complete construction, but such period shall not exceed five years.~~

~~(d) The Director shall not approve a permit for a transportation facility that:~~

- ~~(1) interferes with the attainment or maintenance of the ambient air quality standard for carbon monoxide~~
- ~~(2) results in a contravention of applicable portions of the implementation plan control strategy, or~~
- ~~(3) is demonstrated with dispersion modeling to exceed the ambient air quality standard for carbon monoxide.~~

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

15A NCAC 02Q .0606 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

~~(a) The Director may terminate, modify, or revoke and reissue any permit issued under this Section if:~~

- ~~(1) The information contained in the application or presented in support thereof is determined to be incorrect;~~
- ~~(2) The conditions under which the permit was granted have changed;~~
- ~~(3) Violations of conditions contained in the permit have occurred;~~

~~(4) The permittee refuses to allow the Director or his authorized representative upon presentation of credentials:~~

- ~~(A) to enter, at reasonable times and using reasonable safety practices, the permittee's premises where the transportation facility is located or where any records are required to be kept under terms and conditions of the permit;~~
- ~~(B) to have access, at reasonable times, to any copy or records required to be kept under terms and conditions of the permit;~~
- ~~(C) to inspect, at reasonable times and using reasonable safety practices, the transportation facility and any monitoring equipment or monitoring procedures required in the permit; or~~
- ~~(D) to sample, at reasonable times and using reasonable safety practices, emissions from the facility; or~~

~~(5) The Director finds that modification or revocation of a permit is necessary to carry out the purpose of G.S. 143, Article 21B.~~

~~(b) The construction or continuation of construction of a transportation facility after its permit has been revoked is a violation of this Section, G.S. 143-215.108, and G.S. 143-215.109.~~

Authority G.S. 143-215.3(a)(1),(1a),(1b); 143-215.108; 143-215.109.

15A NCAC 02Q .0607 APPLICATION PROCESSING SCHEDULE

~~(a) The Division shall adhere to the following schedule in processing applications for transportation source permits:~~

- ~~(1) The Division shall send written acknowledgment of receipt of the permit application to the applicant within 10 days of receipt of the application.~~
- ~~(2) The Division shall review all permit applications within 30 days of receipt of the application to determine whether the application is complete or incomplete for processing purposes. The Division shall notify the applicant by letter:~~
 - ~~(A) stating that the application as submitted is complete and specifying the completeness date,~~
 - ~~(B) stating that the application is incomplete, requesting additional information and specifying the deadline date by which the requested information is to be received by the Division, or~~
 - ~~(C) stating that the application is incomplete and requesting that the~~

~~applicant rewrite and resubmit the application.~~

~~If the Division does not notify the applicant by letter dated within 30 days of receipt of the application that the application is incomplete, the application shall be deemed complete. A completeness determination shall not prevent the Director from requesting additional information at a later date when such information is considered necessary to properly evaluate the source, its air pollution abatement equipment, or the facility. If the applicant has not provided the requested additional information by the deadline specified in the letter requesting additional information, the Director may return the application to the applicant as incomplete. The applicant may request a time extension for submittal of the requested additional information.~~

- ~~(3) The Division shall determine within 60 days of receipt of a complete application if any additional information is needed to conduct the technical review of the application. A technical completeness determination shall not prevent the Director from requesting additional information at a later date when such information is considered necessary to properly evaluate the source, its air pollution abatement equipment or the facility. The Division shall complete the technical review within 90 days of receipt of a complete application or 10 days after receipt of requested additional information, whichever is later.~~
- ~~(4) The Director shall send the draft permit to public notice within 60 days after receipt of a complete application or 10 days after receipt of requested additional information, whichever is later.~~
- ~~(5) If the draft permit is not required to go to public hearing, the Director shall complete the review of the record and take final action on the permit within 30 days after the close of the public comment period.~~
- ~~(6) If the draft permit is required to go to public hearing as a result of a request for public hearing under Rule .0604(e) of this Section, the Director shall:~~
 - ~~(A) send the draft permit to public hearing within 45 days after approving the request for the public hearing, and~~
 - ~~(B) complete the review of the record and take final action on the permit within 30 days after the close of the public hearing.~~

~~(b) The days that fall between the sending out a letter requesting additional information and receiving that additional information~~

~~shall not be counted in the schedules under Paragraph (a) of this Rule.~~

~~(c) The Director may return at any time applications containing insufficient information to complete the review.~~

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02H .1002.

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

- ☒ **OSBM certified on:** July 8, 2014
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.gov/web/guest/event-calendar>

Proposed Effective Date: January 1, 2015

Public Hearing:

Date: August 20, 2014

Time: 2:00 p.m.

Location: Archdale Building, 512 N. Salisbury St., Ground Floor Hearing Room, Raleigh, NC 27604

Reason for Proposed Action: *The purpose of this rule change is threefold. First, some of the proposed changes to Rule 15A NCAC 02H .1002 are necessary in order to align the Rule with recent changes to G.S. 143-214.7. Section 51.(d) of North Carolina Session Law 2013-413 amended G.S. 143-214.7 such that "gravel" was excluded from the definition of "built-upon area." The proposed rulemaking incorporates the amendments to G.S. 143-214.7 into Rule 15A NCAC 02H .1002.*

Second, the amendments to G.S. 143-214.7 excluded "gravel" from the definition of "built-upon area," but they did not provide a definition of the term "gravel." This proposed rulemaking defines the term "gravel" and includes other changes that are technical in nature, such as renumbering and alphabetizing the definitions. All of these changes provide clarity to the regulated community on the implementation of stormwater rules that are required by G.S. 143-214.7.

Third, the proposed rulemaking will replace a temporary rule that was adopted pursuant to G.S. 150B-21.1 and published in the North Carolina Register on April 15, 2014. The temporary rule will expire unless a permanent rule is adopted by the Rules Review Commission by January 10, 2015. The text, purpose, and justification of the proposed rule are identical to those of the temporary rule.

Comments may be submitted to: Julie Ventaloro, NCDENR-Land Quality Section-Stormwater Permitting Program, 1612 Mail Service Center, Raleigh, NC 27699-1612; phone (919) 807-6370; fax (919) 807-6494; email julie.ventaloro@ncdenr.gov

Comment period ends: *September 30, 2014*

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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ No fiscal note required by G.S. 150B-21.4

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT
COMMISSION**

**SUBCHAPTER 02H – PROCEDURES FOR PERMITS:
APPROVALS**

SECTION .1000 – STORMWATER MANAGEMENT

15A NCAC 02H .1002 DEFINITIONS

The definition of any word or phrase in this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Other words and phrases used in this Section are defined as follows:

- (1) "Built-upon Area" means ~~that portion of a development project that is covered by impervious surface or and partially impervious surface including, but not limited to, buildings; pavement to the extent that the partially impervious surface does not allow water to infiltrate through the surface and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts into the subsoil.~~ "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material: gravel.
- (2) "CAMA Major Development Permits" mean those permits or revised permits required by

the Coastal Resources Commission ~~according to as set forth in~~ 15A NCAC ~~71 07J~~ Sections .0100 and .0200.

- (3) "Certificate of Stormwater Compliance" means the approval for activities that meet the requirements for coverage under a stormwater general permit for development activities that are regulated by this Section.
- (4) "Coastal Counties" ~~include~~ are Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (5) "Curb Outlet System" means curb and gutter installed in a development which meets low density criteria ~~[Rule—set forth in Rule .1003(d)(1) of this Section]~~ Section with breaks in the curb or other outlets used to convey stormwater runoff to grassed swales or vegetated or natural areas and designed in accordance with Rule .1008(g) of this Section.
- (6) "Development" means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
- (7) "Drainage Area or Watershed" means the entire area contributing surface runoff to a single point.
- (8) "Forebay" means a device located at the head of a wet detention pond to capture incoming sediment before it reaches the main portion of the pond. The forebay is typically an excavated settling basin or a section separated by a low weir.
- (9) "General Permit" means a ~~"permit"~~ permit issued under G.S. 143-215.1(b)(3) and (4) authorizing a category of similar activities or discharges.
- (10) "Gravel" means a clean or washed, loose, uniformly-graded aggregate of stones from a lower limit of 0.08 inches to an upper limit of 3.0 inches in size.
- ~~(40)~~(11) "Infiltration Systems" mean stormwater control systems designed to allow runoff to pass or move (infiltrate/exfiltrate) into the soil.
- ~~(44)~~(12) "Notice of Intent" means a written notification to the Division that an activity or discharge is intended to be covered by a general permit and takes the place of ~~the "application"~~ application used with individual permits.
- ~~(42)~~(13) "Off-site Stormwater Systems" mean stormwater management systems that are located outside the boundaries of the specific project in question, but designed to control stormwater drainage from that project and other potential development sites. These systems shall designate responsible parties for operation and maintenance and may be owned

- and operated as a duly licensed utility or by a local government.
- ~~(24)~~(14) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- ~~(13)~~(15) "On-site Stormwater Systems" mean the systems necessary to control stormwater within an individual development project and located within the project boundaries.
- ~~(26)~~(16) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. ~~Compacted gravel shall not be considered permeable pavement.~~
- ~~(14)~~(17) "Redevelopment" means any land disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous ~~development~~ development. ~~(stormwater~~ Stormwater controls shall not be allowed where otherwise ~~prohibited~~ prohibited.
- ~~(27)~~(18) "Residential development activities" has the same meaning as in 15A NCAC 02B .0202(54).
- ~~(15)~~(19) "Seasonal High Water Table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil that results from mineral leaching.
- ~~(16)~~(20) "Sedimentation/Erosion Control Plan" means any plan, amended plan or revision to an approved plan submitted to the Division of Energy, Mineral, and Land Resources or delegated authority in accordance with G.S. 113A-57.
- ~~(17)~~(21) "Stormwater" is defined in G.S. ~~143, Article 21.~~ 143-213(16a).
- ~~(18)~~(22) "Stormwater Collection System" means any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography or other physical constraints prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of Rule .1003(d)(1) in this Section.
- ~~(19)~~(23) "10 Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the

average, once in 10 years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

- ~~(22)~~(24) "Vegetative Buffer" means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities. The width of the buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high water line of tidal waters, perpendicular to the shoreline.
- ~~(25)~~ ~~"BMP" means Best Management Practice.~~~~(28)~~(25) "Vegetative conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.
- ~~(23)~~(26) "Vegetative Filter" means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that runoff does not become channelized and which provides for control of stormwater runoff through infiltration of runoff and filtering of pollutants. The defined length of the filter shall be provided for in the direction of stormwater flow.
- ~~(20)~~(27) "Water Dependent Structures" means a structure for which the use requires access or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and boat storage areas are not water dependent uses.
- ~~(24)~~(28) "Wet Detention Pond" means a structure that provides for the storage and control of runoff and includes a designed and maintained permanent pool volume.

Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1).

**Note from the Codifier: The Office of Administrative Hearings inadvertently omitted 15A NCAC 05H .2103 from the notice of text published in the NC Register on July 15, 2014, found on pages 106-162. The rule was properly filed by the Mining and Energy Commission. The Codifier apologizes for any inconvenience that this rule omission may have cause on the rulemaking agency and interested persons.*

Notice is hereby given in accordance with G.S. 150B-21.2 that the Mining and Energy Commission intends to adopt the rule cited as 15A NCAC 05H .2103.

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://portal.ncdenr.org/web/mining-and-energy-commission/draft-rules>

Proposed Effective Date: Pending legislative approval

Public Hearings:

Date: August 20, 2014

Time: 10:00 a.m.-2:00 p.m.

Location: NCSU's McKimmon Center, 1101 Gorman St., Raleigh, NC 27606

Date: August 22, 2014

Time: 5:00 p.m.-9:00 p.m.

Location: Wicker Civic Center, 1801 Nash St., Sanford, NC 27330

Date: August 25, 2014

Time: 5:00 p.m.-9:00 p.m.

Location: Rockingham County High School, 180 High School Road, Reidsville, NC 27320

Date: September 12, 2014

Time: 5:00 pm-9:00 p.m.

Location: Western Carolina University's Bardo Fine and Performing Arts Center, 199 Centennial Drive, Cullowhee, NC 28723

Reason for Proposed Action: Session Law 2012-143 reconstituted the Mining Commission as the Mining and Energy Commission (MEC) and directed the MEC to develop and adopt a modern regulatory program for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing. As part of that directive, the MEC was charged with adopting rules that would protect public health and safety; protect public and private property; protect and conserve the State's air, water, and other natural resources; promote economic development and expand employment opportunities; and provide for the productive and efficient development of the State's oil and gas resources. After reviewing the current regulations of the State, the mandate in SL 2012-143, and information from studies about the operation and potential impacts of modern oil and gas exploration and production activities, the MEC is proposing to adopt 126 new rules and to repeal 10 other rules in order to appropriately regulate the oil and gas industry for the purpose of oil and gas exploration and development.

Comments may be submitted to: Walt Haven, Division of Energy, Mineral and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612; email, Oil&Gas@ncdenr.gov

Comment period ends: September 30, 2014

Fiscal impact (check all that apply).

- ☐ State funds affected
☐ Environmental permitting of DOT affected
 Analysis submitted to Board of Transportation
☐ Local funds affected
☐ Substantial economic impact (≥\$1,000,000)
☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 05 – MINING: MINERAL RESOURCES

SUBCHAPTER 05H – OIL AND GAS CONSERVATION

SECTION .2100 – WELL SITE RECLAMATION

15A NCAC 05H .2103 TIMING AND NOTICE OF RECLAMATION

(a) The permittee shall complete reclamation of all disturbed land within two years pursuant to G.S. 113-421(a3).

(b) The permittee shall notify the Department in writing within 30 calendar days following completing reclamation.

(c) The Department shall monitor the well site for compliance with the following standards:

- (1) the vegetative cover shall be maintained for a period of one year after the notice has been given before the disturbed land bond under Rule .1404 shall be released by the surface owner; and
(2) the filled or graded areas shall be maintained so as to avoid the formation of depressions or standing pools of water.

Authority G.S. 113-391(a)(5)l.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to amend the rule cited as 15A NCAC 28 .0302.

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

- ☒ OSBM certified on: June 25, 2014
☐ RRC certified on:
☐ Not Required

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

Proposed Effective Date: December 1, 2014

Public Hearing:

Date: August 20, 2014

Time: 2:00 p.m.

Location: Aquarium Division Office, 3125 Poplarwood Court, Raleigh, NC 27604

Reason for Proposed Action: *This permanent rule amendment is being proposed to replace the temporary rule increasing admission fees at the Aquariums and Pier. The temporary rule was approved by the Rules Review Commission on February 20, 2014.*

The purpose of this amendment is to increase admission fees to the North Carolina Aquariums and to Jennette's Pier to offset the loss of appropriated funds resulting from Session Law 2013-360, effective July 27, 2013, and increased costs associated with transition of temporary employee positions to permanent status in response to pending implementation of the Affordable Care Act.

Admission fees to the Aquariums were last increased in 2006. With state appropriation reductions since 2007 exceeding 35 percent, new funds are needed to continue to operate the Aquariums and offer visitors valuable experiences. This admission fee increase will also continue the Aquariums' move to be more self-sufficient.

Comments may be submitted to: David R. Griffin, 3125 Poplarwood Court, Raleigh, NC 27604; phone (919) 877-5500; email david.griffin@ncaquariums.com

Comment period ends: September 30, 2014

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
- ☒ Local funds affected
- ☒ Substantial economic impact (≥\$1,000,000)
- ☐ No fiscal note required by G.S. 150B-21.4

CHAPTER 28 –NORTH CAROLINA AQUARIUMS

SECTION .0300 – UNAUTHORIZED USE OF FACILITIES: FEES

15A NCAC 28 .0302 FEE SCHEDULE

(a) The following schedule of fees ~~is applicable to govern~~ governs admission to the North Carolina Aquariums:

- | | | |
|-----|---------------------------------|----------------------------------|
| (1) | Roanoke Island: | |
| | Adult, <u>ages</u> 13 and over | \$8.00 <u>\$10.95</u> |
| | Senior, <u>ages</u> 62 and over | \$7.00 <u>\$ 9.95</u> |
| | Child, <u>ages</u> 3 through 12 | \$6.00 <u>\$ 8.95</u> |
| | <u>Military</u> | <u>\$ 9.95</u> |
| (2) | Fort Fisher: | |
| | Adult, <u>ages</u> 13 and over | \$8.00 <u>\$10.95</u> |
| | Senior, <u>ages</u> 62 and over | \$7.00 <u>\$ 9.95</u> |
| | Child, <u>ages</u> 3 through 12 | \$6.00 <u>\$ 8.95</u> |
| | <u>Military</u> | <u>\$ 9.95</u> |
| (3) | Pine Knoll Shores: | |
| | Adult, <u>ages</u> 13 and over | \$8.00 <u>\$10.95</u> |
| | Senior, <u>ages</u> 62 and over | \$7.00 <u>\$ 9.95</u> |
| | Child, <u>ages</u> 3 through 12 | \$6.00 <u>\$ 8.95</u> |
| | <u>Military</u> | <u>\$ 9.95</u> |

(b) Free admission to the North Carolina Aquariums on Roanoke Island, at Pine Knoll Shores and at Fort Fisher ~~is shall~~ be offered to the following groups:

- (1) Aquarium Society Members;
- (2) Preregistered North Carolina School groups;
- (3) Association of Zoos and Aquariums' reciprocals; and
- (4) Children under the age of three.

Free admission ~~is shall be~~ offered to everyone on the following days: Martin Luther King, Jr. holiday and Veteran's Day. ~~Day on November 11.~~

(c) The following schedule of fees ~~is applicable to govern~~ governs admission ~~for fishing~~ on the educational fishing piers of the North Carolina Aquariums:

- | | | |
|-----|---|---------|
| (1) | Daily Fishing Pass | \$12.00 |
| | (maximum 24 hour period, two rods maximum; | |
| | (Ages 13 and over) | \$ 2.00 |
| | for <u>each additional rod</u> each rod over two | |
| (2) | Youth Fishing Pass | \$ 6.00 |
| | (maximum 24 hour period, two rods maximum; | |
| | (Ages 12 and under) | \$ 1.00 |
| | for <u>each additional rod</u> each rod over two | |
| (3) | Pin <u>Pin-Rig</u> Fishing Rigs | \$ 3.00 |
| | addition to fishing pass fee <u>per day</u> | |
| | (live bait) bait fishing) | |
| (4) | Three-Day Fishing Pass | \$30.00 |
| | (any three days in a seven day period from date | |
| | (Ages 13 and over) purchased, two rod maximum; \$2.00 per day for each additional rod) | |
| (5) | Youth Three-Day Fishing Pass | \$15.00 |
| | (any three days in a seven day period from date | |
| | (Ages 12 and under) purchased, two rod maximum; \$2.00 per day for each additional rod) | |
| (6) | Seven-Day Fishing Pass | \$65.00 |
| | (any seven days in a one month period from | |

- (Ages 13 and over) date purchased, two rod maximum; \$2.00 per day for each additional rod)
- (7) Youth Seven-Day Fishing Pass \$32.50
(any seven days in a one month period from (Ages 12 and under) date purchased, two rod maximum; \$2.00 per day for each additional rod)
- (8) Sightseeing Pass \$2.00
(unlimited sightseeing for date of purchase) (Ages 13 and over)
- (9) Youth Sightseeing Pass \$1.00
(unlimited sightseeing for date of purchase) (Ages 12 and under)

Authority G.S. 143B-289.41(b); 143B-289.44.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0353.

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

- ☒ OSBM certified on: June 6, 2014
☐ RRC certified on:
☐ Not Required

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

Proposed Effective Date: December 1, 2014

Public Hearing:

Date: August 21, 2014

Time: 3:00 p.m.

Location: Cook's Memorial Presbyterian Church, 3413 Mt. Holly-Huntersville Rd., Charlotte, NC 28216

Reason for Proposed Action: *The proposed permanent amendments to 15A NCAC 10F .0353 would codify into the rules of the NC Wildlife Resources Commission three no-wake zones that were established by the Mountain Island Lake Marine Commission and create one new no-wake zone on the lake. In September 2013, a meeting was held at Mountain Island Lake with representatives from the Mountain Island Lake Marine Commission, Duke Energy and the Wildlife Resources Commission with the intention of assessing current no-wake zone needs. Those in attendance toured the lake and determined recommendations for existing no-wake zones and any need for new no-wake zones. All agreed that due to safety issues, the current no-wake zones at Neck Cove, Whispering Cove and Gar Creek established by the Mountain Island Lake Marine Commission should become Wildlife Resources Commission no-wake zones and that a no-wake zone is needed at the NC Hwy 73 Bridge.*

Comments may be submitted to: Kate Pipkin, 1701 Mail Service Center, Raleigh, NC 27699-1722

Comment period ends: October 1, 2014

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
☐ Substantial economic impact (≥\$1,000,000)
☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F – MOTORBOATS AND WATER SAFETY

SECTION .0300 – LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0353 MOUNTAIN ISLAND LAKE: MECKLENBURG, GASTON AND LINCOLN COUNTIES
(a) Regulated Area. This Rule applies to Mountain Island Lake which is located in Mecklenburg, Gaston and Lincoln counties.

- (1) Latta Plantation Park - The cove lying north of and adjacent to the Latta Plantation Park and adjacent to the Mecklenburg County Park and Duke Power Company properties.
- (2) Duck Cove - The waters of Duck Cove as delineated by appropriate markers. Duck Cove is adjacent to Mecklenburg County's Cowan's Ford Wildlife Refuge and west of the portion of Neck Road that runs through Cowan's Ford Wildlife Refuge.
- (3) Nance Cove:
 - (A) The waters of the southern portion of Nance Cove extending north from the back of the cove, at or near Shuffletown Landing, up the cove toward the main channel of Mountain Island Lake, extending to a point that is roughly even with the boundary

line between Lots 166 and 167 in the Overlook subdivision, which lots are just north of the Overlook Swim & Tennis Club, and where the cove is approximately 368 feet wide.

- (B) The waters of the western arm or sub-cove of Nance Cove, which lies west of Shadow Cove Lane and the northern-most portion of Nance Cove Road and east of Haymarket Road.
- (4) North Carolina Highway 16 Bridge B - An area extending approximately 50 yards in all directions from the NC Highway 16 Bridge also known as the Rozelles Ferry Bridge.
- (5) Neck Cove beginning at a point on the western shore at 35.367061 N, 80.932632 W to a point on the eastern shore at 35.367085 N, 80.931129 W and extending the entire length of the cove.
- (6) Gar Creek east of a line from a point on the north shore at 35.348851 N, 80.927461 W to a point on the south shore at 35.348082 N, 80.927736 W to a line from a point on the north shore at 35.348854 N, 80.926821 W to a point on the south shore at 35.34844 N, 80.925803 W.
- (7) Whispering Cove beginning at a point on the western shore at 35.341223 N, 80.975715 W to a point on the eastern shore at 35.340806 N, 80.974785 W and extending the entire length of the cove.
- (8) North Carolina Highway 73 Bridge - an area extending approximately 50 yards in all directions from the NC Highway 73 Bridge: east of a line from a point on the north shore at 35.428079 N, 80.95799 W to a point on the south shore at 35.427177 N, 80.957424 W to a line from a point on the north shore at 35.427845 N, 80.955441 W to a point on the south shore at 35.427008 N, 80.955422 W.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. Each of the boards of Commissioners of the above-named counties is designated a suitable agency for placement and maintenance of markers implementing this Rule for regulated areas within their territorial jurisdiction in accordance with the Uniform System.

Authority G.S. 75A-3; 75A-15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0355.

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

☒ OSBM certified on: June 6, 2014

- ☐ RRC certified on:
☐ Not Required

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

Proposed Effective Date: December 1, 2014

Public Hearing:

Date: August 20, 2014

Time: 3:00 p.m.

Location: Perquimans 4-H Ag. Building, 601 S. Edenton St., Hertford, NC 27944

Reason for Proposed Action: *The proposed permanent amendment to 15A NCAC 10F .0355 would establish a no-wake zone on Bethel Creek, a tributary to Yeopim River in Perquimans County. Bethel Creek is a narrow creek approximately 150 feet wide and receives a great deal of activity. There are approximately six private boat docks that are used for swimming, fishing, and boat storage at this time and a proposed new subdivision on the North East side of the creek will increase the number of docks and boating traffic. Also, there are two boat ramps, one containing eight boat slips used to store boats within this proposed no-wake zone. Law Enforcement officers have already received multiple complaints of near misses from boats running at greater than no-wake speed and conclude that due to the safety concern of small children and families swimming in this narrow waterway, and possible hazards caused by duck blinds and fallen trees, a no-wake zone is warranted.*

Comments may be submitted to: Kate Pipkin, 1701 Mail Service Center, Raleigh, NC 27699-1722

Comment period ends: October 1, 2014

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

- ☐ Substantial economic impact ($\geq \$1,000,000$)
☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F – MOTORBOATS AND WATER SAFETY

SECTION .0300 – LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0355 PERQUIMANS COUNTY

(a) Regulated Areas. This Rule applies to the following waters:

- (1) Perquimans River:
 - (A) The canals of Holiday Island subdivision; and
 - (B) Town of Hertford: that part of the Perquimans River beginning 75 yards northeast of the Perquimans River Bridge (Hertford S-shaped Bridge) parallel to the bridge, shore to shore, and ending approximately 550 yards southwest, at a line from a point on the north shore 36.19300 N, 76.46962 W to a point on the south shore 36.19150 N, 76.47099 W.
- (2) Yeopim River:
 - (A) The canal entrance between Navaho Trail and Cherokee Trail;
 - (B) The canal entrance between Cherokee Trail and Ashe Street;
 - (C) The boat ramp at Ashe and Pine Street;
 - (D) The canal entrance between Pine Street and Linden Street;
 - (E) The canal entrance and boat ramp between Willow Street and Evergreen Drive;
 - (F) The canal entrance between Sago Street and Alder ~~Street~~; ~~Street~~; and
 - (G) The swimming area at the Snug Harbor Park and ~~Beach~~; and ~~Beach~~.
 - (H) Bethel Creek north of a line from a point on the west shore at 36.09552 N, 76.47958 W to a point on the east shore at 36.095517 N, 76.47735 W to a line from a point on the west shore at 36.10532 N, 76.48080 W to a point on the east shore at 36.10516 N, 76.48047 W.
- (3) Yeopim Creek:
 - (A) The canal entrance between Mohave Trail and Iowa Trail;
 - (B) The canal entrance between Iowa Trail and Shawnee Trail;
 - (C) The area within 75 yards of the Albemarle Plantation Marina Piers; and

- (D) The area of Beaver Cove as delineated by appropriate markers.
- (4) Little River: The entrance to the cove known as "Muddy Gut Canal," which extends from the waters known as "Deep Creek."

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Perquimans County is designated a suitable agency for placement and maintenance of markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 57 – APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Appraisal Board intends to amend the rules cited as 21 NCAC 57A .0407; and 57B .0101, .0603.

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

Proposed Effective Date: January 1, 2015

Public Hearing:

Date: August 26, 2014

Time: 9:00 a.m.

Location: 5830 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action: *The Appraiser Qualifications Board of the Appraisal Foundation has amended its criteria effective January 1, 2015 to require that an applicant for trainee registration must take a supervisor/trainee course before the application may be granted. The agency has determined that there is no reasonable basis for requiring half of the mandatory continuing education hours to be taken in a classroom. The language regarding activities not eligible for approval as a continuing education course is superfluous as this is covered in 21 NCAC 57A .0204.*

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

Comment period ends: September 30, 2014

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**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☒ **No fiscal note required by G.S. 150B-21.4**

**SUBCHAPTER 57A – REGISTRATION LICENSING,
CERTIFICATION AND PRACTICE**

SECTION .0400 – GENERAL APPRAISAL PRACTICE

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

(a) A certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the appraiser:

- (1) has been certified for at least three years;
- (2) has no more than three trainees working under him or her at any one time. A certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50 percent of the required appraisal experience to upgrade, a certified residential appraiser may add another trainee. A certified general appraiser may have three trainees working under his or her supervision. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor ~~must~~ shall inform the Board of the name of the trainee by filing a Supervisor Declaration Form with the Board. The form may be found on the Board's website at www.ncappraisalboard.org. The supervisor ~~must~~ shall also inform the Board when a trainee is no longer working under his or her supervision by using the Supervisor Declaration Form;
- (3) actively and personally supervises the trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision;

- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized, and assures that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) reviews and signs the trainee's log of appraisals, which must be updated at least every 30 days. In addition, the supervisor ~~must~~ shall make available to the trainee a copy of every appraisal report where the trainee performs more than 75 percent of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous three years. For the purposes of this Section, disciplinary action means an active suspension, a downgrade of a credential, a revocation, or any other action that affects a supervisor's ability to engage in appraisal practice.

(b) Active and personal supervision includes direction, guidance, and support from the supervisor. The supervising appraiser shall have input into and full knowledge of the appraisal report prior to its completion, and shall make any necessary and appropriate changes to the report before it is transmitted to the client. In addition, the supervisor shall accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments or the first 1500 hours of experience, whichever comes first, for which the trainee will perform more than 75 percent of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor ~~must~~ shall accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location.

(c) The trainee ~~must~~ shall maintain a log on a form that includes each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the experience hours claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject. The log ~~must~~ shall show all appraisals performed by the trainee and ~~must~~ shall be updated at least every 30 days. The log form is available on the Board's website at www.ncappraisalboard.org.

(d) ~~All trainees and any An~~ appraiser who wishes to supervise a trainee ~~must shall~~ attend an education program regarding the role of a supervisor before such supervision begins. This course shall be taught only by instructors approved by the Board in accordance with 21 NCAC 57B .0614. ~~A trainee shall not receive experience credit for any appraisals performed before the trainee has taken the course.~~

(e) Trainees ~~must shall~~ assure that the Appraisal Board has received the Supervisor Declaration Form on or before the day the trainee begins assisting the supervising appraiser. The form may be found on the Board's website at www.ncappraisalboard.org. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Paragraph.

(f) Supervising appraisers shall not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest.

(g) If a trainee signs an appraisal report or provides significant professional assistance in the appraisal process and thus is noted in the report as having provided such assistance, the appraiser signing the report shall have notified the Appraisal Board before the appraisal is signed that he or she is the supervisor for the trainee. If more than one appraiser signs the report, the appraiser with the highest level of credential ~~must shall~~ be the declared supervisor for the trainee. If all appraisers signing the report have the same level of credential, at least one of them ~~must shall~~ be declared as the trainee's supervisor before the report is signed.

Authority G.S. 93E-1.6.1; 93E-1-10.

SUBCHAPTER 57B – REAL ESTATE APPRAISAL EDUCATION

SECTION .0100 – COURSES REQUIRED FOR REGISTRATION, LICENSURE AND CERTIFICATION

21 NCAC 57B .0101 REGISTERED TRAINEE COURSE REQUIREMENTS

(a) Each applicant for registration as a trainee shall complete a minimum of 90 hours of precertification education, consisting of the following;

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 15 hours in Residential Market Analysis and Highest and Best Use or 30 hours in General Appraiser Market Analysis and Highest and Best Use; and
- (4) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).

(b) Credit for these courses ~~must shall~~ be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with the rules in this Subchapter. These courses ~~must shall~~ be completed within the five-year period immediately preceding the date when application for registration is made to the Board.

(c) Basic Appraisal Principles shall be a prerequisite to taking Basic Appraisal Procedures, and Basic Appraisal Procedures shall be a prerequisite to taking either Residential or General Market Analysis and Highest and Best Use. The 15 hour USPAP course may be taken any time after the successful completion of Basic Appraisal Procedures.

(d) These four courses ~~must shall~~ have been obtained in a classroom setting. No credit will be given for these courses taken by any other method, such as correspondence school courses or on-line courses.

(e) Before the application may be granted, the applicant shall complete the supervisor/trainee course developed by the North Carolina Appraisal Board.

Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10.

SECTION .0600 – CONTINUING EDUCATION COURSES

21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL

The following requirements ~~must shall~~ be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course ~~must shall~~ comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course ~~must shall~~ be both accurate and current.
- (2) The course ~~must shall~~ involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction ~~must shall~~ be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (3) The course instructor(s) ~~must shall~~:
 - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser ~~licensure~~ licensure, or certification; and
 - (b) either:
 - (i) two years' full-time experience that is directly related to the subject matter to be taught;
 - (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught;
 - (iii) two years' full-time experience teaching the subject matter to be taught;
 - (iv) an equivalent combination of such education and experience; or

- (v) be approved by the Board pursuant to 57B. 0606(11).
- (4) If two or more instructors shall be utilized to teach a course during the approval period and the course shall be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.
- (5) The course ~~must~~ shall be one involving a qualified instructor who, except as noted in Item (6) of this Rule, shall be physically present in the classroom at all ~~times~~ times, and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television ~~instruction~~ instruction, or similar types of instruction by other persons to enhance or supplement his or her personal instruction; however, such other persons shall not be considered to be the course instructor and the course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation. Current Appraisal Board members shall not teach continuing education courses during their term of office on the Board.
- (6) ~~A trainee or appraiser may receive up to 14 hours of credit every two years in the period ending on June 1 of each odd-numbered year for participation in a course offered on-line via the Internet. A sponsor seeking approval of a computer-based education course~~ must shall provide the Board access to the course via the internet at a date and time satisfactory to the Board and the Board shall not be charged any fee for such access. To be approved for credit, an on-line course ~~must~~ shall meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course ~~must~~ shall have a reliable method for recording and verifying attendance. A participant may periodically log on and off of an on-line continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. The course design and delivery mechanism for an on-line course offered on the Internet ~~must~~ shall have received approval from the International Distance Education Certification Center (IDECC). Information about the IDECC may be found on their website at www.idecc.org. A course completion certificate ~~must~~ shall be forwarded to the student as stated in Rule .0607 of this Section, and a course roster ~~must~~ shall be sent to the Appraisal Board in accordance with Rule .0608 of this Section.
- (7) The course ~~must~~ shall be an educational program intended to improve the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. ~~Activities not eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, trade conferences or similar activities.~~
- (8) The course sponsor ~~must~~ shall certify that the course shall be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.
- (9) The course title ~~may~~ shall not include the words "Uniform Standards of Professional Appraisal Practice" or "USPAP" unless the course is either the 15 hour National USPAP course or the 7 hour National USPAP update course. If the course is the 7 hour National USPAP course, the course title ~~must~~ shall state which edition of USPAP will be taught in that specific course.
- (10) Each course ~~must~~ shall utilize a textbook or course materials that have been approved by the Board.
- (11) If the course content is related to technology, such as software, hardware, electronic devices, manuals, or databases, the course shall be developed specifically for utilization in the real estate appraisal business in order to be approved for continuing education credit. Such courses shall not require the student to purchase specific products, and shall not use the course to sell or advertise particular products or software.

Authority G.S. 93E-1-8(c); 93E-1-10.

EMERGENCY RULES

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

NORTH CAROLINA BUILDING CODE COUNCIL

Rule-making Agency: NC Building Code Council

Rule Citation: 2012 NC Energy Conservation and Residential Codes - Chapters 2, 4 and 11, Low Emissivity Fenestration Product

Effective Date: July 2, 2014

Findings Reviewed and Approved by the Codifier: June 24, 2014

Reason for Action: Citizens of North Carolina, as well as other states, have been plagued by documented cases of intense reflective energy from Low-E windows causing damage to vinyl siding on homes and plastic parts of automobiles. The Building Code Council is now aware of four documented cases of fires being caused by similar reflective energy involving Four Seasons and Cardinal IG Co. In these four cases, the Consumer Products Safety Commission, in cooperation with the manufacturer, issued a voluntary recall. Given the prevalence of this problem and concern that intense reflective energy may have the potential to create a fire hazard, the North Carolina Building Code Council seeks to remove the mandatory requirement for Low-E glass from the North Carolina Residential Code until a solution can be found to eliminate this potential hazard.

Suggested language for low emissivity glazing emergency rule – One and Two family dwellings and townhouses

Add to the 2012 NCECC, in Chapter 2 the following definition:

Low Emissivity Fenestration Product. A fenestration product containing glass which has a transparent coating which acts as a thermal mirror and is used to increase a window's insulating value, block or increase heat flow, and reduce fading.

For the 2012 NCECC, Chapter 4, modify Table 402.1.1 as follows:

**TABLE 402.1.1
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT^a**

CLIMATE ZONE	FENESTRATION U-FACTOR ^{b,l}	SKYLIGHT ^b U-FACTOR	GLAZED FENESTRATION SHGC ^{b,e,m}	CEILING R-VALUE ^k	WOOD FRAME WALL R-VALUE ^e	MASS WALL R-VALUE ⁱ	FLOOR R-VALUE	BASEMENT ^c WALL R-VALUE	SLAB ^d R-VALUE & DEPTH	CRAWL SPACE ^c WALL R-VALUE
3	0.35	0.65	0.30	30	13	5/10	19	10/13 ^f	0	5/13
4	0.35	0.60	0.30	38 or 30 cont. ^j	15, 13+2.5 ^h	5/10	19	10/13	10	10/13
5	0.35	0.60	NR	38 or 30 cont. ^j	19, 13+5, or 15+3 ^{eh}	13/17	30 ^g	10/13	10	10/13

l. For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum U-value of 0.55. When applying this note, the use shall be documented to allow identification for compliance with this requirement.

m. For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum solar heat gain coefficient of 0.80. When applying this note, the use shall be documented to allow identification for compliance with this requirement.

For the 2012 NCECC, Chapter 4, modify Table 402.1.3 as follows:

**TABLE 402.1.3
EQUIVALENT U-FACTORS^a**

CLIMATE ZONE	FENESTRATION U-FACTOR ^e	SKYLIGHT U-FACTOR	CEILING U-FACTOR	FRAME WALL U-FACTOR	MASS WALL U-FACTOR ^b	FLOOR U-FACTOR	BASEMENT WALL U-FACTOR ^d	CRAWL SPACE WALL U-FACTOR ^c
3	0.35	0.65	0.035	0.082	0.141	0.047	0.059	0.136
4	0.35	0.60	0.030	0.077	0.141	0.047	0.059	0.065
5	0.35	0.60	0.030	0.061	0.082	0.033	0.059	0.065

e. For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum U-value of 0.55. When applying this note, the use shall be documented to allow identification for compliance. When applying this note and using REScheck, to allow continued use of the software, the applicable fenestration product shall be modeled as meeting the U-factor of 0.35 and the SHGC of 0.30, as applicable, but the fenestration products actual U-value and SHGC shall be noted in the comments section of the software for documentation of application of this note to the applicable products. Compliance for these subject products shall be verified compared to the allowed substituted maximum U-value requirement and maximum SHGC requirement, as applicable.

For the 2012 NCECC, Chapter 4, add an exception to:

402.3.5 Thermally isolated conditioned sunroom U-factor and SHGC

Exception: For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum U-value of 0.55 and, when cooling is provided, a maximum SHGC of 0.80. When applying this note, the use shall be documented to allow identification for compliance with this requirement.

402.5 Maximum fenestration U-factor and SHGC (Mandatory)

Exception: For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum U-value of 0.55 and a maximum SHGC of 0.80. When applying this note, the use shall be documented to allow identification for compliance.

Add to the 2012 NC Residential Code, in Chapter 2 the following definition:

Low Emissivity Fenestration Product. A fenestration product containing glass which has a transparent coating which acts as a thermal mirror and is used to increase a window's insulating value, block or increase heat flow, and reduce fading.

For the 2012 NC Residential Code, Chapter 11, modify Table N1102.1as follows:

**TABLE N1102.1
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT^a**

CLIMATE ZONE	FENESTRATION U-FACTOR ^{b,l}	SKYLIGHT ^b U-FACTOR	GLAZED FENESTRATION SHGC ^{b,e,m}	CEILING R-VALUE ^k	WOOD FRAME WALL R-VALUE ^e	MASS WALL R-VALUE ⁱ	FLOOR R-VALUE	BASEMENT ^c WALL R-VALUE	SLAB ^d R-VALUE & DEPTH	CRAWL SPACE ^c WALL R-VALUE
3	0.35	0.65	0.30	30	13	5/10	19	10/13 ^f	0	5/13
4	0.35	0.60	0.30	38 or 30 cont. ^j	15, 13+2.5 ^h	5/10	19	10/13	10	10/13
5	0.35	0.60	NR	38 or 30 cont. ^j	19, 13+5, or 15+3 ^{eh}	13/17	30 ^l	10/13	10	10/13

l. For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum U-value of 0.55. When applying this note, the use shall be documented to allow identification for compliance with this requirement.

m. For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum solar heat gain coefficient of 0.80. When applying this note, the use shall be documented to allow identification for compliance with this requirement.

For the 2012 NC Residential Code, Chapter 11, modify Table N1102.1.2 as follows:

**TABLE N1102.1.2
EQUIVALENT U-FACTORS^a**

CLIMATE ZONE	FENESTRATION U-FACTOR ^e	SKYLIGHT U-FACTOR	CEILING U-FACTOR	FRAME WALL U-FACTOR	MASS WALL U-FACTOR ^b	FLOOR U-FACTOR	BASEMENT WALL U-FACTOR ^d	CRAWL SPACE WALL U-FACTOR ^c
3	0.35	0.65	0.035	0.082	0.141	0.047	0.059	0.136
4	0.35	0.60	0.030	0.077	0.141	0.047	0.059	0.065
5	0.35	0.60	0.030	0.061	0.082	0.033	0.059	0.065

e. For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum U-value of 0.55. When applying this note, the use shall be documented to allow identification for compliance. When applying this note and using REScheck, to allow continued use of the software, the applicable fenestration product shall be modeled as meeting the U-factor of 0.35 and the SHGC of 0.30, as applicable, but the fenestration products actual U-value and SHGC shall be noted in the comments section of the software for documentation of application of this note to the applicable products. Compliance for these subject products shall be verified compared to the allowed substituted maximum U-value requirement and maximum SHGC requirement, as applicable.

For the 2012 NC Residential Code, add an exception to:

N1102.3.5 Thermally isolated conditioned sunroom U-factor and SHGC

Exception: For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum U-value of 0.55 and, when cooling is provided, a maximum SHGC of 0.80. When applying this note, the use shall be documented to allow identification for compliance with this requirement.

N1102.5 Maximum fenestration U-factor and SHGC

Exception: For one- and two-family dwellings and townhouses, non-low emissivity glazed fenestration products may be substituted for low emissivity glazed fenestration products without energy penalty where judged by the permit holder to be a safety concern due to reflection of concentrated sunlight. The substitute fenestration products shall have a maximum U-value of 0.55 and a maximum SHGC of 0.80. When applying this note, the use shall be documented to allow identification for compliance.

Commentary

The value for maximum U-value identified above for the substituted glazed fenestration products is extracted from the table for the default glazed fenestration U-value properties for unlabeled glazed fenestration products identified in Table 303.1.3(1). The value for maximum SHGC identified above for the substituted glazed fenestration products was originally extracted from the table for the default glazed fenestration SHGC properties for unlabeled glazed fenestration products identified in Table 303.1.3(3) which was 0.70 maximum but was revised to 0.80 maximum based on reports of product availability in the marketplace. When applying this exception, the use shall be documented by the permit holder to allow determination of compliance by the inspector for the substituted fenestration product. Substitute fenestration products will be allowed to be modeled in the REScheck analyses as conforming to the maximum table requirements for U-value and SHGC, as applicable, to allow continued use of the REScheck program without energy penalty. When using the REScheck compliance program for the NC requirements, document the substitute glazed fenestration products via the "Project" tab page under the "Notes" section and identify the applicable glazed fenestration as assigned by the program for the substitute glazed fenestration products. Include the actual U-value and SHGC for the substitute products. This will identify the exempted fenestration products on the program's "compliance certificate". Also, this information should be documented in the "notes" cell for the particular fenestration product. This will identify the exempted fenestration product on the program's "inspection checklist". Then verification of compliance for these subject substituted glazed fenestration products will verified compared to the requirements of the substitute glazed fenestration product maximum U-value and SHGC requirements.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on June 18, 2014.

**REGISTER CITATION TO THE
NOTICE OF TEXT****MEDICAL CARE COMMISSION**

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<u>Reporting and Investigating Abuse, Neglect or Misappropri...</u>	10A	NCAC	13D	.2210*	28:07 NCR
<u>General Rules</u>	10A	NCAC	13D	.3101*	28:12 NCR
<u>Site</u>	10A	NCAC	13D	.3103*	28:12 NCR
<u>Plans and Specifications</u>	10A	NCAC	13D	.3104*	28:12 NCR
<u>Furnishings</u>	10A	NCAC	13D	.3202*	28:12 NCR
<u>New Facility Requirements</u>	10A	NCAC	13D	.3301	28:12 NCR
<u>Additions</u>	10A	NCAC	13D	.3302	28:12 NCR
<u>Heating and Air Conditioning</u>	10A	NCAC	13D	.3401*	28:12 NCR
<u>Emergency Electrical Service</u>	10A	NCAC	13D	.3402*	28:12 NCR
<u>General Electric</u>	10A	NCAC	13D	.3403*	28:12 NCR
<u>Other</u>	10A	NCAC	13D	.3404*	28:12 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>General</u>	10A	NCAC	39A	.0201	28:12 NCR
<u>Definitions</u>	10A	NCAC	39A	.0202	28:12 NCR
<u>Reimbursement Funds</u>	10A	NCAC	39A	.0203	28:12 NCR
<u>Patient Financial Eligibility</u>	10A	NCAC	39A	.0204	28:12 NCR
<u>Covered Services</u>	10A	NCAC	39A	.0205	28:12 NCR
<u>Billing the Program</u>	10A	NCAC	39A	.0206	28:12 NCR
<u>Rates of Reimbursement</u>	10A	NCAC	39A	.0207	28:12 NCR
<u>Reimbursement Funds: Third Party Payors</u>	10A	NCAC	39A	.0208	28:12 NCR
<u>Monitoring</u>	10A	NCAC	39A	.0209	28:12 NCR
<u>Audits</u>	10A	NCAC	39A	.0210	28:12 NCR
<u>Special Provision</u>	10A	NCAC	39A	.0211	28:12 NCR
<u>General</u>	10A	NCAC	39A	.0801	28:12 NCR
<u>Definitions</u>	10A	NCAC	39A	.0802	28:12 NCR
<u>Eligible Providers</u>	10A	NCAC	39A	.0803	28:12 NCR
<u>Financial Eligibility</u>	10A	NCAC	39A	.0804	28:12 NCR
<u>Medical Eligibility</u>	10A	NCAC	39A	.0805	28:12 NCR
<u>Billing the HIV Health Services Program</u>	10A	NCAC	39A	.0806	28:12 NCR
<u>Rates of Reimbursement</u>	10A	NCAC	39A	.0807	28:12 NCR
<u>Reimbursement Funds: Third Party Payors</u>	10A	NCAC	39A	.0808	28:12 NCR
<u>Monitoring</u>	10A	NCAC	39A	.0809	28:12 NCR
<u>Audits</u>	10A	NCAC	39A	.0810	28:12 NCR
<u>School Fluoridation Information</u>	10A	NCAC	40A	.0104	28:12 NCR

APPROVED RULES

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<u>Water Supply</u>	10A	NCAC	40A	.0206	28:12 NCR
<u>Inspection</u>	10A	NCAC	40A	.0207	28:12 NCR
<u>Application and Approval</u>	10A	NCAC	40A	.0208	28:12 NCR
<u>Notification</u>	10A	NCAC	40A	.0306	28:12 NCR
<u>Renovation</u>	10A	NCAC	40A	.0307	28:12 NCR
<u>Equipment and Maintenance</u>	10A	NCAC	40A	.0308	28:12 NCR
<u>Training</u>	10A	NCAC	40A	.0309	28:12 NCR
<u>Surveillance</u>	10A	NCAC	40A	.0310	28:12 NCR
<u>School Fluoridation Agreement</u>	10A	NCAC	40A	.0403	28:12 NCR
<u>Water Analysis Form</u>	10A	NCAC	40A	.0404	28:12 NCR
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<u>Fees for Rabies, Tags, Links, and Rivets</u>	10A	NCAC	41G	.0102	28:12 NCR
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<u>Allocation of Funds</u>	10A	NCAC	43D	.1203	28:12 NCR
<u>Client Eligibility</u>	10A	NCAC	43D	.1204	28:12 NCR
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<u>Definitions</u>	10A	NCAC	43E	.0302	28:12 NCR
<u>Provider Eligibility</u>	10A	NCAC	43E	.0303	28:12 NCR
<u>Client Eligibility</u>	10A	NCAC	43E	.0304	28:12 NCR
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<u>Medical Records</u>	10A	NCAC	43E	.0307	28:12 NCR
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<u>Hospitalization</u>	10A	NCAC	43F	.0404	28:12 NCR
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<u>Orthodontic and Prosthodontic Dental Care</u>	10A	NCAC	43F	.0406	28:12 NCR
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<u>Further Information</u>	10A	NCAC	43F	.0702	28:12 NCR
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<u>Agreement with Vocational Rehabilitation</u>	10A	NCAC	43F	.0901	28:12 NCR
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<u>Client Eligibility</u>	10A	NCAC	43F	.1004	28:12 NCR
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<u>Annual Plan</u>	10A	NCAC	43F	.1011	28:12 NCR
<u>Renewal of Grant Funds</u>	10A	NCAC	43F	.1012	28:12 NCR

JUSTICE, DEPARTMENT OF - DIVISION OF CRIMINAL INFORMATION

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<u>Function of DCIN</u>	12	NCAC	04H	.0103*	28:10 NCR
<u>Eligibility for Access to DCIN</u>	12	NCAC	04H	.0201*	28:10 NCR
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<u>Non-Terminal Access</u>	12	NCAC	04H	.0203*	28:10 NCR
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<u>Control Agreements</u>	12	NCAC	04H	.0303	28:10 NCR
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<u>Official Use of DCIN</u>	12	NCAC	04I	.0102*	28:10 NCR
<u>Personnel Security</u>	12	NCAC	04I	.0103	28:10 NCR
<u>Security Awareness Training</u>	12	NCAC	04I	.0104*	28:10 NCR
<u>Documentation and Accuracy</u>	12	NCAC	04I	.0201*	28:10 NCR
<u>Timeliness</u>	12	NCAC	04I	.0202*	28:10 NCR
<u>Validations</u>	12	NCAC	04I	.0203*	28:10 NCR
<u>Hit Confirmation</u>	12	NCAC	04I	.0204*	28:10 NCR
<u>Arrest Fingerprint Card</u>	12	NCAC	04I	.0301*	28:10 NCR
<u>Final Disposition Information</u>	12	NCAC	04I	.0302	28:10 NCR
<u>Incarceration Information</u>	12	NCAC	04I	.0303	28:10 NCR
<u>Dissemination and Logging of CHRI and NICS Records</u>	12	NCAC	04I	.0401*	28:10 NCR
<u>Accessing of CCH Records</u>	12	NCAC	04I	.0402*	28:10 NCR
<u>Use of CHRI for Criminal Justice Employment</u>	12	NCAC	04I	.0403*	28:10 NCR
<u>Right to Review</u>	12	NCAC	04I	.0404*	28:10 NCR
<u>CCH Use in Licensing and Non-Criminal Justice Employment ...</u>	12	NCAC	04I	.0405*	28:10 NCR
<u>Restrictive Use of CCH for Employment Purposes</u>	12	NCAC	04I	.0406	28:10 NCR
<u>Research Use and Access of CCH Records</u>	12	NCAC	04I	.0407	28:10 NCR
<u>Limitation Requirements</u>	12	NCAC	04I	.0408*	28:10 NCR
<u>Access to CHRI by Attorneys</u>	12	NCAC	04I	.0409*	28:10 NCR
<u>Access to CHRI in Civil Proceedings</u>	12	NCAC	04I	.0410	28:10 NCR
<u>Expungements</u>	12	NCAC	04I	.0501	28:10 NCR
<u>Statewide Automated Fingerprint Identification System</u>	12	NCAC	04I	.0601*	28:10 NCR
<u>Available Data</u>	12	NCAC	04I	.0602*	28:10 NCR
<u>Fingerprinting of Convicted Sex Offenders</u>	12	NCAC	04I	.0603	28:10 NCR

APPROVED RULES

<u>Dissemination of Division of Motor Vehicles Information</u>	12	NCAC	04I	.0701*	28:10 NCR
<u>Audits</u>	12	NCAC	04I	.0801*	28:10 NCR
<u>Definitions</u>	12	NCAC	04J	.0101*	28:10 NCR
<u>Sanctions for Violations by Individuals</u>	12	NCAC	04J	.0102	28:10 NCR
<u>Sanctions for Violations by Agencies</u>	12	NCAC	04J	.0103	28:10 NCR
<u>Notice of Violation</u>	12	NCAC	04J	.0201	28:10 NCR
<u>Informal Hearing Procedure</u>	12	NCAC	04J	.0301*	28:10 NCR

PRIVATE PROTECTIVE SERVICES BOARD

<u>Requirements for a Firearms Trainer Certificate</u>	12	NCAC	07D	.0901*	28:15 NCR
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ARCHITECTURE, BOARD OF

<u>Forms</u>	21	NCAC	02	.0107*	28:18 NCR
<u>Fees</u>	21	NCAC	02	.0108*	28:18 NCR
<u>Applicability of Board Rules</u>	21	NCAC	02	.0202*	28:18 NCR
<u>Firm Practice of Architecture</u>	21	NCAC	02	.0214*	28:18 NCR
<u>Examination</u>	21	NCAC	02	.0302*	28:18 NCR
<u>Licensure by Reciprocity</u>	21	NCAC	02	.0303	28:18 NCR

CHIROPRACTIC EXAMINERS, BOARD OF

<u>Licensure</u>	21	NCAC	10	.0204*	28:16 NCR
<u>Certification of Clinical Assistants</u>	21	NCAC	10	.0213	28:16 NCR

NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS FOR

<u>Authority: Name & Location of Board</u>	21	NCAC	37B	.0101*	28:18 NCR
<u>Initial Licensure Fee</u>	21	NCAC	37D	.0202*	28:18 NCR
<u>Application to Become Administrator-In-Training</u>	21	NCAC	37D	.0402*	28:18 NCR
<u>State Examination Administration</u>	21	NCAC	37D	.0703*	28:18 NCR
<u>Application Contents</u>	21	NCAC	37E	.0102*	28:18 NCR
<u>Issuance of Temporary License</u>	21	NCAC	37F	.0102*	28:18 NCR
<u>Renewal Fee</u>	21	NCAC	37G	.0102*	28:18 NCR
<u>Inactive Requirements</u>	21	NCAC	37G	.0201*	28:18 NCR
<u>Continuing Education Programs of Study</u>	21	NCAC	37H	.0102*	28:18 NCR

LICENSED PROFESSIONAL COUNSELORS, BOARD OF

<u>Professional Ethics</u>	21	NCAC	53	.0102*	28:18 NCR
<u>Professional Disclosure Statement Requirements for LPCA a...</u>	21	NCAC	53	.0204*	28:18 NCR
<u>Counseling Experience</u>	21	NCAC	53	.0205	28:18 NCR
<u>Graduate Counseling Experience</u>	21	NCAC	53	.0206*	28:18 NCR
<u>Supervised Professional Practice</u>	21	NCAC	53	.0208*	28:18 NCR
<u>Qualified Clinical Supervisor</u>	21	NCAC	53	.0209*	28:18 NCR
<u>Individual Clinical Supervision</u>	21	NCAC	53	.0210*	28:18 NCR
<u>Group Clinical Supervision</u>	21	NCAC	53	.0211*	28:18 NCR
<u>Face to Face Supervision Defined</u>	21	NCAC	53	.0212*	28:18 NCR

APPROVED RULES

<u>Applications</u>	21	NCAC	53	.0301*	28:18 NCR
<u>Transcripts</u>	21	NCAC	53	.0302*	28:18 NCR
<u>Applicants Licensed in Other States, Military Personnel a...</u>	21	NCAC	53	.0304*	28:18 NCR
<u>Examination</u>	21	NCAC	53	.0305*	28:18 NCR
<u>Retaking of Examination</u>	21	NCAC	53	.0307*	28:18 NCR
<u>Receipt of Application</u>	21	NCAC	53	.0308*	28:18 NCR
<u>Foreign Degree Applicants</u>	21	NCAC	53	.0310*	28:18 NCR
<u>Requirements for Candidate for Licensure Pending Status</u>	21	NCAC	53	.0311*	28:18 NCR
<u>Alleged Violations</u>	21	NCAC	53	.0403*	28:18 NCR
<u>Application Fee</u>	21	NCAC	53	.0501*	28:18 NCR
<u>Renewal and Other Fees</u>	21	NCAC	53	.0503*	28:18 NCR
<u>Renewal Period</u>	21	NCAC	53	.0601	28:18 NCR
<u>Renewal for Licensure Form; Address Change; Name Change</u>	21	NCAC	53	.0602*	28:18 NCR
<u>Continuing Education</u>	21	NCAC	53	.0603*	28:18 NCR
<u>Failure to Secure Sufficient Continuing Education/Renewal...</u>	21	NCAC	53	.0604*	28:18 NCR
<u>Licensed Professional Counselor Associate</u>	21	NCAC	53	.0701*	28:18 NCR
<u>Supervised Practice for Licensed Professional Counselor A...</u>	21	NCAC	53	.0702*	28:18 NCR
<u>Licensed Professional Counselor Supervisor</u>	21	NCAC	53	.0801*	28:18 NCR
<u>Certificate of Registration for Professional Entity</u>	21	NCAC	53	.0901*	28:18 NCR
<u>Renewal of Certificate of Registration for a Professional...</u>	21	NCAC	53	.0902	28:18 NCR

APPRAISAL BOARD

<u>Form</u>	21	NCAC	57A	.0101*	28:17 NCR
<u>Filing and Fees</u>	21	NCAC	57A	.0102*	28:17 NCR
<u>Qualifications for Trainee Registration and Appraiser Lic...</u>	21	NCAC	57A	.0201*	28:17 NCR
<u>Continuing Education</u>	21	NCAC	57A	.0204*	28:17 NCR
<u>Expired Registration, License or Certificate</u>	21	NCAC	57A	.0206*	28:17 NCR
<u>Temporary Practice</u>	21	NCAC	57A	.0210*	28:17 NCR
<u>Time and Place</u>	21	NCAC	57A	.0301*	28:17 NCR
<u>Subject Matter and Passing Scores</u>	21	NCAC	57A	.0302	28:17 NCR
<u>Re-examination</u>	21	NCAC	57A	.0303*	28:17 NCR
<u>Supervision of Trainees</u>	21	NCAC	57A	.0407*	28:17 NCR
<u>Licensed Residential and Certified Residential Real Estat...</u>	21	NCAC	57B	.0102	28:17 NCR
<u>Course Exemptions for Equivalent Education</u>	21	NCAC	57B	.0104	28:17 NCR
<u>Purpose and Applicability</u>	21	NCAC	57B	.0201	28:17 NCR
<u>Application for Approval</u>	21	NCAC	57B	.0202*	28:17 NCR
<u>Criteria for Approval</u>	21	NCAC	57B	.0203*	28:17 NCR
<u>Administration</u>	21	NCAC	57B	.0207*	28:17 NCR
<u>Accommodations for Persons With Disabilities</u>	21	NCAC	57B	.0208	28:17 NCR
<u>Certificate of Course Completion</u>	21	NCAC	57B	.0209	28:17 NCR

APPROVED RULES

<u>Purpose</u>	21	NCAC	57B	.0301	28:17 NCR
<u>Course Content</u>	21	NCAC	57B	.0302*	28:17 NCR
<u>Course Completion Standards</u>	21	NCAC	57B	.0303*	28:17 NCR
<u>Instructor Requirements</u>	21	NCAC	57B	.0306*	28:17 NCR
<u>Criteria for Course Recognition</u>	21	NCAC	57B	.0307*	28:17 NCR
<u>Applicability</u>	21	NCAC	57B	.0401	28:17 NCR
<u>Qualifying Courses</u>	21	NCAC	57B	.0604*	28:17 NCR
<u>Continuing Education Credit Hours</u>	21	NCAC	57B	.0605	28:17 NCR
<u>Instructors for the Trainee/Supervisor Course Required by...</u>	21	NCAC	57B	.0614*	28:17 NCR
<u>Form of Complaints and Pleadings</u>	21	NCAC	57C	.0101*	28:17 NCR
<u>Form</u>	21	NCAC	57D	.0101*	28:17 NCR
<u>Registration Renewal</u>	21	NCAC	57D	.0202	28:17 NCR
<u>Compliance Manager</u>	21	NCAC	57D	.0303*	28:17 NCR
<u>Payment of Fees to Appraisers</u>	21	NCAC	57D	.0310*	28:17 NCR

REAL ESTATE COMMISSION

<u>Agency Agreements and Disclosure</u>	21	NCAC	58A	.0104*	28:15 NCR
<u>Broker-In-Charge</u>	21	NCAC	58A	.0110*	28:15 NCR
<u>Offers and Sales Contracts</u>	21	NCAC	58A	.0112*	28:15 NCR
<u>Residential Property and Owners' Association Disclosure S...</u>	21	NCAC	58A	.0114*	28:15 NCR
<u>Accounting for Trust Money</u>	21	NCAC	58A	.0117*	28:15 NCR
<u>Trust Money Belonging to Property Owners' Associations</u>	21	NCAC	58A	.0118*	28:15 NCR
<u>Cheating and Related Misconduct</u>	21	NCAC	58A	.0404*	28:15 NCR
<u>Business Entities</u>	21	NCAC	58A	.0502*	28:15 NCR
<u>License Renewal; Penalty for Operating While License Expired</u>	21	NCAC	58A	.0503*	28:15 NCR
<u>Continuing Education Requirement</u>	21	NCAC	58A	.1702*	28:15 NCR
<u>Trust Monies</u>	21	NCAC	58A	.1808*	28:15 NCR
<u>Enrollment Procedure and Contracts</u>	21	NCAC	58C	.0209*	28:15 NCR
<u>Transfer of School Ownership</u>	21	NCAC	58C	.0221*	28:15 NCR
<u>Course Completion Reporting</u>	21	NCAC	58C	.0309*	28:15 NCR
<u>Course Records</u>	21	NCAC	58C	.0310*	28:15 NCR
<u>Update Course Component</u>	21	NCAC	58E	.0102*	28:15 NCR
<u>Nature and Scope of Approval</u>	21	NCAC	58E	.0202*	28:15 NCR
<u>Application and Criteria for Original Approval</u>	21	NCAC	58E	.0203*	28:15 NCR
<u>Active and Inactive Status: Renewal of Approval</u>	21	NCAC	58E	.0204*	28:15 NCR
<u>Criteria for Elective Course Approval</u>	21	NCAC	58E	.0304*	28:15 NCR
<u>Change in Sponsor Ownership</u>	21	NCAC	58E	.0408*	28:15 NCR
<u>Purpose and Applicability</u>	21	NCAC	58E	.0601	28:15 NCR
<u>Course Description</u>	21	NCAC	58E	.0602	28:15 NCR
<u>Authority to Conduct Course</u>	21	NCAC	58E	.0603	28:15 NCR
<u>Course Operational Requirements</u>	21	NCAC	58E	.0604	28:15 NCR

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13D .2111 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

(a) The surveyor shall identify and notify the facility of areas of noncompliance resulting from a survey which may be violations of patients' rights contained in G.S. 131E-117 or rules contained in this Subchapter. The facility may submit additional written information which was not available at the time of the visit for evaluation by the surveyor. The surveyor shall notify the facility if a decision is made, based on information received, not to recommend a penalty. If the decision is to recommend a penalty, the surveyor shall complete and submit an administrative penalty proposal, which includes the classification of the violation and penalty assessed in compliance with G.S. 131E-129, to the Nursing Home Licensure & Certification Section designee. The designee shall determine the type and amount of the penalty to be submitted for consideration. The penalty proposal shall then be submitted to the Section administrative penalty monitor for processing.

(b) The Nursing Home Licensure & Certification Section shall notify the licensee by certified mail within 10 working days from the time the penalty proposal is received by the Section administrative penalty monitor that an administrative penalty is being considered.

(c) The licensee shall have 10 working days from receipt of the penalty proposal notification to provide the Section with any additional written information relating to the proposed administrative penalty.

(d) If the penalty recommendation is classified as a Type B violation and is not a repeat violation as defined by G.S. 131E-129, the licensee shall be notified of the type and amount of penalty and may accept the recommendation instead of review by the Penalty Review Committee. If the penalty recommendation is accepted, the licensee shall notify the administrative penalty monitor by certified mail within five working days following receipt of the recommendation. The licensee must include payment of the penalty with the notification. If payment is not received, the recommendation shall be forwarded to the Penalty Review Committee.

(e) The Penalty Review Committee shall review a recommended penalty proposal when it is a: Type A1 violation; Type A2 violation that has not been corrected; Type B violation that has been cited during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer; or a Type B violation as provided in Paragraph (d) of this Rule which is not accepted by the licensee.

(f) If the Penalty Review Committee determines that the licensee has violated applicable rules or statutes, the Penalty Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131E-129. Recommendations for nursing home penalties shall be submitted to the Chief of the Nursing Home Licensure & Certification Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation and notify the licensee of his or her final decision by certified mail.

(g) The licensee shall have 60 days from receipt of the notification of the Section Chief's final decision to pay the penalty as provided by G.S. 131E-129 or shall file a petition for contested case with the Office of Administrative Hearings within 30 days of the mailing of the notice of penalty imposition as provided by G.S. 131E-2.

History Note: Authority G.S. 131D-34; 131E-104; 143B-165;

Eff. August 3, 1992;

Amended Eff. March 1, 1995; July 1, 2014;

Transferred and recodified from 10 NCAC 03H .0221 Eff. January 10, 1996;

Amended Eff. July 1, 2014.

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

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

(b) The facility shall ensure that the Health Care Personnel Registry Section of the Division of Health Service Regulation is notified within 24 hours of the facility's becoming aware of any allegation against health care personnel as defined in G.S. 131E-256(a)(1).

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

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

- (1) the date and time of the alleged incident;
- (2) the patient's full name and room number;
- (3) details of the allegation and any injury;
- (4) names of the accused and any witnesses;
- (5) names of the facility staff who investigated the allegation;
- (6) results of the investigation; and
- (7) any corrective action that may have been taken by the facility.

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

Eff. January 1, 1996;

Amended Eff. July 1, 2014; February 1, 2013; August 1, 2008; October 1, 1998.

10A NCAC 13D .3101 GENERAL RULES

(a) Each facility shall be planned, constructed, equipped, and maintained to provide the services offered in the facility.

(b) A new facility or remodeling of an existing facility shall meet the requirements of the North Carolina State Building Codes which are incorporated by reference, including all subsequent amendments. Copies of these codes may be purchased from the International Code Council online at <http://www.iccsafe.org/Store/Pages/default.aspx> at a cost of five hundred twenty-seven dollars (\$527.00) or accessed electronically free of charge at http://www.ecodes.biz/ecodes_support/Free_Resources/2012NorthCarolina/12NorthCarolina_main.html. Existing licensed facilities shall meet the requirements of the North Carolina State Building Codes in effect at the time of construction or remodeling.

(c) Any existing building converted from another use to a nursing facility shall meet all requirements of a new facility.

(d) The sanitation, water supply, sewage disposal, and dietary facilities shall comply with the rules of the North Carolina Division of Public Health, Environmental Health Services Section, which are incorporated by reference, including all subsequent amendments. The "Rules Governing the Sanitation of Hospitals, Nursing Homes, Adult Care Homes and Other Institutions", 15A NCAC 18A .1300 are available for inspection at the North Carolina Department of Health and Human Services, Division of Public Health, Environmental Health Services Section 5605 Six Forks Road, Raleigh, North Carolina 27509.

Copies may be obtained from the Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 at no. cost, or can accessed electronically free of charge at <http://reports.oah.state.nc.us/ncac.asp?folderName=\\Title 15A - Environment and Natural Resources\\Chapter 18 - Environmental Health>.

(e) The adult care home portion of a combination facility shall meet the rules for a nursing facility contained in Sections .3100, .3200, and .3400 of this Subchapter, except when separated by two-hour fire resistive construction. When separated by two-hour fire-resistive construction, the adult care home portion of the facility shall meet the rules for adult care homes in 10A NCAC 13F, Licensing of Adult Care Homes, which are incorporated by reference, including all subsequent amendments; and adult care home resident areas must be located in the adult care home section of the facility. Copies of 10A NCAC 13F can be obtained free of charge from the Division of Health Service Regulation, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708, or accessed electronically free of charge at <http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2013%20-%20nc%20medical%20care%20commission/subchapter%20d/su bchapter%20d%20rules.html>.

(f) An addition to an existing facility shall meet the same requirements as a new facility.

History Note: Authority G.S. 131E-102; 131E-104;
Eff. January 1, 1996;
Amended Eff. July 1, 2014.

10A NCAC 13D .3103 SITE

The site of a proposed facility must be approved by the Department prior to construction as:

- (1) accessible by public roads;
- (2) accessible to fire fighting services;
- (3) having a water supply, sewage disposal system, garbage disposal system, and trash disposal system approved by the local health department having jurisdiction;
- (4) meeting all local ordinances and zoning laws; and
- (5) being free from exposure to hazards and pollutants.

History Note: Authority G.S. 131E-102; 131E-104;
Eff. January 1, 1996;
Amended Eff. July 1, 2014.

10A NCAC 13D .3104 PLANS AND SPECIFICATIONS

(a) When construction or remodeling of a facility is planned, one copy of construction documents and specifications shall be submitted by the owner or owner's appointed representative to the Department for review and approval. As a preliminary step to avoid last minute difficulty with construction documents approval, schematic design drawings and design development drawings may be submitted for approval prior to the required submission of construction documents.

(b) Approval of construction documents and specifications shall be obtained from the Department prior to licensure. Approval of construction documents and specifications shall expire one year after the date of approval unless a building permit for the construction has been obtained prior to the expiration date of the approval of construction documents and specifications.

(c) If an approval expires, renewed approval shall be issued by the Department, provided revised construction documents and specifications meeting the standards established in Sections .3100, .3200, and .3400 of this Subchapter are submitted by the owner or owner's appointed representative and reviewed by the Department.

(d) Any changes made during construction shall require the approval of the Department in order to maintain compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter.

(e) Completed construction or remodeling shall conform to the standards established in Sections .3100, .3200, and .3400 of this Subchapter. Construction documents and building construction including the operation of all building systems shall be approved in writing by the Department prior to licensure or patient and resident occupancy.

(f) The owner or owner's appointed representative shall notify the Department in writing either by U.S. Mail or e-mail when actual construction or remodeling is complete.

History Note: Authority G.S. 131E-102; 131E-104;
Eff. January 1, 1996;
Amended Eff. July 1, 2014.

10A NCAC 13D .3202 FURNISHINGS

(a) A facility shall provide handgrips at all toilet and bath facilities used by residents. Handrails shall be provided on both sides of all corridors where corridors are defined by walls and used by residents.

(b) A facility shall provide flame resistant privacy screens or curtains in multi-bedded rooms.

History Note: Authority G.S. 131E-102; 131E-104;
Eff. January 1, 1996;
Amended Eff. July 1, 2014.

10A NCAC 13D .3301 NEW FACILITY REQUIREMENTS

10A NCAC 13D .3302 ADDITIONS

History Note: Authority G.S. 131E-102; 131E-104;
Eff. January 1, 1996;
Repealed Eff. July 1, 2014.

10A NCAC 13D .3401 HEATING AND AIR CONDITIONING

(a) A facility shall provide heating and cooling systems complying with the following:

- (1) The American National Standards Institute and American Society of Heating, Refrigerating, and Air Conditioning Engineers Standard 170: Ventilation of Health Care Facilities, which is incorporated by reference, including all subsequent amendments and editions, and may be purchased for a cost of fifty-four dollars (\$54.00) online at http://www.techstreet.com/ashrae/lists/ashrae_standards.tmpl.
 This incorporation does not apply to Section 7.1, Table 7-1 Design Temperature for Skilled Nursing Facility. The environmental temperature control systems shall be capable of maintaining temperatures in the facility at 71 degrees F. minimum in the heating season and a maximum of 81 degrees F. during the non-heating season; and
- (2) The National Fire Protection Association 90A: Standard for the Installation of Air-Conditioning and Ventilating Systems, which is incorporated by reference, including all subsequent amendments and editions, and may be purchased at a cost of thirty-nine dollars (\$39.00) from the National Fire Protection Association online at <http://www.nfpa.org/catalog/> or accessed electronically free of charge at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=90A>.

(b) In a facility, the windows in dining, activity and living spaces, and bedrooms shall be openable from the inside. To inhibit patient and resident elopement from any window, the facility may restrict the window opening to a six-inch opening.

History Note: Authority G.S. 131E-102; 131E-104;
Eff. January 1, 1996;
Amended Eff. July 1, 2014.

10A NCAC 13D .3402 EMERGENCY ELECTRICAL SERVICE

A facility shall provide an emergency electrical service for use in the event of failure of the normal electrical service. This emergency electrical service shall consist of the following:

- (1) In any existing facility:
 - (a) type 1 or 2 emergency lights as required by the North Carolina State Building Codes: Electrical Code;
 - (b) additional emergency lights for all control points required by Rule .3201(l)(9) of this Subchapter, medication preparation areas required by Rule .3201(l)(1) of this Subchapter and storage areas, and for the telephone switchboard, if applicable;
 - (c) one or more portable battery-powered lamps at each control point required by Rule .3201(l)(9) of this Subchapter; and
 - (d) a source of emergency power for life-sustaining equipment, if the facility admits or cares for occupants needing such equipment, to ensure continuous operation with on-site fuel storage for a minimum of 72 hours.
- (2) An emergency power generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the essential electrical system. For the purposes of this Rule, the "essential electrical system" means a system comprised of alternate sources of power and all connected distribution systems and ancillary equipment, designed to ensure continuity of electrical power to designated areas and functions of a facility during disruption of normal power sources, and also to minimize disruption within the internal wiring system as defined by the North Carolina State Building Codes: Electrical Code.
- (3) Emergency electrical services shall be provided as required by Rule .3101(b) of this Subchapter with the following modification: Section 517.10(B)(2) of the North Carolina State Building Codes: Electrical Code shall not apply to new facilities.
- (4) The following equipment, devices, and systems which are essential to life safety and the protection of important equipment or vital materials shall be connected to the critical branch of the essential electrical system as follows:
 - (a) nurses' calling system;
 - (b) fire pump, if installed;
 - (c) one elevator, where elevators are used for the transportation of patients;

- (d) equipment such as burners and pumps necessary for operation of one or more boilers and their necessary auxiliaries and controls, required for heating and sterilization, if installed;
 - (e) equipment necessary for maintaining telephone service; and
 - (f) task illumination of boiler rooms, if applicable.
- (5) A dedicated critical branch circuit per bed for ventilator-dependent patients is required. This critical branch circuit shall be provided with two duplex receptacles identified for emergency use. When staff determines that the electrical life support needs of the patient exceed the requirements stated in this Item, additional critical branch circuits and receptacles shall be provided. For the purposes of this Rule, a "critical branch circuit" is a circuit of the critical branch subsystem of the essential electrical system which supplies energy to task lighting, selected receptacles and special power circuits serving patient care areas as defined by the North Carolina State Building Codes: Electrical Code. This Item applies to both new and existing facilities.
- (6) Heating equipment provided for ventilator dependent patient bedrooms shall be connected to the critical branch of the essential electrical system and arranged for delayed automatic or manual connection to the emergency power source if the heating equipment depends upon electricity for proper operation. This Item applies to both new and existing facilities.
- (7) Task lighting connected to the automatically transferred critical branch of the essential electrical system shall be provided for each ventilator dependent patient bedroom. For the purposes of this Item, task lighting is defined as lighting needed to carry out necessary tasks for the care of a ventilator dependent patient. This Item applies to both new and existing facilities.
- (8) Where electricity is the only source of power normally used for the heating of space, an essential electrical system shall provide for heating of patient rooms. Emergency heating of patient rooms shall not be required in areas where the facility is supplied by at least two separate generating sources or a network distribution system with the facility feeders so routed, connected, and protected that a fault any place between the generating sources and the facility will not cause an interruption of more than one of the facility service feeders.
- (9) An essential electrical system shall be so controlled that after interruption of the normal

electric power supply, the generator is brought to full voltage and frequency and connected within 10 seconds through one or more primary automatic transfer switches to all emergency lighting, alarms, nurses' call, and equipment necessary for maintaining telephone service. All other lighting and equipment required to be connected to the essential electrical system shall either be connected through the 10 second primary automatic transfer switching or shall be connected through delayed automatic or manual transfer switching. If manual transfer switching is provided, staff of the facility shall operate the manual transfer switch.

- (10) Sufficient fuel shall be stored for the operation of the emergency power generator for a period not less than 72 hours, on a 24-hour per day operational basis with on-site fuel storage. The generator system shall be tested and maintained per National Fire Protection Association Health Care Facilities Code, NFPA 99, which is incorporated by reference, including all subsequent amendments and editions. Copies of this code may be obtained from the National Fire Protection Association - online at <http://www.nfpa.org/catalog/> or accessed electronically free of charge at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=99>. The facility shall maintain records of the generator system tests and shall make these records available to the Department for inspection upon request.

- (11) The electrical emergency service at existing facilities shall comply with the requirements established in Sections .3100, and .3400 of this Subchapter in effect at the time a license is first issued. Any remodeling of an existing facility that results in changes to the emergency electrical service shall comply with the requirements established in Sections .3100, and .3400 of this Subchapter in effect at the time of remodeling.

History Note: Authority G.S. 131E-102; 131E-104; Eff. January 1, 1996; Amended Eff. July 1, 2014.

10A NCAC 13D .3403 GENERAL ELECTRICAL

- (a) In a facility, all main water supply shut off valves in the sprinkler system shall be electronically supervised so that if any valve is closed an alarm will sound at a central station manned 24 hours per day, seven days per week.
- (b) No two adjacent emergency lighting fixtures shall be on the same circuit.
- (c) Receptacles in bathrooms shall have ground fault protection.
- (d) Each patient bed location shall be provided with a minimum of four single or two duplex receptacles. Two single receptacles or one duplex receptacle shall be connected to the critical branch

of the emergency power system at each bed location. Each patient bed location shall also be provided with a minimum of two single receptacles or one duplex receptacle connected to the normal electrical system.

(e) Each patient bed location shall be supplied by at least two branch circuits.

(f) The fire alarm system shall be installed to transmit an alarm automatically to the fire department that is legally committed to serve the area in which the facility is located. The alarm shall be transmitted either to a fire department or to a third-party service that shall transmit the alarm to the fire department. The method used to transmit the alarm shall be approved by local ordinances.

(g) In patient areas, fire alarms shall be gongs or chimes rather than horns or bells.

*History Note: Authority G.S. 131E-102; 131E-104;
Eff. January 1, 1996;
Amended Eff. July 1, 2014.*

10A NCAC 13D .3404 OTHER

(a) In general patient areas of a facility, each room shall be served by at least one calling station and each bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. Calls shall register with the floor staff and shall activate a visible signal in the corridor at the patient's or resident's door. On multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems that provide two-way voice communication shall be equipped with an indicating light at each calling station that lights and remains lighted as long as the voice circuit is operating. A nurses' call emergency button shall be provided for patients' and residents' use at each patient and resident toilet, bath, and shower.

(b) A facility shall provide:

- (1) at least one telephone located to be accessible by patients, residents, and families for making local phone calls; and
- (2) cordless telephones or telephone jacks in patient and resident rooms to allow access to a telephone by patients and residents when needed.

(c) Outdoor lighting shall be provided to illuminate walkways and drives.

(d) A flow of hot water shall be within safety ranges specified as follows:

- (1) Patient Areas - 6 1/2 gallons per hour per bed and at a temperature of 100 to 116 degrees F;
- (2) Dietary Services - 4 gallons per hour per bed and at a minimum temperature of 140 degrees F; and
- (3) Laundry Area - 4 1/2 gallons per hour per bed and at a minimum temperature of 140 degrees F.

(e) If provided in a facility, medical gas and vacuum systems shall be installed, tested, and maintained in accordance with the National Fire Protection Association Health Care Facilities Code, NFPA 99, which is incorporated by reference, including

all subsequent amendments and editions. Copies of this code may be purchased for a cost of sixty-one dollars (\$61.50) from the National Fire Protection Association online at <http://www.nfpa.org/catalog/> or accessed electronically free of charge at

<http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=99>.

(f) Each facility shall have a control mechanism and staff procedures for monitoring and managing patients who wander or are disoriented. The control mechanism shall include egress alarms and any of the following:

- (1) an electronic locking system;
- (2) manual locks; and
- (3) staff supervision.

This requirement applies to new and existing facilities.

(g) Sections of the National Fire Protection Association Life Safety Code, NFPA 101, 2012 edition listed in this Paragraph are adopted by reference.

- (1) 18.2.3.4 with requirements for projections into the means of egress corridor width of wheeled equipment and fixed furniture;
- (2) 18.3.2.5 with requirements for the installation of cook tops, ovens and ranges in rooms and areas open to the corridors;
- (3) 18.5.2.3(2), (3) and (4) with requirements for the installation of direct-vent gas and solid fuel-burning fireplaces in smoke compartments; and
- (4) 18.7.5.6 with requirements for the installation of combustible decorations on walls, doors and ceilings.

Smoke compartments where the requirements of these Sections are applied must be protected throughout by an approved automatic sprinkler system. For the purposes of this Rule, "smoke compartments" are spaces within a building enclosed by smoke barriers on all sides, including the top and bottom as indicated in NFPA 101, 2012 edition. Where these Sections are less stringent than requirements of the North Carolina State Building Codes, the requirements of the North Carolina State Building Codes shall apply. Where these Sections are more stringent than the North Carolina State Building Codes, the requirements of these Sections shall apply. Copies of this code may be purchased for a cost of ninety-three dollars (\$93.00) from the National Fire Protection Association online at <http://www.nfpa.org/catalog/> or accessed electronically free of charge at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=101>.

(h) Ovens, ranges, cook tops, and hot plates located in rooms or areas accessible by patients or residents shall not be used by patients or residents except under facility staff supervision. The degree of staff supervision shall be based on the facility's assessment of the capabilities of each patient and resident.

*History Note: Authority G.S. 131E-102; 131E-104;
Eff. January 1, 1996;
Amended Eff. July 1, 2014.*

10A NCAC 39A .0201 GENERAL
10A NCAC 39A .0202 DEFINITIONS
10A NCAC 39A .0203 REIMBURSEMENT FUNDS
10A NCAC 39A .0204 PATIENT FINANCIAL
ELIGIBILITY
10A NCAC 39A .0205 COVERED SERVICES
10A NCAC 39A .0206 BILLING THE PROGRAM
10A NCAC 39A .0207 RATES OF REIMBURSEMENT
10A NCAC 39A .0208 REIMBURSEMENT FUNDS:
THIRD PARTY PAYORS
10A NCAC 39A .0209 MONITORING
10A NCAC 39A .0210 AUDITS

History Note: Authority G.S. 130A-5(3); 130A-223;
Eff. July 1, 1983;
Amended Eff. October 1, 1990; September 1, 1990; January 1, 1986; July 1, 1985;
Repealed Eff. July 1, 2014.

10A NCAC 39A .0211 SPECIAL PROVISION

History Note: Authority G.S. 130A-5(3); 130A-223;
Eff. August 1, 1991;
Repealed Eff. July 1, 2014.

10A NCAC 39A .0801 GENERAL
10A NCAC 39A .0802 DEFINITIONS
10A NCAC 39A .0803 ELIGIBLE PROVIDERS
10A NCAC 39A .0804 FINANCIAL ELIGIBILITY
10A NCAC 39A .0805 MEDICAL ELIGIBILITY
10A NCAC 39A .0806 BILLING THE HIV HEALTH
SERVICES PROGRAM
10A NCAC 39A .0807 RATES OF REIMBURSEMENT
10A NCAC 39A .0808 REIMBURSEMENT FUNDS:
THIRD PARTY PAYORS
10A NCAC 39A .0809 MONITORING
10A NCAC 39A .0810 AUDITS

History Note: Authority G.S. 130A-223;
Temporary Adoption Eff. January 7, 1991 for a period of 180
Days to Expire on July 6, 1991;
ARRC Objection Lodged January 18, 1991;
Eff. May 1, 1991;
Repealed Eff. July 1, 2014.

10A NCAC 40A .0104 SCHOOL FLUORIDATION
INFORMATION
10A NCAC 40A .0105 DEFINITIONS

History Note: Authority G.S. 130A-366;
Eff. November 1, 1990;
Repealed Eff. July 1, 2014.

10A NCAC 40A .0206 WATER SUPPLY
10A NCAC 40A .0207 INSPECTION
10A NCAC 40A .0208 APPLICATION AND APPROVAL

History Note: Authority G.S. 130A-366;
Eff. November 1, 1990;
Repealed Eff. July 1, 2014.

10A NCAC 40A .0306 NOTIFICATION
10A NCAC 40A .0307 RENOVATION
10A NCAC 40A .0308 EQUIPMENT AND
MAINTENANCE
10A NCAC 40A .0309 TRAINING
10A NCAC 40A .0310 SURVEILLANCE

History Note: Authority G.S. 130A-366;
Eff. November 1, 1990;
Repealed Eff. July 1, 2014.

10A NCAC 40A .0403 SCHOOL FLUORIDATION
AGREEMENT
10A NCAC 40A .0404 WATER ANALYSIS FORM

History Note: Authority G.S. 130A-366;
Eff. November 1, 1990;
Amended Eff. September 1, 1991;
Repealed Eff. July 1, 2014.

10A NCAC 41A .0401 DOSAGE AND AGE
REQUIREMENTS FOR IMMUNIZATION

(a) Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases and have documentation of age-appropriate vaccination in accordance with the Advisory Committee on Immunization Practices (ACIP).

- (1) Diphtheria, tetanus, and pertussis (whooping cough) - five doses: three doses by age seven months; and 2 booster doses, the first by age 19 months and the second on or after the fourth birthday and before entering school for the first time. However:
 - (A) Individuals who receive the first booster dose of diphtheria/tetanus/pertussis vaccine on or after the fourth birthday are not required to have a second booster.
 - (B) Individuals entering college or university for the first time on or after July 1, 2008 must have had three doses of tetanus/diphtheria toxoid; one of which must be tetanus/diphtheria/pertussis.
 - (C) A booster dose of tetanus/diphtheria/pertussis vaccine is required for individuals who have not previously received it and are entering the seventh grade or by 12 years of age, whichever comes first.

- (2) Polio myelitis vaccine - four doses: two doses of trivalent type by age five months; a third dose trivalent type before age 19 months; and a booster dose of trivalent type on or after his or her fourth birthday and before entering school for the first time. However:
 - (A) An individual attending school who has attained his or her 18th birthday is not required to receive a polio vaccine.
 - (B) The requirements for the booster dose on or after the fourth birthday do not apply to individuals who began school before July 1, 2015.
 - (C) Individuals who receive the third dose of poliomyelitis vaccine on or after the fourth birthday are not required to receive a fourth dose if the third dose is given at least six months after the second dose.
- (3) Measles (rubeola) vaccine - two doses of live, attenuated vaccine administered at least 28 days apart: the first dose on or after age 12 months and before age 16 months; and a second dose before entering school for the first time. However:
 - (A) An individual who has been documented by serological testing to have a protective antibody titer against measles is not required to receive measles vaccine.
 - (B) An individual who has been diagnosed before January 1, 1994, by a physician (or designee such as a nurse practitioner or physician's assistant) as having measles (rubeola) disease is not required to receive measles vaccine.
 - (C) An individual born before 1957 is not required to receive measles vaccine except in measles outbreak situations.
 - (D) The requirement for a second dose of measles vaccine does not apply to individuals who enter school or in college or university for the first time before July 1, 1994.
- (4) Rubella vaccine - one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:
 - (A) An individual who has laboratory confirmation of rubella disease or who has been documented by serological testing to have a protective antibody titer against rubella is not required to receive rubella vaccine.
 - (B) An individual who has attained his or her fiftieth birthday is not required to receive rubella vaccine except in outbreak situations.
- (C) An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 is not required to meet the requirement for rubella vaccine except in outbreak situations.
- (5) Mumps vaccine – two doses: the first dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months; and a second dose before entering school, college or university for the first time. However:
 - (A) An individual who has laboratory confirmation of disease, or has been documented by serological testing to have a protective antibody titer against mumps is not required to receive the mumps vaccine.
 - (B) An individual born before 1957 is not required to receive the mumps vaccine.
 - (C) The requirements for the mumps vaccine do not apply to individuals who entered the first grade for the first time before July 1, 1987 or college or university before July 1, 1994.
 - (D) An individual entering school, college or university before July 1, 2008 is not required to receive a second dose of mumps vaccine.
- (6) *Haemophilus influenzae, b* conjugate vaccine - three doses of HbOC or PRP-T or two doses of PRP-OMP before age 7 months and a booster dose of any type on or after age 12 months and by age 16 months. However:
 - (A) Individuals who receive the first dose of *Haemophilus influenzae, b* vaccine on or after 7 months of age and before 12 months of age are required to have two doses of HbOC, PRP-T or PRP-OMP and a booster dose on or after 12 months of age and by age 16 months.
 - (B) Individuals who receive the first dose of *Haemophilus influenzae, b* vaccine on or after 12 months of age and before 15 months of age are required to have only 2 doses of HbOC, PRP-T or PRP-OMP and a booster dose two months later.
 - (C) Individuals who receive the first dose of *Haemophilus influenzae, b* vaccine on or after 15 months of age are required to have only one dose of any of the *Haemophilus influenzae b* conjugate vaccines.

- (D) No individual who has passed his or her fifth birthday is required to be vaccinated against *Haemophilus influenzae, b*.
- (7) Hepatitis B vaccine – three doses: the first dose by age 3 months, a second dose before age 5 months and a third dose by age 19 months. However:
- (A) The last dose of the hepatitis B vaccine series shall not be administered before 24 weeks of age.
- (B) Individuals born before July 1, 1994 are not required to be vaccinated against hepatitis B.
- (8) Varicella vaccine – two doses administered at least 28 days apart; one dose on or after age 12 months of age and before age 19 months; and a second dose before entering school for the first time. However:
- (A) An individual who has laboratory confirmation of varicella disease immunity or has been documented by serological testing to have a protective antibody titer against varicella is not required to receive varicella vaccine.
- (B) An individual who has documentation from a physician, nurse practitioner, or physician's assistant verifying history of varicella disease is not required to receive varicella vaccine. The documentation shall include the name of the individual with a history of varicella disease, the approximate date or age of infection, and a healthcare provider signature.
- (C) An individual born before April 1, 2001 is not required to receive varicella vaccine.
- (D) The requirement for the second dose of varicella vaccine shall not apply to individuals who enter Kindergarten or first grade for the first time before July 1, 2015.
- (9) Pneumococcal conjugate vaccine – Four doses; 3 doses by age 7 months and a booster dose at 12 through 15 months of age. However:
- (A) Individuals who receive the first dose of pneumococcal conjugate vaccine on or after 7 months of age and before 12 months of age are required to have 2 doses at least 4 weeks apart; and a booster dose at 12 through 15 months of age.
- (B) Individuals who receive the first dose of pneumococcal conjugate vaccine on or after 12 months of age and before 24 months of age are required to have 2 doses at least 8 weeks apart to complete the series.
- (C) Individuals who receive the first dose of pneumococcal conjugate vaccine on or after 24 months of age and before 5 years are required to have 1 dose to complete the series.
- (D) No individual who has passed his or her fifth birthday shall be required to be vaccinated against pneumococcal disease.
- (E) An individual born before July 1, 2015 shall not be required to receive pneumococcal conjugate vaccine.
- (10) Meningococcal conjugate vaccine – two doses: one dose is required for individuals entering the seventh grade or by 12 years of age, whichever comes first, on or after July 1, 2015. A booster dose is required by 17 years of age or by entering the 12th grade. However:
- (A) The first dose does not apply to individuals who entered seventh grade before July 1, 2015.
- (B) The booster dose does not apply to individuals who entered the 12th grade before August 1, 2020.
- (C) If the first dose is administered on or after the 16th birthday, a booster dose is not required.
- (D) An individual born before January 1, 2003 shall not be required to receive a meningococcal conjugate vaccine.
- (b) The healthcare provider shall administer immunizations in accordance with this Rule. However, if a healthcare provider administers vaccine up to and including the fourth day prior to the required minimum age, the individual dose is not required to be repeated. Doses administered more than four days prior to the requirements are considered invalid doses and shall be repeated.
- (c) The State Health Director may suspend temporarily any portion of the requirements of this Rule due to emergency conditions, such as the unavailability of vaccine. The Department shall give notice in writing to all local health departments and other providers currently receiving vaccine from the Department when the suspension takes effect and when the suspension is lifted. When any vaccine series is disrupted by such a suspension, the next dose shall be administered within 90 days of the lifting of the suspension and the series resumed in accordance with intervals determined by the most recent recommendations of the Advisory Committee on Immunization Practices. These recommendations may be accessed free of charge at <http://www.cdc.gov/vaccines/acip/>.

History Note: Authority G.S. 130A-152(c); 130A-155.1; Eff. February 1, 1976; Amended Eff. July 1, 1977; Readopted Eff. December 5, 1977;

Temporary Amendment Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988;
Amended Eff. October 1, 1995; October 1, 1994; January 1, 1994; January 4, 1993;
Temporary Amendment Eff. February 23, 2000; August 20, 1999; May 21, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. May 17, 2002; April 1, 2002; February 18, 2002; August 1, 2001;
Amended Eff. July 1, 2015; January 1, 2008; November 1, 2005; January 1, 2005; April 1, 2003.

**10A NCAC 41A .0502 VACCINE FOR PROVIDERS
OTHER THAN LOCAL HEALTH DEPARTMENTS**

History Note: Authority G.S. 130A-433;
Temporary Rule Eff. October 5, 1986 for a period of 120 days to expire on February 1, 1987;
Temporary Rule Eff. February 1, 1987 for a period of 120 days to expire on May 31, 1987;
Eff. March 1, 1987;
Temporary Amendment Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988;
Temporary Amendment Eff. August 26, 1992, for a period 180 days or until the permanent rule becomes effective, whichever is sooner;
Temporary Amendment Eff. October 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. October 1, 1995; January 1, 1995; January 4, 1994; January 4, 1993;
Temporary Amendment Eff. December 1, 1998;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. December 1, 2007;
Amended Eff. November 1, 2008;
Repealed Eff. July 1, 2014.

**10A NCAC 41G .0102 FEES FOR RABIES TAGS,
LINKS, AND RIVETS**

History Note: Authority G.S. 130A-190;
Eff. January 1, 1982;
Amended Eff. September 1, 1990;
Temporary Amendment Eff. July 22, 1997;
Amended Eff. August 1, 1998;
Temporary Amendment Eff. May 4, 2001;
Temporary Amendment Expired February 26, 2002;
Codifier Objected to findings of need on February 11, 2003;
Temporary Amendment Eff. February 24, 2003;
Amended Eff. August 1, 2004;
Repealed Eff. July 1, 2014.

10A NCAC 43D .1201 GENERAL
10A NCAC 43D .1202 PROVIDER ELIGIBILITY
10A NCAC 43D .1203 ALLOCATION OF FUNDS
10A NCAC 43D .1204 CLIENT ELIGIBILITY
10A NCAC 43D .1205 SCOPE OF SERVICES

**10A NCAC 43D .1206 SERVICE PROVIDER
QUALIFICATIONS**
**10A NCAC 43D .1207 PAYMENT FOR
REIMBURSABLE SERVICES**

History Note: Authority G.S. 130A-361;
Eff. October 1, 1993;
Repealed Eff. July 1, 2014.

10A NCAC 43E .0301 GENERAL
10A NCAC 43E .0302 DEFINITIONS
10A NCAC 43E .0303 PROVIDER ELIGIBILITY
10A NCAC 43E .0304 CLIENT ELIGIBILITY
**10A NCAC 43E .0305 APPLICATION FOR FUNDS:
PROGRAM PLAN: RENEWAL**
10A NCAC 43E .0306 BUDGETING OF GRANT FUNDS
10A NCAC 43E .0307 MEDICAL RECORDS
**10A NCAC 43E .0308 CLIENT AND THIRD PARTY
FEES**
**10A NCAC 43E .0309 MONITORING AND
EVALUATION**

History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Amended Eff. December 1, 1990; September 1, 1990; August 1, 1987; April 1, 1987; February 1, 1987;
Repealed Eff. July 1, 2014.

10A NCAC 43F .0101 PURPOSE
10A NCAC 43F .0102 DEFINITIONS

History Note: Authority G.S. 130A-124;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. October 1, 1993; September 1, 1990; July 1, 1986; July 1, 1984; July 1, 1980;
Repealed Eff. July 1, 2014.

10A NCAC 43F .0201 REFERRAL AND FOLLOW-UP
**10A NCAC 43F .0202 RELEASE OF MEDICAL
INFORMATION**
10A NCAC 43F .0203 OUT-OF-STATE CARE
10A NCAC 43F .0204 SPONSORED CLINICS
**10A NCAC 43F .0205 PARTICIPATING PHYSICIANS,
ORTHODONTISTS AND PROSTHODONTISTS**
**10A NCAC 43F .0206 NEW CLINIC DIRECTORS AND
NEW CLINICS**

History Note: Authority G.S. 130A-124;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. September 1, 1990; November 1, 1989; August 1, 1988; July 1, 1986; July 1, 1984; April 1, 1981; July 1, 1980;
Repealed Eff. July 1, 2014.

**10A NCAC 43F .0207 SPEECH AND LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS**

History Note: Authority G.S. 130A-124;

Eff. July 1, 1980;

Amended Eff. September 1, 1990; July 1, 1986; July 1, 1984;
December 1, 1980;

Repealed Eff. July 1, 2014.

10A NCAC 43F .0301 DETERMINATION
10A NCAC 43F .0302 AGE
10A NCAC 43F .0303 MEDICAL CONDITIONS
SUPPORTED BY THE PROGRAM
10A NCAC 43F .0304 MEDICAL CONDITIONS OR
PROCEDURES NOT SUPPORTED

History Note: Authority G.S. 130A-124;

Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. September 1, 1990; July 1, 1986; January 1, 1982;
July 1, 1981; July 1, 1980;

Repealed Eff. July 1, 2014.

10A NCAC 43F .0305 APPEALS PROCEDURE
CONCERNING ELIGIBILITY

History Note: Authority G.S. 130A-124;

Eff. July 1, 1980;

Amended Eff. September 1, 1990; February 1, 1987; July 1,
1986;

Repealed Eff. July 1, 2014.

10A NCAC 43F .0401 CLINIC SERVICES
10A NCAC 43F .0402 OTHER OUTPATIENT
SERVICES
10A NCAC 43F .0403 HOSPITALS
10A NCAC 43F .0404 HOSPITALIZATION
10A NCAC 43F .0405 SPECIAL THERAPY
10A NCAC 43F .0406 ORTHODONTIC AND
PROSTHODONTIC DENTAL CARE
10A NCAC 43F .0407 APPLIANCES AND EQUIPMENT
10A NCAC 43F .0408 DRUGS
10A NCAC 43F .0409 BLOOD
10A NCAC 43F .0410 STAFF CONSULTANT AND
ADVISORY SERVICES

History Note: Authority G.S. 130A-124;

Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. September 1, 1990; August 1, 1988; July 1, 1986;
July 1, 1984; April 1, 1984; October 1, 1983; July 1, 1983;
January 1, 1982; July 1, 1981; April 1, 1981; July 1, 1980;

Repealed Eff. July 1, 2014.

10A NCAC 43F .0501 AUTHORIZATION POLICIES
10A NCAC 43F .0502 SERVICE AUTHORIZATION
10A NCAC 43F .0503 CANCELLATIONS
10A NCAC 43F .0504 SPECIAL THERAPY REQUESTS
10A NCAC 43F .0505 BILLING POLICIES
10A NCAC 43F .0506 PHYSICIANS' BILLING
POLICIES
10A NCAC 43F .0507 OTHER PROFESSIONAL
SERVICES

History Note: Authority G.S. 130A-124;

Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. September 1, 1990; July 1, 1986; July 1, 1984;
April 1, 1984; April 1, 1982; July 1, 1981; December 1, 1980;
July 1, 1980;

Repealed Eff. July 1, 2014.

10A NCAC 43F .0508 CLINIC CHARGES AND
OUTPATIENT CHARGES
10A NCAC 43F .0509 CLERICAL CHARGES
10A NCAC 43F .0510 AUTHORIZED
HOSPITALIZATION
10A NCAC 43F .0511 AUTHORIZED APPLIANCES
10A NCAC 43F .0512 AUTHORIZED DRUGS FOR
OUTPATIENTS

History Note: Authority G.S. 130A-124;

Eff. July 1, 1980;

Amended Eff. September 1, 1990; July 1, 1986; April 1, 1982;
July 1, 1981; December 1, 1980;

Repealed Eff. July 1, 2014.

10A NCAC 43F .0513 REIMBURSEMENT RATES

History Note: Authority G.S. 130A-124;

Temporary Rule Eff. August 15, 1982, for a Period of 120 Days
to Expire on December 12, 1982;

Eff. October 1, 1982;

Amended Eff. July 1, 1986;

Repealed Eff. July 1, 2014.

10A NCAC 43F .0514 APPEALS PROCEDURE

History Note: Authority G.S. 130A-124;

Eff. February 1, 1987;

Repealed Eff. July 1, 2014.

10A NCAC 43F .0601 REQUESTS FOR FORMS
10A NCAC 43F .0602 REQUEST FORM FOR COST
SERVICES
10A NCAC 43F .0603 FINANCIAL ELIGIBILITY
FORM
10A NCAC 43F .0604 FORMS FOR DENIAL OF
REQUESTS FOR SERVICE
10A NCAC 43F .0605 CLINIC NOTES FORM
10A NCAC 43F .0606 CLINIC RECORD
10A NCAC 43F .0607 CLERICAL SERVICES

History Note: Authority G.S. 130A-124;

Eff. February 1, 1976;

Readopted Eff. December 5, 1977;

Amended Eff. September 1, 1990; July 1, 1986; July 1, 1984;
April 1, 1982; July 1, 1980;

Repealed Eff. July 1, 2014.

10A NCAC 43F .0701 QUALIFICATIONS
10A NCAC 43F .0702 FURTHER INFORMATION

History Note: Authority G.S. 130A-124;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. April 1, 1992; January 1, 1990; June 1, 1989; July 1, 1986; July 1, 1980;
Repealed Eff. July 1, 2014.

10A NCAC 43F .0703 APPEALS PROCEDURE

History Note: Authority G.S. 130A-124;
Eff. February 1, 1987;
Repealed Eff. July 1, 2014.

10A NCAC 43F .0704 ADMINISTRATIVE REQUIREMENTS

History Note: Authority G.S. 130A-124;
Eff. June 1, 1989;
Amended Eff. September 1, 1990;
Repealed Eff. July 1, 2014.

**10A NCAC 43F .0801 GENERAL PROVISION
 10A NCAC 43F .0802 REQUIREMENTS FOR THE
 ADOPTIVE CHILD**

History Note: Authority G.S. 130A-124;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. January 4, 1993; June 1, 1990; July 1, 1986; July 1, 1981; July 1, 1980;
Repealed Eff. July 1, 2014.

10A NCAC 43F .0804 APPLICATION FOR COVERAGE AFTER ADOPTION

History Note: Authority G.S. 130A-124;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. January 4, 1993; July 1, 1986; July 1, 1980;
Repealed Eff. July 1, 2014.

10A NCAC 43F .0901 AGREEMENT WITH VOCATIONAL REHABILITATION

History Note: Authority G.S. 130A-124;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. July 1, 1986; July 1, 1980;
Repealed Eff. July 1, 2014.

**10A NCAC 43F .1001 OUTPATIENT CLINIC SERVICES
 10A NCAC 43F .1002 DEFINITIONS
 10A NCAC 43F .1003 PROVIDER ELIGIBILITY
 10A NCAC 43F .1004 CLIENT ELIGIBILITY
 10A NCAC 43F .1005 SCOPE OF SERVICES
 10A NCAC 43F .1006 ALLOCATION OF FUNDS:
 CONTRACT**

**10A NCAC 43F .1007 REPORTING REQUIREMENTS
 10A NCAC 43F .1008 CLIENT AND THIRD PARTY FEES
 10A NCAC 43F .1009 APPLICATION FOR FUNDS
 10A NCAC 43F .1010 BUDGETING OF GRANT FUNDS
 10A NCAC 43F .1011 ANNUAL PLAN
 10A NCAC 43F .1012 RENEWAL OF GRANT FUNDS**

History Note: Authority G.S. 130A-124;
Eff. April 1, 1985;
Amended Eff. September 1, 1990; November 1, 1988; August 1, 1988; July 1, 1986;
Repealed Eff. July 1, 2014.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 04H .0101 SCOPE

(a) The rules in this Chapter are the rules of the North Carolina State Bureau of Investigation, Division of Criminal Information (DCI).
 (b) The FBI Criminal Justice Information Services (CJIS) Security Policy is incorporated by reference herein and shall automatically include any later amendments or editions that may be published by the FBI. The policy is available at no charge on the FBI website: <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center/view>.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04H .0102 DEFINITIONS

As used in this Chapter:

- (1) "ACIIS" means Canada's Automated Criminal Intelligence and Information System.
- (2) "Administration of criminal justice" means the:
 - (a) detection of accused persons or criminal offenders;
 - (b) apprehension of accused persons or criminal offenders;
 - (c) detention of accused persons or criminal offenders;
 - (d) pretrial release of accused persons or criminal offenders;
 - (e) post-trial release of accused persons or criminal offenders;
 - (f) prosecution of accused persons or criminal offenders;
 - (g) adjudication of accused persons or criminal offenders;
 - (h) correctional supervision of accused persons or criminal offenders;
 - (i) rehabilitation of accused persons or criminal offenders;
 - (j) collection of criminal history record information;
 - (k) storage of criminal history record information;

- (l) dissemination of criminal history record information;
- (m) screening of persons for the purpose of criminal justice employment; or
- (n) administration of crime prevention programs to the extent access to criminal history record information is limited to law enforcement agencies for law enforcement programs (e.g. record checks of individuals who participate in Neighborhood Watch or safe house programs) and the result of such checks will not be disseminated outside the law enforcement agency.
- (3) "Advanced authentication" means an alternative method of verifying the identity of a computer system user. Examples include software tokens, hardware tokens, and biometric systems. These alternative methods are used in conjunction with traditional methods of verifying identity such as user names and passwords.
- (4) "AOC" means the North Carolina Administrative Office of the Courts.
- (5) "Authorized recipient" means any person or organization who is authorized to receive state and national criminal justice information by virtue of being:
 - (a) a member of a law enforcement/criminal justice agency approved pursuant to Rule .0201 of this Subchapter; or
 - (b) a non-criminal justice agency authorized pursuant to local ordinance or a state or federal law.
- (6) "CCH" means computerized criminal history record information. CCH can be obtained through DCIN or through N-DEx.
- (7) "Certification" means documentation provided by CIIS showing that a person has been trained in the abilities of DCIN devices, and has knowledge for accessing those programs that are developed and administered by CIIS for local law enforcement and criminal justice agencies.
- (8) "CHRI" means criminal history record information. CHRI is information collected by and maintained in the files of criminal justice agencies concerning individuals, consisting of identifiable descriptions, notations of arrest, detentions, indictments or other formal criminal charges. This includes any disposition, sentencing, correctional supervision, and release information.
- (9) "CIIS" means Criminal Information and Identification Section. CIIS is a section of DCI that manages all CJIS programs within North Carolina, including DCIN.
- (10) "CJI" means criminal justice information. CJI is all of the FBI CJIS provided data necessary for law enforcement agencies to perform their mission and enforce laws, including biometric information, identity history person, organization, property, and case or incident history data. In addition, CJI refers to FBI CJIS provided data necessary for civil agencies to perform their mission including data used to make hiring decisions.
- (11) "CJIS" means Criminal Justice Information Services. CJIS is the FBI division responsible for the collection, warehousing, and dissemination of relevant criminal justice information to the FBI and law enforcement, criminal justice, civilian, academic, employment, and licensing agencies.
- (12) "CJIS Security Policy" means a document published by the FBI CJIS Information Security Officer that provides criminal justice and non-criminal justice agencies with a set of security requirements for the access to FBI CJIS systems to protect and safeguard criminal justice information whether in transit or at rest.
- (13) "Class B misdemeanor" includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded are motor vehicle or traffic offenses designated as being misdemeanors under the laws of jurisdictions other than the State of North Carolina with the following exceptions: either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.
- (14) "Convicted" or "conviction" means, for purposes of DCIN user certification, the entry of:
 - (a) a plea of guilty;

- (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or
- (c) a plea of no contest, nolo contendere, or the equivalent.
- (15) "Criminal justice agency" means the courts, a government agency, or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order and which allocates more than 50 percent of its annual budget to the administration of criminal justice. State and federal Inspector General Offices are included in this definition.
- (16) "Criminal justice board" means a board composed of heads of law enforcement or criminal justice agencies that have management control over a communications center.
- (17) "CSA" means CJIS System Agency. The CSA is a state, federal, international, tribal, or territorial criminal justice agency on the CJIS network providing statewide (or equivalent) service to its criminal justice agency users with respect to the CJIS data from various systems managed by the FBI. In North Carolina, the CSA is the SBI.
- (18) "CSO" means CJIS System Officer. The CSO is an individual located within the CSA responsible for the administration of the CJIS network on behalf of the CSA. In North Carolina, the CSO is employed by the SBI.
- (19) "DCI" means the Division of Criminal Information. DCI is the agency established by the Attorney General of North Carolina in accordance with Article 3 of Chapter 114 of the North Carolina General Statutes. The North Carolina State Bureau of Investigation's Criminal Information and Identification Section is a part of DCI.
- (20) "DCIN" means the Division of Criminal Information Network. DCIN is the computer network used to collect, maintain, correlate, and disseminate information collected by CIIS under Article 3 of Chapter 114 of the North Carolina General Statutes. DCIN also provides access to information collected by other federal, state, and local entities necessary for the administration of criminal justice.
- (21) "DCIN user" means a person who has been certified through the DCIN certification process.
- (22) "Device" means an electronic instrument used by a DCIN user to accomplish message switching, DMV inquiries, functional messages, or DCIN, NCIC, Nlets on-line file transactions.
- (23) "Direct access" means having the authority to:
 - (a) access systems managed by the FBI CJIS Division, whether by manual or automated means, not requiring the assistance of, or intervention by, any other party; or
 - (b) query or update national databases maintained by the FBI CJIS Division including national queries and updates automatically or manually generated by the CSA.
- (24) "Disposition" means information on any action that results in termination or indeterminate suspension of the prosecution of a criminal charge.
- (25) "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.
- (26) "DMV" means the North Carolina Division of Motor Vehicles.
- (27) "DMV information" includes vehicle description and registration information, and information maintained on individuals to include name, address, date of birth, license number, license issuance and expiration, control number issuance, and moving vehicle violation or convictions.
- (28) "DOC" means North Carolina Department of Adult Correction.
- (29) "End user interface" means software that is utilized by a certified user to connect to DCIN and perform message or file transactions.
- (30) "Expunge" means to remove criminal history record information from the DCIN and FBI computerized criminal history and identification files pursuant to state statute.
- (31) "FBI" means the Federal Bureau of Investigation.
- (32) "FFL" means federal firearm licensee. A FFL is any individual, corporation, company, association, firm, partnership, society, or joint stock company that has been licensed by the federal government to engage in the business of importing, manufacturing, or dealing in firearms or ammunition in accordance with 18 USC § 923.
- (33) "III" means Interstate Identification Index. III is the FBI CJIS service that manages automated submission and requests for criminal history record information.
- (34) "Inappropriate message" means any message that is not related to the administration of criminal justice.
- (35) "Incident based reporting" or "I-Base" is a system used to collect criminal offense and arrest information for each criminal offense reported.
- (36) "INTERPOL" means International Criminal Police Organization.

- (37) "N-DEx" means Law Enforcement National Data Exchange. N-DEx is the repository of criminal justice records, available in a secure online environment, managed by the FBI Criminal Justice Information Services (CJIS) Division. N-DEx is available to criminal justice agencies throughout North Carolina, and its use is governed by federal regulations.
- (38) "NCIC" means National Crime Information Center. NCIC is an information system maintained by the FBI that stores criminal justice information which can be queried by federal, state, and local law enforcement and other criminal justice agencies.
- (39) "NFF" means the National Fingerprint File. NFF is an FBI maintained enhancement to the Interstate Identification Index whereby only a single fingerprint card is submitted per state to the FBI for each offender at the national level.
- (40) "Need-to-know" means for purposes of the administration of criminal justice, for purposes of criminal justice agency employment, or for some other purpose permitted by local ordinance, state statute, or federal regulation.
- (41) "NICS" means the National Instant Criminal Background Check System. NICS is the system mandated by the Brady Handgun Violence Protection Act of 1993 that is used by FFLs to instantly determine via telephone or other electronic means whether the transfer of a firearm would be in violation of Section 922(g) or (n) of Title 18, United States Code, or state law, by evaluating the prospective buyer's criminal history. In North Carolina, NICS is used by sheriff's offices throughout the state to assist in determining an individual's eligibility for either a permit to purchase a firearm or a concealed handgun permit.
- (42) "Nlets" means the International Justice and Public Safety Network.
- (43) "Non-criminal justice agency" or "NCJA" means any agency or sub-unit thereof whose charter does not include the responsibility to administer criminal justice, but may need to process criminal justice information. A NCJA may be public or private. An example is a 911 communications center that performs dispatching functions for a criminal justice agency (government), a bank needing access to criminal justice information for hiring purposes (private), or a county school board that uses criminal history record information to assist in employee hiring decisions (public).
- (44) "Non-criminal justice information" means any information or message that does not directly pertain to the necessary operation of a law enforcement or criminal justice agency.
- Examples of messages that are non-criminal justice include:
- (a) accessing any DMV file for:
 - (i) political purposes;
 - (ii) vehicle repossession purposes; and
 - (iii) to obtain information on an estranged spouse or romantic interest;
 - (b) a message to confirm meal plans;
 - (c) a message to have a conversation; and
 - (d) a message to send well wishes during a holiday or birthday.
- (45) "Official record holder" means the agency that maintains the master documentation and all investigative supplements of a restricted file entry or unrestricted file entry.
- (46) "Ordinance" means a rule or law promulgated by a governmental authority including one adopted and enforced by a municipality or other local authority.
- (47) "ORI" means Originating Agency Identifier, which is a unique alpha numeric identifier assigned by NCIC to each authorized criminal justice and non-criminal justice agency, identifying that agency in all computer transactions.
- (48) "Private contractor" means any non-governmental non-criminal justice agency that has contracted with a government agency to provide services necessary to the administration of criminal justice.
- (49) "Re-certification" means renewal of a user's initial certification every two years.
- (50) "Restricted files" means those files maintained by NCIC that are protected as criminal history record information (CHRI), which is consistent with Title 28, Part 20 of the United States Code of Federal Regulations (CFR). Restricted files consist of:
- (a) Gang Files;
 - (b) Known or Appropriately Suspected Terrorist (KST) Files;
 - (c) Supervised Release File;
 - (d) Immigration Violator Files;
 - (e) National Sex Offender Registry Files;
 - (f) Historical Protection Order Files of the NCIC;
 - (g) Identity Theft Files;
 - (i) Protective Interest File; and
 - (j) Person With Information (PWI) data within the Missing Person File.
- (51) "Right-to-review" means the right of an individual to inspect his or her own criminal history record information.
- (52) "SAFIS" means Statewide Automated Fingerprint Identification System. SAFIS is a computer-based system for reading, encoding,

- matching, storing, and retrieving fingerprint minutiae and images.
- (53) "SBI" means the North Carolina State Bureau of Investigation.
 - (54) "Secondary dissemination" means the transfer of CCH/CHRI information to anyone legally entitled to receive such information that is outside the initial user agency.
 - (55) "SEND message" means messages that may be used by DCIN certified users to exchange official information of an administrative nature between in-state law enforcement/criminal justice agencies and out-of-state agencies by means of Nlets.
 - (56) "Servicing agreement" means an agreement between a terminal agency and a non-terminal agency to provide DCIN terminal services.
 - (57) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.
 - (58) "Statute" means a law enacted by a state's legislative branch of government.
 - (59) "TAC" means Terminal Agency Coordinator. A TAC is an individual who serves as a point of contact at a local agency in matters relating to DCIN or CJIS information systems. A TAC administers CJIS and CIIS system programs within the local agency and oversees the agency's compliance with both CIIS rules and CJIS system policies.
 - (60) "Terminal agency" means any agency that has a device under its management and control that is capable of communicating with DCIN.
 - (61) "Training module" means a manual containing guidelines for users on the operation of DCIN and providing explanations as to what information may be accessed through DCIN.
 - (62) "UCR" means the Uniform Crime Reporting program whose purpose it is to collect a summary of criminal offense and arrest information.
 - (63) "Unrestricted files" means those files that are maintained by NCIC that are not considered "Restricted Files."
 - (64) "User agreement" means an agreement between a terminal agency and CIIS whereby the agency agrees to comply with all CIIS rules.
 - (65) "User identifier" means a unique identifier assigned by an agency's Terminal Agency Coordinator to all certified DCIN users that is used for gaining access to DCIN and for identifying certified users.

History Note: Authority G.S. 114-10; 114-10.1; Eff. August 1, 2014.

12 NCAC 04H .0103 FUNCTION OF DCIN

Users of DCIN may:

- (1) transmit or receive any criminal justice related message to or from any device connected to DCIN;
- (2) enter into or retrieve information from North Carolina's:
 - (a) recovered vehicle file;
 - (b) sex offender registry; and
 - (c) concealed handgun permit file
- (3) enter into or retrieve information from DCIN user certification and class enrollment files;
- (4) enter into or retrieve information from NCIC's restricted and unrestricted files;
- (5) access NCIC's criminal history data;
- (6) obtain, on a need-to-know basis, the criminal record of an individual by inquiring into the state Computerized Criminal History (CCH) file maintained by CIIS, or CCH files maintained by other states and the Federal Bureau of Investigation (FBI) through III;
- (7) communicate with devices in other states through Nlets with the capability to exchange automobile registration information, driver's license information, criminal history record information, corrections information, and other law enforcement related information;
- (8) obtain information on North Carolina automobile registration, driver's license information and driver's history by accessing DMV maintained files;
- (9) obtain registration information on all North Carolina registered boats, and inquire about aircraft registration and aircraft tracking;
- (10) obtain information on those individuals under the custody or supervision of DOC; and
- (11) access, enter, and modify information contained within the National Instant Criminal Background Check System (NICS).

History Note: Authority G.S. 114-10; 114-10.1; Eff. August 1, 2014.

12 NCAC 04H .0201 ELIGIBILITY FOR ACCESS TO DCIN

- (a) Only agencies that have obtained an ORI and have complied with Rule .0202 of this Section may access DCIN.
- (b) Any agency in North Carolina desiring an ORI shall make a written request to DCI. DCI shall request an ORI from NCIC.
- (c) If the request is denied by NCIC, DCI shall provide written findings to the requesting agency detailing the reasons for the denial and providing the requesting agency information on the necessary elements to obtain an ORI.

History Note: Authority G.S. 114-10; 114-10.1; Eff. August 1, 2014.

12 NCAC 04H .0202 MANAGEMENT CONTROL REQUIREMENTS

Each device with access to DCIN and those personnel who operate devices with DCIN access must be under the direct and immediate management control of a criminal justice agency, criminal justice board or an FBI approved non-criminal justice agency. The degree of management control shall be such that the agency head, board or approved agency has the authority to:

- (1) set policies and priorities concerning the use and operation, configuration, or maintenance of devices or computer networks accessing DCIN;
- (2) hire, supervise, suspend or dismiss those personnel who will be connected with the operation, configuration, maintenance, or use of devices or computer networks accessing DCIN;
- (3) restrict unauthorized personnel from access or use of devices accessing DCIN; and
- (4) assure compliance with all rules and regulations of the FBI and SBI in the operation of devices with access to DCIN or use of all information received through DCIN.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04H .0203 NON-TERMINAL ACCESS

(a) A non-terminal criminal justice agency may gain access to DCIN through a criminal justice agency that has direct access to the network. The servicing agency (agency providing access) shall enter into a servicing agreement with the non-terminal agency (agency receiving service) as described in Rule .0303 of this Subchapter.

(b) The agreement shall:

- (1) authorize access to specific data;
- (2) limit the use of data to purposes for which given;
- (3) insure the security and confidentiality of the data consistent with these procedures; and
- (4) provide sanctions for violation thereof.

(c) Access shall be granted only if the terminal agency agrees.

(d) Any servicing agency which fails to enforce penalties that are placed upon the non-terminal agency is in violation of this Rule and subject to the provisions of 12 NCAC 04J .0102(e).

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04H .0301 USER AGREEMENT

(a) Each agency receiving access to any data provided by FBI CJIS through DCIN shall sign a user agreement certifying that the agency head has read and understands DCIN, NCIC, CJIS, and other applicable rules and regulations, and that the agency head will uphold the agreement and abide by the rules and regulations. This agreement shall be signed by the agency head and by the North Carolina CJIS System Officer (CSO).

(b) When a new agency head is installed at an agency, a new user agreement shall be signed by the new agency head and the CSO.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04H .0302 SERVICING AGREEMENT

(a) Any agency authorized pursuant to Rule .0201 of this Subchapter with a DCIN device that provides access to a non-terminal agency shall enter into a written servicing agreement with the serviced agency. The agreement shall include the following information:

- (1) the necessity for valid and accurate information being submitted for entry into DCIN;
- (2) the necessity for documentation to substantiate data entered into DCIN;
- (3) the necessity of adopting timely measures for entering, correcting or canceling data in DCIN;
- (4) validation requirements pursuant to Rule 04I .0203 of this Chapter;
- (5) the importance of confidentiality of information provided via DCIN;
- (6) liabilities;
- (7) the ability to confirm a hit 24 hours a day;
- (8) the necessity of using the ORI of the official record holder in record entries and updates; and
- (9) the necessity of using the ORI of the initial user when making inquiries.

(b) The servicing agreement must be signed by the head of the servicing agency and the head of the non-terminal agency, notarized, and a copy must be forwarded to CIIS by the non-terminal agency.

(c) DCI shall be notified of any cancellations or changes made in servicing agreements by the party making the cancellation or changes.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04H .0303 CONTROL AGREEMENTS

(a) A non-criminal justice agency designated to perform criminal justice functions for a criminal justice agency is eligible for access to DCIN.

(b) A written management control agreement shall be entered into between a law enforcement agency and a 911 communications center when management control of the 911 communications center will be under an entity other than the law enforcement agency. The agreement shall state that requirements of Rule .0202 of this Subchapter are in effect, and shall stipulate the management control of the criminal justice function remains solely with the law enforcement agency.

(c) A written management control agreement shall be entered into between a law enforcement agency and their governmental information technology (IT) division when the information technology role will be under an entity other than the law

enforcement agency. The agreement shall state that the requirements pursuant to Rule .0202 of this Subchapter are in effect, and shall stipulate that the management control of the criminal justice function remains solely with the law enforcement agency.

(d) A written agreement shall be entered into between a law enforcement agency and a private contractor when the private contractor configures or supports any device or computer network that stores, processes, or transmits criminal justice information. The written agreement must incorporate the most current version of the CJIS Security Addendum. The CJIS Security Addendum may be found in the current CJIS Security Policy.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04H .0304 DISCLOSURE AGREEMENT

(a) A written disclosure agreement shall be entered into between the SBI and any individual or agency seeking access to DCI-maintained criminal justice information for purposes of research.

(b) The disclosure agreement shall state that each participant and employee of every program of research with access to computerized information is aware of the issues of privacy and the limitations regarding the use of accessed information, and that he or she is bound by CIIS rules concerning these issues pursuant to Rule 04I .0407 of this Chapter.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04H .0401 DCIN USERS

(a) Prior to receiving certification as a DCIN user, and as a condition for maintaining certification as a DCIN user, each applicant or user shall be a citizen of the United States.

(b) The applicant or certified user shall be at least 18 years of age.

(c) An individual is eligible to attend certification class and become a DCIN user only if employed by and under the management control of an agency as described in Rule .0201 of this Subchapter and only after the individual has had a fingerprint-based criminal records search completed by the employing agency indicating that the individual has not been convicted of a criminal offense described in Paragraph (d) or (e) of this Rule.

(d) A conviction of a felony renders an applicant or certified DCIN user permanently ineligible to hold such certification.

(e) A conviction of a crime or unlawful act defined as a Class B misdemeanor renders an applicant ineligible to become certified as a DCIN user when such conviction is within 10 years of the applicant's date of request for DCIN certification. Existing DCIN users convicted of a crime or unlawful act defined as a Class B Misdemeanor while holding certification are ineligible to maintain such certification for a period of 10 years following such conviction. An applicant or certified DCIN user is permanently ineligible to hold such certification upon conviction of two or more Class B misdemeanors regardless of the date of conviction.

(f) No applicant for certification as a DCIN user is eligible for certification while the applicant is subject to pending or outstanding criminal charges, that, if the applicant were convicted, would disqualify the applicant from holding such certification.

(g) No DCIN user is eligible to access DCIN while the user is subject to pending or outstanding criminal charges, that, if the applicant were convicted, would disqualify the user from access.

(h) An employee assigned as a DCIN user and who currently holds valid certification as a sworn law enforcement officer with the powers of arrest through either the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission is not subject to the criminal history record and background search provisions of this Rule.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04H .0402 CERTIFICATION AND RECERTIFICATION OF DCIN USERS

(a) Personnel who are assigned the duty of using a DCIN device shall be certified within 120 days from employment or assignment to user duties. Certification shall be awarded based on achieving a test score of 80 percent or greater in each training module for which the user is seeking certification.

(b) All DCIN users shall be certified by DCI. The initial certification of a user shall be awarded upon attending the "DCIN/NCIC General Inquiries" module class, and achieving a passing score on the accompanying test offered through the DCIN end user interface. A student may also take one or more additional module training classes offered by DCI, which teach the specific functions of DCIN applicable to their job duties. A user may perform only those functions in which they have been trained and certified.

(c) Tests for modules in which a student is seeking initial certification shall be taken within 15 days of the end of the class, and may be open-book. If a student fails the initial certification test they shall have until the 15th day to pass the test, but shall wait at least 24 hours between the failed test and the next attempt. A student shall have a maximum of three attempts to pass the test. If the student fails to achieve a passing score after the third attempt the user shall re-take the module training class.

(d) Recertification requires achieving a test score of 80 percent or higher on the test corresponding to the module for which the user is seeking recertification, and may be accomplished by taking the test through the DCIN end user interface. Recertification is required every two years for each module in which the user is certified and may be obtained any time 30 days prior to or 90 days after expiration.

(e) Tests for modules in which the user is seeking recertification shall be taken within 30 days prior to expiration or within 90 days after expiration, and may be open-book. If the user fails the recertification test the user shall have up to the 90th day after expiration to pass the test, but shall wait at least 24 hours between the failed test and the next attempt. A user shall have a maximum of three attempts to pass the test. If the user fails to achieve a passing score after the third attempt the user shall re-take the training module class. If a user fails to recertify in any

module after the 90th day the user must attend the module training class for the module in which the user seeks recertification and achieve a passing score on the test.

(f) Personnel newly hired or assigned to duties of a terminal user shall receive an indoctrination on the basic functions and terminology of DCIN by their own agency prior to attending an initial certification class. Such personnel may operate a DCIN device during the indoctrination if they are directly supervised by a certified user and are within the 120-day training period.

(g) Any user whose Module 1 certification has expired may recertify up to 90 days after the user's expiration. The individual shall not use any device connected to DCIN during the time between expiration and passing the recertification test(s). Any user whose Module 1 certification has expired more than 90 days shall attend and successfully complete the "DCIN/NCIC General Inquiries" class.

(h) When a DCIN certified user leaves the employment of an agency, the TAC shall notify DCI within 24 hours, and disable the user's user identifier. DCI shall move user's user identifier to an inactive status until such time the user is employed by another agency.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04H .0403 ENROLLMENT

(a) Enrollment is necessary for student attendance at any training for DCIN users. Enrollment shall be requested and approved by the agency TAC and personnel must meet the management control requirements outlined in Section .0200 of this Subchapter.

(b) DCI shall maintain enrollment for all certification classes.

(c) Enrollment shall be done by an automated method provided by DCI.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0101 SECURITY OF DCIN DEVICES

Agencies that have management control of a DCIN device shall institute controls for maintaining the sensitivity and confidentiality of all criminal justice information (CJI) provided through DCIN. These controls include the following:

- (1) a DCIN device and any peripheral or network-connected printer shall be within a physically secure location, as defined by the FBI CJIS Security Policy, accessible only to authorized personnel. Any DCIN device not located within a physically secured location shall have advanced authentication measures installed and enabled; and
- (2) DCIN training module documents shall be located in a physically secure location accessible only by authorized personnel.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0102 OFFICIAL USE OF DCIN

(a) DCIN shall be used for criminal justice and law enforcement purposes only. All traffic generated over the network shall be made in the performance of an employee's or agency's official duties as they relate to the administration of criminal justice.

(b) Transmission of non-criminal justice information through DCIN is prohibited.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0103 PERSONNEL SECURITY

(a) Agencies that have management control of DCIN devices shall institute procedures to ensure those non-DCIN certified individuals with direct access to their DCIN devices or any network that stores, processes, or transmits criminal justice information have been properly screened.

(b) This Rule includes:

- (1) individuals employed by a municipality or county government who configure or support devices that:
 - (A) store criminal justice information;
 - (B) process criminal justice information; or
 - (C) transmit criminal justice information; and
- (2) individuals employed by private vendors or private contractors who configure or support devices that:
 - (A) store criminal justice -information;
 - (B) process criminal justice information; or
 - (C) transmit criminal justice information.

(c) To ensure proper background screening an agency shall conduct both state of residence and national fingerprint-based background checks for personnel described in Paragraphs (a) and (b) of this Rule.

(d) Applicant fingerprint cards shall be submitted by an agency to the SBI to conduct the check. Once the check has been completed the SBI shall send notice to the submitting agency as to the findings of the check.

(e) Personnel described in Paragraphs (a) and (b) of this Rule must meet the same requirements as those described in 12 NCAC 04H .0401(c).

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0104 SECURITY AWARENESS TRAINING

(a) Security awareness training is required within six months of initial assignment and every two years thereafter for any personnel who have access to DCIN devices or any network that stores, processes, or transmits criminal justice information.

(b) This Rule also applies to any individual described in Rule .0103 of this Subchapter who is responsible for the configuration or support of devices or computer networks that store, process, or transmit criminal justice information.

(c) Security awareness training shall be facilitated by CIIS.

(d) Records of security awareness training shall be documented, kept current, and maintained by the criminal justice agency.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0201 DOCUMENTATION AND ACCURACY

(a) Law enforcement and criminal justice agencies may enter stolen property, recovered property, wanted persons, missing persons, protection orders, or convicted sex offenders into NCIC restricted and unrestricted files. Any record entered into NCIC files must be documented. The documentation required is:

- (1) a theft report of items of stolen property;
- (2) an active warrant for arrest or order for arrest for the entry of wanted persons;
- (3) a missing person report and, if a juvenile, a written statement from a parent, spouse, family member, or legal guardian verifying the date of birth and confirming that a person is missing;
- (4) a medical examiner's report for an unidentified dead person entry;
- (5) a protection order or ex parte order (for "temporary orders") issued by a court of competent jurisdiction for a protection order entry; or
- (6) a judgment from a court of competent jurisdiction ordering an individual to register as a sex offender.

(b) All NCIC file entries must be complete and accurately reflect the information contained in the agency's investigative documentation at the point of initial entry or modification. NCIC file entries must be checked by a second party who shall initial and date a copy of the record indicating accuracy has been confirmed.

(c) The following key searchable fields shall be entered for person-based NCIC file entries, if available, and shall accurately reflect the information contained in the entering agency's investigative documentation:

- (1) Name (NAM);
- (2) Date of Birth (DOB);
- (3) Sex (SEX);
- (4) Race (RAC);
- (5) Social Security Number (SOC), for any person-based NCIC file entry other than sex offenders;
- (6) Aliases (AKA);
- (7) FBI Number (FBI);
- (8) State Identification Number (SID); and
- (9) Agency's file number (OCA).

Other data elements may be required for entry into the NCIC. Those additional data elements shall accurately reflect an agency's investigative file.

(d) Searchable fields that are required by the DCIN end user interface shall be entered for property-based NCIC file entries, and shall accurately reflect the information contained in the entering agency's investigative documentation.

(e) An agency must enter any additional information that becomes available later.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0202 TIMELINESS

(a) Law enforcement and criminal justice agencies shall enter records within three days when conditions for entry are met except when a federal law, state statute, or documentation exists to support a delayed entry. Any decision to delay entry under this exception shall be documented.

(b) Timeliness can be defined based on the type of record entry being made:

- (1) Wanted Person File - entry of a wanted person shall be made immediately after the decision to arrest or to authorize arrest has been made, and the decision to extradite has been made. "Immediately" is defined as within three days.
- (2) Missing Person File - entry of a missing person shall be made as soon as possible once the minimum data required for entry (i.e., all mandatory fields) and the appropriate record documentation are available. For missing persons under age 21, a NCIC Missing Person File record shall be entered within two hours of receiving the minimum data required for entry.
- (3) Article, Boat, Gun, License Plate, Securities, Vehicle Part, Boat Part, Vehicle, Protection Order, and Sex Offender Registry Files - entry is made as soon as possible once the minimum data required for entry (i.e., all mandatory fields) and the record documentation are available. Information about stolen license plates and vehicles shall be verified through the motor vehicle registration files prior to record entry if possible. However, if motor vehicle registration files are not accessible, the record shall be entered into NCIC and verification shall be completed when the registration files become available.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0203 VALIDATIONS

(a) Law enforcement and criminal justice agencies shall validate all record entries, with the exception of articles, made into the NCIC restricted and unrestricted files.

(b) Validation shall be accomplished by reviewing the original entry and current supporting documents. Stolen vehicle, stolen boat, wanted person, missing person, protection order, and sex offender file entries require consultation with any appropriate complainant, victim, prosecutor, court, motor vehicle registry files or other appropriate source or individual in addition to the review of the original file entry and supporting documents.

(c) Validations shall be conducted through the CIIS automated method.

(d) Any records containing inaccurate data shall be modified and records which are no longer current or cannot be substantiated by a source document shall be removed from the NCIC.

(e) Any agency that does not properly validate its records shall have their records purged for that month by NCIC. An agency shall be notified of the record purge through an NCIC-generated message sent to the agency's main DCIN device. An agency may re-enter the cancelled records once the records have been validated.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0204 HIT CONFIRMATION

(a) Any agency entering record information into the NCIC restricted and unrestricted files, or which has a servicing agency enter record information for its agency, shall provide hit confirmation 24 hours a day. Hit confirmation of NCIC records means that an agency receiving a positive NCIC response from an inquiry must communicate with the official record holder to confirm the following before taking a person or property into custody:

- (1) the person or property inquired upon is the same as the person or property identified in the record;
- (2) the warrant, missing person report, theft report, or protection order is still outstanding; or
- (3) a decision regarding the extradition of a wanted person has been made; the return of a missing person to the appropriate authorities is still desired; the return of stolen property to its rightful owner is still desired; or the terms, conditions, or service of a protection order still exist.

(b) The official record holder must respond after receiving a hit confirmation request with the desired information or a notice of the amount of time necessary to confirm or reject the record.

(c) An agency that is the official record holder shall have 10 minutes to respond to a hit confirmation request with a priority level of "urgent." If the agency fails to respond after the initial request, the requesting agency shall send a second hit confirmation request to the official record holder. Any subsequent hit confirmation requests shall also be at 10-minute intervals.

(d) An agency shall have one hour to respond to a hit confirmation request with a priority level of "routine." If the agency fails to respond after the initial request, the requesting agency shall send a second hit confirmation request to the official record holder. Any subsequent hit confirmation requests shall also be at one-hour intervals.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0301 ARREST FINGERPRINT CARD

(a) Fingerprint cards submitted in accordance with G.S. 15A - 502 must contain the following information on the arrestee in order to be processed by the SBI or FBI:

- (1) ORI number and address of arresting agency;
- (2) complete name;
- (3) date of birth;
- (4) race;
- (5) sex;
- (6) date of arrest;
- (7) criminal charges; and
- (8) a set of fingerprint impressions and palm prints if the agency is capable of capturing palm prints.

(b) Any fingerprint cards physically received by the SBI that do not meet these requirements shall be returned to the submitting agency to be corrected and resubmitted. Any fingerprint cards that have been submitted electronically to the SBI that do not meet these standards shall not be accepted. The submitting agency shall receive electronic notification that the prints did not meet minimum standards through the agency's LiveScan device.

(c) The arrest and fingerprint information contained on the arrest fingerprint card shall be added to the North Carolina's CCH files, and electronically forwarded to the FBI's Interstate Identification Index (III) for processing.

(d) Criminal fingerprint cards shall be submitted in the following ways:

- (1) electronically through the agency's LiveScan device to North Carolina's Statewide Automated Fingerprint Identification System (SAFIS); or
- (2) mail addressed to:
North Carolina State Bureau of Investigation
Criminal Information and Identification Section
3320 Garner Road
Raleigh, North Carolina 27626
Attention: AFIS & Technical Search Unit

*History Note: Authority G.S. 15A-502; 15A-1383;
Eff. August 1, 2014.*

12 NCAC 04I .0302 FINAL DISPOSITION INFORMATION

(a) Final disposition information shall be submitted electronically to DCI by the Administrative Office of the Courts (AOC).

(b) The final disposition information shall be added to North Carolina's CCH files, and shall be electronically transmitted to the FBI's Interstate Identification Index (III).

(c) Any final disposition rejected by DCI shall be returned to the Clerk of Court in the county of the arresting agency for correction and resubmission.

*History Note: Authority G.S. 15A-1381; 15A-1382; 15A-1383; 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04I .0303 INCARCERATION INFORMATION

(a) Incarceration information shall be electronically submitted to DCI by the North Carolina Department of Public Safety (DPS) on all subjects admitted to prison.

(b) The incarceration information shall be added to the North Carolina CCH files, and shall be electronically transmitted to the FBI's Interstate Identification Index (III).

History Note: Authority G.S. 15A-502; 15A-1383; 114-10; 114-10.1;

Eff. August 1, 2014.

12 NCAC 04I .0401 DISSEMINATION AND LOGGING OF CHRI AND NICS RECORDS

(a) Criminal history record information (CHRI) obtained from or through DCIN, NCIC, N-DEx, or Nlets shall not be disseminated to anyone outside of those agencies eligible under 12 NCAC 04H .0201(a) except as provided by Rules .0403, .0405, .0406, and .0409 of this Section. Any agency assigned a limited access ORI shall not obtain CHRI. Any agency requesting CHRI that has not received an ORI pursuant to 12 NCAC 04H .0201(a) shall be denied access and referred to the North Carolina CSO.

(b) CHRI is available to eligible agency personnel only on a "need-to-know" basis as defined in 12 NCAC 04H .0104.

(c) The use or dissemination of CHRI obtained through DCIN or N-DEx for unauthorized purposes is a violation of this Rule.

(d) CIIS shall maintain an automated log of CCH/CHRI/National Instant Criminal Background Check System (NICS) inquiries for a period of not less than one year from the date of inquiry. The automated log shall contain the following information as supplied by the user on the inquiry screen and shall be made available on-line to the inquiring agency;

- (1) date of inquiry;
- (2) name of record subject;
- (3) state identification number (SID) or FBI number of the record subject;
- (4) message key used to obtain information;
- (5) purpose code;
- (6) user's initials;
- (7) (Attention field) name of person and agency requesting information who is the initial user of the record;
- (8) (Attention 2 field) name of person and agency requesting information who is outside of the initial user agency. If there is not a second individual receiving the information, information indicating why the information is requested may be placed in this field; and
- (9) if applicable, NICS Transaction Number (NTN) for NICS logs only.

(e) Criminal justice agencies making secondary disseminations of CCH, CHRI, N-DEx, or NICS information obtained through DCIN shall maintain a log of the dissemination in a case. This log must identify the name of the recipient and their agency.

(f) Each criminal justice agency obtaining CHRI through a DCIN device shall conduct an audit of their automated CCH log

as provided by DCIN once every month for the previous month. The audit shall take place within 15 business days of the end of the month being reviewed. This audit shall include a review for unauthorized inquiries and disseminations, improper use of agency ORI's, agency names, and purpose codes. These logs must be maintained on file for one year from the date of the inquiry, and may be maintained electronically by the criminal justice agency. Any violation of CIIS rules must be reported by an agency representative to CIIS within 20 business days of the end of the month being reviewed. On those months that do not contain 20 business days, any violations of CIIS rules must be reported by an agency representative to CIIS by the first business day of the following month, at the latest. If an agency does not have a device connected to DCIN that can receive CHRI, this audit is not required.

(g) Each criminal justice agency obtaining information from NICS or N-DEx shall conduct the same monthly audit as those for CHRI logs. The audit shall take place within 15 business days of the end of the month being reviewed. This audit shall include a review for unauthorized inquiries or disseminations and improper use of purpose codes. These logs must be maintained on file for one year from the date of inquiry, and may be maintained electronically by the criminal justice agency. Any violation of CIIS rules must be reported by an agency representative to CIIS within 20 business days of the end of the month being reviewed. On those months that do not contain 20 business days, any violations of CIIS rules must be reported by an agency representative to CIIS by the first business day of the following month, at the latest.

(h) DCIN automated CCH logs, automated NICS logs, and any secondary dissemination logs shall be available for audit or inspection by the CSO or his designee as provided in 12 NCAC 04I .0801.

(i) Out of state agencies requesting a statewide criminal record check shall utilize NCIC.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04I .0402 ACCESSING OF CCH RECORDS

Any accessing of or inquiry into CCH records must be made with an applicable purpose code. An "applicable purpose code" means a code that conveys the reason for which an inquiry is made.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04I .0403 USE OF CHRI FOR CRIMINAL JUSTICE EMPLOYMENT

(a) Agencies must submit an applicant fingerprint card on each individual seeking criminal justice employment, and the card must contain the following information in order to be processed by DCI and FBI:

- (1) complete name;
- (2) date of birth;
- (3) race;
- (4) sex;
- (5) position applied for;

- (6) hiring agency; and
- (7) a set of legible fingerprint impressions.

Any fingerprint cards that do not meet these requirements shall be returned by DCI to the submitting agency for correction and resubmitted.

(b) For sworn and telecommunicator positions the response and the fingerprint card shall be forwarded to the appropriate training and standards agency. For non-sworn positions, the response shall be returned to the submitting agency. DCI shall not maintain the cards or responses.

(c) Agencies may submit the information in Paragraph (a) of this Rule in an electronic method to CIIS for processing. Any fingerprints and associated information not meeting the requirements in Paragraph (a) of this Rule shall not be accepted. An electronic notification shall be sent by DCI to the submitting agency indicating the submitted information did not meet minimum requirements.

*History Note: Authority G.S. 114-10; 114-10.1; 114-16; 114-19;
Eff. August 1, 2014.*

12 NCAC 04I .0404 RIGHT TO REVIEW

(a) An individual may obtain a copy of his or her own criminal history record by submitting a written request to the North Carolina State Bureau of Investigation Criminal Information and Identification Section, Attention: Applicant Unit - Right to Review, 3320 Garner Road, Raleigh, North Carolina 27626. The written request must be accompanied by a certified check or money order in the amount of fourteen dollars (\$14.00) payable to the North Carolina State Bureau of Investigation, and must contain proof of identity to include:

- (1) complete name and address;
- (2) race;
- (3) sex;
- (4) date of birth;
- (5) social security number; and
- (6) a legible set of fingerprint impressions.

(b) The response shall be submitted only to the individual. Copies of the response shall not be provided by DCI to a third party.

(c) The accuracy or completeness of an individual's record may be challenged by submitting the "Right to Review Request Criminal History Written Exception" form available from DCI.

(d) Upon receipt of the "Right to Review Request Criminal History Written Exception", the CIIS shall initiate an internal record audit of the challenger's record to determine its accuracy. If any potential inaccuracies or omissions are discovered, DCI shall coordinate with the arresting agency to review the charge information previously submitted by that agency. Appropriate action shall be taken based on, in part, information provide by the arresting agency. DCI shall inform the challenger in writing of the results of the audit.

(e) If the audit fails to disclose any inaccuracies, or if the challenger wishes to contest the results of the audit, he or she is entitled to an administrative hearing pursuant to G.S. 150B-23.

*History Note: Authority G.S. 114-10; 114-10.1; 114-19.1;
Eff. August 1, 2014.*

12 NCAC 04I .0405 CCH USE IN LICENSING AND NON-CRIMINAL JUSTICE EMPLOYMENT PURPOSES

(a) Criminal justice agencies authorized under 12 NCAC 04H .0201 which issue licenses or approve non-criminal justice employment and want to use computerized criminal history information maintained by DCI for licensing, permit, and non-criminal justice employment purposes shall submit to CIIS a written request listing the types of licenses, permits, and employment for which they desire to use computerized criminal history information. A copy of the local ordinance or a reference to the North Carolina General Statute giving authority to issue a particular permit or license must be included in the written request.

(b) Authorization to use computerized criminal history information for licensing, permit, or employment purposes may be given only after the DCI and the North Carolina Attorney General's Office have evaluated and granted authorization based upon the authority of the North Carolina General Statutes or local ordinance pertaining to the issuance of that particular license or permit for employment.

(c) Once authorization has been given, DCI shall provide the agency an access agreement, which outlines the guidelines for information usage. The access agreement shall also include information on billing mechanisms. DCI shall bill the agency fourteen dollars (\$14.00) for a check of North Carolina computerized criminal history files, and thirty-eight dollars (\$38.00) for a search of both the North Carolina computerized criminal history files and a search of the FBI's Interstate Identification Index (III) files. DCI shall send an invoice to the requesting agency to collect these fees.

(d) The access agreement shall be signed by the requesting agency's head, and returned to DCI.

(e) The agency's terminal, if applicable, shall receive the capability to use the purpose code "E" in the purpose field of the North Carolina CCH inquiry screens for employment or licensing once the agency head has signed the access agreement and returned it to DCI. Once an agency has received this capability, it shall use the purpose code "E", the proper two character code, and the name of the person receiving the record. A log of all primary and any secondary dissemination must also be kept for one year on all responses received from this type of inquiry.

(f) Criminal justice agencies may also gain access by submission of non-criminal justice applicant fingerprint cards. Approval must be obtained pursuant to the procedure in Paragraph (a) of this Rule. One applicant fingerprint card must be submitted on each individual. The fingerprint card must contain the following information on the applicant in order to be processed by DCI and the FBI:

- (1) complete name;
- (2) date of birth;
- (3) race;
- (4) sex;
- (5) reason fingerprinted to include the N.C.G.S. or local ordinance number;
- (6) position applied for;
- (7) the licensing or employing agency; and
- (8) a set of legible fingerprint impressions.

DCI shall return the letter of fulfillment to the submitting agency indicating the existence or absence of a criminal record.

(g) Requests from non-criminal justice agencies or individuals to use criminal history information maintained by DCI for licensing and employment purposes shall be treated as a fee for service request pursuant to G.S. 114-19.1 or any other applicable statute. The process for approval for non-criminal justice agencies or individuals shall be the same process as in Paragraph (a) of this Rule.

(h) Upon being approved, the requesting agency shall submit its requests to the North Carolina State Bureau of Investigation, Criminal Information and Identification Section, Special Processing Unit, 3320 Garner Road, Raleigh, North Carolina 27626. Each request shall include a fee in the form of a certified cashier's check, money order, or direct billing of ten dollars (\$10.00) for a name-only check, fourteen dollars (\$14.00) for a state-only fingerprint based check, or thirty-eight dollars (\$38.00) for a state and national fingerprint based check (if applicable).

(i) Criminal history record information accessible pursuant to this Rule shall be North Carolina criminal history record information, and FBI III information if permitted by statute.

History Note: Authority G.S. 114-10; 114-10.1; 114-19.1; Eff. August 1, 2014.

12 NCAC 04I .0406 RESTRICTIVE USE OF CCH FOR EMPLOYMENT PURPOSES

(a) Use of computerized criminal history information maintained by the CIIS for licensing permits or non-criminal justice employment purposes shall be authorized only for those criminal justice and non-criminal justice agencies who have complied with Rule .0405 of this Section.

(b) The following requirements and restrictions are applicable to all agencies who have received approval to use computerized criminal history information for licensing, permits, or non-criminal justice employment purposes. Each such agency is responsible for their implementation:

- (1) computerized criminal history information obtained shall not be used or disseminated for any other purpose;
- (2) computerized criminal history information obtained shall not be released to or reviewed by anyone other than the agencies authorized by CIIS;
- (3) the only data in the computerized criminal history files which may be used in an agency's determination of issuing or denying a license, permit or employment are those crimes stipulated in the referenced ordinance or statutory authority as grounds for disqualification. All criminal history arrest information held by CIIS shall be released regardless of disposition status. Each agency is responsible for reviewing each statutory authority and knowing what data may be used and what data shall not be used for grounds in denying or issuing a particular license or permit for employment;

(4) prior to denial of a license, permit, or employment due to data contained in a computerized criminal history record, a fingerprint card of the applicant shall be submitted to CIIS for verification that the record belongs to the applicant;

(5) if the information in the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to correct, complete, or challenge the accuracy of the information contained in the record. The applicant must be afforded a reasonable time to correct, complete or to decline to correct or complete the information. An applicant shall not be presumed to be guilty of any charge/arrest for which there is no final disposition stated on the record or otherwise determined. Applicants wishing to correct, complete or otherwise challenge a record must avail themselves of the procedure set forth in Rule .0404(c) of this Section.

(c) A "no-record" response on a computerized criminal history inquiry does not necessarily mean that the individual does not have a record. If the requesting agency desires a more complete check on an applicant, a fingerprint card of the applicant shall be submitted to DCI.

History Note: Authority G.S. 114-10; 114-10.1; 114-19.1; Eff. August 1, 2014.

12 NCAC 04I .0407 RESEARCH USE AND ACCESS OF CCH RECORDS

(a) Researchers who wish to use criminal justice information maintained by CIIS shall first submit to the North Carolina CJIS System Officer (CSO) a completed research design that guarantees protection of security and privacy. Authorization to use computerized criminal history records shall be given after the CSO has approved the research design.

(b) In making a determination to approve the submitted research design, the CSO must ensure that:

- (1) an individual's right to privacy will not be violated by the research program;
- (2) the program is calculated to prevent injury or embarrassment to any individual;
- (3) the results outweigh any disadvantages that are created for the North Carolina criminal justice system if the research information is provided;
- (4) the criminal justice community will benefit from the research and use; and
- (5) the requestor is responsible for cost.

(c) For purposes of this Rule, a researcher is defined as a non-criminal justice or private agency or a criminal justice agency wishing to access criminal history data for a statistical purpose.

History Note: Authority G.S. 114-10; 114-10.1; 114-19.1; Eff. August 1, 2014.

12 NCAC 04I .0408 LIMITATION REQUIREMENTS

Research designs must preserve the anonymity of all subjects. The following requirements are applicable to all such programs of research and each criminal justice agency or researcher is responsible for their implementation:

- (1) Computerized criminal history records furnished for purposes of any program of research shall not be used to the detriment of the person(s) to whom such information relates.
- (2) Criminal history records furnished for purposes of any program of research shall not be used for any other purpose; nor may such information be used for any program of research other than that authorized by the North Carolina CJIS System Officer (CSO).
- (3) Each researcher or anyone having access to the computerized criminal history shall, prior to having such access, sign a Disclosure Agreement with the CSO incorporating the requirements of Rule 04H .0304 of this Chapter.
- (4) The authorization for access to computerized criminal history records shall assure that the criminal justice agency and CIIS have rights to monitor the program of research to assure compliance with this Rule. Such monitoring rights include the right of CIIS staff to audit and review such monitoring activities and also to pursue their own monitoring activities.
- (5) CIIS and the criminal justice agency involved may examine and verify the data generated as a result of the program, and, if a material error or omission is found to have occurred, may order the data not be released for any purpose unless corrected to the satisfaction of the agency and CIIS.

History Note: Authority G.S. 114-10; 114-10.1; 114-19.1; Eff. August 1, 2014.

12 NCAC 04I .0409 ACCESS TO CHRI BY ATTORNEYS

- (a) An attorney must have entered in to a proceeding in accordance with G.S. 15A-141 in order to access CHRI. The attorney may have access to the CHRI of only the defendant he or she is representing. The prosecuting District Attorney must approve the request.
- (b) If, during a proceeding, an attorney desires CHRI of an individual involved in the proceeding other than the attorney's client, the attorney shall make a motion before the court indicating the desire for the CHRI.
- (c) In order to maintain compliance with state and federal requirements an attorney shall disclose the purpose for any request of CHRI.
- (d) CIIS shall provide a form to be utilized by any DCIN user when fulfilling a request for CHRI by an attorney. This form shall help ensure compliance with state and federal rules regarding access to and dissemination of CHRI.

(e) The attorney must fill out all applicable fields of the form and return it to the DCIN user to process the request. The attorney shall provide:

- (1) the client's name;
- (2) docket number for the matter;
- (3) prosecutorial district in which the matter is being tried; and
- (4) the next date on which the matter is being heard.

(f) The attorney may submit requests for CHRI only within the prosecutorial district of the District Attorney that is prosecuting the defendant(s). If a change of venue has been granted during a proceeding, this Rule still applies, and the attorney must still seek the CHRI from the prosecutorial district within which the proceeding originated.

(g) Records of requests and dissemination to attorneys must be kept by the disseminating agency for a period of one year.

(h) Requests for North Carolina-only CHRI may be notarized in lieu of approval from the District Attorney.

History Note: Authority G.S. 114-10; 114-10.1; 15A-141; Eff. August 1, 2014.

12 NCAC 04I .0410 ACCESS TO CHRI IN CIVIL PROCEEDINGS

(a) Access to CHRI is permitted in civil domestic violence and civil stalking proceedings.

(b) Access to and dissemination of CHRI for civil proceedings in this Rule shall be done in accordance with Rules .0401 and .0402 of this Section.

(c) Access to and dissemination of CHRI for any other type of civil proceeding is prohibited.

(d) Civil courts may be issued an Originating Agency Identifier (ORI) for the purposes of this Rule. The ORI issuance must be approved by the FBI and North Carolina's CJIS System Officer (CSO).

History Note: Authority G.S. 114-10; 114-10.1; Eff. August 1, 2014.

12 NCAC 04I .0501 EXPUNGEMENTS

Upon the receipt of a valid court ordered expungement, CIIS shall expunge the appropriate CHRI as directed by the court order. An electronic notification regarding the expungement shall be sent to the FBI for processing and all agencies that have inquired on the record within the past 90 days shall be advised of the court order.

History Note: Authority G.S. 15A-145; 15A-146; 90-96; 90-113.14; 114.10; 114-10.1; 150B-19(5)b.,e. Eff. August 1, 2014.

12 NCAC 04I .0601 STATEWIDE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

(a) Agencies which meet the requirements of 12 NCAC 04H .0201(a) may access the North Carolina Statewide Automated Fingerprint Identification System for criminal justice purposes.

(b) The acronym used for the Statewide Automated Fingerprint Identification System shall be SAFIS.

History Note: Authority G.S. 15A-502; 114-10; 114-10.1; 114-16;
Eff. August 1, 2014.

12 NCAC 04I .0602 AVAILABLE DATA

(a) The following data is available through SAFIS and may be used to make comparisons and obtain CCH data:

- (1) fingerprint images; and
- (2) state identification number.

(b) When the state identification number is used to obtain CCH data, dissemination requirements outlined in Rule .0401 of this Subchapter must be followed.

History Note: Authority G.S. 15A-502; 114-10; 114-10.1; 114-16;
Eff. August 1, 2014.

12 NCAC 04I .0603 FINGERPRINTING OF CONVICTED SEX OFFENDERS

(a) Fingerprints submitted in accordance with G.S. 14-208.7 must contain the following information on the convicted sex offender in order to be processed by the SBI:

- (1) ORI number;
- (2) complete name;
- (3) date of birth;
- (4) race;
- (5) sex;
- (6) sex offender registration number (SRN); and
- (8) a set of fingerprint impressions and palm prints if the agency is capable of capturing palm prints.

Submissions shall be made through the registering agency's LiveScan device.

(b) Fingerprints submitted to CIIS that do not contain all of the items in Paragraph (a) of this Rule shall not be accepted.

(c) The submitted fingerprint information shall be added to the North Carolina Sex Offender Registry and to SAFIS.

History Note: Authority G.S. 114-10;
Eff. August 1, 2014.

12 NCAC 04I .0701 DISSEMINATION OF DIVISION OF MOTOR VEHICLES INFORMATION

(a) DMV information obtained from or through DCIN shall not be disseminated to anyone outside those agencies eligible under 12 NCAC 04H .0201(a) unless obtained for the following purposes:

- (1) in the decision of issuing permits or licenses if statutory authority stipulates the non-issuance or denial of a permit or license to an individual who is a habitual violator of traffic laws or who has committed certain traffic offenses and those licensing purposes have been authorized by CIIS and the Attorney General's Office;
- (2) by governmental agencies to evaluate prospective or current employees for positions involving the operation of publicly owned vehicles; or

- (3) by a defendant's attorney of record in accordance with G.S. 15A-141.

(b) Each agency disseminating driver history information to a non-criminal justice agency for any of the purposes listed in Paragraph (a) shall maintain a log of dissemination for one year containing the following information:

- (1) date of inquiry for obtaining driver's history;
- (2) name of terminal operator;
- (3) name of record subject;
- (4) driver's license number;
- (5) name of individual and agency requesting or receiving information; and
- (6) purpose of inquiry.

(c) Driver history information obtained from or through DCIN shall not be released to the individual named in the record. An individual seeking his or her own driver history information shall be instructed to contact DMV.

(d) DMV information obtained for any purpose listed in Paragraph (a) of this Rule shall be used for only that purpose and shall not be redisseminated or released for any other purpose.

(e) Nothing in this Rule shall prevent an attorney from discussing the contents of driver history information with the individual named in the record if the attorney is representing the individual in accordance with G.S. 15A-141.

History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.

12 NCAC 04I .0801 AUDITS

(a) CIIS shall biennially audit criminal justice information entered, modified, cancelled, cleared and disseminated by DCIN users. Agencies subject to audit include all agencies that have direct or indirect access to information obtained through DCIN.

(b) CIIS shall send designated representatives to selected law enforcement and criminal justice agency sites to audit:

- (1) criminal history usage and dissemination logs;
- (2) NICS usage and dissemination logs;
- (3) driver history dissemination logs;
- (4) security safeguards and procedures adopted for the filing, storage, dissemination, or destruction of criminal history records;
- (5) physical security of DCIN devices in accordance with the current FBI CJIS Security Policy;
- (6) documentation establishing the accuracy, validity, and timeliness of the entry of records entered into NCIC wanted person, missing person, property, protection order, and DCIN and NCIC sex offender files;
- (7) the technical security of devices and computer networks connected to DCIN in accordance with the current FBI CJIS Security Policy;
- (8) user certification, status, and background screening;
- (9) user agreements between the agency and North Carolina's CSA;
- (10) servicing agreements between agencies with DCIN devices and agencies without DCIN devices (when applicable);

- (11) use of private contractors or governmental information technology professionals for information technology support along with the proper training and screening of those personnel; and
- (12) control agreements between agencies and entities providing information technology support (when applicable).

(c) The audits shall be conducted to ensure that the agencies are complying with state and federal regulations, as well as federal and state statutes on security and privacy of criminal history record information.

(d) CIIS shall provide notice to the audited agency as to the findings of the audit. If discrepancies or deficiencies are discovered during the audit they shall be noted in the findings along with possible sanctions for any deficiencies or rule violations.

(e) If applicable, CIIS shall also biennially audit agencies' N-DEx access and usage. CIIS shall audit:

- (1) network security;
- (2) N-DEx transactions performed by agency personnel; and
- (3) user certification and status

(f) Audits of N-DEx usage shall occur concurrently with an agency's DCIN audit, and shall ensure compliance with state and federal regulations on security and privacy of criminal justice information contained within N-DEx.

*History Note: Authority G.S. 114-10; 114-10.1
Eff. August 1, 2014.*

12 NCAC 04J .0101 DEFINITIONS

As used in this Subchapter:

- (1) "Revocation of certification" means a DCIN user's certification is canceled for a period not to exceed one year. At the end of the revocation period the user must attend the DCIN Module 1 certification class. Notification of the revocation shall be sent by DCI via certified mail to the DCIN user and the user's agency head.
- (2) "Suspension of certification" means a DCIN user is prohibited from operating a DCIN device for a period not to exceed 90 days. Notification of the suspension shall be sent by DCI via certified mail to the DCIN user's agency head and to the DCIN user. The agency shall be audited within 90 days of reinstatement of a user's certification.
- (3) "Suspension of services" means an agency's direct access to DCIN is suspended for a period not to exceed two weeks after the North Carolina CSO's finding of fault, and the agency head must then appear before the CSO to respond to the cited violation. This suspension may be limited to certain files or may include a complete suspension of services, depending on the administrative procedure violated. The agency is subject to a

re-audit after 90 days of reinstatement. Further violations of the same regulation, within two years from the date of the suspension, or failure to appear before the CSO to respond to the cited violation is grounds to cancel the user agreement with the agency.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04J .0102 SANCTIONS FOR VIOLATIONS BY INDIVIDUALS

When any certified DCIN user is found to have knowingly and willfully violated any provision of these Rules, DCI may take action to correct the violation and to ensure the violation does not re-occur, to include, but not limited to, the following:

- (1) issuing an oral warning and a request for compliance;
- (2) issuing a written warning and a request for compliance;
- (3) suspending the DCIN user's certification; or
- (4) revoking the DCIN user's certification.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04J .0103 SANCTIONS FOR VIOLATIONS BY AGENCIES

When any agency who has entered in to an agreement in accordance with 12 NCAC 04H .0301 is found to have knowingly and willfully violated any provision of these Rules, DCI may take action to correct the violation and to ensure the violation does not re-occur, to include, but not limited to, the following:

- (1) issuing an oral warning and a request for compliance;
- (2) issuing a written warning and a request for compliance; or
- (3) suspending services to the violating agency.

*History Note: Authority G.S. 114-10; 114-10.1;
Eff. August 1, 2014.*

12 NCAC 04J .0201 NOTICE OF VIOLATION

DCI shall send a written notice via certified mail to the offending agency or employee when DCI has determined that a violation of a DCI rule has occurred. The notice shall inform the party of appeal rights and shall also contain the citation of the rule alleged to have been violated.

*History Note: Authority G.S. 114-10; 114-10.1; 150B-3(b); 150B-23(f);
Eff. August 1, 2014.*

12 NCAC 04J .0301 INFORMAL PROCEDURE

(a) In accordance with G.S. 150B-22 any agency or DCIN user may request a hearing before the North Carolina CSO within 30 days after receipt of written notification from DCI of an adverse action. A request for a hearing shall be made by certified mail to

the North Carolina State Bureau of Investigation Division of Criminal Information, Post Office Box 29500, Raleigh, North Carolina 27626.

(b) Upon receipt of a request for an informal hearing, the CSO shall conduct a hearing and consider the positions of the parties. The CSO shall notify the parties of his or her decision within two weeks following the informal hearing and provide information to the parties of their further appeal rights in accordance with G.S. 150B-23.

*History Note: Authority G.S. 114-10; 114-10.1; 150B-3(b); 150B-22; 150B-23(f).
Eff. August 1, 2014.*

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

(a) Firearms trainer applicants shall:

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

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

(c) In lieu of completing the training course set forth in Subparagraph (a)(4) of this Rule, an applicant may submit to the Board a current Criminal Justice Specialized Law Enforcement Firearms Instructor Certificate from the North Carolina Criminal Justice Education and Training Standards Commission.

(d) In lieu of Subparagraphs (a)(2) and (4) of this Rule, an applicant may establish to the Board's satisfaction a military occupational specialty and two years of verifiable experience within the past five years in the U.S. Armed Forces as a firearms instructor.

(e) All applicants subject to Paragraphs (c) and (d) of this Rule shall comply with the provisions of Subparagraph (a)(3), pay the application amount as set forth in Rule .0903 of this Section, and complete the eight hour course given by the Board on rules and regulations.

(f) In addition to the requirement of 12 NCAC 07D .0200, an applicant for a firearms trainer certificate who is the spouse of an active duty member of the U.S. Armed Forces shall establish to the Board's satisfaction that:

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

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

*History Note: Authority G.S. 74C-5; 74C-9; 74C-13; 93B-15.1;
Eff. June 1, 1984;
Amended Eff. July 1, 2014; October 1, 2013; December 1, 2008;
January 1, 2008; August 1, 2004; November 1, 1991.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 02 – BOARD OF ARCHITECTURE

21 NCAC 02 .0107 FORMS

Any forms referred to or required by these rules are available on the Board web site at www.ncbarch.org.

*History Note: Authority G.S. 83A-6;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. July 1, 2014; May 1, 1989; November 1, 1979.*

21 NCAC 02 .0108 FEES

Fees required by the Board, are payable in advance and are set forth below:

Initial Registration Application by Exam

Residents and Non-Residents	\$ 50.00
Firm	\$ 75.00
Application to take the Architectural Registration Exam	\$ 50.00

Annual license renewal	
Individual	\$ 50.00
Firm	\$100.00

Late renewal Penalty	\$ 50.00
Reciprocal registration	\$150.00

Individual or Firm Reinstatement shall be the fee as set forth G.S. 83A-11 and G.S. 55B-10.

All fees paid to the Board are non-refundable.

Other publications and services provided by the Board are available on the Board web site at www.ncbarch.org.

History Note: Authority G.S. 83A-4; 83A-11;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. July 1, 2014; December 1, 2010; June 1, 1995;
December 1, 1992; May 1, 1991; May 1, 1989; July 1, 1987.

21 NCAC 02 .0202 APPLICABILITY OF BOARD RULES

The Executive Director shall make available on the Board web site at www.ncbarch.org Chapter 83A of the North Carolina General Statutes and the rules of the Board adopted hereunder. Rules adopted and published by the Board under the provisions of Chapter 83A and Chapter 150B shall be binding upon every individual holding a license from the Board, and upon all professional corporations legally authorized to offer or to perform architectural services in this state. All licensees of the Board are charged with having knowledge of the existence of the Board rules and shall be deemed to be familiar with and have an understanding of their provisions. Each licensed person and entity shall affirm in their renewals that they have read the current architectural laws and rules.

History Note: Authority G.S. 83A-6;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. July 1, 2014; June 1, 1995; May 1, 1989.

21 NCAC 02 .0214 FIRM PRACTICE OF ARCHITECTURE

(a) Registration. Prior to offering and rendering architectural services as set forth in G.S. 83A and 21 NCAC 02 .0204(a), all firms shall submit an application for firm registration and be granted registration by the Board. Application for firm registration to practice of architecture within the State of North Carolina shall be made upon forms provided on the Board web site at www.ncbarch.org and include the required application fee as set forth in Rule .0108 of this Chapter. Certificates for firm practice shall be issued only under the provisions of the Professional Corporation Act, G.S. 55B, except as provided in Subsection (b) of this Rule and G.S. 57C.

(b) Architectural Corporations Under G.S. 55, the Business Corporation Act. Applications for certificate of registration as exempt from the Professional Corporation Act under the provisions of G.S. 55B-15 shall be made upon forms provided by the Board. Completed applications shall be accompanied by the corporate application fee. To be eligible as an exempt corporation under the provisions of G.S. 55B-15, the following conditions must exist:

- (1) The corporation must have been incorporated prior to June 5, 1969 as a business corporation;
- (2) Prior to and since June 5, 1969, the corporation must have been a *bona fide* architectural or architectural-engineering firm with services limited to the practice of architecture or architecture-engineering and

ancillary services within the State of North Carolina; and

- (3) The corporation must have applied to be an exempt corporation before October 1, 1979.

(c) Renewal of Certificate. Firm registration shall be renewed on or before December 31st each year. If the Board has not received the annual renewal fee and completed application on or before December 31st each year, the firm license shall expire. No less than 30 days prior to the renewal date, the Board shall send a notice of renewal to each registered firm. Renewal documentation shall be accompanied by the renewal fee. If the accompanying draft or check in the amount of the renewal fee is dishonored by the firm's drawee bank for any reason, the Board shall suspend the firm registration until the renewal fees and returned check charges are paid. When the annual renewal has been complete according to the provision of G.S. 83A-11, the Executive Director shall approve renewal for the firm registration for the current renewal year. Upon completion of the firm annual renewal, the Board may randomly audit the compliance of firm registrations and require proof in the form of corporate records maintained pursuant to North Carolina General Statute 55B. Such records must be maintained for a period of seven years after the renewal is submitted. Renewal fees are non-refundable.

(d) Failure to Renew and Reinstatement. Within one year of the expiration, the firm license may be renewed at any time, upon the return of the completed renewal documents, the annual renewal fee, and the late renewal fees. After one year from the date of expiration for non-payment of the annual renewal fee the licensee shall seek reinstatement, as allowed by G.S. 83A-11. The Board may reinstate the firms' certificate of registration, as allowed by G.S. 83A-11.

(e) Seal. Each registered corporation shall adopt a seal pursuant to 21 NCAC 02 .0206(a)(3).

(f) Approval of Name. In addition to the requirements and limitations of G.S. 55 and 55B, the firm name used by an architectural corporation shall conform with Rule .0205 and be approved by the Board before being used. This Rule shall not prohibit the continued use of any firm name adopted in conformity with the General Statutes of North Carolina and Board Rules in effect at the date of such adoption.

History Note: Authority G.S. 55B-5; 55B-10; 55B-15; 83A-6; 83A-8;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. July 1, 2014; December 1, 2010; July 1, 1993;
May 1, 1989; November 1, 1979.

21 NCAC 02 .0302 EXAMINATION

(a) Licensure Examination. All applicants for architectural registration in North Carolina by examination shall pass the Architectural Registration Examination (ARE), prepared by the National Council of Architectural Registration Boards (NCARB). Applicants who have never been registered in any NCARB recognized jurisdiction may transfer credits for portions of the examination previously passed in another jurisdiction if at the time of initial approval to take the exam in said jurisdiction they otherwise qualified for taking the exam under the rules in

this Chapter. The qualifications necessary for eligibility to take the ARE are as follows:

- (1) be of good moral character as defined in G.S. 83A-1(5);
- (2) be at least 18 years of age;
- (3) completion of a NAAB (National Architectural Accrediting Board) accredited professional degree in architecture;
- (4) all applicants who apply for architectural registration by exam are required to be enrolled in the Intern Development Program (IDP) through NCARB or a program approved as equivalent by the North Carolina Board of Architecture as set forth in G.S. 83A-7(a)(2)
- (5) The Board shall grant eligibility to take the exam, to those individuals who have obtained the required NAAB accredited degree and have enrolled in the NCARB IDP. Upon successful completion of all sections of the ARE and fulfillment of all IDP requirements an individual may submit the application and fee for licensure by exam and may then be granted a license to practice architecture. G.S. 83A-7(a)(1)a. shall be deemed satisfied through completion of the requirements set forth in this Paragraph.

(b) Retention of credit for purposes of licensure by examination in North Carolina.

- (1) Passing scores received after July 1, 2006 on any part of the ARE remain valid for a period of time established by the exam provider, NCARB and found on the web site at www.ncarb.org.
- (2) As of July 1, 2011, passing scores received on any part of the ARE prior to July 1, 1996 are invalid.
- (3) As of July 1, 2014, passing scores received on any part of the ARE after July 1, 1996 and prior to July 1, 2006 are invalid.

(c) Practical training as indicated in G.S. 83A-7(a)(2) means practical experience and diversified training as defined by the Intern Development Program through the NCARB. However, the Board may judge each case on its own merits.

(d) Personal interview. During the application process, the applicant may be interviewed by the Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to qualifications required in Subparagraph (a)(1) of this Rule.

(e) The ARE shall be graded in accordance with the methods and procedures recommended by NCARB. An exam candidate shall receive a passing grade in each division of the Architectural Registration Exam. Information regarding NCARB grading methods and procedures is found on their web site at www.ncarb.org.

(f) A person currently employed under the responsible control of an architect, who holds a Professional Degree from a NAAB accredited program, and who maintains an active NCARB IDP record or has successfully completed the NCARB IDP may use

the title "Architectural Intern" or "Intern Architect" in conjunction with his or her current employment.

History Note: Authority G.S. 83A-1; 83A-6; 83A-7; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 2014; November 1, 2010; July 1, 2006; July 1, 2000; July 1, 1996; June 1, 1995; December 1, 1992; July 1, 1991.

21 NCAC 02 .0303 LICENSURE BY RECIPROCITY

(a) An individual who holds a current license in good standing from a National Council of Architecture Registration Boards (NCARB) recognized jurisdiction and a Certified Council Certificate (also known as "Blue Cover") issued by NCARB may qualify for licensure by reciprocity. Upon receipt of a certified record from NCARB and the Board application for licensure by reciprocity and fee, the Board may issue a license to an applicant as provided in G.S. 83A-7(b). Revocation of the certificate by NCARB shall automatically suspend the architect's license to practice in North Carolina until such time as the certificate is reinstated by NCARB.

(b) The Board may interview with the applicant to satisfy the Board, or its designee that the applicant has had sufficient recent architectural practice experience to be able to competently practice architecture in this state.

History Note: Authority G.S. 83A-6; 83A-7; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 2014; November 1, 2010; July 1, 2006; July 1, 2000; October 1, 1995; May 1, 1989; October 1, 1984; September 1, 1982.

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

21 NCAC 10 .0204 LICENSURE

(a) Initial Licensure. The initial license awarded to an applicant who passed the examination shall be mailed to the address appearing on the application form.

(b) Change of Address. It shall be the responsibility of the licensee to inform the Board of any change in his or her mailing address. Updated address information shall be forwarded to the secretary in writing within 30 days after any such change.

(c) Email and Facsimile. A licensee who maintains an office email address or office facsimile machine shall inform the Board of his or her current email address or facsimile machine telephone number. This contact information shall not be made available to the public and shall be used only for expediting the dissemination of official messages the Board deems high priority or urgent.

History Note: Authority G.S. 90-145; 90-148; Eff. February 1, 1976; Readopted Eff. January 27, 1978; Amended Eff. January 1, 1983;

*Legislative Objection Lodged Eff. January 31, 1983;
Curative Amended Eff. February 28, 1983;
Amended Eff. July 1, 2014; December 1, 1988.*

21 NCAC 10 .0213 CERTIFICATION OF CLINICAL ASSISTANTS

(a) Classification of Applicants. The Board hereby establishes the following categories of applicants for clinical assistant competency certification. Different certification requirements apply to each category.

- (1) Grandfathered applicants. A "grandfathered applicant" is an applicant who is currently employed as a clinical assistant, who has been trained by the applicant's employing physician to perform the duties of a clinical assistant as defined in G.S. 90-143.4(a), and who shall have amassed at least 500 working hours in the capacity of a clinical assistant as of the effective date of this Rule. (Note: this category is temporary; the opportunity to be grandfathered shall expire 120 days after the effective date of this Rule.)
- (2) Reciprocity applicants. A "reciprocity applicant" is an applicant who is currently certified or registered as a clinical assistant in another state whose requirements for certification or registration are substantially similar to or more stringent than the requirements for certification in North Carolina.
- (3) New applicants. A "new applicant" is any applicant who is not a grandfathered applicant or a reciprocity applicant.

(b) Requirements for Certification. Every applicant, regardless of classification, shall complete an application form provided by the Board (available at www.ncchiroboard.com) and submit evidence satisfactory to the Board that the applicant is at least 18 years of age, a high school graduate or the equivalent, and possessed of good moral character. A photocopy of the applicant's birth certificate, driver's license or government-issued identification card shall constitute *prima facie* evidence of the applicant's age. A photocopy of the applicant's high school diploma, transcript or general equivalency diploma (G.E.D.) shall constitute *prima facie* evidence of the applicant's graduation from high school. An affidavit attesting to good moral character and signed by a chiropractic physician or other responsible party who knows the applicant and is not related to the applicant shall constitute *prima facie* evidence of the applicant's good moral character. Every applicant, regardless of classification, shall pay to the Board an initial certification fee in the amount of twenty dollars (\$20.00). In addition to the foregoing general requirements, an applicant shall satisfy the requirements for the applicant's individual category, as follows:

- (1) Grandfathered Applicants. A grandfathered applicant shall submit, on a form provided by the Board (available at www.ncchiroboard.com), an attestation signed by the applicant's employing physician confirming that the applicant is currently

employed as a clinical assistant, has received sufficient on-the-job training, in the judgment of the employer, to perform the duties of a clinical assistant, and has amassed at least 500 hours of work experience in the capacity of a clinical assistant as of the effective date of this Rule. In addition, a grandfathered applicant shall take and pass a refresher proficiency examination administered by or under the authority of the Board, as described in Paragraph (d) of this Rule. (Note: grandfathered applications shall only be accepted for 120 days after the effective date of this Rule.)

- (2) Reciprocity Applicants. A reciprocity applicant shall submit a copy of the applicant's current certification or registration as a clinical assistant in a state with which North Carolina reciprocates and shall also submit written confirmation from the state's certifying authority or registrar that the applicant is in good standing in said state.

- (3) New Applicants. A new applicant shall submit evidence satisfactory to the Board that the applicant has completed an approved clinical assistant education program as described in Paragraph (c) of this Rule. A certificate of completion filed with the Board by the program sponsor shall constitute *prima facie* evidence that the applicant has obtained the required education. A new applicant shall also take and pass the standard proficiency examination administered by or under the authority of the Board, as described in Paragraph (d) of this Rule.

(c) Education Programs. In order to be approved by the Board, a clinical assistant education program for new applicants shall be at least 24 hours in length, of which at least six hours shall be in-person didactic training with an instructor or instructors who, based on education and experience, are deemed competent by the Board to teach the portion of the curriculum they have been assigned. Credit for online coursework shall not exceed 18 hours, and all online coursework shall precede didactic training. At a minimum, the education program shall provide sufficient instruction in the five subjects set forth in G.S. 90-143.4(c) to enable its graduates to satisfy all applicable standards of care. To obtain approval of an education program, the program sponsor shall submit to the Board, at least 30 days prior to the proposed starting date, all instructional materials to be used in the program, including a syllabus of the didactic training, and a *curriculum vitae* for each instructor.

(d) Examinations. The refresher proficiency examination shall emphasize the practical skills possessed by grandfathered applicants and shall be available online. The standard proficiency examination for new applicants shall assess both academic knowledge and practical skills acquired through education programs and shall be administered in person at least four times per year on the fourth Saturday in January, April, July and October. In its discretion, the Board may authorize

additional testing sessions based on the number of applications received. (Note: the refresher proficiency examination for grandfathered applicants shall be discontinued 120 days after the effective date of this Rule.)

(e) Certificate Expiration and Renewal. Unless renewed, a certificate of competency shall expire on June 30th of the second year following the year in which it was issued. A certificate holder seeking to renew shall complete a renewal application form provided by the Board (available at www.ncchiroboard.com) and shall submit evidence satisfactory to the Board that the applicant has completed six hours of Board-approved continuing education. A certificate of attendance filed with the Board by the program sponsor shall constitute *prima facie* evidence that the applicant has completed the number of hours recited in the certificate. The applicant shall pay to the Board a renewal fee in the amount of ten dollars (\$10.00).

(f) Lapsed Certificates. If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 12 months, the certificate holder may obtain reinstatement by making up the accrued deficiency in continuing education. If the lapse is greater than 12 months, no make-up continuing education shall be required, but the certificate holder shall re-take and pass the standard proficiency examination for new applicants. Regardless of the length of lapse, a certificate holder seeking reinstatement shall pay to the Board a renewal fee in the amount of ten dollars (\$10.00).

(g) Exemptions. Graduates of accredited chiropractic colleges and students enrolled in accredited chiropractic colleges who are serving college-sponsored preceptorships in North Carolina are deemed by the Board to have satisfied all requirements imposed by this Rule and are declared competent to perform the duties of a clinical assistant. Any person who qualifies for exemption and who works as a clinical assistant in this state for more than 120 days shall submit an application form to the Board asserting exempt status (form available at www.ncchiroboard.com) but shall not be required to submit a certification fee.

*History Note: Authority G.S. 90-142; 90-143.4;
Eff. July 1, 2014.*

CHAPTER 37 – BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

21 NCAC 37B .0101 AUTHORITY: NAME & LOCATION OF BOARD

The "North Carolina State Board of Examiners for Nursing Home Administrators," subsequently herein referred to as the "Board," is established and authorized by G.S. 90, Article 20. The Board's physical location and mailing address is: 3733 National Drive, Suite 110, Raleigh, North Carolina 27612. The Board's website address is www.ncbenha.org.

*History Note: Authority G.S. 90-277;
Eff. April 1, 1996;
Amend Eff. July 1, 2014.*

21 NCAC 37D .0202 INITIAL LICENSURE FEE

Prior to licensure, the applicant shall send an initial licensure non-refundable fee of five hundred dollars (\$500.00) when the applicant has successfully passed the examinations required by the Board under Sections .0600 and .0700 of this Subchapter.

*History Note: Authority G.S. 90-280;
Eff. February 1, 1976;
Amended Eff. August 1, 1977;
Readopted Eff. October 1, 1981; December 15, 1977;
Amended Eff. December 30, 1981;
Temporary Amendment Eff. July 13, 1982 for a period of 120 days to expire on November 9, 1982;
Amended Eff. February 1, 1991; October 1, 1982;
Transferred and Recodified from 21 NCAC 37A .0302 Eff. April 1, 1996;
Amended Eff. August 1, 1996;
Temporary Amendment Eff. August 15, 1996;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. August 15, 1999;
Amended Eff. July 1, 2014; September 1, 2004; July 1, 2000.*

21 NCAC 37D .0402 APPLICATION TO BECOME ADMINISTRATOR-IN-TRAINING (AIT)

(a) The applicant shall submit to the Board an application containing:

- (1) name;
- (2) education;
- (3) employment history;
- (4) questions pertaining to moral character;
- (5) criminal history; and
- (6) an affidavit stating that the applicant if granted a license, shall obey the laws of the state and the rules of the Board, and shall maintain the honor and dignity of the profession.

(b) The applicant shall submit a resume.

(c) The applicant shall submit three reference forms (one employer and two character) as set forth in Rule .0203 of this Subchapter:

- (1) the Employer Reference Form shall include the address of employment and duties assigned; and
- (2) the Character Reference Form shall include how this individual knows the applicant and whether the applicant is capable to supervise the care of residents of a skilled facility. No character reference shall be from a relative of the applicant.

(d) The applicant shall submit an official transcript issued by the institution indicating the courses completed and hours earned, specifying whether semester or quarter hours. The applicant shall supply documentation of his or her supervisory experience in a nursing home if the applicant is utilizing the experience substitute for the education requirement as allowed by G.S. 90-278(1)b.

(e) The applicant and the preceptor shall appear before the Board for a personal interview.

(f) The preceptor shall submit to the Board three weeks prior to the personal interview:

- (1) a Facility Survey Form stating the facility license number, address and the number of beds;
- (2) a letter accepting individual as an AIT;
- (3) a Preceptor Disclosure Form stating number of years the individual has served as an administrator and number of AITs precepted;
- (4) a curriculum outline for the AIT program that provides the AIT with job experience in each department. A curriculum outline shall include each department in the facility and the information that will be covered, including the recommended number of weeks in the program as outlined on the AIT Curriculum Request and Rationale Form;
- (5) an AIT Curriculum Request and Rationale Form shall be based on education and experience of the AIT applicant. The preceptor shall be responsible for providing a rationale for all subject areas with the recommended number of weeks for the AIT; and
- (6) the directions to the facility.

(g) The owner or governing board of the facility shall submit to the Board three weeks prior to the personal interview a letter of approval for the AIT applicant to train in the facility.

(h) A non-refundable processing fee of two hundred fifty dollars (\$250.00) shall be submitted with the application.

(i) An AIT applicant shall maintain at all times a current residential mailing address with the Board office.

(j) The applicant may obtain an application and forms from the Board's website or from the Board office.

History Note: Authority G.S. 90-278; 90-280; 90-285; 90-288.01;

Eff. February 1, 1976;

Amended Eff. August 1, 1977; April 8, 1977;

Readopted Eff. December 15, 1977;

Amended Eff. February 1, 1980;

Readopted Eff. October 1, 1981;

Amended Eff. August 1, 1995; August 2, 1993; February 1, 1991; May 1, 1989;

Transferred and Recodified from 21 NCAC 37A .0502 Eff. April 1, 1996;

Amended Eff. July 1, 2014; July 1, 2004; April 1, 1996.

21 NCAC 37D .0703 STATE EXAMINATION ADMINISTRATION

(a) The State Examination shall be administered on dates to be determined and published by the Board on the State Examination Application form located on the Board's website. It may also be offered to reciprocity applicants and to AIT applicants who passed the National Examination but previously failed the State Examination on different dates if the applicants show good cause, such as unavailability due to illness, inclement weather, employment, or survey.

(b) An applicant shall pay a non-refundable processing fee of one hundred fifty dollars (\$150.00) each time the applicant takes the State Examination.

(c) To sit for the State Examination, the applicant shall submit a Test Confidentiality and Attestation Form, which is a release form stating the applicant will keep test questions confidential. This form is provided by the Board on the website and in the information package.

(d) An applicant shall pass the State Exam within one year of the date of completion of the AIT program.

History Note: Authority G.S. 90-280; 90-285;

Eff. April 1, 1996;

Amended Eff. July 1, 2014; July 1, 2004.

21 NCAC 37E .0102 APPLICATION CONTENTS

An applicant for reciprocity/endorsement shall submit the following items that shall be received by the Board three weeks prior to the next scheduled Board Meeting posted on the Board's website:

- (1) a completed application;
- (2) a resume;
- (3) certified college transcript(s);
- (4) three reference forms (one employer and two character) located on the Board's website as set forth in Rule 21 NCAC 37D .0203:
 - (a) the Employer Reference Form shall include the address of employment and duties assigned; and
 - (b) the Character Reference Form shall include how the individual knows the applicant and whether the applicant is capable of supervising the care of residents of a skilled facility. No character reference shall be from a relative of the applicant.
- (5) a licensing questionnaire(s) from every state where the applicant held a license. The questionnaire is available on the Board's website;
- (6) a non-refundable processing fee of two hundred fifty dollars (\$250.00); and
- (7) a fingerprint card, necessary forms, and required fee for criminal background check. Information regarding the forms and fees for the criminal background check is available in the Board office.

History Note: Authority G.S. 90-280; 90-285; 90-287; 90-288.01;

Eff. February 1, 1976;

Readopted Eff. December 15, 1977;

Amended Eff. February 1, 1980;

Readopted Eff. October 1, 1981;

Amended Eff. August 1, 1995; August 2, 1993; February 1, 1991; May 1, 1989;

Transferred and Recodified from 21 NCAC 37A .0912(b) Eff. April 1, 1996;

Amended Eff. April 1, 1996;

Temporary Amendment Eff. August 15, 1999;

Amended Eff. July 1, 2014; July 1, 2004; July 1, 2000.

21 NCAC 37F .0102 ISSUANCE OF TEMPORARY LICENSE

(a) An applicant for a temporary license shall submit the following items:

- (1) a completed application;
- (2) a resume;
- (3) three reference forms (one employer and two character) located on the Board's website as set forth in Rule 21 NCAC 37D .0203:
 - (A) the Employer Reference Form shall include the address of employment and duties assigned; and
 - (B) the Character Reference Form shall include how the individual knows the applicant and whether the applicant is capable of supervising the care of residents of a skilled facility. No character reference shall be from a relative of the applicant;
- (4) a letter from the owner or regional manager requesting the issuance of a Temporary License for the facility stating the circumstances necessitating the issuance of the license; and
- (5) the processing fee of three hundred dollars (\$300.00).

(b) After an applicant is issued a temporary license he or she shall submit a fingerprint card, necessary forms, and the required fee for a criminal background check, and successfully pass the state examination administered by the Board at the next exam date to retain the temporary license. Information regarding the forms and fees for the criminal background check is available in the Board office.

(c) A temporary license may be extended at the discretion of the Board in accordance with the requirements of Rule .0101(d) of this Section.

(d) A temporary license shall be issued to the applicant to permit him or her to practice only in the nursing home to which the applicant is assigned on the date of issuance.

(e) If the Board extends the temporary license, no further fee shall be required.

History Note: Authority G.S. 90-278; 90-280; 90-285; 90-288.01;

Eff. February 1, 1980;

Amended Eff. April 15, 1980;

Readopted Eff. October 1, 1981;

Amended Eff. May 1, 1989; December 1, 1983; October 1, 1982;

Transferred and Recodified from 21 NCAC 37A .1003 Eff. April 1, 1996;

Amended Eff. April 1, 1996;

Temporary Amendment Eff. August 15, 1999;

Amended Eff. July 1, 2014; July 1, 2000.

21 NCAC 37G .0102 RENEWAL FEE

Upon making application for renewal, a licensee shall pay a biennial licensure fee of five hundred dollars (\$500.00).

History Note: Authority G.S. 90-280; 90-285; 90-286;

Eff. February 1, 1976;

Amended Eff. August 1, 1977; April 8, 1977;

Readopted Eff. December 15, 1977;

Readopted w/change Eff. October 1, 1981;

Temporary Amendment Eff. July 13, 1982 for a period of 120 days to expire on November 9, 1982;

Amended Eff. February 1, 1991; May 1, 1989; December 1, 1983; October 1, 1982;

Transferred and Recodified from 21 NCAC 37A .0904 Eff. April 1, 1996;

Amended Eff. August 1, 1996;

Temporary Amendment Eff. August 15, 1996;

Amended Eff. July 1, 1998;

Temporary Amendment Eff. August 15, 1999;

Amended Eff. July 1, 2014; September 1, 2004; July 1, 2000.

21 NCAC 37G .0201 INACTIVE REQUIREMENTS

(a) An administrator who desires to be placed on the inactive list shall make a written request on the biennial renewal form provided by the Board and submit a non-refundable inactive fee of one hundred dollars (\$100.00) per year fee to the Board.

(b) A request to be placed on the inactive list shall be submitted to the Board no later than 30 days after expiration of the license under Rule .0101(a) of this Subchapter. Failure to submit the request and payment of the fee within 30 days after expiration shall result in automatic expiration of the license retroactive to the expiration date.

(c) If an administrator makes a request to be placed on the inactive list pursuant to Paragraph (b) of this Rule, an administrator may remain on the inactive list for a period not to exceed four years provided the licensee pays an inactive fee of one hundred dollars (\$100.00) for each additional year prior to expiration of the inactive period.

History Note: Authority G.S. 90-280; 90-285;

Eff. February 1, 1976;

Amended Eff. April 8, 1977;

Readopted Eff. December 15, 1977;

Readopted with Change Eff. October 1, 1981;

Amended Eff. February 1, 1991;

Transferred and Recodified from 21 NCAC 37A .0906 Eff. April 1, 1996;

Amended Eff. April 1, 1999;

Temporary Amendment Eff. August 15, 1999;

Amended Eff. July 1, 2014; July 1, 2000.

21 NCAC 37H .0102 CONTINUING EDUCATION PROGRAMS OF STUDY

(a) The Board shall certify and administer courses in continuing education for the professional development of nursing home administrators and to enable persons to meet the requirements of the Rules in this Chapter. The licensee shall keep a record of his or her continuing education hours. Certified courses, including those sponsored by the Board, an accredited university, college or community college, associations, professional societies, or organizations shall:

- (1) contain a minimum of one classroom hour of academic work and not more than eight classroom hours within a 24-hour period; and

- (2) include instruction in one or more of the following general subject areas or their equivalents:
- (A) Resident Care and Quality of Life;
 - (B) Human Resources;
 - (C) Finance;
 - (D) Physical Environment and Atmosphere; or
 - (E) Leadership and Management.

(b) In lieu of certifying each course offered by a provider, the Board may certify the course provider for an annual fee not to exceed four thousand dollars (\$4,000.00). The Board Office shall conduct a review annually of the number of courses each provider presented in the prior year. The annual fee shall be set at one hundred dollars (\$100.00) for every course offered in the prior year. The course provider shall submit a list of courses offered for credit and agree to comply with the requirements of Paragraph (a) of this Rule.

- (c) Certified courses not administered by the Board shall be:
- (1) submitted to the Board for approval 30 days prior to the presentation of the program; and
 - (2) accompanied with a processing fee to cover the cost of reviewing and maintaining records associated by the continuing education program. The fee schedule is as follows:
 - (A) any course submitted for review, up to and including six hours, shall be accompanied by a non-refundable fee of one hundred dollars (\$100.00); and
 - (B) the sponsor shall pay ten dollars (\$10.00) for each additional hour for any course submitted for review that is greater than six hours.

(d) Courses shall be approved for a period of one year from the date of initial presentation.

(e) In order to receive Board approval for distance learning programs that are via printed material, cd, dvd, videotape, or web-based, the course shall have tests before and after the session. For every credit hour claimed, the course shall include five questions on each test administered before and after the course. These questions may be the same.

(f) Continuing education credit for licensees may include up to 10 hours for participation in distance learning courses only if:

- (1) the distance learning course is approved by the Board or the National Association of Boards of Examiners of Long Term Care Administrators (NAB). The NAB is a certifying association of continuing education across the nation; and
- (2) the approved course sponsor sends to the Board a verification of the individual's completion of the distance learning course.

(g) The Board shall charge a fee covering the cost of continuing education courses it sponsors, not to exceed five hundred dollars (\$500.00).

History Note: Authority G.S. 12-3.1(c)(3); 90-278; 90-280; 90-285; 90-286; Eff. February 1, 1976;

*Amended Eff. April 8, 1977;
Readopted Eff. December 15, 1977;
Readopted w/change Eff. October 1, 1981;
Amended Eff. August 2, 1993; February 1, 1991; May 1, 1989;
February 1, 1986;
Transferred and Recodified from 21 NCAC 37A .0404 Eff. April 1, 1996;
Temporary Amendment Eff. August 15, 1999;
Amended Eff. July 1, 2014; September 1, 2004; July 1, 2000.*

CHAPTER 53 – BOARD OF LICENSED PROFESSIONAL COUNSELORS

21 NCAC 53 .0102 PROFESSIONAL ETHICS

(a) The Board of Licensed Professional Counselors has adopted the American Counseling Association (ACA) Code of Ethics that are hereby incorporated by reference, including subsequent amendments and editions. A free copy may be obtained from the American Counseling Association online at www.counseling.org.

(b) In addition, the Board has adopted the Approved Clinical Supervisor (ACS) Code of Ethics promulgated by the Center for Credentialing and Education that are hereby incorporated by reference, including subsequent amendments and editions. A free copy may be obtained from the Center for Credentialing and Education online at www.cce-global.org.

*History Note: Authority G.S. 90-334(h);
Temporary Rule Eff. February 21, 1984, for a Period of 120 Days to Expire on June 19, 1984;
Eff. July 1, 1984;
Amended Eff. July 1, 2014; January 1, 2010; July 1, 2006; July 1, 1994.*

21 NCAC 53 .0204 PROFESSIONAL DISCLOSURE STATEMENT REQUIREMENTS FOR LPCA AND LPC

A Professional Disclosure Statement is a printed document that includes the following information:

- (1) name of licensee or applicant;
- (2) the licensee's or applicant's highest relevant degree, year degree received, discipline of degree (e.g., counseling, school counseling), and name of institution granting the degree;
- (3) names and numbers of all relevant credentials (licenses, certificates, or registrations);
- (4) number of years of counseling experience;
- (5) description of services offered and clientele (populations) served;
- (6) length of sessions, specific fee or range of fees charged per session (if no fee is charged, a statement to that effect), and methods of payments for services, including information about billing or insurance reimbursement;
- (7) an explanation of confidentiality, including responsibilities and exceptions (e.g., child or elder abuse, court order);

- (8) a statement of procedure for registering complaints, including the full name, address, and telephone number of the Board's office;
- (9) signature and date spaces for both the client and licensee; and
- (10) level of licensure and whether the licensee is under supervision. If under supervision, include name of supervisor.

A current copy of this statement shall be provided to each client prior to the performance of professional counseling services. An updated Professional Disclosure Statement shall be submitted at the time of renewal to the Board's office at 7-D Terrace Way, Greensboro, NC 27403. The counselor shall retain a file copy of the Professional Disclosure Statement signed by each client.

History Note: Authority G.S. 90-334; 90-334(h); 90-343; Eff. July 1, 1994;
Amended Eff. July 1, 2014; January 1, 2010; July 1, 1995.

21 NCAC 53 .0205 COUNSELING EXPERIENCE

The counseling experience required by G.S. 90-336(c)(2) shall include a minimum of 2000 hours of supervised professional practice hours of direct counseling experience. Direct counseling experience consists of live contact with individuals, groups, or families through counseling as defined in G.S. 90-330(a)(3)a and b. Experience shall be gained at a rate of no more than 40 hours per week. At least 100 hours of clinical supervision, as defined in Rule .0210 and Rule .0211 of this Section, shall be documented during the minimum of 3000 hours of supervised professional practice, as defined in Rule .0208 of this Section. No less than three-quarters of the hours of clinical supervision shall be individual clinical supervision.

History Note: Authority G.S. 90-330(a)(3); 90-334(h),(i); 90-336(c); Eff. July 1, 1995;
Amended Eff. July 1, 2014; January 1, 2010; July 1, 2006.

21 NCAC 53 .0206 GRADUATE COUNSELING EXPERIENCE

(a) Applicants enrolled in master's programs before July 1, 2015, a separate practicum and an internship shall be completed as part of the graduate course of study with at least 17 hours of graduate counseling supervision, as defined in Rules .0210 and .0211 of this Section. Supervised graduate counseling shall be verified by a university faculty member on forms available on the Board's website, www.ncblpc.org, and shall consist of a minimum of 300 hours of supervised graduate counseling experience at a rate of not less than one hour of clinical supervision per 40 hours of graduate counseling experience, as defined by Rule .0701(2)(b) of this Chapter. At least 180 hours of this counseling experience shall be direct counseling experience as defined in Rule .0205 of this Section.

(b) Applicants who enroll in a master's program on or after July 1, 2015, graduate counseling experience shall consist of the following separate courses:

- (1) one or more courses in practicum totaling at least three semester hours or five quarter hours;

- (2) one or more courses in internship totaling at least three semester hours or five quarter hours; and
- (3) at least 17 hours of graduate counseling supervision as defined in Rules .0210 and .0211 of this Section.

Supervised graduate counseling shall be verified by a university faculty member on forms available on the Board's website, www.ncblpc.org, and shall consist of a minimum of 300 hours of graduate counseling experience at a rate of not less than one hour of clinical supervision per 40 hours of graduate counseling experience, as defined by Rule .0701(2)(b) of this Chapter. At least 180 hours of this counseling experience shall be direct counseling experience as defined in Rule .0205 of this Section.

History Note: Authority 90-332.1(a)(3); 90-334(h),(i); 90-336(b)(1); Eff. July 1, 1995;
Amended Eff. July 1, 2014; January 1, 2010.

21 NCAC 53 .0208 SUPERVISED PROFESSIONAL PRACTICE

"Supervised professional practice" means counseling experience under the supervision of a qualified clinical supervisor, as defined in Rule .0209 of this Section, and includes a minimum of one hour of individual or two hours of group clinical supervision per 40 hours of supervised professional counseling practice. Individual clinical supervision hours do not count towards the 40 hours of supervised professional practice. At least three-quarters of the hours of clinical supervision shall be individual. Persons who have met all licensure requirements except the supervised professional practice who wish to counsel as supervised counselors in supervised professional settings, as defined in Rule .0207 of the Section, shall apply to become a licensed professional counselor associate as defined in Rule .0701 of this Chapter. The focus of a supervision session shall be on raw data from clinical work that is made available to the supervisor through such means as live observation, co-therapy, audio and video recordings, and live supervision. Written materials and self-reports by the supervised counselor may supplement the supervision process but shall not be the sole basis of any supervision session.

History Note: Authority 90-334(h),(i); 90-336(c)(2); Eff. July 1, 1995;
Amended Eff. July 1, 2014; January 1, 2010; July 1, 2006.

21 NCAC 53 .0209 QUALIFIED CLINICAL SUPERVISOR

(a) A "qualified clinical supervisor" is:

- (1) A licensed professional counselor with the following:
 - (A) a master's degree as defined in G.S. 90-336(b)(1);
 - (B) an independent license that is not under supervision;
 - (C) the equivalent of three semester graduate credits in clinical supervision from a regionally

accredited institution of higher education as documented by an official transcript or 45 contact hours of continuing education in clinical supervision as defined by Rule .0603(c) in this Chapter; and

- (D) a minimum of five years of post-graduate counseling experience with a minimum of two years of post licensure experience; or

- (2) An equivalently and actively licensed mental health professional as defined in Paragraph (c) of this Rule.

(b) As of July 1, 2017, all qualified clinical supervisors shall hold the credential of licensed professional counselor supervisor or be a licensed professional counselor or an equivalently and actively licensed mental health professional, as defined in Paragraph (c) of this Rule.

(c) "Equivalently and actively licensed" means that the mental health professional shall have:

- (1) at least a master's degree as defined in G.S. 90-336(b)(1);
- (2) an independent license that is not under supervision and is in good standing with the respective licensing board;
- (3) the equivalent of three semester graduate credits in clinical supervision from a regionally accredited institution of higher education as documented by an official transcript or 45 contact hours of continuing education in clinical supervision, as defined by Rule .0603(c) in this Chapter;
- (4) a minimum of five years of post-graduate counseling experience, with a minimum of two years of post licensure experience; and
- (5) a minimum of 10 contact hours of continuing education in professional knowledge and competency in the field of counseling supervision completed every two years and submitted to the Board.

History Note: Authority G.S. 90-330(a)(4); 90-334(h),(i); 90-336(d);

Eff. July 1, 1995;

Amended Eff. July 1, 2014; January 1, 2010; July 1, 2006.

21 NCAC 53 .0210 INDIVIDUAL CLINICAL SUPERVISION

"Individual clinical supervision" means face-to-face supervision, as defined in Rule .0212 of this Section, of one or two supervisees and a qualified clinical supervisor, as defined in Rule .0209 of this Section, for a period not less than one hour of clinical supervision per session, as defined in Rule .0208 of this Section, per 40 hours of supervised professional practice, as defined in Rule .0205 of this Section. Face-to-face hours with the qualified clinical supervisor do not count toward the 40 hours of supervised professional practice.

History Note: Authority G.S. 90-334(h),(i); 90-336(c)(2);

Eff. July 1, 1995;

Amended Eff. July 1, 2014; January 1, 2010.

21 NCAC 53 .0211 GROUP CLINICAL SUPERVISION

"Group clinical supervision" means face-to-face supervision, as defined in Rule .0212 of this Section between groups of supervisees, not to exceed 12 supervisees per group, and a qualified clinical supervisor, for a period not less than two hours of clinical supervision per session, per 40 hours of supervised professional practice, as defined in Rule .0208 of this Section.

History Note: Authority G.S. 90-334(h),(i); 90-336(c)(2);

Eff. July 1, 1995;

Amended Eff. July 1, 2014; January 1, 2010.

21 NCAC 53 .0212 FACE TO FACE SUPERVISION DEFINED

"Face-to-face" clinical supervision means supervision that is live, interactive, and visual. Video supervision is permitted as long as the session is synchronous and involves verbal and visual interaction during the supervision. All supervision, whether live or audio and video recordings, shall be done in a confidential manner in accordance with the ACA Code of Ethics as set forth in Rule .0102 of this Chapter.

History Note: Authority G.S. 90-334(h);

Eff. July 1, 2006;

Amended Eff. July 1, 2014; January 1, 2010.

21 NCAC 53 .0301 APPLICATIONS

Applications shall be submitted only on forms obtained from the Board's office at the address set forth in Rule .0204 of this Chapter or website, www.ncblpc.org. Applications may be submitted electronically or mailed in paper format to the Board's office.

History Note: Authority G.S. 90-334; 90-336(a);

Temporary Rule Eff. February 21, 1984, for a Period of 120 Days to Expire on June 19, 1984;

Eff. July 1, 1984;

Amended Eff. July 1, 2014; January 1, 2010; July 1, 1995; July 1, 1994; April 1, 1989.

21 NCAC 53 .0302 TRANSCRIPTS

The applicant shall have official transcripts sent either electronically or in paper format, from institutions where graduate credit was earned. If the transcript course titles are ambiguous or do not convey the pertinent content of the courses, the Board shall require additional documentation from the applicant, such as a course description or syllabus from the same time period that the applicant was enrolled.

History Note: Authority G.S. 90-334; 90-336;

Temporary Rule Eff. February 21, 1984, for a Period of 120 Days to Expire on June 19, 1984;

Eff. July 1, 1984;

Amended Eff. July 1, 2014; January 1, 2010.

**21 NCAC 53 .0304 APPLICANTS LICENSED IN
OTHER STATES**

If an applicant is licensed to practice counseling by a Board in another state, the applicant shall apply for licensure with the North Carolina Board and shall meet the following requirements:

- (1) shall have a minimum of five years of full time counseling experience, or eight years of part time counseling experience, or a combination of full time and part time counseling experience equivalent to five years of full time counseling experience, within 10 years directly prior to application;
- (2) shall have a minimum of 2500 hours of direct client contact;
- (3) shall have an active independent license that does not require supervision, and be in good standing as a licensed professional counselor in another state for a minimum of two years directly prior to application; and
- (4) shall comply with all other applicable rules for licensure as a licensed professional counselor.

History Note: Authority G.S. 90-334; 90-337; S.L. 1993-514, s.5;

Temporary Rule Eff. February 21, 1984, for a Period of 120 Days to Expire on June 19, 1984;

Eff. July 1, 1984;

Amended Eff. July 1, 2014; July 1, 2006; July 1, 1994.

21 NCAC 53 .0305 EXAMINATION

(a) One of the following national exams shall be taken to complete the examination requirement for licensure as a licensed professional counselor associate and licensed professional counselor:

- (1) the National Counselor Examination (NCE);
- (2) the National Clinical Mental Health Counselor Examination (NCMHCE); or
- (3) the Certified Rehabilitation Counselor Examination (CRC).

(b) The Board shall accept examinations administered by other state counselor licensing boards and professional counselor credentialing associations if the Board determines that such examinations are equivalent to the NCE, NCMHCE, or CRC relative to content and minimum satisfactory performance levels for counselors.

(c) The completion of a no fail jurisprudence exam, as selected by the Board, is required for licensure application at each level (licensed professional counselor associate, license professional counselor, and licensed professional counselor supervisor) and for each consecutive renewal period. Applicants and renewing licensees shall submit documentation of completion of the no fail jurisprudence exam, taken within six months prior to application to the Board for licensure or within six months prior to the date of expiration of the license.

History Note: Authority G.S. 90-334(g),(h); 90-336(b)(3); 90-337;

Eff. July 1, 1995;

Amended Eff. July 1, 2014; January 1, 2010; July 1, 2006.

21 NCAC 53 .0307 RETAKING OF EXAMINATION

Applicants who do not pass one of the examinations as set forth in Rule .0305 of this Section may retake it at the next regularly scheduled examination date upon registering with and paying the required examination fee to the National Board of Certified Counselors or to the Commission on Rehabilitation Counselor Certification. Applicants who fail the examination a second time during an application period shall have their application denied. The applicants may reapply for licensure and shall be subject to the requirements at the time of reapplication.

History Note: Authority G.S. 90-334(g),(h),(j);

Eff. July 1, 1995;

Amended Eff. July 1, 2014.

21 NCAC 53 .0308 RECEIPT OF APPLICATION

(a) All requirements for applications shall be satisfied in accordance with Article 24 of G.S. 90 and the rules of this Chapter within two years from the date of receipt of the application or the application shall be denied by the Board. The applicant may reapply for licensure and shall be subject to the requirements at the time of reapplication.

(b) Change of Address. The applicant shall inform the Board of any change in his or her mailing address within 60 days after any change. Updated address information shall be submitted on forms available on the Board's website, www.ncblpc.org.

(c) Change of Name. The applicant shall inform the Board of any change in his or her name within 60 days after any change. A name change form shall be submitted on forms available on the Board's website, www.ncblpc.org and shall include any required legal documentation, as a marriage certificate, divorce decree, or court order.

History Note: Authority G.S. 90-334(h); 90-336(a);

Eff. July 1, 1995;

Amended Eff. July 1, 2014; January 1, 2010; July 1, 2006.

**21 NCAC 53 .0310 FOREIGN DEGREE
APPLICANTS**

(a) Applicants applying for licensure on the basis of a foreign degree shall provide documentation, in addition to all other documents required for licensure, that establishes the following:

- (1) the existence of the degree granting institution;
- (2) the authenticity of the degree, transcripts, and any supporting documents;
- (3) the equivalence of the degree in terms of level of training, content of curriculum, and course credits; and
- (4) the equivalence of any post-graduate supervised experience obtained in the foreign country.

(b) Documentation shall be in the form of a course-by-course evaluation of credentials submitted directly to the Board from an evaluation service that is a member of the National Association of Credentials Evaluation Services, Inc. (www.naces.org).

(c) Except as described in Paragraph (b) of this Rule, only official documents shall be submitted in support of the

application and shall be received directly from the institution or individual involved.

(d) When an official document is not available directly from the institution or individual involved, an original document possessed by the applicant may be reviewed and copied by a Board member or designee.

(e) Any document that is in a language other than English shall be accompanied by a translation with notarized verification of the translation's accuracy and completeness. This translation shall be completed by an individual, other than the applicant, and demonstrates no conflict of interest. The individual providing the translation may be college or university language faculty, a translation service, or an American consul.

*History Note: Authority G.S. 90-334;
Eff. July 1, 2014.*

**21 NCAC 53 .0311 REQUIREMENTS FOR
CANDIDATE FOR LICENSURE PENDING STATUS**

(a) Applicants for licensure may be designated as a "Candidate for Licensure Pending" (CFL-P) if the application is missing one or more of the following requirements:

- (1) official exam score from the examining board;
- (2) official transcript from a regionally accredited higher education institution; or
- (3) Professional Disclosure Statement for the level that they are applying.

(b) For the applicant to be listed as a CFL-P, the applicant shall provide the following documentation:

- (1) a receipt showing the request and payment to the examining board for an official exam score to be sent to the Board; or
- (2) a receipt showing the request and payment to the educational institution for an official transcript to be sent to the Board.

(c) The CFL-P designation allows the applicant's file to be reviewed at the next regularly scheduled Board meeting for approval so that a license may be issued upon receipt of the missing documents. The CFL-P designation is effective for a maximum of 60 days from the date of approval by the Board. If the missing documents are not received within the 60 days, the CFL-P designation shall revert to an application in review and shall be presented at the next scheduled Board meeting upon receipt of missing documents subject to the two-year period set forth in Rule .0308 of this Section.

*History Note: Authority G.S. 90-334;
Eff. July 1, 2014.*

21 NCAC 53 .0403 ALLEGED VIOLATIONS

All complaints of alleged violations shall be submitted electronically or in paper format on forms available on the Board's website, www.ncblpc.org and shall be signed by the complainant(s), unless submitted anonymously. Complaints of violations of Article 24 of G.S. 90, the American Counseling Association, (ACA) Code of Ethics, or the Center for Credentialing and Education's Approved Clinical Supervisor (ACS) Code of Ethics shall include:

- (1) the complainant's signature, unless submitted anonymously;
- (2) the complainant's address and telephone number, unless submitted anonymously;
- (3) date and location of the alleged violation(s);
- (4) a description of the incident(s); and
- (5) signed releases, unless submitted anonymously.

*History Note: Authority G.S. 90-334; 90-340;
Eff. July 1, 1995;
Amended Eff. July 1, 2014; January 1, 2010.*

21 NCAC 53 .0501 APPLICATION FEE

The initial application fees are as follows:

- (1) licensed professional counselor associate application two hundred dollars (\$200.00);
- (2) licensed professional counselor application two hundred dollars (\$200.00); and
- (3) licensed professional counselor supervisor application two hundred dollars (\$200.00).

*History Note: Authority G.S. 90-334;
Temporary Rule Eff. February 21, 1984, for a Period of 120 Days to Expire on June 19, 1984;
Eff. July 1, 1984;
Amended Eff. July 1, 2014; January 1, 2010; July 1, 1994.*

21 NCAC 53 .0503 RENEWAL AND OTHER FEES

(a) The biennial renewal fee of two hundred dollars (\$200.00) is due and payable by June 20 of the renewal year. Checks shall be made payable to the North Carolina Board of Licensed Professional Counselors. Failure to pay the biennial renewal fee within the time stated shall automatically suspend the right of any licensee to practice while suspended. A suspended license may be renewed within one year after non-payment of the renewal fee, plus a late renewal fee of seventy-five dollars (\$75.00).

(b) The cost of a returned check is actual cost.

(c) The registration fee for a Certificate of Registration for a professional corporation or limited liability company is fifty dollars (\$50.00);

(d) The renewal fee for a professional corporation or limited liability company is twenty-five dollars (\$25.00); and

(e) The late renewal fee for a professional corporation or limited liability company is ten dollars (\$10.00).

(f) The cost of copies of public records shall be the "actual cost," as defined in G.S. 132-6.2(b) and mailing cost, if applicable. There shall be no charge if the request is for 10 pages or less.

*History Note: Authority G.S. 55B-10; 55B-11; 90-334; 90-339; 132-6.2(b);
Temporary Rule Eff. February 21, 1984, for a Period of 120 Days to Expire on June 19, 1984;
Eff. July 1, 1984;
Amended Eff. July 1, 2014; July 1, 2006; July 1, 1994.*

21 NCAC 53 .0601 RENEWAL PERIOD

Newly issued licenses shall be effective upon the date of issuance by the Board and shall expire on the second June 30 thereafter. The renewal period for a newly issued license may be less than two years. Following the first renewal of a newly issued license, the renewal period shall be two years and shall run from July 1 in the first year through June 30 in the second year. A licensee whose license has been suspended shall not practice until the license is renewed.

History Note: Authority G.S. 90-334(h); 90-339; Eff. July 1, 1995; Amended Eff. July 1, 2014.

21 NCAC 53 .0602 RENEWAL FOR LICENSURE FORM; ADDRESS CHANGE; NAME CHANGE

(a) License renewal information shall be on the Renewal for Licensure forms available on the Board's website www.ncblpc.org, and submitted either electronically or mailed in paper format to the Board's office as set forth in Rule .0204 of this Chapter. The licensee shall provide general contact information, licensure or credentials, and all continuing counselor education information for the past two years. All requested information shall be provided and the forms shall be signed and dated. Documents that shall be included with the renewal form are the following:

- (1) certificate of completion of the jurisprudence examination for the level of license that is being renewed;
- (2) the ethics attestation statement;
- (3) an updated Professional Disclosure Statement; and
- (4) payment of renewal fee.

(b) Change of Address. The licensee shall inform the Board of any change in his or her mailing address within 60 days after any change. Updated address information shall be submitted on forms available on the Board's website, www.ncblpc.org.

(c) Change of Name. The licensee shall inform the Board of any change in his or her name within 60 days after any change. A name change form shall be submitted on forms available on the Board's website, www.ncblpc.org and shall include any required legal documentation, as a marriage certificate, divorce decree, or court order.

History Note: Authority G.S. 90-334(g); 90-336(a); 90-339(b); Eff. July 1, 1995; Amended Eff. July 1, 2014.

21 NCAC 53 .0603 CONTINUING EDUCATION

(a) Continuing education is required for the renewal of licenses to ensure that licensed professional counselor associates, licensed professional counselors, and licensed professional counselor supervisors maintain their professional knowledge and competency in the field of counseling. Continuing education activities appropriate for the purpose of license renewal are those that are directed toward professionals in the mental health field and that focus on increasing knowledge and skills in the practice of counseling in one or more of the following content areas:

- (1) counseling theory;
- (2) human growth and development;
- (3) social and cultural foundations;
- (4) the helping relationship;
- (5) group dynamics;
- (6) lifestyle and career development;
- (7) appraisal of individuals;
- (8) diagnosis and treatment planning;
- (9) research and evaluation;
- (10) professional counseling orientation; and
- (11) ethics.

(b) Forty contact hours of continuing counselor education, including a minimum of three contact hours of ethics, shall be completed within the two-year license renewal period. However, in the cases of newly issued licenses in which the initial renewal period is less than two full years, 30 contact hours, including a minimum of three contact hours of ethics, shall be completed. Contact hours are defined as the number of actual clock hours spent in direct participation in a structured education format as a learner. Typically, one Continuing Education Unit (CEU) is equivalent to 10 contact hours. In a college or university graduate course, one semester hour of credit is equivalent to 15 contact hours and one quarter hour of credit is equivalent to 10 contact hours.

(c) Continuing counselor education provided by one of the following national organizations, their affiliates, or by a vendor approved by one of the following organizations shall be accepted by the Board for renewal purposes:

- (1) American Association of State Counseling Boards (aascb.org)
- (2) American Counseling Association (counseling.org);
- (3) Commission on Rehabilitation Counselor Certification (crrccertification.com); and
- (4) National Board for Certified Counselors (nbcc.org).

(d) Continuing counselor education provided by one of the following national organizations, their affiliates or by a vendor approved by one of the following organizations shall be approved for no more than 15 contact hours for any given renewal period as defined in Rule .0601 of this Chapter:

- (1) American Association of Christian Counselors (www.aacc.net);
- (2) American Association of Marriage and Family Therapy (www.aamft.org);
- (3) American Psychological Association (www.apa.org);
- (4) Employee Assistance Certification Commission (www.eapassn.org);
- (5) International Association of Employee Assistance Professionals in Education (www.iaeape.org);
- (6) National Area Health Education Center Organization (www.nationalahec.org);
- (7) National Association for Pastoral Counseling and Psychotherapy (www.napcp.ie);
- (8) National Association of Social Workers (www.socialworkers.org);

- (9) National Rehabilitation Association
(www.nationalrehab.org); and
- (10) The Association for Addiction Professionals
(www.naadac.org).

(e) Evidence of completion of continuing counselor education shall consist of a certificate of attendance signed by the responsible officer of a continuing counselor education provider, and shall include date(s) of attendance, number of contact hours, name of attendee, name of course, and approved provider name or number. Licensees shall maintain such information for seven years following course completion; however, a licensee is only required to submit such information if audited by the Board. On the Renewal for Licensure Form, a licensee shall attest to having completed the required continuing counselor education within the current renewal cycle.

(f) The Board may conduct a random audit of a percentage of its licensees' continuing counselor education documentation for each renewal cycle, and licensees shall submit the requested information upon request of the Board. Failure to submit the required documentation shall result in disciplinary action by the Board.

(g) Continuing counselor education activities also acceptable for renewal of licensure are as follows:

- (1) Contact hours shall be awarded for academic credit gained during a renewal period from a regionally accredited institution of higher education for work done in a counseling or counseling-related subject. A copy of a transcript or grade report is the required documentation. Documentation must contain the following information:
 - (A) date(s) of attendance;
 - (B) number of semester or quarter hours earned;
 - (C) name of attendee; and
 - (D) name or number of course.

Contact hours are as defined in Paragraph (b) of this Rule. Completion dates must fall within the renewal period.

- (2) Contact hours shall be awarded for publication activities limited to articles written by the licensee and published in peer reviewed journals, editing of a chapter in a book based on counseling or counseling related material, or authoring or co-authoring a published book on counseling or counseling-related material. Publication dates must fall within the renewal period. Required documentation is a copy of the cover page of the article(s) or book; copy of the copyright page denoting date of publication; or for a chapter in an edited book, a copy of the table of contents listing the chapter is also required. Ten contact hours shall be approved for each publication activity, and only 10. The maximum contact hours allowed during a renewal period is 10. Contact hours awarded for publication activities shall not be applied to the three contact hour requirement for ethics.

- (3) Contact hours shall be awarded for academic credit granted during a renewal period from a regionally accredited institution of higher education for work done toward the completion of a dissertation. "Required documentation" means a copy of a transcript or grade report showing credit earned during the renewal period. The maximum contact hours allowed during a renewal period is 10. Contact hours are as defined in Paragraph (b) of this Rule. Completion dates must fall within the renewal period. Contact hours awarded for dissertation shall not be applied to the three contact hour requirement for ethics.

- (4) Contact hours shall be awarded for supervised professional practice, as defined by Rule .0208 of this Chapter, that was received by the licensee during the renewal period. Contact hours shall not be granted for clinical supervision provided by the licensee to others. The maximum contact hours allowed during a renewal period for supervised professional practice is 10. "Contact hours" means the number of actual clock hours spent in direct, supervised professional practice. Required documentation is a letter from the qualified clinical supervisor, as defined by Rule .0209 of this Chapter, who provided the supervised professional practice verifying a licensee's participation in the activity. The letter shall confirm the dates of the activity, the number of participation hours, and the position or title and credential of the provider. Dates of activity must fall within the renewal period. Contact hours awarded for clinical supervision shall not be applied to the three contact hour requirement for ethics. Supervision quarterly reports as set forth in Rule .0702 of this Chapter may be submitted as supporting documentation.

- (5) Contact hours shall be awarded for the following leadership positions:
 - (A) officer of state, regional, or national counseling organization;
 - (B) editor or editorial board member of a professional counseling journal;
 - (C) member of a state, regional, or national counseling committee producing a written product; or
 - (D) chair of a major state, regional, or national counseling conference or convention.

The leadership position must be occupied for a minimum of six months, and dates must fall within the renewal period. The required documentation is a letter of confirmation of the leadership position, the nature of the position or service rendered, and the signature of an officer of the organization. Ten contact

hours shall be approved for each leadership position held, and only 10 contact hours are allowed during a renewal period. Contact hours awarded for leadership shall not be applied to the three contact hour requirement for ethics.

- (6) Contact hours shall be awarded for hours obtained in activities or workshops for which the licensee was a presenter. The dates of activities presented must fall within renewal period and focus on one or more of the approved content areas as set forth in Paragraph (a) of this Rule. The maximum contact hours awarded for presenting professional activities or workshops is five. Required documentation means an official letter of confirmation from the organization for which the licensee presented and shall contain the following information:

- (A) date(s) of presentation;
- (B) name of presentation; and
- (C) length of presentation.

"Contact hours" means the number of actual clock hours spent presenting. Contact hours awarded for presenting shall not be applied to the three contact hour requirement for ethics.

(h) If documentation for continuing counselor education is not identifiable as dealing with counseling, the Board shall request a written description of the continuing counselor education and how it applies to the professional practice of counseling. If the Board determines that the education is not appropriate, the licensee shall be given 45 days from the date of notification to replace the hours not approved. Those hours shall be considered replacement hours and shall not be applied to the next renewal period.

(i) Licensed professional counselor supervisors shall meet all of the continuing counselor education requirements outlined in Paragraphs (a) through (h) of this Rule and in addition as part of those requirements, shall provide documentation of a minimum of 10 contact hours of continuing counselor education related to professional knowledge and competency in the field of counseling supervision. Continuing counselor education appropriate for the purpose of licensed professional counselor supervisor renewal is education directed toward professionals in the mental health field that focus on increasing knowledge and skills in the practice of counseling supervision, and that is completed during the renewal period.

History Note: Authority 90-334(g),(h); 90-339(b); Eff. July 1, 1995; Amended Eff. July 1, 2014; February 1, 2010.

21 NCAC 53 .0604 FAILURE TO SECURE SUFFICIENT CONTINUING EDUCATION/RENEWAL OF LICENSE

Licensed professional counselor associates, licensed professional counselors, and licensed professional counselor supervisors who fail to document sufficient continuing counselor education to renew their licenses by the expiration date of June 30 shall be

notified in writing by the Board of the deficiencies, that their licenses have expired, and that the licensee shall not practice until it is renewed. Licensed professional counselor associates, licensed professional counselors, and licensed professional counselor supervisors who are unable to provide documentation of sufficient continuing counselor education to renew their licenses have the following options:

- (1) Within one year of expiration, licensed professional counselor associates, licensed professional counselors, and licensed professional counselor supervisors shall complete the required hours of continuing counselor education and an additional 20 hours of continuing counselor education for the purpose of renewal of the expired license. Continuing counselor education acquired during this additional time period for the purpose of renewal of an expired license shall not applied to the next renewal period. Once these requirements have been met, the license shall be renewed.
- (2) Request an extension in writing from the Board. Requests shall be received by the Board no later than May 1st of the year of expiration. An extension shall be granted for:
 - (a) military deployment;
 - (b) major illness lasting longer than three months of self, partner, or child; or
 - (c) death of partner or child.

Extensions shall be granted for a period of up to one year. If the extension is approved, any continuing counselor education acquired during the extension shall not be applied to the next renewal period. Once these requirements have been met, the license shall be renewed and the licensee may resume practice.

Failure to complete one of the above listed options shall mean that a license shall be reissued only upon a new application for a license, and all current licensure requirements shall apply to the new application.

History Note: Authority G.S. 90-334(g),(h); 90-339; Eff. July 1, 1995; Amended Eff. July 1, 2014; January 1, 2010.

21 NCAC 53 .0701 LICENSED PROFESSIONAL COUNSELOR ASSOCIATE

A license as a licensed professional counselor associate shall be granted by the Board to persons preparing for the practice of counseling who have:

- (1) completed graduate training as defined in G.S. 90-336(b)(1);
- (2) completed a minimum of three semester hours or five quarter hours in each of the required coursework areas of study as follows:
 - (a) Coursework in Helping Relationships in Counseling. Studies in this area provide an understanding of

- counseling and consultation processes, including the following:
- (i) counseling and consultation theories, including both individual and systems perspectives, as well as coverage of relevant research and factors considered in applications;
 - (ii) basic interviewing, assessment, and counseling skills;
 - (iii) counselor or consultant characteristics and behaviors that influence professional counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; personal behaviors; and personal characteristics, orientations, and skills;
 - (iv) client or consultee characteristics and behaviors that influence professional counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; and personal behaviors; personal characteristics, orientations and skills; and
 - (v) ethical considerations.
- (b) Coursework in Practicum and Internship. Practicum and internship experience should be provided in a supervised graduate counseling experience in a regionally accredited program of study. This graduate counseling experience shall be completed as defined in Rule .0206 of this Chapter.
- (c) Coursework in Professional Orientation to Counseling. Studies in this area provide an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing, including the following:
- (i) history of the counseling profession, including significant factors and events;
 - (ii) professional roles and functions of counselors, including similarities and differences with other types of professionals;
 - (iii) professional organizations (primarily the ACA, its divisions, branches and affiliates), including membership benefits, activities, services to members, and current emphases;
 - (iv) ethical standards of the National Board for Certified Counselors (NBCC) or ACA and related ethical and legal issues, and their applications to various professional activities (*e.g.*, appraisal, group work);
 - (v) professional counselor preparation standards, their evolution, and current applications;
 - (vi) professional counselor credentialing, including counselor certification, licensure and accreditation practices and standards, and the effects of public policy on these issues;
 - (vii) public policy processes, including the role of the professional counselor advocating on behalf of the profession and its clientele; and
 - (viii) ethical considerations.
- (d) Coursework in Human Growth and Development Theories in Counseling. Studies in this area provide an understanding of the nature and needs of individuals at all developmental levels, relevant to counseling practice, including the following:
- (i) theories of individual and family development, and transitions across the life span;
 - (ii) theories of learning and personality development;
 - (iii) human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology, and environmental factors as they affect both normal and abnormal behavior;
 - (iv) counseling strategies for facilitating development over the life span; and
 - (v) ethical considerations.

- (e) Coursework in Social and Cultural Foundations in Counseling. Studies in this area provide an understanding of issues and trends in a multicultural and diverse society that impact professional counselors and the counseling profession, including, the following:
 - (i) multicultural and pluralistic trends, including characteristics and concerns of counseling individuals from diverse groups;
 - (ii) attitudes and behavior based on factors such as age, race, religious preferences, physical disability, sexual orientation, ethnicity and culture, family patterns, gender, socioeconomic status, and intellectual ability;
 - (iii) individual, family, and group counseling strategies with diverse populations; and
 - (iv) ethical considerations.
- (f) Coursework in Group Counseling Theories and Processes. Studies in this area provide an understanding of group development, dynamics, and counseling theories; group counseling methods and skills; and other group work approaches, including the following:
 - (i) principals of group dynamics, including group counseling components, developmental stage theories, and group members' roles and behaviors;
 - (ii) group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;
 - (iii) theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;
 - (iv) group counseling methods, including group counselor orientations and behaviors, ethical standards, appropriate selection criteria, and methods of evaluation of effectiveness;
- (v) approaches used for other types of group work in counseling, including task groups, support groups, and therapy groups; and
- (vi) ethical considerations.
- (g) Coursework in Career Counseling and Lifestyle Development. Studies in this area provide an understanding of career counseling, development, and related life factors, including the following:
 - (i) career-counseling theories and decision-making process;
 - (ii) career, avocational, educational, and labor market information resources; visual and print media; and computer-based career information systems;
 - (iii) career-counseling program planning, organization, implementation, administration, and evaluation;
 - (iv) interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as related to career counseling;
 - (v) career and educational placement counseling, follow-up, and evaluation;
 - (vi) assessment instruments and techniques relevant to career counseling;
 - (vii) computer-based career-development applications and strategies, including computer-assisted career-counseling systems;
 - (viii) career-counseling processes, techniques and resources, including those applicable to specific populations; and
 - (ix) ethical considerations.
- (h) Coursework in Assessment in Counseling. Studies in this area provide an understanding of individual and group approaches to assessment and evaluation in counseling practice, including the following:
 - (i) theoretical and historical bases for assessment techniques in counseling;

- (ii) validity, including evidence for establishing content, construct, and empirical validity;
 - (iii) reliability, including methods of establishing stability, internal, and equivalence reliability;
 - (iv) appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;
 - (v) psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;
 - (vi) age, gender, ethnicity, language, disability, and cultural factors related to the use of assessment and evaluation in counseling services;
 - (vii) strategies for selecting, administering, interpreting and using assessment and evaluation instruments, and techniques in counseling; and
 - (viii) ethical considerations.
- (i) Coursework in Research and Program Evaluation. Studies in this area provide an understanding of types of research methods, basic statistics, and ethical and legal consideration in research, including the following:
- (i) basic types of research methods to include qualitative and quantitative research designs;
 - (ii) basic parametric and nonparametric statistics;
 - (iii) principles, practices, and applications of needs assessment and program evaluation;
 - (iv) uses of computers for data management and analysis; and
 - (v) ethical and legal considerations.
- (3) passed an examination as defined in Rule .0305 of this Chapter; and
- (4) submitted a complete application for licensed professional counselor associate.
- To prevent a lapse in licensure, licensed professional counselor associates who desire to become licensed professional counselors shall complete the application process for the licensed professional counselor licensure no earlier than 60 days prior to expiration of their licensed professional counselor associate license or upon completion of the supervised professional practice hours as set forth in Rule .0208 of this Chapter to allow for administrative processing and Board action.
- History Note: Authority G.S. 90-334(h); 90-336(a); 90-336(b);*
Eff. January 1, 2010;
Amended Eff. July 1, 2014; January 1, 2010.
- 21 NCAC 53 .0702 SUPERVISED PRACTICE FOR LICENSED PROFESSIONAL COUNSELOR ASSOCIATE**
- A licensed professional counselor associate shall not practice unless the following requirements have been met:
- (1) The licensed professional counselor associate shall submit a completed supervision contract, on forms available on the Board's website, www.ncblpc.org. A supervision contract form shall document the following:
 - (a) the name of the qualified clinical supervisor;
 - (b) contact information for the qualified clinical supervisor;
 - (c) the modality of supervision to be provided, such as live observation, co-therapy, audio and video recordings, and live supervision, as defined by Rule .0208 of this Chapter;
 - (d) the frequency of supervision; and
 - (e) the name and physical location of the site where the proposed supervision will take place.

A separate supervision contract form shall be filed for each separate work setting.
 - (2) If receiving supervision from more than one supervisor, a separate supervision contract form shall be filed for each individual qualified clinical supervisor.
 - (3) A supervisor shall document, on forms available on the Board's website, www.ncblpc.org each quarter that supervision has occurred and shall file a final report upon termination or completion of supervision.
 - (4) If not receiving supervision, the licensed professional counselor associate shall report such to the Board. A report shall be submitted to the Board within two weeks of termination of supervision and within two weeks of a change in the conditions specified in the supervision contract form on file with the Board.

- (5) A licensed professional counselor associate shall only provide counseling while under the supervision of a qualified clinical supervisor.
- (6) A licensed professional counselor associate shall renew his or her license as a licensed professional counselor associate if the supervision requirements to become a licensed professional counselor have not been completed prior to the expiration of the license.

- (7) a statement defining the limits and scope of confidentiality and privileged communication within the supervisory relationship;
- (8) a fee schedule, if applicable;
- (9) the emergency contact information for the licensed professional counselor supervisor; and
- (10) a statement indicating that the licensed professional counselor supervisor follows the American Counseling Association's Code of Ethics and the Center for Credentialing and Education's Approved Clinical Supervisor Code of Ethics as set forth in Rule .0102 of this Chapter.

*History Note: Authority G.S. 90-334(h); 90-336(c);
Eff. January 1, 2010;
Amended Eff. July 1, 2014.*

21 NCAC 53 .0801 LICENSED PROFESSIONAL COUNSELOR SUPERVISOR

(a) The credential of licensed professional counselor supervisor shall be granted by the Board to a licensed professional counselor who has satisfied the following requirements:

- (1) obtained an independent license that is not under supervision as defined in G.S. 90-336(d)(4);
- (2) earned the equivalent of three semester graduate credits in clinical supervision training from a regionally accredited institution of higher education as documented by an official transcript, or 45 contact hours of continuing education in clinical supervision;
- (3) documented licensed professional counseling experience as defined in G.S. 90-336(d)(2); and
- (4) submitted a complete application for licensed professional counselor supervisor.

(b) The licensed professional counselor supervisor shall provide supervisees with a copy of a Professional Disclosure Statement specific to supervision that includes the following:

- (1) business address and telephone number of the licensed professional counselor supervisor;
- (2) the listing of degrees, credentials, and licenses held by the licensed professional counselor supervisor;
- (3) general areas of competence in mental health practice for which the licensed professional counselor supervisor may provide supervision (e.g., addictions counseling, school counseling, career counseling);
- (4) a statement documenting training in supervision and experience in providing supervision;
- (5) a general statement addressing the model of or approach to supervision, including role of the supervisor, objectives and goals of supervision, and modalities (e.g., tape review, live observation);
- (6) a description of the evaluation procedures used in the supervisory relationship;

(c) The supervisor shall provide written or electronically submitted reports, on forms provided by the Board on the website www.ncblpc.org each quarter that supervision has occurred and shall file a final report upon termination or completion of supervision. The supervisor shall be available for consultation with the Board or its committees regarding the supervisee's competence for licensure.

(d) A supervision contract form, as provided by the Board on the website www.ncblpc.org shall document the following:

- (1) the name of the qualified clinical supervisor;
- (2) contact information for the qualified clinical supervisor;
- (3) the modality of supervision to be provided, such as live observation, co-therapy, audio and video recordings, and live supervision, as defined by Rule .0208 of this Chapter;
- (4) the frequency of supervision; and
- (5) the name and physical location of the site where the proposed supervision will take place.

A separate supervision contract form shall be filed for each supervisee.

(e) The licensed professional counselor supervisor, in collaboration with the supervisee, shall maintain a log of clinical supervision hours that includes the following:

- (1) the date;
- (2) supervision start and stop times;
- (3) the modality of supervision to be provided, such as live observation, co-therapy, audio and video recordings, and live supervision, as defined by Rule .0208 of this Chapter; and
- (4) notes on recommendations or interventions used during the supervision.

The licensed professional counselor supervisor shall maintain copies of these logs for a minimum of seven years beyond termination or completion of supervision and shall provide copies to the Board for inspection upon request.

*History Note: Authority G.S. 90-334(h); 90-336(a); 90-336(d);
Eff. January 1, 2010;
Amended Eff. July 1, 2014.*

21 NCAC 53 .0901 CERTIFICATE OF REGISTRATION FOR A PROFESSIONAL ENTITY

(a) The information required for an applicant to obtain a Certificate of Registration for a professional corporation or professional limited liability company organized to render professional counseling services shall include the following:

- (1) typed, or legibly printed, notarized application form;
- (2) proof of licensure as a licensed professional counselor or licensed professional counselor supervisor;
- (3) registration fee; and
- (4) a copy of the Articles of Incorporation or Articles of Organization.

(b) This Certificate of Registration shall remain effective until December 31 following the date of such registration.

History Note: Authority G.S. 55B-10; 57D-2-01(c); 90-334(h); Eff. July 1, 2014.

21 NCAC 53 .0902 RENEWAL OF CERTIFICATE OF REGISTRATION FOR A PROFESSIONAL ENTITY

A notification for renewal of professional corporation or professional limited liability company shall be sent to each registered entity a minimum of 60 days prior to the December 31 expiration date. The Board shall renew the certificate of registration upon receipt of the completed written renewal application of the holder and the renewal fee. Failure to renew by the due date shall result in notification to the Secretary of State's Office to suspend the Articles of Incorporation or Articles of Organization.

History Note: Authority G.S. 55B-11; 57D-2-01(c); 90-334(h); Eff. July 1, 2014.

CHAPTER 57 – APPRAISAL BOARD

21 NCAC 57A .0101 FORM

A person who wishes to be registered as a trainee or to obtain licensure as a licensed real estate appraiser or certification as a certified real estate appraiser may obtain the required form upon request to the Board or from the Board's website at www.ncappraisalboard.org. The form calls for information such as the applicant's name and address, the applicant's social security number, a passport size photograph of the applicant, places of residence and employment, education, and such other information as may be necessary to identify the applicant and determine his qualifications and fitness for registration, licensure, or certification.

History Note: Authority G.S. 93E-1-6(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; September 1, 2008; April 1, 1999.

21 NCAC 57A .0102 FILING AND FEES

(a) Each application for registration as a trainee, licensure as a licensed real estate appraiser, or certification as a certified real estate appraiser shall be accompanied by the required application fee. An additional fee may be charged to defray the cost of any competency examination administered by a private testing service. This additional fee shall be no more than the fee set by the private testing agency. The Board may reject and return to the applicant any application which is incomplete or not accompanied by the required fee or fees. Application fees accompanying complete applications are not refundable.

(b) The application fee shall be that prescribed in G.S. 93E-1-6(b).

(c) Payment of application fees shall be made by certified check, bank check, or money order payable to the North Carolina Appraisal Board.

History Note: Authority G.S. 93E-1-6; 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; September 1, 2008; January 1, 2008; August 1, 2002; April 1, 1999.

21 NCAC 57A .0201 QUALIFICATIONS FOR TRAINEE REGISTRATION AND APPRAISER LICENSURE AND CERTIFICATION

(a) Applicants for trainee registration, licensure as a licensed residential real estate appraiser, and for certification as a certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 and in this Section.

(b) Applicants for trainee registration shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education as set forth in 21 NCAC 57B .0101 or education found by the Board to be equivalent to such courses. Applicants for trainee registration must possess a high school diploma or its equivalent.

(c) Applicants for licensure as a licensed residential real estate appraiser shall have completed 150 hours of education as set forth in 21 NCAC 57B .0102 or education found by the Board to be equivalent to such courses. In addition, applicant for licensure as a licensed residential real estate appraiser must hold an associate's degree, or higher, from an accredited college, community college, or university. Applicants shall have obtained at least 2,500 hours of appraisal experience acquired within the eight year period immediately preceding the date application is made and over a minimum period of two calendar years. Applicants must have been engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

(d) Applicants for certification as a certified residential real estate appraiser shall have completed 200 hours of education as set forth in 21 NCAC 57B .0102 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified residential real estate appraiser must hold a bachelor's degree, or higher, from an accredited college, community college, or university. Applicants shall have obtained at least 2,500 hours of appraisal experience acquired within the eight year period immediately preceding the date

application is made and over a minimum period of two calendar years. Applicants must have been engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

(e) Applicants for certification as a certified general real estate appraiser shall have completed 300 hours of education as set forth in 21 NCAC 57B .0103 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified general real estate appraiser must hold a Bachelor's degree or higher from an accredited college or university. Applicants shall have obtained at least 3,000 hours of appraisal experience acquired within the eight year period immediately preceding the date application is made and over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate. Applicants must have been engaged in real estate appraising for at least two and one-half calendar years prior to the date application is made. At least 50 percent of the non-residential appraisal experience must have been of special use properties such as schools, churches, or hospitals in which the income approach is not applicable or of improved properties in which the income approach was utilized in the appraisal process.

(f) Applicants for licensure or certification who are currently registered trainees must submit a copy of their complete appraisal log. The log form may be found at the Board's website, www.ncappraisalboard.org. Applicants for certification who are currently licensed or certified appraisers must submit an appraisal log showing that they possess the requisite amount and length of experience as set forth in Paragraphs (c) and (d) of this Rule. All applicants shall provide to the Board copies of appraisal reports and work files in support of experience credit. In order for an appraisal to be given experience credit, it must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and with any applicable state statutes or rules.

(g) When a trainee or a licensed real estate appraiser becomes a certified real estate appraiser, his or her previous registration or licensure shall be canceled by the Board. When a certified residential real estate appraiser becomes certified as a general real estate appraiser, his or her previous certification shall be immediately canceled by the Board.

(h) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee shall be retained by the Board. An applicant whose application has been cancelled and who wishes to obtain a registration, license, or certificate must start the licensing process over by filing a complete application with the Board and paying all required fees.

(i) An applicant may request that his or her application be withdrawn at any time before final action is taken by the Appraisal Board on the application.

(j) If an applicant has a current open complaint before the North Carolina Appraisal Board or an appraiser licensing board from any other state, or if the applicant has pending criminal charges

in this or any state, the application shall be accepted but no further action shall be taken on the application until the complaint or criminal charges are resolved. For the purposes of this Section, criminal charges do not include speeding tickets or traffic infractions.

History Note: Authority G.S. 93E-1-6(a); 93E-1-10;

Eff. July 1, 1994;

Amended Eff. July 1, 2014; January 1, 2013; July 1, 2010; September 1, 2008; January 1, 2008; March 1, 2007; April 1, 2006, July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0204 CONTINUING EDUCATION

(a) All registered trainees, real estate appraiser licensees, and certificate holders shall, upon the renewal of their registration, license, or certificate in every odd-numbered year, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Trainees and appraisers who initially registered with the Board after January 1 of an odd numbered year are not required to show continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, licensee, and certificate holder who must complete continuing education pursuant to Paragraph (a) of this Rule must complete 28 hours of continuing education before June 1 of every odd numbered year. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes, at schools approved by the Board to offer such courses. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose status has been upgraded to the level of licensed residential, certified residential, or certified general appraiser since the issuance or most recent renewal of their registration, license, or certificate, and courses taken to satisfy the requirements of a higher level of certification shall not be applied toward the continuing education requirement. Trainees, licensees, and certificate holders shall not take the same continuing education course more than once during the two year continuing education cycle.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, licensee, or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Each trainee, licensee, and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule must, as part of the 28 hours of continuing education required in Paragraph (b) of this Rule, complete the seven hour National USPAP update course between October 1 of an odd-

numbered year and June 1 of an even numbered year, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent. USPAP is updated every even numbered year, and each trainee, licensee, and certificate holder shall take the most recent USPAP update course prior to June 1 of every even numbered year.

(e) A trainee, licensee, or certificate holder who elects to take approved continuing education courses in excess of the requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a certificate of course completion to each trainee, licensee, and certificate holder successfully completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 15 of each year. In order to renew a registration, license, or certificate in a timely manner, the Board must receive proof of satisfaction of the continuing education requirement prior to processing a registration, license, or certificate renewal application. Proof of satisfaction shall be made by receipt of a roster from a school or course sponsor showing the courses completed by the applicant or by submission of an original certificate of course completion. If proof of having satisfied the continuing education requirement is not provided, the registration, license, or certificate shall expire and the trainee, licensee, or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee, or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee, or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) as set out in G.S. 93E-1-8(d) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee, or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. Up to 14 hours of continuing education credit may be granted in each continuing education cycle for participation in appraisal education activities. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit are deemed to have taken an equivalent course and are not subject to the fee prescribed in G.S. 93E-1-8 (d), provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee, or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every two years, regardless of how often he or she teaches the course. Requests for equivalent approval for continuing education credit must be received before June 15 of an odd-numbered year to be credited towards the

continuing education requirement for that odd-numbered year. Equivalent approval shall be granted only for courses that are 7 hours or longer, and shall only be granted for a minimum of 7 hours.

(h) A trainee, licensee, or certificate holder may receive continuing education credit by taking any of the Board-approved precertification courses, other than Basic Appraisal Principles and Basic Appraisal Procedures, or their approved equivalents. Trainee, licensees, and certificate holders who wish to use a precertification course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A licensee or certificate holder who resides in another state, is currently credentialed in another state, and is active on the National Registry in another state may satisfy the requirements of this Section, other than the seven hour National USPAP update course requirement in Paragraph (d) of this Rule, by providing a current letter of good standing from another state showing that the licensee or certificate holder has met all continuing education requirements in the other state. A licensee or certificate holder who became licensed in North Carolina by licensure or certification with another state and now resides in North Carolina may renew by letter of good standing for his or her first renewal as a resident of North Carolina only if the appraiser moved to North Carolina on or after January 1 of an odd numbered year. If an appraiser was a resident of this state before January 1 of an odd-numbered year, the appraiser must comply with the requirements of this section regardless of how the license or certificate was obtained.

(j) A trainee, licensee, or certificate holder who returns from active military duty on or after February 1 of an odd-numbered year is allowed to renew his or her registration, license, or certificate in that odd-numbered year even if the required continuing education is not completed before June 1 of that year. All required continuing education must be completed within 180 days of when the trainee, licensee, or certificate holder returns from active duty. Failure to complete the required continuing education within 180 days is grounds for revocation. This Rule applies to an individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

History Note: Authority G.S. 93B-15; 93E-1-7(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; January 1, 2013; July 1, 2011; July 1, 2010; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999

21 NCAC 57A .0206 EXPIRED REGISTRATION, LICENSE OR CERTIFICATE

(a) Expired registrations, licenses, and certificates may be reinstated within 12 months after expiration upon application, payment to the Board of the renewal and late filing fees as set out in G.S. 93E-1-7, and provision of proof of having obtained the continuing education that would have been required had the registration, license, or certificate been continuously renewed.

(b) If a registration, license, or certificate has been expired for more than 12 months, but less than 24 months, an applicant may apply for reinstatement. In order to be considered for reinstatement, the applicant must pay the filing fee as set out in

G.S. 93E-1-7 and include in the application proof that the applicant has obtained the continuing education that would have been required had the registration, license, or certificate been continuously renewed. In addition, the Board may consider whether the applicant for reinstatement has any prior or current disciplinary actions, and may examine the applicant's fitness for registration, licensure, or certification before granting the request for reinstatement. A completed application for reinstatement must be received by June 1 of the second 12 months or it shall not be accepted.

(c) An application for reinstatement shall not be granted if the registration, license, or certificate has been expired for more than 24 months.

(d) Reinstatement is effective the date it is issued by the Board. It is not retroactive.

(e) A trainee or appraiser whose registration, license, or certification has expired and who is returning from active military duty may renew his or her registration, license, or certificate when the trainee or appraiser returns from active duty without payment of a late filing fee as long as the trainee or appraiser renews the registration, license, or certificate within 180 days of when the trainee or appraiser returns from active duty.

History Note Authority G.S. 93E-1-6(b); 93E-1-7; 93E-1-10;

Eff. July 1, 1994;

Amended Eff. July 1, 2014; July 1, 2011; September 1, 2008; March 1, 2007; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0210 TEMPORARY PRACTICE

(a) A real estate appraiser who does not reside in North Carolina and who is licensed or certified by the appraiser licensing or certifying agency in another state may apply to receive temporary appraiser licensing or certification privileges in this State by filing a notarized application with the Board. The application is available on the Board's website at www.ncappraisalboard.org.

(b) Upon filing a completed application accompanied by the fee prescribed in G.S. 93E-1-9(c), an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. The fee must be paid by money order, certified check, or cashier's check. The Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other state, and may consider all other information outlined in Rule .0202 of this Section.

(c) Privileges granted under the provisions of this Rule shall expire upon the expiration date set forth in the temporary practice permit. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's attention to the appraisal assignment, additional time is needed to complete the assignment, the Board shall extend the temporary practice privileges granted under the permittee's temporary practice permit to afford him additional time to

complete the appraisal assignment. Such request for extension must be received before the original temporary practice permit expires or it shall not be granted. The request shall be in writing and shall include the temporary practice permit number, the amount of additional time needed to complete the assignment, and the reason the extension is necessary.

(d) Persons granted temporary practice privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina trainee or licensed or certified appraiser. Any appraisal report for an appraisal of property located in North Carolina must contain a copy of the temporary practice number for that assignment.

(e) A trainee may not apply for a temporary practice permit. The term "trainee" shall include apprentices and others who are licensed and regulated by a state agency to perform real estate appraisals under the supervision of a certified appraiser. If a trainee does enter the state to inspect a property located in this state, the trainee must be accompanied by the trainee's supervising appraiser. The trainee's supervisor must be a North Carolina licensed or certified real estate appraiser. If not, the supervising appraiser must be licensed or certified as a real estate appraiser in another state and must receive a temporary practice permit for the assignment.

(f) An applicant for a temporary practice permit shall not begin performing any appraisal work in this State until the temporary practice permit has been issued by the Board. If an applicant does begin work before the permit is issued, the temporary practice permit shall be denied.

History Note: Authority G.S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a);

Eff. July 1, 1994;

Amended Eff. July 1, 2014; September 1, 2008; January 1, 2008; March 1, 2007; July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999.

21 NCAC 57A .0301 TIME AND PLACE

(a) Applicants who have completed the education and experience requirements for licensure or certification as set forth in 21 NCAC 57A .0201 shall be issued an examination approval form. The examination approval form is valid for five attempts at the examination or for one year from date of issuance, whichever comes first.

(b) Examinations for appraiser licenses or certificates shall be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants for the examination shall be scheduled for examination based on their successful completion of appraiser educational qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. The application may be found on the Board's website at www.ncappraisalboard.org. Violation of examination procedures and instructions is grounds for denial, suspension, or revocation of a certificate.

(c) Examination results are valid for 24 months from the date the examination is successfully completed.

History Note: Authority G.S. 93E-1-6(c); 93E-1-10;

Eff. July 1, 1994;

Amended Eff. July 1, 2014; January 1, 2013; September 1, 2008; January 1, 2008; April 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0302 SUBJECT MATTER AND PASSING SCORES

(a) The examination for licensure as a licensed residential real estate appraiser or for certification as a certified residential real estate appraiser shall test applicants on the following subject areas:

- (1) Influences on Real Estate Value;
- (2) Legal Considerations in Appraisal;
- (3) Types of Value;
- (4) Economic Principles;
- (5) Real Estate Markets and Analysis;
- (6) Valuation Process;
- (7) Property Description;
- (8) Highest and Best Use Analysis;
- (9) Appraisal Statistical Concepts;
- (10) Sales Comparison approach;
- (11) Site Value;
- (12) Cost Approach;
- (13) Income Approach (Gross Rent Multipliers, Estimation of Income and Expenses, Operating Expense ratios);
- (14) Valuation of Partial Interests; and
- (15) Appraisal Standards and Ethics.

(b) In addition to the subject areas listed in Paragraph (a) of this Rule, the examination for certification as a certified general real estate appraiser shall test applicants on the following subject areas:

- (1) Direct Capitalization;
- (2) Cash Flow Estimates;
- (3) Measures of Cash Flow; and
- (4) Discounted Cash Flow Analysis.

(c) The testing service shall inform applicants whether they have passed the examination, and shall inform them of their actual score only if they fail the examination.

History Note: Authority G.S. 93E-1-6(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; January 1, 2013; September 1, 2008; March 1, 2007; April 1, 1999.

21 NCAC 57A .0303 RE-EXAMINATION

(a) Applicants for an appraiser license or certificate who fail to pass or appear for an examination for which the applicant has been scheduled by the Board-approved private testing service, may schedule a subsequent examination and shall pay the prescribed examination testing fees to the Board-approved private testing service.

(b) Applicants may take the examination no more than five times per application. If an applicant fails the examination, the applicant must wait a minimum of 30 days before retaking the examination. If the applicant does not pass the examination by the fifth attempt at the examination or within one year of the date of issuance of the examination approval form, the application shall be cancelled.

History Note: Authority G.S. 93E-1-6; 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; January 1, 2013; September 1, 2008; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

(a) A certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the appraiser:

- (1) has been certified for at least three years;
- (2) has no more than three trainees working under him or her at any one time. A certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50 percent of the required appraisal experience to upgrade, a certified residential appraiser may add another trainee. A certified general appraiser may have three trainees working under his or her supervision. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee by filing a Supervisor Declaration Form with the Board. The form may be found on the Board's website at www.ncappraisalboard.org. The supervisor must also inform the Board when a trainee is no longer working under his or her supervision by using the Supervisor Declaration Form;
- (3) actively and personally supervises the trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized, and assures that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) reviews and signs the trainee's log of appraisals, which must be updated at least every 30 days. In addition, the supervisor must make available to the trainee a copy of every appraisal report where the trainee performs more than 75 percent of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous three years.

For the purposes of this Section, disciplinary action means an active suspension, a downgrade of a credential, a revocation, or any other action that affects a supervisor's ability to engage in appraisal practice.

(b) Active and personal supervision includes direction, guidance, and support from the supervisor. The supervising appraiser shall have input into and full knowledge of the appraisal report prior to its completion, and shall make any necessary and appropriate changes to the report before it is transmitted to the client. In addition, the supervisor shall accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments or the first 1500 hours of experience, whichever comes first, for which the trainee will perform more than 75 percent of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location.

(c) The trainee must maintain a log on a form that includes each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the experience hours claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject. The log must show all appraisals performed by the trainee and must be updated at least every 30 days. The log form is available on the Board's website at www.ncappraisalboard.org.

(d) All trainees and any appraiser who wishes to supervise a trainee must attend an education program regarding the role of a supervisor before such supervision begins. This course shall be taught only by instructors approved by the Board in accordance with 21 NCAC 57B .0614. A trainee shall not receive experience credit for any appraisals performed before the trainee has taken the course.

(e) Trainees must assure that the Appraisal Board has received the Supervisor Declaration Form on or before the day the trainee begins assisting the supervising appraiser. The form may be found on the Board's website at www.ncappraisalboard.org. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Paragraph.

(f) Supervising appraisers shall not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest.

(g) If a trainee signs an appraisal report or provides significant professional assistance in the appraisal process and thus is noted in the report as having provided such assistance, the appraiser signing the report shall have notified the Appraisal Board before the appraisal is signed that he or she is the supervisor for the trainee. If more than one appraiser signs the report, the appraiser with the highest level of credential must be the declared supervisor for the trainee. If all appraisers signing the report have the same level of credential, at least one of them must be declared as the trainee's supervisor before the report is signed.

History Note: Authority G.S. 93E-1.6.1; 93E-1-10; Eff. July 1, 1994;

Amended Eff. July 1, 2014; January 1, 2013; July 1, 2010; September 1, 2008; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57B .0102 LICENSED RESIDENTIAL AND CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) Each applicant for licensure as a licensed residential real estate appraiser or for certification as a certified residential real estate appraiser shall complete a minimum of 200 hours of qualifying education, consisting of the following:

- (1) A minimum of 30 hours in basic appraisal principles;
- (2) A minimum of 30 hours in basic appraisal procedures;
- (3) a minimum of 15 hours in residential market analysis and highest and best use;
- (4) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 30 Hours in Residential Sales Comparison and Income Approaches;
- (6) A minimum of 15 hours in Residential Report Writing and Case Studies;
- (7) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP);
- (8) A minimum of 15 hours in Statistics, Modeling and Finance;
- (9) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (10) A minimum of 20 hours of appraisal subject matter electives.

Credit for these courses must be earned from a Board-approved course sponsor or school.

(b) An applicant who is currently registered with the Board as a trainee shall satisfy the educational requirements to become a licensed or certified residential real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;
- (2) A minimum of 30 Hours in Residential Sales Comparison and Income Approaches;
- (3) A minimum of 15 hours in Residential Report Writing and Case Studies;
- (4) A minimum of 15 hours in Statistics, Modeling and Finance;
- (5) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (6) A minimum of 20 hours of appraisal subject matter electives.

(c) An applicant who was licensed as a licensed residential appraiser before January 1, 2015 shall satisfy the educational requirements to become a certified residential real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in Statistics, Modeling and Finance;
- (2) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (3) A minimum of 20 hours of appraisal subject matter electives.

(d) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed by the Board as a licensed residential real estate appraiser must have completed all required courses no earlier than January 1, 2008.

(e) An applicant who is currently registered by the Board as a trainee or who is currently licensed by the Board as a licensed residential real estate appraiser must have completed all courses required beyond those required for his current registration, license, or certification no earlier than January 1, 2008.

(f) The Basic Appraisal Principles, Basic Appraisal Procedures, Residential Market Analysis, USPAP, and Residential Sales Comparison and Income Approach classes must have been obtained in a classroom setting. All other courses in this section may be taken on-line via the Internet.

History Note: Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;

Amended Eff. July 1, 2014; January 1, 2013; July 1, 2010; September 1, 2008; January 1, 2008; March 1, 2007; July 1, 2003; August 1, 2002.

21 NCAC 57B .0104 COURSE EXEMPTIONS FOR EQUIVALENT EDUCATION

History Note: Authority G.S. 93E-1-6(a); 93E-1-10;
Eff. July 1, 1994;
Repealed Eff. July 1, 2014.

21 NCAC 57B .0201 PURPOSE AND APPLICABILITY

This Section establishes criteria for approval and operational requirements for all real estate appraisal qualifying course sponsors and schools. These standards shall be satisfied in order for course sponsors and schools to obtain and maintain approval of their courses for appraiser qualifying education credit. Schools and course sponsors shall obtain course approval from the Board prior to conducting qualifying courses and prior to advertising or otherwise representing that a course is or may be approved for credit in North Carolina.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;
Amended Eff. July 1, 2014; September 1, 2008.

21 NCAC 57B .0202 APPLICATION FOR APPROVAL

Schools and other course sponsors seeking approval to conduct real estate appraisal qualifying courses shall make written application to the Board. The application form may be found on the Board's website at www.ncappraisalboard.org.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;

Amended Eff. July 1, 2014; September 1, 2008.

21 NCAC 57B .0203 CRITERIA FOR APPROVAL

Approval to conduct real estate appraisal qualifying courses shall be granted to a school or course sponsor when it is shown to the satisfaction of the Board that:

- (1) the school or course sponsor has submitted a completed application form. The form may be found at the Board's website at www.ncappraisalboard.org;
- (2) the school or course sponsor complies with the standards described in this Section; and
- (3) the courses to be conducted comply with the standards described in Section .0300 of this Subchapter.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;
Amended Eff. July 1, 2014; September 1, 2008.

21 NCAC 57B .0207 ADMINISTRATION

One person shall be designated as the Director for each approved school or course sponsor and shall be responsible for administrative matters such as program development, scheduling of classes, advertising, maintenance of facilities and equipment, record keeping, and general supervision of the instruction program. The director shall ensure that the policies and general operations of the school or course sponsor comply with the provisions of Sections .0200 and .0300 of this Subchapter. The Director shall meet the fitness standards for applicants for trainee registration or appraiser licensure or certification. The Director shall:

- (1) have a baccalaureate or higher degree in the field of education; or
- (2) have at least two years full time experience within the past 10 years as an instructor or school administrator; or
- (3) meet the minimum appraisal education and experience qualifications listed in 21 NCAC 57B .0306 to teach either the residential or general appraisal precertification courses; or
- (4) possess qualifications which are found by the Board to be substantially equivalent to Item (1), (2), or (3) of this Rule.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;
Amended Eff. July 1, 2014; September 1, 2008; August 1, 2002.

21 NCAC 57B .0208 ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

The Board may suspend, revoke, or deny renewal of approval of a real estate school or course sponsor to conduct appraiser qualifying courses upon finding that any court of competent jurisdiction has found the school or course sponsor official or instructor in the employ of the school or course sponsor to be in violation of any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring that courses related to certification for professional or trade

purposes be offered in a place and manner accessible to persons with disabilities.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;
Amended Eff. July 1, 2014; September 1, 2008; August 1, 2002.

21 NCAC 57B .0209 CERTIFICATION OF COURSE COMPLETION

Approved schools or course sponsors must provide each passing student with a course completion certificate. Certificates of course completion shall be on a document bearing the letterhead or insignia of the school or course sponsor and shall have the signature or signature stamp of the school or course sponsor director. A student who has taken a qualifying course, other than the 15 hour National USPAP course, for continuing education credit and who does not pass the examination shall not be given a course completion certificate, but shall be given a certificate of attendance for the course, provided that the student complies with the provisions of 21 NCAC 57B .0303. Either certificate is valid to obtain continuing education credit, in accordance with 21 NCAC 57B .0604.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;
Amended Eff. July 1, 2014; September 1, 2008; January 1, 2008;
July 1, 2005; August 1, 2002.

21 NCAC 57B .0301 PURPOSE

This Section establishes minimum standards for real estate appraisal qualifying courses prescribed by G.S. 93E-1-6(a).

History Note: Authority G.S. 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;
Amended Eff. July 1, 2014; September 1, 2008.

21 NCAC 57B .0302 COURSE CONTENT

(a) All courses shall consist of instruction in the subject areas outlined in the Appraiser Qualification Board's Guide Note 1. Guide Note 1 may be accessed at the Appraisal Foundation website at www.appraisalfoundation.org.

(b) Courses may also include coverage of additional related subject areas; however, any such course must provide additional class time above the minimum required classroom hours specified in 57B .0101, .0102, and .0103 and the minimum requirement of 15 hours for USPAP for the coverage of such additional subject areas.

(c) On or before the first class meeting day of the Basic Appraisal Principles course, the instructor shall give to each student material prepared by the Board regarding the trainee registration process and the process to upgrade to a licensed or certified appraiser. The student handout may be accessed on the Board's website at www.ncappraisalboard.org.

History Note: Authority G.S. 93E-1-6; 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;

Amended Eff. July 1, 2014; September 1, 2008; January 1, 2008;
July 1, 2005; August 1, 2002.

21 NCAC 57B .0303 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion shall assure that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course. A student's grade shall be based solely on his or her performance on examinations and on graded homework and class work assignments.

(b) Course completion requirements shall include a comprehensive final course examination which covers all prescribed subject areas and which accounts for at least 50 percent of a student's grade for the course. Take-home or open-book final course examinations are prohibited. In their discretion, schools and course sponsors may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course; however, any make up examination shall be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the makeup examination shall be different from those used in the initial examination.

(c) The minimum attendance required for satisfactory course completion is 90 percent of all scheduled classroom hours for the course.

(d) The instructor may offer additional hours of instruction so that students can make up lost hours of instruction.

(e) Students who are taking a qualifying course, other than the 15 hour National USPAP course, for continuing education credit may sit for the final course examination, but they are not required to pass the examination in order to receive continuing education credit. Students who take and pass the examination and who comply with the provisions of this Rule shall be given a course completion certificate. Students who do not take and pass the examination but who otherwise comply with the provisions of this Rule shall be given a certificate of attendance. Students who are taking the course as a result of a conditional dismissal, consent order, or order of the Board after a hearing must take and pass the examination.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10;
Eff. July 1, 1994;
Amended Eff. July 1, 2014; July 1, 2010; September 1, 2008;
July 1, 2005; August 1, 2002.

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

(a) Except as indicated in Paragraph (b) of this Rule, all qualifying courses or courses deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 200 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and two years' full-time experience as a certified residential or general real estate appraiser within the previous five years. At least one-half of such experience must be in residential property appraising. Instructors must also be certified as a residential or general real estate appraiser.
 - (2) General appraiser courses: 300 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years. At least one-half of such experience must be in income property appraising. Instructors must also be a certified general real estate appraiser and have been so certified for at least five years.
 - (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course. The instructor must be a certified residential or a certified general appraiser. If a USPAP instructor fails to renew or loses his or her certification by the Appraiser Qualifications Board, the instructor must immediately stop teaching and notify the Appraisal Board of the loss of certification.
 - (4) Statistics, modeling and finance: must have previously completed this class, or must have completed 3 semester hours of statistics in an accredited college or university.
- (b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area the lecturer is teaching.
- (c) Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:
- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary;
 - (2) The ability to present instruction in an accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students;
 - (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
 - (4) The ability to effectively utilize instructional aids to enhance learning;
 - (5) The ability to maintain an effective learning environment and control of a class; and
 - (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students' backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.
- (d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape or DVD in a manner and format which depicts the instructor teaching portions of a qualifying course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Paragraph (c) of this Rule.
- (e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act. This inquiry may include consideration of whether disciplinary action or criminal charges are pending.
- (f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a reprimand, suspension (whether active or inactive), or a revocation.
- (g) Proposed qualifying course instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, must supply the Board with copies of sample appraisal reports or other evidence of experience.
- (h) Persons desiring to become instructors for qualifying courses must file an application for approval with the Board. The application may be accessed at the Board's website at www.ncappraisalboard.org. There is no fee for application for instructor approval. Once an instructor has been approved to teach a specific qualifying course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer qualifying courses.
- (i) Current Appraisal Board members shall not be eligible to teach qualifying courses during their term of office on the Board.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; July 1, 2010; September 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002.

21 NCAC 57B .0307 CRITERIA FOR COURSE RECOGNITION

(a) Schools and course sponsors seeking to offer appraiser qualifying courses shall make written application to the Board and pay applicable fees as required by G.S. 93E-1-8(b). The application may be accessed at the Board's website at www.nappraisalboard.org.

(b) Appraisal subject matter electives offered for qualifying credit shall meet all other requirements of this Chapter. The content of these electives shall be directly related to the appraisal of real property to be approved for credit. Appraisal subject matter elective courses shall contain a minimum of 15 hours.

(c) Various combinations of courses may be recognized as equivalent to the appraiser qualifying courses specified in 57B .0101, .0102 and .0103.

(d) The 15 hour USPAP course shall be the 15-hour National USPAP Course approved by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent.

(e) The application shall state the name of the instructor for the course. All instructors shall be approved by the Board pursuant to 57B .0306(h). After the course is approved, if a school or course sponsor wishes to change instructors, the school shall notify the Board of the name of the new instructor at least seven calendar days before the proposed change would take effect. If the proposed instructor is not currently approved in accordance with 57B .0306(h), the instructor shall be approved by the Board before the school or course sponsor may change instructors.

(f) Course sponsors may offer all qualifying classes other than Residential Sales Comparison and Income Approach class and the General Appraiser Income Approach class on-line via the Internet. The Board shall be provided access to the course via the internet at a date and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, an on-line qualifying education course shall meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course shall be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course shall have a method for recording and verifying attendance. A participant may periodically log on and off of an on-line course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. The course design and delivery mechanism for an on-line course offered on the Internet shall have received approval from the International Distance Education Certification Center (IDECC). Information about the IDECC may be found on their website at www.idecc.org. A course completion certificate shall be forwarded to the student as stated in Rule .0303(e) of this Section.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; July 1, 2010; September 1, 2008; January 1, 2008; August 1, 2002.

21 NCAC 57B .0401 APPLICABILITY

This Section applies to private real estate appraisal schools offering qualifying courses, appraisal trade organizations and to

all other course sponsors other than North Carolina colleges, universities, community, or technical colleges accredited by the Southern Association of Colleges and Schools, and agencies of the federal, State or local government.

History Note: Authority G.S. 93E-1-8(a),(b); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; September 1, 2008; January 1, 2008; August 1, 2002.

21 NCAC 57B .0604 QUALIFYING COURSES

(a) Appraisal qualifying courses conducted by North Carolina approved schools or by appraisal trade organizations which are approved as equivalent to the North Carolina qualifying courses may be separately approved as appraisal continuing education courses. Trainees, licensed, and certified appraisers may obtain continuing education credit for these courses only to the extent permitted by Rule .0204 of Subchapter 57A. Appraisal trade organizations shall at all times assure compliance with Rules .0606, .0607, and .0608 of this Section in order to retain such approval for these courses.

(b) It is presumed that any person taking any of the qualifying courses is doing so for registration, licensure, or certification purposes. If the person wishes to obtain continuing education credit for the course, he or she shall request such credit in writing and shall send the original course completion certificate or course attendance certificate with the request.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; September 1, 2008; March 1, 2007; July 1, 2005; August 1, 2002.

21 NCAC 57B .0605 CONTINUING EDUCATION CREDIT HOURS

The course approval issued to a course sponsor shall include the number of hours of continuing education credit that will be awarded for the course. The minimum number of continuing education credit hours awarded for a course shall be three and one-half hours, and the maximum number of continuing education credit hours awarded for a course, regardless of its length, shall be thirty hours. Continuing education credit hours shall not be carried forward into subsequent licensing periods. No continuing education credit shall be given for courses taken before the student was registered as a trainee or licensed or certified as an appraiser in this state or any other state.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2014; January 1, 2013; August 1, 2002.

21 NCAC 57B .0614 INSTRUCTORS FOR THE TRAINEE/SUPERVISOR COURSE REQUIRED BY G.S. 93E-1-6.1

(a) Instructors for the trainee/supervisor course required by 21 NCAC 57A .0407(c) shall be real estate appraisers who have been certified residential or certified general for at least three years.

(b) Instructors shall not have received any disciplinary action regarding their appraisal certificate from the State of North Carolina or any other state within the previous three years. In addition, instructors shall not have been convicted of or pleaded guilty to any criminal act. "Criminal act" does not include speeding tickets or traffic infractions.

(c) All applicants for instructor of the trainee/supervisor course shall obtain a criminal records check that is satisfactory to the Board. This records check must have been performed within 60 days of the date the completed application for approval as an instructor is received by the Board. Applicants shall pay the vendor directly for the cost of these reports. In order to be satisfactory to the Board, the records check must comply with the provisions of 21 NCAC 57A .0202(e).

(d) Persons who wish to instruct the trainee/supervisor course shall be approved by the Board before they may teach this course. Approval of a trainee/supervisor course instructor authorizes the instructor to teach the course for any approved course sponsor.

(e) Applicants who wish to become instructors for the trainee/supervisor course shall attend an educational workshop sponsored by the Board before they may be approved. Applicants may check the Board's website for information regarding the date and location of the class. The website may be accessed at www.ncappraisalboard.org.

(f) Approval of trainee/supervisor course instructors shall run from July 1 to June 30 of the next year. Applicants whose approval is granted after July 1 will expire on June 30 of the next year.

History Note: Authority G.S. 93E-1-6.1; 93E-1-8(c); 93E-1-10; Eff. July 1, 2014.

21 NCAC 57C .0101 FORM OF COMPLAINTS AND OTHER PLEADINGS

(a) There is no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the trainee, appraiser, or appraisal management company, identify the Complainant by name, provide a physical address and contact information for the Complainant, and shall apprise the Board of the facts which form the basis of the complaint.

(b) When investigating a complaint, the scope of the investigation is not limited to the persons or transactions described or alleged in the complaint.

(c) Persons who make complaints are not parties to contested cases heard by the Board, but may be witnesses in the cases.

(d) There is no specific form required for answers, motions, or other pleadings relating to contested cases before the Board, except they shall be in writing. To be sufficient, the document must identify the case to which it refers and apprise the Board of the matters it alleges, answers, or requests. In lieu of submission in writing, motions, requests, and other pleadings may be made on the record during the course of the hearing before the Board.

(e) During the course of an investigation of a licensee, the Board, through its legal counsel or staff, may send a trainee, appraiser, or appraisal management company one or more Letters of Inquiry requesting the trainee, appraiser, or appraisal management company to respond. The initial Letter of Inquiry,

or attachments thereto, shall set forth the subject matter being investigated. Upon receipt of a Letter of Inquiry, the trainee, appraiser, or appraisal management company shall respond within thirty calendar days. The response shall include copies of all documents requested in a Letter of Inquiry.

(f) Hearings in contested cases before the Board are governed by the provisions of Article 3A of Chapter 150B of the General Statutes.

(g) A complaint shall not be accepted if the applicable time period for retention of the work file for that appraisal assignment pursuant to the Recordkeeping Rule of the Uniform Standards of Professional Appraisal Practice has expired. This Section does not apply to complaints involving the actions outlined in G.S. 93E-1-12(b)(1),(2),(4), and (5)

History Note: Authority G.S. 93E-1-10; 93E-2-3; 93E-2-8; Eff. July 1, 1994; Amended Eff. July 1, 2014; January 1, 2011; July 1, 2003; August 1, 2002.

21 NCAC 57D .0101 FORM

An appraisal management company that wishes to file an application for an appraisal management company certificate of registration may obtain the required form upon request to the Board or on the Board's website at www.ncappraisalboard.org. The form calls for information such as:

- (1) the legal name of the applicant;
- (2) the name under which the applicant will do business in North Carolina;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the applicant's NC Secretary of State Identification Number if required to be registered with the Office of the NC Secretary of State;
- (6) a completed application for approval of the compliance manager;
- (7) any past criminal conviction of and any pending criminal charge against any person or entity that owns ten percent or more of the appraisal management company;
- (8) any past revocation, suspension, or denial of an appraisal license of any person or entity that owns ten percent or more of the appraisal management company;
- (9) if a general partnership, a description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;
- (10) if a business entity other than a corporation, limited liability company, or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents;
- (11) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and

- (12) a certification that the applicant has obtained a surety bond as required by G.S. 93E-2-4(g).

Incomplete applications shall not be acted upon by the Board.

*History Note: Authority G.S. 93E-2-4; S.L. 2013-403;
Eff. January 1, 2011;
Amended Eff. July 1, 2014.*

21 NCAC 57D .0202 REGISTRATION RENEWAL

(a) All registrations expire on June 30, 2012 and every June 30 of each year thereafter unless renewed before that time. The renewal period shall be from May 1 through June 30 of each year.

(b) A holder of an appraisal management company registration desiring the renewal of such registration shall apply in writing upon the form provided by the Board and shall forward the renewal fee. The renewal fee shall be two thousand dollars (\$2000). The renewal fee is not refundable under any circumstances.

(c) Any company who acts or holds itself out as a registered appraisal management company while its appraisal management company registration is expired is subject to disciplinary action and penalties as prescribed in G.S. 93E-2-8 and G.S. 93E-2-10.

*History Note: Authority G.S. 93E-2-3; 93E-2-6;
Eff. January 1, 2011;
Amended Eff. July 1, 2014.*

21 NCAC 57D .0303 COMPLIANCE MANAGER

(a) A compliance manager shall be designated with the Board for each appraisal management company. The compliance manager shall be a certified real estate appraiser certified under Article I of this chapter or in another state.

(b) An appraisal management company shall file an application with the Board for approval of the designated compliance manager. This application shall provide the Board with information such as the compliance manager's name, mailing and physical address, and phone and email contact information, and shall be signed by the designated compliance manager. The application may be accessed at the Board's website at www.ncappraisalboard.org.

(c) The designated compliance manager shall obtain a criminal records check pursuant to 93E-2-11. Applicants shall pay all required fees to perform the check. This records check shall have been performed within 60 days of the date the completed application is received by the Board. The criminal records check results must be attached to the application for approval as a compliance manager.

(d) The designated compliance manager is responsible for:

- (1) the notification to the Board of any change of trade name or contact information of the appraisal management company and the registration of any assumed business name adopted by the appraisal management company for its use;
- (2) the retention and maintenance of records relating to appraisals conducted by or on behalf of the appraisal management company;

- (3) the maintenance of a record of all appraisers in North Carolina who perform appraisals for the appraisal management company, including a log of payments to appraisers; and
- (4) the conduct of advertising of appraisal management services by or in the name of the appraisal management company;

(e) If an appraisal management company intends to change its compliance manager, it must submit an application for approval of the new compliance manager at least 10 business days before the effective date of the change. The form may be accessed at the Board's website at www.appraisalboard.org.

(f) If a compliance manager leaves the appraisal management company and the company is unable to give at least 10 days' notice of the change, the company shall have 15 business days from the date the compliance manager leaves to obtain a new compliance manager.

*History Note: Authority G.S. 93E-2-3; 93E-2-4(b); 93E-2-5;
Eff. January 1, 2011;
Amended Eff. July 1, 2014.*

21 NCAC 57D .0310 PAYMENT OF FEES TO APPRAISERS

(a) Appraisal management companies shall pay fees to an appraiser within 30 days of the date the appraisal is first transmitted by the real estate appraiser to the company as follows:

- (1) If payment is made by electronic means, the funds for the fee shall be deposited into the appraiser's account so that they are available to the appraiser on the 31st day following the date the appraisal is first transmitted to the company.
- (2) If payment is made by check, the check shall be postmarked no later than the 30th day following the date the appraisal is first transmitted to the company.

(b) If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal, the appraisal management company shall notify the appraiser in writing of the reason for nonpayment. Such notice shall be sent to the appraiser within 30 days after the date the appraiser first transmits the appraisal to the appraisal management company by any established method that provides proof of delivery, including registered mail, return receipt requested. The notice shall state the address of the subject property of the appraisal, the name of the appraiser(s) signing the report, and the reason why the fee shall not be paid. The notice shall also notify the appraiser of any dispute resolution process that the appraisal management company may have in place.

*History Note: Authority G.S. 93E-2-3; 93E-2-4(d);
Eff. January 1, 2011;
Amended Eff. July 1, 2014.*

CHAPTER 58 – REAL ESTATE COMMISSION

21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE

(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing and signed by the parties thereto from its formation. A broker shall not continue to represent a buyer or tenant without a written, signed agreement when such agreement is required by this Rule. Every written agreement for brokerage services of any kind in a real estate transaction shall be for a definite period of time, shall include the broker's license number, and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. For the purposes of this Rule, an agreement between brokers to cooperate or share compensation shall not be considered an agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be memorialized in writing.

(b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate transaction shall contain the following provision: "The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any party or prospective party." The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, "familial status" shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker shall, at first substantial contact with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," set forth the broker's name and license number thereon, review the publication with the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with

him or her at the earliest practicable opportunity thereafter. For the purposes of this Rule, "first substantial contact" shall include contacts between a broker and a consumer where the consumer or broker begins to act as though an agency relationship exists and the consumer begins to disclose to the broker personal or confidential information. The "Working with Real Estate Agents" publication can be obtained on the Commission's website at www.ncrec.gov or upon request to the Commission.

(d) A real estate broker representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. The written authority must be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency must be reduced to writing not later than the time that one of the parties represented by the broker makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker represents the interests of the seller. The written disclosure shall include the broker's license number. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker shall immediately disclose by similar means whom he represents and shall immediately mail or otherwise transmit a copy of the written disclosure to the buyer. In no event shall the broker mail or transmit a copy of the written disclosure to the buyer later than three days from the date of first substantial contact with the buyer.

(f) In every real estate sales transaction, a broker representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he or she represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase and shall include the broker's license number.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule do not apply to real estate brokers representing sellers in auction sales transactions.

(h) A broker representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he or she represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm that represents more than one party in the same real estate transaction is a dual agent and, through the brokers associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more

individual brokers associated with the firm to represent only the interests of the seller and one or more other individual brokers associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker shall not be so designated and shall not undertake to represent only the interests of one party if the broker has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated broker for a party in a real estate sales transaction when a provisional broker under his or her supervision will act as a designated broker for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker to represent the seller, the broker so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller that the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker to represent the buyer, the broker so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker designated to represent the seller:

- (1) that the buyer may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the buyer that the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;

- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party that the party has identified as confidential, unless disclosure is otherwise required by statute or rule.

(o) A broker who is selling property in which the broker has an ownership interest shall not undertake to represent a buyer of that property. A firm listing a property owned by a broker affiliated with the firm may represent a buyer of that property so long as any individual broker representing the buyer on behalf of the firm does not have an ownership interest in the property and the buyer consents to the representation after full disclosure of the broker's ownership interest.

(p) A broker or firm with an existing listing agreement for a property shall not enter into a contract to purchase that property unless, prior to entering into the contract, the listing broker or firm first discloses in writing to their seller-client that the listing broker or firm may have a conflict of interest in the transaction and that the seller-client may want to seek independent counsel of an attorney or another licensed broker. Prior to the listing broker entering into a contract to purchase the listed property, the listing broker and firm shall either terminate the listing agreement or transfer the listing to another broker affiliated with the firm. Prior to the listing firm entering into a contract to purchase the listed property, the listing broker and firm shall disclose to the seller-client in writing that the seller-client has the right to terminate the listing and the listing broker and firm shall terminate the listing upon the request of the seller-client.

History Note: Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-6(a);

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2014; July 1, 2009; July 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; July 1, 1997; August 1, 1996; July 1, 1995.

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) When used in this Rule, the term:

- (1) "Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a broker acting in a fiduciary capacity are handled or records for such trust monies are maintained;
- (2) "Principal Office" means the office so designated in the Commission's records by the qualifying broker of a licensed firm or the broker-in-charge of a sole proprietorship; and
- (3) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business.

(b) Except as provided in Paragraphs (d) and (e) of this Rule, every real estate firm, including a sole proprietorship, shall have a broker designated by the Commission as provided in Paragraph (f) of this Rule to serve as the broker-in-charge at its principal

office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office at a time. No office of a firm shall have more than one designated broker-in-charge.

(c) If a firm shares office space with one or more other firms, the same broker may serve as broker-in-charge of multiple firms at that location. All firms at that location having the same designated broker-in-charge shall maintain with the Commission as a delivery address the same delivery address as that of the single designated broker-in-charge.

(d) A licensed real estate firm is not required to have a broker-in-charge if it:

- (1) has been organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;
- (2) is treated for tax purposes as a Subchapter S corporation by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no licensed or unlicensed person associated with it other than its qualifying broker.

(e) A broker who is a sole proprietor shall obtain the Commission's designation of himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more other brokers affiliated with him or her in the real estate business. Maintenance of a trust or escrow account by a broker solely for holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not, standing alone, subject the broker to the requirement to designate himself or herself as a broker-in-charge.

(f) A broker desiring to be a broker-in-charge shall request in writing his or her designation as broker-in-charge by the Commission on a form provided by the Commission. The form shall include the broker's name, license number, firm affiliation, and a certification that he or she possesses the experience described in Subparagraph (g)(2) of this Rule. Upon receipt of notice from the Commission that the broker has been designated as broker-in-charge, the broker shall assume the duties of broker-in-charge.

(g) To qualify to become a broker-in-charge, a broker shall:

- (1) have a license on active status but not on provisional status;
- (2) possess at least two years of full-time real estate brokerage experience or equivalent four years of part-time real estate brokerage experience within the previous five years or real estate education, such as the completion of the North Carolina GRI program or other education with a subject matter relating to brokerage practice and the supervision of brokers, or experience in real estate transactions that the Commission finds equivalent to such experience, such as a

licensed attorney with a practice that consisted primarily of handling real estate closing and related matters in North Carolina for three years immediately preceding application or full-time, lawful experience selling new homes owned by a corporate homebuilder as a bonafide employee of the corporate home builder for three years immediately preceding the application; and

- (3) complete the Commission's 12 classroom hour broker-in-charge course either within three years prior to designation as a broker-in-charge or within 120 days following designation as a broker-in-charge.

Upon the request of the Commission, a broker shall provide evidence to the Commission that he or she possesses the requisite experience. A broker-in-charge designation shall be immediately terminated if a broker-in-charge fails to complete the broker-in-charge course during the required time period or if the Commission finds the broker-in-charge does not possess the required experience. A broker who is removed as broker-in-charge for failure to timely complete the Commission's 12 hour broker-in-charge course must first complete the 12 hour broker-in-charge course before he or she may again be designated as broker-in-charge.

(h) By submission of a broker-in-charge designation request to the Commission, a broker certifies that he or she possesses the experience required to become a broker-in-charge and upon designation by the Commission, the broker shall be authorized to act as a broker-in-charge. Upon his or her designation as broker-in-charge and completion of the broker-in-charge course within the time period prescribed in Subparagraph (g)(3) of this Rule, the designated broker-in-charge acquires the eligibility to be re-designated as a broker-in-charge at any time in the future after a period of not actively serving as a broker-in-charge without having to again satisfy the qualification requirements for initial designation stated in this Paragraph so long as the broker continuously satisfies the requirements to retain such eligibility described in Paragraph (k) of this Rule.

(i) The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the Commission, assume the responsibility at his or her office for:

- (1) the retention of current license renewal pocket cards by all brokers employed at the office for which he or she is broker-in-charge; the display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each broker employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the conduct of advertising by or in the name of the firm at such office;
- (4) the maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;

- (5) the retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the supervision of provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) the supervision of all brokers employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(j) A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who completed the Commission's broker-in-charge course prior to April 1, 2006 or within 120 days following designation as a broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her eligibility to serve as a broker-in-charge is terminated as provided in Paragraph (l) of this Rule.

(k) Once a broker has been designated as a broker-in-charge and completed the 12 hour broker-in-charge course as prescribed by Paragraph (g) of this Rule, the broker may maintain broker-in-charge eligibility by timely annual renewal of his or her broker license and completion each license year of the four hour mandatory continuing education update course for brokers-in-charge known as the "Broker-In-Charge Update Course" described in Rule 58E .0102(b), and any Commission-approved four hour continuing education elective course described in Rule 58E .0305. The Broker-In-Charge Update Course shall be taken initially by a broker-in-charge during the first full license year following the license year in which the broker was designated as a broker-in-charge and each license year thereafter in order for the broker to maintain broker-in-charge eligibility. Enrollment in the Broker-In-Charge Update Course shall be limited exclusively to current brokers-in-charge, and brokers who are not currently acting as a broker-in-charge but who desire to retain their broker-in-charge eligibility. Only these brokers shall receive continuing education credit for taking the Broker-In-Charge Update Course. A broker-in-charge or broker who is broker-in-charge eligible who takes the General Update Course described in Rule .1702 of this Subchapter rather than the Broker-In-Charge Update Course shall receive continuing education update course credit for taking such course only for the purpose of retaining his or her license on active status and shall not be considered to have satisfied the requirement to take the Broker-In-Charge Update Course in order to retain his or her broker-in-charge status or eligibility.

(l) A broker's broker-in-charge eligibility and, if currently designated as a broker-in-charge, his or her broker-in-charge designation shall be terminated upon the occurrence of any of the following events:

- (1) the broker's license expires or the broker's license is suspended, revoked or surrendered;
- (2) the broker's license is made inactive for any reason;

- (3) the broker fails to complete the Broker-In-Charge Update Course described in Paragraph (k) of this Rule; or
- (4) the broker is found by the Commission to have not possessed the experience required in Paragraph (g) of this Rule at the time of either initial designation as a broker-in-charge or re-designation as a broker-in-charge.

(m) When a broker who is a former broker-in-charge desires to be re-designated as a broker-in-charge following termination of his or her broker-in-charge designation or eligibility, he or she must first have a license on active status. The broker then must satisfy the experience requirements for initial designation set forth in Paragraph (g) of this Rule, and the broker must complete the 12 hour broker-in-charge course prior to re-designation as broker-in charge.

(n) A broker-in-charge shall notify the Commission in writing that he or she no longer is serving as broker-in-charge of a particular office within 10 days following any such change.

(o) A non-resident broker who has been designated by the Commission as the broker-in-charge of an office not located in North Carolina is not required to complete the broker-in-charge course or the Broker-In-Charge Update Course prescribed for brokers-in-charge under Paragraph (k) of this Rule. However, if such broker-in-charge either becomes a resident of North Carolina or becomes broker-in-charge of an office located within North Carolina, then he or she must take the 12 hour broker-in-charge course within 120 days of such change, unless he or she has taken the 12 hour course within the preceding three years. Such broker-in-charge shall take the Broker-In-Charge Update Course prescribed in Paragraph (k) of this Rule during the first full license year following the change and each license year thereafter so long as the broker-in-charge remains a resident of North Carolina or continues to manage an office located in North Carolina.

(p) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.1; 93A-4.1(c)(8); 93A-4.1(e); 93A-4.2; 93A-9; 93A-9(a); Eff. September 1, 1983;

Amended Eff. July 1, 2014; May 1, 2013; July 1, 2010; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1995; July 1, 1994.

21 NCAC 58A .0112 OFFERS AND SALES CONTRACTS

(a) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form unless the form describes or specifically requires the entry of the following information:

- (1) the names of the buyer and seller;
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;

- (3) an itemization of any personal property to be included in the transaction;
 - (4) the purchase price and manner of payment;
 - (5) any portion of the purchase price that will be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and any other terms contained in the promissory note deemed material by the parties;
 - (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;
 - (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0116 of this Subchapter;
 - (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, and who shall pay loan closing costs, and a condition that the buyer shall make every reasonable effort to obtain the loan;
 - (9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
 - (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
 - (11) the date for closing and transfer of possession;
 - (12) the signatures of the buyer and seller;
 - (13) the date of offer and acceptance;
 - (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except *ad valorem* taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer or a provision otherwise describing the estate to be conveyed with encumbrances, and the form of conveyance;
 - (15) the items to be prorated or adjusted at closing;
 - (16) who shall pay closing expenses;
 - (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;
 - (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing;
 - (19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents; and
 - (20) any other provisions or disclosures required by statute or rule.
- (b) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing:
- (1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker or firm; or
 - (2) any provision that attempts to disclaim the liability of a broker for his or her representations in connection with the transaction.
- A broker or anyone acting for or at the direction of the broker shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys.
- (c) The provisions of this Rule shall apply only to preprinted offer and sales contract forms which a broker acting as an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.
- History Note: Authority G.S. 93A-3(c); Eff. July 1, 1988; Amended Eff. July 1, 2014; July 1, 2010; July 1, 2009; April 1, 2006; October 1, 2000; July 1, 1995; July 1, 1989; February 1, 1989.*

21 NCAC 58A .0114 RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete the following Residential Property and Owners' Association Disclosure Statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

**STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT**

Instructions to Property Owners

1. The Residential Property Disclosure Act (G.S. 47E) ("Disclosure Act") requires owners of residential real estate (single-family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish purchasers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option, and sale under a lease with option to purchase where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check (✓) in the appropriate box. In responding to questions, you are only obligated to disclose information about which you have actual knowledge.
 - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No," you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - c. If you check "No Representation," you are choosing not to disclose the conditions or characteristics of the property, even if you have actual knowledge of them or should have known of them.
 - d. If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Disclosure Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Disclosure Statement to the purchasers; and the broker must disclose any material facts about your property which he or she knows or reasonably should know, regardless of your responses on the Statement.
4. You must give the completed Disclosure Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the Disclosure Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property and Owners' Association Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract without penalty to you as the purchaser. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after

settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____
 Owner's Name(s): _____
Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date _____, ____
 Owner Signature: _____ Date _____, ____

Purchasers acknowledge receipt of a copy of this Disclosure Statement; that they have examined it before signing; that they understand that this is not a warranty by owners or owners' agents; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owners and not the owners' agents or subagents. Purchasers are strongly encouraged to obtain their own inspections from a licensed home inspector or other professional. As used herein, words in the plural include the singular, as appropriate.

Purchaser Signature: _____ Date _____, ____
 Purchaser Signature: _____ Date _____, ____

Property Address/Description: _____

The following questions address the characteristics and condition of the property identified above about which the owner has actual knowledge. Where the question refers to "dwelling," it is intended to refer to the dwelling unit, or units if more than one, to be conveyed with the property. The term "dwelling unit" refers to any structure intended for human habitation.

- | | Yes | No | No Representation |
|---|--------------------------|--------------------------|--------------------------|
| 1. In what year was the dwelling constructed? _____
Explain if necessary: _____ | | | <input type="checkbox"/> |
| 2. Is there any problem, malfunction or defect with the dwelling's foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications to them? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. The dwelling's exterior walls are made of what type of material? <input type="checkbox"/> Brick Veneer <input type="checkbox"/> Wood <input type="checkbox"/> Stone <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Concrete <input type="checkbox"/> Fiber Cement <input type="checkbox"/> Aluminum <input type="checkbox"/> Asbestos <input type="checkbox"/> Other _____
(Check all that apply) | | | <input type="checkbox"/> |
| 4. In what year was the dwelling's roof covering installed? _____
(Approximate if no records are available.) Explain if necessary: _____ | | | <input type="checkbox"/> |
| 5. Is there any leakage or other problem with the dwelling's roof? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, | | | |

- fixtures, water heater, etc.)? ☐ ☐ ☐
9. Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning? ☐ ☐ ☐
10. What is the dwelling's heat source? ☐ Furnace ☐ Heat Pump ☐ Baseboard
☐ Other _____ (Check all that apply)
 Age of system: _____
11. What is the dwelling's cooling source? ☐ Central Forced Air ☐ Wall/Window Unit(s) ☐
☐ Other _____ (Check all that apply)
 Age of system: _____
12. What is the dwelling's fuel sources? ☐ Electricity ☐ Natural Gas ☐ Propane ☐ Oil ☐
☐ Other _____ (Check all that apply)
 If the fuel source is stored in a tank, identify whether the tank is ☐ above ground or ☐ below ground, and whether the tank is ☐ leased by seller or ☐ owned by seller.
 (Check all that apply)
13. What is the dwelling's water supply source? ☐ City/County ☐ Community System ☐
☐ Private Well ☐ Shared Well ☐ Other _____
 (Check all that apply)
14. The dwelling's water pipes are made of what type of material? ☐ Copper ☐ Galvanized ☐
☐ Plastic ☐ Polybutylene ☐ Other _____
 (Check all that apply)
15. Is there any problem, malfunction or defect with the dwelling's water supply (including water quality, quantity or water pressure)? ☐ ☐ ☐
16. What is the dwelling's sewage disposal system? ☐ Septic Tank ☐ Septic Tank with Pump ☐
☐ Community System ☐ Connected to City/County System ☐ City/County System available
☐ Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates State law]) ☐ Other _____
 (Check all that apply)
17. If the dwelling is serviced by a septic system, do you know how many bedrooms are allowed by the septic system permit? If your answer is "Yes," how many bedrooms are allowed? _____ ☐ No records available. ☐ ☐
18. Is there any problem, malfunction or defect with the dwelling's sewer and/or septic system? ☐ ☐ ☐
19. Is there any problem, malfunction or defect with the dwelling's central vacuum, pool, hot tub, spa, attic fan, exhaust fan, ceiling fans, sump pump, irrigation system, TV cable wiring or satellite dish, garage door openers, gas logs, or other systems? ☐ ☐ ☐
20. Is there any problem, malfunction or defect with any appliances that may be included in the conveyance (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)? ☐ ☐ ☐
21. Is there any problem with present infestation of the dwelling, or damage from past infestation of wood destroying insects or organisms which has not been repaired? ☐ ☐ ☐
22. Is there any problem, malfunction or defect with the drainage, grading or soil stability of the property? ☐ ☐ ☐
23. Are there any structural additions or other structural or mechanical changes to the dwelling(s) to be conveyed with the property? ☐ ☐ ☐

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 24. Is the property to be conveyed in violation of any local zoning ordinances, restrictive covenants, or other land-use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 25. Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) which affect the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. Is there any noise, odor, smoke, etc. from commercial, industrial or military sources which affects the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. Is the property subject to any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmens' liens, or notices from any governmental agency that could affect title to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 29. Is the property subject to a flood hazard or is the property located in a federally-designated flood hazard area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. Does the property abut or adjoin any private road(s) or street(s)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. If there is a private road or street adjoining the property, is there in existence any owners' association or maintenance agreements dealing with the maintenance of the road or street? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

If you answered "yes" to any of the questions listed above (1-31) please explain (attach additional sheets if necessary):

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector, or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

The following questions pertain to the property identified above, including the lot to be conveyed and any dwelling unit(s), sheds, detached garages, or other buildings located thereon.

- | | Yes | No | No Representation |
|---|--------------------------|--------------------------|--------------------------|
| 32. To your knowledge, is the property subject to regulation by one or more owners' association(s) or governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot, including, but not limited to obligations to pay regular assessment or dues and special assessments? If your answer is "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:
(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager _____ are _____

(specify name) _____ whose regular | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

APPROVED RULES

assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager _____ are _____

*** If you answered "Yes" to question 32 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to question 32 above, you do not need to answer the remaining questions on this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.**

- | | Yes | No | No Representation |
|---|--------------------------|--------------------------|--------------------------|
| 33. Are any fees charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If your answer is "yes," please state the amount of the fees:

_____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. As of the date this Disclosure Statement is signed, are there any dues, fees or special assessment which have been duly approved as required by the applicable declaration or by-laws, and that are payable to an association to which the lot is subject? If your answer is "yes," please state the nature and amount of the dues, fees or special assessments to which the property is subject:

_____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the property or lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:

_____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:

_____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 37. Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply.) | | | |

- | | Yes | No | No Representation |
|---|--------------------------|--------------------------|--------------------------|
| Management Fees | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Exterior Building Maintenance of Property to be Conveyed | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Exterior Yard/Landscaping Maintenance of Lot to be Conveyed | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Common Areas Maintenance | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Trash Removal | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Recreational Amenity Maintenance (specify amenities covered) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Pest Treatment/Extermination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Storm Water Management/Drainage/Ponds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private Road Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gate and/or Security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Owner Initials and Date _____ Owner Initials and Date _____

Purchaser Initials and Date _____ Purchaser Initials and Date _____

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the text of the form shall not be altered or amended in any way.

(c) The form described in Paragraph (a) of this Rule as amended effective July 1, 2014 applies to all properties placed on the market on or after July 1, 2014. The form described in Paragraph (a) of this Rule as amended effective January 1, 2013, applies to all properties placed on the market prior to July 1, 2014. If a corrected disclosure statement required by G.S. 47E-7 is prepared on or after July 1, 2014, for a property placed on the market prior to July 1, 2014, the form described in Paragraph (a) of this Rule as amended effective July 1, 2014, shall be used.

History Note: Authority G.S. 47E-4(b); 47E-4(b1); 93A-3(c); 93A-6;
Eff. October 1, 1998;

Amended Eff. July 1, 2014; January 1, 2013; January 1, 2012; July 1, 2010; July 1, 2009; January 1, 2008; July 1, 2006; September 1, 2002; July 1, 2000.

21 NCAC 58A .0117 ACCOUNTING FOR TRUST MONEY

(a) A broker shall create, maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit and disbursement of such funds into and from a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account.

(b) A trust or escrow account shall satisfy the requirements of G.S. 93A-6(g) and shall be designated as a "Trust Account" or "Escrow Account." All bank statements, deposit tickets and checks drawn on said account shall bear the words "Trust Account" or "Escrow Account." A trust account shall provide for the full withdrawal of funds on demand without prior notice and without penalty or deduction to the funds.

(c) A broker shall create, maintain or retain, as required by Rule .0108 of this Section, the following records:

- (1) bank statements;
- (2) canceled checks and other evidence or memoranda of payments from the trust or escrow account, whether by transfer between accounts, wire payments, or payments by electronic means, that shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales

transaction ledgers or for rental transactions, the corresponding property or owner ledgers. Checks and other evidence or memoranda of payments from the account shall identify the payee by name and shall bear a notation identifying the purpose of the disbursement. When a payment is used to disburse funds for more than one sales transaction, owner, or property, the check or other evidence or memoranda of payment shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet that shall be cross-referenced to the corresponding check or payment. In lieu of retaining canceled checks, a broker may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than

- 1.1875 x 3.0 inches and provided that the broker's bank retains for a period of at least five years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F.R. 229.51 and makes the original or substitute checks available to the broker and the Commission upon request. The description of "substitute checks" contained in 12 C.F.R. 229.51 is incorporated by referencing, including subsequent amendments and additions. The regulation may be accessed at www.gpo.gov at no charge.
- (3) deposit tickets or other evidence or memoranda of deposits or payments into the account, whether by transfer between accounts, wire payments, or payments by electronic means:
- (A) for a sales transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger;
 - (B) for a rental transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger;
 - (C) for deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment;
 - (D) when a single deposit ticket or payment is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information may either be recorded on the ticket or other evidence or memoranda of deposits or payments into the account for each sales transaction, owner, or property, or it may refer to the same information recorded on a supplemental deposit worksheet that shall be cross-referenced to the corresponding deposit ticket;
- (4) a separate ledger for each sales transaction, for each property or owner of property managed by the broker and for company funds held in the trust account:
- (A) the ledger for a sales transaction shall identify the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for each deposit and disbursement entry;
 - (B) the ledger for a rental transaction shall identify the particular property or owner of property, the tenant, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for each deposit and disbursement entry. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit, the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property as well as the check number, amount, date, payee, purpose and a running balance for each disbursement. When tenant security deposit monies are accounted for on a separate ledger as provided in this Rule, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries;
 - (C) a broker may maintain a maximum of one hundred dollars (\$100.00) in company funds in a trust account for the purpose of paying service charges incurred by the account. In the event that the services charges exceed one hundred dollars (\$100.00) monthly, the broker may deposit an amount each month sufficient to cover the service charges. A broker shall maintain a separate ledger for company funds held in the trust account identifying the date, amount and running balance for each deposit and disbursement;

- (5) a general journal, check register or check stubs identifying in chronological order each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for each entry into the account;
- (6) a payment record for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Rule .0118 of this Section. Payment record(s) shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;
- (7) copies of earnest money checks, due diligence fee checks, receipts for cash payments, contracts, and closing statements in sales transactions;
- (8) copies of leases, security deposit checks, property management agreements, property management statements, and receipts for cash payments in leasing transactions;
- (9) copies of covenants, bylaws, minutes, management agreements and periodic statements relating to the management of property owner associations;
- (10) copies of invoices, bills, and contracts paid from the trust account; and
- (11) copies of any documents not otherwise described in this Rule that are necessary to verify and explain record entries.

(d) Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets.

(e) Brokers shall reconcile their trust or escrow accounts monthly. The trust account reconciliation shall be performed in the following manner as of a specific cutoff date selected by the broker:

- (1) a trial balance shall be prepared showing a list of the property or owner ledgers, their balances, and the total of all of the property or owner ledger balances as of the cutoff date;
- (2) a bank statement shall be reconciled by deducting from the statement's ending balance the amount of any outstanding checks and then adding to the balance the amount of any deposits-in-transit as of the cutoff date; and
- (3) the trial balance, reconciled bank statement balance, and the journal balance shall be compared as of the cutoff date. If the amounts on the trial balance, journal balance and

reconciled bank balance do not agree, the broker shall investigate the reason for any variation between the balances and make the necessary corrections to bring the balances into agreement.

A broker shall maintain and retain a worksheet for each monthly trust account reconciliation showing the balance of the journal or check stubs, the trial balance and the reconciled bank statement balance to be in agreement as of the cutoff date.

(f) In addition to the records required by Paragraph (c) of this Rule, a broker acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain either a subsidiary ledger sheet for each property or owner of such properties on which all funds collected and disbursed are identified in categories by purpose or an accounts payable ledger for each owner or property and each vendor to whom trust monies are due. If a broker maintains a subsidiary ledger, the broker shall reconcile the subsidiary ledgers to the corresponding property or property owner ledger on a monthly basis. If a broker maintains an accounts payable ledger, the broker shall record on the ledger monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger entry including the amount to be disbursed for each and the purpose of the disbursement. The broker may also maintain an accounts payable ledger in the format described above for vacation rental tenant security deposit monies and vacation rental advance payments.

(g) Upon the written request of a client, a broker shall, no later than ten days after receipt of the request, furnish the client with copies of any records retained as required by Rule .0108 of this Section that pertain to the transaction to which the client was a party.

(h) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule .0108 of this Section.

History Note: Authority G.S. 93A-3(c); 93A-6; Eff. April 1, 2013; Amended Eff. July 1, 2014.

21 NCAC 58A .0118 TRUST MONEY BELONGING TO PROPERTY OWNERS' ASSOCIATIONS

(a) The funds of a property owners' association, when collected, maintained, disbursed or otherwise controlled by a broker, are trust money and shall be treated as such in the manner required by Rules .0116 and .0117 of this Section. Such trust money shall be deposited into and maintained in a trust or escrow account dedicated exclusively for trust money belonging to a single property owners' association and shall not be commingled with funds belonging to other property owners' associations or other persons or parties. A broker who undertakes to act as manager of a property owners' association or as the custodian of trust money belonging to a property owners' association shall provide the association with periodic statements that report the balance of association trust money in the broker's possession or control and account for the trust money the broker has received and disbursed on behalf of the association. Such statements must be

made in accordance with the broker's agreement with the association, but not less frequently than every 90 days.

(b) A broker who receives trust money belonging to a property owners' association in his or her capacity as an officer of the association in a residential development in which the broker is a property owner and for which the broker receives no compensation is exempt from the requirements of Rules .0116 and .0117 of this Section. However, the broker shall not convert trust money belonging to the association to his or her own use, apply such money or property to a purpose other than that for which it was intended or permit or assist any other person in the conversion or misapplication of such money or property.

*History Note: Authority G.S. 93A-3(c); 93A-6;
Eff. April 1, 2013;
Amended Eff. July 1, 2014.*

21 NCAC 58A .0404 EXAMINATION RELATED CONDUCT

- (a) When taking a license examination, an applicant shall not:
- (1) cheat or attempt to cheat on the examination by any means, including giving or receiving assistance or using notes of any type;
 - (2) communicate with any person other than an examination supervisor for any purpose in any manner;
 - (3) have in his or her possession or utilize in any manner study materials or notes or any device that may be used to:
 - (A) communicate with others;
 - (B) access information; or
 - (C) record or store photographs, visual images, audio or other information about the examination;
 - (4) have in his or her possession or utilize a calculator that:
 - (A) permits the storage, entry or retrieval of alphabetic characters; or
 - (B) is not silent, hand-held and either battery-powered or solar-powered;
 - (5) have in his or her possession a wallet, pocketbook, bag or similar item that can be used to store materials prohibited by this Rule;
 - (6) refuse to demonstrate to the examination supervisor that pockets on any item of clothing do not contain materials prohibited by this Rule;
 - (7) leave or attempt to leave the testing area with any materials provided for the purpose of taking the examination or with any information, notes or other information about the content of the examination; or
 - (8) refuse to comply with the instructions of the Commission and the Commission's test provider for taking the examination; or
 - (9) disrupt in any manner the administration of the examination.
- (b) Violation of this Rule shall result in dismissal from an examination, invalidation of examination scores, forfeiture of

examination and application fees and denial of a real estate license, as well as for disciplinary action if the applicant has been issued a license.

*History Note: Authority G.S. 93A-4(d);
Eff. December 1, 1985;
Amended Eff. July 1, 2014; April 1, 2006; July 1, 2000.*

21 NCAC 58A .0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity that changes its business form other than by conversion shall submit a new license application upon making the change and obtain a new firm license. An entity which converts to a different business entity in conformity with and pursuant to applicable North Carolina General Statutes is not required to apply for a new license. However, such converted entity shall provide the information required by this Paragraph in writing to the Commission within 10 days of the conversion and shall include the duplicate license fee prescribed in Rule .0509 of this Section to have the firm license reissued in the legal name of the converted entity. Incomplete applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available on the Commission's website at www.ncrec.gov or upon request to the Commission and shall require the applicant to set forth:

- (1) the name of the entity;
- (2) the name under which the entity will do business;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the entity's NC Secretary of State Identification Number if it is required to be registered with the Office of the NC Secretary of State;
- (6) the name, real estate license number and signature of the proposed qualifying broker for the proposed firm;
- (7) the address of and name of the proposed broker-in-charge for each office as defined in Rule .0110(a) of this Subchapter, along with a completed broker-in-charge declaration form for each proposed broker-in-charge;
- (8) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;
- (9) any past revocation, suspension or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;
- (10) if a general partnership, a full description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;

- (11) if a business entity other than a corporation, limited liability company or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;
- (12) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and
- (13) any other information required by this Rule.

When the authority of a business entity to engage in the real estate business is unclear in the application or in law, the Commission shall require the applicant to declare in the license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons and similar information. For purposes of this Rule, the term "principal," when it refers to a person or entity, means any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner or who holds any other comparable position.

(b) After filing a written application with the Commission and upon a showing to the Commission that one principal of the business entity holds a broker license on active status and in good standing who will serve as qualifying broker of the entity, the entity shall be licensed provided it appears to the Commission that the applicant entity employs and is directed by personnel possessed of the requisite character and fitness required of applicants for a broker license by G.S. 93A-4(b). The qualifying broker of a partnership of any kind must be a general partner of the partnership; the qualifying broker of a limited liability company must be a manager of the company; and the qualifying broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the qualifying broker of another licensed business entity if the qualifying broker-entity has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying broker shall assure to the Commission the performance of the qualifying broker's duties with regard to both entities. A provisional broker may not serve as a qualifying broker.

(c) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(d) The qualifying broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity as "office" and "branch office" are defined in Rule .0110(a) of this Subchapter;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a

- photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (5) notifying the Commission in writing of any change of his or her status as qualifying broker within ten days following the change;
- (6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as qualifying broker until a new qualifying broker has been designated with the Commission or, if no new qualifying broker is designated, for the period of time records are required to be retained by Rule .0108 of this Subchapter; and
- (8) notifying the Commission if, upon the termination of his or her status as qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out of balance or have not been reconciled as required by Rule .0117 of this Subchapter.

(e) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this State that a licensed entity has ceased to exist or that its authority to engage in business in this State has been terminated by operation of law, the Commission shall cancel the license of the entity.

History Note: Authority G.S. 55-11A-04; 93A-3(c); 93A-4(a); 93A-4(b); 93A-4(d);

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2014; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2005; April 1, 2004; July 1, 2003; October 1, 2000; August 1, 1998; January 1, 1997; July 1, 1994; May 1, 1990.

21 NCAC 58A .0503 LICENSE RENEWAL; PENALTY FOR OPERATING WHILE LICENSE EXPIRED

(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following issuance. Any broker desiring renewal of his or her license shall apply for renewal within 45 days prior to license expiration by submitting an electronic renewal application on the

Commission's website at www.ncrec.gov and submitting with the electronic application the required renewal fee of forty-five dollars (\$45.00). A broker who does not have the ability to renew online may renew by calling the Commission's office during normal business hours posted on the Commission's website. Every individual broker shall provide on his or her renewal application an email address to be used by the Commission to communicate with the broker. The email address may be designated by the broker as private in order to be exempt from public records disclosures pursuant to G.S. 93A-4(b2). A broker who does not have an email address shall so state on the renewal application. A broker is not required to obtain an email address to comply with this Rule.

(b) Any person desiring to renew his or her license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4.1 and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to change his or her license from inactive status to active status, the broker must satisfy the continuing education requirement prescribed in Rule .1703 or .1711 of this Subchapter.

(d) Any person or firm that engages in the business of a real estate broker while his, her, or its license is expired shall be subject to the penalties prescribed in G.S. 93A-6.

History Note: Authority G.S. 93A-3(c); 93A-4(b2); 93A-4(c); 93A-4(d); 93A-4.1; 93A-4.1(a); 93A-4.1(c)(8); 93A-6; Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 1994; February 1, 1991; February 1, 1989;

Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. July 1, 2014; April 1, 2013; April 1, 2006; January 1, 2006; July 1, 2004; December 4, 2002; April 1, 1997; July 1, 1996; August 1, 1995.

21 NCAC 58A .1702 CONTINUING EDUCATION REQUIREMENT

(a) Except as provided in Rules .1708 and .1711 of this Section, in order to renew a broker license on active status, the person requesting renewal of a license shall, upon the second renewal of such license following initial licensure, and upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight classroom hours of real estate continuing education in courses approved by the Commission as provided in Subchapter 58E. Four of the required eight classroom hours must be obtained each license period by completing a mandatory update course developed annually by the Commission and known as the "General Update Course," the subject matter of which is described in Rule 58E .0102, except that a broker-in-charge or broker who is broker-in-charge eligible shall complete the "Broker-In-Charge Update Course" in lieu of the "General Update Course" as set forth in Rule .0110 of this Subchapter. The remaining four hours shall be obtained by

completing one or more Commission-approved elective courses described in Rule .0305 of Subchapter 58E. The broker shall provide upon request of the Commission, evidence of continuing education course completion.

(b) No continuing education shall be required to renew a broker license on inactive status. In order to change a license from inactive status to active status, the broker must satisfy the continuing education requirement described in Rule .1703 of this Section.

(c) No continuing education shall be required for a broker who is a member of the U.S. Congress or the North Carolina General Assembly in order to renew his or her license on active status.

(d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. For continuing education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued to a person, the reinstatement of a canceled, revoked or surrendered license, and any license expired for more than six months.

History Note: Authority G.S. 93A-3(c); 93A-4.1; 93A-4.1(c)(7); 93A-4.1(c)(8);

Eff. July 1, 1994;

Amended Eff. July 1, 2014; April 1, 2006; July 1, 2005; April 1, 2004; October 1, 2000; August 1, 1998; July 1, 1996.

21 NCAC 58A .1808 TRUST MONIES

A nonresident commercial broker acting as real estate broker in North Carolina shall deliver to the North Carolina resident broker with whom he or she is affiliated all money belonging to others received in connection with the nonresident commercial broker's acts or services as a broker. Upon receipt of the funds, the resident North Carolina broker shall cause the funds to be deposited in a trust account in accordance with the provisions of Rule .0116 of this Subchapter.

History Note: Authority G.S. 93A-4; 93A-6(d); 93A-6(g); 93A-9;

Eff. July 1, 2004;

Amended Eff. July 1, 2014; April 1, 2006.

21 NCAC 58C .0209 ENROLLMENT PROCEDURES AND CONTRACTS

(a) A school shall provide to a prospective student a copy of the school's bulletin prior to the time that a student becomes committed to payment of any portion of tuition or registration deposit without the right to a full refund.

(b) A school shall execute a written enrollment contract with each student after the school's bulletin has been provided to the student but prior to the beginning of the course for which the student is enrolling. The student shall be provided a copy of the enrollment contract at the time of signing. The enrollment contract shall be a separate document and shall not be combined with the school's bulletin into a single document. A school may utilize the school's copy of the enrollment contract to note a record of student tuition payments.

(c) A school's student enrollment contract shall include:

- (1) the student's name;
- (2) the contract date;

- (3) the title of the course(s) for which the student is enrolling;
- (4) the course schedule (beginning date, end date and meeting days and times);
- (5) the amount of tuition and other required fees;
- (6) a provision incorporating by reference the school's policies as described in the school's bulletin;
- (7) a provision whereby the school certifies that the school's bulletin has been provided to the student and that the student acknowledges receipt of the bulletin;
- (8) any provisions needed to address special accommodations or arrangements applicable to a particular student;
- (9) the signatures of both the student and a school official; and
- (10) the following prescribed text: "NOTICE: Pursuant to North Carolina Real Estate Commission Rule 21 NCAC 58A .1904, the Commission may deny or withdraw credit for a postlicensing course that a provisional broker begins taking while already enrolled in another postlicensing course at the same school or a different school if participating in the two courses concurrently results in the provisional broker attending postlicensing course sessions that total more than 21 classroom hours in any given seven-day period."

(d) Other than the amount of tuition and fees, an enrollment contract shall not address other school policies that are addressed in the school's bulletin.

History Note: Authority G.S. 93A-4; 93A-33;
Eff. October 1, 1980;
Transferred and Recodified from 21 NCAC 58A .1309 Eff. November 27, 1989;
Amended Eff. July 1, 2014; January 1, 2008; April 1, 2006.

21 NCAC 58C .0221 TRANSFER OF SCHOOL OWNERSHIP

- (a) When ownership of a licensed school is transferred to a different legal entity, the school license is not transferable and shall terminate on the effective date of the transfer.
- (b) All courses shall be completed by the effective date of the ownership transfer. The transferring owner shall report course completion to the Commission.
- (c) The entity acquiring ownership shall obtain an original school license for each location where the school will conduct courses as required by G.S. 93A-34 and Rule .0202 of this Subchapter prior to advertising courses, registering students, accepting tuition, conducting courses, or otherwise engaging in any school operations.

History Note: Authority G.S. 93A-33; 93A-34; 93A-35;
Eff. July 1, 2014.

21 NCAC 58C .0309 COURSE COMPLETION REPORTING

(a) Schools shall provide a course completion certificate to each student who completes a prelicensing or postlicensing course in compliance with Commission rules and the school course completion standards. Each course completion certificate shall be on official school letterhead and identify the course, student and instructor. The certificate shall be signed by the director, dean or other school official responsible for supervising the conduct of the course.

(b) Schools shall prepare and submit to the Commission accurate reports verifying completion of a prelicensing or postlicensing course for each student who completes a prelicensing or postlicensing course in compliance with Commission rules and school course completion standards. Such reports shall include:

- (1) students' names (full legal name for prelicensing course students);
- (2) students' license numbers (for postlicensing course students);
- (3) students' unique identification number (for prelicensing course students);
- (4) course dates;
- (5) school and course code numbers;
- (6) instructor's name and code number (for prelicensing courses); and
- (7) course information.

(c) The report shall be transmitted by uploading the information to the Commission's website at www.ncrec.gov within seven calendar days following the course. Schools shall electronically submit with postlicensing course completion reports the per student fee prescribed by G.S 93A-4(a2).

History Note: Authority G.S. 93A-4(a); 93A-4(a2); 93A-4(d); 93A-33;
Eff. September 1, 1979;
Amended Eff. February 1, 1989; September 1, 1984; January 1, 1981;
Transferred and Recodified from 21 NCAC 58A .1111 Eff. November 27, 1989;
Amended Eff. July 1, 2014; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 1994; May 1, 1990.

21 NCAC 58C .0310 COURSE RECORDS

(a) Schools shall retain on file for three years copies of all enrollment, grade and attendance records and shall make such records available to the Commission upon request.

(b) Schools shall retain on file for two years a master copy of each final course examination that shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be made available to the Commission upon request.

History Note: Authority G.S. 93A-4(a),(d); 93A-33;
Eff. September 1, 1984;
Recodified from Rule 58A .1105 (d) and (e) Eff. January 6, 1989;
Transferred and Recodified from 21 NCAC 58A .1113 Eff. November 27, 1989;

Amended Eff. July 1, 2014; October 1, 2000; May 1, 1990.

21 NCAC 58E .0102 UPDATE COURSE COMPONENT

(a) To renew a license on active status, a real estate broker shall complete, within one year preceding license expiration and in addition to satisfying the continuing education elective requirement described in Rule.0302 of this Subchapter, a Commission-developed "General Update Course" described in Paragraph (b) of this Rule consisting of four classroom hours of instruction. A broker-in-charge or broker who is broker-in-charge eligible who desires to retain his or her broker-in-charge status or eligibility shall complete in lieu of the "General Update Course" a Commission-developed "Broker-In-Charge Update Course" consisting of four classroom hours of instruction, described in Paragraph (b) of this Rule and prescribed in Rule 58A .0110.

(b) The Commission shall develop annually a General Update Course and a Broker-In-Charge Update Course that shall be conducted by sponsors approved by the Commission under this Subchapter. The subject matter of these courses shall be determined by the Commission, and shall include instruction on the duties and responsibilities required of brokers by the License Law and Commission rules as well as current trends, standards, or changes affecting the real estate brokerage practice. The Broker-in-Charge Update Course shall also include instruction on the duties and responsibilities required of brokers-in-charge by the License Law and Commission rules. The Commission shall produce instructor and student materials for use by course sponsors, and shall prepare completely new courses for each one-year period beginning July 1 and ending the next June 30. Sponsors shall acquire the Commission-developed course materials and utilize the materials to conduct the update courses. The courses shall be conducted as prescribed by the rules in this Subchapter and the course materials developed by the Commission. All course materials developed by the Commission for use in an update course and that are subject to the protection of federal copyright laws are the property of the Commission. Violation of the Commission's copyright with regard to these materials shall be grounds for disciplinary action. Sponsors shall provide brokers participating in their classes a copy of the student materials developed by the Commission. With advance approval from the Commission, course sponsors and instructors may make modifications to the update course when the update course is being promoted to and conducted for a group of brokers that specialize in a particular area of real estate brokerage, provided that the modifications relate to the same general subject matter addressed in the prescribed update course and the course as modified achieves the same educational objectives as the unmodified course.

(c) Approved sponsors shall conduct update courses using an instructor who has been approved by the Commission as an update course instructor under Section .0200 of this Subchapter. The sponsor may conduct the update course at any location as frequently as is desired during the approval period; however, no courses may be conducted between June 11 and June 30 of any approval period.

History Note: Authority G.S. 93A-3(c); 93A-4.1;

Eff. July 1, 1994;

Amended Eff. July 1, 2014; April 1, 2006; July 1, 2000.

21 NCAC 58E .0202 NATURE AND SCOPE OF APPROVAL

Update course instructors shall be approved by the Commission in a separate process from approval for update course sponsors. Approved update course instructors may teach the General Update Course or Broker-In-Charge Update Course for any approved update course sponsor for as long as his or her approval is on active status. An approved update course instructor may not independently conduct an update course unless the instructor has also obtained approval as an update course sponsor. An instructor shall obtain written approval from the Commission prior to teaching an update course and prior to representing to any sponsor or other party that he or she is approved or may be approved as an update course instructor.

History Note: Authority G.S. 93A-3(c); 93A-4.1;

Eff. July 1, 1994;

Amended Eff. July 1, 2014; July 1, 2000.

21 NCAC 58E .0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking initial approval as an update course instructor must make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications shall be submitted.

(b) The applicant shall be truthful, honest and of high integrity.

(c) The applicant shall be qualified under one of the following standards:

- (1) Possession of a current North Carolina real estate broker license that is not on provisional status, a current continuing education record, and three years full-time experience on active status in general real estate brokerage, including substantial experience in real estate sales and at least one year of general brokerage experience in North Carolina, within the previous seven years. For purposes of this Rule, substantial experience is experience which is material, valuable, and worthwhile and not nominal, occasional, or intermittent; or
- (2) Possession of qualifications found by the Commission to be equivalent to the standard stated in Subparagraph (c)(1) of this Rule.

(d) The applicant shall possess good teaching skills as demonstrated on a video recording portraying the instructor teaching a live audience. The applicant shall submit the video recording for Commission review on a digital video disc (DVD). The video recording must be 45-60 minutes in length and shall depict a continuous block of instruction on a single real estate or directly related topic. The video recording shall be unedited, show a portion of the audience, and have visual and sound quality sufficient to enable reviewers to see and hear the instructor. The video recording shall have been recorded within

the previous calendar year. The video recording shall demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) The applicant shall take the Commission's Update Instructor Seminar for the real estate license year in which the applicant's approval would be effective prior to approval being issued. If this seminar is not taken within six months after filing the application for approval, the application shall be deemed cancelled. The Update Instructor Seminar shall be a seven hour course offered by the Commission multiple times each year to demonstrate the General Update Course and Broker-in-Charge Update Course materials described in Rule .0102(b) of this Subchapter to approved instructors to prepare them to teach those courses. Registration and available dates for the Update Instructor Seminar are available online at the Commission's website, www.ncrec.gov.

(f) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he or she is a Commission-approved real estate preclicensing instructor who has satisfied all requirements for an unconditional approval or possesses a current North Carolina real estate broker license, a current continuing education record, and a current designation as a Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

History Note: Authority G.S. 93A-3(c); 93A-4.1; Eff. July 1, 1994;

Amended Eff. July 1, 2014; January 1, 2008; April 1, 2004; July 1, 2003; September 1, 2002; July 1, 1996; July 1, 1995.

21 NCAC 58E .0204 ACTIVE AND INACTIVE STATUS; RENEWAL OF APPROVAL

(a) An instructor's initial approval shall be issued on active status and shall remain on active status during the approval period so long as the instructor takes the Commission's annual Update Instructor Seminar, described in Rule .0203(e) of this Section, before September 1 of each year. An instructor may teach the General Update Course or Broker-In-Charge Update Course while his or her license is on active status. When an instructor fails to complete the Update Instructor Seminar by September 1, the instructor's approval shall be placed on inactive status and shall remain on inactive status until the seminar is taken or until the expiration of the instructor's approval, whichever occurs first. An instructor shall not teach any version of the update course while his or her approval is on inactive status.

(b) If an instructor whose approval is on active status is unable to take the Update Instructor Seminar on any of the scheduled seminar dates as shown on the Commission's website at www.ncrec.gov before September 1 of any year due to a personal hardship such as a personal or family illness or a business conflict, the instructor may request and obtain from the Commission an extension of time to take the seminar on a seminar date following the September 1 deadline. The instructor shall not complete the course later than December 1 of that year. If an extension of time is granted, the instructor's approval shall remain on active status during the extension period.

(c) Commission approval of update course instructors expires on the third December 31 following issuance of approval.

Approved instructors shall file applications for renewal of approval on a form provided by the Commission on its website at www.ncrec.gov on or before the December 1 immediately preceding expiration of approval. The form shall request information pertaining to the applicant's qualifications under Rule .0203(c) of this Section. In order to renew their approval, applicants must satisfy the criteria for original approval, with the exception of the requirement in Rule .0203(d) of this Section, and their approval shall be on active status as described in Paragraph (a) of this Rule. Applicants for renewal of approval whose approval is on inactive status shall also take the Commission's annual Update Instructor Seminar for the real estate license year in which the applicant's renewal of approval would be effective.

(d) In order to reinstate an expired instructor approval, the former instructor must file an application on a form provided by the Commission and shall satisfy the criteria for original approval set forth in Rule .0203(b) and (c) of this Section. If the applicant's prior instructor approval was on inactive status at the time the approval expired, the applicant must additionally take the Commission's annual Update Instructor Seminar for the real estate license year in which the applicant's reinstated approval would be effective. If the applicant's prior instructor approval has been expired for more than one year, the applicant must also satisfy the criteria for original approval set forth in Rule .0203(d) of this Section.

History Note: Authority G.S. 93A-3(c); 93A-4.1; Eff. July 1, 1994;

Amended Eff. July 1, 2014; January 1, 2012; July 1, 2000; July 1, 1996; July 1, 1995.

21 NCAC 58E .0304 CRITERIA FOR ELECTIVE COURSE APPROVAL

(a) The following requirements shall be satisfied in order to obtain approval of a proposed elective course:

- (1) The applicant shall submit the application form and pay the application fee, both of which are required in Rule .0303 of this Section, including any additional application fee set forth in Subparagraph (a)(12) of this Rule if applicable;
- (2) The applicant shall satisfy the requirements of Section .0400 of this Subchapter relating to the qualifications or eligibility of course sponsors;
- (3) The subject matter of the course shall satisfy the elective course subject matter requirements set forth in Rule .0305 of this Section and all information to be presented in the course shall be current and accurate;
- (4) The course shall involve a minimum of four classroom hours of instruction on acceptable subject matter, as defined in Rule .0305 of this Section. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time;
- (5) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter shall be truthful, honest and of

- high integrity. To do this, the Commission may consider the reputation and character of any owner, officer and director of any corporation, association or organization applying for sponsor approval;
- (6) The proposed instructor(s) for the course shall possess the qualifications described in Rule .0306 of this Section;
 - (7) The instructional delivery methods to be utilized in the course shall either involve live instruction in a traditional classroom setting or comply with the requirements described in Rule .0310 of this Section;
 - (8) The applicant shall submit an instructor guide that includes:
 - (A) a course outline describing the subject matter and topics to be taught in sufficient detail to permit an evaluation by the Commission of the depth and accuracy of the subject matter and topics to be covered;
 - (B) the amount of time to be devoted to each major topic and to breaks;
 - (C) the learning objective(s) for each major topic; and
 - (D) the instructional methods and instructional aids that will be utilized in the course.
 - (9) The proposed time allotments shown in the instructor guide shall be appropriate for the proposed subject matter to be taught. Unless the applicant can demonstrate that straight lecture is the most effective instructional method for the course, the instructor guide must provide for the use of a variety of instructional methods and instructional aids intended to enhance student participation, attentiveness, and learning. Examples of instructional methods that may be appropriate include, but are not limited to, instructor-led class discussion, role-playing, and in-class individual or group work assignments. Examples of instructional aids that may be appropriate include, but are not limited to, PowerPoint slides, overhead transparencies, video recordings, and information from the Internet displayed on a large screen;
 - (10) The course shall include handout materials for students that provide, in narrative or text form, all the information to be presented in the course. This requirement shall not be satisfied by using only copies of PowerPoint slides or a detailed course outline. All information included in the student materials shall be up-to-date, without error, explanatory of topics covered, consistent with course learning objectives, grammatically correct, and organized. The scope and depth of information presented shall be appropriate in view of course learning objectives and subject matter time allotments, and the information presented must, except for instruction on changes in laws, rules, or practices, include coverage of subject matter at a cognitive level higher than that expected of entry-level real estate brokers. The quality of reproduced student materials shall be generally comparable to that commonly seen in education materials produced by professional publishers. These standards for student materials also apply, to the extent they are relevant, to student materials other than paper materials such as material to be viewed by computer that are provided for use by students in distance education courses;
 - (11) If an applicant proposes to use copyrighted materials in the course, such materials shall be used in a form approved by the copyright holder. If any copyrighted material is to be duplicated by the applicant for use in the course, the sponsor must have the specific permission of the copyright holder; and
 - (12) When an applicant resubmits an elective course approval application after a previous application for the same course has been twice reviewed and found unsatisfactory by the Commission, the resubmitted application shall be treated as an original application for approval and shall be subject to the application fee prescribed in Rule .0303 of this Section.
- (b) An application for elective course approval shall be found unsatisfactory if the applicant fails to fulfill one or more of the requirements set forth in this Rule.
- (c) Applicants requesting approval of distance education courses shall also comply with the requirements described in Rule .0310 of this Section.
- History Note: Authority G.S. 93A-3(c); 93A-4.1; Eff. July 1, 1994; Amended Eff. July 1, 2014; July 1, 2010; April 1, 2004; July 1, 2000; July 1, 1996; July 1, 1995.*
- 21 NCAC 58E .0408 CHANGE IN SPONSOR OWNERSHIP**
- When ownership of an approved course sponsor is transferred to a different legal entity, the sponsor approval is not transferable and terminates on the effective date of the transfer. The sponsor owner transferring ownership shall not conduct any course after the effective date of the transfer. The entity acquiring sponsor ownership shall obtain an original course sponsor approval as required by G.S. 93A-4.1 and Rules .0103, .0303 and .0402 of this Subchapter prior to advertising courses, registering students, accepting tuition, conducting courses or otherwise engaging in any sponsor activity.
- History Note: Authority G.S. 93A-3(c); 93A-4.1; Eff. July 1, 1994; Amended Eff. July 1, 2014.*

APPROVED RULES

21 NCAC 58E .0601
21 NCAC 58E .0602
21 NCAC 58E .0603
COURSE
21 NCAC 58E .0604
REQUIREMENTS

PURPOSE AND APPLICABILITY
COURSE DESCRIPTION
AUTHORITY TO CONDUCT

COURSE OPERATIONAL

History Note: *Authority* G.S. 93A-2; 93A-3; 93A-3(c); 93A-4.1; 93A-4.2;
Eff. July 1, 2010;
Repealed Eff. July 1, 2014.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on August 21, 2014 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Margaret Currin (Chair)
Jeff Hyde
Jay Hemphill
Faylene Whitaker

Appointed by House

Garth Dunklin (1st Vice Chair)
Stefanie Simpson (2nd Vice Chair)
Jeanette Doran
Ralph A. Walker
Anna Baird Choi

COMMISSION COUNSEL

Amanda Reeder (919)431-3079
Abigail Hammond (919)431-3076
Amber Cronk May (919)431-3074

RULES REVIEW COMMISSION MEETING DATES

August 21, 2014 September 18, 2014
October 16, 2014 November 20, 2014

AGENDA

RULES REVIEW COMMISSION

THURSDAY, AUGUST 21, 2014 10:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters:
 - A. Commissioner of Agriculture – 02 NCAC 52K .0301, .0401, .0501 (Reeder)
 - B. Department of Public Safety – 14B NCAC 07A .0116 (Reeder)
 - C. Board of Dental Examiners – 21 NCAC 16B .0101, .0201, .0202, .0301, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0601, .0701, .0801, .0901, .1002, .1101; 16C .0101, .0202, .0301, .0303, .0311, .0401, .0402, .0403, .0404, .0405, .0501, .0601; 16Q .0303 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between June 23, 2014 and July 21, 2014.
 - Pesticide Board (Hammond)
 - Alcoholic Beverage Control Commission (Reeder)
 - Department of Labor (Reeder)
 - Environmental Management Commission (Reeder)
 - Board of Dental Examiners (Reeder)
 - Board of Examiners of Electrical Contractors (Reeder)
 - Medical Board (May)
 - Board of Pharmacy (May)
 - Board of Podiatry Examiners (May)
 - Appraisal Board (May)
 - Building Code Council (May)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. G.S. 150B-19.1 Certification

- VII. Existing Rules Review
- 04 NCAC 24 – Division of Employment Security (Reeder)
 - 21 NCAC 08 – Certified Public Accountants (Hammond)
 - 21 NCAC 52 – Podiatry Examiners (Hammond)
 - 24 NCAC 02 – Agricultural Finance Authority (May)
 - 25 NCAC 01A – State Human Resources Commission (Reeder)
 - 25 NCAC 01B – State Human Resources Commission (Reeder)
 - 25 NCAC 01C – State Human Resources Commission (Reeder)
 - 25 NCAC 02 – Office of Americans with Disabilities Act (May)
- VIII. Commission Business
- Next meeting: Thursday, September 18, 2014
-

**Commission Review
Log of Permanent Rule Filings
June 23, 2014 through July 21, 2014**

PESTICIDE BOARD

The rules in Chapter 9 are from the Food and Drug Protection Division of the Department of Agriculture and Consumer Services.

The rules in Subchapter 9L are from the N.C. Pesticide Board and include organizational rules (.0100); registration (.0300); samples and submissions (.0400); pesticide licenses (.0500); pesticide and pesticide container disposal (.0600); declaration of pests and restrictions on their control (.0700); bulk distribution of pesticides (.0800); aerial application of pesticides (.1000); private pesticide applicator certification (.1100); arsenic trioxide (.1200); availability of restricted use pesticides (.1300); ground application of pesticides (.1400); worker protection standards for agricultural pesticides (.1800); pesticide storage (.1900); chemigation (any process whereby pesticides are applied to land, crops, or plants using an irrigation system) (.2000); hearing rules of the North Carolina pesticide board (.2100); and interim protection measures for the Carolina heelsplitter mussel (.2200).

<u>Duties of Pesticide Section</u>	02	NCAC	09L	.0101
Amend/*				
<u>Assignment of Duties</u>	02	NCAC	09L	.0103
Amend/*				
<u>Common and Chemical Names of Pesticides</u>	02	NCAC	09L	.0316
Amend/*				
<u>Registration of Pesticides to Meet with Special Local Needs</u>	02	NCAC	09L	.0317
Amend/*				
<u>Exemption of Agencies for Use of Pesticides in Emergencies</u>	02	NCAC	09L	.0318
Amend/*				
<u>Tolerances</u>	02	NCAC	09L	.0402
Amend/*				
<u>Governmental Workers</u>	02	NCAC	09L	.0506
Amend/*				
<u>Continuances</u>	02	NCAC	09L	.0516
Amend/*				
<u>Recertification Process</u>	02	NCAC	09L	.0522
Amend/*				
<u>Designations</u>	02	NCAC	09L	.0901
Amend/*				
<u>Definitions</u>	02	NCAC	09L	.1001
Amend/*				
<u>Exemptions</u>	02	NCAC	09L	.1006

Amend/*				
<u>Single Purchase Emergency Certification Permit</u>	02	NCAC	09L	.1104
Amend/*				
<u>Definitions</u>	02	NCAC	09L	.1401
Amend/*				
<u>Adoption by Reference</u>	02	NCAC	09L	.1805
Amend/*				
<u>Copies of Contingency Plan</u>	02	NCAC	09L	.1909
Amend/*				
<u>Inspection: Maintenance and Modification</u>	02	NCAC	09L	.2004
Amend/*				

ALCOHOLIC BEVERAGE CONTROL COMMISSION

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

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

<u>Applications for Permits: General Provisions</u>	04	NCAC	02S	.0102
Amend/*				

The rules in Subchapter 2T concern industry members, retail/industry member relationships, ship chandlers, air carriers, and fuel alcohol including definitions and application procedures (.0100); product approvals, listing procedures and product lists (.0200); packaging and labeling of malt beverages and wine (.0300); standards of identity for wine containers (.0400); general provisions for industry members (.0500); sales and deliveries of malt beverages and wine (.0600); alcoholic beverages, retailer/industry member relationship and trade practices (.0700); ships chandler's permit (.0800); distillers and representatives (.0900); air carriers (.1000); fuel alcohol permits (.1100); and administrative action by commission (.1200).

<u>Labels to be Submitted to Commission</u>	04	NCAC	02T	.0302
Amend/*				
<u>Label Contents: Malt Beverages</u>	04	NCAC	02T	.0303
Amend/*				
<u>Growlers</u>	04	NCAC	02T	.0308
Amend/*				
<u>Growlers: Cleaning, Sanitizing, Filling and Sealing</u>	04	NCAC	02T	.0309
Adopt/*				

LABOR, DEPARTMENT OF

The rules in Chapter 13 concern boiler and pressure vessel including definitions (.0100); administration (.0200); enforcement of standards (.0300); general requirements (.0400); non-standard boilers and pressure vessels (.0500); hot water vessels used for heating or for storage of hot water (.0600); nuclear energy systems (.0700); and forms (.0800).

<u>Design and Construction Standards</u>	13	NCAC	13	.0401
Amend/*				

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

<u>Broad River Basin</u>	15A NCAC 02B .0306
<u>Amend/*</u>	

DENTAL EXAMINERS, BOARD OF

The rules in Subchapter 16D concern provisional licensure for dentists including general provisions (.0100); and examinations (.0200).

<u>Patient Records</u>	21 NCAC 16D .0103
<u>Repeal/*</u>	

<u>Application</u>	21 NCAC 16D .0104
<u>Amend/*</u>	

<u>Consent for Board Investigation</u>	21 NCAC 16D .0106
<u>Adopt/*</u>	

The rules in Subchapter 16E concern provisional licensure for dental hygienists.

<u>Application</u>	21 NCAC 16E .0103
<u>Amend/*</u>	

<u>Examination</u>	21 NCAC 16E .0104
<u>Amend/*</u>	

EXAMINERS OF ELECTRICAL CONTRACTORS, BOARD OF

The rules in Chapter 18B are from the Board of Electrical Contractors including general provisions (.0100); examinations and qualifications (.0200); terms and definitions applicable to licensing (.0300); licensing requirements (.0400); reciprocal licensing agreements with other states (.0700); special restricted licenses (.0800); violations and contested case hearings (.0900); forms, certificates, and publications of the board (.1000); and continuing education courses and requirements (.1100).

<u>Electrical Installation: Project: Project Value-Limitation</u>	21 NCAC 18B .0303
<u>Amend/*</u>	

<u>Annual License Fees</u>	21 NCAC 18B .0404
<u>Amend/*</u>	

MEDICAL BOARD

The rules in Subchapter 32B concern license to practice medicine including prescribing (.1000); general (.1300); resident's training license (.1400); faculty limited license (.1500); purpose license (.1600); other business (.1700); and expedited license for physician license (.2000).

<u>Reinstatement of Physician License</u>	21 NCAC 32B .1350
<u>Amend/*</u>	

<u>Reactivation of Physician License</u>	21 NCAC 32B .1360
<u>Amend/*</u>	

<u>Application for Resident's Training License</u>	21 NCAC 32B .1402
<u>Amend/*</u>	

The rules in Subchapter 32U cover the administration of vaccines by pharmacists.

Administration of Vaccines by Pharmacists
Amend/*

21 NCAC 32U .0101

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

Administration of Vaccines by Pharmacists
Amend/*

21 NCAC 46 .2507

PODIATRY EXAMINERS, BOARD OF

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

Temporary License for Clinical Residency/Fellowship
Adopt/*

21 NCAC 52 .0213

Forms and Applications
Amend/*

21 NCAC 52 .0611

APPRAISAL BOARD

The rules in Subchapter 57A cover licensing, certification and practice rules for appraisers including application procedures (.0100); licensing and certification (.0200); examination (.0300); general practice requirements (.0400); and appraisal standards (.0500).

Expired Registration, License or Certificate
Amend/*

21 NCAC 57A .0206

BUILDING CODE COUNCIL

2012 NC Building Code/Automatic Sprinkler Systems
Amend/*

901.6.1

2012 NC Building Code/Fixture Calculations
Amend/*

2902.1.1

2012 NC Building Code Council/Means of Egress Capacity Fa...
Amend/*

3404.6

2012 NC Fuel Gas Code/Pipe Joints
Amend/*

403.10.1

2012 NC Mechanical Code/Makeup Air Required
Amend/*

505.2

<u>2012 NC Plumbing Code/Fixture Calculations</u> Amend/*	403.1.1
<u>2012 NC Residential Code/Hazardous Locations</u> Amend/*	R308.4
<u>2012 NC Residential Code/Corrosion Resistance</u> Amend/*	R4605.5
<u>2012 NC Residential Code/Deck Attachment</u> Amend/*	Appendix AM104.1

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Craig Croom
J. Randolph Ward	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Carl John Perkinson v. Department of Public Safety	14 CPS 02245	06/24/14	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
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Kenneth Terrell Ford v. DHHS, Division of Facility Services	13 DHR 10745	02/12/14	29:03 NCR 356
J. Mark Oliver DDS, PLLC v. DHHS, Division of Medical Assistance	13 DHR 14369	02/19/14	29:02 NCR 206
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DEPARTMENT OF REVENUE

Cyril Broderick, Jr. v. Department of Revenue	14 REV 01773	06/24/14
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STATE OF NORTH CAROLINA
COUNTY OF WAYNE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 10745

Filed

2014 SEP 12 AM 11:55

KENNETH TERRELL FORD
PETITIONER

VS.

N. C. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
FACILITY SERVICES
RESPONDENT

*Office of
Administrative Hearings*

FINAL DECISION

On October 25, 2013, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Goldsboro, North Carolina. On December 9, 2013, the undersigned ruled that Respondent failed to present sufficient evidence to substantiate the finding that Petitioner abused a resident of O'Berry Neuro-Medical Treatment Center on August 13, 2012. On January 17, 2014, pursuant to the undersigned's Order, Petitioner filed a proposed Final Decision with the Office of Administrative Hearings.

APPEARANCES

For Petitioner: Dustin B. Pittman
 Strickland, Lapas, Agner & Associates
 112 North William Street
 Goldsboro, North Carolina 27530

For Respondent: Josephine N. Tetteh
 Assistant Attorney General
 N.C. Department of Justice
 P.O. Box 629
 Raleigh, North Carolina 27602-0629

ISSUES

1. Whether Respondent failed to use proper procedure, or failed to act as required by law or rule by failing to afford Petitioner the right to the hearing before substantiating and entering a finding of abuse against Petitioner's name on the Health Care Personnel Registry?

2. Whether Respondent acted erroneously, or acted arbitrarily and capriciously when it entered a substantiated finding of abuse against Petitioner's name on the Health Care Personnel Registry?

APPLICABLE LAW

N.C. Gen. Stat. § 131E-256, and rules promulgated thereunder
N.C. Gen. Stat. § 150B-22, et seq. and rules promulgated thereunder

PREHEARING MOTION

Before hearing, Petitioner made a Motion in Limine to exclude any reference to a photo array and any and all photographic identification of Petitioner by the resident PH as such identifications were unreliable and likely to confuse the trier of fact pursuant to Rule 403 of the Rules of Evidence. The Court reserved ruling on the motion until testimony was heard. Based on the preponderance of evidence heard at trial, the undersigned hereby denies Petitioner's Motion.

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None

For Respondent: Exhibits 1 - 31

WITNESSES

For Petitioner: No witnesses

For Respondent: Kenneth Terrell Petitioner, Kim Brantham, Donna Trolinger,
Dr. Donald Statuto, Donna Ramsey, Tony Walters,
Gwendolyn Woods, Lynette Cox, Pamela Anderson

FINDINGS OF FACT

Procedural Background

1. On March 21, 2013, Respondent notified Petitioner that it was substantiating an allegation of abuse against Petitioner for abusing a resident of O'Berry Neuro-Medical Treatment Center, on August 13, 2012, in Goldsboro, North Carolina. Respondent also advised Petitioner that it was listing the substantiated finding against Petitioner's name on the Health Care Personnel Registry as follows:

On or about August 13, 2012, Kenneth Terrell Ford, a Health Care Personnel, abused a resident (PH) by willfully kicking the resident in the groin and pushing the resident's head against a wall resulting in physical harm, pain, and mental anguish.

(Respondent's Exhibit 30)

2. Petitioner was employed at O'Berry Neuro-Medical Treatment Center ("O'Berry") as a Health Care Technician I from May 15, 1999 until October 10, 2012. At O'Berry, Petitioner was generally referred to as "Ken." (T. p. 157)

3. On August 13, 2012, PH was a 72 year old resident who was assigned to Petitioner's care on the "B" shift in Unit 6-3 at O'Berry. PH had been diagnosed with vascular dementia, moderate mental retardation, cardiovascular accident, contractures, hypertension, atherosclerosis, and had a long time history of seizures. (Resp Exh 27)

a. PH was ambulatory, and walked with an unsteady or staggered gait due to one leg being shorter than the other, and because he had a flat left foot. PH wore custom insoles in his shoes to help with walking. Because of his leg and foot issues, PH was considered a high risk for falls, and required assistance with mobility at times. PH's upper right arm was contracted. (Resp Exh 27, T. p.164)

b. PH functioned in the high or severe range of Mental Retardation cognitively, and in the moderate range adaptively. He was verbal and able to communicate, but also stuttered. According to PH's Person Center Plan and O'Berry staff, PH easily became confused and forgot things, would not recognize familiar faces or objects, and forgot people's names. "When he gets upset, he starts rambling and talks very fast, and puts all kinds of stuff together. He may put things that happened in the past with things now." (Resp Exh 24) "He may become irritable and curse or hit at staff." When asked to do something, he may have problems carrying out tasks. (Resp Exh 27) The unit staff provided supports to PH that PH needed to minimize agitation associated with his dementia. (Resp Exh 4)

c. The preponderance of the evidence established that resident PH would get the present and future mixed up, and sometimes exaggerated. "He adds the future with the present." (Resp Exh 17) PH did not refer to individuals by name, but called them "boy" or "girl." (Resp Exh 17, T. p. 67))

4. In August of 2012, Petitioner was assigned to unit or group home 6-3 at O'Berry where he generally worked the "B" Shift from 7:00 a.m. until 3:30 p.m.

5. On August 13, 2012, Petitioner arrived at work at approximately 7:00 a.m. and attended a morning briefing until approximately 7:10 a.m. Petitioner was assigned to care for resident PH. The employees on the "A" shift had already awakened and dressed Petitioner's patients. Health care tech Jerry McClarin had gotten resident PH out of bed, and dressed. The "A" shift employees had completed the body check form indicating no injury was noted to PH after the "A" shift had performed its body check of PH.

6. At 7:00 a.m., resident PH asked health care tech Swindell Coley for his money. Coley advised PH to wait until they finished with morning briefing.

7. After the morning briefing, Petitioner began walking down the hall, and met PH. Petitioner and Jerry McClarin performed a superficial body check of PH's arms and legs since PH was already dressed, and wearing shorts. Petitioner did not see any injuries on PH.

8. At approximately 7:15 a.m., Petitioner began grooming his other patients.

9. About 7:15 a.m., Coley and Jerry McClarin gave PH \$2.00 in the canteen area. PH left the canteen room behind Coley and McClarin.

10. At approximately 7:30 a.m. on August 13, 2012, PH approached Donna Trollinger ("Trollinger"), a licensed practical nurse who was distributing medications, to obtain his medications. Trollinger thought PH appeared mad and upset. After Trollinger asked PH what was wrong, PH told Trollinger that "Kent kicked me." Trollinger gave PH his meds, and turned away from PH to sign the medication book. When Trollinger turned back around, she saw that PH had pulled his pants and underwear down, and was pointing to his pelvic or groin area, above and to the left of his penis. PH advised that "Kent kicked me." PH told Trollinger that Kent kicked him two or three times. (Resp Exhs 9, 10, 19, 21)

11. Ms. Trollinger asked Petitioner to wait a minute, and asked Swindell Coley for assistance. Trollinger explained to Coley what PH had told her. When Coley saw PH, PH pointed to his groin, and explained that "that boy" banged or pushed his head against the wall. PH stomped his foot, and hit himself in the stomach area. (Resp Exhs 9, 10, 19, 21)

12. Mr. Coley notified Tony Walters, the Group Home Manager, of PH's statements. Walters notified Wanda Medline, Administrator on Duty, who contacted Kim Brantham, Chief Advocate. PH told Walters that "a boy" or "that boy" pushed PH's head it against the wall. "He didn't say a name. He normally did not call names. I never heard him call a staff name." (Resp Exh 17)

13. Around 7:40 a.m. or 7:50 a.m., Walters, Trollinger, Petitioner, and Jerry McClarin, took PH to a private bathroom to perform a body check. Petitioner stood at the door while Trollinger examined PH. Nurse Trollinger observed a quarter-size mark in PH's pelvic area, above and to the left of his penis. That area was tender to the touch. It was difficult for Trollinger to see the bruise without the use of a flashlight. Trollinger found no injury to PH's head or shoulder. (Resp Exhs 10, 21)

14. Mr. Walters had been on the unit hall that morning between 7:00 am and 7:30 am. He did not recall any commotion, or noise which was out of the ordinary. He did not hear anything that would leave him to believe a patient had been kicked in the scrotum. Walters never heard PH say the name "Kent," or witnessed PH identify Petitioner in any way as the person who kicked or pushed him. At hearing, Mr. Walters acknowledged that the only way an injury is reported on the body check form is if a staff member writes it on there. Walters also acknowledged that if he willfully injured a patient, he would not report an injury on his body check form.

15. Petitioner asked PH why he said Petitioner's name as the body who hit him. PH told Petitioner that, "It wasn't you. It was another guy in short pants, and he had something on his shoulder." (Resp Exh 7)

16. At approximately 11:30 a.m. on August 13, 2012, Dr. Donald Statuto examined PH, and observed a bruise in PH's pelvic area that was in the process of diffusing over the pubic area. Dr. Statuto was employed at O'Berry, and has been since 2006. His responsibilities included treating residents for injuries. Dr. Statuto's examination revealed that PH's skin over the bruise was intact. In Statuto's medical experience, the bruise appeared like a "blunt force trauma," and the injury occurred within the last twenty-four hours. (Resp Exh 18, T. pp. 93-94) PH told Dr. Statuto that someone hit him, but PH never told Statuto that he was kicked. PH never mentioned any names to Statuto.

17. On August 13, 2012, Petitioner left work at 1:30 P.M., and was off work on August 14, 2012. On August 15, 2012, Petitioner returned to work, and was assigned to a different unit until August 17, 2012. (T. p. 164) Petitioner had no interactions with PH after the kicking incident was reported on August 13, 2012.

18. Kim Brantham was responsible for the training of employees and the investigation of allegations of abuse or neglect of residents. At some time prior to 8:00 a.m. on August 13, 2012, Brantham received notice of the allegation of abuse regarding PH. Brantham was notified that PH was kicked by Kent in his bedroom.

19. At hearing, Brantham opined that the injury experienced by PH could have been caused by an accident, or means other than abuse, but that possibility was not examined during her investigation into the August 13, 2012 incident with PH.

20. Lynette Cox was a Unit Director at O'Berry, and was responsible for two clusters, which comprise eight homes. She never witnessed PH personally identify Petitioner as the individual who kicked him, but did indicate that PH identified Petitioner from photographs. Petitioner consistently denied to her that he abused PH. Cox was aware that PH had fallen and been injured in the past.

21. On August 13, 2012, Nurse Donna Trollinger, Unit Director Lynette Cox, and Chief Advocate Kim Brantham interviewed PH. The staff asked PH if there was anything he wanted to share with them. PH "pointed to his groin area," and stated "that man kicked him and pushed his head into wall." (Resp Exh 25) PH rambled from one topic to another. PH could not remember the name of the man who kicked him, but he told staff that the incident happened "last night in his bedroom." As PH was preparing to leave the office, Petitioner came to the door. PH said, "That's the boy." Staff asked PH if Petitioner was the man who kicked, and pushed his head against the wall. PH stated that Petitioner was the man that had kicked him, and pushed his head against the wall. PH also told staff that Petitioner was the man with the yellow pants and his friend. PH then said it was another man [who hit him]. (T. pp. 68-69) PH described the man who hit him as wearing shorts with a striped shirt "like his." PH was wearing a blue-striped polo shirt. O'Berry staff determined during its investigation that another staff member was wearing a striped shirt like PH's and shorts on August 13, 2012. (Resp Exh 25, p. 7 of 21)

22. On August 17, 2012, O'Berry management placed Petitioner, and two other staff members on administrative leave or investigative status.

23. Gwendolyn Woods ("Woods") is the niece of PH. On August 13, 2012, O'Berry nurse April Sprague telephoned Ms. Woods, and advised her of the incident involving PH. The next day, August 14, 2012, Woods visited PH. PH told Woods that "Ken" kicked him in the private area.

24. On August 17, 2012, Woods visited PH again at O'Berry, and performed a body check on PH. Woods observed red and purple whelps on PH's side and buttocks, which were not previously reported to her. She showed 3 nurses the whelps. The ones on PH's buttocks had not healed completely, and some were fresh. (T. pp. 140-141) Because PH told Woods he was still hurting, Ms. Woods took PH to Lenoir Memorial Hospital that day for an evaluation of his injuries. (Resp Exhs 11, 31)

25. On August 22, 2012, Cox and Brantham interviewed PH again with Ms. Woods present. Staff laid seven photographs of male staff members in front of PH. They asked PH if he saw the man who kicked him. PH looked through the photos one by one. Upon seeing Petitioner's photo, PH said, "That's the man." When staff asked PH if Petitioner was the man who kicked him, PH began talking about tapes, dogs, and various other unrelated topics. Staff sporadically placed the photos in front of PH again, and asked PH if he saw the person who kicked him. PH selected Petitioner's photo. PH also identified another male staff member as the person who gave him his bath. (T. p. 49) When PH looked again at the photos, he pointed to Petitioner's photo, and said, "That's the man. That's my friend." (T. p. 50) PH also identified Frankie Bellamy, another health care tech, and talked about hitting Mr. Bellamy "beside the head with his belt. PH stated that "a man had come in his room and got in his bed." (Resp Exh 25)

26. On August 29, 2012, Cox and Brantham interviewed PH with Woods present. PH claimed that a man who lives down the hall came to his room and got into the bed with PH. PH identified Frank Bellamy, another staff member, by photograph as the man who got into his bed, and hit him with a belt while he resided at O'Berry. PH described how his head was slammed "up side that bed, my foot up, my head down, my arm and my shoulders," by that man. PH noted that the man who hit him doesn't live with him, but comes in the back door [of O'Berry]. PH described how that man drives different cars, and works with PH at night. (Resp. Exh. 25) During this interview, PH frequently became confused. PH made various statements wherein he mixed together incidents from his past, including things that he experienced during his childhood, and things his dad did to him, with things that occurred in his room at O'Berry.

27. Woods removed PH from O'Berry, and brought him to live with her and her family. PH told Ms. Woods that "staff were hitting me, but he wouldn't call any names . . . he [PH] was telling me from 2012 that he didn't want to be there, and he said they were hitting him." (Resp Exh 22) While staying with Woods, PH cried a lot, had a lot of nightmares, and always talked about the incident over and over, saying that Kent kicked him. (T. pp. 139-141) At times, PH would holler at Woods' home, and she would tell him not to yell, hit, or cuss her. PH responded to Woods that, "they hit, they kick, they punch." (T. p. 140)

28. Pamela Anderson ("Anderson") is a nurse investigator employed by Respondent who investigates complaints of abuse and neglect at facilities regulated by Respondent. Ms. Anderson supervised investigator Ann Groves who primarily investigated the allegations of abuse against Petitioner.

29. On March 4, 2013, almost six months after the alleged incident occurred, Investigator Groves interviewed PH. PH remembered living at O'Berry and recalled Petitioner. Groves asked PH, "Did you ever have an incident with Kenneth Ford?" PH's answer on the interview sheet was, "He put his hand over my eyes." Ms. Groves asked PH, "Where did the incident occur?" PH answered, "In the shower." PH told Ms. Groves that he got hit, and pointed to a bruise in his groin area.

a. Ms. Groves showed PH a photograph of Petitioner, and asked PH if he knew who that was. PH said, "That was the man that did it." PH called the man Kenneth, and said he hit him with a belt, and poured water on his head. When Groves asked who kicked him, PH took the picture of Petitioner and said, "He did." (Resp Exh 23)

b. At hearing, during cross-examination, Ms. Anderson acknowledged that PH did not know that the photograph they showed him was Petitioner. She also acknowledged that PH did not identify Petitioner as the man who kicked him until Ms. Groves showed Petitioner's photograph to PH. (T. pp. 206-207)

30. Based on Respondent's investigation, Anderson opined that Petitioner kicked PH in the groin on the morning of August 13, 2012. Anderson believed that PH was standing behind Petitioner, and kicked PH "donkey style," which resulted in PH's injury. However, Anderson acknowledged that no person she interviewed in the course of the investigation heard any commotion in the unit which would suggest Petitioner kicked PH "donkey style" on August 13, 2012. (T. pp. 199-201)

31. Anderson based her finding, in part, on what she described as inconsistencies in the statements Petitioner gave to individuals during the O'Berry investigation and the DHHS investigation. However, upon closer examination, Anderson was unable to identify any inconsistent statements made by Petitioner.

32. Dr. Donna Ramsey ("Ramsey") is a psychologist who treated PH from January of 2013 until June of 2013. After conducting a clinical assessment of PH, Dr. Ramsey diagnosed PH with Post Traumatic Stress Disorder ("PTSD"). Ramsey indicated that PH seemed to relive a trauma from his past that affected his behavior and overall demeanor. Ramsey described PH's statements about this incident as the "same man, with the same belt, standing there at night." Ramsey indicated that PH never mentioned a kick, and it seemed to her like the event he was describing happened at night. Ramsey was also aware from Ms. Woods that PH had experienced some physical and sexual abuse. She "got many statements from him [PH] that there absolutely was a trauma," and that it impacted PH psychologically, physically, and emotionally. (T. p. 104)

33. A preponderance of evidence showed that Petitioner never worked the "A" or night shift while he was employed at O'Berry.

34. At hearing, Statuto opined that based on his "logical medical opinion," PH's injury was most likely caused by a fall into a curved object like the edge of a table. He explained that:

I envision a curved surface. The corner of a table would be a – a good way to explain how the blood vessel was probably broken. . . . He could have fallen. More likely than not, that's what it is.

(T. p. 95-97) In his medical opinion, the injury was not caused by a kick or a punch.

35. A preponderance of the evidence also established that PH suffered bruises on his right buttocks and side, but the origin or source of such injury was unknown and not determined by Respondent.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to N.C. Gen. Stat. Chapters 131E and 150B. To the extent the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. All parties have been correctly designated, and there is no question of misjoinder or nonjoinder.

3. Respondent has the burden of proving by a preponderance of the evidence that Respondent acted erroneously, acted arbitrarily or capriciously, failed to use proper procedure, or failed to act as required by law or by rule in violation of N.C. Gen. Stat. § 150B-23.

4. N.C. Gen. Stat. § 131E-256(a)(1)(a) requires Respondent maintain a registry containing the names of all health care personnel working in health care facilities in North Carolina who have been subject to findings of abuse of a resident. The Health Care Personnel Registry provides a process to protect residents from abuse by preventing the future employment of personnel in health care facilities who are known to be abusive.

5. As a health care personnel working in a health care facility, Petitioner is subject to the provisions of N.C. Gen. Stat. § 131E-256.

6. "Abuse" is defined by 42 CFR Part 488.301 to mean: "the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in physical harm, pain, or mental anguish."

7. A preponderance of the evidence showed that Respondent did not deny Petitioner any due process rights to a hearing before substantiating and entering a

finding of abuse against Petitioner's name on the Health Care Personnel Registry. This contested case hearing afforded Petitioner the required due process rights to a hearing before Respondent could implement any agency action against Petitioner.

8. A preponderance of the evidence clearly established that resident PH suffered physical injury to his groin area on or about August 13, 2012. However, Respondent failed to present sufficient evidence to prove by a preponderance of the evidence that Petitioner was the person who abused resident PH on August 13, 2012, at O'Berry, by kicking PH in the groin and pushing PH's head against a wall.

a. First, PH was the only person who identified Petitioner as the man who kicked him in the groin on August 13, 2012, and there were no eyewitnesses to the incident.

b. Secondly, a preponderance of the evidence proved that PH's identification of Petitioner as the perpetrator was not reliable. PH had dementia, and was known to "mix together" events from the past with events in the present. During the facility's three interviews of PH, PH's confusion of the past and present day events was apparent and frequent. PH rambled in his answers. At the same time that PH identified Petitioner, from a photograph, as the man who hit him, PH pointed to Petitioner's photo and called Petitioner his friend. PH described the man who kicked him as someone wearing shorts and striped shirt like he was wearing on August 13, 2012. On August 13, 2012, PH similarly told Petitioner that Petitioner wasn't the man who kicked him, and "It was another guy in short pants, and he had something on his shoulder." (Resp Exh 7) During O'Berry's investigation, PH indicated he was hit while in his bedroom, and Respondent determined that PH was kicked while in his bedroom. However, during Respondent's investigation of PH, PH said the hitting incident occurred in the shower.

c. There was no evidence that Petitioner was wearing shorts and a striped shirt at work on August 13, 2012. O'Berry management learned that another staff member was wearing shorts and striped shirt like PH on August 13, 2012. (Resp Exh 25) There was no evidence Respondent further investigated this factor.

d. During O'Berry's interview of PH, PH not only accused another staff member of getting in the bed and sexually abusing him, but claimed that someone hit him with a belt.

e. Contrary to Respondent's determination that PH was kicked around 7:20 a.m. on August 13, 2012, PH claimed that he was hit at night.

f. Dr. Statuto's logical medical opinion was that PH's injury was most likely caused by a fall into a curved object like the edge of a table. Statuto examined PH four hours after PH was injured, while there was no evidence that Respondent physically examined PH, and Respondent did not interview PH until

seven months after the injury occurred. Respondent presented insufficient medical evidence to rebut Dr. Statuto's medical opinion.

9. The photographic evidence of PH's bruised buttocks, combined with PH's statements, and Dr. Ramsey's statements undoubtedly proved that PH suffered physical harm from being hit by a belt during the subject time period. Nevertheless, since that issue was not part of the contested case before me, the undersigned will not make any determination regarding that issue.

10. Based on a preponderance of the evidence in this case, Respondent erred in substantiating a finding of abuse against Petitioner's name, and listing such finding against Petitioner's name on the Health Care Personnel Registry.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **REVERSES** Respondent's decision to place a finding of substantiated abuse against Petitioner's name on the Health Care Personnel Registry, and Orders such finding against Petitioner's name be removed from the Health Care Personnel Registry.

NOTICE AND ORDER

This Final Decision is issued under the authority of N.C. Gen. Stat. § 150B-36(c). Pursuant to N.C. Gen. Stat. § 150B-45, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the **petition within 30 days after being served** with a written copy of the Administrative Law Judge's Decision and Order.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. N.C. Gen. Stat. § 150B-47 requires the Office of Administrative Hearings to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. To ensure the timely filing of the record, the appealing party must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings when the appeal is initiated.

This 16th day of February, 2014.


Melissa Owens Lassiter
Administrative Law Judge

STATE OF NORTH CAROLINA

Filed

COUNTY OF WAKE

2014 JUL -3 PM 4:04

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 19981**

SUSAN ARROWOOD, OLPC, Office of Administrative Hearings

Petitioner,

v.

N.C. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
MEDICAL ASSISTANCE and its Agent
PARTNERS BEHAVIORAL HEALTH
MANAGEMENT,

Respondents.

**FINAL DECISION
ORDER OF DISMISSAL**

THIS MATTER came on for hearing on December 30, 2013 before the undersigned Administrative Law Judge, Augustus B. Elkins II, in Raleigh, North Carolina. A Petition for a Contested Case Hearing was filed by Petitioner, Susan Arrowood, OLPC ("Petitioner") with the Office of Administrative Hearings (OAH) on December 9, 2013 along with a Motion for Stay, Temporary Restraining Order (TRO) and Preliminary Injunction. The Undersigned partially granted the TRO on December 20, 2013. The Undersigned allowed Partners Behavioral Health Management ("Partners") and N.C. Department of Health and Human Services, Division of Medical Assistance (DHHS/DMA) to present Motions to Dismiss for lack of subject matter jurisdiction in writing inasmuch as the Motions had been made orally during the TRO hearing. The Undersigned requested that all parties file supporting memoranda as to their positions on whether the OAH has jurisdiction over the subject matter of Petitioner's claims.

APPEARANCES

For Petitioner: Knicole Emanuel
Williams Mullen
301 Fayetteville St., Suite 1700
Raleigh, NC 27601

For Respondent
DHHS/DMA: Thomas J. Campbell
Assistant Attorney General
Public Assistance Section
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

For Respondent

Partners: Nancy B. Paschall
Mullen Holland & Cooper P.A.
PO Box 488
Gastonia, NC 28053-0488

AFTER CONSIDERING the Motions, Responses, Pleadings, Affidavits, Memoranda and arguments of counsel and for good cause shown, the Undersigned makes the following:

FINDINGS OF FACT

1. The Division of Medical Assistance section of Respondent State Agency, Department of Health and Human Services (DHHS/DMA), is responsible for administering and managing North Carolina's Medicaid plan and program. Pursuant to North Carolina General Statutes § 108A-54, DHHS/DMA is authorized to adopt rules, regulations, and policy for program operation.

2. Partners is a multi-county area mental health, developmental disabilities and substance abuse authority established pursuant to North Carolina General Statutes § 122C-115. Partners is a local management entity/managed care organization (LME/MCO) that is responsible for the management and oversight of the public system of mental health, developmental disabilities and substance abuse services at the community level. Partners contracts with the DHHS/DMA to manage the Medicaid benefits of its consumers. In doing so, Partners operates as a Prepaid Inpatient Health Plan (PIHP), receiving a finite amount of funding from the State to manage the provision of Medicaid benefits to consumers in its catchment area.

3. Partners is the Department's legally authorized agent and contractor, which, acting within the scope of its authorized activities, assesses, authorizes, manages, reviews, audits, and monitors services pursuant to the Social Security Act, the North Carolina State Plan of Medical Assistance, and the waivers of the federal Medicaid Act granted by the United States Department of Health and Human Services.

4. As a LME/MCO/PIHP, Partners is responsible for recruiting, developing, and overseeing a comprehensive provider network within its area of authority that assures access to care for all Medicaid enrollees in the applicable Medicaid waiver program. Because Partners contracts with providers under the applicable Medicaid waiver program, if a provider does not have a contract with Partners, that provider cannot participate in the Medicaid waiver that Partners operates.

5. Petitioner Susan Arrowood, OLPC is a provider of mental health and substance abuse services in Morganton, NC and surrounding areas. Petitioner assists consumers, including Medicaid recipients, in preventing, overcoming, and managing deficits caused by mental health

and/or substance abuse issues. Petitioner is a provider who serves Medicaid recipients inside Partners' catchment area pursuant to a contract with Partners.

6. Partners is a limited, local agent of DHHS/DMA and has general authority to enter into contracts with both DHHS/DMA and Petitioner. The contract between DHHS/DMA and Partners requires Partners to provide a process for provider appeals.

7. Petitioner and Partners entered into a contract setting forth conditions of the contract including processes for disputing termination. Partners established its disputes policies and procedures setting forth the review for properly and timely established grievances. The Procurement Contract between Partners and Petitioner provides that the dispute resolution process and appeals process is outlined in the Provider Manual.

8. In accordance with the contract, Partners established a Participating Provider Disputes Policy and Procedure ("Policy"). The Provider Disputes Policy outlines the steps a provider should take in order to review and contest a decision involving the provider's status within the network. Two levels of panel review are provided. The Policy states that written notification of the panel decision will be sent to the provider. Included in the written notification is information about the participating provider's right to appeal to the State Appeals Panel and the mechanism to request such reconsideration.

9. On November 25, 2013, Partners notified Petitioner in writing that it was terminating its contract with Petitioner with cause on January 1, 2014.

10. Petitioner was informed in the November 25, 2013 letter that it could "dispute the decision of Partners. . .". Petitioner was informed that a formal written request to dispute the decision must be submitted within twenty-one (21) calendar days. The letter further informed Petitioner that the decision of Partners shall be considered final if a reconsideration request was not received. The Participating Provider Disputes Policy and the Dispute Resolution Form was included with the letter.

11. Petitioner did not submit a request for reconsideration or avail herself of the Provider Disputes Policy prior to filing her case with OAH. At no point did Petitioner follow the Provider Dispute Policy and Procedure. Petitioner did not complete the Provider Dispute Resolution Form, nor did she appeal the contract termination in any manner at the Partners level.

12. DHHS/DMA did not independently take any action against the Petitioner. DHHS/DMA incorporated the arguments made by Partners that Petitioner failed to exhaust all administrative remedies at her disposal in the DHHS/DMA memorandum filed with the OAH.

13. Respondents Partners and DHHS/DMA presented written arguments that OAH does not have jurisdiction over provider appeals for contractual termination from an LME/MCO with references to North Carolina General Statutes § 150B and 108(C). The Undersigned, at the beginning of oral arguments, stated these arguments would not be considered at this time as part of its decision on the Motions to Dismiss, wishing to focus solely on the issue of Petitioner's

failure to exhaust her administrative remedies. Counsel for Partners requested that the arguments made in writing be preserved as being made in the record and the Undersigned so noted.

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties received proper notice of the motions and the hearing in this matter.
2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Bonnie Ann F. v Callahan Indep. Sch. Bd.*, 835 F. Supp. 340 (1993). A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).
3. "Questions of subject matter jurisdiction may properly be raised at any point, even in the Supreme Court." *Forsyth County Bd. of Social Services v. Division of Social Services*, 317 N.C. 689, 346 S.E.2d 414 (1986) (citations omitted). *Williams v. New Hanover County Bd. of Educ.*, 104 N.C.App. 425, 409 S.E.2d 753 (1991) (*quoting Harrell v. Whisenant*, 53 N.C.App. 615, 281 S.E.2d 453 (1981)).
4. The contractual provision which provides for a local reconsideration review is a valid and binding provision within the contract. Such a provision is reasonable and is required of both the LME/MCO/PIHP and the Petitioner.
5. North Carolina statutes require that providers exhaust the appeals process at the area authority (LME/MCO) level and then proceed to the State Appeals Panel. North Carolina General Statute § 122C-151.3 requires that an area authority establish written procedures for resolving disputes over decisions of an area authority that may be appealed to the State MH/DD/SA Appeals Panel.
6. North Carolina General Statute § 122C-151.4 describes the process of appeal for contractors (providers) who: (i) claim that an area authority has not acted within applicable State law or rules in imposing particular requirements; (ii) claim that a particular requirement of the contract substantially compromises the ability of the contractor to fulfill the contract; or (iii) that the area authority has acted arbitrarily or capriciously in reducing funding for the type of services provided by the contractor.
7. North Carolina General Statute § 122C-151.4(f) further states that a person who is dissatisfied with a decision of the State MH/DD/SA Appeals Panel may commence a contested case under Chapter 150B. The statute further provides that : "If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to

the Office of Administrative Hearings *after having exhausted the appeals process at the appropriate area authority. . .*” (Emphasis added.)

8. The Petitioner failed to exhaust the appeals process at the area authority (LME/MCO) level as required by N.C. General Statutes.

9. The OAH is a court of limited jurisdiction, and cannot exercise jurisdiction over matters or entities unless specifically authorized by statute. *Empire Power Co. v. N.C. Department of Environment and Natural Resources*, 337 N.C. 569, 586; 447 S.E.2d 768, 788 (1994) (“There is no inherent right to appeal from an administrative decision to either OAH or the courts.”); *Gummels v. N.C. Department of Human Resources*, 98 N.C. App. 675, 677; 392 S.E.2d 113, 114 (1990) (“ . . because the right to appeal to an administrative agency is granted by statute, compliance with statutory provisions is necessary to sustain the appeal.”)

10. The Petitioner did not avail herself of the local appeals process as required by the contract between the parties or the applicable statutes. Where a Petitioner does not follow statutory requirements for submitting an appeal, the OAH does not acquire jurisdiction over the subject matter of the case. See *Nailing v. UNC-CH*, 117 N.C. App. 318; 451 S.E.2d 351 (1994), *disc. rev. denied*, 339 N.C. 614; 454 S.E.2d 255 (1995).

11. “An action is properly dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction where the plaintiff has failed to exhaust administrative remedies.” *Johnson v. University of N.C.*, 202 N.C. App. 355, 357; 688 S.E.2d 546, 548 (2010).

12. OAH lacks subject matter jurisdiction based upon (a) the contractual terms between the parties; (b) the statutory requirements for provider disputes with LME/MCO area authorities; and (c) the limited jurisdiction of OAH.

13. The local reconsideration review policy promotes efficiency by providing the LME/MCO the opportunity to correct its own mistakes and further provides a process of administrative remedies for the parties to try to resolve their controversy through informal procedures at the lowest level possible.

14. Asserting jurisdiction in a case where a petitioner has failed to exhaust administrative remedies could open a flood gate of provider cases to OAH which could then become the only arbiter of all contract terminations of LME/MCOs, contrary to systems set up by the federal and state governments.

15. A court should dismiss an action for want of subject matter jurisdiction if the moving party is entitled to prevail as a matter of law.” *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir.1999) (quoting *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir.1991)).

16. When reviewing a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b), a trial court may consider and weigh matters outside the pleadings. See *Department of Transportation v. Blue*, 147 N.C. App. 596, 556 S.E.2d 609 (2001).

17. Administrative tribunals only have such authority as is properly conferred upon them by the Legislature. *State ex rel. Utilities Comm'n v. Carolina Utility Customers Ass'n, Inc.*, 336 N.C. 657, 446 S.E.2d 332 (1994); *Meads v. N.C. Dep't of Agriculture*, 349 N.C. 656, 509 S.E.2d 165 (1998).

18. Where it is obvious that the Court lacks the authority to hear a matter, the Court is precluded from exercising its jurisdiction and is therefore obliged to dismiss the case. *Lovern v. Edwards*, 190 F.3d 648 (4th Cir.1999).

19. Petitioner failed to exhaust her administrative remedies. The Respondent is entitled to a dismissal of the Petition because of the Petitioner's premature filing of his Petition. Because dismissal has been found appropriate based on the lack of subject matter jurisdiction, the Undersigned has no need to address any further basis of Respondent's motion.

FINAL DECISION

NOW, THEREFORE, based on the foregoing, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above and grants the Respondent Partners Behavioral Health Management's Motion to Dismiss the whole of the Petition brought by Petitioner. The North Carolina Office of Administrative Hearings lacks subject matter jurisdiction to hear the case and dismissal is appropriate and proper pursuant to N.C. GEN. STAT. § 1A-1, Rule 12(b) of the North Carolina Rules of Civil Procedure. It is hereby **ORDERED** that this contested case be **DISMISSED without prejudice**.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-33 and N.C. Gen. Stat. § 150B-34.

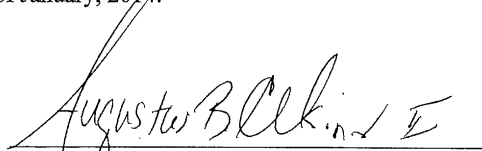
Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

In conformity with the Office of Administrative Hearings' Rules, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED, *nunc pro tunc*, the 30th day of December, 2013.

Signed and entered this the 7th day of January, 2014.


Augustus B. Elkins, II
Administrative Law Judge Presiding

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
1/7/2014 9:31 AM

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ11693

WILLIAM DALE AARONSON PETITIONER, V. N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	PROPOSAL FOR DECISION
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On November 26, 2013, Administrative Law Judge J. Randall May heard this case in High Point, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: William Dale Aaronson, *Pro Se*
10561 Doe Run Drive
Marston, North Carolina 28363

For Respondent: Matthew L. Boyatt, Assistant Attorney General
Attorney for Respondent
NC Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Has the Petitioner committed or been convicted of any combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commissions' Rules, such that Petitioner's application for certification is subject to denial?

Has Petitioner committed the felony offense of Financial Card Fraud?

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner

received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on March 20, 2013.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. Petitioner is an applicant for justice officer certification through the Scotland County Sheriff's Office.

4. 12 NCAC 10B. 0204(d)(5) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of:

(5) Any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

5. 12 NCAC 10B. 0204(a)(1) further provides:

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

(1) a felony

6. The Petitioner testified at the administrative hearing and does not dispute that he has been convicted of six (6) misdemeanor offenses, as set out in greater detail below.

7. On January 27, 1998, Petitioner was convicted of misdemeanor worthless check in violation of N.C.G.S. § 14-107 (d)(1) in Richmond County, North Carolina; Case No. 1996 CR 005785. (Respondent's Exhibit 3)

8. On August 8, 1996, Petitioner was convicted of misdemeanor worthless check in violation of N.C.G.S. § 14-107 (d)(1) in Richmond County, North Carolina; Case No. 1996 CR 005043. (Respondent's Exhibit 3)

9. On August 8, 1996, Petitioner was convicted of misdemeanor assault in violation of N.C.G.S. § 14-33(a) in Richmond County, North Carolina; Case No. 1996 CR 005040. (Respondent's Exhibit 3)

10. On August 8, 1996, Petitioner was also convicted of misdemeanor carrying a concealed gun in violation of N.C.G.S. § 14-269 (a1) in Richmond County, North Carolina; Case No. 1996 CR 005041. (Respondent's Exhibit 3)

11. On August 8, 1996, Petitioner was also convicted of a second count of misdemeanor assault in violation of N.C.G.S. § 14-33 (a) in Richmond County, North Carolina; Case No. 1996 CR 005042. (Respondent's Exhibit 3)

12. On April 8, 1994, Petitioner was convicted of misdemeanor financial card fraud in violation of N.C.G.S. § 14-113.13 in Forsyth County, North Carolina; Case No. 1994 CR 001384. (Respondent's Exhibit 3)

13. Petitioner was ordered by the court to pay restitution in the amount of \$800.00 as a result of Petitioner's misdemeanor financial card fraud conviction in 1994 CR 001384. In addition, Petitioner was placed on probation for 2 years and was ordered to pay attorney's fees and to obtain his high school diploma. Petitioner paid the \$800.00 in restitution and complied with the court's remaining order.

14. Pursuant to 12 NCAC 10B .0103 (10) (a), and the Class B Misdemeanor Manual adopted by the Respondent, the criminal offenses of issuing a worthless check, simple assault, and carrying a concealed gun are each classified as Class A misdemeanors.

15. Petitioner has been convicted of five (5) Class A misdemeanors: 1) misdemeanor worthless check, 1996 CR 005785; 2) misdemeanor worthless check 1996 CR 005043; 3) simple assault 1996 CR 005040; 4) carrying a concealed gun, 1996 CR 005041; and 5) simple assault, 1996 CR 005042.

16. Pursuant to 12 NCAC 10B .0103 (10) (b), and the Class B Misdemeanor Manual adopted by the Respondent, the criminal offense of misdemeanor financial card fraud in violation of N.C.G.S. § 14-133.13 constitutes a Class B misdemeanor. The record establishes that Petitioner has been convicted of the Class B misdemeanor offense of financial card fraud in case No. 1994 CR 001384.

17. Petitioner testified regarding the two simple assault convictions and the carrying a concealed gun conviction set out above. These offenses arose out of the same incident. Petitioner and his friends were fooling around and were throwing glass bottles at a sign. Petitioner stated two (2) by standards were struck by glass as the bottles shattered. When the police arrived, Petitioner was found to be in possession of a concealed handgun. Petitioner and his friends were charged criminally. Petitioner accepted responsibility for his actions and pleaded guilty when he appeared in court. The criminal charges against Petitioner's friends were later dismissed when the victims failed to appear in court on the second setting. Petitioner was 19 years old when these events occurred.

18. Regarding the two (2) worthless check convictions, Petitioner believes these were an honest mistake on his part. Petitioner did not have funds sufficient to cover the checks when Petitioner issued them. Petitioner accepted responsibility for his actions and paid restitution in

full when he pleaded guilty to these two (2) charges. Petitioner was also 19 years old when he issued the worthless checks.

19. With regard to the financial card fraud, Petitioner was honest and forthright regarding his unlawful activity. In August of 1993 Petitioner visited his step- grandparents, Anthony and June Pierce, in Kernersville, North Carolina. Petitioner was staying with them for approximately two (2) weeks. During this visit, June Pierce showed Petitioner how to use a debit card. Petitioner admitted that the purpose of this was to show Petitioner how the card worked. Petitioner was not given permission by either June or Anthony Pierce to take the ATM bank card or to otherwise withdraw funds with the ATM bank card.

20. On August 19, 1993, Petitioner snuck his step-grandparent's ATM bank card from a dresser in their home. Petitioner then went to the bank on his bicycle and proceeded to withdraw \$300.00 without the knowledge or consent of either Anthony or June Pierce. Petitioner returned the card to the dresser undetected. At no point during his visit did Petitioner let either June or Anthony Pierce know that Petitioner had taken their ATM bank card, or that he had fraudulently withdrawn \$300.00 from their account. Petitioner does not recall what he spent the money on specifically, but Petitioner does admit that he used the money for various personal items and that he spent all the money prior to getting caught.

21. When Petitioner returned home from his August 1993 trip to visit his step-grandparents, Petitioner concealed from his mother that he had fraudulently withdrawn \$300.00 from Anthony and June Pierce's bank account without their knowledge or consent. The Petitioner continued to spend the \$300.00 he stole after his return home and made no effort to disclose this to his parents or step-grandparents.

22. Five (5) months later, Petitioner visited Anthony and June Pierce again in Kernersville during the month of January 1994. On January 3, 1994, Petitioner snuck his step-grandparent's ATM bank card for the second time without the knowledge or consent of either June or Anthony Pierce. Petitioner went to the bank on his bicycle and withdrew \$500.00 from the Pierce's bank account without the knowledge or consent of either June or Anthony Pierce. Petitioner returned the ATM bank card to the dresser undetected. At no point during his January 1994 visit did Petitioner let either June or Anthony Pierce know that Petitioner had taken their ATM bank card, or that he had fraudulently withdrawn \$500.00 from their account. Petitioner does not recall what he spent the \$500.00 on specifically, but Petitioner does admit that he used the money for various personal items and that he spent all the money prior to getting caught.

23. When Petitioner returned home from his January 1994 visit at his step-grandparents, Petitioner concealed from his mother that he had fraudulently withdrawn \$500.00 from Anthony and June Pierce's bank account without their knowledge or consent. The Petitioner continued to spend the \$500.00 he stole after his return home and made no effort to disclose this to his parents or step-grandparents.

24. At some point following his January 1994 visit with his step-grandparents, Petitioner left for Job Corps in Kentucky. It was not until his return home from Job Corps that Petitioner learned that he had been caught stealing from his step-grandparents. Petitioner's step-

grandparents noticed the discrepancy in their bank account on the second \$500.00 transaction, and were able to identify Petitioner as the one who took the money through the video surveillance from the ATM machine at their bank.

25. Petitioner admits that he stole from his step-grandparents. Petitioner admits that he stole a total of \$800.00 through two (2) separate ATM transactions. Petitioner did not have the consent of Anthony and/or June Pierce when these transactions were made, or any time thereafter. Petitioner testified that Anthony Pierce pursued the criminal charges in order to teach Petitioner a life lesson.

26. As a condition of Petitioner's misdemeanor financial card fraud conviction, Petitioner was ordered to pay restitution to his step-grandparents in the amount of \$800.00 for the two (2) fraudulent bank card withdrawals on August 19, 1993 and January 3, 1994.

27. Petitioner regrets his actions and is remorseful that he stole \$800.00 from his step-grandparents in two fraudulent bank card transactions. Petitioner was 17 years old when he engaged in this unlawful activity. At that time, Petitioner was living at home with his mother. Petitioner did not pay rent at that time and Petitioner had no other expenses such as a car payment or insurance premiums. Petitioner no longer has contact with his step-grandparents.

28. Petitioner committed the felony offense of financial card fraud within the meaning of N.C.G.S. § 14-133.13. Petitioner took the Pierce's ATM bank card on August 19, 1993 and again on January 3, 1994 without their knowledge and without their consent. Within a six-month period, Petitioner used the ATM bank card at a bank ATM on the two above-referenced dates to fraudulently withdraw a total of \$800.00. Petitioner took the money and converted it to his own personal use without the knowledge or consent of the cardholders, Anthony and June Pierce. Pursuant to N.C.G.S. § 133.13 and N.C.G.S. § 113.17(b), Petitioner's fraudulent withdrawals constitute a felony because the amount of the two transactions was in excess of \$500.00.

29. Despite Petitioner's criminal record, Petitioner has been employed by the Scotland County Sheriff's Office in a probationary status for approximately 16 months. At the administrative hearing, Petitioner introduced into the record a letter of support from Scotland County Sheriff Shep Jones. Sheriff Jones believes Petitioner is an excellent and hard-working officer who has provided exemplary service to the Sheriff's Office. Sheriff Jones is hopeful Petitioner can resolve his issues with the Sheriffs' Commission in order to continue his service with the Scotland County Sheriff's Office.

30. The Petitioner also has previous law enforcement experience. Petitioner has previously received certification through the North Carolina Criminal Justice Education and Training Standards Commission. Petitioner worked for the Wagram Police Department for approximately four (4) years. Petitioner introduced into the record a letter of support from Chief of Police K. Locklear. Chief Locklear characterized Petitioner as an exceptional police officer and recommended that the Sheriffs' Commission issue Petitioner his General Certification in order to become a sworn deputy.

31. Based on the evidence presented at the administrative hearing, including Petitioner's sworn testimony and the exhibits introduced into the record, this court finds that Petitioner has been convicted of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commission's Rules, such that Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204 (d)(5) and 12 NCAC 10B .0205. The court further finds that Petitioner committed the felony offense of financial card fraud within the meaning of N.C.G.S. § 14-113.13, such that Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204 (a)(1) and 12 NCAC 10B .0205.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on March 20, 2013.

2. Pursuant to 12 NCAC 10B. 0204(a)(1), the Commission shall deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a felony.

3. Pursuant to N.C.G.S. § 14-113.13, an individual commits the felony offense of financial transaction card fraud when he obtains money, with the intent to defraud the lawful card holder, by representing that he is the lawful holder of a financial transaction card when in fact he does not have the consent of the lawful card holder and is not authorized to withdraw the funds. If within a six (6) month period the individual unlawfully withdraws over \$500.00, the offense is classified as a Class I felony pursuant to N.C.G.S. § 14-113.13 and N.C.G.S. § 14-113.17(b).

In the case at bar, Petitioner used the ATM bank card of Anthony and June Pierce without their knowledge or consent to fraudulently withdraw a total of \$800.00 from the bank account of Anthony and June Pierce within a 5 month period. On August 19, 1993, Petitioner fraudulently withdrew \$300.00 from the Pierce's bank account without their knowledge or consent. Petitioner spent this money on himself and made no effort to disclose to his step-grandparents that he had stolen money from them. On January 3, 1994, Petitioner again fraudulently withdrew \$500.00 from the Pierce's bank account without their knowledge or consent. Petitioner again spent this money on himself and made no effort to disclose to his step-grandparents that he had stolen money from them. On each occasion, Petitioner snuck the Pierce's ATM bank card from a dresser within the Pierce home with the intent to fraudulently withdraw money without permission for his personal use. Petitioner knew he was not entitled to these funds. Petitioner admits that he stole from his step-grandparents and is remorseful for his action. The record establishes Petitioner committed the class I felony offense of financial transaction card fraud within the meaning of N.C.G.S. § 14-113.13 and Petitioner's application for certification should therefore be denied pursuant to 12 NCAC 10B. 0204(a)(1).

4. Pursuant to 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of:

(5) Any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

5. Pursuant to 12 NCAC 10B .0103(2), "convicted" or "conviction" means and includes, for purposes of that Chapter, the entry of (a) a plea of guilty; (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or (c) a plea of no contest, nolo contendere, or the equivalent.

6. Pursuant to 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).

7. The criminal offenses of simple assault under N.C.G.S. § 14-33 (a), carrying a concealed gun under N.C.G.S. § 14-269 (a1), and misdemeanor worthless check under N.C.G.S. § 14-107 (d)(1), are each classified as Class A misdemeanors pursuant to 12 NCAC 10B .0103 (10)(a) and the Class B Misdemeanor Manual adopted by Respondent. The record in this case establishes that Petitioner has been convicted of five (5) separate Class A misdemeanors as follows: 1) misdemeanor worthless check, 1996 CR 005785; 2) misdemeanor worthless check 1996 CR 005043; 3) simple assault 1996 CR 005040; 4) carrying a concealed gun, 1996 CR 005041; and 5) simple assault, 1996 CR 005042.

8. The criminal offense of misdemeanor financial card fraud under N.C.G.S. § 14-113.13 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by the Respondent. The record in this case establishes that Petitioner was convicted of misdemeanor financial card fraud on April 8, 1994; 1994 CR 001384.

9. Petitioner has a total of six (6) criminal convictions classified as Class A and/or Class B misdemeanors pursuant to the Commission's Rules, as set out in greater detail above. Petitioner's application for certification is therefore subject to denial pursuant to 12 NCAC 10B .0204(d)(5). All convictions occurred over ten (10) years ago.

10. Pursuant to 12 NCAC 10B .0205, the Respondent may, in its discretion, reduce or suspend the period of sanction imposed for the Petitioner's record of a combination of four or more Class A or Class B misdemeanor convictions "when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension."

PROPOSAL FOR DECISION

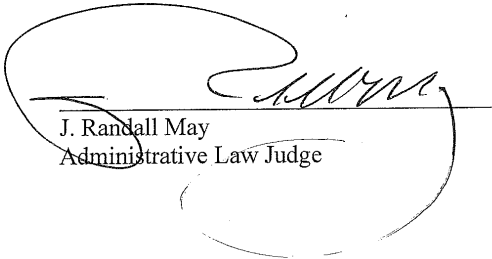
Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned finds that the Petitioner has committed the felony offense of financial transaction card fraud and has been convicted of six (6) misdemeanor offenses as set out in greater detail above. As to the felony offense [12 NCAC 10B. 0204(a)(1)] and because of the extenuating circumstances regarding Petitioner's relationship with the victims (his grandparents); Petitioner's age (17 years of age) at the time of the offense (1993); and his unblemished career as a police officer; it is RECOMMENDED that the Commission consider waiving the requirement of a permanent suspension and, instead, SUSPEND his suspension with a term of probation.

NOTICE AND ORDER

The North Carolina Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 7th day of January, 2014.


J. Randall May
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF MADISON

Filed

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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 OSP 12223

CHAUNCEY JOHN LEDFORD
PETITIONER

VS.

NC DEPARTMENT OF PUBLIC SAFETY
RESPONDENT

FINAL DECISION

This contested case was heard before Fred Gilbert Morrison Jr., Senior Administrative Law Judge, in Raleigh, North Carolina, on December 2, 3, & 4, 2013. On December 27, 2013, the parties filed proposed findings of fact and conclusions of law.

APPEARANCES

For Petitioner: Larry B. Leake
Jamie A. Stokes
LEAKE & STOKES
Attorneys at Law
1 West Pack Square, Suite 501
Asheville, NC 28801

For Respondent: Joseph Finarelli
Special Deputy Attorney General
Jodi Harrison
Assistant Attorney General
NC Department of Justice
P. O. Box 629
Raleigh, NC 27602

ISSUE

Whether the termination of Petitioner's employment as an ALE Special Agent was a result of discrimination based upon his political affiliation?

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. §§ 126-34, 34.1 & 36

FINDINGS OF FACT

Petitioner Chauncey John Ledford was born on July 8, 1965, in Buncombe County, North Carolina. He graduated from Madison County High School in 1983. Petitioner registered as a Democrat at age 18. His father, also a Democrat, served as a member of the Madison County Board of Commissioners for twenty years. Following high school, Petitioner worked in his family's business for several years before serving three years (April 1990-September 1993) as a Buncombe County Deputy Sheriff.

Petitioner served 5 years (September 1993-November 1998) as an ALE Special Agent with then CCPS which is now DPS before being elected Sheriff of Madison County. He served as sheriff from December 1998 to October 2009 when he was appointed Director of ALE (policy-making exempt) by Governor Beverly Perdue (Democrat) upon the recommendation of her appointed Secretary of Crime Control & Public Safety, Reuben Young. During seven (2002-2009) of his eleven years as sheriff, Petitioner also was a Special Agent Reserve with ALE.

In addition to his years of service as a deputy sheriff, ALE Special Agent, Sheriff, ALE Reserve Agent, & ALE Director, Petitioner completed hundreds of hours of law enforcement training, including at the FBI Academy, the Drug Enforcement School & Academy, SWAT (SOG) & BLET. He was well-qualified to be an ALE Agent Advanced.

In late 2012 Petitioner decided that he would like to return to the field as an ALE Special Agent. He discussed this desire with DPS Secretary Reuben Young and made a written request to him on November 27, 2012. Secretary Young, pursuant to his statutory authority in G. S. 18B-500, 143B-10, 126-5(e) & (f), approved the request by memo dated December 19, 2012, after clearing it with his CEO/Chief Deputy Secretary, his Human Resources Director, Governor Perdue, and her chief of staff. The interim director at the Office of State Personnel had also been contacted and approved the personnel action. There was a position vacancy in Wilmington, an agent retiring in Asheville, a greater need for an agent in Asheville, so the Petitioner was demoted from SG 83 to SG 72 and reassigned to the Asheville District effective January 1, 2013, with a 41% reduction in pay (from \$110,000 to \$65,887 annually, which was within limits allowed by policy). Although there was a continual posting for ALE agent, there was no need for a posting for this transaction as it was a demotion/transfer/reassignment by Secretary Young and the agency was not openly recruiting in this instance. Upon his return to the field, Petitioner performed very well, leading in arrests and being recognized once as agent of the month. He was no longer in a policy-making exempt position, rather he had become a probationary employee in a non-exempt job who had to serve two years before being recognized as a career state employee under the State Personnel Act. His supervisor had no concerns nor had he received any complaints about how Petitioner performed his duties.

Pat McCrory (Republican) was elected as governor in the November 2012 election. When his transition team met with DPS officials they asked whether any exempt employees were being placed in non-exempt positions and were told about the plans for Petitioner. When he was told of a negative comment from a Republican state senator about Petitioner being reassigned, new DPS Secretary Kieran Shanahan (Republican) remarked: "That should not have happened." Incoming officials were disappointed Petitioner was no longer in a policy-making exempt position subject to dismissal without rights for another position.

On or about February 6 and February 16, 2013, two disgruntled ALE agents who had been disciplined (one by Petitioner) filed internal grievances complaining about salary inequities and the manner in which Petitioner had been demoted and assigned to Asheville at a salary higher than other agents. The first grievant had outside help in preparing his grievance and shared it with the second grievant who filed the same. On March 4 and March 12, 2013, DPS Secretary Shanahan advised the two agents that their appeals did not contain any issue(s) that are grievable pursuant to State Law or Agency Policy. The grievants did not seek a contested case hearing regarding Petitioner's demotion/transfer as provided by G. S. 126-36.2 and there was no evidence that any other agent had.

DPS Commissioner of Law Enforcement Frank Perry by memo dated April 10, 2013, advised Petitioner that he was being terminated from state service because his participation in the events leading to the demotion could not be viewed as anything other than unacceptable personal conduct. Commissioner Perry did not prepare the dismissal memo, did not know who did, nor did he know why two different versions were prepared. He cited the two grievances which had been dismissed by Secretary Shanahan as the reason for his looking into the matter further. He had read about Petitioner's demotion in the **News & Observer's** political section (Under the Dome). He knew nothing about Petitioner's qualifications, never sought information from him, Secretary Young, his deputies, or his HR personnel. He signed an official criminal justice training and standards form attesting that Petitioner had not been under investigation for any alleged misconduct. Perry also ignored suggestions from employee relations and state personnel representatives to maintain the status quo or move the position and Petitioner to Wilmington. He was advised that Petitioner could appeal disciplinary action based upon political affiliation, but did not so notify Petitioner in his termination memo.

Petitioner was not given notice of the charges against him; never afforded an opportunity to tell his side of the story as to whether he had in fact violated any statutes, rules or regulations; and his former superiors were not involved in Perry's investigation. His prior colleagues in DPS/ALE testified that they had never heard of an employee not being offered these opportunities which were required by ALE's internal disciplinary policy. When Secretary Shanahan received an email on April 17, 2013, with attached news story about Petitioner's dismissal, he forwarded it at 9:47pm to Governor McCrory's chief of staff "to let him and G" know that Petitioner had been fired, thus suggesting it was a political concern. In Perry's April memo, he related concerning a new Department head and Petitioner: "—inevitable that you would be separated from state service----." Petitioner was a marked man politically following the 2012 election for governor.

Petitioner's evidence showed that over the years, including until he was terminated, he had served the ALE Division with commitment, dedication and loyalty. His last performance evaluation rated him as "Outstanding", the highest possible for employees. He has not been the subject of sanction by any law enforcement licensing board.

On May 8, 2013, Petitioner filed a Petition For A Contested Case Hearing claiming therein that he had been wrongfully terminated because of his political affiliation.

The Respondent failed to produce discovery in a timely manner. Some was produced on the evening of the last business day before hearing and during the hearing. This was prejudicial to Petitioner as it required his counsel to spend excessive amounts of time seeking production of the discovery and affected Petitioner's ability to conduct follow-up discovery and adequately prepare the case.

Petitioner has incurred \$59,310.77 in attorneys' fees/costs to date, having contracted to pay Mr. Leake \$375.00 per hour and Ms. Stokes \$250.00 per hour, in accordance with the Affidavit filed by Petitioner's attorney on December 27, 2013. The hours claimed by Mr. Leake (52) and Ms. Stokes (146.2) are reasonable. Reasonable rates for them per hour would be: \$275.00 for Mr. Leake and \$225.00 for Ms. Stokes; \$137.50 per hour to Mr. Leake for travel time. Other fees/costs set forth in the affidavit are found to be reasonable.

Based on the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

The North Carolina General Assembly has provided in G. S. 126-36(a), 126-34.1 and 126-37 that State employees or former State employees who have reason to believe that they have been terminated because of their political affiliation have a right to a contested case hearing in the Office of Administrative Hearings, after which pursuant to 150B-34(a) an administrative law judge shall make a final decision or order that contains findings of fact and conclusions of law.

To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law.

A Court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C.App.438,440, aff'd, 335 N.C.234(1993).

North Carolina courts look to federal employment discrimination law for guidance in establishing evidentiary standards for contested cases filed under the State Personnel Act. *North Carolina v. Gibson*, 308 N.C. 130, 301 S.E.2d 78 (1983).

In order to prove a discrimination claim, Petitioner must first establish a prima facie case of discrimination. See *N.C. Department of Correction v. Hodge*, 99 N.C. App. 602, 611, 394 S.E.2d 285 (1990) and *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

Petitioner has met his prima facie burden by establishing that he was a very prominent Democrat non-policymaking employee of Respondent brought in during a Democrat administration who was hoping to continue his State employment under an incoming Republican administration. He has established that Respondent treated him differently than other ALE Special Agents in failing to follow its own ALE internal disciplinary policy by not providing him notice of his being investigated; not allowing him an opportunity to respond to the charges against him by two disgruntled employees whom had been disciplined; not involving his immediate supervisors in an investigation and decision to terminate his employment. He has also raised inferences by showing Respondent focused upon holding him responsible for actions by his Democrat superiors in late 2012 and terminating him without regard to the very good job he was doing as a field agent in 2013; failing to provide a probationary employee with any counseling or suggestions concerning how he could improve his job performance; ignoring suggestions from personnel and legal professionals to let the matter rest or transfer the position with Petitioner back to Wilmington. The Republican transition team had inquired about DPS plans to move any exempt employees into non-exempt positions prior to the administration change and were told of plans concerning Petitioner. When informed about a Republican State Senator's negative remarks concerning the personnel transaction, Republican Secretary appointee Shanahan remarked "That should not have happened", indicating his state of mind coincided with the senator's and transition team's concerning Petitioner. Finally, Secretary Shanahan thought it important to send an email at 9:47pm notifying the governor and his chief of staff that Petitioner had been terminated, which suggests a political purpose was behind it. Petitioner was a marked man politically.

To rebut this inference, the burden then shifts to Respondent to present evidence that it terminated Petitioner's employment for a legitimate, non-discriminatory reason. This burden is one of production, not persuasion. *Reeves*, 530 U.S. at 142.

The Respondent has met this burden of production by establishing that two disgruntled, formerly disciplined agents filed grievances complaining about how Petitioner became a field agent and his salary, which led to an investigation resulting in his termination without following the ALE's internal disciplinary procedures.

The burden then shifts back to the Petitioner to prove that Respondent's reason for terminating Petitioner as it did was merely a pretext, and not a legitimate, nondiscriminatory reason. "Although the intermediate burdens shift back and forth under this framework, the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated

against the plaintiff remains at all times with the plaintiff.” *Id.* at 143. In attempting to satisfy this burden, Petitioner must “prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.” *Id.* Petitioner met his ultimate burden in establishing to the undersigned that his termination was the result of political discrimination. His prima facie evidence set forth in my findings of fact was relied upon to reach this conclusion. Also, it did not seem credible that Respondent’s action was not politically motivated. Petitioner had been performing very well as a field agent. His background, training, and experience qualified him very well for the advanced level position and approved salary. It is more likely than not that had he not been such a prominent, life-long Democrat from Madison County he would not have been terminated, for the State needs such well-qualified ALE Special Agents.

Terminating Petitioner in disregard of ALE’s internal disciplinary policy and past practices with other agents indicates that it is more likely than not that political affiliation was a factor. Respondent’s primary concern appeared to be to reverse the decision by Secretary Young to demote/transfer Petitioner, with no regard to how he was performing his duties as a field agent and without exploring fairly all alternatives to termination. Secretary Young had exercised due diligence prior to deciding to demote/transfer/reassign Petitioner who was at the time a policymaking employee whose consent was unnecessary.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned renders the following:

DECISION

Petitioner shall be reinstated to the position from which he was terminated at the same salary/rate of pay. Petitioner is to be paid all compensation to which he would otherwise have been entitled since the date of his dismissal, including but not limited to back pay, leave, contributions into the State retirement system, and any and all benefits to which he would have been entitled.

Petitioner shall be reimbursed for attorney fees to Mr. Leake in the amount of \$14,300.00 plus \$1,375.00 for travel time. Petitioner shall be reimbursed for attorney fees to Ms. Stokes in the amount of \$32,895.00. Petitioner shall be reimbursed \$1,385.77 for other expenses/costs claimed in his attorney’s affidavit. Total Reimbursement: \$49,955.77.


NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The**

appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 31st day of December, 2013.


Fred Gilbert Morrison Jr.
Senior Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
2/12/2014 11:53 AM

STATE OF NORTH CAROLINA
COUNTY OF SURRY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13OSP16230

BARBARA HINTON PETITIONER, V. SURRY COUNTY HEALTH AND NUTRITION CENTER RESPONDENT.	FINAL DECISION
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This matter coming on to be heard and being before the undersigned presiding at the January 6, 2014 contested case hearing conducted at the Surry County Judicial Center, Dobson, North Carolina.

APPEARANCES

For Petitioner: Daniel C. Nash, Attorney at Law, High Point, NC
For Respondent: Edwin M. Woltz, Attorney at Law, Mount Airy, NC

EXHIBITS

The following Exhibits were admitted into evidence:

Petitioners:

Exhibit 1 . Surry County Employee Performance Appraisal for Petitioner from 9/1/11-9/1/12.

Respondents:

Exhibit 1 Pre-disciplinary Conference notification dated June 4, 2013.
Exhibit 2 Dismissal letter dated June 6, 2013.
Exhibit 3 Coaching Document dated November 19, 2012 and subsequent Facebook posting June 2013 by Ms. Hinton.
Exhibit 4 Digital Recorder Usage Policy and Digital Recorder Usage training documentation.
Exhibit 5 Employee Confidentiality Acknowledgment.
Exhibit 6 Signed affidavit by Tiffany Bullins; related text messages from Ms. Hinton; and text messages as produced from cell phone provider.
Exhibit 7 Surry County Code of Ethics and Professional Conduct.

- Exhibit 8 Appeal letter to County Manager Chris Knopf from Barbara Hinton dated June 10, 2013 and supplement letter dated June 16, 2013.
- Exhibit 9 County Manager Chris Knopf's response letter dated July 1, 2013 to Ms. Hinton's termination of appeal.
- Exhibit 10 Surry County Personnel Ordinance Article VII, Section 8 - Failure in Personal Conduct.
- Exhibit 11 Surry County Personnel Ordinance Article V, Section 7 - Workplace Harassment Policy.
- Exhibit 12 Administrative leave memo from David Stone dated May 25, 2007.

WITNESSES

Tiffany Bullins, Public Health Nurse Supervisor II
Holly York, Social Worker II, imbedded at Mount Airy OB-GYN
Samantha Ange, Health Director
Sandra Snow, Surry County Human Resources Officer
Barbara Hinton, Petitioner

ISSUE

Whether Petitioner was discharged without just cause from her position as a Social Worker II with Respondent.

APPLICABLE STATUTES, ORDINANCES, AND POLICIES

Chapter 126 N.C. Gen. Stat.
Surry County Personnel Ordinance
Surry County Code of Ethics and Professional Conduct
Employee Confidentiality Acknowledgment
Digital Recorder Usage Policy

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the undersigned makes the following findings of fact. In making the findings of fact, the undersigned has weighed all the evidence, or the lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility; including, but not limited to, demeanor of the witness; any interest, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of witnesses and review of the documents entered into evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner was hired by Respondent on or about the 18th day of May 1998 and worked in various capacities for Respondent, most recently in the position of Social Worker II.

2. That the Surry County Health and Nutrition Center is a unit of Surry County Government and its employees are covered both by the Surry County Personnel Ordinance and by the North Carolina State Personnel Act.
3. That Petitioner's immediate supervisor was Tiffany Bullins, Public Health Nurse Supervisor, II who supervised, in addition to Petitioner, approximately 23 people.
4. That Petitioner worked at the Surry County Health and Nutrition Center and in the course of her employment, worked with Holly York, also an employee of the Health and Nutrition Center, who was "imbedded" to monitor prenatal client care at Mount Airy OB GYN.
5. That Petitioner received an Employee Performance Appraisal from Respondent covering a period from September 1, 2011 to September 1, 2012, which was positive and which reflected upon Ms. Hinton as a good and valued employee of Respondent's organization.
6. Samantha Ange, Surry County Health Director since 2008, became aware of negative Facebook posts compiled and submitted by Petitioner, which came to the attention of various personnel of Respondent, including Holly York. The Facebook postings occurred in October 2012 and became the subject of a personnel action in November 2012.
7. Petitioner's supervisor, Tiffany Bullins, met with Petitioner to discuss the negative Facebook posting on or about November 19, 2012, at which time a Coaching Document was reviewed and signed by Petitioner and Ms. Bullins. Issues discussed included negative comments on Facebook that could be linked to Respondent, and other concerns. The Coaching Document included a discussion that Petitioner's actions could very well have led to a written warning, but administrative staff felt Petitioner understood the point and would refrain from additional negative postings that could be related back to Respondent.
8. Coaching Document recommendations included:
 - A. Refrain from posting any negative comments on Facebook that can be linked back to Respondent by fellow co-workers or the public in general, with the understanding that there will be a zero tolerance; and
 - B. Strive to maintain a positive attitude during all times, even among ever-changing circumstances; strive to make co-workers that have been moved to your area feel welcome; and always share concerns with your supervisor appropriately.

11. That in late May or early June 2013, Petitioner again posted on Facebook in a manner that Respondent's management deemed to be a violation of the zero tolerance policy outlined in the Coaching Document from November 2012.
12. Petitioner contended the posting occurred on her personal time and was in conflict with the Coaching Document, but was in response to a newspaper article about the potential merger of Respondent with another County department.
13. The 2013 Facebook posting included many personal complaints by Petitioner about her working conditions, furnishings and having to use her own phone and car for work purposes.
14. That in the course of her employment, Petitioner received ongoing education and training on Surry County's Policies and Procedures concerning the Health and Insurance Portability Accountability Act (HIPAA), including: Privacy concerns, protected health information, and the consequences of a HIPAA violation. All of Respondent's employees, including Petitioner, received ongoing training on HIPAA concerns.
15. All of Respondent's employees, including Petitioner, reviewed and executed an Employee Confidentiality Acknowledgment, a component of which acknowledged that she would never remove confidential and/or sensitive and/or PHI (Protected Health Information) from the work area without authorization.
16. Public Health nurses, social workers, and other staff employed by Respondent, including Petitioner, received ongoing training; and executed and agreed to be bound by the Surry County Health and Nutrition Center Digital Recorder Usage Policy and Procedure. It prohibited recording of telephone conversations except on specially designated, Respondent-owned devices; and its use was limited to incidences of threatening or harassing phone calls, and required permission, or consent of, Petitioner's supervisor.
17. Petitioner recorded a client telephone conversation on her cell phone in order to provide evidence to her supervisor of disruptive background noise. That Petitioner failed to delete the recording of the telephone conversation with the client and caused her telephone, including the un-erased client recording, to be surrendered to a telephone company in connection with the trade-in of her phone for another model.
18. Petitioner and all other County employees received ongoing training and executed a document entitled Surry County Code of Ethics and Professional Conduct where, among other things, Petitioner agreed to maintain a respectful attitude toward fellow employees, public officials, colleagues, and associates.

19. All Surry County employees, including Petitioner, are subject to a Personnel Ordinance adopted by Surry County Board of Commissioners. Article VII, Section 8 of the ordinance deals with failure of personal conduct. In accordance with that ordinance, an employee may be reprimanded, suspended, demoted, or dismissed for causes relating to personal conduct detrimental to County service: (1) in order to avoid undue disruption at the workplace; (2) to protect the safety of persons or property; or (3) for other serious reasons.
20. Employees of Respondent are covered by the North Carolina State Human Resources Act (NCSHRA).
21. Section 25 NCAC 011.2304 of the North Carolina Annotated Code states that employees covered by NCSHRA may be dismissed for a current incident of unacceptable personal conduct including: (1) conduct for which no reasonable person should expect to receive prior warning; or ... (4) the willful violation of known or written work rules; or (5) conduct unbecoming an employee that is detrimental to the agency's service....
22. Petitioner was subject to Article V, Section 7 of the Surry County Personnel Ordinance regarding Workplace Harassment which prohibits, among other things, an employee engaging in conduct that falls under the definition of creating a hostile work environment.
23. That on or about June 3, 2013, around midnight, beginning at approximately 12:07 AM, Petitioner texted her supervisor, Tiffany Bullins, 37 times over approximately a one-hour period with a combination of work-related and personal grievances, which caused alarm and discomfort to Petitioner's supervisor.
24. That on or about June 3, 2013, Petitioner's supervisor, Tiffany Bullins, provided notice to Samantha Ange, Health Director, of receipt of 37 text messages from Petitioner after midnight. One of the texts included Petitioner's assertion that she had recorded a client telephone conversation on her cell phone, a violation of the Digital Recorder Usage Policy.
25. On or about June 4, 2013, Samantha Ange compiled a letter to Petitioner notifying her of a pre-disciplinary conference on Wednesday June 5th at 8:30 AM. The letter provided notice that the purpose of the conference was to discuss a recommendation of disciplinary action, up to and including dismissal, due to Petitioner's personal conduct. The following personal conduct issues were outlined in the letter:
 - A. Blatant disregard for the County 11/19/12 Coaching Document instructions that state: "Refrain from posting any negative comments on Facebook that can be

linked back to SCHNC by fellow co-workers or the public in general with the understanding that there will be a zero tolerance”.

- B. Self-admitted HIPAA violation and violation of the Digital Recorder Usage Policy and Procedure.
 - C. Creation of a hostile workplace.
 - D. Violation of Surry County Code of Ethics and Professional Conduct.
26. That a pre-disciplinary conference was conducted on June 5, 2013, at which time the Health Director, Petitioner’s supervisor, and the Surry County Human Resources Officer were in attendance with Petitioner.
27. At the pre-disciplinary conference, Petitioner admitted making negative comments on her Facebook page regarding her employment, notwithstanding receipt of the Coaching Document from November 19, 2012, stating a zero tolerance for further negative Facebook postings.
28. At the pre-disciplinary conference, Petitioner acknowledged ongoing training on the Digital Recorder Usage Policy, and admitted recording a client’s telephone conversation on her personal cell phone to demonstrate background noise. Petitioner also admitted that the phone was surrendered with the recording in place to her cell phone carrier and she made a trip back to the telephone company to retrieve the phone or erase the call, but was unsuccessful.
29. Petitioner admitted that the texting to Tiffany Bullins, and the 2013 Facebook posting, were her efforts to “vent” as a result of stress and other matters, including financial difficulty and health problems.
30. A violation of a written Coaching Document subjects a Surry County employee to disciplinary action, up to and including dismissal.
31. A violation of HIPAA Policies and Procedures by a Surry County employee subjects the employee to disciplinary actions, up to and including dismissal.
32. A violation of the Digital Recorder Usage Policy by an employee of the Surry County Health Department subjects the employee to disciplinary action, up to and including dismissal.
33. It is a violation of the Surry County Personnel Ordinance for an employee to engage in conduct that falls under the definition of unlawful workplace harassment, which subjects the employee to disciplinary action, up to and including dismissal.

34. At the pre-disciplinary hearing, Petitioner was presented with a copy of the Surry County Code of Ethics and Professional Conduct and admitted to a violation of item #7, which states "I will maintain a respectful attitude toward fellow employees, public officials, colleagues and associates."
35. That the letter of termination compiled by Samantha Ange provided notice to Petitioner of a right to appeal her dismissal under the Surry County Personnel Ordinance, Article VIII, Section 3.
36. That Petitioner appealed her termination to the Surry County Manager by letters dated June 10, 2013, and June 16, 2013, in which she admitted to recording a conversation with a client and that she may have disrespected her supervisor. The County Manager found Petitioner's dismissal to be consistent with the criteria of "failure in personal conduct" as outlined in the Surry County Personnel Ordinance.
37. The Surry County Manager provided written notice to Petitioner that employees subject to the State Human Resources Act may appeal grievances to the Office of State Personnel (Personnel Commission) in accordance with "Personnel Policies, State of North Carolina, Local Government Employees Subject to the State Personnel Act."
38. Petitioner presented evidence of a positive Surry County Employee Performance Appraisal; that she did not intend to use the recording of the client's phone conversation for any purpose but to demonstrate the level of background noise she was required to endure at work; and that she was a good, dedicated employee.

CONCLUSIONS OF LAW

1. That the Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.
2. The parties are properly before this tribunal and they received adequate notice of the hearing and all parties have been correctly designated and there is no question as to misjoinder or nonjoinder.
3. Petitioner's termination was justified as a dismissal for failure in personal conduct consistent with Article VII, Section 8 of the Surry County Personnel Ordinance and Section 126-35 of the North Carolina General Statutes.
4. Petitioner's conduct complained of by Respondent occurred substantially as alleged and that given the totality of the circumstances, Petitioner's conduct constituted just cause for the disciplinary action taken.

5. Petitioner is a career state employee as defined by N.C. G.S. § 126-1.1.
6. Administrative regulations provide two grounds for discipline or dismissal based on just cause: Unsatisfactory job performance; and unacceptable personal conduct. 25 NCAC 1J .0604.
7. Unacceptable personal conduct includes, *inter alia*, "conduct for which no reasonable person should expect to receive prior warning;" "the willful violation of known or written work rules;" and "conduct unbecoming a state employee that is detrimental to state service." 25 NCAC 01J .0614.
8. In determining whether a public employer has just cause to discipline its employees requires two separate inquiries: Whether the employee engaged in the conduct the employer alleges; and secondly, whether that conduct constitutes just cause for the disciplinary action taken. See *Early v. County of Durham Dept. of Social Services*, 172 N.C. App. 344, 616 S.E.2d 553 (2005) (quoting *N.C. Dep't of Env't & Natural Res v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004)).
9. A single act of unacceptable personal conduct can constitute just cause for any discipline, up to and including dismissal. *Hilliard v. N.C. Dep't of Correction*, 173 N.C. App. at 597, 620 S.E.2d 17 (2005).
10. In analyzing unacceptable personal conduct, *Warren v. N.C. Dep't of Crime Control and Pub. Safety*, 726 S.E.2d 920, 924 (N.C. App. 2012) holds, "the proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: Whether that misconduct amounted to just cause for the disciplinary action taken."
12. In this case, the greater weight of the testimony and admitted exhibits supports the conclusion that Respondent met its burden of proof, and established by a preponderance of the evidence in the record that it had just cause to terminate its employment of Petitioner for unacceptable personal conduct.
13. Respondent complied with the procedural requirements for dismissing Petitioner from employment with the Surry County Health and Nutrition Center.

FINAL DECISION

Based on the Findings of Fact and Conclusions of Law, the undersigned finds and holds that the Respondent has carried its burden of proof by a greater weight of the evidence that the

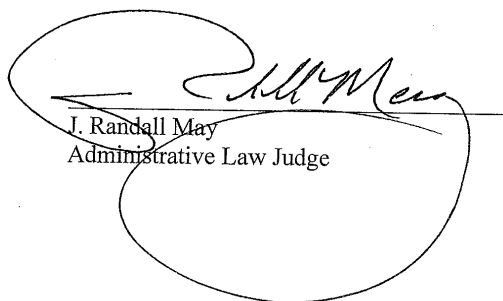
Petitioner's dismissal from employment with Respondent for unacceptable personal conduct should be and is UPHELD.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 12th day of February, 2014.



J. Randall May
Administrative Law Judge