

# ***NORTH CAROLINA REGISTER***

**VOLUME 29 • ISSUE 17 • Pages 2033 – 2114**

**March 2, 2015**

<b>I. PROPOSED RULES</b>	
Commerce, Department of	
Employment Security, Division of.....	2033 – 2066
<b>II. APPROVED RULES.....</b>	2067 – 2095
Administrative Hearings, Office of	
Hearings Division	
Environment and Natural Resources, Department of	
Environmental Management Commission	
Mining and Energy Commission	
Health and Human Services, Department of	
Health Service Regulation, Division of	
<b>Occupational Licensing Boards and Commissions</b>	
Hearing Aid Dealers and Fitters Board	
Physical Therapy Examiners, Board of	
Refrigeration Examiners, Board of	
State Treasurer, Department of	
Department	
<b>III. RULES REVIEW COMMISSION.....</b>	2096 – 2108
<b>IV. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions.....	2109 – 2114

**PUBLISHED BY**

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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.**

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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

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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

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**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2015 – December 2015

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
29:13	01/02/15	12/08/14	01/17/15	03/03/15	03/20/15	05/01/15	05/2016	09/29/15
29:14	01/15/15	12/19/14	01/30/15	03/16/15	03/20/15	05/01/15	05/2016	10/12/15
29:15	02/02/15	01/09/15	02/17/15	04/06/15	04/20/15	06/01/15	05/2016	10/30/15
29:16	02/16/15	01/26/15	03/03/15	04/17/15	04/20/15	06/01/15	05/2016	11/13/15
29:17	03/02/15	02/09/15	03/17/15	05/01/15	05/20/15	07/01/15	05/2016	11/27/15
29:18	03/16/15	02/23/15	03/31/15	05/15/15	05/20/15	07/01/15	05/2016	12/11/15
29:19	04/01/15	03/11/15	04/16/15	06/01/15	06/22/15	08/01/15	05/2016	12/27/15
29:20	04/15/15	03/24/15	04/30/15	06/15/15	06/22/15	08/01/15	05/2016	01/10/16
29:21	05/01/15	04/10/15	05/16/15	06/30/15	07/20/15	09/01/15	05/2016	01/26/16
29:22	05/15/15	04/24/15	05/30/15	07/14/15	07/20/15	09/01/15	05/2016	02/09/16
29:23	06/01/15	05/08/15	06/16/15	07/31/15	08/20/15	10/01/15	05/2016	02/26/16
29:24	06/15/15	05/22/15	06/30/15	08/14/15	08/20/15	10/01/15	05/2016	03/11/16
30:01	07/01/15	06/10/15	07/16/15	08/31/15	09/21/15	11/01/15	05/2016	03/27/16
30:02	07/15/15	06/23/15	07/30/15	09/14/15	09/21/15	11/01/15	05/2016	04/10/16
30:03	08/03/15	07/13/15	08/18/15	10/02/15	10/20/15	12/01/15	05/2016	04/29/16
30:04	08/17/15	07/27/15	09/01/15	10/16/15	10/20/15	12/01/15	05/2016	05/13/16
30:05	09/01/15	08/11/15	09/16/15	11/02/15	11/20/15	01/01/16	05/2016	05/28/16
30:06	09/15/15	08/24/15	09/30/15	11/16/15	11/20/15	01/01/16	05/2016	06/11/16
30:07	10/01/15	09/10/15	10/16/15	11/30/15	12/21/15	02/01/16	05/2016	06/27/16
30:08	10/15/15	09/24/15	10/30/15	12/14/15	12/21/15	02/01/16	05/2016	07/11/16
30:09	11/02/15	10/12/15	11/17/15	01/02/16	01/20/16	03/01/16	05/2016	07/29/16
30:10	11/16/15	10/23/15	12/01/15	01/15/16	01/20/16	03/01/16	05/2016	08/12/16
30:11	12/01/15	11/05/15	12/16/15	02/01/16	02/22/16	04/01/16	05/2016	08/27/16
30:12	12/15/15	11/20/15	12/30/15	02/15/16	02/22/16	04/01/16	05/2016	09/10/16

## 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.

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

**TITLE 04 – DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce, Division of Employment Security intends adopt the rules cited as 04 NCAC 24A .0101-.0109, .0201-.0207, .0301, .0302; 24B .0101-.0106, .0201-.0207, .0301, .0302, .0401, .0402, .0501-.0504, .0601-.0603, .0701-.0705, .0801-.0804, .0901, .1001, .1002; 24C .0101-.0104, .0201-.0212, .0301, .0302, .0401, .0402, .0501-.0506, 0601; 24D .0101-.0107, .0201-.0203, .0301-.0304, .0401-.0403, .0501-.0504, .0601-.0604, .0701, .0702, .0801, .0901, .1001-.1003, .1101-.1107, .1201-.1204, .1301, .1302, .1401, and repeal the rules cited as 04 NCAC 24E .0101-.0104 pursuant to the readoption process set out in G.S. 150B-21.3A (c)(2)g.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncesc.com](http://www.ncesc.com) (Legal Tab)

**Proposed Effective Date:** July 1, 2015

**Public Hearing:**

**Date:** April 10, 2015

**Time:** 10:00 a.m. – 1:00 p.m.

**Location:** DES Main Campus, Room GB 111, Daniels Building, 700 Wade Avenue, Raleigh, NC 27605

**Reason for Proposed Action:** DES became subject to G.S. 150B, pursuant to G.S. 96-4(d) and Section 1.10(c), Part 1, Session Law 2011-401 (Senate Bill 532). The intent of the Act was to reform the Employment Security Laws of North Carolina, including making DES subject to Rule Making under Article 2A of Chapter 150B of the North Carolina General Statutes. The changes were intended to improve transparency in the State’s administration of the UI program. The Act requires the NC Dept. of Commerce to adopt rules to ensure that the administration of the UI program and federal law provisions are properly implemented. Further, federal law, specifically 20 CFR 640, requires that state unemployment law (including administrative rules) be "reasonably calculated to insure the full payment of unemployment compensation when determined under State law to be due to claimants." As a result, DES is now moving to adopt these proposed rules to codify many of the existing policies and practices utilized in the UI program. The availability of clear and understandable information is of significant importance to the citizens of North Carolina and these proposed rules are the first step to provide meaningful and useful information regarding DES and its procedures.

*These proposed rules are based on sound, reasonably available scientific, technical, economic and other relevant information.*

**Comments may be submitted to:** *Jeremy L. Ray, Rule-making Coordinator/Legal Liaison, NC Dept. of Commerce, DES, 700 Wade Ave, PO Box 25903, Raleigh, NC 27611, phone (919) 707-1606, fax (919) 733-1129, email [jeremy.ray@nccommerce.com](mailto:jeremy.ray@nccommerce.com)*

**Comment period ends:** May 1, 2015

**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)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

**CHAPTER 24 - DIVISION OF EMPLOYMENT SECURITY**

**SUBCHAPTER 24A – GENERAL**

**SECTION .0100 – GENERAL**

**04 NCAC 24A .0101 OFFICE LOCATION**

The administrative offices of the North Carolina Department of Commerce, Division of Employment Security (hereinafter "DES," or "The Division") are located at 700 Wade Avenue, in Raleigh, North Carolina. The General Mailing Address is P.O. Box 25903, Raleigh, NC 27611-5903. The same work hours will be observed by the Division as are, or may be observed by the Office of State Human Resources (OSHR).

Authority G.S. 96-4.

**04 NCAC 24A .0102 ADDRESS CHANGES**

(a) Each employing unit that has or had individuals in employment as defined in G.S. 96-1 shall notify DES in writing of any change to its mailing address. This notice shall be transmitted by facsimile, via the internet, or by postal mail within seven days after the effective date of the change.

(b) Each claimant who is liable to DES for an overpayment of benefits, or is registered for work at a public employment office, shall notify DES by facsimile, via the internet, or by postal mail of any change of address within seven days after the effective date of the change.

*Authority G.S. 96-4; 20 C.F.R. 640.*

**04 NCAC 24A .0103 ADDRESSES FOR NOTICE**

(a) In all transactions requiring notice by G.S. 96 or these Rules, DES shall provide notice to the last known address as reflected in its official records.

(b) Except as provided in Paragraph (a) of this Rule, when DES mails a notice of an initial claim to the employer at one of the following addresses:

- (1) the address of the employer for which the claimant last worked;
- (2) if the employer has more than one branch or division at different locations, the address of the branch or division for which the claimant last worked; or
- (3) an address designated by the employer as reflected in DES's official records.

*Authority G.S. 96-4; 96-14.1.*

**04 NCAC 24A .0104 ADDRESSES FOR FILING CLAIMS, APPEALS, EXCEPTIONS, REQUESTS OR PROTESTS**

(a) Claimants shall file a claim for unemployment insurance benefits by internet on DES's website, or by telephone.

- (1) The telephone number for filing a new initial claim is (877) 841-9617.
- (2) Claimants with a social security number ending in an odd number shall file weekly certifications on Monday and Wednesday through Saturday by dialing (888) 372-3453.
- (3) Claimants with a social security number ending in an even number shall file weekly certifications on Tuesday through Saturday by dialing (888) 372-3453.

(b) Appeals from a Determination by Adjudicator shall be filed with the Appeals Section by mail, facsimile, or email.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1228.
- (3) The email address is [des.public.appeals@nccommerce.com](mailto:des.public.appeals@nccommerce.com).
- (4) Any questions regarding the contents of a Determination by Adjudicator shall be directed to the Adjudication Unit by telephone to (919) 707-1410, facsimile at (919) 733-1127, or email at [des.ui.customerservice@nccommerce.com](mailto:des.ui.customerservice@nccommerce.com).

(c) Appeals of a Non-Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit by mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1369.
- (3) Any questions regarding the contents of a Non-Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369, or email at [des.ui.bpc@nccommerce.com](mailto:des.ui.bpc@nccommerce.com).

(d) Appeals of a Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit by mail, or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1369.
- (3) Any questions regarding the contents of a Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369, or email at [des.ui.bpc@nccommerce.com](mailto:des.ui.bpc@nccommerce.com).

(e) Appeals of a Monetary Determination shall be filed with the Monetary Revision Unit by mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 715-3983.
- (3) The email address is [des.ui.customerservice@nccommerce.com](mailto:des.ui.customerservice@nccommerce.com).
- (4) Any questions regarding the contents of a Monetary Determination shall be directed to the Monetary Revision Unit by telephone to (919) 707-1257, facsimile at (919) 715-3983 or mail.

(f) Appeals of a Wage Transcript and Monetary Determination shall be filed with the Monetary Revision Unit by mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 715-3983.
- (3) Any questions regarding the contents of a Wage Transcript and Monetary Determination shall be directed to the Monetary Revision Unit by telephone to (919) 707-1257, facsimile at (919) 715-3983 or mail.

(g) Petitions for Waiver of Overpayment shall be filed with the Benefits Integrity Unit by mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1369.
- (3) Any questions regarding the contents of an overpayment determination shall be directed to the Benefit Payment Control Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369 or email at [des.ui.bpc@nccommerce.com](mailto:des.ui.bpc@nccommerce.com).

(h) Claimant appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter shall be filed with the Benefits Integrity Unit by mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- (2) The facsimile number is (919) 733-1369.

(3) Any questions regarding the contents of a North Carolina Department of Revenue Offset Letter shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369 or email at [des.ui.bpc@nccommerce.com](mailto:des.ui.bpc@nccommerce.com).

(i) Employer appeals of a North Carolina Department of Revenue Offset Letter for outstanding tax debts shall be filed with and Tax Administration Section by mail, facsimile, or email.

(1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

(2) The facsimile number is (919) 733-1255.

(3) The email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(4) Any questions regarding the contents of a NCDOR Offset letter for outstanding tax debts shall be directed to the Tax Administration Section by telephone to (919) 707-1150, facsimile at (919) 733-1255 or email at [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(j) Claimant Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the Benefit Integrity Unit of mail or facsimile.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 715-3983.

(3) Any questions regarding TOP shall be directed to a Recovery Specialist by telephone to (919) 707-1338 or email at [des.ui.bpc@nccommerce.com](mailto:des.ui.bpc@nccommerce.com).

(k) Employer requests shall be filed with Employer Call Center (ECC) by mail, telephone, facsimile or email.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The phone number is (919) 707-1150.

(3) The facsimile number is (919) 715-0780.

(4) The email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(l) Appeals from an Appeals Decision shall be filed with the Board of Review by mail, facsimile or email.

(1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 733-0690.

(3) The email address is [BOR@nccommerce.com](mailto:BOR@nccommerce.com).

(m) Requests for Post-Decision Relief or Reconsideration shall be filed with the Board of Review by mail, facsimile or email.

(1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 715-7193.

(3) The email address is [BOR@nccommerce.com](mailto:BOR@nccommerce.com).

(n) Protests or appeals of a Tax Liability Determination shall be filed with the Tax Administration Section by mail, facsimile, or email.

(1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

(2) The facsimile number is (919) 733-1255.

(3) The email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(o) Protests or appeals of a Tax Rate Assignment shall be filed with the Tax Administration Section by mail, facsimile, or email.

(1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

(2) The facsimile number is (919) 733-1255.

(3) The email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(p) Protests or appeals of Audit Results shall be filed with the Tax Administration Section by mail, facsimile, or email.

(1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

(2) The facsimile number is (919) 733-1255.

(3) The email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(q) Protests or appeals of Tax Assessments shall be filed with the Tax Administration Section by mail, facsimile, or email.

(1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

(2) The facsimile number is (919) 733-1255.

(3) The email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(r) Exceptions to a Tax Opinion shall be filed with the Board of Review by mail, facsimile or email.

(1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 715-7193.

(3) The email address is [BOR@nccommerce.com](mailto:BOR@nccommerce.com).

(s) Protests or appeals of benefit charges to an employer's account, or requests for non-charging shall be filed with the Employer Benefit Charges/Benefit Charges Unit by mail or facsimile.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611-5903.

(2) The facsimile number is (919) 733-1126.

(3) All questions regarding non-charging shall be directed to the Employer Benefit Charges/Benefit Charges Unit at (919) 707-1279.

(t) Protests or appeals of a Denial of Seasonal Assignment shall be filed with the Tax Administration Section by mail, facsimile, or email.

(1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

(2) The facsimile number is (919) 733-1255.

(3) The email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

*Authority G.S. 96-4; 96-14.1.*

**04 NCAC 24A .0105 DEFINITIONS**

(a) In addition to the terms defined in G.S. 96, the following definitions apply whenever these terms are used in this Chapter:

(1) "Additional claim" means the reopening of a valid initial claim for unemployment insurance benefits after a claimant, as defined in Item (15) of this Rule, ceased filing a weekly certification as defined in G.S. 96-14.9, for one or more weeks due to intervening employment. The first week of eligibility filed after a claim has been

- reopened shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.
- (2) "Agent state" means any state from which, or through which a claimant files a claim for benefits from another state.
- (3) "Adjudicator" means an employee of DES appointed to conduct an informal investigation and render a determination as required by G.S. 96-15(b).
- (4) "Appeal" means a submission by a party with statutory appeal rights requesting the Appeals Section of DES or the Board of Review to review a determination or decision that is adverse to that party.
- (5) "Appeals Referee" or "Hearing Officer" means an attorney appointed to hear or decide an appeal from a determination by an adjudicator and issues involving the rights, status, and liabilities of an employer pursuant to the provisions of G.S. 96-4(q) or 96-15(c).
- (6) "Appeals Section" means the section within DES where Appeals Referees conduct quasi-judicial administrative evidentiary hearings and make decisions in contested cases for unemployment insurance benefits. The Appeals Section also consists of support staff that assists Appeals Referees.
- (7) "Authorized Representative" means an individual authorized by an employer or employing unit to act on the employer or employing unit's behalf before DES.
- (8) "Base period" means as defined in G.S. 96-1(3). Calendar quarters are January through March, April through June, July through September, and October through December.
- (9) "Benefit week" means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.
- (10) "Benefit wage credits" means wages used to determine a claimant's monetary eligibility for benefits. Benefit wage credits consist of the wages a claimant received or should have received during the claimant's base period of employment to include those wages that were awarded and paid to the claimant after the base period pursuant to a court order, the National Labor Relations Board, another adjudicative agency or by private agreement, consent, or arbitration for loss of pay because of discharge. DES shall credit the awarded wages to the quarter in which the wages should have been paid.
- (11) "Board of Review" means as defined in G.S. 96-4(b) and is the body that conducts "higher authority review" of appeals arising from the decisions of the Division, tax liability hearings and labor disputes. The Board of Review is also referred to as the Board or BOR.
- (12) "Calendar Period" means the 52 week period beginning with the first day of a week in which an individual first files a valid claim for benefits and registers for work. The week begins on the first Sunday preceding the initial claim filed and ends the following year on a Saturday.
- (13) "Charging cycle" means the 52 week period beginning August 1<sup>st</sup> and ending July 31<sup>st</sup> the year following the year in which the employer's account is assessed and charged for erroneous payments against its account, due to establishing a pattern of untimely and inadequate responses to Requests for Separation Information (NCUI 500AB) during the preceding reporting cycle.
- (14) "Chief Appeals Referee" includes the Chief Appeals Referee's designee, unless otherwise stated.
- (15) "Claimant" means an individual who files an unemployment insurance benefits claim for payments as provided in G.S. 96-14.1.
- (16) "Convincing evidence" is evidence that is reasonable and persuasive enough to cause the trier of fact to believe it.
- (17) "Customarily," as the term is used in G.S. 96-16, means during at least seventy-five percent of the calendar years of an observation interval.
- (18) "Day" means a calendar day.
- (19) "Delivery service" means an authorized designated carrier pursuant to Rule 4(j) of the North Carolina Rules of Civil Procedure and 26 U.S.C. 7502(f)(2).
- (20) "DES website" means the internet address found at [www.ncesc.com](http://www.ncesc.com).
- (21) "Due diligence" means the measure of carefulness, precaution, attentiveness, and good judgment as to be expected from, and ordinarily exercised by a reasonable and prudent person under the particular circumstances.
- (22) "Effective date of a claim" means either (1) the benefit year beginning on the Sunday preceding the payroll week ending date if the claimant is payroll attached, or (2) the benefit year beginning on the Sunday of the calendar week within which a claimant filed a valid claim for benefits and registered for work if the claimant is not payroll attached.
- (23) "Electronic transmission" means transmission by facsimile or internet.
- (24) "Equity and good conscience" means fairness as applied to a given set of circumstances.
- (25) "Fault" means circumstances to which blame, responsibility, culpability, or impropriety attaches; an error or defect of judgment or of conduct; any deviation from prudence or duty; a wrong tendency, course, or act; bad faith or neglect of duty.
- (26) "Good cause" means a substantial reason amounting to a legal excuse for failing to



- perform an act required by law in the exercise of due diligence.
- (27) "In-person/telephone hearing" means an administrative hearing before the Appeals Section, Board of Review, or other designated Hearing Officer where at least one party or witness appears in-person, and another party or witness appears by telephone.
- (28) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits may be paid to unemployed claimants absent from the state (or states) where benefit wage credits accumulated.
- (29) "Interstate claimant" means a claimant who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any claimant who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that this exclusion would create an undue hardship.
- (30) "Labor dispute" means a dispute between an employer and its employees about wages, hours, working conditions, or issues concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condition of employment, between those who alone could be directly concerned in the controversy.
- (31) "Last known address" means the most recent address provided to DES by the claimant or taxpayer located in its official record, except that DES shall update addresses maintained in its official records by referring to data accumulated and maintained in the United States Postal Service (USPS) National Change of Address database that retains change of address information (NCOA Database). If the claimant or taxpayer's name and last known address in DES's official records match the claimant or taxpayer's name and previous mailing address contained in the NCOA database, the new address in the NCOA database is the taxpayer's last known address.
- (32) "Legal representative" means a licensed attorney or a person supervised by a licensed attorney as defined in G.S. 96-17(b) and G.S. 84.
- (33) "Liable state" means any state against which a claimant files a claim for benefits through another state.
- (34) "Observation interval" means an interval of time including the four consecutive calendar years preceding the calendar year in which an application for a seasonal determination is made pursuant to G.S. 96-16. In the case of a
- newly liable employer or an employer whose operational activities have changed, the observation interval may be less than four calendar years.
- (35) "Party with appeal rights" means a party who has the right to appeal an unfavorable determination or decision pursuant to G.S. 96-4(q) and G.S. 96-15.
- (36) "Public employment office" means a local office managed and operated by the Division of Workforce Solutions (DWS) of the North Carolina Department of Commerce.
- (37) "Regularly recurring" means a period or periods of operational activity and shall be deemed regularly recurring if, during at least 75 percent of the calendar years in the observation interval, the beginning and ending dates of the period or periods do not vary more than four weeks.
- (38) "Reopened claim" means the resumption of a valid initial claim following a break in filing weekly certifications during a benefit year and the break was caused by reasons other than intervening employment. The first week of eligibility following the effective date of the reopened claim shall constitute a waiting period week if all eligibility requirements of G.S. 96-14.9 are met.
- (39) "Reporting cycle" means the 52 week period beginning August 1<sup>st</sup> and ending July 31<sup>st</sup> the following year in which the employer's account is examined and recorded for any inadequate responses to Requests for Separation Information (NCUI 500AB).
- (40) "State" means any of the 50 states in the United States and includes the District of Columbia, Puerto Rico and the U.S. Virgin Islands.
- (41) "Wages paid" means both wages actually received by a worker, and wages constructively paid. Wages are constructively paid when they are credited to the account of, or set apart for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available so that the worker may draw upon them at any time, and payment brought within the worker's control and disposition, although not then actually reduced to possession.
- (42) "Wages payable" means wages earned but not paid.
- (43) "Weekly period" means a seven day period beginning on Sunday and ending on the following Saturday.
- (44) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits for the week are claimed.

Authority G.S. 84; 96-1; 96-4; 96-9.2; 96-9.6; 96-14.1; 96-14.9; 96-15; 96-17; 96-20.

**04 NCAC 24A .0106 FILING/MAILING DATES AND USE OF FORMS**

(a) Except as otherwise provided in this Chapter, a document, or form shall be filed with DES on the date the document, or form is received by DES.

(b) When determining whether a party had good cause for filing a late appeal or protest, DES shall consider the date mailed in the order listed:

- (1) the postmark date or the postal meter date, where there is only one;
- (2) the postmark date if there is both a postmark date and a postal meter date, if they conflict; or
- (3) the date the document was delivered to a delivery service, which is equivalent to a postmark date of the United States Postal Service.

(c) A document received in an envelope bearing no legible postmark, postal meter date, or date of delivery to the delivery service shall be considered to have been sent three business days before receipt by DES, or on the date of the document, if the document date is less than three days earlier than date of receipt.

(d) If the envelope is lost after delivery to DES, the date on the document shall control. If the document is undated, DES shall deem the date the writing was sent to be three business days prior to receipt by DES, subject to sworn testimony establishing an even earlier date from the sender of the writing.

(e) Except as otherwise provided in this Chapter, the date and time that DES receives a document shall be used when the document is sent by facsimile transmission or via the internet.

(f) Except as otherwise provided in this Chapter, when a document furnishes information that is sufficient to indicate the purpose or intent of the document, but is not on a form prescribed by DES, the controlling date shall be determined as described in this Section.

Authority G.S. 96-4.

**04 NCAC 24A .0107 DIGITAL SIGNATURES**

(a) A digital signature provided by an employing unit or claimant, shall authenticate a written electronic communication sent to DES with the same force and effect as that of a manual signature by the person or individual using it and shall have the following characteristics:

- (1) unique to the person or individual using it;
- (2) ability to be independently verified;
- (3) under the sole control of the person or individual using it; and
- (4) infeasible to change the data in the communication without invalidating the digital signature.

Authority G.S. 96-4; 96-9.15.

**04 NCAC 24A .0108 SIGNATURES ON REPORTS AND FORMS**

(a) Where DES requires a signature on a report or form, the writing shall be signed by:

- (1) the individual, if the person required to submit the report or form is an individual;
- (2) an officer or authorized representative, if the employing unit required to submit the report or form is a corporation;
- (3) a partner or other authorized representative, if the employing unit required to submit the report or form is a partnership;
- (4) a member or other authorized representative, if the employing unit required to submit the form is an association;
- (5) an authorized member or officer having knowledge of its affairs, if the employing unit required to submit the report or form is an unincorporated organization;
- (6) the fiduciary, if the employing unit required to submit the report or form is a trust or estate; or
- (7) the head of the department, or designee having control of the services to which contributions, reimbursements, or other payments are attributable, if the employing unit required to submit the report or form is the State of North Carolina or a department, division, branch, unit, instrumentality, or political subdivision thereof.

Authority G.S. 96-4; 96-9.15.

**04 NCAC 24A .0109 POWER OF ATTORNEY**

(a) An employer may appoint an agent with full or limited power and authority to act on its behalf with DES. An employer's appointment of an agent shall be made in writing in the manner prescribed by G.S. 32A-1.

Authority G.S. 96-4; 96-9.15; 32A-1; 32A-2.

**SECTION .0200 - REQUESTS FOR DOCUMENTS AND PUBLIC RECORDS**

**04 NCAC 24A .0201 WRITTEN REQUEST REQUIRED**

(a) Any individual or employing unit requesting to inspect or copy any record containing confidential unemployment insurance information shall make the request in writing. All requests shall be submitted to the Legal Services Section, ATTN: Legal Release by mail to Post Office Box 25903, Raleigh, North Carolina, 27611, facsimile to (919) 715-7194, or email to [legal.release@nccommerce.com](mailto:legal.release@nccommerce.com).

Authority G.S. 96-4; 20 CFR 603.

**04 NCAC 24A .0202 CLEAR DESCRIPTION OF RECORDS REQUIRED**

(a) Each written request for unemployment insurance information shall describe the record or records sought and provide sufficient details to permit identification and location of the records.

(b) The request shall specify:

- (1) the subject matter of the record;
- (2) the date or approximate date that the record was made;
- (3) the place where the record was made;
- (4) the person or office that made the record; and
- (5) any other necessary identifying details about the record, such as an account or form number.

(c) If the description is insufficient for an employee familiar with the subject area of the request to locate the record, the Chief Counsel or designee shall notify the person making the request and where applicable, indicate the additional information required to locate the record.

*Authority G.S. 96-4; 20 C.F.R. 603.*

**04 NCAC 24A .0203 DETERMINATION AS TO DISCLOSURE**

(a) If the Chief Counsel or designee determines that the applicable law does not permit disclosure of the requested information, the Chief Counsel or designee shall provide written notification to the person making the request. The notice shall state reasons for the denial, including the applicable law prohibiting disclosure.

(b) Where there is specific information in a record that is prohibited from disclosure, the specific information shall be deleted or redacted before providing the requested record.

*Authority G.S. 96-4; 20 C.F.R. 603.*

**04 NCAC 24A .0204 RELEASE OF INFORMATION TO THIRD PARTY**

(a) Upon written request, a claimant, employer, applicant, or other person who authorizes information or records to be released to a third party or person shall provide:

- (1) the name of the third party or person;
- (2) the address of the third party or person;
- (3) a statement that the claimant, employer, applicant or other person authorizing the disclosure of information waives confidentiality as to the information directed to be released.

(b) An individual requesting that DES release or disclose to a third party or person the individual's quarterly wage records, including the amount of wages, names, and addresses of each employer reporting wages for the individual shall:

- (1) clearly identify the third party or person by name;
- (2) provide the address of the third party or person;
- (3) contain a statement that the individual waives confidentiality as to the information authorized to be disclosed;
- (4) state that the authorization and waiver is given on the basis of informed consent as mandated by 20 CFR Part 603 and any other applicable federal regulation that may be promulgated by the U.S. Department of Labor; and
- (5) contain a clear statement that the employing unit which provided the information to DES has

been provided proper advance notice of the request for disclosure.

*Authority G.S. 96-4; 20 CFR 603.*

**04 NCAC 24A .0205 FEES FOR COPIES AND SERVICES**

(a) Search Fees:

- (1) The fee for searching DES records by authorized staff is four dollars and forty cents (\$4.40) for each one-quarter hour or fraction thereof required to obtain the records to be searched or to search the records.
- (2) If the search for requested records requires transportation of DES staff to the location of the records, or transportation of the records to DES staff at a cost of more than five dollars (\$5.00), the actual transportation costs will be added to the search time cost.
- (3) If the search for requested records requires batch processing by computer, the Chief Counsel or designee shall provide an estimate of DES's cost to produce the information to individual making the request. The amount of the estimate provided must be based on the computer programming and other actions necessary for the batch processing. Upon consenting to the estimate provided by the Chief Counsel or designee, DES shall send an invoice for the actual cost of producing the requested information to the individual making the request.

(b) Reproduction Fees: The fees for obtaining copies of records shall be computed as follows:

- (1) copying: one cent (\$0.01) per page;
- (2) transcription of hearing: three dollars and seventy-five cents (\$3.75) per quarter hour or fraction thereof;
- (3) recording of hearing: three dollars and seventy-five cents (\$3.75) per compact disk or recording.

(c) No more than 10 copies of any document shall be furnished in response to any request.

(d) Administrative and Overhead Fees: The fee required for the time required for the Chief Counsel or designee to review a request and determine whether the request is authorized by G.S. 96-4 is five dollars and eighty-four cents (\$5.84) for each one-quarter hour or fraction thereof. The overhead cost for processing and invoicing is four dollars and fifty cents (\$4.50) per invoice.

*Authority G.S. 96-4(x); 20 CFR 603.*

**04 NCAC 24A .0206 METHOD OF PAYMENT**

- (a) Fees shall be paid by cash, money order, or certified check.
- (b) An agency of state or federal government, a county, or a municipality may pay fees by draft.
- (c) Payments shall be mailed to the North Carolina Department of Commerce, Division of Employment Security, ATTN: Finance

and Budget, Post Office Box 25903, Raleigh, North Carolina 27611.

*Authority G.S. 96-4(x); 20 CFR 603.*

**04 NCAC 24A .0207 PAYMENT REQUIRED BEFORE INFORMATION RELEASE**

(a) Payment shall accompany all requests for release of information. If payment does not accompany a request, DES shall send an invoice for all fees due to the individual making the request, due immediately upon receipt.

(b) When exigent circumstances requires the immediate release of information to local, state, or federal law enforcement officials, DES shall release the information upon receipt of a written assurance demonstrating a guaranty of future payment from the law enforcement official making the request.

*Authority G.S. 96-4; 20 CFR 603.*

**SECTION .0300 – PETITIONS FOR RULE-MAKING**

**04 NCAC 24A .0301 RIGHT TO PETITION**

(a) The petition shall be in writing and contain the following information:

- (1) the subject area to which the petition is directed;
- (2) a draft of the proposed rule, amendment or repeal;
- (3) the reason for the proposal;
- (4) the effect on existing rules and practices, including cost;
- (5) any data supporting the proposal;
- (6) the name and address of each petitioner; and
- (7) the date.

(b) Any person submitting a petition requesting the adoption, amendment, or repeal of a rule under this Chapter shall address the petition to the Rules Coordinator, Attn: DES Legal Services Section, Post Office Box 25903, Raleigh, North Carolina 27611-5903.

*Authority G.S. 96-4; 150B-20.*

**04 NCAC 24A .0302 DISPOSITION OF PETITION**

(a) Upon receipt of a petition, the Secretary of Commerce, or designee shall review the petition to determine whether the public interest would be served by granting the request.

(b) Within 30 days of receiving the petition, the Secretary or designee shall make a decision on the petition and inform the petitioner by mailing:

- (1) a written denial of the petition and the reason for the denial; or
- (2) written notice to the petitioner that the Secretary or designee will initiate a rule-making proceeding as required by G.S. 150B.

(c) Each determination granting or denying a petition shall include a statement that the Secretary or designee's decision is a final agency decision subject to judicial review.

(d) Each determination shall include instructions for filing a request for judicial review in the superior court pursuant to G.S.

150B-45 within 30 days after receiving the determination and the date the determination was mailed.

*Authority G.S. 96-4; 150B-20; 150B-45.*

**SUBCHAPTER 24B - BENEFITS**

**SECTION .0100 - CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS**

**04 NCAC 24B .0101 FILING A CLAIM**

(a) An individual shall contact DES by internet or telephone to file a valid initial claim for benefits pursuant to 04 NCAC 24A .0104.

(b) Prior to receiving any benefits, the claimant shall register for work with a public employment office, unless exempt from this requirement as enumerated under this Chapter or any state or federal law.

(c) In the event of a mass layoff by an employer, the employer may request to electronically file an initial claim for benefits for the individuals to be laid off. The request shall be made to DES through its website at [www.ncesc.com](http://www.ncesc.com). The employer shall provide DES with a list of the individuals who wish to file an initial claim for benefits. For each individual, the list shall include all information required for an initial claim. The list shall be used by DES as an initial claim for each individual on the list. Each individual shall subsequently file his or her weekly certification.

(d) Information for an initial claim shall include:

- (1) the claimant's name, social security number, address, telephone number, email address, and date of birth, gender;
- (2) immigration status;
- (3) whether the claimant worked for the federal government or in another state during the previous two years;
- (4) whether the claimant applied for or is receiving disability payments;
- (5) whether the claimant was or will be paid vacation or severance and the time frame that the payment covers;
- (6) whether the claimant refused work since becoming unemployed;
- (7) whether the claimant filed for or is receiving benefits under any other unemployment insurance law;
- (8) whether the claimant applied for or is receiving any type of retirement pension;
- (9) the name and complete address of the claimant's last employer;
- (10) the reason for the claimant's separation from work; and
- (11) the claimant's beginning and ending dates of employment.

*Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 20 C.F.R. 602.*

**04 NCAC 24B .0102 ALTERNATIVE FILING METHODS**

(a) A claimant shall file a valid initial claim, or a weekly certification for payment of benefits by mail, delivery service, or facsimile to DES's Central Office in Raleigh, North Carolina, or a Division of Workforce Solutions public employment office throughout the State when conditions exist that make it impracticable for a DES representative to accept the claim or weekly certification by telephone or internet due to inclement weather or declared natural disaster.

*Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 20 C.F.R. 602.*

**04 NCAC 24B .0103 WEEKLY CERTIFICATIONS**

(a) After a claimant files a valid initial claim and establishes a benefit year, the claimant shall file subsequent weekly certification for payment of benefits by telephone, or internet on DES's website at intervals of no less than seven and no more than fourteen consecutive days for each week claimed.

- (1) Each claimant shall file weekly certifications as defined under 04 NCAC 24A .0104.
- (2) If at any time during the benefit year, more than fourteen calendar days elapse since the claimant last filed a weekly certification, the claimant shall file an additional or reopened claim for benefits as defined in 04 NCAC 24A .0105, and shall comply with all eligibility requirements.

(b) Each claimant shall:

- (1) file claims and weekly certifications in accordance with the rules of this Chapter that includes the following:
  - (A) information required for claims filing outlined in Rule .0101 of this Section.
  - (B) information required for filing weekly certification, including each claimant's full name and social security number;
- (2) inform DES of whether he or she worked during the previous calendar week;
- (3) provide information regarding all earnings before deductions (gross) for work performed during the previous calendar week;
- (4) provide information as to whether he or she received holiday, vacation, bonus, or separation pay, and the gross amount during the previous calendar week;
- (5) inform DES of whether he or she began receiving or whether there was a change in any type of retirement pension during the previous calendar week;
- (6) provide information regarding whether he or she applied for or received any disability payments during the previous calendar week;
- (7) inform DES of whether he or she was physically able and available for work during the previous calendar week;
- (8) provide information as to whether he or she looked for work, refused work or kept a record of work search during the previous calendar week; and

- (9) provide information as to whether he or she has quit a job or been discharged from a job since filing a claim for unemployment benefits.
- (10) sign all forms for the valid initial claim or weekly certification that are filed in person, by mail or delivery service; and
- (11) submit all claims and weekly certifications as required by the Employment Security Law and this Section.

*Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 96-15.01.*

**04 NCAC 24B .0104 INFORMATION TO BE PROVIDED TO CLAIMANTS FILING A NEW CLAIM**

(a) A claimant filing a new claim for benefits shall be informed that:

- (1) unemployment insurance benefits are subject to federal and state income tax;
- (2) he or she may elect to have federal and state income tax deducted and withheld from the payment of unemployment insurance benefits;
- (3) he or she may change a previous withholding status;
- (4) all amounts deducted and withheld from unemployment insurance benefits shall remain in the unemployment fund, as defined in G.S. 96-5, until transferred to the federal or state taxing authority as a payment of income tax; and
- (5) any amounts deducted and withheld for taxes shall be only after amounts are deducted and withheld under any other provisions of the Employment Security Law.

*Authority G.S. 96-4; 96-14.2.*

**04 NCAC 24B .0105 ANTEDATING**

(a) A valid initial claim shall be retroactively effective to the Sunday of the calendar week during which a claimant would have filed a claim if the failure to file the claim at that time includes the following:

- (1) a notice of the time and place for filing a claim for benefits that should have been posted was not posted in the claimant's employment establishment;
- (2) the claimant's employer coerced the claimant not to file a claim for benefits and the claimant contacted an authorized representative of DES no later than 14 days following his or her last day of work;
- (3) of natural disaster; or
- (4) an invalid claim was filed in good faith in another state.

*Authority G.S. 96-4; 96-14.1; 96-15.*

**04 NCAC 24B .0106 SUSPENSION OF BENEFITS FOR PROBATION VIOLATORS WHO AVOID ARREST**

(a) Upon receipt of a valid court order resulting from a probation violation for absconson or willful avoidance of arrest, DES shall suspend benefits pursuant to the terms outlined by the issuing judge in the order, effective beginning on the Sunday following the effective date of the order.

(b) Within seven days of receiving the order, DES shall provide written notice and reasons for the ineligibility for benefits to the claimant, the issuing court, and the North Carolina Department of Public Safety.

(c) The notice shall state:

- (1) the claimant's name;
- (2) the claimant's address as contained in DES's official records and provided with the court order;
- (3) the date the order was entered; and
- (4) the effective date of the claimant's ineligibility for benefits.

*Authority G.S. 15A-1345; 96-4; 96-14.1.*

**SECTION .0200 - INTERSTATE CLAIMS**

**04 NCAC 24B .0201 REGISTRATION FOR WORK**

(a) The agent state shall register each claimant for work:

- (1) who files through the agent state for work; or
- (2) upon notification of a claim filed directly with the liable state, as required by the law, regulations, and procedures of the agent state.

(b) The registration shall be accepted as meeting the registration requirements of the liable state.

(c) Each agent state shall report each interstate claimant who fails to meet the registration or re-employment assistance reporting requirements of the agent state to the liable state.

*Authority G.S. 96-4; 96-24.*

**04 NCAC 24B .0202 BENEFIT RIGHTS OF INTERSTATE CLAIMANTS**

(a) If a claimant files a claim against any state, and it is determined by the state that the claimant has benefit wage credits available in the state, then claims shall be filed only against the state as long as benefit wage credits are available in that state. Once benefit wage credits become unavailable in that state, the claimant shall file claims against any other state where benefit wage credits are available.

(b) For the purposes of this Section, benefit wage credits shall be deemed to be unavailable:

- (1) whenever benefits have been exhausted, terminated, or postponed for an indefinite period; or
- (2) for the entire period in which benefits would otherwise be payable; or
- (3) whenever benefits are affected by the applications of a seasonal restriction.

*Authority G.S. 96-4; 96-15; 96-16; 96-21; 96-24; 20 CFR 616.*

**04 NCAC 24B .0203 CLAIMS FOR BENEFITS**

(a) Claims for benefits or waiting-period credit filed by an interstate claimant directly with the liable state shall be filed according to the liable state's procedures. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state based on consecutive claims filed.

(b) Claims shall be filed according to the agent state's regulations for intrastate claims in the same manner as provided in Section .0100 of this Subchapter.

(1) With respect to claims for weeks of unemployment during which a claimant was not working for his regular employer, the liable state shall accept a continued claim that is filed up to one week or one reporting period late under circumstances that it considers good cause. If a claimant files more than one reporting period late, the filing shall open an additional claim, and no continued claim for a past period shall be accepted.

(2) With respect to weeks of unemployment during which a claimant is attached to his regular employer, the liable state shall accept any claim filed within the time applicable to claims under the law of the agent state.

*Authority G.S. 96-4; 20 C.F.R. 616.*

**04 NCAC 24B .0204 DETERMINATION OF CLAIMS**

(a) In connection with each claim filed by an interstate claimant, the agent state shall compile and report the facts relating to the claimant's availability for work and eligibility for benefits to the liable state.

(b) The agent state's responsibility and authority in determination of interstate claims shall be limited to investigation and reporting of relevant facts, including facts pertaining to each claimant's registration for work or reporting for re-employment assistance as required by the agent state.

*Authority G.S. 96-4; 96-15; 20 C.F.R. 616.*

**04 NCAC 24B .0205 APPELLATE PROCEDURE**

(a) The agent state shall cooperate in taking evidence and holding hearings in interstate benefit claims appeals.

(b) The agent state shall conduct appeal hearings in disputed cases and determine timeliness using the liable state's laws, regulations, or policies and practices. In interstate appeals where North Carolina is the liable state, timeliness of the appeal shall be determined by provisions of the Employment Security Law, 04 NCAC 24A .0100, and any DES Precedent Decisions applicable to intrastate appeals.

(c) The liable state shall conduct the hearings on appealed interstate benefit claims.

*Authority G.S. 96-4; 20 CFR 616.*

**04 NCAC 24B .0206 CANADIAN CLAIMS**

The provisions of this Section apply to all Canadian claims.

*Authority G.S. 96-4.*

**04 NCAC 24B .0207 NOTIFICATION OF INTERSTATE CLAIM**

- (a) The liable state shall notify the agent state of each initial claim, reopened claim file, claim transferred to interstate status, and each weekly claim filed from the agent state.
- (b) Notice shall be provided using the Interstate Benefit Payment Plan uniform procedures and record format promulgated as written guidance by the USDOL.
- (c) This rule incorporates material found in the Interstate Benefit Payment Plan by reference in accordance with G.S. 150B-14(c). Copies of the incorporated material found in the Interstate Benefit Payment Plan can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0101.

*Authority G.S. 96-4; 20 CFR 616.*

**SECTION .0300-WORK SEARCH REQUIREMENTS**

**04 NCAC 24B .0301 REQUIREMENTS FOR CLAIMANTS**

- (a) Every claimant shall register for work at [www.NCWorks.gov](http://www.NCWorks.gov) or a public employment office in the state in which you reside, actively seek work, be available for work, and accept suitable work unless specifically exempted by G.S. 96-14.9 or federal law.
- (b) Each claimant shall make the minimum number of weekly work search contacts required by G.S. 96-14.9(e)(3).
  - (1) Each claimant shall maintain weekly work search contact records as required by G.S. 96-14.9(e)(4).
  - (2) Each claimant who receives his or her first unemployment benefit payment on or after March 1, 2014 shall have a mandatory in-person Employability Assessment Interview (EAI) with a workforce specialist at a local DWS office as a condition of continued eligibility for receipt of unemployment insurance benefits. Claimants excepted from this requirement are: Reemployment Eligibility Assessment (REA); those enrolled in and attending a Workforce Investment Act (WIA) program; attached claims; and longshoremens.
    - (A) The EAI shall be scheduled within four weeks of the first benefit payment to a claimant.
    - (B) Each claimant reporting for EAI shall be required to present a valid form of identification to DWS or their designee to establish their availability for work as required under G.S. 96-14.6.
    - (C) DWS shall notify each claimant receiving an initial EAI of the date, time, and location by mail, at least 14 days in advance of the EAI.
- (c) Each claimant attending an EAI shall present his or her record of work search identification in order to receive unemployment insurance services at a DWS office.
  - (1) A valid ID shall be identification issued at the state or federal level acceptable for

Employment Eligibility Verification Form (I-9) purposes, and shall include, but not be limited to the following:

- (A) driver's license;
- (B) military identification;
- (C) United States Passport;
- (D) passport card;
- (E) trusted traveler cards such as the NEXUS SENTRI and FAST CARDS issued by the U.S. Department of Homeland Security;
- (F) Permanent Resident Card (green card); and
- (G) Native American tribal identification card.

(d) Each claimant shall actively seek suitable work as required under G.S. 96-14.9 and 20 C.F.R. 604.5 to receive unemployment benefits.

- (1) Work registration at [www.NCWORKS.gov](http://www.NCWORKS.gov) alone shall be insufficient to establish that a claimant is actively seeking work.
- (2) Each claimant shall seek work on their own behalf.
- (3) Restrictions as to salary, hours, or working conditions that are inconsistent with the labor market pursuant to the factors outlined in G.S. 96-14.6(f) shall indicate that a claimant is not making a reasonable search for suitable work.

*Authority G.S. 96-4; 96-14.9; 96-14.14; 96-15; 20 C.F.R. 604.*

**04 NCAC 24B .0302 RECORD OF WORK AND WAGES OF CLAIMANTS**

- (a) Each claimant who has registered for work and filed a claim for unemployment insurance benefits shall keep a record of any work performed during any day within a benefit period. Each claimant shall record all work performed, regardless of whether the work constitutes employment as defined in G.S. 96-1(12).
- (b) The record of work shall include the:
  - (1) name and address of each individual or entity for whom the claimant worked;
  - (2) total remuneration earned; and
  - (3) the number of hours worked during the benefit period.
- (c) Each claimant shall submit the record of work to DES when requested. DES shall request the record of work under the following conditions:
  - (1) when a claimant's availability for work is questioned by failing to meet any of the requirements under G.S. 96-14.6(d);
  - (2) whenever an inconsistency arises between what a claimant asserts in a work search report and what an employer reports to DES;
  - (3) during a claimant's eligibility for benefits review;
  - (4) during an audit; or
  - (5) when a claimant reports to a DWS office for an Employability Assessment Interview.

(d) Each interstate claimant shall transmit a copy of their record of work, including photo-ID, to DES via facsimile or mail as provided in 04 NCAC 24A .0103.

*Authority G.S. 96-4; 96-15; 20 C.F.R. 604.*

**SECTION .0400 - ADJUDICATION**

**04 NCAC 24B .0401 DETERMINATIONS**

(a) Each adjudicator shall render a written determination resolving any issues related to the claim or protest under G.S. 96-15, which shall include:

- (1) each issue or question involved;
- (2) the docket number of the case;
- (3) the resolution of each issue;
- (4) the citation of the provision of law applied to reach the resolution of each issue or question;
- (5) the parties' rights to file an appeal of the determination;
- (6) the statutory time period under G.S. 96-15(b)(1) within which an appeal shall be filed;
- (7) instructions for requesting an in-person hearing;
- (8) information on filing an appeal of the determination by mail, facsimile, or email, as set forth in 04 NCAC 24A .0104; and
- (9) notice that claims filed on or after June 30, 2013 are subject to repayment of overpayments, including those resulting from any decision that is later reversed on appeal.

*Authority G.S. 96-4; 96-15; 20 C.F.R. 602.*

**04 NCAC 24B .0402 REQUEST FOR SEPARATION INFORMATION FROM EMPLOYER**

(a) In connection with a claim filed by a claimant, DES shall require the claimant's last employer to provide complete information (sufficient facts) to make a correct initial determination of the claimant's eligibility for unemployment insurance benefits without having to contact the employer to obtain additional information.

(b) Employers shall submit a Form NCUI 500AB consistent with G.S. 96-15(b)(2) that shall be provided to the employer's last known address as reflected in its official records and include the following information:

- (1) last and first dates of employment;
- (2) the claimant's pay rate;
- (3) the gross amount of the vacation, severance, and any sick pay;
- (4) the beginning and ending dates covered by the separation payments;
- (5) if the claimant quit their job:
  - (A) a copy of the employee's resignation letter if one exists;
  - (B) the reason(s) for the resignation; or
- (6) if the claimant was discharged:
  - (A) the reason(s) for the separation and supporting documentation and evidence;

(B) copies of any employee policies, warnings, handbooks, documents, or contracts signed by the employee that pertain to the employee's discharge; or

(7) if the claimant is still employed:

- (A) conditions under which the employee was hired;
- (B) the number of hours per week that the employee is currently working;
- (C) any reduction of the employee's work hours, the date the reduction took place, reasons for the reduction, and if temporary, any date when the employee may be allowed to return to work; or

(8) if the employee was separated due to an inability to perform job duties and was employed less than 100 days, an explanation describing the inability to perform the job duties; and

(9) any separation information requested by DES, or which the employer should reasonably expect is necessary for DES to make a correct initial determination of the claimant's eligibility for unemployment benefits.

(c) Employers may respond to requests for separation information by mail or fax as provided under 04 NCAC 24A .0104, or by submitting their responses at [www.ncesc.com](http://www.ncesc.com) through the employer portal.

*Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15; 20 U.S.C. 3303.*

**SECTION .0500 – LABOR DISPUTES**

**04 NCAC 24B .0501 NOTICE TO EMPLOYER OF LABOR DISPUTE CLAIM**

When a claimant files a claim for benefits that allegedly involves unemployment due to a labor dispute, the UI Director or designee shall notify the employer of the claim filed within 30 days of receipt.

*Authority G.S. 96-4; 96-15.*

**04 NCAC 24B .0502 EMPLOYER RESPONSE REQUIREMENT**

(a) Within five days of receiving notice that a claim was filed involving unemployment due to a labor dispute, the employer shall provide the UI Director or designee, with a list containing:

- (1) the names of all affected employees;
- (2) the complete mailing addresses, including zip codes of all affected employees; and
- (3) the social security numbers of all affected employees.

(b) The employer shall also provide the UI Director or designee, with:

- (1) notice of the first day of unemployment;
- (2) the reason for the labor dispute; and
- (3) the place where the labor dispute is or was in progress.



Authority G.S. 96-4; 96-14.7; 96-15.

**04 NCAC 24B .0503 DETERMINATION OF LABOR DISPUTE AND REFERRAL FOR HEARING**

(a) If an issue of unemployment due to a labor dispute exists, the Chief Counsel shall refer the matter in writing to DES's Board of Review or designee for hearing.

(b) Hearings involving the issue of unemployment due to a labor dispute shall be heard upon order of the Board of Review or designee and conducted pursuant to 04 NCAC 24C.

Authority G.S. 96-4; 96-14.7; 96-15.

**04 NCAC 24B .0504 ISSUES**

(a) The issues to be decided in labor dispute hearings may include the following:

- (1) whether a labor dispute existed, and if so, identification of the beginning and ending dates of the labor dispute, or whether the dispute is ongoing;
- (2) the reasons for the labor dispute;
- (3) whether any individual is disqualified to receive benefits as provided in G.S. 96-14.7; and
- (4) any other issue ordered by DES's Board of Review or designee, which shall be provided to each party in writing.

Authority G.S. 96-4; 96-14.7; 96-15.

**SECTION .0600 – UNEMPLOYMENT INSURANCE BENEFIT OVERPAYMENTS**

**04 NCAC 24B .0601 NOTICE REQUIREMENT FOR OVERPAYMENT**

(a) A determination finding an overpayment of benefits to a claimant shall contain:

- (1) the date the determination was mailed to the claimant;
- (2) reasons for the overpayment;
- (3) the statutory authority under G.S. 96-18 for seeking repayment of the overpayment; and
- (4) notice that the claimant may protest the overpayment determination and instructions on how to protest the overpayment determination as provided in 04 NCAC 24A .0104.
- (5) Notice that the claimant may file a request for waiver of the overpayment in the same manner as prescribed under Subparagraph (a)(4) of this Rule.

Authority G.S. 96-4; 96-18.

**04 NCAC 24B .0602 BILL FOR REPAYMENT OF OVERPAYMENT**

(a) If a claimant does not protest an overpayment determination, the determination of overpayment shall become final. DES shall mail a bill to the claimant for the amount of the overpayment owed after a final determination or decision.

(b) The first bill shall contain:

- (1) the total amount of the overpayment; and
- (2) notice that repayment of an overpayment determined to be fraudulent shall not be waived.

Authority G.S. 96-4; 96-18.

**04 NCAC 24B .0603 WAGE AUDIT NOTICE FOR EMPLOYERS**

(a) DES shall mail a Wage Audit Notice to an employer requesting information for investigating a potential claimant overpayment whenever a discrepancy or question to that claimant's eligibility for unemployment benefits exists. The Wage Audit Notice shall:

- (1) identify the claimant whose weekly earnings information is sought;
- (2) request the employer provide weekly earnings information during the specified time period; and
- (2) any other information necessary to investigate the claimant's overpayment status;

(b) The employer shall respond to the Wage Audit Notice request within fifteen days by mail or internet at NC Division of Employment Security, Benefits Integrity Unit, Post Office Box 25903 Raleigh, NC 27611 or [www.ncesc.com](http://www.ncesc.com)

Authority G.S. 96-4; 96-18.

**SECTION .0700 – REQUEST FOR WAIVER OF OVERPAYMENT**

**04 NCAC 24B .0701 WAIVER OF REPAYMENT OF NONFRAUDULENT OVERPAYMENT**

(a) Claimants may petition DES for a waiver of non-fraud unemployment insurance overpayments as provided in this Subchapter.

(b) A request for waiver of overpayment shall be accompanied by all evidence or documents that the claimant wishes DES to consider in deciding whether to grant the waiver and a written explanation of why the waiver request should be granted.

(c) DES shall not consider any petition for waiver of overpayment while an appeal of the overpayment is pending.

(d) Any request to waive the overpayment shall indicate that the claimant agrees that the overpayment is owed to DES and the claimant shall not be permitted to challenge the overpayment determination in the waiver petition.

Authority G.S. 96-4; 96-15; 96-18.

**04 NCAC 24B .0702 WAIVER OF REPAYMENT OF FRAUDULENT OVERPAYMENT**

DES shall not waive repayment of overpayment of any State or federal unemployment insurance benefits caused by a claimant's fraud as defined under G.S. 96-18. DES shall not consider any request for waiver of fraudulent overpayments.

Authority G.S. 96-4; 96-18.

**04 NCAC 24B .0703 DECISION AND CONSIDERATION OF WAIVER PETITIONS**

(a) The Assistant Secretary or designee shall consider the degree of the claimant's fault in creating the overpayment and any other matters tending to show that collection of the overpayment would be against equity and good conscience. Except as provided in Rule .0704 of this Section, a claimant's present economic circumstances or present ability to repay is not relevant to whether a waiver request should be granted.

(b) The Assistant Secretary or designee shall render a written decision on the waiver request.

*Authority G.S. 96-4; 96-18.*

**04 NCAC 24B .0704 FACTORS IN DETERMINING EQUITY AND GOOD CONSCIENCE**

(a) DES shall consider the following factors:

- (1) whether the overpayment resulted from a decision on appeal and whether there was notice to the claimant that the case had been appealed;
- (2) whether there has been an affirmative finding under Subparagraph (a)(1) regarding the claimant and the overpayment; and
- (3) whether recovery of the overpayment would cause extraordinary and lasting financial hardship to the claimant resulting in the claimant's loss of or inability to obtain minimal necessities of food, medicine, and shelter; and whether the financial hardship as described above may be expected to last for the foreseeable future.
- (4) In applying this hardship test in the case of attempted recovery by repayment, a substantial period of time will be 180 days, and the foreseeable future shall be no less than 360 days.
- (5) In applying this hardship test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future is the longest potential period of benefit entitlement at the time of the request for a waiver of repayment.
- (6) In making financial hardship determinations, DES shall consider all potential income sources of the claimant, the claimant's family, and all cash resources available to the claimant and the claimant's family in the time period being considered.

*Authority G.S. 96-4; 96-18.*

**04 NCAC 24B .0705 FACTORS IN DETERMINING FAULT**

(a) In determining whether fault exists in any overpayment of state or federal compensation, the following factors shall be considered:

- (1) whether the claimant made or caused another to make a material statement or representation in

connection with the application for federal compensation that resulted in the overpayment, and whether the claimant knew or should have known that the statement or representation was inaccurate;

- (2) whether the claimant failed or caused another to fail to disclose or omit a material fact in connection with an application for the compensation that resulted in the overpayment, and whether the claimant knew or should have known that the fact was material;
- (3) whether the claimant knew or could have been expected to know that he or she was not entitled to the compensation payment; and
- (4) whether there was a determination that the overpayment was the result of fraud as defined under G.S. 96-18.

(b) If any factor in Paragraph (a) is confirmed, recovery of the overpayment shall not be waived.

*Authority G.S. 96-4; 96-18.*

**SECTION .0800 - INTERSTATE OVERPAYMENT RECOVERY**

**04 NCAC 24B .0801 DUTIES OF THE REQUESTING STATE**

(a) The requesting state shall:

- (1) send the recovering state a request for overpayment recovery assistance that shall include:
  - (A) certification that the overpayment is collectible under the requesting state's law;
  - (B) certification that the determination is final and that any rights to postpone recoupment of the benefits are exhausted or have expired;
  - (C) a statement of whether the state is participating in a cross-program offset by agreement with the U.S. Secretary of Labor; and
  - (D) a copy of the initial overpayment determination and a statement of the outstanding balance;
- (2) send notice of the request to the claimant pursuant to Rule .0802 of this Section;
- (3) send the recovering state a new outstanding overpayment balance whenever the requesting state receives any amount of repayment from a source other than the recovering state (e.g., interception of tax refund); and
- (4) send notice of the request by a method approved by the USDOL.

*Authority G.S. 96-4; 96-18.*

**04 NCAC 24B .0802 DUTIES OF RECOVERING STATE**

(a) In recovering state or federal benefit overpayments, the recovering state shall:

- (1) issue an overpayment recovery determination to the claimant that shall include the following:
  - (A) statutory authority for the offset;
  - (B) identity of the state requesting recoupment;
  - (C) date of the original overpayment determination;
  - (D) type of overpayment, such as fraud or non-fraud;
  - (E) program type;
  - (F) total amount of offset; and
  - (G) amount to be offset weekly;
- (2) offset any benefits to be paid for each week claimed, in the amount permitted by that state's law;
- (3) prepare and forward a check payable to the requesting state, showing the amount recovered, except as provided in Rule .0803 of this Section.
- (4) retain a record of the overpayment balance in its files no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefit period, or other extension of benefits, whichever is later; and
- (5) not redetermine the original overpayment determination.

*Authority G.S. 96-4; 96-18.*

**04 NCAC 24B .0803 DUTIES OF PAYING STATE**

(a) In recovering outstanding overpayments in the transferring state, the paying state shall:

- (1) offset any outstanding overpayment it receives from a transferring state prior to honoring any request from any other Interstate Reciprocal Overpayment Recovery Arrangement (IRORA) participating state; and
- (2) credit deductions against the benefits paid statement, or forward a check to the transferring state as described Rule .0802 of this Section.

*Authority G.S. 96-4; 96-18.*

**04 NCAC 24B .0804 WITHDRAWALS OF COMBINED WAGE CLAIMS**

(a) Withdrawal of a combined wage claim after benefits have been paid shall only be permitted where the combined wage claimant has repaid benefits overpaid, or authorizes the new liable state to offset the overpayment.

- (1) The paying state shall issue an overpayment determination and forward a copy, together with an overpayment recovery request and an authorization to offset, with the initial claim to the new liable state.

(2) The recovering state, which is the new liable state, shall:

- (A) offset the total amount of any overpayment resulting from withdrawal of a combined wage claim before releasing any payments to the claimant;
- (B) offset the total amount of any overpayment resulting from withdrawal of a combined wage claim before honoring a request from any other participating state under IRORA;
- (C) provide the claimant with written notice for the amount offset; and
- (D) prepare and forward a check representing the amount recovered to the requesting state as described Rule .0802(a) of this Section.

*Authority G.S. 96-4; 96-18.*

**SECTION .0900 - SETOFF DEBT COLLECTION ACT**

**04 NCAC 24B .0901 SETOFF DEBT COLLECTION ACT HEARINGS**

Hearings pursuant to G.S. 105A-8(B) shall be conducted consistent with the procedures prescribed in 04 NCAC 24C.

*Authority G.S. 96-4; 105A-8(b).*

**SECTION .1000 - TREASURY OFFSET PROGRAM**

**04 NCAC 24B .1001 NOTICE OF REFERRAL**

(a) Consistent with 31 U.S.C. 3716, DES shall notify each claimant by mail of its intent to refer the debt to the Treasury Offset Program (TOP) at least 60 days before submitting the debt to TOP.

(b) Each notice shall include:

- (1) the claimant's name;
- (2) the type of debt;
- (3) the total amount of the referred debt;
- (4) the total amount of fees, as applicable;
- (5) the amount of assessed penalties, as applicable;
- (6) a citation to the legal authority that permits collection of the debt through TOP;
- (7) a clear statement of DES's intention to collect the debt through administrative offset;
- (8) a statement that the claimant may request a copy of DES's records that support the debt pursuant to 04 NCAC 24A;
- (9) a statement of the claimant's right to request that DES reevaluate the debt;
- (10) the time period in which request for reevaluation shall be made;
- (11) a statement of the claimant's right to request to enter into a written repayment agreement with DES;

- (12) a mailing address to which payments shall be sent;
- (13) a mailing address and facsimile number to request a reevaluation of the debt;
- (14) a telephone number to seek information regarding the notice;
- (15) the date that the notice was mailed to the claimant; and
- (16) instructions for paying the debt.

(c) Claimants choosing to repay the debt after receiving notice shall make payment payable to Division of Employment Security and mail to Benefit Payment Control (BPC) Unit, Post Office Box 25903, Raleigh, NC 27611, or remit by credit card on DES's website at [www.ncesc.com](http://www.ncesc.com), or by calling BPC at (919) 707-1338

*Authority G.S. 96-4; 96-18; 31 CFR 285; 26 U.S.C. 6402; 31 U.S.C. 3716.*

**04 NCAC 24B .1002 REEVALUATION OF DEBT**

(a) A claimant requesting a reevaluation of their debt shall submit a written request to DES's Benefits Integrity Unit by mail to Post Office Box 25903, Raleigh, NC 27611-5903, or facsimile to (919) 733-1369.

- (1) The written request shall explain why the debt should not be referred to the Treasury Offset Program (TOP) for collection.
- (2) The written request shall be accompanied by documents or other convincing evidence that shows:
  - (A) the identity of the individual to whom the debt is assigned is incorrect; and
  - (B) the amount of the debt is inaccurate;

(b) The Assistant Secretary or designee shall consider the evidence submitted by the claimant.

(c) The Assistant Secretary or designee shall issue a written decision on the request for reevaluation. The written decision shall be mailed to the claimant and include the following:

- (1) whether the debt will be referred to TOP; and
- (2) reasons for the decision based on the reasons provided by the claimant in the written request for reevaluation.

*Authority G.S. 96-4; 96-18; 31 CFR 285; 26 U.S.C. 6402; 31 U.S.C. 3716.*

**SUBCHAPTER 24C - INITIAL APPEALS FROM DETERMINATION AND HIGHER AUTHORITY REVIEW**

**SECTION .0100 – GENERAL INITIAL APPEALS INFORMATION**

**04 NCAC 24C .0101 APPEAL DATE ESTABLISHED BY TESTIMONY**

(a) A party shall be allowed to establish an appeal date earlier than a postal meter date, or the date of a document only in the face of convincing evidence.

(b) When a party alleges filing an appeal that DES never received, the party shall present convincing evidence of a timely filing,

which may be corroborated by testimony or physical evidence linked to the appeal in question.

(c) The Appeals Referee shall allow cross-examination to establish timeliness of an appeal.

*Authority G.S. 96-4; 96-15.*

**04 NCAC 24C .0102 EXCEPTION TO TIMELINESS REQUIREMENT**

(a) Timeliness sanctions shall be waived when DES or an agent state representative gives misleading information on appeal rights to a party, if the party:

- (1) establishes what he or she was told that was misleading and how he or she was misled;
- (2) identifies, if possible, the individual who misled him or her; and
- (3) establishes that no contrary written instructions were available to the party.

*G.S. 96-4; 96-15.*

**04 NCAC 24C .0103 BASE PERIOD EMPLOYER DENIED NONCHARGING**

A base period employer who was not the claimant's last employer may file an appeal from a determination denying noncharging of benefits to its account as provided in 04 NCAC 24D .0200. The claimant is not a party with appeal rights in this appeal.

*Authority G.S. 96-4; 96-11.3; 96-11.4.*

**04 NCAC 24C .0104 EMPLOYER PARTY TO DETERMINATION**

An employer may file an appeal from a determination that affects a claimant's entitlement to benefits if the employer is a party to the determination. Only one employer can be a party with appeal rights to a proceeding.

- (1) An employer named as the last employer on an initial claim is a party to a determination ruling on the merits of the claimant's separation from employment and other specific issues raised by the employer regarding the claimant's entitlement to benefits.
- (2) An employer named as the last employer on an additional or continued claim is a party to a determination ruling on the merits of that additional or continued claim regarding separation from employment or other specific issues raised by the employer if the employer:
  - (A) was the employer named as the last work on the claimant's initial claim; or
  - (B) is a base period employer whose account has been ruled subject to charging of benefits.
- (3) A reimbursing employer named as the last employer on an additional or continued claim is a party to a determination ruling on the merits of that additional or continued claim regarding separation from employment or other specific issues raised by the employer if the employer:

- (A) was the employer named as the last work on the claimant's initial claim; or
- (B) is a base period employer.
- (4) If an employer, during a claimant's benefits year, provides DES with information that raises specific issues, including a potential disqualification, ineligibility, allegations of fraud, or other issues that affect a claimant's entitlement to benefits, the employer is a party with appeal rights to a determination ruling on the merits of the specific issue raised by the employer if the employer is:
  - (A) named as the last employer on the claimant's initial claim;
  - (B) a base period taxed employer whose account has been ruled subject to charging of benefits, even if that employer was named as the last employer on the claimant's initial claim and did not timely respond to notice of the claimant's initial claim;
  - or
  - (C) a base period reimbursing employer.
- (5) An employer against whom a claimant has alleged entitlement to additional base period wages is a party with appeal rights to that issue.

- (2) the identity of the determination being appealed;
- (3) a clear statement of the party's intent to appeal;
- and
- (4) the name of the party appealing.

Authority G.S. 96-4; 96-15.

**04 NCAC 24C .0204 APPEALS HEARING NOTICE**

- (a) The Appeals Section shall mail notice of the hearing to each party at least 14 days before the hearing date.
- (b) Notice of the hearing shall include:
  - (1) the determination appealed;
  - (2) the appealing party;
  - (3) the time of the hearing;
  - (4) the date of the hearing;
  - (5) the physical location of an in-person hearing;
  - (6) the telephone number of each party for telephone hearings;
  - (7) each issue, with statutory reference, to be heard and decided;
  - (8) the name and contact information of the designated Appeals Referee;
  - (9) the manner by which witnesses may offer evidence and participate in the hearing;
  - (10) each party's right to legal representation;
  - (11) instructions for requesting a rescheduling of the hearing;
  - (12) each party's right and instructions for requesting the issuance of a subpoena for the production of records or individuals to appear to testify;
  - (13) instructions on how to request an in-person hearing; and
  - (14) instructions on how to give evidence for a hearing.

(c) The determination, the written appeal, and any additional documents provided to the Appeals Section by either party, shall accompany the hearing notice.

Authority G.S. 96-4; 96-15.

**04 NCAC 24C .0205 TELEPHONE HEARINGS**

- (a) Hearings shall be conducted by telephone conference call, unless a request or objection is made pursuant to Rule .0206 of this Section.
- (b) In cases of telephone hearings, the Appeals Section shall provide a Telephone Hearing Questionnaire for a party to use to submit each telephone number to be called by the Appeals Referee for the hearing. In the absence of the submission by a party of any telephone number to be called for the hearing, the Appeals Referee shall call a party at the telephone number listed on the hearing notice.

Authority G.S. 96-4; 96-15.

**04 NCAC 24C .0206 IN-PERSON HEARINGS**

- (a) A party may request an in-person hearing:
  - (1) at the time the appeal is filed; or

Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15.

**SECTION .0200 – INITIAL APPEALS HEARING**

**04 NCAC 24C .0201 APPEARANCE BY PARTY**

An appearance by a party includes offering testimony, questioning witnesses, and presenting oral argument.

- (1) A party shall appear by telephone when the party participates in the telephone conference call with the Appeals Referee on the date and time of the hearing and participates in the proceedings.
- (2) A party shall appear in person at the location on the date and times scheduled for the in-person hearing, and participate in the proceedings.

Mere submission of written documents or observation of the proceedings does not constitute an appearance.

Authority G.S. 96-4; 96-15.

**04 NCAC 24C .0202 PRESENTING AND SCHEDULING APPEALED CLAIMS**

A party wishing to appeal from an adjudicator's determination shall file an appeal by mail, facsimile, or email pursuant to Rule 04 NCAC 24A .0104.

Authority G.S. 96-4; 96-15.

**04 NCAC 24C .0203 CONTENTS OF APPEAL TO APPEALS SECTION**

A party's written appeal shall contain the following:

- (1) the date of the appeal;

- (2) by filing a written objection to the telephone conference call to:
  - (A) the Appeals Section as provided for in 04 NCAC 24A .0104; or
  - (B) the designated Appeals Referee using the contact information provided on the hearing notice.

(b) If travel is required to conduct the in-person hearing, the objecting party shall be required to travel to a location convenient to the non-objecting party and where the Division regularly conducts in-person hearings as determined by the Appeals Referee based on each party's location.

*Authority G.S. 96-4; 96-15.*

**04 NCAC 24C .0207 RESCHEDULING A HEARING**

(a) Either before or during a hearing, an Appeals Referee, on his or her own motion, or on the motion of a party, may continue or adjourn a hearing for "good cause" in accordance with 04 NCAC 24A .0105. In addition to the reasons set forth in G.S. 96-15(d1), a continuance or an adjournment, may be granted at the request of a party due to:

- (1) illness of the party;
- (2) death in the immediate family of the requesting party;
- (3) a need to obtain an interpreter or translator;
- (4) a religious observance;
- (5) jury duty;
- (6) actively seeking legal representation;
- (7) court appearance unrelated to DES;
- (8) active military duty;
- (9) scheduling conflict created by new employment; or
- (10) to accommodate the business needs of the employer.

(b) Before a hearing, requests for a continuance of the hearing shall be made to the designated Appeals Referee orally or in writing. The request for a continuance of a hearing shall specifically state and explain the reasons for the request.

*Authority G.S. 96-4; 96-15.*

**04 NCAC 24C .0208 DISQUALIFICATION OF APPEALS REFEREE**

(a) An Appeals Referee shall be free of any personal interest or bias in the appeal over which he or she is presiding.

(b) An Appeals Referee shall not participate in hearing an appeal in which that Appeals Referee has a personal interest in the outcome of the appeals decision.

(c) An Appeals Referee may recuse themselves from a hearing to avoid the appearance of impropriety or partiality.

(d) A pre-hearing challenge to the impartiality of a designated Appeals Referee shall be in writing, addressed to the Chief Appeals Referee, and shall be heard and decided by the Chief Appeals Referee or designee.

(e) The Chief Appeals Referee or designee's decision on any pre-hearing challenge to the impartiality of an assigned Appeals Referee shall be in writing and mailed to the parties.

*Authority G.S. 96-4; 96-15; 20 C.F.R. 650.2.*

**04 NCAC 24C .0209 CONDUCT OF HEARINGS**

(a) Consistent with G.S. 96-15(f), all hearings shall be conducted in a manner to preserve the substantial rights of the parties.

- (1) The parties to an appeal before an Appeals Referee have the right to present relevant and material evidence as determined by the Appeals Referee.
- (2) The Appeals Referee may ask questions to develop the record as to the relevant facts, circumstances, and issues presented at the hearing.
- (3) The Appeals Referee may examine parties and witnesses, and shall allow cross-examination to the extent necessary to afford the parties due process.
- (4) All issues relevant to the appeal shall be considered and ruled upon.

(b) The Appeals Referee shall give each party ten minutes from the time of the scheduled hearing to appear for the hearing. If the appealing party fails to appear at the hearing and a continuance had not been previously granted the Appeals Referee shall issue an Appeals Decision dismissing the appeal.

(c) A party desiring to introduce documents or other evidence at a hearing shall provide an authenticated copy plus one copy for the Appeals Referee to include in the official record, and a copy to each party to the proceeding. Documents or other evidence shall be provided to the opposing party prior to the hearing.

(d) A party offering numerous documents into evidence shall prepare a list of documents in the order of their presentation. The list shall be provided to the Appeals Referee and opposing party before the hearing, to become part of the official hearing record.

(e) Official notice may be taken of all facts for which judicial notice may be taken and of other facts within the specialized knowledge of the DES. The noticed fact and its source shall be stated on the record and made known to the parties at the earliest practicable time. A party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence.

*Authority G.S. 96-4; 96-15; 20 C.F.R. 650.2.*

**04 NCAC 24C .0210 HEARSAY**

(a) Hearsay evidence shall be accepted as credible evidence only when it:

- (1) falls within the statutory or common law exceptions to the hearsay rules; or
- (2) has an equivalent indicia of trustworthiness as competent evidence; and
- (3) is more probative on the point for which it is offered than any other evidence which the party offering the hearsay could reasonably be expected to procure.

(b) The Appeals Referee may permit the parties to file an affidavit at the time of the hearing in the same manner as applicable to other hearsay evidence.

*Authority G.S. 8C, Art. 8; 96-4; 96-15.*

**04 NCAC 24C .0211 CONTROLLED SUBSTANCE RESULTS**

(a) In lieu of live testimony from a laboratory representative at a contested claims hearing, an affidavit from an authorized representative of the laboratory may be presented to prove controlled substance examination results, chain of custody, or compliance with all testing or retesting required by federal or state law.

- (1) When a party desires to introduce the affidavit at the hearing, a copy of the affidavit shall be received by the party against whom the affidavit will be offered at least two days before the hearing.
- (2) If the party who desires to introduce the affidavit is unable, despite reasonable efforts, to accomplish the required service within the time specified, the Appeals Referee may adjourn or continue the hearing to allow such service to be accomplished. However, the Appeals Referee shall not continue the hearing if the party against whom the affidavit is offered has refused to accept service or has taken other steps to avoid or delay receipt of the affidavit.
- (3) At the hearing, the party shall offer an authenticated copy of the affidavit as an exhibit.
- (4) If the party against whom the affidavit is offered objects to the entry of the affidavit into the official record, the objecting party may request an adjournment or continuance of the hearing to subpoena the author of the affidavit. The affidavit's author will be permitted to testify by telephone at the reconvened hearing.
- (5) Once the affidavit is made a part of the official record of evidence compiled by the Appeals Referee, the Appeals Referee may in their discretion, base findings of fact on the affidavit.
- (6) The results of the controlled substance examination and compliance with any applicable statutory or regulatory procedural requirements shall be deemed proven if the claimant admits or stipulates to them during the hearing or by affidavit.

*Authority G.S. 95-230 through 95-235; 96-4; 96-15.*

**04 NCAC 24C .0212 CONTENTS OF APPEALS DECISION**

- (a) The Appeals Decision shall include:
  - (1) the names of the individuals present for the hearing;
  - (2) findings of fact necessary for a resolution of the appeal;
  - (3) the applicable statutory provisions;
  - (4) conclusions of law;
  - (5) the name of the Appeals Referee who conducted the hearing and rendered the decision; and

- (6) notice of each party's right to file an appeal of the Appeals Decision and the time period for filing an appeal.

*Authority G.S. 96-4; 96-15.*

**SECTION .0300 - LEGAL REPRESENTATION FOR INITIAL APPEALS**

**04 NCAC 24C .0301 ADMINISTRATIVE PROCEEDINGS**

- (a) An individual who is a party to a proceeding may represent himself or herself before an Appeals Referee.
- (b) A partnership or association may be represented by any of its members.
- (c) A corporation may be represented by an officer.
- (d) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.

*Authority G.S. 84; 96-4; 96-15; 96-17.*

**04 NCAC 24C .0302 NOTICES AND SERVICE TO PARTY**

- (a) Notices or certification of attorney supervision shall be in writing and presented to the Appeals Referee to become part of the official record, and shall contain:
  - (1) the name of the supervising attorney;
  - (2) the name of the person being supervised;
  - (3) the supervising attorney's active North Carolina State Bar number;
  - (4) the phone and address information of the supervising attorney.
- (b) When a party has a legal representative, all documents or information required to be provided to the party shall only be provided to the legal representative, unless otherwise instructed on the record during the hearing. An address provided to an Appeals Referee for mailing of an Appeals Decision does not constitute a change of address with DES for purposes of DES's official records.

*Authority G.S. 84; 96-4; 96-15; 96-17.*

**SECTION .0400 – SUBPOENAS FOR INITIAL APPEALS**

**04. NCAC 24C .0401 ISSUANCE OF SUBPOENAS**

- (a) Subpoenas to compel the attendance of witnesses and the production of records for any appeal hearing may be issued at the direction of the designated Appeals Referee.
  - (1) A subpoena may be issued at the request of a party or on motion of the Appeals Referee.
  - (2) Any documentation showing service of the subpoena shall become part of the official hearing record.
  - (3) Any request for a subpoena shall be in writing, sent to the Appeals Referee, and shall include:
    - (A) the name of the party requesting the subpoena;
    - (B) the claimant's name;
    - (C) the docket number of the case;

- (D) the name, address, and telephone number of each person sought for appearance at the hearing;
- (E) the specific identification of any document, recording, or item sought, including a detailed description of where the item is located;
- (F) the name and address of the individual or party in possession of any item sought; and
- (G) a statement of why the testimony or evidence to be subpoenaed is necessary for a proper presentation of the case.

(4) The request shall be granted only to the extent that the items or testimony sought appears relevant to the issues on appeal.

(b) Legal representatives may issue subpoenas at their own expense only if prior consent is obtained by the designated Appeals Referee.

(c) Subpoenas shall be issued at least five days before the date of the scheduled hearing.

*Authority G.S. 96-4; 96-15.*

**04. NCAC 24C .0402 OBJECTION TO SUBPOENA**

(a) Any party or person receiving a subpoena may serve a written objection to the issuance of a subpoena. The objection shall contain the following:

- (1) be addressed to the designated Appeals Referee prior to the hearing; and
- (2) shall provide reasons for the objection and the relief sought by the objecting party.

(b) The Appeals Referee shall rule on the objection and notify the parties of the ruling before the hearing. The Appeals Referee's ruling shall be in writing or recorded as part of the official hearing record.

*Authority G.S. 96-4; 96-15.*

**SECTION .0500 – LABOR DISPUTES**

**04 NCAC 24C .0501 REQUIREMENTS FOR APPEAL STATEMENT TO BOARD OF REVIEW**

(a) A party shall file a written statement of appeal from an appeals decision to the Board of Review. A written statement of appeal from an Appeals Decision to the Board of Review shall include the following:

- (1) identify the decision being appealed by the docket number;
- (2) contain a clear statement of the reasons or grounds for the appeal; and
- (3) state the name of the party appealing.

*Authority G.S. 96-4; 96-15.*

**04 NCAC 24C .0502 ACKNOWLEDGMENT OF APPEAL**

(a) The receipt of a party's appeal from an Appeals Decision shall be acknowledged in writing by the Appeals Section and sent to all parties of record.

(b) The notice acknowledging receipt of an appeal shall inform each party of the following:

- (1) the right to request oral arguments;
- (2) the deadline to request oral arguments;
- (3) the right to submit written arguments regarding the appeal;
- (4) the deadline for submitting written arguments; and
- (5) that the party may submit a written request for a record of the hearing proceeding pursuant to G.S. 96-15; and the procedures for obtaining a record of the hearing, including recordings or transcripts.

(c) Records shall be provided in accordance with G.S. 96-4 and 04 NCAC 24A.

*Authority G.S. 96-4; 96-15; 20 C.F.R. 603.*

**04 NCAC 24C .0503 ORAL ARGUMENTS**

(a) Oral arguments shall be granted at the discretion of the Board of Review.

(b) A request for oral arguments shall include the following:

- (1) be in writing; and
- (2) be directed to the Board of Review, North Carolina Department of Commerce by mail, facsimile, or email pursuant to 04 NCAC 24A .0104.
- (3) be received within 15 days of the date on the notice acknowledging receipt of an appeal from an Appeals Decision; and
- (4) contain a statement that a copy of the request was mailed or personally delivered to the opposing party, if one exists.

(c) If the request is granted, the Board of Review shall give written notice to each interested party to appear before the Board of Review.

(d) Notice to appear before the Board of Review to present oral arguments shall contain:

- (1) the Higher Authority Decision docket number;
- (2) the Lower Appeals Decision docket number at issue;
- (3) the identity of the party requesting oral arguments;
- (4) the right of the non-requesting party to appear and present oral arguments;
- (5) the date and time for oral arguments;
- (6) the physical address where oral arguments are scheduled to be held; and
- (7) each party's right to legal representation.

(e) The notice to appear for oral arguments shall be mailed to each party at least 14 calendar days before the date scheduled for arguments.

(f) Any request to reschedule oral arguments shall be sent by mail, fax, or email to the Board of Review pursuant to 04 NCAC



24A .0104, and to each party to the proceeding by mail, fax, or delivery service as defined under 04 NCAC 24A .0105. A request to reschedule oral arguments shall state the reason(s) for the request.

Authority G.S. 96-4; 96-15.

**04 NCAC 24C .0504 LEGAL REPRESENTATION**

(a) An individual who is a party to a proceeding may represent himself or herself before the Board of Review.

(b) A partnership or association may be represented by any of its members.

(c) A corporation may be represented by an officer.

(d) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.

(e) Notices or certification of attorney supervision shall be in writing and presented to the Board of Review to become part of the official record and shall contain:

- (1) the name and business address of the supervising attorney; and
- (2) the supervising attorney's active North Carolina State Bar number.

(f) When a party has a legal representative, all documents or information required to be provided to the party shall be provided only to the legal representative, unless otherwise requested in writing to the Board of Review. An address provided to the Board of Review for mailing shall not constitute a change of address with DES for purposes of DES's official records.

(g) Any information provided to a party's legal representative shall have the same force and effect as if it had been sent to the party.

Authority G.S. 96-4; 96-15; 96-17.

**04 NCAC 24C .0505 INTRODUCTION OF EVIDENCE IN HIGHER AUTHORITY HEARINGS**

A party desiring to introduce documents or other non-testimonial evidence at a hearing shall provide an authenticated copy plus one copy for the Board of Review, or a hearing officer appointed by the Board to include in the official record at the hearing. A copy shall be provided to each party prior to the hearing. Documents or other evidence shall be provided to the opposing party prior to the hearing.

Authority G.S. 96-4; 96-15.

**04 NCAC 24C .0506 CONTENT OF HIGHER AUTHORITY DECISION**

(a) The Board of Review shall issue a written Higher Authority Decision that includes the following:

- (1) the names of the members of the Board of Review who participated in the review;
- (2) findings of fact, conclusions of law, and the decision of the Board of Review;
- (3) instructions for filing an appeal of the Higher Authority Decision to the superior court and the date the Higher Authority Decision was mailed;

(4) instructions for requesting any post-decision relief or reconsideration if applicable under Rule .0601 of this Subchapter; and

(5) notice that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.

Authority G.S. 96-4; 96-11.4; 96-15.

**SECTION .0600 – POST-DECISION RELIEF**

**04 NCAC 24C .0601 POST-DECISION RELIEF**

(a) A written request for reconsideration or post-decision relief shall:

- (1) be in the form of a motion or petition, and shall be clearly identified as a Request for Reconsideration or a Motion or Petition for Post-Decision Relief;
- (2) identify the party seeking post-decision relief;
- (3) contain the name of each party, and the docket number of the Higher Authority Decision;
- (4) contain a statement that a copy was mailed or personally delivered to each party to the proceedings; and
- (5) explain the reasons why post-decision relief should be granted.

(b) The written request shall be filed no later than 30 days after the Higher Authority Decision was mailed to each party, and the timeliness requirements of 04 NCAC 24A .0100 apply.

(c) The written request shall be filed with the Board of Review pursuant to 04 NCAC 24A .0104(n).

(d) Any order granting or denying a party's request for post-decision relief shall contain the following notices:

- (1) that a party has a right to petition for judicial review by appealing the original Higher Authority Decision to the superior court; and
- (2) that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.

Authority G.S. 96-4; 96-11.4; 96-15.

**SUBCHAPTER 24D - TAX ADMINISTRATION**

**SECTION .0100 - ACCOUNT CHARGE PROTESTS**

**04 NCAC 24D .0101 NOTICE OF CLAIM TO EMPLOYER**

Upon receipt of a claim for benefits filed by a claimant, DES shall notify the claimant's last employer and all base period employers of the claim filed.

Authority G.S. 96-4; 96-11.4; 96-15.

**04 NCAC 24D .0102 NOTICE TO EMPLOYER OF POTENTIAL CHARGES**

(a) DES shall notify each employer in writing of potential charges to the employer's account. The notice shall contain the:

- (1) date of the notice;
- (2) claimant's name and social security number;
- (3) date the claimant's benefit year began;
- (4) claimant's weekly benefit amount and weekly earnings allowance;
- (5) employer's reporting number used to report wages for the claimant;
- (6) base period wages reported by the employer by calendar quarter and dollar amount;
- (7) employer's percentage of total base period wages reported;
- (8) maximum potential charge amount that can be applied to the employer's experience rating account if the claimant exhausts his or her benefits;
- (9) a statement containing the employer's right to protest the notice; and
- (10) the time period within which a protest shall be filed pursuant to G.S. 96-15.

(b) Notice of potential charges to the employer's account shall be provided using the following forms, as applicable:

- (1) Notice of Combined Wage Claim and Potential Charges to Your Account (Form NCUI 551C);
- (2) Notice of Unemployment Claim, Wages Reported and Potential Charges (Form NCUI 551L);
- (3) Notice of Initial Claim and Potential Charges to Reimbursable Employer (Form NCUI 551R);
- (4) Notice of Initial Claim and Potential Charges for Claimants on Temporary Layoff (Form NCUI 551T);
- (5) Reversal of Previously Allowed Noncharging (Form NCUI 553A);
- (6) Reversal of Previously Denied Noncharging (Form NCUI 554);
- (7) Administrative Determination Disallowing Noncharging (Form NCUI 570); and
- (8) List of Charges to Your Account (Form NCUI 626).

*Authority G.S. 96-4; 96-11.1; 96-11.2; 96-11.3; 96-11.4; 96-15.*

**04 NCAC 24D .0103 REQUIREMENTS FOR FILING PROTESTS**

(a) An employer who protests the benefit charges to its account shall make the protest as follows:

- (1) in writing within fourteen days of the mailing date of the notice of potential charges;
- (2) by mail to: DES Employer Benefit Charges/Benefit Charges Unit, Post Office Box 25903, Raleigh, North Carolina 27611-5903; or facsimile to 919-733-1126; and
- (3) list all grounds for the protest as prescribed under Rule .0105 of this Section.

(b) Any of the following forms, when completed with the information indicated in Paragraph (a) of this Rule, shall constitute compliance with this Rule:

- (1) Notice of Combined Wage Claim and Potential Charges to Your Account (Form NCUI 551C);
- (2) Administrative Determination Disallowing Noncharging (Form NCUI 570);
- (3) List of Charges to Your Account (Form NCUI 626); or
- (4) Unemployment Tax Rate Assignment (Form NCUI 104).

*Authority G.S. 96-4; 96-11.3; 96-11.4.*

**04 NCAC 24D .0104 TIME FOR FILING PROTESTS**

The provisions of 04 NCAC 24A .0100 shall apply in determining timeliness of a protest.

*Authority G.S. 96-4; 96-11.3; 96-11.4.*

**04 NCAC 24D .0105 GROUNDS FOR PROTEST**

(a) An employer shall only file protests for the following reasons:

- (1) clerical errors in the list of charges;
- (2) charges resulting from individuals who were never employed by the employer;
- (3) charges resulting from individuals who remain employed by the employer; or
- (4) errors in adding charges to an incorrect account.

*Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5.*

**04 NCAC 24D .0106 DES'S RESPONSIBILITIES UPON RECEIPT OF PROTEST**

(a) DES shall review the employer's account charges and investigate the accuracy of the charges based on the reasons provided by the employer in the protest.

(b) Upon completion of its review, DES shall issue a written determination of its findings based on the reasons provided by the employer in the protest.

*Authority G.S. 96-4; 96-11.4.*

**04 NCAC 24D .0107 DETERMINATION ON GROUNDS CONTAINED IN PROTEST**

(a) The determination by DES shall contain:

- (1) notice of whether the relief sought by the employer in the protest was granted or denied;
- (2) any adjustments that have been made to the list of charges if the relief sought in the protest was granted, or the reasons for denial if the relief sought in the protest was denied;
- (3) the date the determination was mailed to the employer;
- (4) the employer's right to appeal the determination pursuant to 04 NCAC 24C .0200; and
- (5) the time period within which an appeal shall be filed.

*Authority G.S. 96-4; 96-11.3; 96-11.4.*

**SECTION .0200 – REQUEST FOR NONCHARGING OF BENEFITS PAYMENTS**

**04 NCAC 24D .0201 MAKING THE REQUEST FOR NONCHARGING**

(a) An employer who requests noncharging of benefit charges shall make the request as follows:

- (1) by stating the reason(s) for the request in writing;
- (2) within 15 days of the mailing date of the notice of potential charges; and
- (3) sent by mail to: DES Employer Benefit Charges/Benefit Charges Unit, Post Office Box 25903, Raleigh, North Carolina 27611-5903; or by facsimile to 919-733-1126.

*Authority G.S. 96-4, 96-11.3, 96-11.4.*

**04 NCAC 24D .0202 DETERMINATION ON REQUESTS FOR NONCHARGING**

(a) DES shall render a determination in writing as to each request for noncharging. The determination shall contain notice of whether the request for noncharging has been granted or denied.

- (1) Where a request for noncharging is granted, the employer's account shall be protected from benefit charges for benefit payments made after the last day that the claimant worked, based on wages reported by the employer before the claimant separated from the employer.
- (2) Where a request for noncharging is denied, the determination shall contain:
  - (A) the reason(s) for denying the request;
  - (B) the mailing date of the determination;
  - (C) the time period within which a protest of the denial must be filed; and
  - (D) instructions for protesting the denial to the Employer Benefit Charges/Benefit Charges Unit by mail to Post Office Box 25903, Raleigh, North Carolina 27611-5903, or facsimile to (919) 733-1126.

*Authority G.S. 96-4; 96-11.1; 96-11.3; 96-11.4.*

**04 NCAC 24D .0203 APPEALING DENIAL OF REQUEST FOR NONCHARGING**

(a) The employing unit may file an appeal following an unsuccessful protest of a request for noncharging.

(b) Employers shall direct all appeals from denials of a request for noncharging to the Appeals Section. The provisions of 04 NCAC 24A .0100 shall apply in determining timeliness of an appeal.

(c) Hearings on the denial of noncharging shall be conducted pursuant to the provisions of 04 NCAC 24C.

*Authority G.S. 96-4; 96-11.3; 96-11.4.*

**SECTION .0300 - ADEQUACY**

**04 NCAC 24D .0301 ADEQUACY THRESHOLD DETERMINATION**

(a) An employer who establishes a pattern of failing to provide a timely response or adequate response to the Request for Separation Information (Form NCUI 500AB) under 04 NCAC 24B .0107, shall not be relieved of charges for resulting erroneous unemployment insurance benefit payments.

(b) In determining the timeliness of an employer response, DES shall consider the following:

- (1) whether the response was received within 14 days pursuant to G.S 96-15; and
- (2) whether the employer had good cause for failing to respond within the 14 day period.

(c) In determining the adequacy of an employer response, DES shall consider the following:

- (1) what information was requested;
- (2) whether the response to the request is sufficient to satisfy the request;
- (3) whether an employer should have provided DES with copies of relevant handbooks, policies, warnings, recordings, documents, or other information related to the claim; and
- (4) whether the employer's responses provide enough facts to enable an authorized DES representative to make a correct legal determination without having to contact the employer to obtain additional information.

(d) An employer who fails to submit timely or adequate responses to two-percent or two, whichever is greater, of the total requests for separation information (Form NCUI 500AB) under G.S. 96-11.4 during the reporting cycle, shall not be relieved of erroneous payments in the following charging cycle as defined under 04 NCAC 24A .0105.

(e) DES shall review each employer's account every reporting cycle to determine whether the employer has a pattern of failing to respond timely or adequately to requests for separation information under G.S. 96-11.4, and shall issue an Adequacy Threshold Determination at the conclusion of the reporting year cycle if the employer has met the criteria defined under Paragraph (d) of this Rule.

*Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15; 23 U.S.C. 3303.*

**04 NCAC 24D .0302 ADEQUACY THRESHOLD DETERMINATION**

(a) The Adequacy Threshold Determination shall include:

- (1) the effect of the determination on the employer's account;
- (2) the reasons for the determination;
- (3) the date the determination was mailed to the employer;
- (4) instructions for protesting the determination; and
- (5) the time period within which a protest must be filed.

(b) An employer may protest its Adequacy Threshold Determination and shall file its written request with DES's Tax Administration Section by mail to Post Office Box 26504.

Raleigh, NC 27611, facsimile to (919) 733-1255, or email to [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

- (1) The request shall include the following:
  - (A) the name of the employing unit;
  - (B) the address of the employing unit;
  - (C) the account number of the employing unit;
  - (D) a brief statement of the question involved and reasons for the request; and
  - (E) the name, address, and official position of the individual making the request.
- (2) The written request shall be filed within fifteen days after the date that the Adequacy Threshold Determination notice was mailed to the employer, and the timeliness requirements of 04 NCAC 24A .0100 shall apply.

(c) Following the written request, the Tax Administration Section shall review the employer's request for review and issue a written determination. The determination shall contain the following:

- (1) notify the employing unit of whether its application was granted or denied;
- (2) indicate whether additional information from the employing unit is required; and
- (3) explain the reasons for the ruling and what information was considered.

(d) No further right of appeal from an unfavorable written determination of a protest of an adequacy threshold determination shall exist unless and until an Adequacy Penalty Determination, as defined under Rule .0303 of this Section is subsequently issued at the conclusion of the employer's charging year.

**04 NCAC 24D .0303 ADEQUACY PENALTY DETERMINATION**

(a) DES shall issue an Adequacy Penalty Determination at the end of each charging year cycle if the employer's account is not relieved of charges for untimely or inadequate responses for particular claims during that charging year cycle, resulting from an adequacy threshold determination in the prior charging year cycle that the employer met or exceeded the adequacy threshold.

(b) The Adequacy Penalty Determination shall include the following:

- (1) a listing containing the specific claims that would have resulted in a relief from charges as a result of erroneous unemployment insurance payments that were later reversed on appeal; and
- (2) instructions for protesting the Adequacy Penalty Determination;

(c) An employer may protest its adequacy penalty determination and shall file its written request with DES's Tax Administration Section by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email to [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

- (1) The request shall include:
  - (A) the name of the employing unit;
  - (B) the address of the employing unit;

- (C) the account number of the employing unit;
- (D) a brief statement of the question involved and reasons for the request; and
- (E) the name, address, and official position of the individual making the request.

(2) The written request shall be filed within 15 days after the date that the Adequacy Penalty Determination was mailed to the employer, and the timeliness requirements of 04 NCAC 24A .0100 shall apply.

(3) Following the written request, the Tax Administration Section shall review the employer's request and issue a written determination. The determination shall include the following:

- (A) notify the employing unit of whether its application was granted or denied;
- (B) alternatively indicate whether additional information from the employing unit is required;
- (C) explain the reasons for the ruling and identify the information considered; and
- (D) instructions for appealing the denial to the Board of Review.

Authority G.S. 96-4; 96-11.3; 96-11.4; 23 U.S.C. 3303.

**04 NCAC 24D .0304 APPEALING ADEQUACY PENALTY DETERMINATIONS**

(a) The employing unit may file an appeal of the adequacy penalty determination and request a hearing. The appeal shall be filed by mail to DES's Tax Administration Section at Post Office Box 26504, Raleigh, North Carolina 27611, facsimile to (919) 733-1255, or email to [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(b) The appeal shall contain the following:

- (1) the date of the appeal;
- (2) the identity of the determination, decision or result being appealed;
- (3) a clear statement of the party's intent to appeal;
- (4) reasons for the appeal; and
- (5) the name of the party appealing the determination, decision, or result.

(c) The provisions of 04 NCAC 24A .0100 apply in determining the timeliness of an appeal.

(d) Appeal hearings from Adequacy Penalty Determinations shall be conducted as set forth in Section .1100 of this Subchapter.

Authority G.S. 96-4; 96-11.3; 96-11.4; 23 U.S.C. 3303.

**SECTION .0400 - VOLUNTARY ELECTION AND PAYMENTS**

**04 NCAC 24D .0401 VOLUNTARY ELECTION BY EMPLOYERS**

- (a) Any employer electing coverage under G.S. 96-9.8 of the Employment Security Law shall make the election by completing the Employer Status Report (Form NCUI 604), available on DES's website at www.ncesc.com.
- (b) The information provided in the Employer Status Report (Form NCUI 604) shall be provided in the same manner as required under Rule .0602 of this Subchapter.
- (c) Voluntary election shall not be granted if DES determines that potential benefit payments would exceed the taxes received from the employer.
- (d) The effective date of coverage is January 1, or the first day of employment in the year in which the voluntary election is made, whichever is later.
- (e) Employers who satisfy the criteria for voluntary election of coverage under this Rule, shall have a contributory unemployment tax account, and shall not have a reimbursable account.

Authority G.S. 96-4; 96-9.6; 96-9.8; 26 U.S.C. 3309.

**04 NCAC 24D .0402 ELECTION TO REIMBURSE IN LIEU OF CONTRIBUTIONS**

- (a) An employer electing to pay reimbursements for benefits, rather than contributions who meets the requirements of Rule .0401 of this Section, shall make the election by completing the Employer Status Report (Form NCUI 604) available on DES's website at www.ncesc.com; and mailing it to DES Tax Administration at Post Office Box 26504, Raleigh, NC 27611.
- (b) The information provided in the Employer Status Report (Form NCUI 604) shall be provided in the same manner as described under Rule .0602 of this Subchapter.
- (c) A qualifying employer under G.S. 96-9.6 electing to pay reimbursements for benefits, rather than contributions, shall make the election:
  - (1) by writing a letter stating their election to the Tax Administration Section of DES at Post Office Box 26504, Raleigh, NC 27611 within 30 days after the employer receives written notification from the Division that it is eligible to make an election as defined under G.S. 96-9.6.

Authority G.S. 96-4; 96-9.6; 96-9.8; 26 U.S.C. 3309.

**04 NCAC 24D .0403 PAYMENT OF EMPLOYER TAXES**

- (a) Taxes shall be due and payable to the DES's administrative office in Raleigh, North Carolina, or to an agent of DES authorized to accept payments.
- (b) Tax payments shall be made as follows:
  - (1) electronic check;
  - (2) credit card;
  - (3) Automated Clearing House (ACH) credit;
  - (4) business check with funds drawn from a U.S. financial institution;
  - (5) cashier's check from a U.S. financial institution;

or

(6) cash.

(c) Payments shall be made payable to the Division of Employment Security and sent by U.S. mail or delivery service to DES Tax Administration at Post Office Box 26504, Raleigh North Carolina 27611.

(d) Timeliness of payments is determined pursuant to the 04 NCAC 24A .0100.

Authority G.S. 96-4; 96-9.15.

**SECTION .0500 - RECORDS**

**04 NCAC 24D .0501 RECORDS OF EMPLOYERS**

(a) Each employer shall keep accurate employment and payroll records. These records shall be maintained for five years after the calendar year in which wages for services are paid and shall include the following:

- (1) the name and correct address of the employer;
- (2) the name and address of each division, branch, or establishment operated, owned, or maintained by the employer at different locations in North Carolina; and
- (3) the following information for each individual performing services for the employer:
  - (A) the individual's name;
  - (B) the individual's address;
  - (C) the individual's social security number:
    - (i) if an individual performing services for an employer does not have a social security number, the employer shall request that the individual produce a receipt issued by the Social Security Administration, showing that the individual has filed an application for a social security number.
    - (ii) the employer shall copy and retain a copy of the receipt, and the individual must retain the receipt.
  - (D) the dates on which the individual performed services for the employer;
  - (E) the actual number of hours worked each day and total number of hours worked each week;
  - (F) daily attendance record, including times that the individual did not work for reasons other than lack of work;
  - (G) the state or states in which the individual performed services:
    - (i) the base of operations if any of the services are performed outside North Carolina, and are not incidental to the services performed in North Carolina; or

- (ii) if there is no base of operations, then the place from which services are directed or controlled; and
- (iii) the individual's state of residence.

- (H) the amount of wages paid to the individual for each separate payroll period, if paid weekly, or if not paid weekly, by calendar weeks:
  - (i) date of payment of the wages; and
  - (ii) amounts or remuneration paid to each individual for each separate payroll period other than "wages," as defined in G.S. 96-1(b)(28);
- (I) amounts paid to individuals as allowances or reimbursements for travel or other business expenses, dates of payments, and the amounts of expenditures actually incurred and documented by the individual;
- (J) whether, during any payroll period the individual worked less than full time, and if so, the hours and dates worked;
- (K) reasons for an individual's separation from work;
- (L) any contract between the employer and the worker;
- (M) where the employer considers the worker to be an independent contractor or otherwise not an "employee" under the Employment Security Law, all records, documentation and evidence which supports that classification; and
- (N) federal and state tax returns for the periods when the worker was employed.

(b) In addition to the records required in Paragraph (a), each employer shall keep the following:

- (1) the records that establish and reflect ownership and any changes of ownership of the employer;
- (2) the address where the headquarters of the employer is located;
- (3) the mailing address of the employer; and
- (4) the address at which the records are available for inspection or audit by representatives of DES.

(c) Each employer's records shall reflect:

- (1) the addresses of owners; or
- (2) in the event the employer is a corporation or an unincorporated organization, the records shall show the addresses of directors, officers, and any individuals on whom subpoenas, legal processes, or citations may be served in North Carolina.

*Authority G.S. 96-4; 96-9.15; 96-10; 26 U.S.C. 3306.*

**04 NCAC 24D .0502 WAGE RECORDS**

(a) Wages paid for services excluded from the definition of "employment" as defined in G.S. 96-1(b)(12) shall be separately reflected in the employer's records to indicate the following:

- (1) the time of service; and
- (2) remuneration for services that is separate from taxable wages.

(b) Where there are pay periods in which an individual performs services excluded from the term "employment," and any service which is "employment," the employer's record shall reflect the hours spent in the excluded service and the hours spent in "employment."

(c) If any remuneration other than monetary wages is paid to or is received by an individual related to services performed by the individual, the records shall show the total amount of cash wages and the cash value of any other remuneration paid by the employer.

(d) If any part of an individual's wages is not paid in cash, the reasonable cash value of the remuneration other than cash shall be deemed for all relevant purposes as follows:

- (1) the amount that is agreed upon between the employer and the individual if:
  - (A) the terms of the agreement are reported to DES; and
  - (B) DES determines that the agreed value or amount is reasonable pursuant to IRS Publication 15-B; or
- (2) the amount DES determines if:
  - (A) the amount agreed upon is unreasonable; or
  - (B) the employer and the individual fail to agree upon an amount; or
  - (C) the employer fails to report the terms of an agreement to DES; and
  - (D) the employer fails to show the cash value of the noncash remuneration prior to the due date of contributions with respect to the wages.

(3) DES shall determine an amount by reviewing documents, tax values, internet sites and other available information that reflects the market value.

(e) This Rule incorporates material found in the IRS Publication 15-B by reference in accordance with G.S.150B-14(c). Copies of the incorporated material found in IRS Publication 15-B can be obtained at no cost to the public by request by contacting DES as specified under 04 NCAC 24A .0101.

*Authority G.S. 96-1(b)(28); 96-4; 26 U.S.C. 3306; IRS Pub. 15-B.*

**04 NCAC 24D .0503 ALLOWANCES AND REIMBURSEMENT ADVANCES**

(a) Allowances, advances of reimbursements paid to an individual in employment for traveling, and other bona fide expenses incurred or reasonably expected to be incurred in the business of the individual's employer shall not be treated as wages, provided:

- (1) a separate payment is made for the expenses; or
- (2) itemized accounting records are kept indicating the separate amounts where a single payment covers both wages and expenses combined; and
- (3) the amount of payments for expenses excluded from wages will not exceed the amounts allowable as deductible expenses by income tax regulations under the United States Internal Revenue Code, 26 U.S.C. 62(2) and 162(a)(2). Where the United States Internal Revenue Service (IRS) has not made a determination, DES shall make an independent determination.

(b) Where an employee must pay traveling and other expenses out of commissions or salary and these amounts are not accounted for separately, the entire amount of commissions or salary will be considered wages, unless the employer submits itemized records which show that a certain percentage of commissions or salary is expenses.

- (1) The money value for room and board shall not be included in wages if the room and board is provided to the employee for the convenience of the employer.

(A) If the room and board has been excluded from wages by the IRS for income tax withholdings, FICA and FUTA, it shall be considered to be for the convenience of the employer and excluded from wages.

(c) This rule incorporates 26 U.S.C 62(2) "Adjusted Gross Income Defined" and 26 U.S.C 162(a)(2) "Traveling Expenses" by reference in accordance with G.S.150B-14(c). Copies of the incorporated material found in 26 U.S.C 62(2) and 26 U.S.C 162(a)(2) can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0101.

*Authority G.S. 96-4; 150B-21.6; 26 U.S.C. 62(2); 162(a)(2).*

#### **04 NCAC 24D .0504 MANNER OF RECORDKEEPING**

(a) Each employer shall maintain records as prescribed in this Section.

(b) All records shall be kept and maintained in a manner that preserves the integrity of all reports that the employing unit is required to file with DES.

- (1) Records shall be accessible to authorized representatives of DES within the geographical boundaries of the State of North Carolina.
- (2) When records are not maintained, or are not available within North Carolina, the employing unit shall pay to DES the expenses and costs incurred when a representative of DES is required to travel outside the State of North Carolina to inspect or audit the employing unit's records or provide for delivery of the required records for inspection or audit to DES via mail or electronic transmission.
- (3) Where records are delivered via electronic transmission, the employer shall provide DES

with all necessary information to access the content of the electronic transmission.

(c) Where any part of an employing unit's accounting records are maintained by an automated data processing system, the employing unit shall provide the following:

- (1) audit trails with all supporting documentation;
- (2) general accounting books with any ledgers containing source references that coincide with financial reports for reporting periods; and
- (3) a description of the automatic data processing portion of the employing unit's accounting system.

(d) Each employing unit, when requested by DES, shall furnish a job description of duties performed by any individual or group of individuals who are performing or have performed services for the employing unit.

(e) Records prescribed by this Subchapter shall be preserved for five years after the calendar year in which wages for services are paid.

*Authority G.S. 96-4; 96-10; 26 U.S.C. 3306.*

#### **SECTION .0600 - REPORTS**

##### **04 NCAC 24D .0601 GENERAL FORMAT OF REPORTS AND FORMS AND METHODS OF SUBMISSION**

(a) The following shall file the portion of the required Employer's Quarterly Tax and Wage Report (NCUI 101) that contains the name, social security number, and gross wages of each employee on magnetic or electronic media using a compact disk, online remote tax filing, or upload of data file via the internet format:

- (1) employers with 25 or more employees in any one calendar quarter; and
- (2) other entities, including agents reporting on behalf of employers, who file reports for a client employer with a total of twenty-five or more employees in any one calendar quarter.

(b) Quarterly Employer's Tax and Wage Reports (Form NCUI 101) shall contain the individual employees' wages section and wage summary section.

(c) Employers, including agents, who file an Employer's Quarterly Tax and Wage Report for a client employer with less than 25 total employees in any one calendar quarter may use magnetic or electronic media reporting. Employers with less than 25 employees may also file paper returns.

(d) A magnetic or electronic media wage report from agents reporting on behalf of employers may contain information from multiple employers.

*Authority G.S. 96-4; 96-9.15.*

##### **04 NCAC 24D .0602 STATUS REPORTS**

(a) Each employing unit shall file a status report with DES within 10 days of becoming subject to the Employment Security Law. The Status Report shall contain the following:

- (1) the name and address of the business;

- (2) names, social security numbers, and addresses of the owners and responsible officers of the business;
- (3) any records pertaining to contracts for business acquisitions which indicate successorship status; and
- (4) any information about company officers in continuity of control cases

(b) An employing unit that ceases business or transfers, leases or sells all or any part of the assets of its business or changes the trade name or address of the business shall give notice to DES within ten days by filing a status report. The status report shall contain, in addition to the requirements listed under Paragraph (a), the former name and address of the business.

Authority G.S. 96-4; 96-10; 96-11.7.

**04 NCAC 24D .0603 QUARTERLY REPORTS FROM TAXED EMPLOYERS**

(a) Each employer, other than a domestic employer who has elected to report and pay annually under G.S. 96-9.15(f), shall file with DES, within the month during which contributions for any period become due, an Employer's Quarterly Tax and Wage Report (Form NCUI 101) for the preceding calendar quarter which shall indicate the following:

- (1) the total amount of remuneration paid for employment, or proof that no remuneration was paid during the quarter;
- (2) the total amount of wages paid for employment;
- (3) the amount of wages paid to each individual employee; and
- (4) the name and social security number of each individual to whom the wages were paid and the federal identification number, if one exists.

Authority G.S. 96-4; 96-9.6; 96-9.15; 96-10.

**04 NCAC 24D .0604 ANNUAL REPORTS FROM DOMESTIC EMPLOYERS**

(a) A request by a domestic employer to report wages paid, and pay contributions on an annual basis shall be made in writing and delivered to DES pursuant to 04 NCAC 24A .0104. There is no special form or format required for the written request.

(b) Each qualified domestic employer who has made an election as referenced in Paragraph (a) shall file with DES, a domestic Employer's Annual Tax and Wage Report (Form NCUI 101-C), that shall include all information specified under Rule .0603 of this Section and subtotaled for each quarter during the calendar year in which wages were paid.

Authority G.S. 96-4; 96-9.15; 96-10.

**SECTION .0700 - TRANSFER OF EXPERIENCE RATING TO RELATED ENTITY SUCCESSOR ACCOUNT**

**04 NCAC 24D .0701 TRANSFER OF EXPERIENCE**

(a) A new successor employer that acquires a part of an entity related to the transferring employer shall request a percentage of the transferring employer's experience rating when:

- (1) the successor employer is a distinct and severable portion of the transferring employer;
- (2) it is severed from the control of the transferring employer;
- (3) a severable and distinct portion of the successor employer would not be a disregarded entity or subsidiary of the transferring employer but an entity that is operational on its own with no support from the transferring employer;
- (4) the successor employer is comprised of shareholders or owners, or employees from the transferring employer; and
- (5) the successor employer's operations may remain similar to those of the transferring employer (i.e., proprietorships that split between family members as defined in G.S. 96-1(b)(18), spin-off corporations, partnerships that split operations between partners, or any other division in operations) that would not result in denial of a new discrete employer number to the successor employer pursuant to G.S. 96-11.7(c).

(A) A transferring employer shall be left operational on its own with no support from the successor employer.

(B) A successor employer shall request a transfer of experience under conditions described in Rule .0702 of this Section, and a transferring employer shall request to retain the remaining experience pursuant to Rule .0702 of this Section.

(C) The percentage of the experience that is transferred to the successor employer shall be transferred as of the date of acquisition for use in determining the successor's contribution rate.

Authority G.S. 96-4; 96-10; 96-11.7.

**04 NCAC 24D .0702 REQUIREMENTS FOR TRANSFER OF EXPERIENCE**

(a) An employer shall submit the following information to DES when requesting a partial transfer of experience rating:

- (1) the total three-year taxable payroll ending June 30<sup>th</sup> prior to the last computation date for the transferring employer; and
- (2) the total three-year taxable payroll ending June 30<sup>th</sup> immediately prior to the last computation date for the transferring employer, relating to the severable portion acquired.

(b) Notwithstanding Paragraph (a) of this Rule, an alternate three-year payroll may be used when the severed or retained unit was not operated by the transferring employer during the three-year period ending June 30<sup>th</sup> prior to the last computation date.

(c) A successor employer that acquires the experience rating account, either total or partial, shall be liable for accrued benefits and acquire related rights based on the transferring employer's



employment prior to the acquisition. Benefit charges to the transferring or successor employer shall be made in accordance with the percentage used to transfer the experience rating account, based on wages paid prior to the transfer.

(d) The requirements of this Section shall apply to transfers mandated by law, and those requiring DES's approval pursuant to G.S. 96-11.7.

(e) The completion and submission of Form NCUI 603 in accordance with 04 NCAC 24A .0104 shall satisfy the requirements of this Rule.

*Authority G.S. 96-4; 96-10; 96-11.7.*

**SECTION .0800 - AGREEMENTS TO COMPROMISE**

**04 NCAC 24D .0801 APPLICATION**

(a) An employing unit may file a request for compromise of its tax debt with DES.

(b) A request for compromise shall include the following:

- (1) the name and address of the employing unit;
- (2) the date the request to compromise is made;
- (3) the date the requested compromise is requested to be effective;
- (4) stated reasons for the request to compromise;
- (5) evidence to support the claim or reasons for the request;
- (6) the amount and terms offered by the employer to settle the debt; and
- (7) the signature of a duly authorized representative of the employer.

(c) The employer shall provide all information requested by the Department pursuant to Section .0500 of this Subchapter for the determination of the compromise.

(d) The request for compromise shall be filed with DES's Tax Administration Section by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email at [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

*Authority G.S. 96-4; 96-10; 96-10.1.*

**SECTION .0900 - SPECIAL TAX INVESTIGATIONS**

**04 NCAC 24D .0901 SPECIAL TAX INVESTIGATIONS**

(a) When it is discovered by a representative of DES that a claimant is alleging that he or she was an employee and the employer is alleging that the claimant was not an employee, the matter shall be referred to DES's Assistant Secretary in writing.

(b) The Assistant Secretary, on behalf of DES, shall issue a Result of Investigation by the Tax Administration Section upon receipt of the findings of the investigation. The Result of Investigation shall be in writing and mailed to each party to the controversy pursuant to 04 NCAC 24A .0103.

(d) The Result of Investigation shall provide notice of each party's rights for filing an appeal to obtain a hearing before the Board of Review, and the time period within which an appeal shall be filed with DES's Tax Administration Section by mail, facsimile, or email pursuant to 04 NCAC 24A .0104.

(e) Appeal hearings pursuant to this Section shall be upon order of the Board of Review and conducted pursuant to Section .1100 of this Subchapter.

*Authority G.S. 96-4; 96-9.2.*

**SECTION .1000 - REQUESTS AND HEARINGS TO REVIEW AND REDETERMINE TAX RATE**

**04 NCAC 24D .1001 REQUEST FOR REDETERMINATION OF TAX RATE**

(a) An employer may request a review and redetermination of its tax rate after receiving notice of the tax rate.

(b) An employer requesting a review and redetermination of its tax rate shall file its written request with DES's Tax Administration Section by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email to [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(1) The request shall include the following:

- (A) the name of the employer;
- (B) the address of the employer;
- (C) the account number of the employer;
- (D) a brief statement of the question involved and reasons for the request;
- and
- (E) the name, address, and official position of the individual making the request.

(2) The request shall be filed on or before May 1 following the effective date of the contribution rate pursuant to G.S. 96-9.2(d).

*Authority G.S. 96-4; 96-9.2.*

**04 NCAC 24D .1002 DIVISION'S OBLIGATIONS**

(a) The Division shall review the employing unit's request to review and redetermine its tax rate and all available facts, and shall issue a written ruling. The ruling shall include the following:

- (1) notify the employing unit of whether its application was granted or denied;
- (2) the applicable legal authority, with specific citations, for the ruling;
- (3) be mailed to the employing unit's address as reflected in DES's official records;
- (4) contain the mailing date of the notice;
- (5) a statement containing the employer's right to appeal the notice; and
- (6) the time period within which an appeal shall be filed.

(b) If DES's ruling is adverse to the employing unit, the employing unit may file an appeal of the ruling and request a hearing.

(1) The appeal shall be filed by mail to DES's Tax Administration Section at Post Office Box 26504, Raleigh, North Carolina 27611, facsimile to (919) 733-1255, or email to [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(2) Hearings requested pursuant to this Section shall be conducted as set forth in Section .1100 of this Subchapter.

Authority G.S. 96-4; 96-9.2.

**04 NCAC 24D .1003 CONTINUED PAYMENTS REQUIRED**

The employer shall continue to pay contributions at the rate assigned pending any hearing on an application for review and redetermination of tax rate until finally adjudicated. If the rate assigned is subsequently changed by a ruling of the Board of Review or the courts, the employer shall be entitled to a refund, or be liable for additional contributions.

Authority G.S. 96-4; 96-9.2; 96-10.

**SECTION .1100 - TAX LIABILITY HEARINGS**

**04 NCAC 24D .1101 APPEALING A TAX MATTER**

(a) Employers shall direct all appeals regarding tax matters, or monetary eligibility to the DES Tax Administration Section pursuant to 04 NCAC 24A .0104.

(b) A written appeal under this Rule shall contain the following:

- (1) the date of the appeal;
- (2) the identity of the determination, decision, or result being appealed;
- (3) a clear statement of the party's intent to appeal;
- (4) reasons for the appeal; and
- (5) the name of the party appealing the determination, decision, or result.

Authority G.S. 96-4.

**04 NCAC 24D .1102 SCHEDULING TAX HEARINGS**

(a) A notice of the hearing shall be mailed to each party at least fourteen days before the hearing date.

(b) The hearing notice shall include the following:

- (1) identify the determination, decision, or result being appealed or protested;
- (2) the name of the appealing or protesting party;
- (3) the date and time of the hearing;
- (4) the physical location of an in-person hearing;
- (5) the telephone number at which each party will be called for a telephone hearing;
- (6) each issue, with statutory reference, to be heard and decided;
- (7) the name and contact information for the Board of Review or designated Hearing Official;
- (8) the manner in which witnesses may offer evidence and participate in the hearing;
- (9) each party's right to obtain a legal representative as defined in 04 NCAC 24A .0105;
- (10) instructions for requesting a rescheduling of the hearing;
- (11) notice that a party may object to a telephone hearing and request an in-person hearing;

(12) a statement of each party's right to request the issuance of a subpoena for the production of records or individuals to appear to testify, and instructions for how to do so.

Authority G.S. 96-4.

**04 NCAC 24D .1103 TELEPHONE HEARINGS**

(a) Hearings shall be conducted by telephone conference call, unless a request is made for an in-person hearing at the time the appeal is filed, or an objection is made pursuant to Rule .1104 of this Section.

(b) In cases of telephone hearings, the Board of Review shall provide a Telephone Hearing Questionnaire for each party to submit each telephone number to be called by the Board of Review or its designated Hearing Official for the hearing. If a party fails to submit a telephone number to be called for the hearing, the Board of Review shall call each party at the telephone number listed on the hearing notice.

Authority G.S. 96-4.

**04 NCAC 24D .1104 IN-PERSON HEARINGS**

(a) A party shall only request an in-person hearing at the time the appeal is filed in writing, or by filing a written objection to the telephone conference call, received at least seven days before the scheduled hearing.

(b) If travel is required to conduct the in-person hearing, the objecting party shall travel to a location convenient to the non-objecting party, as determined by the Board of Review.

Authority G.S. 96-4.

**04 NCAC 24D .1105 RESCHEDULING A TAX HEARING**

(a) The Board of Review may continue or adjourn a hearing at any time.

(b) A request for a continuance of a hearing made prior to the hearing date shall be in writing and shall specify the reasons for the request.

Authority G.S. 96-4.

**04 NCAC 24D .1106 SUBPOENAS**

(a) Any party's request for a subpoena to be issued by the Board of Review shall be in writing, sent to the Board of Review, and shall include:

- (1) the name of the party requesting the subpoena;
- (2) the claimant's name, if applicable;
- (3) the employer's name, if applicable;
- (4) the docket number of the case;
- (5) the name, address, and telephone number of each person sought for appearance at the hearing;
- (6) the specific identification of any document, recording, or item sought, including a detailed description of where the item is located;
- (7) the name and address of the individual or party in possession of any item sought; and

(8) a statement of why the testimony or evidence to be subpoenaed is necessary for a proper presentation of the case.

(b) Legal representatives shall issue subpoenas at their own expense and discretion.

(c) Any party or person receiving a subpoena may serve a written objection to the issuance of the subpoena.

(1) The objection shall be directed to the Board of Review prior to the commencement of the hearing and provide reasons for the objection and the relief sought by the objecting party.

(2) The Board of Review shall rule on the objection and notify the parties before the hearing. The Board of Review's reasons for its ruling shall be in writing or stated on the record during the hearing.

Authority G.S. 96-4.

**04 NCAC 24D .1107 THE TAX OPINION**

(a) Following the conclusion of a tax hearing, the Board of Review shall issue a tax opinion with respect to the appeal filed.

(b) The tax opinion shall set forth:

- (1) a statement of the case;
- (2) any findings of fact;
- (3) conclusions of law;
- (4) the final order with regard to the opinion rendered;
- (5) the date the opinion was mailed;
- (6) instructions for filing an appeal; and
- (7) the time period within which an appeal shall be filed.

(c) The Board of Review shall mail a copy of the tax opinion to each party to the appeal.

Authority G.S. 96-4.

**SECTION .1200 - SEASONAL PURSUITS**

**04 NCAC 24D .1201 REQUEST FOR SEASONAL DETERMINATION**

(a) Each employer desiring a seasonal determination shall request assignment of the seasonal period by DES.

(b) The request shall be made in writing by completing the Application for Seasonal Determination (Form NCUI 611) that is available on DES's website at [www.ncesc.com](http://www.ncesc.com) and addressed to the Tax Administration Section by mail, facsimile, or email as provided in 04 NCAC 24A .0104.

(c) Requests for Seasonal Determination using (Form NCUI 611) shall contain the following:

- (1) the employing unit's name and physical address;
- (2) years of operation in North Carolina;
- (3) location of each seasonal pursuit;
- (4) description of seasonal each pursuit; and
- (5) beginning and ending dates of each seasonal pursuit for the last four years.

(d) The request shall be filed at least 20 days before the beginning date of the period of production operations for which the designation is requested.

(e) Completion and Submission of Form NCUI 611 shall satisfy the requirements of this Rule.

Authority G.S. 96-4; 96-16.

**04 NCAC 24D .1202 WRITTEN DETERMINATION**

(a) DES shall issue a written determination granting or denying the request upon making its determination pursuant to G.S. 96-16(c). The determination shall notify the employer of the following:

- (1) the specific seasonal period assigned by DES;
- (2) the effective date of the determination; and
- (3) the specific filing requirements for seasonal employers;

(b) Any determination that denies the request for a seasonal designation shall state the reasons for the denial.

(c) Each determination shall contain notice of each party's right to appeal the determination and request a hearing, the date the determination was mailed, and the time period within which an appeal shall be filed.

(d) The employer may file its appeal of a denial of a request for seasonal pursuit designation with DES's Tax Administration Section in the same manner as prescribed under Rule .1201 of this Section, by submitting a Form NCUI 611 by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email to [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com)

(e) Hearings shall be conducted as set forth in Section .1100 of the Subchapter.

Authority G.S. 96-4; 96-16.

**04 NCAC 24D .1203 DISPLAY REQUIRED**

(a) Each employer shall display no less than two Notice to Workers of a Seasonal Determination forms in separate locations (Form NCUI 543) on its premises. Form NCUI 543 will be sent to employers when approved for Seasonal Pursuit status by mail.

(b) The Notice to Workers of a Seasonal Determination (Form NCUI 543) shall be provided by DES and shall be displayed on the employer's premises in such places as:

- (1) entry ways used by workers to enter and exit the employer's premises;
- (2) in or near an area where a record of time worked is required to be used or frequented by workers;
- (3) a bulletin board in places where workers frequent or regularly gather; or
- (4) other locations within the place of employment visible to employees.

Authority G.S. 96-4; 96-16.

**04 NCAC 24D .1204 WAGE RECORDS AND REPORTS REQUIREMENT**

(a) Any pursuit that DES determines to be seasonal shall maintain payroll records such that the seasonal wages paid to workers during the active periods of the seasonal pursuit may be

distinguished from any non-seasonal wages that are paid to those workers.

(b) Any employer engaged in a seasonal pursuit shall submit quarterly wage reports pursuant to Section .0600 of this Subchapter, showing the seasonal wages paid to workers during the active periods assigned by DES.

(c) Within 15 days of the date that DES mails notice of a seasonal period, the employer shall complete and submit to DES a Breakdown of Wages Previously Reported for Workers to Show Seasonal and Non-Seasonal Wages (Form NCUI 542) with seasonal wages in the current base period and in intervening quarters between the base period and completed calendar quarters preceding the first day of the active period, which shall include the following:

- (1) each worker's social security number, and name; and
- (2) each worker's seasonal wages, non-seasonal wages and total wages for each calendar quarter.

(d) Any wages earned by seasonal workers outside the seasonal period assigned by DES shall be reported as non-seasonal wages, even though they may have been earned for seasonal work.

*Authority G.S. 96-4; 96-16.*

**SECTION .1300 – COLLECTION METHODS OF EMPLOYER DEBT**

**04 NCAC 24D .1301 NOTICE TO EMPLOYER**

(a) DES shall serve notice and execution of levy on employer to collect past due unemployment insurance taxes, penalties, interest and costs.

(b) Notice shall be written and provided to the employer by U.S. mail.

(c) The notice shall state the following:

- (1) that DES is in possession of judgments and executions that were properly docketed and indexed by the clerks of the superior court;
- (2) the county of the superior court where the judgments and executions are docketed;
- (3) that DES mailed previous notice of the debt and the date DES mailed notice to the employer;
- (4) the amount owed by the employer;
- (5) the name of any other individual or entity that will receive notice of the debt;
- (6) the statutory authority for service of execution of levy by DES;
- (7) the relief sought by DES; and
- (8) the name, address and telephone number of an authorized representative of DES who may be contacted regarding the debt.

*Authority G.S. 1-359; 96-4; 96-10; 96-18.*

**04 NCAC 24D .1302 NOTICE TO GARNISHEE**

(a) DES shall serve notice and execution of levy on third parties in order to collect past due unemployment insurance taxes, penalties, interest, and costs.

(b) Notice shall be written and provided to the garnishee by U.S. mail.

(c) The notice shall state the following:

- (1) the name of the indebted employer;
- (2) that DES is in possession of judgments and executions that were properly docketed and indexed by the clerks of the superior court;
- (3) the county of the superior court where the judgments and executions are docketed;
- (4) that the employer has received previous notice of the debt;
- (5) the amount owed by the employer;
- (6) statutory authority for service of execution of levy;
- (7) relief sought and how to remit payment; and
- (8) the name, address and telephone number of an authorized representative of DES who may be contacted regarding the debt.

*Authority G.S. 1-359; 96-4; 96-10.*

**SECTION .1400 - RECORDS**

**04 NCAC 24D .1401 OFFICIAL FORMS**

Unless otherwise provided, all forms referenced under this section are available by contacting the Employer Call Center (ECC) as follows:

- (1) mailing address is Post Office Box 26504, Raleigh, North Carolina 27611;
- (2) phone number is (919) 707-1150;
- (3) facsimile number is (919) 715-0780; or
- (4) email address is des.tax.customerservice@nccommerce.com.

*Authority G.S. 96-4; 96-16.*

**SUBCHAPTER 24E - UNEMPLOYMENT INSURANCE DOCUMENTS AND RECORDS**

**04 NCAC 24E .0101 CONFIDENTIALITY OF UNEMPLOYMENT INSURANCE INFORMATION**

~~Information obtained by the North Carolina Department of Commerce, Division of Employment Security ("DES") from claimants, employers, applicants, or other persons, or groups of persons in the course of administering the State Public Employment Service Program will be disclosed only pursuant to law, including by confidentiality waiver as provided in Rule .0102 of this Section.~~

*Authority G.S. 96-4(d); 96-4(x).*

**04 NCAC 24E .0102 REQUEST FOR DOCUMENTS AND RECORDS**

~~(a) Any person who desires to inspect or copy any record containing confidential unemployment insurance information shall submit a written request to the Legal Services Section of DES. The person may use request form(s) created by DES and made available to the public via DES's website (<https://www.ncese.com/default.aspx>).~~

(b) Each request should reasonably describe the record or records sought, providing sufficient detail to permit identification and location of the record(s). The request shall specify, when possible, the subject matter of the record, the date or approximate date when the record was made, the place where the record was made, the person or office that made the record, and any other pertinent identifying details about the record, such as a form number.

(c) If the description is insufficient so that an employee who is familiar with the subject area of the request cannot locate the record, the Certified Paralegal to the Chief Counsel of the Legal Services Section shall notify the requester and, to the extent possible, indicate the additional information required.

(d) The Certified Paralegal shall review the request and determine if the federal regulatory and state statutory provisions that govern disclosure of confidential unemployment insurance information permit the requested information to be disclosed. The Certified Paralegal shall initiate a search for the records within two business days after the request is received. If the request is denied, the requester shall be notified in writing, with a brief statement including the reasons for the denial.

(e) To the extent required to comply with applicable law prohibiting disclosure of specific information, the Certified Paralegal shall delete this specific information when the requested record is made available. Justification for the deletion will be explained in writing upon request.

(f) DES may release information or records obtained from a claimant, employer, applicant or other person to said claimant, employer, applicant or other person upon a written request. Upon written request, the claimant, employer, applicant or other person may also authorize that information or record be released to a third party or person clearly identified by name and address in the request that must contain a statement that the claimant, employer, applicant or other person waives confidentiality as to the information directed to be released. Upon the written request of a third party or person, DES may disclose to a third party or person confidential information or records regarding a claimant, employer, applicant or other persons upon written request and on a reimbursement basis only if the request meets all applicable requirements as set forth in 20 CFR 603.5(d), including informed consent or signed release, whichever is applicable.

(g) When DES requests an individual or employing entity to supply information about that individual or employing entity, it will provide a form that the individual or employing entity shall use to submit the requested information. The form will include notice of the following:

- (1) How the information will be used;
- (2) The information may be disclosed to federal agencies, state agencies and public officials as required by federal or state laws and regulations;
- (3) Which parts of the requested information are required and which are optional;
- (4) The consequences of failure to provide the requested information; and
- (5) DES will take all precaution precautions to keep all the information confidential and privileged pursuant to G.S. 96-4(x), but it cannot guarantee the confidentiality or privilege of any information transmitted to it by

the way of the Internet or other electronic means.

(h) An individual may request DES release or disclose to a third party or person the individual's quarterly wage records, including the amount of such wages and names and addresses of the employer(s) reporting wages for the individual. The request must clearly identify the third party or person by name and address, and contain a statement that the individual waives confidentiality as to the information authorized to be released or disclosed and does so on the basis of informed consent as mandated by 20 CFR 603 and any other applicable federal regulation that may be promulgated by the U.S. Department of Labor and the employing entity from whom such information was collected has been properly provided notice. DES may disclose to a third party or person an individual's quarterly wage records upon written request only if the request meets all applicable requirements as set forth in 20 CFR 603.5, including informed consent or signed release, whichever is applicable.

*Authority G.S. 96-4(d); 96-4(x); 20 CFR 603.*

**04 NCAC 24E .0103 FEES FOR COPIES AND SERVICES**

(a) Search Fees:

- (1) Search of the records by DES custodial or clerical personnel carries a fee of four dollars and forty cents (\$4.40) for each one quarter hour or fraction thereof of employee worktime required to reach or obtain the records to be searched or make the necessary search.
- (2) If the search for the requested record requires transportation of the searcher to the location of the records or transportation of the records to the searcher, at a cost in excess of five dollars (\$5.00), actual transportation costs will be added to the search time cost.
- (3) If the search for requested records requires batch processing by computer, the Certified Paralegal shall provide an estimate of DES's cost of producing the information to the requester. The estimate will be provided because of the computer programming and other actions necessary for the batch processing. The requester will be billed for the actual cost of producing the requested information.

(b) Reproduction Fees: Notwithstanding Rule .0104 of this Section, the fees payable for obtaining requested copies of records shall be computed on the following basis subject to the following conditions:

- (1) Copying Fee: one cent (\$0.01) per page;
- (2) Transcription of Hearing Fee: three dollars and seventy five cents (\$3.75) per quarter hour or fraction thereof;
- (3) Not more than 10 copies of any document will be furnished; and
- (4) Recording of Hearing Fee: three dollars and seventy five cents (\$3.75) per tape.

~~(c) Administrative and Overhead Fees: The Certified Paralegal's request review and determination carries a fee of five dollars and eighty four cents (\$5.84) for each one quarter hour or fraction thereof of the worktime required to perform such task. The overhead cost for processing and invoicing is four dollars and fifty cents (\$4.50) per invoice.~~

~~Authority G.S. 96-4(d); 96-4(x)(4).~~

**04 NCAC 24E .0104 PAYMENT OF FEES**

~~(a) Payment of fees as set forth in Rule .0103 of this Section shall be made by cash, money order or certified check. An agency of state or federal government, a county or municipality may pay by its draft.~~

~~(b) If payment did not accompany the request, the Certified Paralegal shall send to the requester an invoice for all fees due. Payment of all fees shall be received prior to the Certified Paralegal furnishing the information or record to the requester. Under exigent circumstances requiring immediate release of information to local or federal law enforcement personnel, the~~

~~Certified Paralegal shall release the information upon a written assurance of future payment.~~

~~(c) Except for the transcript fee mandated by G.S. 96-15(f), no fees shall be charged for those records or documents furnished to the parties to proceedings before DES to the extent such records or documents are necessary for a proper case presentation or defense connected with a contested claim for unemployment insurance benefits or a contested determination of tax (contributions) liability.~~

~~(d) No fees shall be charged to the North Carolina State Bureau of Investigation for searching and copying records when requested in writing by the Bureau if it asserts that such records are necessary for an official investigation in progress.~~

~~(e) The Certified Paralegal shall send an invoice. The invoice will instruct the requester to submit the fee to the North Carolina Department of Commerce, Division of Employment Security, ATTN: Finance and Budget, Post Office Box 25903, Raleigh, North Carolina 27611.~~

~~Authority G.S. 96-4(d); 96-4(x); 20 CFR 603.~~

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**APPROVED RULES**

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

Rules approved by the Rules Review Commission at its meeting on January 15, 2015.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**HHS - HEALTH SERVICE REGULATION, DIVISION OF**

<u>Definitions</u>	10A	NCAC	14L	.0101*	29:07	NCR
<u>Stroke Center Designation</u>	10A	NCAC	14L	.0201*	29:07	NCR

**STATE TREASURER, DEPARTMENT OF**

<u>Description of the Program</u>	20	NCAC	01G	.0101	29:08	NCR
<u>Definitions</u>	20	NCAC	01G	.0102	29:08	NCR
<u>Principles of Accounting and Valuation</u>	20	NCAC	01G	.0103	29:08	NCR
<u>Accounting for Exchanges</u>	20	NCAC	01G	.0104	29:08	NCR
<u>Allocation of Management Costs</u>	20	NCAC	01G	.0105	29:08	NCR
<u>Consolidation of Existing Investments of Participants</u>	20	NCAC	01G	.0106	29:08	NCR
<u>Mergers of Additional Investment Portfolios</u>	20	NCAC	01G	.0107	29:08	NCR
<u>Loans Between Investment Funds</u>	20	NCAC	01G	.0108	29:08	NCR
<u>Delegation of Authority</u>	20	NCAC	01G	.0109	29:08	NCR
<u>General</u>	20	NCAC	01G	.0201	29:08	NCR
<u>Eligible Investments</u>	20	NCAC	01G	.0202	29:08	NCR
<u>Eligible Participants</u>	20	NCAC	01G	.0203	29:08	NCR
<u>Allocation of Income to Participants</u>	20	NCAC	01G	.0204	29:08	NCR
<u>Voluntary Deposits for Investments</u>	20	NCAC	01G	.0207	29:08	NCR
<u>General</u>	20	NCAC	01G	.0301	29:08	NCR
<u>Eligible Investments</u>	20	NCAC	01G	.0302	29:08	NCR
<u>Eligible Participants</u>	20	NCAC	01G	.0303	29:08	NCR
<u>Allocation of Income to Participants</u>	20	NCAC	01G	.0304	29:08	NCR
<u>Valuation of Ownership Units</u>	20	NCAC	01G	.0305	29:08	NCR
<u>Purchase of Ownership Units</u>	20	NCAC	01G	.0306	29:08	NCR
<u>Redemption of Ownership Units</u>	20	NCAC	01G	.0307	29:08	NCR
<u>General</u>	20	NCAC	01G	.0401	29:08	NCR
<u>Eligible Investments</u>	20	NCAC	01G	.0402	29:08	NCR
<u>Eligible Participants</u>	20	NCAC	01G	.0403	29:08	NCR
<u>Allocation of Income to Participants</u>	20	NCAC	01G	.0404	29:08	NCR
<u>Valuation of Ownership Units</u>	20	NCAC	01G	.0405	29:08	NCR
<u>Purchase of Ownership Units</u>	20	NCAC	01G	.0406	29:08	NCR
<u>Redemption of Ownership Units</u>	20	NCAC	01G	.0407	29:08	NCR
<u>Responsibility of Equity Investment Advisory Committee</u>	20	NCAC	01G	.0408	29:08	NCR
<u>Rebalancing of Ownership</u>	20	NCAC	01G	.0409	29:08	NCR
<u>General</u>	20	NCAC	01G	.0501	29:08	NCR

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*APPROVED RULES*

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<u>Eligible Investments</u>	20	NCAC 01G .0502	29:08 NCR
<u>Eligible Participants</u>	20	NCAC 01G .0503	29:08 NCR
<u>Allocation of Income to Participants</u>	20	NCAC 01G .0504	29:08 NCR
<u>Valuation of Ownership Units</u>	20	NCAC 01G .0505	29:08 NCR
<u>Purchase of Ownership Units</u>	20	NCAC 01G .0506	29:08 NCR
<u>Redemption of Ownership Units</u>	20	NCAC 01G .0507	29:08 NCR
<u>Rebalancing of Ownership</u>	20	NCAC 01G .0508	29:08 NCR
<u>General Information</u>	20	NCAC 01H .0101	29:08 NCR
<u>Definition of Terms</u>	20	NCAC 01H .0102	29:08 NCR
<u>Minimum Standards</u>	20	NCAC 01H .0103	29:08 NCR
<u>Delegation of Authority</u>	20	NCAC 01H .0104	29:08 NCR
<u>Requirements for the RFP</u>	20	NCAC 01H .0201	29:08 NCR
<u>Issuance of the RFP</u>	20	NCAC 01H .0202	29:08 NCR
<u>Contract Period: Termination of Trustee</u>	20	NCAC 01H .0203	29:08 NCR
<u>Termination for Cause</u>	20	NCAC 01H .0204	29:08 NCR
<u>Availability of Records</u>	20	NCAC 01H .0205	29:08 NCR
<u>Establishment of Individual Accounts</u>	20	NCAC 01H .0301	29:08 NCR
<u>Eligible Securities: Case Deposits</u>	20	NCAC 01H .0302	29:08 NCR
<u>Deposit of Cash or Securities</u>	20	NCAC 01H .0303	29:08 NCR
<u>Substitution of Securities</u>	20	NCAC 01H .0304	29:08 NCR
<u>Required Reporting</u>	20	NCAC 01H .0305	29:08 NCR
<u>Withdrawal of Cash or Securities</u>	20	NCAC 01H .0306	29:08 NCR
<u>Fees</u>	20	NCAC 01H .0307	29:08 NCR
<u>Notification of Default</u>	20	NCAC 01H .0401	29:08 NCR
<u>Sale of Securities After Default</u>	20	NCAC 01H .0402	29:08 NCR

**HEARING AID DEALERS AND FITTERS BOARD**

<u>Passing Examination</u>	21	NCAC 22F .0105*	29:04 NCR
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**PHYSICAL THERAPY EXAMINERS, BOARD OF**

<u>Membership of Board</u>	21	NCAC 48A .0103*	29:02 NCR
<u>Exemptions</u>	21	NCAC 48B .0104*	29:02 NCR
<u>Responsibilities</u>	21	NCAC 48C .0102*	29:02 NCR
<u>Retaking Examination</u>	21	NCAC 48D .0109*	29:02 NCR
<u>Foreign-Trained Physical Therapist Applicant by Examination</u>	21	NCAC 48E .0110*	29:02 NCR
<u>Foreign-Trained Physical Therapist by Endorsement</u>	21	NCAC 48E .0111*	29:02 NCR
<u>Foreign-Trained Physical Therapist Assistant Applicant</u>	21	NCAC 48E .0112*	29:02 NCR
<u>Criminal History</u>	21	NCAC 48E .0113*	29:02 NCR
<u>Continuing Competence Activities</u>	21	NCAC 48G .0109*	29:02 NCR
<u>Evidence of Compliance</u>	21	NCAC 48G .0110*	29:02 NCR
<u>Complaints and Investigations</u>	21	NCAC 48G .0504*	29:02 NCR
<u>Subpoenas</u>	21	NCAC 48G .0512*	29:02 NCR
<u>Prohibited Actions</u>	21	NCAC 48G .0601*	29:02 NCR
<u>Definitions</u>	21	NCAC 48G .0701	29:02 NCR
<u>Programs</u>	21	NCAC 48G .0702*	29:02 NCR
<u>Information of Impairment</u>	21	NCAC 48G .0703	29:02 NCR



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**APPROVED RULES**

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<u>Confidentiality</u>	21	NCAC 48G .0704	29:02 NCR
<u>Reports</u>	21	NCAC 48G .0705*	29:02 NCR
<u>Program Standards</u>	21	NCAC 48G .0706*	29:02 NCR

**REFRIGERATION EXAMINERS, BOARD OF**

<u>Licensure for Military-Trained Applicant; Licensure for M...</u>	21	NCAC 60 .0214*	29:08 NCR
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**ADMINISTRATIVE HEARINGS, OFFICE OF**

<u>Continuances</u>	26	NCAC 03 .0118*	29:06 NCR
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*These Rules are subject to the Legislative Session that began in January 2015.*

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Stormwater Requirements: Oil and Gas Exploration and Prod...</u>	15A	NCAC 02H .1030*	28:23 NCR
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**MINING AND ENERGY COMMISSION**

<u>Completeness and Request for Additional Information</u>	15A	NCAC 05H .0704*	29:02 NCR
<u>Permit Conditions</u>	15A	NCAC 05H .1308*	29:02 NCR
<u>Permit Modifications</u>	15A	NCAC 05H .1310*	29:02 NCR
<u>Disturbed Land Bond</u>	15A	NCAC 05H .1404*	29:02 NCR
<u>Environmental Damage Bond</u>	15A	NCAC 05H .1405*	29:02 NCR
<u>Inspection and Approval of Reclamation for Bond Release r...</u>	15A	NCAC 05H .1406*	29:02 NCR
<u>Bond Forfeiture Procedures</u>	15A	NCAC 05H .1407*	29:02 NCR
<u>Variance for Setbacks</u>	15A	NCAC 05H .1603*	29:02 NCR
<u>Well Stimulation Requirements</u>	15A	NCAC 05H .1613*	29:02 NCR
<u>Request for Investigation of Water Supply</u>	15A	NCAC 05H .1804*	29:02 NCR
<u>Surface Water Source Documentation</u>	15A	NCAC 05H .1902*	29:02 NCR
<u>Groundwater Source Documentation</u>	15A	NCAC 05H .1903*	29:02 NCR
<u>Exploration and Production Waste Disposal</u>	15A	NCAC 05H .2003*	29:02 NCR

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

**10A NCAC 14L .0101 DEFINITIONS**

The following definitions apply throughout this Subchapter:

- (1) "Acute Stroke Care" means the process for the assessment and treatment of patients experiencing an acute cerebrovascular accident.
- (2) "Acute Stroke Ready" means a hospital that has satisfied all requirements for certification as an acute stroke ready hospital from a nationally recognized hospital accrediting organization.
- (3) "Catchment Area" means the geographical area from which a hospital's patients are drawn.
- (4) "Comprehensive Stroke Care" means care provided by hospitals that meet or exceed the requirements put forward by nationally-recognized hospital accrediting organizations
- (5) "Comprehensive Stroke Center" means a hospital that has satisfied all requirements for certification from a nationally recognized hospital certifying organization for the provision of comprehensive stroke care.
- (6) "Conditional Designation" means a hospital that is pursuing certification but has not satisfied all certification requirements of the

and have developed the infrastructure, staff, and training necessary to receive and treat patients with the most complex stroke cases, including advanced imaging capabilities, 24 hours per day, seven days per week, with availability of specialized treatments, and staff with the unique education and competencies to care for complex stroke patients through the certification process required by accrediting organizations.

- national accrediting body to qualify for Comprehensive Stroke Center or Primary Stroke Center or Acute Stroke Ready Hospital designation.
- (7) "Department" means the Department of Health and Human Services.
  - (8) "Designated Stroke Center" means a hospital that has presented evidence to the Department of current certification by a national accrediting organization as a Comprehensive Stroke Center or Primary Stroke Center or Acute Stroke Ready Hospital.
  - (9) "Designation" means the recognition by the Department of a hospital's certification by a nationally recognized hospital certifying organization for the provision of stroke care as set forth in Items (2), (5), and (13) of this Rule.
  - (10) "EMS System" means those entities that are approved by the Department in accordance with 10A NCAC 13P .0201 of the EMS and Trauma rules.
  - (11) "EMS Provider" means those entities defined in G.S. 131E-155(13a) that hold a current license issued by the Department pursuant to G.S. 131E-155.1.
  - (12) "Office of Emergency Medical Services (OEMS)" means a section of the Division of Health Service Regulation of the North Carolina Department of Health and Human Services located at 1201 Umstead Drive, Raleigh, North Carolina 27603.
  - (13) "Primary Stroke Center" means a hospital that has satisfied all requirements for certification from a nationally recognized hospital accrediting organization for the provision of acute stroke care.

- (4) other nationally recognized accrediting body that requires conformance to best practices for stroke care.
- (b) Hospitals designated as a Primary Stroke Center or Comprehensive Stroke Center or Acute Stroke Ready Hospital shall notify the Office of Emergency Medical Services of the following information within 90 days of certification:
  - (1) the name of the accrediting organization issuing certification to the hospital;
  - (2) the date of certification;
  - (3) the level of certification (Primary, Comprehensive or Acute Stroke Ready);
  - (4) the date of renewal of the certification; and
  - (5) the name and phone number of the primary contact person at the hospital who is responsible for obtaining the certification.
- (c) The Department shall maintain a list of all Primary Stroke Centers, Comprehensive Stroke Centers and Acute Stroke Ready Hospitals on its website at <http://www.ncdhhs.gov>.
- (d) Each designated Primary Stroke Center or Comprehensive Stroke Center or Acute Stroke Ready Hospital shall coordinate the provision of acute stroke care with other hospitals in their catchment area through written agreements that address the following minimum requirements:
  - (1) transportation of acute stroke patients to the designated Primary Stroke Center or Comprehensive Stroke Center or Acute Stroke Ready Hospital; and
  - (2) acceptance of patients initially treated at hospitals incapable of providing management of the acute stroke patient.
- (e) The Office of Emergency Medical Services shall provide written notification annually through email to the medical directors of each EMS system and EMS provider a list of all Primary Stroke Centers, Comprehensive Stroke Centers and Acute Stroke Ready Hospitals contained on the Department's website.

- (f) Hospitals shall notify the Office of Emergency Medical Services in writing within 30 days of any change to the hospital's Primary Stroke Center or Comprehensive Stroke Center or Acute Stroke Ready certification.
- (g) Hospitals that have received a conditional certification are ineligible for designation by the Department as a Primary Stroke Center or Comprehensive Stroke Center or Acute Stroke Ready Hospital until the hospital receives Primary Stroke Center or Comprehensive Stroke Center or Acute Stroke Ready certification by the accrediting body issuing the certification.
- (h) Hospitals that fail to maintain certification shall be removed from the Department's website by the Office of Emergency Medical Services within 30 days following receipt of written notification from the affected hospital.
- (i) Non-certified hospitals shall not advertise or utilize signage representing the hospital as a Primary Stroke Center or Comprehensive Stroke Center or Acute Stroke Ready Hospital if the hospital has not received that designation by the Department.

*History Note: Authority G.S. 143B-10; 131E-78.5; Eff. February 1, 2015.*

*History Note: Authority G.S. 143B-10; 131E-78.5; Eff. February 1, 2015.*

**10A NCAC 14L .0201 STROKE CENTER DESIGNATION REQUIREMENTS**

(a) The Department shall designate hospitals licensed by the Division of Health Service Regulation pursuant to G.S. 131E-78.5 as certified "Designated Stroke Centers," as defined in Rule .0101(8) of this Subchapter, upon receipt of evidence provided by the hospital as defined in Paragraph (b) of this Rule that the hospital has received Primary Stroke Center or Comprehensive Stroke Center or Acute Stroke Ready certification by any of the following:

- (1) "The Joint Commission" (TJC), "American Heart Association" (AHA), and "American Stroke Association" (ASA) Comprehensive Stroke Center, Disease Specific Certification Program;
- (2) "Healthcare Facilities Accreditation Program" (HFAP);
- (3) "Det Norske Veritas" (DNV); or

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

**15A NCAC 02H .1030 STORMWATER REQUIREMENTS: OIL AND GAS EXPLORATION AND PRODUCTION**

(a) Regulated Development Activity. Persons engaged in oil and gas exploration, development, and production activities shall manage stormwater runoff in accordance with the provisions of this Rule.

- (1) These persons shall submit a permit application to the Division of Energy, Mineral, and Land Resources (Division) in accordance with the requirements of this Section.
- (2) These persons shall obtain a permit from the Division prior to any on-site activities other than land surveying, and surface soil testing of hydraulic conductivity and engineering properties.
- (3) This Rule authorizes the Division to issue a stormwater-only permit. Any other discharge to surface waters is prohibited unless permitted in accordance with G.S. 143-215.1.
- (4) The Division may issue stormwater permits as discrete, stand-alone stormwater permits or may incorporate stormwater permit conditions into an environmental protection permit encompassing multiple regulatory programs.

(b) Permit Application Requirements.

- (1) Notwithstanding the qualifying provisions of Rule .1003(b)(1), (2), and (3) of this Section, a complete permit application and a permit are required for oil and gas exploration, development, and production activity, regardless of whether the activity also requires a CAMA major development permit or an Erosion and Sedimentation Control Plan. A permit application and permit are also required regardless of whether the development is located in the 20 coastal counties, drains to Outstanding Resource Waters (ORW), or drains to High Quality Waters (HQW).
- (2) The Division shall treat each stormwater permit application for oil and gas exploration, development, and production activities as a High Density Project application as provided for in Rule .1003(d)(2) of this Section, and shall only grant permit coverage if the application itself and the proposed development meet the requirements of this Rule.
- (3) The Director may solicit and receive comments from other regulatory agencies and the public when necessary to obtain additional information needed to complete the review of either the stormwater permit application or the stormwater conditions in an application for an environmental protection permit encompassing multiple regulatory programs. If comments are

solicited, notice will be posted on the Division's website with 30 days provided for public comment to be submitted to the Director. The permit application will be included in the notice published on the Division's website.

- (4) The permit application for oil and gas exploration, development, and production activities shall be submitted to the Division at the Raleigh Central Office located at 512 North Salisbury Street, Raleigh, North Carolina 27604.
- (5) The stormwater permit application shall comply with the requirements in Rule .1003(g) of this Section. In addition, the application shall include the following information:
  - (A) all North Carolina classifications and supplemental classifications (if any) assigned to the receiving water; (B) the location of all stormwater discharge points, both by latitude and longitude coordinates and by graphic representation;
  - (C) the graphic representation of the location and delineation of wetlands and regulated buffers on the site, adjacent to the site, or between the site and the receiving water;
  - (D) a statement that there are no threatened or endangered species identified for the receiving water or for downstream receiving waters. If threatened or endangered species are present the application shall identify the threatened and endangered species and their reported locations in the receiving water and downstream receiving waters. The application shall propose specific measures for the protection of any threatened or endangered species present in the receiving water. The Division shall evaluate the proposed measures and may require additional or different measures in the final form of the stormwater management permit;
  - (E) a design narrative that explains the assumptions and calculations for the engineering design of the stormwater control systems proposed and that identifies how the design complies with each specific requirement of this Section; and
  - (F) a graphic representation of the final site grade and site conditions that will be implemented in support of a future request to rescind the stormwater permit, or comprehensive environmental permit, based on the final close out and the end of the

permit holder's commercial interest in the site.

- (6) As a part of the permit application, the applicant shall submit a Stormwater Management Plan that identifies the physical and procedural stormwater management measures proposed to minimize the discharge of pollutants through stormwater. The Stormwater Management Plan shall address all phases of site activity and operation. The Stormwater Management Plan shall include:

- (A) a description of site activities with the potential to affect the pollutant content of stormwater runoff;
- (B) a description of the permittee's stormwater management strategy to control and minimize stormwater exposure of significant materials;
- (C) a description of the permittee's spill prevention and response procedures;
- (D) a description of the permittee's preparations in anticipation of, and in response to, rainfall events in excess of the design basis of the physical stormwater control and treatment measures employed;
- (E) a description of good housekeeping measures and supporting facility inspections including a schedule of inspections and maintenance on any structural control measures;
- (F) a description of the permittee's training of site personnel in stormwater pollution prevention; and
- (G) the identification of the specific person or position responsible for the overall coordination, development, implementation, and revision of the Stormwater Management Plan.

(c) Stormwater Management Requirements.

- (1) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage (control, operate, maintain, store, handle, clean up, and dispose of) site conditions, materials, activities, and stormwater as follows:
  - (A) Equipment, petroleum products, equipment wash waters, and associated spent fluids shall be managed to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.
  - (B) Herbicides, pesticides, fertilizers, and similar materials shall be managed to prevent introduction into stormwater runoff.

- (C) Building material waste, land clearing and demolition debris, litter, and sanitary wastes shall be managed to prevent introduction into stormwater runoff. Dedicated management areas shall be established for these materials a minimum of 50 feet away from surface waters and discrete stormwater conveyances.

- (D) Topsoil and excavated material stockpiles shall be located a minimum of 50 feet away from surface waters and stormwater conveyances and shall be managed to prevent runoff transport of the stockpiled materials to surface waters.

- (E) Excess concrete, concrete wash water, and cement slurries shall be managed to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.

- (2) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage site conditions, materials, activities, and stormwater as follows:

- (A) All perimeter dikes, perimeter swales, perimeter ditches, perimeter slopes, all slopes steeper than 3:1, and all slopes longer than 50 feet shall be provided with temporary or permanent ground cover stabilization within 7 calendar days from the last land disturbing activity.

- (B) All other disturbed areas shall be provided temporary or permanent ground cover stabilization within 14 calendar days from the last land disturbing activity.

- (C) Time extensions may be requested in writing by the permittee. These requests may be granted by the Division based on weather or site-specific conditions. and

- (D) Treatment measure requirements:
  - (i) All sediment basins and traps with a contributing drainage area of one acre or greater shall utilize outlet structures that withdraw water from the surface.
  - (ii) Stormwater treated with polymers, flocculants, or other treatment chemicals shall be routed through sediment traps, filters, or other settling devices to

ensure removal prior to discharge to surface waters. Only chemicals that have been approved by the Division may be used. The approved chemicals list is available on the Division's website at <http://portal.ncdenr.org/web/lr/construction-stormwater>.

- (3) For this Rule, 'spudding' the well means starting the oil or gas well drilling process by removing rock, dirt, and other sedimentary material with the drill bit. After initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, and at least 72 hours prior to spudding an oil or gas well, the permittee shall deliver to the Division written certification by the individual designing the stormwater control system in accordance with Rule .1008(j) of this Section. Regardless of whether a certificate of occupancy is provided or required by other authority, the permittee shall not proceed with spudding the well until the Division accepts the designer's written certification. Within 72 hours of receiving the designer's certificate the Division shall inspect the permitted stormwater control system. Subsequent to the inspection, the Division may withhold acceptance of the designer's certification upon concluding that the stormwater control system has not been installed in accordance with the stormwater permit and the approved stormwater permit application documents. If the Division fails to inspect the stormwater control system within 72 hours of receiving the designer's certification, the certification shall be deemed accepted by the Division and the permittee may proceed with spudding the well.
- (4) After completion of the surface site preparation activity, and beginning with the surface activity in direct support of well drilling, the permittee shall manage site conditions, materials, activities, and stormwater as follows:
  - (A) Stormwater control measures shall control and treat the runoff from the rainfall event with a 24-hour precipitation total greater than or equal to 90 percent of all 24-hour rainfall event totals on an annual basis.
  - (B) Stormwater control measures shall discharge at a rate less than or equal to the peak pre-development discharge rate for the 1-year, 24-hour storm.
  - (C) Stormwater control measures shall be designed in accordance with the

provisions of Rule .1008 of this Section.

- (D) In addition to the measures identified in Rule .1008(a) of this Section, other measures shall be approved where individually, or in combination, the measures achieve 85% average annual removal of Total Suspended Solids, and upon the Division's review and conclusion of appropriate design and suitability for the anticipated site conditions.
- (E) All stormwater control measures shall be equipped with underflow baffles or other effective means to prevent the discharge of hydrocarbons and floating pollutants.
- (F) The requirements identified in Subparagraphs (1) and (2) of this Paragraph for initial site construction shall also apply to all subsequent phases of site operation.
- (5) The Division shall establish record-keeping, self-inspection, and self-reporting permit requirements to insure effective site management attention, response actions, and control of the potential for polluted stormwater.
- (6) Stormwater management requirements provided in this Paragraph pertain to the well pad area, all adjacent developed areas, and access and haul roads in proximity to the well pad or directly associated with the operation of the permitted site.
  - (d) Coordination with other water quality regulations.
    - (1) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the requirements of Rule .1006 of this Section. However, pursuant to Rule .1006 of this Section, the Division may require more stringent measures for development activities draining to HQW waters.
    - (2) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the Freshwater ORW requirements of Rule .1007 of this Section. However, pursuant to Rule .1007 of this Section, the Division may require more stringent measures for development activities draining to ORW waters.
    - (3) This Rule is not intended to modify, repeal, or supersede any other rule, regulation, or other provision of law. The requirements of this Rule are in addition to the requirements of any other rule, regulation, or other provision of law. Where any requirement of this Rule imposes restrictions different from those imposed by any other rule, regulation, or other provision of law, whichever requirement is more restrictive or imposes higher protective standards for human

or environmental health, safety, and welfare shall control. This includes Sections 15A NCAC 02B .0100, 15A NCAC 02B .0200, and 15A NCAC 02B .0300, whether administered by the State or by a local unit of government.

History Note: Authority G.S. 113-391(a3)(1); 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); S.L. 2014-4 Section 2.(e); Eff. Pending Legislative Review.

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**15A NCAC 05H .0704 COMPLETENESS AND REQUEST FOR ADDITIONAL INFORMATION**

(a) The Chair of the Commission shall make a determination on the completeness of the request for hearing based on the requirements of this Section. The Chair shall return incomplete requests to the requesting party.

(b) Before deciding the merits of the request, the Commission shall determine if additional information or presentation(s) are needed and if so:

- (1) request additional written submissions from the requesting party;
- (2) request a written response from the Division staff or any other person; and
- (3) hear oral arguments from the requesting party, intervenors, and Division staff or their legal counsel.

History Note: Authority G.S. 113-391(b); Eff. Pending Legislative Review.

**15A NCAC 05H .1308 PERMIT CONDITIONS**

A Form 2 – Oil or Gas Well Permit Application may be approved with conditions based on the individual well site. These conditions may require the permittee to:

- (1) create or construct additional erosion control measures to be installed during oil and gas well operations;
- (2) create or construct a natural buffer to be left between any stream and the disturbed land;
- (3) create or construct visual screening, such as existing natural vegetation, vegetated earthen berms, tree plantings at staggered spacing, to be installed and maintained between any disturbed land and any adjoining property containing occupied buildings or public access within view of the disturbed land;
- (4) create or construct erosion control measures to be implemented during the construction and operation of all roads to minimize off-site damage from sediment; or
- (5) comply with other conditions as determined by the Department based on the well site geography, geology, and the recommendations of other Divisions in order to safeguard public health, welfare, and the environment.

History Note: Authority G.S. 113-391(a)(5); 113-391(a6);

Eff. Pending Legislative Review.

**15A NCAC 05H .1310 PERMIT MODIFICATIONS**

(a) Any permittee may apply at any time for a modification of the permit. The application shall be in writing on Form 2 – Oil or Gas Well Permit Application in accordance with Rule .1304 of this Section. The Department may review, approve, approve with conditions, or deny the application for modification in accordance with the rules of this Section.

(b) The permittee shall provide any additional information required by the Department to satisfy application requirements in accordance with Rule .1307 of this Section. The permittee shall not be required to resubmit information that remains unchanged since the time of the prior application.

(c) If a proposed modification of the permit affects the land area covered by the permit or the approved Reclamation Plan, then the permittee shall propose a modification to the Reclamation Plan that meets the requirements of Rule .2102 of this Subchapter.

(d) No modification of a permit shall become effective until any required change has been made in the bond or other security posted under the provisions of G.S. 113-378, 113-391, and 113-421, so as to assure the performance of obligations assumed by the permittee under the permit and Reclamation Plan.

(e) If at any time it appears to the Department from its inspection of the disturbed land that the activities under the Reclamation Plan and other terms and conditions of the permit are failing to achieve the purposes and requirements of this Subchapter, the Department shall give the permittee written notice of that fact and request the permittee to modify the permit in accordance with Rule .1307 of this Section.

History Note: Authority G.S. 113-391(a)(5)a; 113-391(a6); 113-395; 113-410(a); Eff. Pending Legislative Review.

**15A NCAC 05H .1404 DISTURBED LAND BOND**

(a) The applicant or permittee shall provide to each surface owner a disturbed land bond that is sufficient to cover the cost of completing the requirements of the approved Reclamation Plan in accordance with Rule .2102 of this Subchapter and any reclamation conditions of the approved permit.

(b) The Commission shall set the disturbed land bond amount by calculating the costs for corrective actions(s), using the Reclamation Cost Table and calculations specified in Paragraphs (c) and (d) of this Rule, to return the land to the conditions set out in the approved Reclamation Plan in accordance with Rule .2102 of this Subchapter and any reclamation conditions of the approved permit.

(c) The Commission shall use the Reclamation Cost Table to calculate the amount for the disturbed land bond. The Reclamation Cost Table set by the Commission shall include the following:

- (1) stone removal for access road and well pad in cubic yards;
- (2) spreading stockpiles and berms to prepare for fine grading in cubic yards;
- (3) filling of pits in cubic yards;
- (4) fine grading per acre;

- (5) seed and mulch, repair seeding, and fertilizing per acre;
- (6) matting for soil cover per acre;
- (7) matting permanent soil reinforcement per acre;
- (8) drainage ditch excavation; and
- (9) borrow excavation.

(d) The disturbed land bond shall be calculated by multiplying the affected area for each item listed in Paragraph (c) of this Rule and the unit cost for each item as determined by the Commission based on market value of each item. The Reclamation Cost Table is available on the Division's Oil and Gas Program webpage at the following address: <http://portal.ncdenr.org/web/lr/oilgas>.

(e) If the applicant, permittee, or surface owner disagrees with the disturbed land bond amount determined by the Commission, the applicant, permittee, or surface owner may appeal the bond amount pursuant to G.S. 113-421(a3)(1).

*History Note: Authority G. S. 113-391(a)(5)l; 113-391(a)(13a); 113-421(a3)(1); 150B-43; Eff. Pending Legislative Review.*

**15A NCAC 05H .1405 ENVIRONMENTAL DAMAGE BOND**

(a) The applicant or permittee shall submit an environmental damage bond in the amount of one million dollars (\$1,000,000), unless the Commission sets a higher amount pursuant to G.S. 113-421(a3)(2).

(b) The environmental damage bond may be submitted as a separate bond or as an aggregate bond amount with the oil or gas well plugging and abandonment bond, as required by Rule .1403 of this Section.

(c) In identifying environmentally sensitive areas, the Commission shall consider the following:

- (1) renewable resources, which may include:
  - (A) watersheds or aquifers that are present sources of public water supply, as identified by the Department or the Environmental Management Commission at <http://swap.ncwater.org/website/swap/viewer.htm>; and
  - (B) prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of marketable timber).
- (2) environmental or natural resources, which may include:
  - (A) existing national or State parks or forests, wilderness areas, the State Nature and Historic Preserve, or public recreation areas;
  - (B) present sections of the natural and scenic rivers system;
  - (C) stream segments that have been classified for scientific or research uses by the Environmental Management Commission at <http://portal.ncdenr.org/web/wq/ps/cs> u, or that are proposed to be so classified in a rulemaking proceeding

that is pending before the Environmental Management Commission pursuant to G.S.143-214.1 at the time of the designation of the area of environmental concern;

- (D) existing wildlife refuges, preserves or management areas found at <http://www.fws.gov/refuges/refugeloc/atormaps/NorthCarolina.html> and game lands identified by the Wildlife Resources Commission found at <http://ncpaws.org/wrcmapbook/>;
- (E) areas that sustain rare and endangered botanical or animal species; and
- (F) areas containing unique geological formations, as identified by the State Geologist.

- (3) natural-hazard areas, which may include:
  - (A) the shoreline of estuarine and public trust waters;
  - (B) floodways and floodplains; and
  - (C) areas where geologic and soil conditions are such that there is a substantial possibility of landslides or seismic activity, as identified by the State Geologist, at <http://portal.ncdenr.org/web/lr/geologic-hazards>.

(4) Outstanding Resource Waters as designated by the Division of Water Resources at <http://nc.maps.arcgis.com/apps/webappviewer/index.html?id=5f5cce7640a1499b83a7b7efaf5524a4> and such contiguous land for the purpose of maintaining the exceptional water quality and outstanding resource values identified in the designation; and

(5) Primary Nursery Areas as designated by the Marine Fisheries Commission at <http://portal.ncdenr.org/web/mf/primary-nursery-areas>.

(d) After the Commission determines that an operation would be sited in an environmentally sensitive area, the Commission may increase the bond amount pursuant to G.S. 113-421(a3)(2). In making the determination, the Commission shall consider factors such as the following:

- (1) the proximity of the oil or gas well or well site to the environmentally sensitive area;
- (2) the character of the environmentally sensitive area;
- (3) the topography of the environmentally sensitive area; and
- (4) special soil or geologic conditions in the environmentally sensitive area.

*History Note: Authority G. S. 113-391(a)(5)l; 113-421(a3)(2); Eff. Pending Legislative Review.*

**15A NCAC 05H .1406 INSPECTION AND APPROVAL OF RECLAMATION FOR BOND RELEASE OR FORFEITURE**

(a) The permittee shall proceed with reclamation as scheduled in the approved Reclamation Plan pursuant to Rule .2102 of this Subchapter.

(b) The permittee shall notify the Department in writing that it has completed reclamation of an area of disturbed land in accordance with Rule .2103 of this Subchapter.

(c) After receipt of the notice as required by Paragraph (b) of this Rule, the Department shall conduct an inspection to determine whether the permittee has complied with the Reclamation Plan in accordance with Rule .2102 of this Subchapter and the reclamation conditions of the Oil or Gas Well Permit.

(1) If the Department determines from its inspection of the area in accordance with this Rule that reclamation has been properly completed, it shall notify the permittee in writing.

(2) If the Department determines from its inspection of the area that reclamation is deficient based on Rule .2102 of this Subchapter, then the Department shall notify the permittee in writing of all such deficiencies. The permittee shall commence action within 30 days to rectify these deficiencies and shall take corrective actions until the deficiencies have been corrected. The Department shall conduct follow-up site inspections in accordance with this Subparagraph and Rule .0203 of this Subchapter to ensure the permittee has taken the corrective actions.

(d) The Department shall initiate enforcement actions if it finds any of the following conditions in accordance with Rule .0901 of this Subchapter:

- (1) the reclamation of the disturbed land within the permitted area is not proceeding in accordance with the Rule .2103 of this Subchapter or the Reclamation Plan;
- (2) the permittee has failed within 30 days after notice to commence corrective action; or
- (3) the final reclamation has not been properly completed in conformance with the Reclamation Plan and G.S. 113-421(a3).

*History Note: Authority G. S. 113-391(a)(5)l; 113-391(b); 113-410;113-421(a3); Eff. Pending Legislative Review.*

**15A NCAC 05H .1407 BOND FORFEITURE PROCEEDINGS**

(a) If the Department determines there is a violation necessitating bond forfeiture or the revocation of a permit, it shall send the permittee and surety a written notice of violation. Upon receipt of the written notice of violation, the permittee shall have 60 calendar days to complete corrective action. If the permittee does not correct the violation within the 60 day period, the Department shall request the Attorney General to initiate forfeiture

proceedings against the bond or other security filed by the permittee in accordance with Rule .0901 of this Subchapter.

(b) Such proceedings shall be brought in the name of the State of North Carolina for the face amount of the bond or other security, less any amount already released by the Department, and these sums shall be subject to forfeiture.

(c) If the amount of the bond or other security filed pursuant to this Section proves to be insufficient to complete the required final reclamation pursuant to the approved Reclamation Plan, the permittee shall be liable to the Department for any excess above the amount of the bond or other security that is required to defray the cost of completing the required final reclamation.

(d) If a permit is revoked by the Department, the Department shall proceed with efforts to collect the bond(s) or other financial assurance that was submitted to the Department at the time of permitting for oil or gas well plugging and abandonment and environmental damage in accordance with the rules of this Section.

*History Note: Authority G.S. 113-391(a)(5)l; 113-421(a3); Eff. Pending Legislative Review.*

**15A NCAC 05H .1603 VARIANCE FOR SETBACKS**

(a) An applicant or permittee may request a variance to reduce the setback distances for an oil or gas wellhead, a tank or tank battery, and a pit from an occupied dwelling required by Rule .1601 of this Section. The variance, if granted, shall provide equal or greater protection of public health, safety, and the environment. Variances from setbacks established for high occupancy buildings are prohibited. The Commission in granting or denying variances shall:

- (1) require additional measures that eliminate, minimize, or mitigate potential adverse impacts to public health, welfare, and the environment, such as the use of non-diesel fuels with lower emissions; and
- (2) require site-specific mitigation measures to address location specific considerations.

(b) The Commission shall require the following conditions in any approved variance from an occupied dwelling:

- (1) the wellhead, tank or tank battery, or production facility shall be a minimum of 400 feet from an occupied dwelling; and
- (2) freshwater storage pits, reserve pits to drill surface casing, and emergency pits shall be a minimum of 400 feet from an occupied dwelling.

The Commission shall not grant a variance for any E & P waste pit setback from an occupied dwelling.

(c) An applicant or permittee may request a variance to reduce the setback distances for an oil or gas wellhead, a tank, or tank battery from an intermittent stream, a pond, or other natural or artificial water body, which is not a water of the State, wholly contained within the drilling unit. The Commission shall determine that the measures proposed to eliminate, minimize or mitigate potential adverse impacts to public health, welfare and the environment are adequate to address all the risks at the well site and justify the reduction of setback distances as requested in the variance and that the variance, if granted, shall provide equal



or greater protection of public health, safety, and the environment. The variance shall include the following conditions:

- (1) additional measures that eliminate, minimize, or mitigate potential adverse impacts to public health, welfare, and the environment, such as the use of secondary or backup containment measures;
- (2) the oil or gas wellhead, freshwater storage pit, tank, tank battery, or production facility shall be a minimum of 50 feet from any intermittent stream, pond, or other natural or artificial water body, that is not a water of the State, and that is wholly contained within the drilling unit; and
- (3) oil or gas wellheads, a tank, a tank battery, or pits less than 650 feet from, and up-gradient of, a surface water body shall use tertiary containment, such as an earthen berm.

The Commission shall not grant a variance for any E & P waste pit setback from an intermittent stream.

(d) The Commission shall require green completions in any approved variance, which include:

- (1) flow lines, separators, and sand traps capable of supporting green completions shall be installed;
- (2) prevention of uncontrolled venting; and
- (3) temporary flowback flaring and oxidizing equipment shall include the following:
  - (A) equipment sized to handle one and one half times the largest flowback volume of gas experienced within a 10-mile radius;
  - (B) valves and porting available to divert gas to temporary equipment or to permanent flaring and oxidizing equipment; and
  - (C) auxiliary fuel and heat to sustain combustion or oxidation of the gas mixture when the mixture includes noncombustible gases.

(e) An applicant or permittee may submit a surface use agreement from a surface landowner as justification to request a variance to setback distances for the wellheads, tank or tank battery, and pits from occupied dwellings. The surface use agreement may include additional site-specific mitigation measures. The surface use agreement shall include written consent of the landowner, which may be provided by any of the following:

- (1) a copy of an original lease agreement text filed with the county Registrar of Deeds that shows the reduction of the distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling;
- (2) a copy of a deed severing the oil and gas mineral rights, as applicable, from the owner's parcel of land as filed with the county Registrar of Deeds that expressly provides for the reduction of the distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling; or

- (3) a copy of a written surface use agreement signed by the property owner that consents to the proposed location of an oil or gas wellhead, well pad, tank, tank battery, or pit(s), as applicable. An applicant or permittee may submit a copy of a written statement filed with the county Register of Deeds that expressly provides for the reduction of the distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling in lieu of a copy of a written surface use agreement.

(f) Variance requests shall be submitted in accordance with Rule .0301 of this Subchapter. In addition to the information required by Rule .0301 of this Subchapter, any permittee seeking to use surface use agreement as a basis for a variance shall submit a copy of the surface use agreement containing the information in Paragraph (e) of this Rule.

*History Note: Authority G.S. 113-391(a)(5)d; Eff. Pending Legislative Review.*

**15A NCAC 05H .1613 WELL STIMULATION REQUIREMENTS**

(a) The applicant or permittee shall indicate on the Form 2 – Oil or Gas Well Permit Application the intent to perform well stimulation operations. If well stimulation was not approved as part of the initial application, the permittee desiring to perform such operations shall submit for approval the information required by this Rule via email, fax or mail to the Department for review at least 30 calendar days prior to commencement of planned well stimulation operations.

(b) The production casing shall withstand the maximum anticipated treating pressure of the proposed well stimulation operations. The maximum anticipated treating pressure shall not exceed 80 percent of the minimum internal yield pressure for such production casing.

(c) Non-cemented portions of the oil or gas well shall be tested prior to well stimulation operations to ensure that the wellbore can meet one of the following conditions:

- (1) 70 percent of the lowest activating pressure for pressure actuated sleeve completions; or
- (2) 70 percent of formation integrity for open-hole completions, as determined by a formation integrity test (FIT).

(d) The permittee shall notify the Department via telephone or email a minimum of 48 hours prior to the commencement of all well stimulation operations at the oil or gas well. The contact information is set forth in Rule .0201 of this Subchapter. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days of the telephone or email notice and shall include the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;

- (3) the property street address, or nearest address to the ingress and egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the scheduled date and approximate time for the well stimulation operations.

(e) The permittee shall monitor and record all casing annuli via pressure gauges and by visual discharge for any pressure or flow increases or discharges that would be indicative of a potential loss of wellbore integrity during the well stimulation operations. The permittee shall take remedial action to avoid the loss of wellbore integrity and shall notify the Department within 24 hours of discovery via telephone or email.

(f) If well stimulation treatment design does not allow the surface casing annulus to be open to atmospheric pressure, then the surface casing pressures shall be monitored with a gauge and pressure relief device. The maximum set pressure on the pressure relief device shall be the lower of:

- (1) a pressure equal to: 0.70 times 0.433 times the true vertical depth of the surface casing shoe (expressed in feet);
- (2) 80 percent of the API rated minimum internal yield for the surface casing; or
- (3) 80 percent of the surface casing shoe test pressure, adjusted for fluid density.

The well stimulation treatment shall be terminated if the pressures exceed the limits set in Subparagraphs (f)(1) through (f)(3) of this Rule and the Department shall be notified within 24 hours of the occurrence of an exceeded pressure. Pressures on any casing string other than the surface casing shall not be allowed to exceed 80 percent of the API rated minimum internal yield pressure for such casing string throughout the stimulation treatment. The permittee shall notify the Department within 24 hours via telephone or email if treatment pressure exceeds 80 percent of the API rated minimum internal yield pressure on any casing string other than surface casing.

(g) The permittee shall monitor and record, at all times, the following parameters during well stimulation operations:

- (1) surface injection pressure, in pounds per square inch (psi);
- (2) fluid injection rate in barrels per minute (BPM);
- (3) proppant concentration in pounds per thousand gallons;
- (4) fluid pumping rate in BPM;
- (5) identities, rates, and concentrations of additives used in accordance with Rule .1702 of this Subchapter; and
- (6) all annuli pressures.

(h) Following the notification in Paragraph (f) of this Rule, the Department may require additional documentation or oil or gas well tests to determine if the well stimulation operations potentially endanger any fresh groundwater zones, if the permittee is unable to assess the wellbore integrity. If either the permittee or the Department determines fresh groundwater zones are endangered, the Department shall require the permittee to perform remedial operations to correct any oil or gas well failure.

(i) The Department shall notify the Commission at its next regularly scheduled meeting of any remedial operations conducted pursuant to Paragraph (h) of this Rule.

*History Note: Authority G.S. 113-391(a)(5)k; 113-391(a)(10); 113-391(a)(11); 113-391(b); 113-391(b1); Eff. Pending Legislative Review.*

**15A NCAC 05H .1804 REQUEST FOR INVESTIGATION OF WATER SUPPLY**

(a) Any surface owner or owner of a water supply who suspects contamination as a result of the drilling, alteration, or operation of an oil or gas well may submit Form 21 – Water Supply Investigation Request to the Department, requesting that an investigation be conducted. The Form 21 – Water Supply Investigation Report can be found in Rule .0201(a) in this Subchapter and shall be sent to the Department in accordance with Rule .0201(c) in this Subchapter. The completed form shall include the following information:

- (1) the name of surface owner or owner of the water supply, address, telephone number, and email address;
- (2) the name of the oil or gas well permittee, if known;
- (3) the API number, the lease name, and the oil or gas well name and number, if known;
- (4) an indication if the individual contacted the permittee, and if so, the name of the person contacted;
- (5) the date of incident, if known; and
- (6) a description of the incident or problem.

(b) Upon the receipt of a Form 21 – Water Supply Investigation Report, the Department shall require the permittee to pay for a test to be conducted on the water supply and submit the analytical results to the Department in accordance with Rules .1803(f) and .1805 of this Section.

(c) The permittee shall replace a water supply pursuant to G.S. 113-421(a5) if the investigation and analytical results indicate that the water supply is contaminated due to the activities of the permittee.

*History Note: Authority G.S. 113-391(a)(3); 113-391(a)(4); 113-391(a)(5)b; 113-391(a)(14); 113-423(f); Eff. Pending Legislative Review.*

**15A NCAC 05H .1902 SURFACE WATER SOURCE DOCUMENTATION**

(a) For surface water sources, the applicant or permittee shall consult with the Department to determine and evaluate the limits of the affected reach. The exact delineation of the affected reach shall be determined in consultation with and the approval of the Department and shall depend on factors including:

- (1) the cumulative amount of water to be withdrawn when the proposed withdrawal is combined with existing withdrawals;
- (2) the hydrologic characteristics of the stream;
- (3) the presence or absence of downstream point source discharges; and

- (4) the potential effects on other users and instream flow.
- (b) Following a determination of the limits of the affected each, the following information shall be provided by the permittee to the Department:
  - (1) the river basin designation, as defined by G.S. 143-215.22G, at the point of withdrawal and the river basin designation where the water will be used;
  - (2) the classification of the water source at the withdrawal point in accordance with 15A NCAC 02B .0301, which is incorporated by reference including subsequent amendments;
  - (3) for free-flowing water sources:
    - (A) a list of other existing and proposed withdrawals within the affected reach, including the maximum withdrawal capacity of each; and
    - (B) an estimate of the 7Q10 flow at the proposed intake location and explain the methodology used to derive the estimate. The cumulative maximum instantaneous withdrawal from the affected reach shall be limited to 20 percent of the 7Q10 flow;
  - (4) the owner, facility name, National Pollution Discharge Elimination System (NPDES) permit number, and permitted volume of any point source discharges within the affected reach or discharge to a water impoundment that is listed as a water source.
- (c) When flows in the affected reach are at 7Q10 levels, withdrawals conducted under the permit shall cease until flows reach 120 percent of the 7Q10 flow level.
- (d) The results of a survey to determine the presence of any state or federally threatened or endangered species or any invasive species that may be affected by the proposed withdrawal shall include:
  - (1) the identification of any state or federally threatened or endangered species present;
  - (2) a description of how any detrimental impacts to those species and their critical habitats will be avoided;
  - (3) a description of how the spread of any identified invasive species will be prevented; and
  - (4) the identification of the sources of information used for the determination and contact information for the federal and state agencies consulted.
- (e) The permittee shall indicate the presence of any known noxious aquatic weeds listed in 15A NCAC 02G .0602, which is incorporated by reference including any subsequent amendments, or other exotic or invasive species in the source water(s).
- (f) If the surface water source is classified as an Outstanding Resource Water under 15A NCAC 02B .0225, the permittee shall document how the outstanding resource value will not be adversely affected, taking into account the value assigned to it, the site-specific location, and the proposed quantity of water to withdrawn under this plan.

*History Note: Authority G.S. 113-391(a)(4); 113-391(a)(5)e; 113-391(a)(5)k; Eff. Pending Legislative Review.*

**15A NCAC 05H .1903 GROUNDWATER SOURCE DOCUMENTATION**

- (a) For groundwater sources from which water is proposed to be obtained as part of the Water Management Plan, the applicant or permittee shall provide the following information:
  - (1) for pre-existing groundwater wells, a copy of the well construction record filed with the Department in accordance with 15A NCAC 02C .0114(b), which is incorporated by reference including subsequent amendments, or from the local health department;
  - (2) for groundwater wells constructed specifically for the purposes covered by the Water Management Plan, a copy of the Well Construction Permit issued by the Department pursuant to 15A NCAC 02C .0105, which is incorporated by reference including subsequent amendments, and the associated groundwater well construction record form submitted to the Department pursuant to 15A NCAC 02C .0114(b);
  - (3) the results of an aquifer pump test for each well included in the Water Management Plan. The aquifer pump test shall be conducted in accordance with 15A NCAC 02C .0110(b), which is incorporated by reference including subsequent amendments;
  - (4) a map showing the extent of the measureable area of influence determined by the aquifer pump test at the proposed rate of withdrawal indicating the locations of all surface waters and water supply wells within the area of influence;
  - (5) a map showing the extrapolated cone of depression based on six months usage; and
  - (6) information required by 15A NCAC 02C .0107(j)(2)(E) and (j)(3)(D), which is incorporated by reference including subsequent amendments, for the construction of water supply and other wells.
- (b) The applicant or permittee shall use a drought indicator well within the measureable area of influence identified by the Division of Water Resources and the United States Geological Survey found at <http://www.ncwater.org/?page=345>, to be used to monitor the impacts to groundwater and to determine appropriate thresholds on which to base the cessation of groundwater pumping. If there is no such well, the applicant or permittee shall, in consultation with and the approval of the Department, identify a well for this purpose.
- (c) When the drought indicator well closest to the groundwater source(s) included in this application is designated as D3, indicating that water levels are at or below the fifth percentile of historic water level measurements as determined by the Drought Management Advisory Council and reported by the Division of Water Resources at <http://www.ncwater.org/?page=345>, the

withdrawals from these sources shall cease until the designation is upgraded to D1 or above, indicating water levels above the 10th percentile of historic water level measurements.

*History Note: Authority G.S. 113-391(a)(5)e; 113-391(a)(5)k; 113-391(b); Eff. Pending Legislative Review.*

**15A NCAC 05H .2003 EXPLORATION AND PRODUCTION WASTE DISPOSAL**

(a) The permittee shall test produced water and flowback fluids. The permittee shall test for the following parameters on a frequency and schedule determined by the Department, based on factors such as new sciences, the shale resource, and operator technology for the protection of public health, welfare, and the environment. At a minimum, testing shall be conducted on the produced water and flowback fluids from the first completed well on each well pad and on all fluids prior to management in accordance with Subparagraphs (c)(2), (c)(3), and (c)(4) of this Rule:

- |   |                                 |
|---|---------------------------------|
| carbonaceous biochemical oxygen demand (CBOD) | ammonia-nitrogen (NH3-N)        |
| dissolved oxygen (DO)                         | specific conductance            |
| pH  | total suspended solids (TSS)    |
| barium  | bromide                         |
| chlorides                                     | sulfates                        |
| sodium  | divalent cations                |
| total dissolved solids (TDS)                  | oil and grease                  |
| arsenic, total recoverable                    | cadmium, total recoverable      |
| cobalt, total recoverable                     | copper, total recoverable       |
| cyanide, total recoverable                    | lead, total recoverable         |
| mercury, total recoverable                    | nickel, total recoverable       |
| tin, total recoverable                        | zinc, total recoverable         |
| benzene                                       | bis(2-ethylhexyl)phthalate      |
| butylbenzyl phthalate                         | carbazole                       |
| n-Decane                                      | fluoranthene                    |
| n-Octadecane                                  | radium-226 (Dissolved)          |
| strontium-90 (Dissolved)                      | beta radiation (gross)          |
| chronic whole effluent toxicity               | total organic carbon            |
|   | volatile organic compounds      |
|   | semi-volatile organic compounds |

- (1) the water samples shall be collected and analyzed in accordance with Rule .1803 of this Subchapter; and
- (2) the analytical results shall be submitted to Division within 30 calendar days of receiving the analytical results, unless a different schedule is prescribed by the Department, based on the results of the initial test.

(b) The Director, in consultation with the Director of the Division of Water Resources and the Director of the Division of Public Health within the Department of Health and Human Services, may require additional analysis and scheduling as necessary for the protection of public health, welfare, and the environment.

(c) E & P waste shall be managed as:

- (1) reuse in well stimulation operations;
- (2) onsite pretreatment for reuse or disposal;
- (3) disposal at a plant installed for the purpose of disposing of waste within the State, permitted in accordance with G.S. 143-215.1; or
- (4) disposal facility located within another state that is duly permitted to accept flowback fluid and produced water from oil or gas operations.

(d) If E & P waste is to be disposed of in accordance with Subparagraphs (c)(2), (c)(3), or (c)(4) of this Rule, the permittee shall also comply with the following requirements:

- (1) prior to transporting the waste to a publically owned treatment works pursuant to

Subparagraph (c)(3) of this Rule, the permittee shall submit a copy of the approved Industrial User Permit required by 15A NCAC 02H .0916, which is incorporated by reference, including subsequent amendments, to the Division.

- (2) the permittee shall notify the Division if any facility identified in the plan refuses to accept E & P waste. Upon such refusal, the permittee shall submit a revised E & P Waste Management Plan in accordance with Rule .2002 of this Section that identifies a new disposal facility to the Division.

(e) Any sludge or residual resulting from the reuse process authorized pursuant to Subparagraph (c)(1) of this Rule or from any onsite pretreatment that may be used in conjunction with Subparagraphs (c)(2) and (c)(3) of this Rule shall be managed and disposed of pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule or with the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto, 42 USC 6901 et seq. and 40 CFR Parts 239-282, which is incorporated by reference, including subsequent amendments, which can be accessed for no charge at [http://www.ecfr.gov/cgi-bin/text-idx?SID=13be85c0df8971509a2531a778d1c87f&tpl=/ecfrbrows e/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=13be85c0df8971509a2531a778d1c87f&tpl=/ecfrbrows e/Title40/40tab_02.tpl). In addition, prior to disposal of any sludge or residual resulting from the reuse process authorized pursuant to Subparagraph (c)(1) of this Rule, or from any onsite

pretreatment that may be used in conjunction with Subparagraphs (c)(2) and (c)(3) of this Rule, the permittee shall demonstrate that the sludge or residual meets all applicable radioactivity standards for the disposal facility.

(f) Residuals from onsite pretreatment shall be disposed of in accordance with G.S. 143-215.1 and G.S. 130A-294, or transported to another state and disposed of in accordance with the receiving state's rules.

(g) Solid E & P waste, including drill cuttings and solidified muds, shall be characterized in accordance with EPA Method 1311, Toxicity Characteristic Leaching Procedure, which is incorporated by reference, including subsequent amendments and found at <http://www.epa.gov/epawaste/hazard/testmethods/sw846/pdfs/1311.pdf>. The solid E & P waste shall be characterized on a frequency and schedule determined by the Department, based on the permittee's drilling, completion, and stimulation practices. In addition, the Director, in consultation with the Director of the Division of Waste Management, may require additional analysis as necessary for the protection of public health, welfare, and the environment.

(h) Solid E & P waste shall be disposed of by transfer to the appropriate permitted solid waste management facility in accordance with 15A NCAC 13A or 15A NCAC 13B, which are incorporated by reference including subsequent amendments.

(i) E & P waste fluids may be transported to other drilling sites for reuse provided that such fluids are transported and stored in a manner that does not constitute a hazard to water resources, public health, safety, or the environment in accordance with 15A NCAC 13B .0105.

(j) E & P waste, when transported off-site for treatment or disposal, shall be transported to treatment facilities or to waste disposal facilities permitted to receive E & P waste by the Department in accordance with 15A NCAC 13B. When transported to facilities outside of North Carolina for treatment or disposal, E & P waste shall be transported to facilities permitted by the appropriate regulatory agency in the receiving state.

(k) When E & P waste is transported off-site, the permittee shall maintain for five years copies of each invoice, bill, or ticket and such other records to document the following requirements:

- (1) the permittee's name, address, and business telephone number;
- (2) the county, city, or town where the oil or gas well is located;
- (3) the property street address, or nearest address to the ingress and egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the date and time of the transport;
- (6) the company name and contact information of the E & P waste transporter;
- (7) the location of the E & P waste pickup site if different than a pit or tank located onsite;
- (8) the type and volume of E & P waste;
- (9) the name and location of the treatment or disposal site; and
- (10) a chronological record showing the date and time of waste collection and the transfer of

waste from one person to another during the course of final delivery to a disposal facility. These documents shall be signed and dated by all appropriate parties, and shall include the generator, transporter, and receiving facility representative.

(l) All records shall be maintained in accordance with the Rule .0202 of this Subchapter.

*History Note: Authority G.S. 113-391(a)(3); 113-391(a)(4); 113-391(a)(5)f; Eff. Pending Legislative Review.*

**TITLE 20 – DEPARTMENT OF STATE TREASURER**

<b>20 NCAC 01G .0101</b>	<b>DESCRIPTION OF THE PROGRAM</b>
<b>20 NCAC 01G .0102</b>	<b>DEFINITIONS</b>
<b>20 NCAC 01G .0103</b>	<b>PRINCIPLES OF ACCOUNTING AND VALUATION</b>
<b>20 NCAC 01G .0104</b>	<b>ACCOUNTING FOR EXCHANGES</b>
<b>20 NCAC 01G .0105</b>	<b>ALLOCATION OF MANAGEMENT COSTS</b>
<b>20 NCAC 01G .0106</b>	<b>CONSOLIDATION OF EXISTING INVESTMENTS OF PARTICIPANTS</b>
<b>20 NCAC 01G .0107</b>	<b>MERGERS OF ADDITIONAL INVESTMENT PORTFOLIOS</b>
<b>20 NCAC 01G .0108</b>	<b>LOANS BETWEEN INVESTMENT FUNDS</b>
<b>20 NCAC 01G .0109</b>	<b>DELEGATION OF AUTHORITY</b>

*History Note: Authority G.S. 147-69.3; Emergency Regulation Eff. July 1, 1979, for a Period of 120 Days to Expire on October 29, 1979; Made Permanent Eff. October 29, 1979; Repealed Eff. February 1, 2015.*

<b>20 NCAC 01G .0201</b>	<b>GENERAL</b>
<b>20 NCAC 01G .0202</b>	<b>ELIGIBLE INVESTMENTS</b>
<b>20 NCAC 01G .0203</b>	<b>ELIGIBLE PARTICIPANTS</b>
<b>20 NCAC 01G .0204</b>	<b>ALLOCATION OF INCOME TO PARTICIPANTS</b>

*History Note: Authority G.S. 147-69.3; Emergency Regulation Eff. July 1, 1979, for a Period of 120 Days to Expire on October 29, 1979; Made Permanent Eff. October 29, 1979; Amended Eff. July 1, 1987; June 1, 1984; February 1, 1982; October 29, 1979; Repealed Eff. February 1, 2015.*

<b>20 NCAC 01G .0207</b>	<b>VOLUNTARY DEPOSITS FOR INVESTMENTS</b>
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*History Note: Authority G.S. 147-69.3(b), (j); Eff. June 1, 1986; Repealed Eff. February 1, 2015.*

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**APPROVED RULES**

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**20 NCAC 01G .0301**      **GENERAL**  
**20 NCAC 01G .0302**      **ELIGIBLE INVESTMENTS**  
**20 NCAC 01G .0303**      **ELIGIBLE PARTICIPANTS**  
**20 NCAC 01G .0304**      **ALLOCATION OF INCOME TO PARTICIPANTS**  
**20 NCAC 01G .0305**      **VALUATION OF OWNERSHIP UNITS**  
**20 NCAC 01G .0306**      **PURCHASE OF OWNERSHIP UNITS**  
**20 NCAC 01G .0307**      **REDEMPTION OF OWNERSHIP UNITS**

*History Note: Authority G.S. 147-69.3; Emergency Regulation Eff. July 1, 1979, for a Period of 120 Days to Expire on October 29, 1979; Made Permanent Eff. October 29, 1979; Amended Eff. June 1, 1984; February 1, 1982; Repealed Eff. February 1, 2015.*

**20 NCAC 01G .0401**      **GENERAL**  
**20 NCAC 01G .0402**      **ELIGIBLE INVESTMENTS**  
**20 NCAC 01G .0403**      **ELIGIBLE PARTICIPANTS**  
**20 NCAC 01G .0404**      **ALLOCATION OF INCOME TO PARTICIPANTS**  
**20 NCAC 01G .0405**      **VALUATION OF OWNERSHIP UNITS**  
**20 NCAC 01G .0406**      **PURCHASE OF OWNERSHIP UNITS**  
**20 NCAC 01G .0407**      **REDEMPTION OF OWNERSHIP UNITS**  
**20 NCAC 01G .0408**      **RESPONSIBILITY OF EQUITY INVESTMENT ADVISORY COMMITTEE**

*History Note: Authority G.S. 147-69.3; Emergency Regulation Eff. July 1, 1979, for a Period of 120 Days to Expire on October 29, 1979; Made Permanent Eff. October 29, 1979; Amended Eff. October 1, 1987; July 1, 1987; June 1, 1984 February 1, 1982; October 29, 1979; Repealed Eff. February 1, 2015.*

**20 NCAC 01G .0409**      **REBALANCING OF OWNERSHIP**

*History Note: Authority G.S. 147-69.3; Eff. February 1, 1982; Repealed Eff. February 1, 2015.*

**20 NCAC 01G .0501**      **GENERAL**  
**20 NCAC 01G .0502**      **ELIGIBLE INVESTMENTS**  
**20 NCAC 01G .0503**      **ELIGIBLE PARTICIPANTS**  
**20 NCAC 01G .0504**      **ALLOCATION OF INCOME TO PARTICIPANTS**  
**20 NCAC 01G .0505**      **VALUATION OF OWNERSHIP UNITS**  
**20 NCAC 01G .0506**      **PURCHASE OF OWNERSHIP UNITS**  
**20 NCAC 01G .0507**      **REDEMPTION OF OWNERSHIP UNITS**

*History Note: Authority G.S. 147-69.3(j); Eff. June 1, 1984; Amended Eff. December 1, 1987; Repealed Eff. February 1, 2015.*

**20 NCAC 01G .0508**      **REBALANCING OF OWNERSHIP**

*History Note: Authority G.S. 147-69.3; Eff. December 1, 1987; Repealed Eff. February 1, 2015.*

**20 NCAC 01H .0101**      **GENERAL INFORMATION**  
**20 NCAC 01H .0102**      **DEFINITION OF TERMS**  
**20 NCAC 01H .0103**      **MINIMUM STANDARDS**  
**20 NCAC 01H .0104**      **DELEGATION OF AUTHORITY**

*History Note: Authority G.S. 147-78.1; Eff. December 1, 1985; Repealed Eff. February 1, 2015.*

**20 NCAC 01H .0201**      **REQUIREMENTS FOR THE RFP**  
**20 NCAC 01H .0202**      **ISSUANCE OF THE RFP**  
**20 NCAC 01H .0203**      **CONTRACT PERIOD: TERMINATION OF TRUSTEE**  
**20 NCAC 01H .0204**      **TERMINATION FOR CAUSE**  
**20 NCAC 01H .0205**      **AVAILABILITY OF RECORDS**

*History Note: Authority G.S. 147-78.1; Eff. December 1, 1985; Repealed Eff. February 1, 2015.*

**20 NCAC 01H .0301**      **ESTABLISHMENT OF INDIVIDUAL ACCOUNTS**  
**20 NCAC 01H .0302**      **ELIGIBLE SECURITIES: CASH DEPOSITS**  
**20 NCAC 01H .0303**      **DEPOSIT OF CASH OR SECURITIES**  
**20 NCAC 01H .0304**      **SUBSTITUTION OF SECURITIES**  
**20 NCAC 01H .0305**      **REQUIRED REPORTING**  
**20 NCAC 01H .0306**      **WITHDRAWAL OF CASH OR SECURITIES**  
**20 NCAC 01H .0307**      **FEEES**

*History Note: Authority G.S. 147-78.1; Eff. December 1, 1985; Repealed Eff. February 1, 2015.*

**20 NCAC 01H .0401**      **NOTIFICATION OF DEFAULT**  
**20 NCAC 01H .0402**      **SALE OF SECURITIES AFTER DEFAULT**

*History Note: Authority G.S. 147-78.1; Eff. December 1, 1985; Repealed Eff. February 1, 2015.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 22 – HEARING AID DEALERS AND FITTERS BOARD

21 NCAC 22F .0105 PASSING EXAMINATION

- (a) The exam consists of four parts: (1) Part A shall assess applicant's knowledge of hearing testing through a computer simulation program; (2) Part B shall assess applicant's practical knowledge and ability to make an ear impression; (3) Part C shall assess the applicant's knowledge of relevant laws and regulations governing hearing aid specialists; and (4) Part D shall assess the applicant's knowledge of the following: (A) audiometry; (B) anatomy and physiology pertaining to the dispensing of hearing aids; (C) hearing aids; (D) hearing aid technologies; and (E) the scope of practice for hearing aid specialists. (b) The Board shall annually review the contents and outcome of the previous qualifying examinations and shall determine the minimum performance criteria required for passing the examination. In accordance with G.S. 93B-8(a), each registered applicant shall be informed in writing of the requirements for passing the examination prior to the applicant taking the examination. (c) An applicant shall pass all parts of the exam in order to receive a license. (d) For a registered applicant who completes "one full year of apprenticeship," as defined in 21 NCAC 22A .0401, all exam results shall expire 31 months after the date of initial issuance of the apprentice certificate. (e) If a registered applicant is exempt from the apprenticeship requirement, or takes an exam more than 31 months after the date of initial issuance of the apprentice certificate, the exam results shall expire 19 months after the date of the exam.

History Note: Authority G.S. 93B-8; 93D-1.1; 93D-3(c); 93D-8; Eff. April 23, 1976; Amended Eff. May 1, 1988; Temporary Amendment Eff. February 10, 2014; Amended Eff. February 1, 2015; April 1, 2014.

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CHAPTER 48 – BOARD OF PHYSICAL THERAPY EXAMINERS

21 NCAC 48A .0103 MEMBERSHIP OF BOARD

- (a) Selection of Board Members. Nominations for members of the Board shall be sought from licensees residing in North

Carolina. The ballots distributed to licensees in North Carolina shall list each nominee's place and location of employment and practice setting. The completed ballots shall be forwarded to the President of the North Carolina Physical Therapy Association within the 30-day deadline indicated on the ballot.

(b) Qualification of Nominees. Each nominee for a physical therapist or physical therapist assistant position on the Board shall, on a form provided by the Board, attest to meeting the qualifications specified in G.S. 90-270.25.

(c) Actively Engaged in Practice. Each physical therapist and physical therapist assistant member of the Board shall, during incumbency, be employed or otherwise actively engaged in a position that includes at least 1000 hours annually devoted to review, oversight, supervision, administration, teaching, or providing physical therapy services for patients, clients, or the public.

(d) Decisions. Decisions shall be reached by a majority of the Board Members present and eligible to participate provided that a quorum consists of five Board Members.

History Note: Authority G.S. 90-270.25; 90-270.26; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. February 1, 2015; August 1, 2002; August 1, 1998; April 1, 1989; May 1, 1988; December 30, 1985; October 28, 1979.

21 NCAC 48B .0104 EXEMPTIONS

A person seeking an exemption from licensure requirements pursuant to G.S. 90-270.34(a)(8) or (9) shall submit the Request for Exemption form approved by the Board (www.ncptboard.org), or a written request that includes license number and contact information. An exemption issued pursuant to G.S. 90-270.34(a)(8) or (9) expires on the next annual renewal date.

History Note: Authority G.S. 90-270.34; Eff. February 1, 2015.

21 NCAC 48C .0102 RESPONSIBILITIES

(a) A physical therapist shall determine the patient care plan and the elements of that plan appropriate for delegation.

(b) A physical therapist shall determine that those persons acting under his or her supervision possess the competence to perform the delegated activities.

(c) A physical therapist may delegate responsibilities to physical therapist assistants, including supervising physical therapist or physical therapist assistant students.

(d) A physical therapist shall enter and review chart documentation, reexamine and reassess the patient, and revise the patient care plan if necessary, based on the needs of the patient.

(e) A physical therapist shall establish a discharge plan that includes a discharge summary or episode of care for each patient.

(f) The physical therapist shall provide all therapeutic interventions that require the physical therapist's expertise, and may delegate to a physical therapist assistant or physical therapy aide the delivery of service to the patient when it is safe and effective for the patient.

(g) A physical therapist's responsibility for patient care management includes first-hand knowledge of the health status of each patient and oversight of all documentation for services rendered to each patient, including awareness of fees and reimbursement structures.

(h) A physical therapist shall be immediately available in person or by telecommunication to a physical therapist assistant supervising a physical therapy aide or student engaging in patient care.

(i) A physical therapist who is supervising a physical therapy aide or student shall be present in the same facility when patient care is provided.

(j) A physical therapist shall clinically supervise only that number of assistive personnel, including physical therapist assistants, physical therapy aides, and students completing clinical requirements, as the physical therapist determines is appropriate for providing safe and effective patient interventions at all times.

(k) If a physical therapist assistant or physical therapy aide is involved in the patient care plan, a physical therapist shall reassess a patient every 60 days or 13 visits, whichever occurs first.

(l) A physical therapist shall document every evaluation and intervention or treatment including the following elements:

- (1) authentication (signature and designation) by the physical therapist who performed the service;
- (2) date of the evaluation or treatment;
- (3) length of time of total treatment session or evaluation;
- (4) patient status report;
- (5) changes in clinical status;
- (6) identification of specific elements of each intervention or modality provided. Frequency, intensity, or other details may be included in the plan of care and if so, do not need to be repeated in the daily note;
- (7) equipment provided to the patient; and
- (8) interpretation and analysis of clinical signs, symptoms, and response to treatment based on subjective and objective findings, including any adverse reactions to an intervention.

(m) At the time of reassessment the physical therapist shall document:

- (1) the patient's response to therapy intervention;
- (2) the patient's progress toward achieving goals; and
- (3) justifications for continued treatment.

(n) A physical therapist shall, upon request by the patient of record, provide the original or copies of the patient's treatment record to the patient, or to the patient's designee. As permitted by G.S. 90-411, a fee may be charged for the cost of reproducing copies. The documents requested shall be provided within 30 days of the request and shall not be contingent upon current, past, or future physical therapy treatment or payment of services.

*History Note: Authority G.S. 90-270.24; 90-270.26; 90-270.31; 90-270.34; 90-411; Eff. December 30, 1985; Amended Eff. February 1, 2015; July 1, 2013; December 1, 2006; August 1, 2002; August 1, 1998; January 1, 1991.*

**21 NCAC 48D .0109 RETAKING EXAMINATION**

(a) Arrangements for Retake. To retake the examination, the applicant shall notify the Board in writing, and pay the retake fee as specified in 21 NCAC 48F .0102 The examination cost as set forth by the Federation ([www.fsbpt.org](http://www.fsbpt.org)) is hereby incorporated by reference and includes subsequent amendments and editions. A copy of the retake application may be obtained from the Board's website at no charge.

(b) Retake Examination. The Board shall administer a particular form of the examination to an applicant only one time.

(c) Limitations. An applicant shall be limited to taking the examination the number of times allowed by the Federation as indicated on the Federation's website ([www.fsbpt.org](http://www.fsbpt.org)).

*History Note: Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.33; Emergency Regulation Eff. July 23, 1979, for a period of 120 days to expire on November 20, 1979; Made Permanent Eff. November 20, 1979; Amended Eff. February 1, 2015; February 1, 1996; November 1, 1993; August 1, 1988; May 1, 1988.*

**21 NCAC 48E .0110 FOREIGN-TRAINED PHYSICAL THERAPIST APPLICANT BY EXAMINATION**

(a) This Rule applies to a physical therapist who has graduated from a program located outside the United States that has not been accredited by the Commission of Accreditation of Physical Therapy Education (CAPTE), or its successor, in accordance with G.S. 90-279(2) and does not hold an active license in another State or Territory of the United States.

(b) All application forms and supporting documents shall be in English or accompanied by an English translation.

(c) For the applicant's educational background to be determined substantially equivalent to that obtained by an applicant for licensure under G.S. 90-270.29(2), the applicant shall meet the standards of the Federation's most recent Coursework Tool (CWT) for Physical Therapists at ([http://www.fsbpt.org/Portals/0/documents/free-resources/CWT5\\_Rev20141101.pdf](http://www.fsbpt.org/Portals/0/documents/free-resources/CWT5_Rev20141101.pdf)) and for Physical Therapy Assistants at (<http://www.fsbpt.org/Portals/0/documents/free-resources/PTATool2007.pdf>). This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call the Federation at 703-299-3100 or download a copy from the Federation's website noted in this Paragraph. The cost of this document in February 2015 is zero dollars (\$0.00). A copy of this instrument is on file at the Division located at 18 West Colony Place, Suite 140, Durham, NC 27705 and is available for public inspection during regular business hours.

(d) The applicant shall make arrangements to have the credentials evaluated by FCCPT (Foreign Credentialing Commission on Physical Therapy, Inc.), or a service with a physical therapist consultant on its staff that is determined by the Board to be equivalent. The Board may make its own review of an applicant's educational program and is not bound by the findings of the credentialing service.

(e) The applicant shall provide the following information to the Board:

- (1) proof that the applicant has demonstrated English language proficiency by meeting the



most recent Test of English as a Foreign Language (TOEFL) score requirement as defined by the Federation; The instrument is incorporated by reference and includes subsequent editions. Individuals wishing to register for the TOEFL should contact Examination Testing Service (<http://www.ets.org/toefl/>). The cost of this examination in February 2015 is posted on the ETS website and noted in this Paragraph. The TOEFL is an examination that is owned by ETS and is not available for public review.

- (2) proof that coursework was taught in the English language; or
- (3) documentation for exemption as per USCIS CFR 212.15 (<http://www.uscis.gov/>). This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call the United States Citizenship and Immigration Service National Customer Service Center at 1-800-375-5283 or 1-800-767-1833 (TDD) toll free. The cost of this document in February 2015 is zero dollars (\$0.00). A copy of this instrument is on file at the Division located at 18 West Colony Place, Suite 140, Durham, NC 27705 and is available for public inspection during regular business hours.

*History Note: Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31; 150B-21.6(2); Eff. December 30, 1985; Amended Eff. November 1, 1991; August 1, 1991; Temporary Amendment Eff. July 21, 1995, for a period of 180 days or until the permanent Rule becomes effective, whichever is sooner; Amended Eff. February 1, 2015; December 1, 2006; November 1, 2004; August 1, 2002; August 1, 1998; February 1, 1996; October 1, 1995.*

**21 NCAC 48E .0111 FOREIGN-TRAINED PHYSICAL THERAPIST APPLICANT BY ENDORSEMENT**

- (a) This Rule applies to a physical therapist who has graduated from a program located outside the United States that has not been accredited by the Commission of Accreditation of Physical Therapy Education (CAPTE), or its successor, in accordance with G.S. 90-279(2) and holds an active physical therapist license in another State or Territory of the United States.
- (b) All application forms and supporting documents shall be in English or accompanied by an English translation.
- (c) For the applicant's educational background to be determined substantially equivalent to an educational program accredited under G.S. 90-270.29(2), the applicant shall meet the standards of the Federation's Coursework Tool (CWT) ([www.fspt.org](http://www.fspt.org)) for the applicant's year of graduation. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call the Federation at 703-299-3100 or download a copy from the Federation's website noted in the Paragraph. The cost of this document in February 2015 is zero

dollars (\$0.00). A copy of this instrument is on file at the Division located at 18 West Colony Place, Suite, 140, Durham NC 27705 and is available for public inspection during regular business hours.

(d) The applicant shall make arrangements to have the credentials evaluated by FCCPT (Foreign Credentialing Commission on Physical Therapy, Inc.), or a service with a physical therapist consultant on its staff that is determined by the Board to be equivalent. The Board may make its own review of an applicant's educational program and is not bound by the findings of the credentialing service.

(e) The applicant shall provide the following information to the Board:

- (1) for examinations administered prior to August 1, 1998, proof that a score of 210 on the TSE (Test of Spoken English) or the SPEAK (Speaking Proficiency English Assessment Kit) examination was obtained ([www.ets.org/toefl/ibt/](http://www.ets.org/toefl/ibt/));
- (2) for examinations administered on or after August 1, 1998, and prior to January 1, 2007, the following proof shall be provided:
  - (a) minimum score of 50 on the TSE examination or the SPEAK examination;
  - (b) minimum score on the Test of Written English (TWE) of 4.5; and
  - (c) minimum score of 560 on the Test of English as a Foreign Language (TOEFL).
- (3) for examinations administered on or after January 1, 2007, proof shall be provided that the applicant obtained the following minimum standard scale scores in each of the four scoring domains (Listening, Reading, Writing, and Speaking), and the total score of the iBT/Next Generation TOEFL:
  - (a) Writing: 24;
  - (b) Speaking: 26;
  - (c) Reading Comprehension: 21;
  - (d) Listening Comprehension: 18; and
  - (e) Total Score: 89.
- (4) proof that coursework was taught in the English language; or
- (5) documentation for exemption as per USCIS CFR 212.15 (<http://www.uscis.gov/>). This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call the United States Citizenship and Immigration Service National Customer Service Center at 1-800-375-5283 or 1-800-767-1833 (TDD) toll free. The cost of this document in February 2015 is zero dollars (\$0.00). A copy of this instrument is on file at the Division located at 18 West Colony Place, Suite, 140, Durham NC 27705 and is available for public inspection during regular business hours.

*History Note: Authority G.S. 90-270.26; 90-270.29; 90-270.29(2); 90-270.30; 90-270.31; 150B-21.6(2); Eff. February 1, 2015.*

**21 NCAC 48E .0112 FOREIGN-TRAINED PHYSICAL THERAPIST ASSISTANT APPLICANT**

(a) This Rule applies to a physical therapist assistant who has graduated from a program located outside the United States that has not been accredited by the Commission of Accreditation of Physical Therapy Education (CAPTE), or its successor, in accordance with G.S. 90-279(2).

(b) All application forms and supporting documents shall be in English or accompanied by an English translation.

(c) If the applicant does not meet the requirements of G.S. 90-270.29(3), the Board shall examine the applicant's educational background to determine if the general and professional education is substantially equivalent to an educational program accredited under G.S. 90-270.29(2), who shall satisfy the requirements as determined by the Coursework Tool (CWT) developed by the Federation. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call the Federation at 703-299-3100 or download a copy from the Federation's website noted in this Paragraph. The cost of this document in February 2015 is zero dollars (\$0.00). A copy of this instrument is on file at the Division located at 18 West Colony Place, Suite, 140, Durham NC 27705 and is available for public inspection during regular business hours.

(d) The applicant shall make arrangements to have the credentials evaluated by FCCPT (Foreign Credentialing Commission on Physical Therapy, Inc.), or a service with a physical therapist consultant on its staff that is determined by the Board to be equivalent. The Board may make its own review of an applicant's educational program and is not bound by the findings of the credentialing service.

(e) The applicant shall provide the following information to the Board:

- (1) proof that the applicant has demonstrated English language proficiency by meeting the most recent Test of English as a Foreign Language TOEFL score requirement as defined by the Federation; The instrument is incorporated by reference and includes subsequent editions. Individuals wishing to register for the TOEFL should contact Examination Testing Service (<http://www.ets.org/toefl/>). The cost of this examination in February 2015 is posted on the ETS website and noted in this Paragraph. The TOEFL is an examination that is owned by ETS and is not available for public review.
- (2) proof that coursework was taught in the English language; or
- (3) documentation for exemption as per USCIS CFR 212.15 (<http://www.uscis.gov/>). This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call the United States Citizenship and Immigration Service national Customer Service Center at 1-800-

375-5283 or 1-800-767-1833 (TDD) toll free. The cost of this document in February 2015 is zero dollars (\$0.00). A copy of this instrument is on file at the Division located at 18 West Colony Place, Suite, 140, Durham NC 27705 and is available for public inspection during regular business hours.

*History Note: Authority G.S. 90-270.26; 90-270.26(2); 90-270.29; 90-270.30; 90-270.31; 150B-21.6(2); Eff. February 1, 2015.*

**21 NCAC 48E .0113 CRIMINAL HISTORY**

(a) At the applicant's expense, an applicant for licensure shall consent to a criminal history record check, and furnish fingerprints to the Board.

(b) If an applicant is denied licensure based on the refusal to consent to a criminal history record check or the contents of the criminal history record check, upon written notice delivered to the Board within 15 business days of the Board's denial, applicant shall have the right to appear before the Board at its next regularly scheduled meeting to appeal the Board's decision.

*History Note: Authority G.S. 90-270.29A; 93B-8.1; 114-19.33; Eff. February 1, 2015.*

**21 NCAC 48G .0109 CONTINUING COMPETENCE ACTIVITIES**

(a) Continuing Education activities are eligible for points as follows:

- (1) A registered attendee at courses or conferences offered live in real time by approved providers earns one point for each contact hour. The maximum number of points allowed during any reporting period shall be 29. The maximum number of points allowed during any reporting period for an interactive course offered through electronic media shall be 15. Credit shall not be given for the same course or conference more than once during any reporting period. The licensee shall submit the Certificate of Attendance issued by the approved provider.
- (2) For registered participation in an academic course related to physical therapy offered for credit in a post-baccalaureate program unless the course is required for licensure, one semester hour earns 15 points, and the maximum number of points allowed during any reporting period shall be 29. The licensee shall obtain a letter grade of "C" or better, or "P" if offered on a pass/fail basis. Credit shall not be given for the same course more than one time. The licensee shall submit a transcript published by the approved provider or furnished by the academic institution.
- (3) For attendance or participation in an activity related to physical therapy for which no assessment is received, two contact hours earns

- one point. The maximum number of points allowed during any reporting period shall be five. Credit shall not be given for the same activity more than one time. The licensee shall submit a certificate of completion, or if that is not available, a summary of the objectives of the activity and the time spent in the activity.
- (4) For registered participation in a non-interactive course offered by an approved provider by videotape, satellite transmission, webcast, DVD, or other electronic media, one hour of participation earns one point. The maximum number of points allowed during any reporting period shall be 10. Credit shall not be given for the same course more than once during a reporting period. The licensee shall submit a certificate of completion provided by the course provider.
  - (5) For participation in a study group consisting of at least three licensees conducted either live or in real time through electronic media, whose purpose is to advance the knowledge and skills of the participants related to the practice of physical therapy, two hours of participation in the study group earns one point. The maximum number of points allowed during any reporting period shall be 10. The licensee shall submit a biography of each participant, a statement of the goals of the study group, attendance records for each participant, assignments for each participant and an analysis by each participant specifying the knowledge and skills enhanced by participating in the study group.
  - (6) For participation in a self-designed home study program for the purpose of advancing the knowledge and skill of the participant related to the practice of physical therapy, three hours of home study earns one point. The maximum number of points allowed for home study during any reporting period shall be five. The licensee shall submit a description of the plans and objectives of the study, an analysis of the manner in which the plans and objectives were met, and a certification of the time spent on the project.
  - (7) For participation in continuing education required by credentialed residencies and fellowships, one point shall be granted for each contact hour. The maximum number of points for each reporting period shall be 29. The licensee shall submit the certificate of attendance issued by the American Physical Therapy Association ("APTA") credentialed residency or fellowship.
  - (8) For completion of a home study physical therapy program furnished by an approved provider, one hour of home study earns one point. The maximum number of points during any one reporting period allowed shall be 10.
- The licensee shall submit a certificate of completion issued by the approved provider.
- (b) Points are awarded for advanced training as follows:
    - (1) For fellowships conferred by organizations credentialed by the APTA in a specialty area of the practice of physical therapy, 10 points shall be awarded for each full year of clinical participation, up to a maximum of 20 points per reporting period for this activity. The licensee shall submit the certificate conferred on the licensee or evidence that all requirements of the fellowship program have been met.
    - (2) For completion of a residency program in physical therapy offered by an APTA credentialed organization, 10 points shall be awarded for each full year of clinical participation, up to a maximum of 20 points per reporting period for this activity. The licensee shall submit the certificate conferred on the licensee or evidence that all requirements of the residency program have been met.
    - (3) For specialty certification or specialty recertification by the American Board of Physical Therapy Specialization ("ABPTS"), 20 points shall be awarded upon receipt of such certification or recertification during any reporting period. The licensee shall submit evidence from ABPTS that the certification or recertification has been granted.
    - (4) For a physical therapist assistant, Advanced Proficiency designation by the APTA for the PTA earns 19 points per reporting period. The licensee shall submit evidence from APTA that the designation has been awarded.
  - (c) Achieving a passing score on the Federation's Practice Review Tool ("PRT") earns 10 points. Taking the PRT without achieving a passing score earns five points. The licensee shall submit the certificate of completion and performance report. Points shall be awarded only one time for any specific practice area.
  - (d) Clinical Education activities are eligible for points as follows:
    - (1) For completion of a course offered by an approved provider for a licensee to become a Credentialed Clinical Instructor recognized by APTA, one course hour earns one point, and the maximum number of points awarded during any reporting period shall be 29. The licensee shall submit a credential certificate issued by the approved provider. Credit for completing the same course shall be given only once.
    - (2) For enrollment in a course offered by APTA for a licensee to become a Credentialed Clinical Instructor Trainer, one course hour earns one point, and the maximum number of points awarded during any reporting period shall be 29. The licensee shall submit a Trainer certificate issued by APTA. Credit for completing the same course shall be given only once.

- (3) For serving as a Clinical Instructor for a physical therapist or physical therapist assistant student, resident, or fellow for a period of at least 80 hours, 40 hours of direct on-site supervision earns one point, and the maximum number of points awarded during any reporting period shall be eight. The licensee shall submit verification of the clinical affiliation agreement with the accredited educational program for the student supervised and a log showing the number of hours spent supervising the student.
- (e) Presenting or teaching for an accredited physical therapy educational program; a transitional Doctor of Physical Therapy ("DPT") program; an accredited program for health care practitioners licensed under the provisions of Chapter 90 of the North Carolina General Statutes; or a state, national, or international workshop, seminar or professional health care conference earns two points for each hour of presentation or teaching. The licensee shall submit written materials advertising the presentation or teaching, or other evidence of the date, subject, goals and objectives of the presentation, and any written materials prepared by the licensee. A maximum of six points shall be allowed during any reporting period, and credit shall not be given for teaching or presenting the same subject matter more than one time during any reporting period.
- (f) Research and published books or articles shall be eligible to accumulate up to a maximum of 15 points as follows:
  - (1) Submission of a request to a funding agency for a research grant as a Principal or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant that shall include the title, an abstract, the funding agency, and the grant period. Points shall be awarded only one time during any reporting period.
  - (2) Having a research grant funded as a Principal Investigator or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant that shall include the title, an abstract, the funding agency, the grant period and documentation of the funding received in a given period. Points shall be awarded only one time during a reporting period.
  - (3) Service as a Grants Reviewer earns one point for each two hours of grant review and a maximum of five points shall be allowed. The licensee shall submit a description of all grants reviewed and any reports generated in connection with the reviews, including the dates of service, the agency for whom the review was performed, and the hours spent on the grant review. Points shall be awarded only once for each grant reviewed during the reporting period.
  - (4) The author or editor of a book published by a third party entity dealing with a subject related to the practice of physical therapy earns 10 points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (5) The author or editor of a chapter in a book published by a third party entity dealing with a subject related to the practice of physical therapy earns five points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (6) The author of a published peer-reviewed article relating to the practice of physical therapy earns 10 points. The licensee shall submit the article, names and employers of the reviewers, and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (7) The author of a published non peer-reviewed article or book-review or abstract relating to the practice of physical therapy earns four points. The licensee shall submit the article and a list of consulted resources. Each article, book-review, or abstract shall count one time only. A maximum of four points shall be awarded during any reporting period.
- (8) The author of a published peer-reviewed abstract, book review, or peer-reviewed abstract for a earns five points for a presentation, up to a maximum of 15 points during any reporting period, and credit for the same poster or presentation shall not be awarded more than one time. The licensee shall submit a copy of the poster or presentation and a list of consulted resources.
- (g) Clinical practice shall be eligible for points as follows:
  - (1) For each year during the reporting period that a licensee is engaged in clinical practice for 1,750 hours or more, three points shall be awarded. The licensee shall submit certification from the employer(s) for whom the services were performed including year and hours worked or document practice hours as the owner of a practice.
  - (2) For each year during the reporting period that a licensee is engaged in clinical practice for at least 1,000 hours but less than 1,750 hours, two points shall be awarded. The licensee shall submit a certification from the employer(s) for whom the services were performed including year and hours worked or document practice hours as the owner of a practice.
  - (3) For each year during the reporting period that a licensee is engaged in clinical practice for at least 200 hours but less than 1,000 hours, one point shall be awarded. The licensee shall submit a certification from the employer(s) for whom the services were performed including year and hours\_worked or document practice hours as the owner of a practice.

(h) Professional Self-Assessment earns five points for completion of an approved Reflective Practice Exercise. This exercise shall be approved if it is a process for a licensee to evaluate current professional practice abilities, to establish goals to improve those abilities, to develop a plan to meet those goals, and to document that the objectives are being accomplished. The licensee shall submit evidence of completion of all elements of the Reflective Practice Exercise. Points shall be awarded only one time during any reporting period.

(i) Workplace Education shall be eligible for points as follows:

- (1) Presentation or attendance at an in-service session related to the practice of physical therapy, including health care issues related to the practice of physical therapy, shall be allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two hours of attendance earns one point. One hour of presentation earns one point. A maximum of five points may be earned during any one reporting period. Credit for the same in-service shall not be granted more than one time.
- (2) Presentation or attendance at an in-service session devoted to general patient safety, emergency procedures, or governmental regulatory requirements shall be allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two contact hours of in-service are equivalent to one point, which shall be the maximum credit granted during any reporting period. Credit for the same in-service shall not be granted more than one time during any reporting period.

(j) Professional Service shall be eligible for points as follows:

- (1) Participation in a national physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee, physical therapy services task force member, or delegate to a national assembly earns five points for each full year of participation, up to a maximum of 10 points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position, and a summary of the activities of the licensee.
- (2) Participation in a state physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee earns four points for each full year of participation, up to a maximum of eight points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position, and a summary of the activities of the licensee.
- (3) Participation in a local or regional physical therapy or interdisciplinary (including physical

therapy) organization as an officer or chair of a physical therapy service committee earns two points for each full year of participation, up to a maximum of four points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position, and a summary of the activities of the licensee.

- (4) Participation as a member of a physical therapy professional organization committee involved with physical therapy services earns one point for each full year of participation, up to a maximum of two points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the committee, and a summary of the work of the committee.
- (5) Participation in unpaid volunteer service to the general public and healthcare professionals related to physical therapy earns one point for at least 20 hours spent on service activities during each year, up to a maximum of two points during any reporting period. The licensee shall submit published materials describing the service activity.
- (6) Membership in the APTA for one year earns one point. A point may be earned for each year of membership during the reporting period. The licensee shall submit proof of membership in the APTA.
- (7) Membership in an APTA Section for one year earns one-half point. The licensee shall submit proof of membership in the APTA Section. Points shall not be awarded for membership in more than one Section.
- (8) Selection by the Federation for participation as an item writer of exam questions for the National Physical Therapy Examination (NPTE) or by the American Board of Physical Therapy Specialties (ABPTS) earns five points for each year of participation. The licensee shall submit documentation of participation by the Federation or ABPTS.
- (9) Participation in clinical research, clinical trials, or research projects related to the practice of physical therapy earns 1 point for each hour of participation, up to a maximum of 10 hours per reporting period. The licensee shall submit a log of hours of participation including date, activity performed, location of the research, and primary investigator.
- (k) During each reporting period, every licensee shall complete a jurisprudence exercise provided by the Board. The jurisprudence exercise shall be available online at the Board's website, at <http://www.ncptboard.org> and a certificate of completion shall be issued to a licensee at the conclusion of the exercise, at which time one point shall be awarded to the licensee. The maximum number of points allowed during a reporting period is three.

*History Note: Authority G.S. 90-270.26;  
Eff. January 1, 2009;  
Amended Eff. February 1, 2015; January 1, 2014.*

**21 NCAC 48G .0110 EVIDENCE OF COMPLIANCE**

(a) Each licensee shall submit a completed Continuing Competence Reporting Form with an application for license renewal. The form shall be found on the Board's website at <http://www.ncptboard.org>.

(b) Licensees shall retain evidence of compliance with continuing competence requirements for a period of four years following the end of the reporting period for which credit is sought for an activity.

(c) Documentary evidence for continuing education activities shall include the following for each activity:

- (1) name of approved provider;
- (2) name of accrediting organization;
- (3) title;
- (4) date;
- (5) hours for presentation; and
- (6) record of attendance or participation by provider.

(d) The Board shall conduct random audits to ensure continuing competence compliance. Within 30 days from receipt of an Audit Notice from the Board, the licensee shall furnish the Board with the documentary evidence required by Rule .0109 of this Section showing completion of the points required for the audited reporting period.

(e) Requests for extensions of time for up to an additional 30 days to respond to the Audit Notice shall be submitted to and granted by the Board's Executive Director. For circumstances beyond the control of the licensee related to physical or medical hardship sustained by the applicant or his or her immediate family, the Board shall grant an additional period of time to respond to the Audit Notice.

(f) If the results of the audit show a licensee has not completed the required points, and the number of additional points needed by the licensee is 10 or fewer, the licensee shall complete the remaining points within 90 days from the date the Board notifies the licensee by electronic communication or U.S. Postal Service mail of the deficiency. For circumstances beyond the control of the licensee or for personal hardship, the Board shall grant an additional period of time to respond to the Audit Notice.

(g) Failure to respond to the Board's Audit Notice in a timely fashion, or failure to provide the necessary documentary evidence of compliance pursuant to this Rule shall subject the licensee to disciplinary action pursuant to 21 NCAC 48G .0601(a)(10).

*History Note: Authority G.S. 90-270.26(3a);  
Eff. January 1, 2009;  
Amended Eff. February 1, 2015; January 1, 2014.*

**21 NCAC 48G .0504 COMPLAINTS AND INVESTIGATIONS**

(a) In order to file a complaint with the Board, the following information shall be submitted to the Board in writing:

- (1) the name and address of person alleged to have violated the Physical Therapy Practice Act;

- (2) a statement of conduct giving rise to complaint; and
- (3) the name, address, and telephone number of complainant.

(b) Upon receipt of a written complaint alleging misconduct that may subject a licensee to disciplinary action, or upon the receipt of the information that a violation of the Physical Therapy Practice Act may have occurred, the Board shall investigate the matter to determine whether probable cause exists to institute disciplinary proceedings.

(c) The Executive Director of the Board and a member appointed by the Chair shall serve as an investigative committee. This investigative committee may be assisted by:

- (1) the Board's attorney;
- (2) an investigator;
- (3) a former member of the Board; or
- (4) a consultant retained by the investigative committee who possesses expertise that will assist the investigative committee in its investigation.

(d) The investigative committee shall investigate the complaint or information set forth in Paragraphs (a) and (b) of this Rule. In conducting its investigation, the Board Chair (or Executive Director, if designated by the Chair) may issue subpoenas in the investigative committee's name for the production of documents pursuant to the provisions of Rule .0512 of this Section. The investigative committee shall determine whether there is probable cause to believe that the licensee has violated any statute or Board rule that justifies a disciplinary hearing. If the investigative committee determines probable cause does not exist, the complaint shall be dismissed, and the complainant shall be notified of the investigative committee's action and its reasons. If the investigative committee determines that probable cause exists, the investigative committee shall offer to confer with the licensee in an attempt to settle the matter through informal means. If the investigative committee and the licensee reach an agreement on the disposition of the matter under investigation, the investigative committee shall cause to be drafted a proposed settlement agreement that shall include findings of fact, conclusions of law, and a consent order for presentation to and consideration by the Board. The settlement agreement shall be presented to and approved by the licensee before it is presented to the Board for consideration and approval.

(e) Prior to a decision rendered by the Board, any materials generated or obtained by the Board in conducting an investigation shall be considered confidential investigation records not subject to the Public Records Act (G.S. 132); however, copies of such materials may be provided to a licensee subject to disciplinary action, or to the licensee's attorney, so long as identifying information concerning the treatment or delivery of professional services to a patient who has not consented to its public disclosure shall be redacted.

(f) If the investigative committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request a contested case hearing pursuant to Rule .0502 of this Section or the Board shall give notice of a disciplinary or contested case hearing.

(g) If probable cause is found, but it is determined that license suspension or revocation is not warranted, the investigative

committee shall recommend that the Board place the licensee on probation, or issue a warning to the licensee. In making this determination, the investigative committee shall consider such factors as harm to the public; nature of the conduct; and prior record of discipline. The investigative committee shall mail a copy of its recommendation to the licensee.

(h) Within 20 days after receipt of the recommendation, the licensee may refuse the probation or warning and request a contested case hearing pursuant to this Rule. The refusal and request shall be filed with the Board. The legal counsel for the Board shall thereafter prepare, file, and serve a Notice of Hearing.

(i) In the alternative, within 20 days after receipt of the recommendation, the licensee may request an informal meeting with the Board to discuss the basis of the investigative committee's recommendation and present reasons why the Board should not follow the investigative committee's recommendation. There shall be no sworn testimony presented, nor shall there be a formal record of the proceedings.

(j) If the licensee does not request a contested case hearing or an informal meeting with the Board, the Board shall still determine whether to accept the investigative committee's recommendation.

(k) Participation by a current Board member in the investigation of a complaint shall disqualify that Board member from participating in the decision making process of a contested case hearing.

(l) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney prosecuting the matter for the Board may continue to communicate concerning the contested case with the members of the investigative committee who investigated the matter, with persons not parties to the contested case who may be called as witnesses including the person who filed the complaint, and with the Board members about other matters.

*History Note: Authority G.S. 90-270.26; 90-270.26(10); 150B-38; 150B-39; 150B-40;*

*Eff. October 1, 1995;*

*Amended Eff. February 1, 2015; July 1, 2013; August 1, 2002; August 1, 1998; February 1, 1996.*

**21 NCAC 48G .0512 SUBPOENAS**

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either pursuant to an investigation, a Board proceeding, at a hearing, or for the purposes of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name, home or business address of all persons to be subpoenaed, and the date, time, and place for responding to the subpoena. The Board may deny the issuance of any subpoena that is determined by the Board to have the intent of harassing or intimidating a witness. The Board Chair or Executive Director of the Board shall issue the requested subpoenas within three business days of receipt of the request.

(b) Subpoenas shall contain:

- (1) the caption of the case or the name of the licensee or matter being investigated;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour, and location of the hearing in which the witness is commanded to appear;
- (4) a particularized description of the books, papers, records, or objects the witness is directed to bring to the hearing, if any;
- (5) the identity of the party on whose application the subpoena was issued;
- (6) the date of issue;
- (7) the signature of the presiding officer or his designee; and
- (8) a "return of service". The "return of service" form, as filled out, shall show the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas for the production of documents for copying or inspection, the subpoena shall contain a particularized description of the books, papers, records or objects to be produced.

(d) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1, Rule 4. The cost of service, fees, and expenses of any witnesses or any documents subpoenaed shall be paid by the party requesting the subpoena. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy to the Board with the attached "return of service" form completed.

(e) Any person receiving a subpoena from the Board may object by filing a written objection with the Board's office within 10 business days of receipt of the subpoena. The objection shall include a concise statement of reasons why the subpoena should be quashed or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be unduly burdensome as determined by the Board in light of the significance of the evidence sought, or other undue hardship.

(f) Any objection to a subpoena shall be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(g) The party who requested the subpoena may file a written response to the objection within 10 business days after receipt of the objection. The written response shall be filed with the Board and served by the requesting party on the objecting witness.

(h) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party objecting to the subpoena, and may notify any other party or parties of an open hearing before the presiding officer, to be scheduled as soon as practicable. At the hearing, evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(i) Within 30 days after the close of such hearing, the presiding officer shall rule on the challenge and issue a written decision. A

copy of the decision shall be issued to all parties and made a part of the record.

*History Note: Authority G.S. 90-270.26; 90-270.26(10); 150B-39; 150B-40; Eff. October 1, 1995; Amended Eff. February 1, 2015; August 1, 2002.*

**21 NCAC 48G .0601 PROHIBITED ACTIONS**

(a) Behaviors and activities that may result in disciplinary action by the Board pursuant to G.S. 90-270.36(1), (6), (7), (8), and (9) and G.S. 90-270.35(4) include the following:

- (1) recording false or misleading data, measurements, or notes regarding a patient;
- (2) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (3) practicing or offering to practice beyond the scope permitted by law;
- (4) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (5) performing, without adequate supervision as described in the rules in this Chapter, professional services that the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
- (6) harassing, abusing, inappropriately touching, as defined in Rule 48A .0105(7) of this Chapter or intimidating a patient either physically or verbally;
- (7) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (8) promoting an unnecessary device, treatment intervention, nutritional supplement, product, or service for the financial gain of the practitioner or of a third party as determined by the investigative committee;
- (9) offering, giving, soliciting, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a client;
- (10) failure to file a report, filing a false report, or failure to respond to an inquiry from the Board within 30 days from the date of issuance, required by the rules in this Subchapter, or impeding or obstructing such filing or inducing another person to do so;
- (11) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the patient, except as authorized or required by law;

- (12) guaranteeing that a patient will benefit from the performance of professional services;
- (13) altering a license or renewal card by changing any information appearing thereon;
- (14) using a license or renewal card that has been altered;
- (15) permitting or allowing another person to use his or her license or renewal card for the practice of physical therapy;
- (16) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure to perform such responsibilities;
- (17) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
- (18) soliciting or engaging in any activities of a sexual nature, including kissing, fondling, or touching any person while the person is under the care of a physical therapist or physical therapist assistant;
- (19) billing or charging for services or treatment not performed;
- (20) making treatment recommendations or basing a patient's continued treatment on the extent of third party benefits instead of the patient's condition;
- (21) willfully or intentionally communicating false or misleading information regarding a patient;
- (22) harassing, abusing, or intimidating any person, either physically or verbally, while engaged in the practice of physical therapy;
- (23) using a form of a license or renewal card that was not issued by the Board or is not current;
- (24) failing to record patient data within a reasonable period of time following evaluation, assessment, or intervention;
- (25) failing to pay the costs of investigation or otherwise to comply with an order of discipline;
- (26) failing to maintain legible patient records that contain an evaluation of objective findings, a diagnosis, a plan of care including desired outcomes, the treatment record including all elements of 21 NCAC 48C .0102(l) or 21 NCAC 48C .0201(f), a discharge summary or episode of care including the results of the intervention, and sufficient information to identify the patient and the printed name and title of each person making an entry in the patient record;
- (27) charging fees not supported by documentation in the patient record;
- (28) furnishing false or misleading information on an application for licensure and licensure renewal; and
- (29) engaging in misrepresentation or deceit, or exercising undue influence over a patient or



former patient for the financial gain of the licensee.

(b) When a person licensed to practice physical therapy in North Carolina is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Physical Therapy Examiners shall determine whether the conduct found by the other jurisdiction also violates the North Carolina Physical Therapy Practice Act. The Board may impose the same or lesser disciplinary action upon receipt of the other jurisdiction's actions. The licensee may request a hearing. At the hearing, the issues shall be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Physical Therapy Practice Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(c) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the Board determines the public health, safety, or welfare requires emergency action.

(d) When the Board receives a notice from a Clerk of Superior Court that the license of a physical therapist or a physical therapist assistant has been forfeited pursuant to G.S. 15A-1331A, the licensee shall surrender the license to the Board within 24 hours and shall not engage in the practice of physical therapy during the period of forfeiture. Forfeiture under this Section shall not limit the Board's authority to take further disciplinary action against the licensee in accordance with the Board's rules.

*History Note: Authority G.S. 15A-1331A; 90-270.24; 90-270.26; 90-270.35(4); 90-270.36; 150B-3; Eff. October 1, 1995; Amended Eff. February 1, 2015; July 1, 2013; December 1, 2006; August 1, 2002; August 1, 1998; February 1, 1996.*

**21 NCAC 48G .0701 DEFINITIONS**

- (a) "Impairment" is a condition caused by substance abuse or mental illness that impacts a licensee's ability to provide physical therapy services.
- (b) "Participant" is a licensee enrolled in a Program designed to treat substance abuse or mental illness.
- (c) "Program" is a specific course of action for health care practitioners who suffer from substance abuse or mental illness to the extent it impairs professional competence.

*History Note: Authority G.S. 90-270.26(11); Eff. February 1, 2015.*

**21 NCAC 48G .0702 PROGRAMS**

- (a) Before participating in a Program, a licensee shall be referred to the Program by the Board.
- (b) If the Board does not offer a Program, it may make arrangements for licensees with impairments to participate in Programs administered by other North Carolina health care licensing boards or by other physical therapy licensing boards that are members of the Federation. Such Programs shall provide for:

- (1) investigation, review, and evaluation of records, reports, complaints, litigation, and other information about the practice and practice patterns of licensed physical therapists and physical therapist assistants as may relate to impaired physical therapists and physical therapist assistants;
- (2) identification, intervention, treatment, referral, and follow up care of impaired physical therapists and physical therapist assistants; and
- (3) due process rights for any subject physical therapist or physical therapist assistant.

(c) Any licensee enrolled in a Program shall comply with its requirements. Any licensee terminated by a Program before successfully completing the Program may be subject to disciplinary action.

*History Note: Authority G.S. 90-270.26(11); Eff. February 1, 2015.*

**21 NCAC 48G .0703 INFORMATION OF IMPAIRMENT**

- (a) When information of suspected impairment of a licensee is received by the Board, the Board shall conduct an investigation and routine inquiries to determine the validity of the report prior to referring the licensee to a Program.
- (b) Licensees suspected of impairment may be required to submit to personal interviews if the investigation and inquiries indicate the report of impairment may be valid.

*History Note: Authority G.S. 90-270.26(11); Eff. February 1, 2015.*

**21 NCAC 48G .0704 CONFIDENTIALITY**

Information received by the Program shall remain confidential in accordance with the Program's policies and procedures. However, information received as a result of a Board referral shall be freely exchanged with the Board or its authorized agents.

*History Note: Authority G.S. 90-270.26(11); Eff. February 1, 2015.*

**21 NCAC 48G .0705 REPORTS**

Following an investigation, intervention, treatment, or upon receipt of a complaint or other information, a program participating with the Board pursuant to Rule .0702(b) of this Section shall report to the Board detailed information about any physical therapist or physical therapist assistant licensed by the Board, if it is determined that:

- (1) the physical therapist or physical therapist assistant constitutes an imminent danger to the public or to himself or herself; or
- (2) the physical therapist or physical therapist assistant refuses to cooperate with the Program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence; or
- (3) it reasonably appears that there are other grounds for disciplinary action.

History Note: Authority G.S. 90-270.26(11);  
Eff. February 1, 2015.

**21 NCAC 48G .0706 PROGRAM STANDARDS**

Any Program receiving referrals of licensees from the Board shall be monitored on an annual basis to determine its ability to provide:

- (1) adequate staffing to supervise participants in the Program;
- (2) referrals for treatment to professionals, group counseling and facilities; and
- (3) appropriate post-treatment support.

History Note: Authority G.S. 90-2701.26(11);  
Eff. February 1, 2015.

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**CHAPTER 60 – BOARD OF REFRIGERATION EXAMINERS**

**21 NCAC 60 .0214 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR MILITARY SPOUSE**

(a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submits an Application for License to Practice Refrigeration Contracting, as set forth in Rule .0206 of this Section. The application is available on the website at <http://www.refrigerationboard.org/applytotakeexam/application>;
- (2) submits a license fee in accordance with G.S. 87-64 and Rule .0209 of this Section;
- (3) provides documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2), as set forth on <http://refrigerationboard.org/applytotakeexam/military.html>; and
- (4) provides documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

(b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submits an Application for License to Practice Refrigeration Contracting, as set forth in Rule .0206 of this Section. The application is available on the website at <http://www.refrigerationboard.org/applytotakeexam/application>;
- (2) submits a license fee in accordance with G.S. 87-64 and Rule .0209 of this Section;

- (3) submits written documentation demonstrating that the applicant is married to an active member of the U.S. military;
- (4) provides documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1) and (2), as set forth on <http://refrigerationboard.org/applytotakeexam/military.html>;
- (5) provides documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed; and is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

History Note: Authority G.S. 93B-15.1;  
Eff. February 1, 2015.

**TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS**

**26 NCAC 03 .0118 CONTINUANCES**

(a) Requests for a continuance of a hearing shall be granted upon a showing of good cause or extraordinary cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing to the administrative law judge and shall be served upon all parties of record. In determining whether good cause or extraordinary cause exists, due regard shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within five days of a hearing shall be denied unless the reason for the request could not have been ascertained earlier.

- (1) "Good cause" includes death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is clearly necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the administrative law judge have agreed to a new hearing date or the parties have agreed to a settlement of the case that has been or is likely to be approved by the final decision maker.
- (2) "Good cause" shall not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance

is sought; unavailability of a witness if the witness testimony can be taken by deposition, and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(b) For the purpose of determining whether "extraordinary cause" exists to allow a final decision to be issued beyond 180 days after the commencement of a personnel case under G.S. 126-34.02(a) the phrase "extraordinary cause" is defined as follows: out of the ordinary; exceeding the usual, average, or normal measure or degree; not usual, regular, or of a customary kind. "Extraordinary cause" includes:

- (1) a stay issued by a federal or state trial or appellate judge;
- (2) a stay issued by an administrative law judge under G.S. 150B-33(a); or
- (3) a pending OAH civil rights investigation which addresses the same issues of discrimination as the subject matter of the contested case when

the OAH investigation has not been pending in the Civil Rights Division longer than 90 days.

"Extraordinary cause" shall not be granted for any cause listed in Subparagraph (a)(2) of this Rule.

(c) A continuance for good cause shall not be granted when to do so would prevent the case from being concluded within any statutory or regulatory deadline.

(d) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the administrative law judge shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient.

*History Note: Authority G.S. 126-34.02; 150B-33(b)(4); Eff. August 1, 1986; Amended Eff. November 1, 1987; Temporary Amendment Eff. March 1, 2014; Amended Eff. February 1, 2015.*

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on March 19, 2015 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**  
Jeff Hyde (1<sup>st</sup> Vice Chair)  
Margaret Currin  
Jay Hemphill  
Faylene Whitaker

**Appointed by House**  
Garth Dunklin (Chair)  
Stephanie Simpson (2<sup>nd</sup> Vice Chair)  
Anna Baird Choi  
Jeanette Doran  
Ralph A. Walker

**COMMISSION COUNSEL**

Abigail Hammond (919)431-3076  
Amber Cronk May (919)431-3074  
Amanda Reeder (919)431-3079

**RULES REVIEW COMMISSION MEETING DATES**

March 19, 2015                  April 16, 2015  
May 21, 2015                  June 18, 2015

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**AGENDA**

**RULES REVIEW COMMISSION  
THURSDAY, MARCH 19, 2015 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. Board of Physical Therapy Examiners – 21 NCAC 48C .0104 (Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between January 21, 2015 and February 20, 2015
  - Pesticide Board
  - Office of the Commissioner of Banks
  - Medical Care Commission
  - Commission for Public Health
  - Department of Transportation/Division of Motor Vehicles
  - Acupuncture Licensing Board
  - Board of Dental Examiners
  - Irrigation Contractors Licensing Board
  - Board of Physical Therapy Examiners
  - Board of Refrigeration Examiners
  - State Human Resources Commission
  - Building Code Council
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
  1. 04 NCAC 08 - Rural Electrification Authority
  2. 10A NCAC 05 - Department of Health and Human Services
  3. 10A NCAC 09 - Child Care Commission
  4. 21 NCAC 42 – Board of Optometry Examiners
- VII. Commission Business

- Next meeting: Thursday, April 16, 2015
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**Commission Review  
Log of Permanent Rule Filings  
January 21, 2015 through February 20, 2015**

**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).

Eastern and Hairy-Tailed Moles 02 NCAC 09L .0707  
Adopt/\*

**BANKS, OFFICE OF THE COMMISSIONER OF**

The rules in Subchapter 3D concern banks acting in a fiduciary capacity including licensing (.0100); reports required by commissioner of banks (.0200); and trust department (.0300).

Definitions 04 NCAC 03D .0105  
Adopt/\*

Reports of Condition of State Trust Entities 04 NCAC 03D .0201  
Amend/\*

Administration of Trust Business 04 NCAC 03D .0302  
Amend/\*

Books and Records 04 NCAC 03D .0303  
Amend/\*

Collective Investment 04 NCAC 03D .0304  
Amend/\*

**MEDICAL CARE COMMISSION**

The rules in subchapter 13F concern licensing of homes for the aged and infirm and include definitions (.0100); licensing (.0200); physical plant (.0300); staff qualification (.0400); staff orientation training, competency and continuing education (.0500); staffing (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medication (.1000); Resident's funds and refunds (.1100); policies; records and reports (.1200); special care units for alzheimer and related disorders (.1300); special care units for mental health disorders (.1400); use of physical restraints and alternatives (.1500); and rated certificates (.1600).

Medication Labels 10A NCAC 13F .1003  
Amend/\*

Pharmaceutical Services 10A NCAC 13F .1010  
Amend/\*

The rules in subchapter 13G concern licensing of family care homes including definitions (.0100); licensing (.0200); the building (.0300); staff qualifications (.0400); staffing orientation, training, competency and continuing education (.0500); staffing of the home (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medications (.1000); management and resident's funds and refunds (.1100); policies, records and reports (.1200); use of physical restraints and alternatives (.1300); and rated certificates (.1600).

<u>Medication Labels</u>	10A NCAC 13G .1003
Amend/*	
<u>Pharmaceutical Services</u>	10A NCAC 13G .1010
Amend/*	

The rules in Subchapter 13H concern the licensing of homes for developmentally disabled adults including identifying information (.0100); management in private for profit homes (.0200); management in homes operated by private non-profit boards (.0300); personnel (.0400); the home (.0500); arrangement and size of rooms (.0600); services (.0700); program standards (.0800); admission, transfer, and discharge policies (.0900); medical policies (.1000); rates, residents' funds, refunds (.1100); records and reports (.1200); capacity (.1300); application procedures (.1400); licensing information (.1500); miscellaneous rules (.1600); adult home care licenses (.1700); and death reporting requirements (.1800).

<u>Group Homes; Developmentally Disabled Adults</u>	10A NCAC 13H .0101
Repeal/*	
<u>Group Homes for Developmentally Disabled Adults</u>	10A NCAC 13H .0102
Repeal/*	
<u>Private For Profit Group Homes</u>	10A NCAC 13H .0103
Repeal/*	
<u>Definitions</u>	10A NCAC 13H .0104
Repeal/*	
<u>Regulation</u>	10A NCAC 13H .0201
Repeal/*	
<u>The Co-Administrator</u>	10A NCAC 13H .0202
Repeal/*	
<u>Relief Person-in-Charge</u>	10A NCAC 13H .0203
Repeal/*	
<u>The Home Manager in Private Non-Profit Homes</u>	10A NCAC 13H .0301
Repeal/*	
<u>Change of Manager</u>	10A NCAC 13H .0302
Repeal/*	
<u>Personnel Requirements</u>	10A NCAC 13H .0401
Repeal/*	
<u>Qualifications of Other Staff and Family Members Living In</u>	10A NCAC 13H .0402
Repeal/*	
<u>Qualifications of Relief Person-In-Charge</u>	10A NCAC 13H .0403
Repeal/*	
<u>Responsibilities of Relief Person-In-Charge</u>	10A NCAC 13H .0404
Repeal/*	
<u>Qualifications of Other Staff Not Living In</u>	10A NCAC 13H .0405
Repeal/*	
<u>Health Requirements</u>	10A NCAC 13H .0406
Repeal/*	
<u>General Personnel Requirements</u>	10A NCAC 13H .0407
Repeal/*	

<u>Staff Competency and Training</u> Repeal/*	10A NCAC 13H .0408
<u>Training Program Content and Approval</u> Repeal/*	10A NCAC 13H .0409
<u>Qualifications of Medication Staff</u> Repeal/*	10A NCAC 13H .0410
<u>Medication Administration Competency Evaluation</u> Repeal/*	10A NCAC 13H .0411
<u>Location</u> Repeal/*	10A NCAC 13H .0501
<u>Construction</u> Repeal/*	10A NCAC 13H .0502
<u>Living Areas</u> Repeal/*	10A NCAC 13H .0601
<u>Dining Area</u> Repeal/*	10A NCAC 13H .0602
<u>Kitchen</u> Repeal/*	10A NCAC 13H .0603
<u>Bedrooms</u> Repeal/*	10A NCAC 13H .0604
<u>Closets</u> Repeal/*	10A NCAC 13H .0605
<u>Bathrooms</u> Repeal/*	10A NCAC 13H .0606
<u>Storage Areas</u> Repeal/*	10A NCAC 13H .0607
<u>Floors</u> Repeal/*	10A NCAC 13H .0608
<u>Laundry</u> Repeal/*	10A NCAC 13H .0609
<u>Outside Entrances</u> Repeal/*	10A NCAC 13H .0610
<u>Fire Safety Requirements</u> Repeal/*	10A NCAC 13H .0611
<u>Other Requirements</u> Repeal/*	10A NCAC 13H .0612
<u>Housekeeping and Furnishings</u> Repeal/*	10A NCAC 13H .0613
<u>Personal Care</u> Repeal/*	10A NCAC 13H .0701
<u>Health Care</u> Repeal/*	10A NCAC 13H .0702
<u>Food Service</u> Repeal/*	10A NCAC 13H .0703
<u>Other Regulations</u> Repeal/*	10A NCAC 13H .0704
<u>Individual Goals</u> Repeal/*	10A NCAC 13H .0801
<u>Individual Records</u> Repeal/*	10A NCAC 13H .0802
<u>Policies and Procedures</u> Repeal/*	10A NCAC 13H .0803

<u>Resident's Living Status</u> Repeal/*	10A NCAC 13H .0804
<u>Activities Outside the Home</u> Repeal/*	10A NCAC 13H .0805
<u>Accident Prevention</u> Repeal/*	10A NCAC 13H .0806
<u>Plan for Medical Services</u> Repeal/*	10A NCAC 13H .0807
<u>Personal Skills Development</u> Repeal/*	10A NCAC 13H .0808
<u>Admissions</u> Repeal/*	10A NCAC 13H .0901
<u>Medical Requirements</u> Repeal/*	10A NCAC 13H .0902
<u>Personal Information</u> Repeal/*	10A NCAC 13H .0903
<u>Written Agreements</u> Repeal/*	10A NCAC 13H .0904
<u>Plans at Time of Admission</u> Repeal/*	10A NCAC 13H .0905
<u>Procedures for Transfer</u> Repeal/*	10A NCAC 13H .0906
<u>Procedures for Discharge</u> Repeal/*	10A NCAC 13H .0907
<u>Physicians</u> Repeal/*	10A NCAC 13H .1001
<u>Physical Examinations</u> Repeal/*	10A NCAC 13H .1002
<u>Medications</u> Repeal/*	10A NCAC 13H .1003
<u>Handling Funds of Residents</u> Repeal/*	10A NCAC 13H .1101
<u>Refund Policies</u> Repeal/*	10A NCAC 13H .1102
<u>Records</u> Repeal/*	10A NCAC 13H .1201
<u>Reports</u> Repeal/*	10A NCAC 13H .1202
<u>Capacity</u> Repeal/*	10A NCAC 13H .1301
<u>Increase in Capacity</u> Repeal/*	10A NCAC 13H .1302
<u>Application for License</u> Repeal/*	10A NCAC 13H .1401
<u>New Construction: Additions and Renovations</u> Repeal/*	10A NCAC 13H .1402
<u>Current License</u> Repeal/*	10A NCAC 13H .1501
<u>Renewal of License</u> Repeal/*	10A NCAC 13H .1502
<u>Termination of License</u> Repeal/*	10A NCAC 13H .1503



<u>Denial or Revocation of License</u> Repeal/*	10A NCAC 13H .1504
<u>Procedures for Appeal</u> Repeal/*	10A NCAC 13H .1505
<u>Suspension of Admissions</u> Repeal/*	10A NCAC 13H .1506
<u>Administrative Penalty Determination Process</u> Repeal/*	10A NCAC 13H .1601
<u>Resident Assessment</u> Repeal/*	10A NCAC 13H .1602
<u>Resident Care Plan</u> Repeal/*	10A NCAC 13H .1603
<u>Licensed Health Professional Support</u> Repeal/*	10A NCAC 13H .1604
<u>Cooperation with Case Managers</u> Repeal/*	10A NCAC 13H .1605
<u>Health Care Personnel Registry</u> Repeal/*	10A NCAC 13H .1606
<u>Respite Care</u> Repeal/*	10A NCAC 13H .1607
<u>Definitions</u> Repeal/*	10A NCAC 13H .1701
<u>Persons Not Eligible for New Adult Care Home Licenses</u> Repeal/*	10A NCAC 13H .1702
<u>Conditions for License Renewal</u> Repeal/*	10A NCAC 13H .1703
<u>Definitions</u> Repeal/*	10A NCAC 13H .1901
<u>Scope</u> Repeal/*	10A NCAC 13H .1902
<u>Reporting Requirements</u> Repeal/*	10A NCAC 13H .1903

**PUBLIC HEALTH, COMMISSION FOR**

The rules in Chapter 43 concern personal health. The rules in Subchapter 43K concern newborn screening for critical congenital heart defects.

<u>Definitions</u> Adopt/*	10A NCAC 43K .0101
<u>Screening Requirements</u> Adopt/*	10A NCAC 43K .0102
<u>Reporting Requirements</u> Adopt/*	10A NCAC 43K .0103

The rules in Subchapter 48B establish the accreditation standards for local health departments including general provisions (.0100); the standards or benchmarks to monitor health status (.0200); diagnose and investigate health problems and health hazards in the community (.0300); inform, educate and empower people about health issues (.0400); mobilize community partnerships to identify and solve health problems (.0500); develop policies and plans that support individual and community health efforts (.0600); enforce laws and regulations that protect health and ensure safety (.0700); link people to personal health services to assure the provision of health care when otherwise unavailable (.0800); assure a competent public health workforce and personal health workforce (.0900); evaluate

effectiveness, accessibility and quality of personal and population based health services (.1000); research for new insights and innovative solutions to health problems (.1100); provide facilities and administrative services (.1200) and provide governance (.1300).

<u>Accreditation Requirements</u> Amend/*	10A NCAC 48B .0103
<u>Benchmark 34</u> Amend/*	10A NCAC 48B .1301
<u>Benchmark 37</u> Amend/*	10A NCAC 48B .1304
<u>Benchmark 38</u> Amend/*	10A NCAC 48B .1305
<u>Benchmark 39</u> Amend/*	10A NCAC 48B .1306
<u>Benchmark 40</u> Amend/*	10A NCAC 48B .1307
<u>Benchmark 41</u> Amend/*	10A NCAC 48B .1308

**TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES**

The rules in Chapter 3 concern the Division of Motor Vehicles.

The rules in Subchapter 3B concern the driver license section of the Division of Motor Vehicles including general information (.0100); driver's license issuance (.0200); medical evaluation (.0300); records (.0400); classified drivers' license (.0600); commercial drivers' license (.0700); and gross vehicle weight rating (GVWR) (.0800).

<u>Driver's License Examination</u> Amend/*	19A NCAC 03B .0201
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**ACUPUNCTURE LICENSING BOARD**

The rules in Chapter 1 are from the North Carolina Acupuncture Licensing Board including licensure (.0100); renewal of licensure (.0200); continuing education (.0300); practice parameters and procedures (.0400); schools and colleges of acupuncture (.0500); code of ethics (.0600); and administrative procedures (.0700).

<u>Suspension of Authority and Escrow of Funds</u> Adopt/*	21 NCAC 01 .0108
<u>Armed Services Extension for Credential</u> Adopt/*	21 NCAC 01 .0109
<u>Acupuncture License by Reciprocity Based on Military Service</u> Adopt/*	21 NCAC 01 .0110
<u>Acupuncture License by Reciprocity Based on Status as Mil...</u> Adopt/*	21 NCAC 01 .0111
<u>Purpose and Scope</u> Adopt/*	21 NCAC 01 .0601
<u>Non-Discrimination</u> Adopt/*	21 NCAC 01 .0602
<u>Competence</u> Adopt/*	21 NCAC 01 .0603
<u>Serving Sentence</u> Adopt/*	21 NCAC 01 .0604

<u>Education and Training Standards</u> Adopt/*	21	NCAC	01	.0605
<u>Patient Welfare</u> Adopt/*	21	NCAC	01	.0606
<u>Confidentiality</u> Adopt/*	21	NCAC	01	.0607
<u>Client Relationships</u> Adopt/*	21	NCAC	01	.0608
<u>Board Investigation</u> Adopt/*	21	NCAC	01	.0609

**DENTAL EXAMINERS, BOARD OF**

The rules in Subchapter 16G concern dental hygienists.

<u>Functions Which May Be Delegated</u> Amend/*	21	NCAC	16G	.0101
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The rules in Subchapter 16H concern dental assistants including classification and training (.0100); and permitted functions of dental assistant (.0200).

<u>Approved Education and Training Programs</u> Amend/*	21	NCAC	16H	.0104
<u>Permitted Functions of Dental Assistant II</u> Amend/*	21	NCAC	16H	.0203

The rules in Subchapter 16I concern the annual renewal of the dental hygienist license.

<u>Applications</u> Amend/*	21	NCAC	16I	.0101
<u>Continuing Education Required</u> Amend/*	21	NCAC	16I	.0102
<u>Penalty/Non-Compliance/Continuing Education Requirement</u> Amend/*	21	NCAC	16I	.0105
<u>License Void Upon Failure to Renew</u> Amend/*	21	NCAC	16I	.0107
<u>Form of Certificate</u> Amend/*	21	NCAC	16I	.0108
<u>Definitions</u> Amend/*	21	NCAC	16I	.0110
<u>Exemptions Granted</u> Amend/*	21	NCAC	16I	.0111

The rules in Subchapter 16J concern sanitation.

<u>Premises</u> Amend/*	21	NCAC	16J	.0101
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The rules in Subchapter 16K concern dental school extension facilities.

<u>Instructors to be Approved</u> Amend/*	21	NCAC	16K	.0103
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Reports to Board 21 NCAC 16K .0106  
Amend/\*

The rules in Subchapter 16N concern rule-making and administrative hearing procedures including petitions for rulemaking (.0100); notice of rule-making hearings (.0200); rule-making hearings (.0300); declaratory rulings (.0400); administrative hearing procedures (.0500); and administrative hearings, decisions, related rights and procedures (.0600).

Request for Hearing 21 NCAC 16N .0502  
Amend/\*

Notice of Hearing 21 NCAC 16N .0504  
Amend/\*

Who Shall Hear Contested Cases 21 NCAC 16N .0505  
Amend/\*

Petition for Intervention 21 NCAC 16N .0506  
Amend/\*

Disqualification of Board Members 21 NCAC 16N .0508  
Amend/\*

Subpoena 21 NCAC 16N .0603  
Amend/\*

**IRRIGATION CONTRACTORS LICENSING BOARD**

The rules in Chapter 23 are from the Irrigation Contractors' Licensing Board and concern licensing (.0100); hearing rules of the North Carolina Irrigation Contractors' Licensing Board (0200); irrigation record drawing minimum standards (.0300); irrigation design minimum standards (.0400); irrigation system installation minimum standards (.0500); irrigation system management for water efficiency minimum standards (.0600); and

Ethics 21 NCAC 23 .0105  
Adopt/\*

Conduct of Hearing 21 NCAC 23 .0206  
Amend/\*

Decision of Board 21 NCAC 23 .0207  
Amend/\*

Trenching and Piping 21 NCAC 23 .0505  
Amend/\*

**PHYSICAL THERAPY EXAMINERS, BOARD OF**

The rules in Subchapter 48G concern retention of license including licensure renewal (.0100); lapsed licenses (.0200); refusal to renew or grant license suspension or revocation (.0300); probation or warning (.0400); contested case hearings (.0500); and disciplinary action (.0600).

Continuing Competence Activities 21 NCAC 48G .0109  
Amend/\*

**REFRIGERATION EXAMINERS, BOARD OF**

The rules in Chapter 60 are from the Board of Refrigeration Examiners and concern organization and definitions (.0100); examinations (.0200); licenses and fees (.0300); disciplinary action (.1100); and continuing education.

Office of the Board 21 NCAC 60 .0102  
Amend/\*

**STATE HUMAN RESOURCES COMMISSION**

The rules in Subchapter 1B are from the state personnel commission and concern general provisions (.0100); rule-making (.0200); contested case hearing procedures (.0300); and appeal to the commission (.0400).

<u>Time Frame for Raising Allegation of Discrimination</u> Amend/*	25	NCAC	01B	.0350
<u>Exercise of Commission Discretion</u> Amend/*	25	NCAC	01B	.0413

The rules in Subchapter 1C concern personnel administration including employment (.0100); general employment policies (.0200); personnel records and reports (.0300); appointment (.0400); work schedule (.0500); competitive service (.0600); secondary employment (.0700); requirements for teleworking programs (.0800); employee recognition programs (.0900); and separation (.1000).

<u>Employee Objection to Material in File</u> Amend/*	25	NCAC	01C	.0311
<u>Permanent and Time-Limited Appointment</u> Amend/*	25	NCAC	01C	.0402
<u>Reduction in Force</u> Amend/*	25	NCAC	01C	.1004
<u>Unavailability When Leave is Exhausted</u> Amend/*	25	NCAC	01C	.1007

The rules in Subchapter 1D are the rules dealing with compensation and include administration of the pay plan (.0100); new appointments (.0200); promotion (.0300); demotions or reassignments (.0400); separation (.0500); reallocation (.0600); salary range revision (.0700); initial classification (.0800); transfer (.0900); reinstatement (.1000); longevity pay (.1200); holiday premium pay (.1300); shift premium pay (.1400); emergency call-back pay (.1500); foreign service pay (.1600); employment of physicians for extended duty (.1800); hours of work and overtime compensation (.1900); unemployment insurance (.2000); special salary adjustments (.2100); comprehensive compensation system (.2500); and in-range salary adjustments (.2600).

<u>Initial Employment</u> Amend/*	25	NCAC	01D	.0201
<u>Severance Salary Continuation</u> Amend/*	25	NCAC	01D	.2701

The rules in Subchapter 1E cover employee benefits including general leave provisions (.0100); vacation leave (.0200); sick leave (.0300); workers compensation leave (.0700); military leave (.0800); holidays (.0900); miscellaneous leave (.1000); other types of leave without pay (.1100); community involvement (.1200); the voluntary shared leave program (.1300); family and medical leave (.1400); child involvement leave (.1500); community services leave (.1600); administrative leave (.1700) and incentive leave (.1800).

<u>Total State Service Defined</u> Amend/*	25	NCAC	01E	.0204
<u>Approved Holidays</u> Amend/*	25	NCAC	01E	.0901
<u>Purpose</u> Amend/*	25	NCAC	01E	.1601
<u>Definitions</u> Amend/*	25	NCAC	01E	.1602
<u>Covered Employees and Leave Credits</u> Amend/*	25	NCAC	01E	.1603

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**RULES REVIEW COMMISSION**

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<u>Community Service Leave Administration</u> Amend/*	25	NCAC	01E	.1605
<u>Additional Time for Community Service Activities</u> Repeal/*	25	NCAC	01E	.1606

The rules in Subchapter 1H concern recruitment and selection including general provisions (.0600); general provision for priority consideration (.0700); promotional priority (.0800); reduction-in-force-priority reemployment (.0900); exempt priority consideration (.1000); and veteran's preference (.1100).

<u>Special Applicant Considerations Related to Priority</u> Amend/*	25	NCAC	01H	.0633
<u>Selection of Applicants</u> Amend/*	25	NCAC	01H	.0634
<u>Employment: E-Verify</u> Amend/*	25	NCAC	01H	.0636
<u>Employment of Relatives</u> Amend/*	25	NCAC	01H	.0641
<u>Reduction in Force Application and Appeal</u> Amend/*	25	NCAC	01H	.0901
<u>Requirements for Reduction in Force Priority Consideration</u> Amend/*	25	NCAC	01H	.0902
<u>Agency and Employee Responsibilities</u> Amend/*	25	NCAC	01H	.0904
<u>Office of State Human Resources Responsibilities</u> Amend/*	25	NCAC	01H	.0905
<u>Denial of Veterans' Preference</u> Amend/*	25	NCAC	01H	.1103

The rules in Subchapter 1J cover employee grievances (.0500); disciplinary actions including suspensions and dismissals (.0600); Governor's Award for Excellence (.0800); internal performance pay dispute resolution procedures (.0900); state employees assistance program (.1000); unlawful workplace harassment (.1100); employee grievances (.1200); employee appeals and grievance process (.1300); and employee mediation and grievance process (.1400).

<u>Appeals</u> Amend/*	25	NCAC	01J	.0603
<u>Written Warning</u> Amend/*	25	NCAC	01J	.0610
<u>Investigatory Leave</u> Amend/*	25	NCAC	01J	.0615
<u>Credentials</u> Adopt/*	25	NCAC	01J	.0616
<u>Discrimination and Retaliation</u> Adopt/*	25	NCAC	01J	.0617
<u>Appeal of Denial of Veterans' Preference</u> Adopt/*	25	NCAC	01J	.0618
<u>Unlawful Workplace Harassment and Retaliation</u> Repeal/*	25	NCAC	01J	.1101
<u>General Provisions</u> Repeal/*	25	NCAC	01J	.1201
<u>Agency Responsibilities</u> Repeal/*	25	NCAC	01J	.1202

<u>Agency Grievance Reports</u> Repeal/*	25	NCAC	01J	.1203
<u>Discrimination and Retaliation/Special Provisions</u> Repeal/*	25	NCAC	01J	.1204
<u>Unlawful Workplace Harassment</u> Repeal/*	25	NCAC	01J	.1205
<u>Time Limits</u> Repeal/*	25	NCAC	01J	.1206
<u>Final Agency Action</u> Repeal/*	25	NCAC	01J	.1207
<u>Leave In Connection with Grievances</u> Repeal/*	25	NCAC	01J	.1208
<u>Minimum Procedural Requirements</u> Repeal/*	25	NCAC	01J	.1301
<u>General Agency Grievance Procedure Requirements</u> Adopt/*	25	NCAC	01J	.1302
<u>Agency and University Grievance Reports and Data Entry</u> Adopt/*	25	NCAC	01J	.1303
<u>Settlements/Consent Agreements in Grievances, Contested C...</u> Adopt/*	25	NCAC	01J	.1304
<u>Office of State Human Resources Review and Approval of Fi...</u> Adopt/*	25	NCAC	01J	.1305
<u>Back Pay</u> Adopt/*	25	NCAC	01J	.1306
<u>Front Pay</u> Adopt/*	25	NCAC	01J	.1307
<u>Leave</u> Adopt/*	25	NCAC	01J	.1308
<u>Health Insurance</u> Adopt/*	25	NCAC	01J	.1309
<u>Interest</u> Adopt/*	25	NCAC	01J	.1310
<u>Reinstatement</u> Adopt/*	25	NCAC	01J	.1311
<u>Causes for Reinstatement</u> Adopt/*	25	NCAC	01J	.1312
<u>Suspension Without Pay</u> Adopt/*	25	NCAC	01J	.1313
<u>Discrimination, Harassment, or Retaliation</u> Adopt/*	25	NCAC	01J	.1314
<u>Voluntary Programs or Benefits</u> Adopt/*	25	NCAC	01J	.1315
<u>Remedies for Procedural Violations</u> Adopt/*	25	NCAC	01J	.1316
<u>Remedies: Salary Adjustments</u> Adopt/*	25	NCAC	01J	.1317
<u>Certain Remedies not Available</u> Adopt/*	25	NCAC	01J	.1318
<u>Situations in Which Attorney's Fees May be Awarded</u> Adopt/*	25	NCAC	01J	.1319
<u>Attorney's Fees may be Awarded as a Result of a Settlement</u> Adopt/*	25	NCAC	01J	.1320

<u>Minimum Procedural Requirements</u> Repeal/*	25	NCAC	01J	.1401
<u>Flexibility</u> Repeal/*	25	NCAC	01J	.1402
<u>Informal Meeting with Supervisor</u> Repeal/*	25	NCAC	01J	.1403
<u>Mediation Procedure</u> Repeal/*	25	NCAC	01J	.1404
<u>Conclusion of Mediation</u> Repeal/*	25	NCAC	01J	.1405
<u>Limitations on a Mediation Agreement</u> Repeal/*	25	NCAC	01J	.1406
<u>Post Mediation</u> Repeal/*	25	NCAC	01J	.1407
<u>Employee Responsibilities for Mediation</u> Repeal/*	25	NCAC	01J	.1408
<u>Agency Responsibilities for Mediation</u> Repeal/*	25	NCAC	01J	.1409
<u>Office of State Personnel Responsibilities</u> Repeal/*	25	NCAC	01J	.1410
<u>Agency Procedural Requirements for Employee Mediation and...</u> Repeal/*	25	NCAC	01J	.1411
<u>Office of State Personnel Responsibilities for Employee M...</u> Repeal/*	25	NCAC	01J	.1412

**BUILDING CODE COUNCIL**

<u>2012 NC Residential Code/Docks, Piers, Bulkheads and Water...</u> Amend/*				
<u>2012 NC Residential Code/Wood and Fitch Plate Examples</u> Amend/*				N-1, N-2 Tables
<u>2012 NC Residential Code/Wood and Fitch Plate Beams</u> Amend/*				N-1, N-2 Tables
<u>2012 NC Residential Code/Southern Pine Spans</u> Amend/*				AM106, AM111 Tables
<u>2012 NC Residential Building Code/Screen Enclosure</u> Amend/*				202,



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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge  
JULIAN MANN, III*

*Senior Administrative Law Judge  
FRED G. MORRISON JR.*

**ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
ABC Commission v. Noble 6 Enterprises LLC, T/A Peppermint Rabbit	13 ABC 20226	08/13/14	
ABC Commission v. Demetrius Earl Smith, T/A Smith's Convenient Store	14 ABC 01354	08/18/14	
ABC Commission v. 40 and Holding, LLC T/A London Bridge Pub	14 ABC 01953	12/16/14	
Melody Locklear McNair v. ABC Commission	14 ABC 02323	06/25/14	
Marcus L. Bellamy T/A Bellas Grill v. ABC Commission	14 ABC 03485	07/24/14	
Kelvin M. Williams, dba Da Wave v. ABC Commission	14 ABC 04723	09/12/14	
ABC Commission v. Prescott Elliot Urban Environments LLC T/A Marquis Market	14 ABC 04798	10/02/14	
ABC Commission v. Noa Noa LLC T/A Noa Noa	14 ABC 05891	11/20/14	
M & K Investments Inc. v. ABC Commission	14 ABC 06199	11/24/14	
<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>			
Travis Earl Atkinson v. NC Victims Compensation Commission	13 CPS 16304	09/02/14	
Carl John Perkinson v. Department of Public Safety	14 CPS 02245	06/24/14	
Karen Tate v. Victims Compensation Commission	14 CPS 02397	09/03/14	
Waheeda Ammeri v. Department of Public Safety	14 CPS 03254	07/21/14	
Mitchell Kent Wilson v. NC Crime Victims Compensation Commission	14 CPS 05569	11/06/14	
Jacorey Thomas v. NC DPS Victim Services	14 CPS 05922	10/20/14	
Rodger L. Ackerson v. Janice W. Carmichael, NC Crime Victims Compensation Commission	14 CPS 06627	10/14/14	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>			
M. Yaghi, DDS, P.A. v. DHHS	11 DHR 11579	09/15/14	
M. Yaghi, DDS, P.A. v. DHHS	11 DHR 11580	09/15/14	
Timothy John Murray v. DHHS, Division of Health Service Regulation	11 DHR 12594	12/19/14	29:16 NCR
Senior Home Care Services, Inc. v. DHHS	12 DHR 09750	08/13/14	
Parker Home Care LLC v. DHHS, Division of Medical Assistance	12 DHR 10864	10/06/14	
Johnson Allied Health Services, Inc. v. DHHS	12 DHR 11536	09/02/14	
Helen Graves v. Alamance County Department of Social Services and NC Department of Health and Human Services, Division of Health Service Regulation	12 DHR 12411	09/02/14	
AHB Psychological Services v. DHHS and Alliance Behavioral Healthcare	13 DHR 00115	01/06/14	29:02 NCR 202
Albert Barron, Sr. v. Eastpointe Human Services Local Management Entity	13 DHR 00784	04/22/14	29:04 NCR 444
At Home Personal Care Services, Inc. v. DHHS, Division of Medical Assistance	13 DHR 01922	03/20/14	29:07 NCR 834
AHB Psychological Services v. DHHS and Alliance Behavioral Healthcare	13 DHR 08874	01/06/14	29:02 NCR 202

**CONTESTED CASE DECISIONS**

Sheryl A. Lyons v. DHHS	13 DHR 10228	05/12/14	29:05 NCR 559
Cleveland Otis Dunston v. North Carolina Nurse Aide Registry	13 DHR 10364	10/06/14	
Kenneth Terrell Ford v. DHHS, Division of Facility Services	13 DHR 10745	02/12/14	29:03 NCR 356
Pamela Byrd v. DHHS	13 DHR 12691	11/05/13	29:06 NCR 685
Mary Lynne Nance v. DHHS, Division of Health Service	13 DHR 13351	05/13/14	29:08 NCR 959
Tricare Counseling and Consulting, Inc. v. DHHS, Division of Medical Assistance	13 DHR 14221	12/31/13	29:04 NCR 460
Neogenesis, LLC v. DHHS, Division of Medical Assistance and its agent Eastpointe Human Services Local Management Entity	13 DHR 14222	06/09/14	29:09 NCR 1113
J. Mark Oliver DDS, PLLC v. DHHS, Division of Medical Assistance	13 DHR 14369	02/19/14	29:02 NCR 206
Jabez Home Infusion Company Services v. DHHS	13 DHR 15135	09/02/14	29:12 NCR 1531
Genesis Project 1 Inc. v. DHHS, Division of Medical Assistance and its agent, Mecklink Behavioral Healthcare	13 DHR 17094	12/16/13	29:01 NCR 70
Ervin Smith v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 17560	07/30/14	
Ashley Renee Davis v. Department of Human Services	13 DHR 17606	09/02/14	
Estate of Earlene W. Alston, Lewis E. Alston v. DHHS, DMA	13 DHR 17909	04/08/14	29:02 NCR 211
Total Renal Care of North Carolina, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Bio-Medical Applications of North Carolina	13 DHR 18127	06/23/14	29:07 NCR 842
Total Renal Care of North Carolina, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Bio-Medical Applications of North Carolina	13 DHR 18223	06/23/14	29:07 NCR 842
Lawanda Suggs v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 18454	08/15/14	
David LeGrand v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 18668	08/01/14	29:10 NCR 1229
Absolute Home Care Agency, Inc. v. DHHS, Division of Medical Assistance	13 DHR 18689	09/02/14	29:11 NCR 1445
John A. Page v. DHHS	13 DHR 19546	09/24/14	
United Home Care, Inc. d/b/a Untied Home Health, Inc. d/b/a United Home Health v. DHHS, Division of Health Service Regulation, Certificate of Need Section, and Maxim Healthcare Services, Inc.	13 DHR 19690	06/05/14	29:09 NCR 1122
Heartfelt Alternatives Inc. v. Alliance Behavioral Healthcare, DHHS	13 DHR 19958	12/09/14	29:16 NCR
Susan Arrowood, OLPC v. DHHS, Division of Medical Assistance and its agent Partners Behavioral Health Management	13 DHR 19981	01/08/14	29:03 NCR 366
Rosemary Nwankwo v. DHHS	13 DHR 20013	08/13/14	
Akinsola Ade Okunsokan v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 20066	09/26/14	
Marilyn Sherrill v. DHHS	13 DHR 20086	08/13/14	
Angelo Cornilus Graham v. Office of Administrative Hearings	13 DHR 20090	10/01/14	
HSB Enterprise Corporation, Hettion S. Booker v. DHHS, Division of Medical Assistance, Program Integrity Section	13 DHR 20235	09/02/14	
Leisa Lenora Dockery v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 20318	09/15/14	
Gregory P. Lathan, President and Registered Agent, The EI Group Inc. v. DHHS	13 DHR 20332	08/20/14	
Jacqueline Marie Jackson v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	14 DHR 00460	07/10/14	
Parker Home Care LLC v. DHHS	14 DHR 00752	10/06/14	
Rhamia Machae Robinson v. DHHS, Division of Health Service Regulation	14 DHR 01051	12/23/14	
Nadiah Porter v. Durham County Department of Social Services (DSS) (Formerly Durham's Alliance for Child Care Access, DACCA)	14 DHR 01309	06/30/14	
Wittner Wright and Lisa Wright v. DHHS	14 DHR 01510	07/21/14	
Darrick Pratt v. DHHS, Division of Health Service Regulation	14 DHR 01598	08/26/14	
Victoria McLaughlin v. DHHS, Division of Health Service Regulation	14 DHR 01741	10/01/14	
Elite Care Inc. Demetrice Wilson v. DHHS and East Carolina Behavioral Health	14 DHR 01926	09/02/14	
Elizabeth Mitchell v. Durham DSS	14 DHR 01982	06/23/14	
Wayne Mitchell v. Durham DSS	14 DHR 02044	06/23/14	
Sylvia B. Thompson v. DHHS, Vital Records	14 DHR 02280	10/17/14	
Robert Stanley Hendricks v. Walter B. Jones	14 DHR 02367	10/21/14	
Prince Onwuka, Roda V. Onwuka v. Division of Child Development and Early Education	14 DHR 02636	07/24/14	
Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health System and Hoke Healthcare, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section and FirstHealth of the Carolinas, Inc. d/b/a FirstHealth Moore Regional Hospital	14 DHR 02853	08/21/14	29:12 NCR 1588
Andrea Cook v. DHHS, Division of Health Service Regulation	14 DHR 02947	07/29/14	
Dianne Lucas v. DHHS, Division of Health Service Regulation	14 DHR 03088	08/05/14	
Faisal Saed Ismail v. New Hanover County DSS	14 DHR 03089	08/01/14	
Evangela Wayne v. DHHS, Division of Health Service Regulation	14 DHR 03296	09/09/14	

**CONTESTED CASE DECISIONS**

Peter K. Kagwanja, owner Lighthouse Foodmart v. DHHS, Division of Public Health	14 DHR 03335	07/03/14
Independent Living Group Home Shanita Lovelace v. DHHS	14 DHR 03482	09/05/14
Jennifer Lyn McKinney v. DHHS, Division of Health Service Regulation	14 DHR 03521	08/07/14
Juan Wilbornx v. DHHS	14 DHR 03585	08/18/14
Harold Eku John Coker v. Office of Administrative Hearings	14 DHR 03644	08/01/14
Nancy A. Wood v. DHHS, Division of Social Services, Child Welfare Services	14 DHR 03938	11/04/14
TT & T Services, Inc. v. DHHS, Division of Medical Assistance and Eastpointe Human Services	14 DHR 04461	09/19/14
TT & T Services Inc., Euniceteen Diggs v. Eastpoint MCO	14 DHR 04560	11/04/14
Lori Brady, Administrator, Randolph Fellowship Home Inc., Alpha House v. DHHS, Division of Health Service Regulation	14 DHR 04606	10/08/14
Wilbert Nichols III, Community Alternative Housing Inc. v. Eastpointe MCO, Tichina Hamer	14 DHR 04640	09/16/14
Derrick J. Brown v. DHHS	14 DHR 05065	10/08/14
Jacqueline McAdoo v. DHHS	14 DHR 05287	09/12/14
Eva Lewis Washington, Successful Transitions LLC	14 DHR 05447	10/06/14
Mary Jones v. DHHS, Division of Health Service Regulation	14 DHR 05763	12/19/14
Nicole Emanuel v. DHHS, Division of Health Service Regulation	14 DHR 05881	11/14/14
ASA Food Mart #1 d/b/a Mohammad Shafi Khen	14 DHR 05927	11/03/14
Lashawn Tillery v. DHHS, Division of Health Service Regulation	14 DHR 06059	11/25/14
Duke Raleigh Hospital, Designated Rep: Mary Planisek v. DHHS, Division of Medical Assistance, Program Integrity Program	14 DHR 06107	10/29/14
Forever Young Group Care LLC v. DHHS, Division of Health Service Regulation	14 DHR 06130	11/04/14
Randolph Dugar v. Brunswick County DSS	14 DHR 06133	11/12/14
De'Ericka Crowder v. DHHS, Division of Health Service Regulation	14 DHR 06489	11/18/14
Muna Elmi v. DHHS	14 DHR 06563	10/13/14
Yolanda M Lewis v. Health Personnel Care Registry Investigations Branch	14 DHR 06774	12/30/14
Olivia Napier Wilson v. DHHS, Division of Health Service Regulation	14 DHR 07025	11/24/14
Kathleen T. Clark, Bradley W. Burris v. Cumberland County Department of Social Services & Individual Social Workers Deborah Harrington, Sherita Hamilton, Veronica Hudson, Glenda Simmons	14 DHR 07354	12/19/14
Beulah Forbes v. DHHS	14 DHR 07968	12/17/14

**DEPARTMENT OF JUSTICE**

Derrick Wayne Knox v. NC Criminal Justice Education and Training Standards Commission	11 DOJ 04831	11/19/14	29:16 NCR
Riki Paul Matsufugi Johnson v. NC Alarm Systems Licensing Board	12 DOJ 09070	09/18/14	
Derrick Wayne Knox v. NC Criminal Justice Education and Training Standards Commission	11 DOJ 09478	11/19/14	29:16 NCR
Brian Louis Scott v. NC Private Protective Services Board	12 DOJ 10093	09/23/14	
Stephen James Riley v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 09572	10/30/13	29:04 NCR 465
William Dale Aaronson v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 11693	01/07/14	29:03 NCR 373
Benjamin Lee Torain v. NC Private Protective Services Board	13 DOJ 14220	12/11/13	29:06 NCR 692
Jose Monserrate Acosta v. NC Private Protective Services	13 DOJ 15271	12/11/13	29:02 NCR 213
Kent Patrick Locklear v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 15368	01/03/14	29:01 NCR 74
Michael Keith Fox v. NC Criminal Justice Education and Training Standards Commission	13 DOJ 15453	05/27/14	29:05 NCR 572
Michael Tyler Nixon v. NC Alarm Systems Licensing Board	13 DOJ 16246	11/25/13	29:01 NCR 79
Vincent Dale Donaldson v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 16255	04/14/14	29:07 NCR 877
Jason Thomas Hunt v. NC Criminal Justice Education and Training Standards Commission	13 DOJ 16261	09/18/14	29:12 NCR 1546
Garrett Dwayne Gwin v. NC Criminal Justice Education and Training Standards Commission	13 DOJ 17240	06/10/14	
Donald Shane Dublin v. NC Criminal Justice Education and Training Standards Commission	13 DOJ 18990	09/12/14	29:11 NCR 1453
James Brian Gilmore v. NC Criminal Justice Education and Training Standards Commission	13 DOJ 19034	12/10/14	29:16 NCR
Howard Ron Simons v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 19148	06/20/14	
William Richard Herring v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 19149	09/18/14	
Keith Lavon Mallory, Jr. v. NC Sheriff's Education and Training Standards Commission	13 DOJ 19152	08/20/14	
Janet Staricha v. University of NC at Chapel Hill	13 DOJ 19693	06/06/14	
David Nollie Eure v. Criminal Justice Education and Training Standards Commission	14 DOJ 00561	11/07/14	29:15 NCR 1896
Scott Eric Smithers v. NC Private Protective Services Board	14 DOJ 00728	07/31/14	
Lisa Paulette Childress v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 00869	07/07/14	
Derek Andre Howell v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 00871	08/22/14	
Angela Renee Joyner v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 00873	06/23/14	
Dennis Kevin Creed v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 00878	05/23/14	29:08 NCR 992
Jeremy Samuel Jordan v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 01203	06/12/14	

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**CONTESTED CASE DECISIONS**

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Orlando Rosario v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 01519	09/15/14	
Robert James Roy v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 02039	10/13/14	
Kerry Graves v. NC Private Protective Services Board	14 DOJ 02248	09/22/14	29:11 NCR 1467
Timothy Wayne Spivey, Sr v. Criminal Justice Training Standards Commission	14 DOJ 02719	12/16/14	
Susan Potts Casper v. Criminal Justice Education and Training Standards Commission	14 DOJ 02720	12/09/14	
Antwain Renae Smith v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 02721	10/31/14	29:11 NCR 1474
Areleous Carlos Tilghman v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 02723	11/10/14	
Gene Arthur Pulley III v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 02724	12/04/14	
Joe Louis Mason v. Sheriffs' Education and Training Standards Commission	14 DOJ 03029	11/06/14	29:15 NCR 1901
Dierdre Aston Rhinehart v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 03523	09/16/14	
Kenneth Lamont McCoy v. NC Alarm Systems Licensing Board	14 DOJ 03904	07/17/14	
Brenda Louise Lassiter v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 04104	09/17/14	
Donald Edward Cottle II v. NC Alarm Systems Licensing Board	14 DOJ 04127	08/27/14	
Ossie James Adkins v. NC Alarm Systems Licensing Board	14 DOJ 04129	08/29/14	
David R. Beatson v. NC Private Protective Services Board	14 DOJ 04313	09/04/14	29:09 NCR 1183
Jermaine Chareem Norfleet v. Private Protective Services Board	14 DOJ 05702	10/24/14	
Michael Ryan Davis v. Alarm Systems Licensing Board	14 DOJ 05704	10/24/14	
James Cornelius Tatum, Jr. v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 05715	10/07/14	
Andrew George Anderson v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 05716	12/19/14	
Jeremy Clark v. NC Private Protection Services Board	14 DOJ 05882	11/07/14	
Malinda McCray McCullum v. Alarm Systems Licensing Board	14 DOJ 06134	11/21/14	29:15 NCR 1907
Allen Leslie Jackson v. Private Protective Services Board	14 DOJ 08154	12/30/14	
Gordon Fareed Shaw v. Private Protective Services Board	14 DOJ 08581	12/16/14	
Markus Schopfer Von Stolz v. Private Protective Services Board	14 DOJ 08698	12/17/14	

**DEPARTMENT OF LABOR**

Jacquelyn Thomas v. NCDOL 14 DOL 05878 09/26/14

**EMPLOYMENT SECURITY**

Heather Clawson v. University of Pembroke 14 DSC 07243 12/09/14

**DEPARTMENT OF STATE TREASURER**

Reza M. Salami v. NC A&T State University, Retirement Systems Division 13 DST 09273 06/26/14

Ozie L. Hall v. Department of State Treasurer, Retirement Systems Division, Teachers' and State Employees Retirement System 14 DST 02877 07/07/14

Lucy Hayes v. Department of State Treasurer, Retirement Systems Division 14 DST 03138 08/29/14

DG Gassaway v. NC Teachers and State Employees Retirement Systems 14 DST 06260 10/06/14

**STATE BOARD OF EDUCATION**

Isaac F. Pitts, Jr. v. Department of Public Instruction 13 EDC 11604 07/23/14 29:10 NCR 1237

Tara Jane Dumas v. Department of Public Instruction 13 EDC 18876 05/02/14 29:08 NCR 966

Catherine Helgesen v. Department of Public Instruction, Licensure Section 13 EDC 20059 07/22/14 29:10 NCR 1244

Crystal Arnae Kelly v. Department of Public Instruction 14 EDC 03803 09/05/14

Barbara Cheskin v. Department of Public Instruction 14 EDC 04962 10/06/14

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

Castle Bay Property Owners Association Inc. A NC Non-Profit Corp v. NCDENR Division of Energy, Mineral & Land Resources and White Horse Farm, Richard & Ann Donaldson v. DENR, Division of Water Quality 14 EHR 01136 11/14/14 29:15 NCR 1911

Certain Teed Corporation v. Department of Environment and Natural Resources, Division of Water Resources 13 EHR 13548 06/30/14

Castle Bay Property Owners Association Inc. A NC Non-Profit Corp v. NCDENR Division of Energy, Mineral & Land Resources and White Horse Farm, Richard & Ann Donaldson v. DENR, Division of Water Quality 14 EHR 01410 11/14/14 29:15 NCR 1911

Certain Teed Corporation v. Department of Environment and Natural Resources, Division of Water Resources 13 EHR 14024 6/30/14

NC Coastal Federation, Cape Fear River Watch, Penderwatch and Conservancy, Sierra Club v. Department of Environment and Natural Resources, Division of Air Quality and Carolinas Cement Company LLC 13 EHR 17906 07/01/14

**HUMAN RELATIONS COMMISSION**

Shannon S. Smith v. Housing Authority of the Town of Mt. Airy 14 HRC 03220 08/20/14

**DEPARTMENT OF INSURANCE**

Sandy T. Moore v. Blue Cross/Blue Shield NC, State Health Plan 14 INS 00275 08/07/14  
 Beryl Joan Waters v. NC State Health Plan 14 INS 01413 09/18/14

**BOARD OF LICENSED PROFESSIONAL COUNSELORS**

Beth Ford v. NC LPC Board 14 LPC 03805 08/25/14

**MISCELLANEOUS**

Timothy Odell Hicks v. Minimal Housing Standard Commission 14 CTY 05449 11/24/14  
 William L. Harris v. NC Administrative Office of the Courts 14 MIS 00113 08/25/14  
 Beth Ford v. Wake County Special Proceeding Court 14 MIS 01123 08/26/14  
 Dammon C. Wright v. North Carolina Central University 14 MIS 05200 09/16/14  
 Lorriane Blackwell Lewis v. Guilford County District Court, Guilford County Superior Court, Appellant Division Clerk of Court, Office of the Governor 14 MIS 09122 12/30/14

**OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)**

Ricky Lynn Mason v. NC Correctional Institution for Women 10 OSP 07753 10/09/14

Peter Duane Deaver v. NC Department State Bureau of Investigation and NC Department of Justice 11 OSP 05950 08/26/14 29:09 NCR 1091

Azlea Hubbard v. Department of Commerce, Division of Workforce Solutions 12 OSP 08613 05/19/14

Mark Smagner v. Department of Revenue 13 OSP 05246 12/05/13 29:04 NCR 471  
 Antonio Asion v. Department of Public Safety, et. Al. 13 OSP 10036 05/09/14 29:05 NCR 593  
 Thomas Carl Bland v. NC Agricultural & Technical State University 13 OSP 11087 10/30/13 29:06 NCR 697  
 Antonio Asion v. Department of Public Safety, et. Al. 13 OSP 11386 05/09/14 29:05 NCR 593  
 Ricky Ward v. Department of Public Safety 13 OSP 11968 05/14/14 29:05 NCR 615  
 Chauncey John Ledford v. Department of Public Safety 13 OSP 12223 12/31/13 29:03 NCR 381  
 Mary Chapman Knight v. Department of Commerce, Division of Employment Security 13 OSP 12677 07/30/14 29:12 NCR 1562  
 Mary S. Hardin v. Department of Public Safety 13 OSP 13014 07/10/14 29:10 NCR 1255  
 Harold Leonard McKeithan v. Fayetteville State University 13 OSP 13380 12/03/13 29:05 NCR 637  
 Vicki Belinda Johnson v. DHHS 13 OSP 13603 08/08/14  
 Lenton Credelle Brown v. Department of Public Safety, W. Ellis Boyle General Counsel 13 OSP 13729 05/16/14  
 Cleveland Dunston v. DHHS 13 OSP 14365 06/23/14 29:06 NCR 705  
 Kenneth Shields v. Department of Public Safety 13 OSP 15762 02/26/14 29:01 NCR 84  
 Tammy Cagle v. Swain County Consolidated Human Services Board 13 OSP 15763 12/19/13 29:04 NCR 480  
 Rena Pearl Bridges v. Department of Commerce 13 OSP 15896 02/19/14 29:01 NCR 95  
 Barbara Hinton v. Surry County Health and Nutrition Center 13 OSP 16230 02/12/14 29:03 NCR 388  
 Elaine Rouse v. Winston-Salem State University 13 OSP 17182 08/26/14  
 Elaine Rouse v. Winston-Salem State University 13 OSP 17182 08/29/14  
 Meg DeMay v. Richmond County Department of Social Services 13 OSP 18084 07/02/14 29:06 NCR 719  
 Chris Edward Fidler v. Department of Revenue 13 OSP 18255 08/25/14 29:11 NCR 1459  
 Patrick E. Holmes v. Fayetteville State University 13 OSP 188480 07/15/14 29:12 NCR 1576  
 Renecia Morgan v. Washington County Department of Social Services 13 OSP 18590 04/21/14 29:08 NCR 983  
 Gregg Sipler v. University of NC at Greensboro 13 OSP 18692 04/21/14 29:07 NCR 885  
 Josephine Keke v. DHHS 13 OSP 19639 04/17/14 29:08 NCR 973  
 Carolyn Collins v. Department of Public Safety 13 OSP 19827 07/11/14 29:10 NCR 1273

Joseph Vincoli v. Department of Public Safety 14 OSP 00389 04/10/14 29:02 NCR 218  
 Rose Marie Johnson v. Durham County Department of Social Services 14 OSP 01317 07/21/14  
 Pamela M. Walsh v. Deborah McSwain, (NC DPS), Department of Public Safety 14 OSP 01345 09/25/14  
 Ralph Douglas Moody v. NC State Treasurer's Office, Deputy Treasurer Brenda Williams 14 OSP 01733 09/24/14  
 Craig Williams v. Billy Deaver NCCU Superintendent, NC Central University of Building Trades 14 OSP 02111 06/06/14

Shaneda L. Gilliam v. Department of Public Safety, Division of Adult Correction 14 OSP 02493 10/21/14  
 Crystal McLean v. Alicia Lopez, NC SCO/DOA, NC State Construction Office/Department of Administration 14 OSP 02944 07/01/14  
 Sion A. Moss III v. NC School for the Deaf 14 OSP 02993 09/17/14  
 Teresa Wheeler v. County of Currituck-Currituck County Fire/EMS Department 14 OSP 03688 08/12/14

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**CONTESTED CASE DECISIONS**

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Wesley Monroe Enzor, Jr v. Department of Public Safety	14 OSP 04842	12/29/14	
Martin J. Rios v. DHHS, Cherry Hospital	14 OSP 05062	11/03/14	
Vickey A. Ingram v. CLT Transit Management of CLT Inc.	14 OSP 05202	09/19/14	
Sallie Newton v. NC State University	14 OSP 06467	11/12/14	
Denise Malloy Hubbard v. North Carolina State University	14 OSP 06909	11/06/14	
Maretta L. Brewington v. Sampson County Department of Social Services	14 OSP 07608	12/19/14	
Gina-Marie Kross, RN v. DHHS, Division of Health Service Regulation	14 OSP 08199	12/19/14	

**DEPARTMENT OF REVENUE**

C-Co Mini Mart Inc. v. Department of Revenue	13 REV 10490	09/10/14	
Feeling Great Inc. v. Department of Revenue	13 REV 18080	07/23/14	29:07 NCR 891
Sleep Medical Center Inc. v. Department of Revenue	13 REV 18081	07/23/14	29:07 NCR 891
Curtis Leyshon v. Department of Revenue	13 REV 20016	08/29/14	
Lisa Webb Leyshon v. Department of Revenue	13 REV 20017	08/29/14	
Cyril Broderick, Jr. v. Department of Revenue	14 REV 01773	06/24/14	
Kacey Suo v. Department of Revenue	14 REV 02878	10/14/14	
P&P of Holden Beach Inc. or Rockfish Ventures 1 Inc.	14 REV 03901	08/05/14	
C-Co Mini Mart Inc. v. Department of Revenue	14 REV 10490	08/01/14	

**OFFICE OF THE SECRETARY OF STATE**

Cheryl A. Tatum v. Department of Secretary of State	13 SOS 18521	06/09/14	29:09 NCR 1176
Tonya Denise Pettaway v. Department of the Secretary of State	14 SOS 02369	08/05/14	
Anthony Garrard v. Secretary of State's Office	14 SOS 03403	08/22/14	

**UNC HOSPITALS**

Sarah W. Robbins v. UNC Hospitals	13 UNC 13904	10/03/14	
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**WILDLIFE RESOURCES COMMISSION**

People for the Ethical Treatment of Animals, Inc., Jacob Matthew Norris, and Julie Coveleski v. North Carolina Wildlife Resources Commission and Gordon Myers, as Executive Director, North Carolina Wildlife Resources Commission	14 WRC 01045	08/01/14	
People for the Ethical Treatment of Animals, Inc., Jacob Matthew Norris, and Julie Coveleski v. North Carolina Wildlife Resources Commission and Gordon Myers, as Executive Director, North Carolina Wildlife Resources Commission	14 WRC 01348	08/01/14	
People for the Ethical Treatment of Animals, Inc., v. Wildlife Resources Commission and Gordon Myers, As Executive Director	14 WRC 10041	12/29/14	