

NORTH CAROLINA REGISTER

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215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

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amy.bason@ncacc.org

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(919) 715-4000

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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 th 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.

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

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

Application by: Jim King
Eljen Corporation, Inc.
123 McKee St
East Hartford, CT 06108

For: Innovative Approval of Eljen Geotextile Sand Filter (GSF)

DHHS Contact: Nancy Deal
1-919-707-5875
Fax: 919-845-3973
Nancy.Deal@dhhs.nc.gov

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

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

**STATE HUMAN RESOURCES COMMISSION
Correction to Fiscal Impact of Rules**

On September 1, 2015, the State Human Resources Commission published notice in the NC Register, pages 542-549, to adopt the rules cited as 25 NCAC 01O .0107 - .0115, .0207 - .0211; and repeal the rules cited as 25 NCAC 01O .0101 - .0106.

The notice should have included that the fiscal note for the rules included a substantial economic impact of at least \$1,000,000 in a 12-month period. See correction to the fiscal impact below:

Fiscal impact (check all that apply).

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

For comments, please contact Maggie A. Craven, 1331 Mail Service Center, Raleigh, NC 27699, phone 919-807-4805, email Maggie.Craven@nc.gov.

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

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Industrial Commission intends to adopt the rule cited as 04 NCAC 10A .0108 and amend the rules cited as 04 NCAC 10A .0101, .0404, .0405, .0502, .0609, .0609A, .0610, .0613, and .0617.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ic.nc.gov/proposedNCICEfilingRules.html>

Proposed Effective Date: January 1, 2016 for Rule 04 NCAC 10A .0101; February 1, 2016 for all other proposed rules

Public Hearing:

Date: October 20, 2015

Time: 2:00 p.m.

Location: Dobbs Building, Room 2173, 430 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *The Industrial Commission has proposed to adopt a comprehensive electronic filing rule, 04 NCAC 10A .0108, for two primary reasons. First, the rule will assist the Industrial Commission's regulated public by centralizing all information regarding how to file documents in one rule. Second, the rule will mandate electronic filing, with exceptions for filers without electronic filing capabilities, and prohibit duplicate filings, both of which will significantly improve the accuracy and efficiency of document intake and processing by the Industrial Commission. Most of the amendments proposed for Rules 04 NCAC 10A .0404, 04 NCAC 10A .0405, 04 NCAC 10A .0502, 04 NCAC 10A .0609, 04 NCAC 10A .0609A, 04 NCAC 10A .0610, 04 NCAC 10A .0613, and 04 NCAC 10A .0617 modify these rules to make them consistent with the proposed new 04 NCAC 10A .0108.*

There are a few other proposed amendments that do not specifically relate to the proposed e-filing rule, but also are intended to improve efficiency. There are two proposed changes to Rule 04 NCAC 10A .0404 related to service of the Form 24 Application and the Form 24 Application decision that are intended to make the process more efficient and to save the State and the regulated public money. There are also minor rule citation corrections proposed for Rules 04 NCAC 10A .0404, 04 NCAC 10A .0405, and 04 NCAC 10A .0502. There is a proposed change to Rule 04 NCAC 10A .0609 to regulate the format of motions and responses so that they all contain certain necessary information and are not filed within the text of e-mails or at the end of briefs. There are also proposed changes to Rules 04 NCAC 10A .0609, 04 NCAC 10A .0609A, and 04 NCAC 10A .0617 requiring that proposed Orders be submitted in Microsoft Word

format to allow Industrial Commission staff to edit the Orders prior to filing them.

The change proposed to Rule 04 NCAC 10A .0101 will designate the Raleigh office of the Industrial Commission as the main office in the context of the recent opening of regional Industrial Commission offices.

Comments may be submitted to: Meredith Henderson, Executive Secretary and Rulemaking Coordinator, 4333 Mail Service Center, Raleigh, NC 27699-4333, phone (919) 807-2575, email meredith.henderson@ic.nc.gov

Comment period ends: November 16, 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 10 - INDUSTRIAL COMMISSION

SUBCHAPTER 10A - WORKERS' COMPENSATION RULES

SECTION .0100 – ADMINISTRATION

04 NCAC 10A .0101 LOCATION OF MAIN OFFICE AND HOURS OF BUSINESS

The ~~offices~~ main office of the North Carolina Industrial Commission ~~are~~ is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically may be filed at the main office between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

Authority G.S. 97-80(a).

04 NCAC 10A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

(a) All documents filed with the Commission in workers' compensation cases shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Any document filed with the Commission which requires contemporaneous payment of a processing fee pursuant to Rule 04 NCAC 10E .0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements of this Rule shall not apply to claimants and employers without legal representation. Claimants and employers without legal representation may file documents with the Commission via EDFP, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) All documents listed in Table 1 below shall be transmitted to the Commission via the Commission's Electronic Document Filing Portal ("EDFP"). Information regarding how to register for and use EDFP is available at <http://www.ic.nc.gov/training.html>. In the event EDFP is inoperable, all documents listed in Table 1 below shall be sent to the Commission via electronic mail to edfp@ic.nc.gov. Documents listed in Table 1 below which are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

Table 1: Documents to be filed via EDFP

<u>Appeal of Administrative Order to Full Commission</u>
<u>Appeal of Medical Motion Order to Full Commission</u>
<u>Appeal of Opinion and Award of Deputy Commissioner</u>
<u>Appeal of Order of Executive Secretary (Non-Medical)</u>
<u>Attorney Representation Letter</u>
<u>Brief to the Full Commission</u>
<u>Brief or Contentions</u>
<u>Compromise Settlement Agreement</u>
<u>Confirmation of Scheduling of Mediation</u>
<u>Court of Appeals – Notice of Appeal</u>
<u>Deposition</u>
<u>Form 18M</u>
<u>Form 21</u>
<u>Form 23 Application</u>
<u>Form 23 Response</u>
<u>Form 23 Additional Documentation</u>
<u>Form 24 Application</u>
<u>Form 24 Response</u>
<u>Form 24 Additional Documentation</u>
<u>Form 26</u>

<u>Form 26A</u>
<u>Form 33</u>
<u>Form 33R</u>
<u>Form 44</u>
<u>MSC2</u>
<u>MSC4</u>
<u>MSC5</u>
<u>Pre-trial Agreement</u>
<u>Notice of Scheduled Mediation</u>

Transcripts of depositions shall be filed with the Commission pursuant to this Paragraph by the court reporting service. The transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The parties shall provide the court reporting service with the information necessary to effectuate electronic filing of the deposition transcripts and attached exhibits. If an exhibit to a deposition is in a form that makes submission of an electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements with the Commission to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition transcripts shall not be accepted for filing.

(c) The workers' compensation forms listed in Table 2 below and all other documents to be filed with the Commission's Claims Administration Section shall be sent to the Commission via electronic mail to forms@ic.nc.gov.

Table 2: Forms to be filed via electronic mail to forms@ic.nc.gov

<u>Form 18</u>
<u>Form 18B</u>
<u>Form 26D</u>
<u>Form 28</u>
<u>Form 28B</u>
<u>Form 28C</u>
<u>Form 28T</u>
<u>Form 29</u>
<u>Form 30</u>
<u>Form 30A</u>
<u>Form 30D</u>
<u>Form 31</u>
<u>Form 60</u>
<u>Form 61</u>
<u>Form 62</u>
<u>Form 63</u>

(d) Motions, motion responses, and all other documents not referenced in Paragraphs (b) and (c) of this Rule shall be filed with the Commission via electronic mail in accordance with Subparagraphs (1) through (11) of this Paragraph:

- (1) Medical motions and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter shall be filed via electronic mail to medicalmotions@ic.nc.gov.
- (2) Motions or notices filed with the Office of the Executive Secretary pursuant to Rule .0609(b) of this Subchapter and any other documents to be filed with the Office of the Executive

Secretary which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to execsec@ic.nc.gov.

- (3) Motions before a Deputy Commissioner filed pursuant to Rule .0609(a) of this Subchapter and any other documents to be filed with a Deputy Commissioner which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to deputy@ic.nc.gov.
- (4) Motions before the Full Commission filed pursuant to Rule .0609(c) of this Subchapter and any other documents to be filed with the Full Commission which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to fullcommission@ic.nc.gov.
- (5) Motions and any other documents to be filed with the Commission's Claims Administration Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to forms@ic.nc.gov.
- (6) Documents to be filed with the Commission's Docket Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to dockets@ic.nc.gov.
- (7) Documents to be filed with the Commission's Mediation Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to mediation@ic.nc.gov.
- (8) Documents to be filed with the Commission's Compliance & Fraud Investigative Division which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to fraudcomplaints@ic.nc.gov.
- (9) Documents to be filed with the Commission's Medical Fees Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to medicalfees@ic.nc.gov.
- (10) Documents to be filed with the Commission's Safety Education & Training Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to safety@ic.nc.gov.
- (11) Forms 25N to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to 25n@ic.nc.gov. Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to rehab.referrals@ic.nc.gov.

(e) A one-year waiver shall be granted to a self-insured employer, carrier, third-party administrator, or law firm that notifies the Commission of its inability to comply with the electronic filing requirements in Paragraph (a) of this Rule due to a lack of the necessary internet technology resources. The notification shall indicate why the entity is unable to comply with the rule and outline its plan for coming into compliance within the one-year period. The notification shall be filed with the Office of the Clerk of the Commission via facsimile or U.S Mail.

(f) A self-insured employer, carrier, third-party administrator, or law firm may apply to the Commission for an emergency

temporary waiver of the electronic filing requirement in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems and/or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

Authority G.S. 97-80.

SECTION .0400 - DISABILITY, COMPENSATION, FEES

04 NCAC 10A .0404 TERMINATION AND SUSPENSION OF COMPENSATION

(a) No application to terminate or suspend compensation shall be approved by the Commission without a formal hearing if the effect of the approval is to set aside the provisions of an award of the Commission.

(b) When an employer, carrier, or administrator seeks to terminate or suspend temporary total disability compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in G.S. 97-18(d) (payment without prejudice), G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only for claims arising on or after June 24, 2011)), the employer, carrier, or administrator shall notify the employee's attorney of record or the employee, if not represented, on Form 24, *Application to Terminate or Suspend Payment of Compensation*. This form requests:

- (1) the date of injury or accident and date the disability began;
- (2) the nature and extent of injury;
- (3) the number of weeks compensation paid and the date range including from and to;
- (4) the total amount of indemnity compensation paid to date;
- (5) whether one of the following events has occurred:
 - (A) an agreement was approved by the Commission and the date;
 - (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
 - (C) an employer paid compensation to the employee without contesting the claim within the statutory period provided under G.S. 97-18(d); or
 - (D) any other event related to the termination or suspension of compensation;
- (6) whether the application is made to terminate or suspend compensation and the grounds; and
- (7) whether the employee is in managed care.

(c) The employer, carrier, or administrator shall specify the grounds and the alleged facts supporting the application, and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application to Terminate or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, carrier, or administrator serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation*

on the employee's attorney of record by e-mail or facsimile, or the employee, if not represented, by ~~certified mail, return receipt requested, first class mail~~. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached documents shall be sent to the Commission via upload to the Electronic Document ~~Fee Filing Portal, Portal~~ in accordance with Rule .0108 of this Subchapter, and shall be contemporaneously served on employee's counsel by e-mail or facsimile, or on the employee, if unrepresented, by ~~certified mail, return receipt requested, first class mail~~.

(d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages of documents attached which are to be considered by the Commission. If the employee or the employee's attorney of record objects by the date inserted on the employer's Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall set the case for an informal hearing, unless waived by the parties in favor of a formal hearing. The objection shall be filed in accordance with Rule .0108 and shall be accompanied by all currently available supporting documentation. A copy of any objection shall be contemporaneously served on the employer, carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier" or "administrator" also includes any successor in interest in the pending claim.

(e) If an employee does not object within the allowed time, the Commission shall review the Form 24 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision and Order shall be rendered without an informal hearing as to whether there is a sufficient basis under the Workers' Compensation Act to terminate or suspend compensation, except as provided in Paragraph (g) of this Rule. Either party may seek review of the Administrative Decision and Order as provided by Rule ~~.0703~~ .0702 of this Subchapter.

(f) If the employee timely objects to the Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 24 *Application to Terminate or Suspend Payment of Compensation*, unless the time is extended for good cause shown. The informal hearing may be by telephone conference between the Commission and the parties or their attorneys of record. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, carrier, or administrator may waive the right to an informal hearing, and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*.

(g) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule ~~.0703~~ .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be preemptorily set and shall not require a Form 33 *Request that*

Claim be Assigned for Hearing. The employer has the burden of producing evidence on the issue of the employer's application for termination or suspension of compensation. If the Deputy Commissioner reverses an order previously granting a Form 24 *Application to Terminate or Suspend Payment of Compensation* motion, the employer, carrier, or administrator shall promptly resume compensation or otherwise comply with the Deputy Commissioners decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

(h) If the Commission is unable to reach a decision after an informal hearing, the Industrial Commission shall issue an order to that effect that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employer, carrier, or administrator shall within 30 days of the date of the Administrative Decision and Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The effect of placing the case on the docket shall be the same as if the Form 24 *Application to Terminate or Suspend Payment of Compensation* were denied, and compensation shall continue until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

(i) The Commission shall ~~mail any Administrative Decision and Order to the non-prevailing party by certified mail, send a copy of the Administrative Decision and Order to a non-prevailing party who is without legal representation by certified mail.~~

(j) No order issued as a result of an informal Form 24 *Application to Terminate or Suspend Payment of Compensation* hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of the Form 24 *Application to Terminate or Suspend Payment of Compensation*. Compensation may be terminated retroactively without a formal hearing where there is agreement by the parties, where allowed by statute, or where the employee is incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding the filing of a Form 24 *Application to Terminate or Suspend Payment of Compensation* may be ordered as a result of a formal hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to G.S. 97-42.

(k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

Authority G.S. 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a).

04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION

(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 *Application to Reinstate Payment of Disability Compensation*, or

by the filing of a Form 33 *Request that Claim be Assigned for Hearing*.

(b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstate Payment of Disability Compensation*, the original Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached documents shall be ~~sent to filed with the Commission at the same time and by the same method by which in accordance with Rule .0108 of this Subchapter and a copy of the Form 23 and attached documents are contemporaneously sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record.~~ The employee shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23 *Application to Reinstate Payment of Disability Compensation* by inserting a date 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any. The Form 23 *Application to Reinstate Payment of Disability Compensation* shall specify the number of pages of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the Form 23 *Application to Reinstate Payment of Disability Compensation* and ~~send file it to with the Commission in accordance with Rule .0108 of this Subchapter and send a copy contemporaneously to the employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent to the Commission.~~ record.

(c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review the Form 23 *Application to Reinstate Payment of Disability Compensation* and attached documentation and, without an informal hearing, render an Administrative Decision and Order as to whether there is sufficient basis under the Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be rendered within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a response to the Form 23 *Application to Reinstate Payment of Disability Compensation*. Either party may seek review of the Administrative Decision and Order as provided by Rule ~~.0703~~ .0702 of this Subchapter.

(d) If the employer, carrier, or administrator timely objects to the Form 23 *Application to Reinstate Payment of Disability Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 23 *Application to Reinstate Payment of Disability Compensation* unless the time is extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the foregoing, the employee may waive the right to an informal hearing and proceed to a formal

hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*. Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule ~~.0703~~ .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employee has the burden of producing evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses an order previously granting a Form 23 *Application to Reinstate Payment of Disability Compensation* motion, the employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

(e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order to that effect, that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary, within 30 days of the date of the Administrative Decision or Order. The effect of placing the case on the docket shall be the same as if the Form 23 *Application to Reinstate Payment of Disability Compensation* was denied, and compensation shall not be reinstated until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

Authority G.S. 97-18(k); 97-80(a).

SECTION .0500 – AGREEMENTS

04 NCAC 10A .0502 COMPROMISE SETTLEMENT AGREEMENTS

(a) The Commission shall not approve a compromise settlement agreement unless it contains the following information:

- (1) The employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury that is the subject of this agreement.
- (2) The employer, carrier or administrator will pay all costs incurred.
- (3) No rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released by this agreement.
- (4) The employee has, or has not, returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease.
- (5) Where the employee has not returned to a job or position at the same or a greater wage as was being earned prior to the injury or occupational disease, the employee has, or has not, returned to some other job or position, and, if so, the description of the particular job or position, the name of the employer, and the average weekly

wage earned. This Subparagraph does not apply where the employee or counsel certifies that partial wage loss due to an injury or occupational disease is not being claimed.

- (6) Where the employee has not returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease, a summary of the employee's age, educational level, past vocational training, past work experience, and any impairment, emotional, mental or physical, that predates the current injury or occupational disease. This Subparagraph does not apply upon a showing of:
- (A) unreasonable burden upon the parties;
 - (B) the employee is represented by counsel; or
 - (C) even if the employee is not represented by counsel, where the employee or counsel certifies that total wage loss due to an injury or occupational disease is not being claimed.

(b) No compromise settlement agreement shall be considered by the Commission unless the following requirements are met:

- (1) The relevant medical, vocational, and rehabilitation reports known to exist, including those pertinent to the employee's future earning capacity, are submitted with the agreement to the Commission by the employer, carrier, administrator, or the attorney for the employer.
- (2) The parties and all attorneys of record have signed the agreement.
- (3) In a claim where liability is admitted or otherwise has been established, the employer, carrier, or administrator has undertaken to pay all medical expenses for the compensable injury to the date of the settlement agreement.
- (4) The settlement agreement contains a list of all known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer, carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement.
- (5) The settlement agreement contains a list of the unpaid medical expenses, if known, that will be paid by the employer, carrier, or administrator, if there are unpaid medical expenses that the employer or carrier has agreed to pay. The settlement agreement also contains a list of unpaid medical expenses, if known, that will be paid by the employee, if there are unpaid medical expenses that the employee has agreed to pay.
- (6) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense will notify in writing the

unpaid health care provider of the party's responsibility to pay the unpaid medical expense. Other unpaid health care providers will be notified in writing of the completion of the settlement by the party specified in the settlement agreement:

- (A) when the employee's attorney has notified the unpaid health care provider in writing under G.S. 97-90(e) not to pursue a private claim against the employee for the costs of medical treatment, or
 - (B) when the unpaid health care provider has notified in writing the employee's attorney of its claim for payment for the costs of medical treatment and has requested notice of a settlement.
- (7) Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under G.S. 97-26.
- (8) The settlement agreement contains a finding that the positions of the parties to the agreement are reasonable as to the payment of medical expenses.

(c) When a settlement has been reached, the written agreement shall be submitted to the Commission upon ~~execution~~ execution in accordance with Rule .0108 of this Subchapter. All compromise settlement agreements shall be directed to the Office of the Executive Secretary for review or distribution for review in accordance with Paragraphs ~~(a) and (b)~~ (a) through (c) of Rule .0609 of this Subchapter.

(d) Once a compromise settlement agreement has been approved by the Commission, the employer, carrier, or administrator shall furnish an executed copy of the agreement to the employee's attorney of record or the employee, if unrepresented.

(e) An attorney seeking fees in connection with a Compromise Settlement Agreement shall submit to the Commission a copy of the fee agreement with the client.

Authority G.S. 97-17; 97-80(a); 97-82.

SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES

04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES

- (a) Motions and responses before a Deputy Commissioner:
- (1) in cases that are currently calendared for hearing before a Deputy Commissioner shall be ~~sent by the filing party directly to the assigned Deputy Commissioner~~ filed in accordance with Rule .0108 of this Subchapter.
 - (2) to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be ~~directed by the filing party~~ addressed to the Deputy Commissioner who authored the Opinion and ~~Award~~ Award

and filed in accordance with Rule .0108 of this Subchapter.

(b) Motions and responses shall be ~~sent by the filing party directly to be filed with~~ the Office of the Executive ~~Secretary; Secretary in~~ accordance with Rule .0108 of this Subchapter:

- (1) when a case is not calendared before a Deputy Commissioner;
- (2) once a case has been continued or removed from a Deputy Commissioner calendar; or
- (3) after the filing of an Opinion and Award when the time for taking appeal has run.

(c) Motions and responses before the Full Commission:

- (1) in cases calendared for hearing before the Full Commission shall be ~~sent by the filing party directly addressed~~ to the Chair of the Full Commission ~~panel. panel and filed in~~ accordance with Rule .0108 of this Subchapter.
- (2) filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be ~~directed by the filing party addressed~~ to the Chair of the ~~Commission. Commission and filed in~~ accordance with Rule .0108 of this Subchapter.
- (3) in cases continued from the Full Commission hearing docket, shall be ~~directed by the filing party addressed~~ to the Chair of the panel of Commissioners who ordered the ~~continuance. continuance and filed in~~ accordance with Rule .0108 of this Subchapter.
- (4) filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals shall be ~~sent by the filing party directly addressed~~ to the Commissioner who authored the Opinion and ~~Award. Award and filed in~~ accordance with Rule .0108 of this Subchapter.

(d) Motions and responses thereto shall include a caption containing the Industrial Commission file number(s), party names, and a title identifying the nature of the motion or response. Motions and responses set forth in the body of electronic mail correspondence or contained in a brief shall not be accepted for filing by the Commission. This Paragraph does not apply to parties without legal representation.

~~(d)~~(e) A motion shall state with particularity the grounds on which it is based, the relief sought, and the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented.

~~(e)~~(f) Motions to continue or remove a case from the hearing calendar on which the case is set shall be made as much in advance as possible of the scheduled hearing and may be made in written or oral form. In all cases, the moving party shall provide the basis for the motion and state that the other parties have been advised of the motion and relate the position, if known, of the other parties regarding the motion. Oral motions shall be followed with a written motion from the moving party.

~~(f)~~(g) The responding party to a motion shall have 10 days after a motion is served during which to file and serve copies of response in opposition to the motion. The Commission may

shorten or extend the time for responding to any motion in the interests of justice or to promote judicial economy.

~~(g)~~(h) A party who has not received actual notice of a motion or who has not filed a response at the time action is taken and who is adversely affected by the action may request that it be reconsidered, vacated, or modified. Motions shall be determined without oral argument, unless the Commission determines that oral argument is necessary for a complete understanding of the issues.

~~(h)~~(i) Where correspondence relative to a case before the Commission is sent to the Commission, copies of such correspondence shall be contemporaneously sent by the same method of transmission to the opposing party or, if represented, to opposing counsel. Written communications, whether addressed directly to the Commission or copied to the Commission, may not be used as an opportunity to introduce new evidence or to argue the merits of the case, with the exception of the following:

- (1) written communications, such as a proposed order or legal memorandum, prepared pursuant to the Commission's instructions;
- (2) written communications relative to emergencies, changed circumstances, or scheduling matters that may affect the procedural status of a case such as a request for a continuance due to the health of a litigant or an attorney;
- (3) written communications sent to the tribunal with the consent of the opposing lawyer or opposing party, if unrepresented; and
- (4) any other communication permitted by law or the Rules of the Commission.

~~(i)~~(j) All motions and responses thereto shall include a proposed Order in Microsoft Word format to be considered by the Commission.

Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91.

04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS

(a) Medical motions brought pursuant to G.S. 97-25, and responses thereto, shall be brought before either the Office of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted electronically to medicalmotions@ic.nc.gov. Motions and responses shall be submitted contemporaneously to the Commission and the opposing party or opposing party's counsel, if represented.

(b) Following receipt of a notice of hearing before a Deputy Commissioner on a medical motion or appeal, the parties shall submit all subsequent filings and communications electronically directly to the Deputy Commissioner assigned.

(c) In addition to any notice of representation contained in a medical motion or response, an attorney who is retained by a party to prosecute or defend a medical motion or appeal before the Commission shall file a notice of representation ~~with the Docket Director at~~ doekets@ic.nc.gov in accordance with Rule .0108 of the Subchapter and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.

(d) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall contain the following:

- (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 and a statement directly underneath the case caption clearly indicating the request is for either an administrative ruling by the Executive Secretary or an expedited full evidentiary hearing before a Deputy Commissioner;
- (2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number. If the employee is represented, the name, email address, telephone number, and fax number of employee's counsel;
- (3) the employer's name and employer code;
- (4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, to the extent available, email address;
- (5) the adjuster's name, email address, telephone number, and fax number if counsel for the employer and carrier has not been retained;
- (6) if an attorney has been retained for the employer or carrier, the attorney's name, email address, telephone number, and fax number;
- (7) a statement of the treatment or relief requested;
- (8) a statement of the medical diagnosis of the employee and the name of any health care provider having made a diagnosis or treatment recommendation that is the basis for the motion;
- (9) a statement as to whether the claim has been admitted on a Form 60, *Employer's Admission of Employee's Right to Compensation*, Form 63, *Notice to Employee of Payment of Compensation without Prejudice (G.S. 97-18(d))* or *Payment of Medical Benefits Only without Prejudice (G.S. 97-2(19) & 97-25)*, Form 21, *Agreement for Compensation for Disability*, or is subject to a prior Commission Opinion and Award or Order finding compensability, with supporting documentation attached;
- (10) a statement of the time-sensitive nature of the request, if any;
- (11) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiners, and second opinion examiners;
- (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the employee has made a prior written request to the defendants for the examination, as well as the date of the request and the date of the denial, if any;
- (13) a representation that informal means of resolving the issue have been attempted in good

faith, and the opposing party's position, if known; and

- (14) a proposed ~~Order~~ Order in Microsoft Word format.

(e) Motions submitted pursuant to G.S. 97-25 and requesting emergency medical relief shall contain the following:

- (1) a boldface or otherwise emphasized, designation as "Emergency Medical Motion";
- (2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number. If the employee is represented, the name, email address, telephone number, and fax number of the employee's counsel;
- (3) the employer's name and employer code, if known;
- (4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, if available, email address;
- (5) the adjuster's name, email address, telephone number, and fax number if counsel for the employer/carrier has not been retained;
- (6) the counsel for employer/carrier's name, email address, telephone number, and fax number;
- (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention;
- (8) a statement of the need for a shortened time period for review, including relevant dates and the potential for adverse consequences if the recommended relief is not provided emergently;
- (9) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiner, and second opinion examiners;
- (10) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known;
- (11) documents known and in the possession of the movant relevant to the request, including relevant medical records; and
- (12) a proposed ~~Order~~ Order in Microsoft Word format.

(f) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of any time allowed for response and whether informal telephonic oral argument is necessary.

(g) A party may appeal an Order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by ~~submitting~~ filing notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall specifically identify the Order from

which the appeal is taken and shall indicate that the appeal is from an administrative Order by the Executive Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of appeal, the appeal shall be assigned to a Deputy Commissioner and an Order under the name of the Deputy Commissioner to which the appeal is assigned shall be issued within five days of receipt of the notice of appeal.

(h) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken in accordance with Rule .0612 of this Subchapter and on the Deputy Commissioner's order pursuant to G.S. 97-25. In full evidentiary hearings conducted by a Deputy Commissioner pursuant to G.S. 97-25(f)(1) and (f)(2), depositions shall be completed and all transcripts, briefs, and proposed Opinion and Awards ~~submitted to filed with~~ the Deputy Commissioner in accordance with Rule .0108 of this Subchapter within 60 days of the filing of the motion or appeal. The Deputy Commissioner may reduce or enlarge the timeframe contained in this Paragraph for good cause shown or upon agreement of the parties.

(i) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by giving filing notice of appeal to the Full Commission within 15 calendar days of receipt of the ~~decision~~ decision in accordance with Rule .0108 of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's decision filed pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifically identifies the decision from which appeal is taken and indicates that the appeal is taken from a decision by a Deputy Commissioner pursuant to G.S. 97-25(f)(2). After receipt of notice of appeal, the appeal shall be acknowledged by the ~~Docket Section~~ Commission within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The Order shall set the schedule for filing briefs. A Full Commission hearing on an appeal of a medical motion filed pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless unusual circumstances arise and the Commission so orders. All correspondence, briefs, and motions related to the appeal shall be addressed to the Chair of the Panel with a copy to his or her law clerk.

(j) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by ~~submitting filing~~ notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee's Order filed pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies the Order from which appeal is taken and indicates that the appeal is from an Order of a Deputy Commissioner entered pursuant to G.S. 97-25(f)(3). After receipt of notice of appeal, the appeal shall be acknowledged within five days by sending an Order under the name of the Deputy Commissioner to whom the appeal is assigned. The appeal of the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee shall be subject to G.S. 97-25(f)(2) and G.S. 97-84.

(k) ~~The Commission shall accept the filing of documents by non-electronic methods if electronic transmission is unavailable to the party.~~ Claimants and employers without legal representation are

not required to file documents via electronic transmission and may file documents with the Commission via EDPF, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77.

04 NCAC 10A .0610 PRE-TRIAL AGREEMENT

(a) A Pre-Trial Agreement shall be signed by the attorneys and ~~submitted to the Commissioner or Deputy Commissioner before whom the case is pending filed with the Commission in accordance with Rule .0108 of this Subchapter~~ 10 days before the hearing, unless a shorter time period is ordered upon agreement of the parties.

(b) The Pre-Trial Agreement shall be prepared in a form that conforms to the Order on Final Pre-Trial Conference adopted in the North Carolina Rules of Practice for the Superior and District Courts. Should the parties fail to comply with a Pre-Trial Order, the Commissioner or Deputy Commissioner shall remove the case from the hearing docket if required in the interests of justice or to promote judicial economy. Should the parties thereafter comply with the Pre-Trial Order after the removal of the case, the Pre-Trial Agreement shall be directed to the Commissioner or Deputy Commissioner who removed the case from the ~~docket; docket and filed in accordance with Rule .0108 of this Subchapter.~~ The Commissioner or Deputy Commissioner shall order the case returned to the hearing as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing docket. No new Form 33 *Request that Claim be Assigned for Hearing* is required.

(c) If the parties need a conference, a Commissioner or Deputy Commissioner shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate, including conference telephone calls.

(d) Any party may request a pre-trial conference to aid in settling the case or resolving contested issues prior to trial. Requests for such pre-trial conferences shall be directed to the Commissioner or Deputy Commissioner before whom the claim has been calendared.

Authority G.S. 97-80(a); 97-80(b); 97-83.

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

(a) The parties shall file with the Deputy Commissioner or ~~Commission~~ Commissioner in accordance with Rule .0108 of this Subchapter within 15 days following the hearing, a list identifying all expert witnesses to be deposed and the deposition dates unless otherwise extended by the Commission in the interests of justice and judicial economy.

(b) After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the expert's fee invoice, ~~submit to file with~~ the Deputy Commissioner or ~~Commissioner~~ Commissioner in accordance with Rule .0108 of this Subchapter a request to approve the costs related to the expert deposition. In these requests, the party shall provide ~~to the Deputy Commissioner or Commissioner~~, in a cover letter along with the invoice (if available), the following:

- (1) the name of the expert and the expert's practice;
- (2) the expert's fax number;
- (3) the expert's area of specialty and board certifications, if any;
- (4) the length of the deposition;
- (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with parties' counsel;
- (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an exceptional, unique, or complex injury or disease;
- (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be deposed at employer's expense; and
- (8) the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section. The proposed Order shall also reflect the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

(c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this Rule shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for the deposition, if applicable.

(d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an amount equal to 10 percent being added to the fee granted in the Order.

(e) A proposed fee for cancellation of a deposition within five days of a scheduled deposition may be submitted to filed with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter for consideration and approval if in the interest of justice and judicial economy.

(f) This Rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the contractual fee of the expert.

Authority G.S. 97-26.1; 97-80(a); 97-80(d).

04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS

(a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney. No direct contact or communication concerning contested matters may be made with a represented party by the opposing party or any person on its behalf, without the attorney's permission except as permitted by G.S. 97-32 or other applicable law.

(b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with the Commission, in writing a Motion to Withdraw that contains a

statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known address of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of compensation is made or approved.

(c) An attorney may withdraw from representation only by written order of the Commission. The issuance of an award of the Commission does not release an attorney as the attorney of record.

(d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the Full Commission shall timely file a notice of appeal, as set out by this Subchapter, on behalf of his or her client either before or with his or her Motion to Withdraw.

(e) Motions to Withdraw shall be submitted ~~electronically to attorneywithdrawals@ic.nc.gov, unless electronic submission is unavailable to the parties.~~ in accordance with Rule .0108 of this Subchapter. The Motion to Withdraw shall include a proposed Order in Microsoft Word format that includes, in the appearances, the last known address of any pro se party, or the contact information of new counsel, if such counsel has been retained. The proposed Order shall include fax numbers for all parties, if known.

Authority G.S. 97-80(a); 97-90; 97-91.

TITLE 09 – OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Office of Information Technology Services intends to amend the rules cited as 09 NCAC 06B .1302, .1304, .1402, and readopt without substantive changes the rules cited as 09 NCAC 06B .0301, .0302, .0314-.0316, .0405, .0701, and .0901.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for re adoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.its.state.nc.us/ITProcurement/Rules/Default.asp>

Proposed Effective Date: *January 1, 2016*

Public Hearing:

Date: *November 19, 2016*

Time: *10:00 a.m.*

Location: *Office of Information Technology Services, 3900 Wake Forest Road, Raleigh, NC 27619*

Reason for Proposed Action:

Readoption without substantive changes:

09 NCAC 06B .0301 - *Describes procurement procedures to be followed by the purchasing agency.*

09 NCAC 06B .0302 – Outlines requirements for solicitation for purchases and evaluations of offers utilizing best value methods.

09 NCAC 06B .0314 – Outlines the requirements for advertising solicitations, publishing addenda to solicitations, and publishing notice of award.

09 NCAC 06B .0316 – Describes procedures for negotiation of purchasing contracts.

09 NCAC 06B .0405 – Outlines requirements for the debriefing of offerors.

09 NCAC 06B .0701 – Provides descriptions of and process for term and convenience contracts and master agreements.

09 NCAC 06B .0901 – Outlines conditions for limited or waived competition.

Amendments:

09 NCAC 06B .1302 – Describes purchasing procedures to be followed in cases of emergencies or pressing need.

09 NCAC 06B .1304 – Lists the general delegation for agencies, describes conditions under which the State CIO may suspend, rescind, lower or raise the general delegation for agencies, and describes procedure for an agency to request and increase of its general delegation.

09 NCAC 06B .1402 – Specifies that the purchasing agency is responsible for maintaining procurement file records and documenting all purchase transaction. Outlines types of records to be maintain in each procurement file.

Comments may be submitted to: Teresa M. Bank, Office of Information Technology Services, PO Box 17209, Raleigh, NC 27619-7209, phone (919) 754-6285, email Teresa.bank@nc.gov

Comment period ends: November 19, 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 - 09 NCAC 06B .0301, .0302, .0314-.0316, .0405, .0701, and .0901
No fiscal note required by G.S. 150B-21.3A(d)(2) - 09 NCAC 06B .1302, .1304, and .1402

CHAPTER 06 – OFFICE OF INFORMATION TECHNOLOGY SERVICES

SUBCHAPTER 06B – PROCUREMENT REQUESTS

SECTION .0300 – PROCUREMENT AUTHORIZATION AND PROCEDURES

09 NCAC 06B .0301 – READOPTION WITHOUT SUBSTANTIVE CHANGES

09 NCAC 06B .0302 – READOPTION WITHOUT SUBSTANTIVE CHANGES

09 NCAC 06B .0314 – READOPTION WITHOUT SUBSTANTIVE CHANGES

09 NCAC 06B .0315 – READOPTION WITHOUT SUBSTANTIVE CHANGES

09 NCAC 06B .0316 – READOPTION WITHOUT SUBSTANTIVE CHANGES

SECTION .0400 – REJECTION OF OFFERS

09 NCAC 06B .0405 – READOPTION WITHOUT SUBSTANTIVE CHANGES

SECTION .0700 - CONTRACTS

09 NCAC 06B .0701 – READOPTION WITHOUT SUBSTANTIVE CHANGES

SECTION .0900 – WAIVER OF COMPETITION

09 NCAC 06B .0901 – READOPTION WITHOUT SUBSTANTIVE CHANGES

SECTION .1300 - EXEMPTIONS, EMERGENCIES, AND SPECIAL DELEGATIONS

09 NCAC 06B .1302 EMERGENCY SITUATIONS OR PRESSING NEED

- (a) An agency may make purchases of goods or services in the open market in cases of emergency or pressing need.
(b) When emergency or pressing need action is necessary, and the estimated expenditure is over the purchasing agency's delegation, prior verbal approval shall be obtained from the State CIO unless the purchase must be made outside of business hours, during holidays or when state offices are otherwise closed. Subsequently, if the expenditure is over the purchasing agency's delegation, an explanation of the emergency or pressing need purchase shall be reported in writing to the State CIO. The State CIO shall report such purchases of goods that exceed the

benchmark in 09 NCAC 06A .0103 to the Board of Awards as a matter of record.

Authority G.S. 143-52.1; 147-33.76(b1).

09 NCAC 06B .1304 GENERAL DELEGATIONS

(a) The general purchasing delegation for a purchasing agency shall be twenty-five thousand dollars (\$25,000) unless specific authorization is given by the State CIO.

(b) The State CIO may suspend, rescind, lower or raise this general delegation for a specific agency, up to the benchmark established under Rule 09 NCAC 06A .0103 by the Secretary of Administration upon consideration of the agency's overall capabilities, including staff resources, organizational structure, training, purchasing compliance reviews, electronic communication capabilities, and audit reports.

(c) If an agency wishes to obtain an increase in its general delegation, it shall submit a request in writing, outlining its overall capabilities, to the State CIO for the State CIO's consideration.

Authority G.S. 147-33.76(b1).

SECTION .1400 - RECORDS

09 NCAC 06B .1402 PROCUREMENT FILE RECORDS

(a) The purchasing agency shall identify each paper or electronic contract record individually so it can be located and referenced.

(b) The purchasing agency shall document all purchase transactions. As applicable, each paper or electronic procurement file shall include the following records:

- (1) Requisition;
(2) Approval to proceed with acquisition;
(3) Each original executed offer if in writing, or written documentation of verbal offer received;
(4) Documentation supporting whether each offeror is responsive and responsible to terms of the solicitation, the use of a competitive range selection and rejection of offerors for negotiations, best and final offers (BAFO), award, or cancellation or other disposition of the solicitation as may be applicable;
(5) Worksheets/evaluations of individual offers;
(6) Vendor distribution list or proof of fulfilling advertisement requirements, and any conditions and approval for waiver to advertise, publish, and notify any part of a procurement action;
(7) Written justification for limitation or waiver of competition, or emergency purchase, or waiver of any rule during the solicitation process;
(8) Tabulation of offers received;
(9) State CIO approval of award recommendation;
(10) Purchase order or other payment verification;
(11) Reason(s) for receiving only one offer in response to a solicitation;
(12) Summary of vendor debriefing, if any;
(13) Signed contracts or agency acceptance of offer(s); and
(14) Board of Awards' decision records; and

(15)(14) Protest documents.

(c) After award of contract, all material in the procurement file, except non-public information, shall be made available for inspection in accordance with the Public Records Law, G.S. 132-1 et seq.

Authority G.S. 147-33.95(f).

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to amend the rule cited as 10A NCAC 09 .1718.

Link to agency website pursuant to G.S. 150B-19.1(c): http://ncchildcare.dhhs.state.nc.us/general/whatsnew.asp

Proposed Effective Date: April 1, 2016

Public Hearing:

Date: November 9, 2015

Time: 1:00 p.m.

Location: Nature Research Center, William G. Ross Conference Center, 4th Floor, 121 W. Jones Street, Raleigh, NC

Reason for Proposed Action: The NC Child Care Commission proposes to amend the rule regarding the supervision of children while in a Family Child Care Home. This amendment will allow school-age children to participate in age-appropriate activities in a room separate from younger children in care in a family child care home setting. The change will also align this Rule with the center supervision rules; more specifically defining supervision and allowing children to be seen "or" heard.

Comments may be submitted to: Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2200, phone (919) 527-6502, fax (919) 715-0970, email Dedra.Alston@dhhs.nc.gov

Comment period ends: November 30, 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 09 – CHILD CARE RULES

SECTION .1700 –FAMILY CHILD CARE HOME REQUIREMENTS

10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS

(a) The operator shall provide the following on a daily basis for all children in care:

- (1) Developmentally appropriate equipment and materials for a variety of outdoor activities which allow for vigorous play, large and small muscle development, and social, emotional, and intellectual development. Each child shall have the opportunity for outdoor play each day that weather conditions permit. The operator shall provide space and time for vigorous indoor activities when children cannot play outdoors;
- (2) An individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with individual linens for each pre-school aged child in care for four hours or more, or for all children if overnight care is provided, to rest comfortably. Individual sleep requirements for infants aged 12 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). Linens shall be changed weekly or whenever they become soiled or wet;
- (3) A quiet, separate area which can be easily supervised for children too sick to remain with other children. Parents shall be notified immediately if their child becomes too sick to remain in care;
- (4) ~~Adequate supervision as described below:~~ Children shall be adequately supervised at all times. Adequate supervision shall mean that:
 - (a) ~~For pre-school age children, the operator must be positioned in the indoor and outdoor environment to maximize their ability to hear and see the children at all times and render immediate assistance; or~~
 - (b) ~~For school-age children, the operator must be positioned in the indoor and outdoor environment to maximize their ability to hear or see the children at all times and render immediate assistance. The operator must interact~~

with the children while moving about the indoor or outdoor area; and

- (c) For children of all ages:
 - (i) the operator must know where each child is located and be aware of children's activities at all times;
 - (ii) the operator must provide supervision appropriate to the individual age, needs and capabilities of each child; and
 - (iii) all of the conditions in this Paragraph shall apply except when emergencies necessitate that direct supervision is impossible for brief periods of time. Documentation of emergencies shall be maintained and available for review by Division representatives upon request.

~~(A) For children who are awake, staff shall interact with the children while moving about the indoor or outdoor area, and shall be able to hear and see the children at all times, except when emergencies necessitate that direct supervision is impossible for brief periods of time; and~~

~~(B) For children who are sleeping or napping, the staff are not required to visually supervise them, but shall be able to hear and respond quickly to them. Children shall not sleep or nap in a room with a closed door between the children and the supervising staff. The staff shall be on the same level of the home where children are sleeping or napping.~~

~~(5) Nothing contained in this Rule shall be construed to preclude a "qualified person with a disability," as defined by G.S. 168A-3(9), or a "qualified individual with a disability," as defined by the Americans With Disabilities Act at 42 U.S.C. 12111(8), from working in a licensed child care facility.~~

~~(6) For children who are sleeping or napping, the operator is not required to visually supervise them, but shall be able to hear and respond quickly to them. Children shall not sleep or nap in a room with a closed door between the children and the operator. The operator shall be on the same level of the home where children are sleeping or napping.~~

~~(5)(7) A safe sleep environment by ensuring that when a child is sleeping or napping, bedding or other objects shall not be placed in a manner that covers the child's face;~~

- ~~(6)~~(8) The opportunity each day for each child under the age of 12 months to play while awake while positioned on his or her stomach;
- ~~(7)~~(9) Developmentally appropriate activities as planned on a written schedule. Materials or equipment shall be available indoors and outdoors to support the activities listed on the written schedule. The written schedule shall:
 - ~~(A)~~(a) Show blocks of time usually assigned to types of activities and include periods of time for both active play and quiet play or rest;
 - ~~(B)~~(b) Be displayed in a place where parents are able to view;
 - ~~(C)~~(c) Reflect daily opportunities for both free choice and guided activities;
 - ~~(D)~~(d) Include a minimum of one hour of outdoor play throughout the day, if weather conditions permit; and
 - ~~(E)~~(e) Include a daily gross motor activity which may occur indoors or outdoors; and
- ~~(8)~~(10) When screen time, including videos, video games, and computer usage, is provided, it shall be:
 - ~~(A)~~(a) Offered only as a free choice activity,
 - ~~(B)~~(b) Used to meet a developmental goal, and
 - ~~(C)~~(c) Limited to no more than two and a half hours per week for each child two years of age and older.

Usage time periods may be extended for specific special events, projects, occasions such as a current event, homework, on-site computer classes, holiday; and birthday celebration. Screen time is prohibited for children under the age of two years. The operator shall offer alternate activities for children under the age of two years.

Date: November 17, 2015
Time: 10:00 a.m.
Location: 820 South Boylan Avenue, McBryde Building, 1st Floor, Raleigh, NC 27603

Reason for Proposed Action:

Background:

10A NCAC 71P the majority of rules regarding the definition and operation of the State/County Special Assistance Program. Most of the rules were created and became effective in 1983. Very few of the rules have been amended or added, with the last change in 2000. The rules have never undergone a thorough review for accuracy and alignment with policy and practice.

Rationale:

The majority of amendments and repeals for 71P are intended to:

- 1) Update obsolete language within the rules:
 - a) Assure gender neutral language
 - b) Update obsolete language including references to "domiciliary" care.
- 2) Update obsolete rules where policy and practice has changed:
 - a) Program name change to "State/County Special Assistance";
 - b) Change all references to the supervising agency to Division of Aging and Adult Service;
 - c) Elimination of eligibility groups which became obsolete in 1998;
 - d) Update all references to the "family" budget unit to a budget unit of one which changed in practice prior to 1995;
 - e) Clarify the rule on payee and assure that it is not more restrictive than the General Statute.
- 3) Encompass the Special Assistance In-Home Program which was codified in 2007.
- 4) Incorporate changes in terminology and instructions as the Special Assistance moves into the NC FAST case management system and electronic issuance.

Comments may be submitted to: Carlotta Dixon, 820 South Boylan Ave, McBryde Building, MCS 2401, Raleigh, NC 27603, phone (919) 527-6421, fax (919) 334-1198, email Carlotta.dixon@dhhs.nc.gov

Comment period ends: November 17, 2015 at 5:00 p.m.

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

Authority G.S. 110-85; 110-88; 110-91(2),(12).

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Social Services Commission intends to adopt the rules cited as 10A NCAC 71P .0306, .0608, .0705, amend the rules cited as 10A NCAC 71P .0101-.0103, .0201 .0202, .0301, .0302, .0501, .0502, .0504, .0505, .0507, .0508, .0601-.0604, .0701, .0702, .0803-.0805, .0902-.0905, and repeal the rules cited as 10A NCAC 71P .0303, .0304, .0401-.0406, .0506, .0704, .0801, .0802, and .0906.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www2.ncdhhs.gov/dss/sscommission/pubnot.htm>

Proposed Effective Date: January 1, 2016

Public Hearing:

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 71 – ADULT AND FAMILY SUPPORT

SUBCHAPTER 71P - STATE/COUNTY SPECIAL ASSISTANCE FOR ADULTS

SECTION .0100 - GENERAL PROVISIONS

10A NCAC 71P .0101 SUPERVISION

The Adult and Family Services Section of the Division of Social Services ~~The Adult Services Section of the Division of Aging and Adult Services~~ is responsible for supervising the administration of the ~~State/County Special Assistance for Adults program.~~ State/County Special Assistance Program. The section is located at ~~325 North Salisbury Street, 2405 Mail Service Center, Raleigh, North Carolina 27699-2405.~~ 693 Palmer Drive, 2101 Mail Service Center, Raleigh, North Carolina 27699-2101. The office is open during regular business hours.

Authority G.S. 143B-153.

10A NCAC 71P .0102 DEFINITIONS

For purposes of this Chapter are the following definitions:

- ~~(3)~~(1) "Adequate Notice" shall mean a written notice sent to an applicant or recipient a beneficiary to inform him or her of intended action to terminate or modify the payment. The action may be effective immediately upon the mailing or delivery of the notice in the circumstances outlined in G.S. 108A-79.(b). The applicant or recipient must receive the notice no later than the effective date of payment or in the case of termination, the date he would have received payment. Adequate notice may be given only in circumstances outlined in 10 NCAC 24A .0602. Advance, or timely notice shall mean notice sent to an applicant or recipient regarding termination or reduction of assistance. Such notice shall be mailed at least ten work days before the proposed action. All notices of action shall contain information outlined in G.S. 108A-79.
- ~~(7)~~(2) "~~Domiciliary~~"Adult Care " shall mean group care for persons who cannot remain in their own home and who are placed in facilities licensed by the Department of Health and Human Services as a domiciliary ~~an adult care facility~~ (e.g., an adult care home, assisted living

~~residence, a family care home, a home for the aged and infirm or homes for developmentally disabled adults).~~ or a licensed residential facility under 10A NCAC 27G .5601(c)(1) and (3). For purposes of this Chapter this definition shall also include facilities for persons under age 18 who are legally blind licensed under 10A NCAC 27G .2101.

- ~~(3)~~ Advance, or timely notice shall mean a written notice sent to an applicant or beneficiary at least ten days prior to proposed action regarding termination or reduction of assistance. All notices of action shall contain information outlined in G.S. 108A-79.
- ~~(14)~~(4) "~~Representative~~" "Authorized Representative" shall mean a person who ~~acts on behalf of a client~~ is legally authorized or designated in writing by the beneficiary to act on behalf of the applicant/beneficiary.
- (5) "~~Client~~" "Beneficiary" shall mean an applicant for or recipient of ~~State/County Special Assistance for Adults, State/County Special Assistance.~~
- ~~(4)~~(6) "Budget Unit" shall mean for State/County Special Assistance for the Certain Disabled Program, all persons whose needs and income are considered in determining the payment. The budget unit is one for State/County Special Assistance SAA and SAD.
- (7) "~~Division of Aging and Adult Services~~" shall mean the same as the Division of Aging as defined in G.S. 143B-181.1.
- ~~(40)~~(8) "Essential Person" for the Certain Disabled Program shall mean a person living in the ~~recipient's beneficiary's~~ home, rendering vital services without which the ~~client~~ beneficiary would not be able to remain in his or her home, and eligible to be included in the budget unit.
- (9) "~~Long term care insurance~~" shall mean insurance policies purchased to cover a wide range of medical, personal and social services provided at home or in a care facility when the beneficiary requires, at a minimum, assistance with activities of daily living. Long term care policies pay either a set rate regardless of the actual expenses or indemnity type payments, or on a reimbursement for expenses basis.
- ~~(13)~~(10) "Maintenance amount" shall mean the ~~amount a client in domiciliary care or his wife at home are allowed for basic needs.~~ facility rate plus the personal needs allowance.
- ~~(4)~~(11) "~~AA SA~~""SAA" shall mean ~~a program of financial assistance~~ State/County Special Assistance ~~to~~ for persons who are at least 65 years of age and who meet the eligibility requirements outlined in 10A NCAC 71P .0800 and shall also mean the assistance itself.
- ~~(2)~~(12) "~~AD SA~~""SAD" shall mean ~~a program of financial assistance~~ State/County Special

~~Assistance to for disabled persons with disabilities who are at least 18 years of age but less than 65 years of age or who are under 18 and are legally blind and who meet the eligibility requirements outlined in 10A NCAC 71P .0800 and shall also mean the assistance itself.~~

- (13) "State/County Special Assistance" shall also mean State/County Assistance In-Home Program unless otherwise noted.
- ~~(14)~~ (14) "Substitute Payee" shall mean a personal representative, trustee or guardian who is responsible for receiving and ~~dispensing~~ State/County Special Assistance checks payments to meet the recipient's beneficiary's needs.
- ~~(6)~~ "Contribution" shall mean cash received by a member of a budget unit on a regular basis.
- ~~(8)~~ "Effective Date" shall mean the day, month and year for which financial assistance is authorized.
- ~~(9)~~ "Equity" shall mean the tax value of a resource owned by a person less the amount of debts, liens, or other encumbrances.
- ~~(11)~~ "Group I" shall mean mandatory supplementation to assure that, in spite of the conversion to supplemental security income, each recipient of aid to the aged or disabled in December 1973 receives no less income beginning January 1974 than he was receiving in December 1973.
- ~~(12)~~ "Group II" shall mean supplementation to aged or disabled clients who applied for assistance on or after January 1, 1974.

Authority G.S. 108A-79; 143B-153.

10A NCAC 71P .0103 STATE/COUNTY SPECIAL ASSISTANCE PROGRAM PROCEDURES

The following general procedures shall be applicable to the ~~state/county special assistance for adults program~~: State/County Special Assistance Program:

- (1) Notices and hearings rules stated in 10A NCAC 67A .0200 shall control for ~~State/County Special Assistance for Adults~~. the State/County Special Assistance Program.
- (2) Confidentiality rules stated in 10A NCAC 69 shall control for ~~State/County Special Assistance for Adults~~. the State/County Special Assistance Program.
- (3) Manual rules stated in 10A NCAC 71P shall control for ~~State/County Special Assistance for Adults~~. the State/County Special Assistance Program.

Authority G.S. 143B-153.

SECTION .0200 - ADULT CARE

10A NCAC 71P .0201 MAXIMUM RATES

The county department of social services may negotiate rates lower than the maximum rates with operators of ~~domiciliary adult care facilities~~. Maximum rates are established by the General Assembly and published in the Eligibility Manual -- State/County Special Assistance for Adults program. ~~State/County Special Assistance Program~~ -- located in ~~Room 531 of the Albemarle Building, 325 North Salisbury Street, Taylor Hall, 693 Palmer Dr., Raleigh, North Carolina, on the Department of Health and Human Services website, www.dhhs.nc.gov free of charge and in each county department of social services.~~

Authority G.S. 143B-153.

10A NCAC 71P .0202 LICENSED FACILITIES

~~State/County Special Assistance for Adults~~ State/County Special Assistance payments shall be made only for ~~clients-beneficiaries~~ in ~~domiciliary adult care facilities~~ which have signed a civil rights compliance statement and are licensed by the Department of Health and Human Services. ~~Services unless the beneficiary is eligible to receive a payment for State/County Special Assistance In-Home.~~

Authority G.S. 143B-153.

SECTION .0300 - BUDGETING PRINCIPLES

10A NCAC 71P .0301 MINIMUM PAYMENT

The minimum ~~State/County Special Assistance for Adults~~ State/County Special Assistance payment for ~~Group I~~ is one dollar (\$1.00). The minimum payment for ~~Group II~~ is five dollars (\$5.00).

Authority G.S. 143B-153.

10A NCAC 71P .0302 BENEFICIARY IN ADULT CARE

If a recipient is the only member of the budget unit and he is in ~~domiciliary care~~, his ~~The~~ monthly special assistance State/County Special Assistance payment shall be computed by:

- (1) Determining ~~needs~~ the maintenance amount by adding the ~~domiciliary adult care~~ facility rate established by the General Assembly for the approved level of care to the ~~maintenancee~~ personal needs allowance;
- (2) Subtracting net income from ~~needs~~; the maintenance amount; and
- (3) Rounding the difference to the nearest dollar.

Authority G.S. 143B-153.

10A NCAC 71P .0303 RECIPIENT IN DOMICILIARY CARE WITH SPOUSE AT HOME

If a recipient is in ~~domiciliary care~~ and has a spouse at home, his monthly special assistance payment shall be computed by:

- (1) ~~Determining needs~~ by adding the ~~domiciliary care rate~~ for the approved level of care, the ~~maintenance allowance~~ and the current SSI individual benefit level (or reasonable needs of

~~the spouse when she provides convincing evidence that they exceed the SSI benefit);~~

- ~~(2) Subtracting their combined net income from their needs; and~~
- ~~(3) Rounding the difference to the nearest dollar.~~

Authority G.S. 143B-153.

10A NCAC 71P .0304 RECIPIENT/DOMICILIARY CARE: SPOUSE/NOT RECEIVING ASSIST

If a recipient is in domiciliary care and has a spouse in domiciliary care not receiving assistance, his monthly special assistance payment shall be computed by:

- ~~(1) Determining needs by adding the domiciliary care rate for the recipient's approved level of care to the maintenance allowance; and~~
- ~~(2) Subtracting net income from needs. (Each spouse is allowed to apply his own income toward the cost of his care. If he has excess income above his needs, the excess shall be applied toward his spouse's needs. The couple is also allowed an option of dividing their income equally. If so, and either spouse has excess income above his needs, the excess shall be applied toward the other spouse's needs; and~~
- ~~(3) The difference is rounded to the nearest dollar.~~

Authority G.S. 143B-153.

10A NCAC 71P .0306 BENEFICIARY IN A PRIVATE LIVING ARRANGEMENT

(a) The maximum payment for an individual eligible for State/County Special Assistance In-home living in a private living arrangement shall be computed by:

- (1) Determining the maintenance amount by adding the adult care facility rate established by the General Assembly to the personal needs allowance.
- (2) Subtracting net income from the maintenance amount; and
- (3) Rounding the difference to the nearest dollar.

(b) The actual payment for an individual eligible for State/County Special Assistance In-Home shall be determined by a comprehensive assessment conducted by a social worker of financial resources and needs related to health and safety in the private living setting. The payment may be authorized up to the maximum determined in (a) (1)-(3) in the subparagraph of this rule.

Authority G.S. 143B 153.

SECTION .0400 - MIXED BUDGETING: WHEN OTHER BUDGET MEMBERS ARE RECIPIENTS

10A NCAC 71P .0401 MINIMUM PAYMENT

The minimum State/County Special Assistance for Adults for Group I is one dollar (\$1.00). The minimum payment for Group II is five dollars (\$5.00).

Authority G.S. 143B-153.

10A NCAC 71P .0402 RECIPIENT/DOMICILIARY CARE: SPOUSE/CHILDREN RECEIVING AFDC

If the recipient is in domiciliary care and AFDC money payments are being received by his spouse and minor dependent children, the monthly special assistance payment shall be computed by:

- ~~(1) Determining needs by adding the domiciliary care rate for the approved level of care to the maintenance allowance;~~
- ~~(2) Subtracting the recipient's net income from his needs; and~~
- ~~(3) Rounding the difference to the nearest dollar.~~

Authority G.S. 143B-153.

10A NCAC 71P .0403 RECIPIENT/DOMICILIARY CARE: SPOUSE/CHILDREN REC'G AFDC-MA

If the recipient is in domiciliary care and AFDC MA is being received by his spouse and minor children, the monthly special assistance payment shall be computed by following the method specified in 10A NCAC 71P .0402.

Authority G.S. 143B-153.

10A NCAC 71P .0404 RECIPIENT/DOMICILIARY CARE: SPOUSE/REC'G MEDICAL ASSIST.

If the recipient is in domiciliary care and his spouse is in the home and receives medical assistance, the monthly special assistance payment shall be computed following the method specified in 10A NCAC 71P .0402.

Authority G.S. 143B-153.

10A NCAC 71P .0405 RECIPIENT/SPOUSE BOTH RECEIVING SPECIAL ASSISTANCE

If a recipient is in domiciliary care and his spouse receives AA SA or AD SA, the monthly special assistance payment shall be computed by:

- ~~(1) Determining needs by adding the domiciliary care rate for the approved level of care to the maintenance allowance; and~~
- ~~(2) Subtracting net income from his needs. (If he has excess income above his needs, the excess shall be applied toward his spouse's needs. The couple is allowed to divide their income equally. If so, and either spouse has excess income above his needs, the excess shall be applied toward the other spouse's needs.); and~~
- ~~(3) The difference is rounded to the nearest dollar.~~

Authority G.S. 143B-153.

10A NCAC 71P .0406 RECIPIENT/DOMICILIARY CARE: SPOUSE: NURSING/INTERMED. FAC.

If a recipient is in domiciliary care and his spouse is in a skilled nursing facility or intermediate care facility, the monthly special

~~assistance payment shall be computed following the method specified in 10A NCAC 71P .0402.~~

Authority G.S. 143B-153.

SECTION .0500 - PAYMENT PROCEDURES

10A NCAC 71P .0501 PAYEE

~~(a) The recipient is payee for his own special assistance check unless it is determined that he is unwilling or unable to manage his assistance to the extent that he deprives himself or is hazardous to himself or others. The beneficiary shall be payee for his or her own State/County Special Assistance payment unless the beneficiary or his or her legal representative designates a responsible personal representative to serve as substitute payee.~~

~~(b) A payee for federal benefits for the beneficiary may serve as the substitute payee for the State/County Special Assistance payment except when the payee for federal benefits is an administrator or staff of an adult care facility where the beneficiary is residing. The administrator or staff of an adult care facility is prohibited from acting as payee for State/County Special Assistance payments for their residents.~~

~~(b)(c) When this situation occurs court action shall be taken by the county dss to have a substitute payee appointed. A substitute payee can be a personal representative, a trustee or a legal guardian. The director of the county department of social services may invoke the procedures in G.S. 108A-37 when he or she determines that the beneficiary has shown that he or she is unwilling or unable to manage his or her assistance to the extent that deprivation or hazard to himself or herself or others results.~~

~~(d) Under no circumstances shall payments be made to persons or entities designated in G.S. 108A-47.~~

Authority G.S. 143B-153; 108A-25; 108A-37.

10A NCAC 71P .0502 PAYMENT AUTHORIZATION

~~(a) Special assistance State/County Special Assistance shall not be authorized prior to the month of application.~~

~~(b) If SSI approval is not pending, and the worker disposes of an application after the month of application, special assistance State/County Special Assistance may be authorized as much as two months prior to the month of disposition.~~

~~(c) If SSI approval has been pending, special assistance State/County Special Assistance may be authorized retroactive to the month SSI was approved, if the applicant was in domiciliary residential care and had applied for special assistance State/County Special Assistance that month.~~

~~(d) If an applicant enters domiciliary residential care, or meets the North Carolina residency requirement for Special Assistance, after the first day of the month, and all other eligibility criteria is met he the applicant shall be eligible only for a partial payment for that month from the date of entry, or the date he the applicant meets the residency requirement, to the end of the month. The payment shall be computed without considering income, disregard, deductions or exemption.~~

~~(e) If a recipient's beneficiary's level of care is determined to no longer be domiciliary residential care and a bed is not readily available under the Medicaid Program, special assistance~~

State/County Special Assistance shall continue until a bed at the appropriate level of care is located.

Authority G.S. 108A-41(b); 143B-153.

10A NCAC 71P .0504 CORRECTION OF ADMINISTRATIVE OVERPAYMENTS

(a) State responsible overpayments will be charged to the state.

(b) If the ~~recipient-beneficiary~~ (or his representative) failed to report a change or report timely, and fraud is not suspected, and he or she is not entitled to all or part of a ~~check payment~~, the county shall:

- (1) Ask the ~~recipient-beneficiary~~ to refund the overpayment voluntarily.
- (2) If the ~~recipient-beneficiary~~ refuses to refund the overpayment, his special assistance the State/County Special Assistance grant payment may be reduced up to 10 percent if he or she has disregarded earned income or excess reserve up to that amount.
- (3) If the ~~recipient-beneficiary~~ has no disregarded earned income or excess reserve, the recipient shall sign an agreement that he will to repay if he or she acquires resources in the future.

~~(c) County responsible overpayments are the responsibility of the county.~~

Authority G.S. 143B 153.

10A NCAC 71P .0505 BENEFIT ISSUANCE

~~(a) The department of social services Department of Health and Human Services shall write checks according to authorize benefits based on the eligibility determination decision of county department of social services staff submitted by county directors of social services using the current State eligibility system through the authority of the county director of social services.~~

~~(b) Except for replacement checks, all checks All benefits shall be issued by the method requested mailed to the address given by the recipient-beneficiary or substitute payee.~~

~~(c) Replacement checks are mailed to county departments of social services. payments may be added up to 12 months after initial issuance by the electronic method of the beneficiary's choice.~~

~~(d) Checks shall be delivered to the post office on the last work day of each month.~~

Authority G.S. 143B-153.

10A NCAC 71P .0506 RECEIPT AND USE OF CHECKS

~~(a) The recipient is entitled to his monthly check in advance until the payment is terminated by appropriate action.~~

~~(b) Staff members of county departments of social services shall not act as witnesses for endorsement by a recipient who cannot sign his check.~~

Authority G.S. 143B-153.

10A NCAC 71P .0507 LOST: STOLEN AND FORGED CHECKS

(a) If a ~~recipient-beneficiary~~ reports that an ~~assistance-a State/County Special Assistance~~ check has been lost or stolen before he or she has endorsed it, the county department shall have the recipient sign an affidavit that he or she did not receive the check. Within ten days after the check is reported lost or stolen, the county department shall request a replacement check from the state office.

- (1) If the check has not been paid, the state shall issue a replacement check and issue a stop payment for the original check.
- (2) If the check has been paid, the state shall send to the county a photocopy of the endorsed check and a Forgery Affidavit. The county shall compare, or shall arrange for comparison by experts in the field of document examination, the endorsement to other known signatures of the payee.
 - (A) If forgery is suspected, the county shall within 24 months, submit to the state the completed and signed Forgery Affidavit. The state shall issue a replacement ~~check-check~~ upon verification of forgery.
 - (B) After the county makes its analysis and a determination is made that the payee endorsed and cashed the check, it shall notify the state. The state shall not issue a replacement check.

(b) If a ~~recipient-beneficiary~~ reports that an assistance check has been lost or stolen after he has endorsed it, the county department will request a replacement check of the state office. If the check has not been paid by the State Treasurer, a replacement check will be issued. If the check has been paid, a replacement check will not be issued. It is the responsibility of the ~~recipient-beneficiary~~ to take legal action.

(c) This Rule shall not apply to State/County Special Assistance payments issued electronically.

Authority G.S. 143B-153.

10A NCAC 71P .0508 FRAUD

(a) Definition: Fraud vs. Misrepresentation.

- (1) Fraud is a crime against society which can only be determined in a criminal court. It is the willful and intentional act that creates the crime, rather than the resulting overpayment. An applicant or recipient is suspected of fraud when he or she willfully and knowingly with the intent to deceive:
 - (A) makes a false statement or misrepresentation; or
 - (B) fails to disclose a material fact; or
 - (C) does not report changes in income or other eligibility factors that affect the amount of payment; and as a result obtains or continues to receive assistance.

(2) Misrepresentation causes monetary loss as a result of a ~~recipient's~~ beneficiary's action or inaction. Misrepresentation can be intentional or unintentional:

- (A) Intentional Misrepresentation. The applicant or ~~recipient-beneficiary~~ gives incorrect or misleading information in response to either oral or written questions. The information is provided with the knowledge that it is incorrect, misleading, or incomplete. This may or may not be fraud but that must be decided by a court of law.
- (B) Unintentional Misrepresentation. There is no proof that the ~~recipient beneficiary~~ acted willfully and intentionally to obtain more benefits than those to which he or she was entitled. The ~~recipient beneficiary~~ gives incomplete, incorrect or misleading information because he or she does not understand the eligibility requirements or his or her responsibilities to provide the agency with required information.

(b) Prevention.

(1) Interviews. In an effort to prevent fraud, the ~~eligibility-worker-income maintenance caseworker~~ shall do the following at applications and reviews:

- (A) obtain correct social security numbers for ~~budget-unit-members;~~ applicant/beneficiary;
- (B) explain ~~his-the applicant/beneficiary or authorized representative's~~ obligation to report all changes in situation within five days after they occur;
- (C) inform ~~him-the applicant/beneficiary or authorized representative~~ of the consequences of failure to report changes, stressing the penalties for fraud and misrepresentation;
- (D) give ~~him-the applicant/beneficiary or authorized representative~~ a copy of the fraud pamphlet and explain ~~to him-the~~ meaning of fraud;
- (E) question the applicant or ~~recipient beneficiary or the authorized representative~~ regarding unreported income when it appears living standards of a spouse at home or CD-a Certain Disabled Program applicant or ~~recipient-beneficiary~~ exceed exceeds income;
- (F) tell ~~him-the applicant/beneficiary or authorized representative~~ how to report changes; and

- (G) ask the ~~recipient-beneficiary~~ about any changes since ~~his-the~~ application or last review.
- (2) Documentation and Verification. The worker shall verify and document in detail the information given during the interview.
- (c) Detection. The worker shall check ~~SDX and BENDEX listings-all available online verification systems~~ at applications and reviews. If lead information is received from other agencies, providers, other ~~recipients~~ beneficiaries or private citizens, the county departments shall investigate.
- (d) Investigation. County department responsibilities.
- (1) As soon as there is an indication that a ~~recipient~~ beneficiary obtained benefits to which he or she was not entitled or an overpayment exists, the worker shall assess whether the agency determined eligibility and documented information obtained according to regulations, substantiate the intent to defraud, and obtain and document all of the evidence necessary to substantiate whether the overpayment is due to intentional or unintentional misrepresentation.
- (2) The director, or his or her designee, shall review each case after the eligibility staff's evaluation. If there is sufficient evidence to suspect fraud, the director shall refer the case for a decision to the board of social services, or make the decision if the board has designated that he or she do so.
- (3) If the director determines that the case should go before the board of social services, a summary shall be prepared which contains:
- (A) identifying information,
- (B) description of the suspected fraudulent act,
- (C) description of the evidence to substantiate the applicant's or ~~recipient's~~ beneficiary's intent to defraud,
- (D) description of evidence to substantiate the amount of the overpayment, and
- (E) background information such as the applicant's or ~~recipient's~~ beneficiary's current situation, educational background and competency.
- (e) County Board of Social Services Responsibilities. The county board of social services or its designee shall review the suspected fraud case to determine if there is a basis for suspected fraud and determine the appropriate course of action to take. While fraud may be suspected, the board may decide that the ~~recipient's~~ circumstances preclude prosecution and/or repayment. The board must determine if the applicant or ~~recipient-beneficiary~~:
- (1) willfully and knowingly misstated, provided incorrect or misleading information in response to oral or written questions; or
- (2) willfully and knowingly failed to report changes affecting the amount of payment; or
- (3) willfully and knowingly failed to report the receipt of benefits to which ~~he-the~~ beneficiary knew he or she was not entitled.
- If the board determines that willful misrepresentation occurred and therefore fraud is suspected, it shall direct the agency to pursue one or more of the following:
- (4) Administrative action:
- (A) involuntary grant reduction up to 10 percent of the payment;
- (B) voluntary grant reduction;
- (C) voluntary ~~recipient-beneficiary~~ refund;
- (5) Civil court action;
- (6) Criminal court action;
- (7) Take no action for unusual or hardship cases.
- (f) County Department Follow-Up.
- (1) Administration action:
- (A) Involuntary grant reduction. If a Certain Disabled ~~recipient-beneficiary~~ has no resources, an involuntary grant reduction shall not exceed 10 percent of the payment. In ~~domiliary~~ residential care cases, grant reduction shall be required only if the ~~recipient~~ beneficiary has disregarded earned income or excess reserve. The amount of reduction shall not exceed the amount available as disregarded earned income or excess reserve. If the ~~recipient-beneficiary~~ has no resources, the board may direct the agency to require ~~him-the~~ beneficiary to sign a statement that he or she will repay the overpayment if he acquires resources in the future.
- (B) Voluntary grant reduction and voluntary ~~recipient-beneficiary~~ refund. The county department shall ensure that the ~~recipient-beneficiary~~ who agrees to a voluntary grant reduction or refund is not treated any more harshly than the applicant or ~~recipient~~ beneficiary who has an involuntary grant reduction.
- (2) Criminal court action. The county department shall assist the prosecutor by:
- (A) providing a clear and concise summary of the suspected fraud case;
- (B) compiling any information gathered during the investigation;
- (C) making the prosecutor aware of the specific eligibility factors involved in the case;
- (D) explaining exactly how the overpayment amount was computed, the time restraints on social services actions (advance notice, 5-day reporting requirements);
- (E) if necessary, appearing as a witness.

- (3) Regardless of what the board or its designee decides or what action is taken by the court, the agency shall continue to work with the applicant or ~~recipient-beneficiary~~. The applicant or ~~recipient-beneficiary~~ shall be promptly notified of any action taken in the case. If the applicant or ~~recipient-beneficiary~~ remains eligible, the case shall not be terminated just because fraud is suspected.
- (4) If the board, or its designee, suspects fraud, the department's findings and action shall be reported immediately to the ~~Adult and Family Services Section~~. Adult Services Section at the Division of Aging and Adult Services.
- (5) The county department shall keep all documentation, evidence, or summaries for future reference.

(g) G.S. 108A-39 shall control for adult care facilities and fraudulent misrepresentation.

Authority G.S. 143B-153.

SECTION .0600 - APPLICATION PROCESS

10A NCAC 71P .0601 ACCEPTANCE OF APPLICATION

Acceptance of the application shall involve the following:

- (1) The applicant shall be allowed to apply without delay. Without delay is the same day the applicant appears at the county ~~department~~ department, or on the day it is received by the county department of social services if submitted electronically or by another DHHS approved method.
- (2) The applicant shall be informed, verbally and in writing, that:
 - (a) He or she can apply without delay;
 - (b) A decision must be made concerning his or her eligibility within 45 days from the date of application for ~~AA SAA~~ or 60 days for ~~AD-SAD~~ or CD unless ~~he or a collateral cause the delay; pending a decision for SSI eligibility. In the case of a pending SSI application, the application can pend up to twelve months.~~
 - (c) He or she will receive a written decision concerning his or her eligibility.
- (3) The ~~applicant shall apply in his county of residence~~. residence shall be responsible for processing the application. The applicant or his/her representatives may appear for the purpose of submitting an application at the county department where he/she currently resides in an SA approved facility or at a county that is convenient for the representative to apply. The applicant must not be required to travel to the county of residence. An

application taken by an income maintenance caseworker at a department outside of the individual's county of residence is a courtesy application.

- (4) The date of the application for assistance shall be the date ~~the applicant or his representative signs the application~~. application, signed by the applicant or his/her representative under penalty of ~~perjury~~, perjury and is received in the department with one exception. If the applicant is in a mental institution, the date of application shall be the date the referral is received by the county department of social services.
- (5) If a person requests assistance by mail or electronic submission to the department of social services, the letter or electronic submission shall be considered a request to apply. A follow-up ~~letter~~ contact shall be ~~mailed~~ initiated within 3 work days after the ~~letter request~~ is received by the agency. The ~~letter correspondence~~ shall request that the applicant come to the county department for an interview or contact the agency so that other arrangements can be made. The letter shall specify that the department shall, if it does not hear from the applicant within 15 days of the date of the ~~letter correspondence~~ from the county, consider that the applicant is no longer interested in receiving assistance.
- (6) If a person requests assistance by telephone, he or she shall be advised that he or she can apply at any time. If the person requests a specific time, an interview shall be scheduled.

Authority G.S. 108A-43; 143B-153.

10A NCAC 71P .0602 INITIAL APPLICATION

The applicant shall be allowed to have any person(s) of his or her choice participate in the ~~interview~~. application process. If the applicant wishes for another person to receive benefit notices, an authorized representative must be legally authorized or designated in writing by the applicant to act on his or her behalf. The eligibility specialist income maintenance caseworker shall explain the eligibility requirements. The applicant shall be informed of the following:

- (1) ~~He~~ The applicant must provide the name of collaterals, such as landlords, employers, and others with knowledge of his situation.
- (2) It is the county's responsibility to use collateral sources to substantiate or verify information necessary to establish eligibility, except that, for an applicant moving to North Carolina to join a close relative (parent, grandparent, brother, sister, spouse, or child), the close relative must provide verification of his or her state residency to the county department of social services. eligibility. Collateral sources of information include knowledgeable individuals, business organizations, public

- records, and documentary evidence. If the applicant does not wish necessary collateral contacts to be made, he or she can withdraw the application. If ~~he—the applicant~~ denies permission to contact necessary collaterals, the application shall be ~~rejected—denied~~ due to failure to cooperate in establishing eligibility.
- (3) ~~A worker will visit his home or the domiciliary care facility. The purpose of the visit is to verify eligibility requirements. Residence in the adult care facility shall be verified. State/County Special Assistance In-Home applicants' private living residence shall be verified by the social worker conducting the in-home assessment.~~
- (4) The applicant has the right to:
- (a) Receive assistance if found eligible;
 - (b) Be protected against discrimination on the ground of race, creed, or national origin by Title VI of the Civil Rights Act of 1964; ~~He~~ The applicant may appeal such perceived discrimination;
 - (c) ~~Spend his assistance payment as he wishes, but it must be in his best interest and that of his family. The payment minus the personal needs allowance for a State/County Special Assistance beneficiary who is an adult care facility resident, is intended to supplement the beneficiary's income to pay the facility for room and board. The State/County Special Assistance In-Home payment is intended to be used as indicated in the service plan and shall be used for purposes related to the beneficiary's health and safety. A substitute payee may be appointed for those individuals who cannot manage the payment;~~
 - (d) ~~Receive his monthly check in advance until the payment is terminated by appropriate action;~~
 - (d) Have any person participate in the application process. If the applicant wishes for another person to receive benefit notices an authorized representative must be legally authorized or designated in writing by the applicant to act on his or her behalf.
 - (e) Have any information given to the agency kept in confidence;
 - (f) Appeal, if ~~his—~~assistance will be denied, changed or terminated; ~~his—the applicant~~ believes that the payment is incorrect based on the county's interpretation of state regulations; or ~~his—the applicant's~~ request for a change in the amount of assistance—review of
- his/her circumstances was delayed beyond 30 days or ~~rejected—denied~~;
- (g) Reapply at any time, if found ineligible;
- (h) Withdraw the application at any time or if found eligible, withdraw from the assistance program at any time.
- (5) The applicant's responsibilities. ~~He—The applicant or authorized representative~~ must:
- (a) Provide the county department, state and federal officials the necessary sources from which the county department can locate and obtain information needed to determine eligibility. This includes furnishing his or her Social Security Number.
 - (b) Not provide false statements or withhold information or he or she may be subject to prosecution. Report—The applicant or authorized representative must report to the county department of social services any change in situation that may affect eligibility for a check payment within five days after it happens. The meaning of fraud shall be explained. The applicant shall be informed that he may be suspected of fraud if he or she willfully withholds information or fails to report a change in situation and that in such situations, he or she may have to repay assistance received in error and that he or she may also be tried by the courts for fraud.
 - (c) Inform the county department of social services of any person or organization against whom he or she has a right to recovery. When he or she accepts Medicaid medical assistance (when included with all SA except for CD), State/County Special Assistance, the applicant assigns his or her rights to third party insurance benefits to the state. He or she shall be informed that it is a misdemeanor to fail to disclose the identity of any person or organization against whom he or she has a right to recovery.
 - (d) Immediately report to the county department the receipt of a check payment which he or she knows to be erroneous, such as two checks payments for the same month, or a check payment in the wrong amount. If ~~he—the beneficiary~~ does not report such payments, he or she may be required to repay any overpayment.

Authority G.S. 108A-41(b); 143B-153.

10A NCAC 71P .0603 ELIGIBILITY DETERMINATION PROCESS

The following steps shall be followed in eligibility determination:

- (1) Each eligibility factor shall be reviewed;
- (2) ~~A home visit (or a visit to the domiciliary care facility, if a home visit is not appropriate) shall be made unless one of the following exceptions applies: The county department of social services income maintenance caseworker shall verify the applicant's residence in a licensed facility approved for State/County Special Assistance payments. The adult services social worker shall verify the State/County Special Assistance In-Home applicant's residence in a private living arrangement.~~
 - (a) ~~The applicant resides in a state institution (mental hospital or retardation center). In this case, information shall be obtained from a responsible person or staff member of the institution.~~
 - (b) ~~The applicant resides in a domiciliary care facility in a county other than his county of residence. In this case, information shall be obtained from a responsible person or the county department in the county where the facility is located.~~
- (3) The applicant shall be asked whether he or she receives Supplemental Security Income benefits. If the applicant's income is less than the Federal Benefit Rate for SSI, the individual must apply for SSI as requirement of eligibility. If he or she has not applied, he or she shall be asked to apply immediately. The State/County Special Assistance application shall be held until a disposition on the SSI application is made.
- (4) ~~The applicant or the applicant's legally responsible party shall cooperate with the resident evaluation to be completed by the Adult Care Home Resident Evaluator.~~

Authority G.S. 143B-153; S.L. 1999-237.

10A NCAC 71P .0604 TIME STANDARD

- (a) Applications for ~~AA-SAA~~ shall be processed within 45 days from the date the application form is signed. Applications for ~~AD SAD and CD~~ State/County Special Assistance for the Certain Disabled Program shall be processed within 60 days from the date the application form is signed. The 45 or 60 days cover the time from date of application to the date the ~~check approval~~ or denial notice is mailed.
- (b) When collateral information is received after the time standard, the application shall be disposed of within 5 work days, unless the applicant's situation has changed. If the situation has changed, the additional information needed shall be documented

in the case record. When all information is received, the application shall be disposed of within 5 work days.

(c) For pending applications, the time standard defined in Paragraph (a) of this Rule shall apply unless ~~the applicant or collaterals delay in providing information pending a decision for SSI eligibility. In the case of a pending SSI application, the State/County Special Assistance application can pend up to 12 months. If that happens, the application shall be held pending up to one year. On the 45th or 60th day, a letter shall be sent to the applicant giving him the reason for the delay and list of what is needed to complete the application. A decision must be made concerning his eligibility within 45 days from the date of application for AA or 60 days for AD or CD unless he or a collateral cause the delay;~~

(d) If the applicant's eligibility cannot be determined by the beginning of the 12th month, ~~he the applicant~~ shall be notified that his or her application will be denied unless the ~~information is provided~~ SSI decision is received by the end of the 12th month.

Authority G.S. 143B-153.

10A NCAC 71P .0608 NOTICE TO BENEFICIARY

The director of the county department of social services or his/her designee shall notify the beneficiary and his/her authorized representative, if any, in writing of the disposition of the application. The notification for approval must include the effective date of the assistance.

Authority G.S. 108A-79; 143B-153.

SECTION .0700 - REDETERMINATION OF ELIGIBILITY

10A NCAC 71P .0701 TIME AND CONTENT

All eligibility factors subject to change must be reviewed at least once every 12 months, before the recipient receives ~~his the~~ thirteenth check payment. The income maintenance caseworker must immediately evaluate the effect on eligibility of all changes reported by the beneficiary, his/her authorized representative, or made known to the worker by another method.

Authority G.S. 143B-153.

10A NCAC 71P .0702 VERIFICATION OF FACILITY RESIDENCE

The home or domiciliary care facility income maintenance caseworker must be visited in at least 10 percent of the verify facility residence in all facility cases due for a review each month. ~~The sample must include high risk cases.~~

Authority G.S. 143B-153.

10A NCAC 71P .0704 RE-EVALUATION

Eligibility re-determination shall be based on verification that a re-evaluation has been completed at least every 12 months using the Resident Assessment Instrument for Adult Care Homes and other supportive information which documents the need for care in an adult care home licensed under G.S. 131D-2, a

combination home licensed under G.S. 131E, Article 6, Part A, or a facility licensed under G.S. 122C, Article 2.

Authority G.S. 143B-153; S.L. 1999-237.

10A NCAC 71P .0705 NOTICE TO BENEFICIARY OF INTENDED ACTION

The director of the county department of social services or his/her designee shall notify the beneficiary and his/her authorized representative, if any, in writing intended action to terminate or reduce the assistance. The appropriate notice shall be sent, as follows:

- (1) Advance, or timely shall be sent to a beneficiary at least ten work days before the proposed action becomes effective. All notices of action shall contain information outlined in G.S. 108A 79.
- (2) An adequate notice must be received by the beneficiary no later than the effective date of the change in the payment or in the case of termination, the date he or she would have received payment. Adequate notice may be given only in the following circumstances:
 - (a) The beneficiary dies;
 - (b) The beneficiary is admitted to a public institution and no longer qualifies for assistance;
 - (c) The beneficiary signs and dates a written statement or requests to have State/County Special Assistance terminated or reduced;
 - (d) The beneficiary is placed in skilled nursing care, intermediate care, or long-term hospitalization;
 - (e) The beneficiary's whereabouts are unknown and agency mail has been returned by the post office indicating no know forwarding address; assistance authorized for a specific period is terminated and the beneficiary was informed in writing at approval that such benefits would stop at a specific time.

Authority G.S. 108A 79; 143B-153.

SECTION .0800 - COVERAGE

10A NCAC 71P .0801 AA-SA: GROUP I

~~AA SA Group I coverage shall be provided only for persons who are:~~

- ~~(1) aged 65 or older who, in December 1973, were receiving aid to the aged or aid to the disabled;~~
- ~~(2) in need;~~
- ~~(3) not inmates of public institutions;~~
- ~~(4) not patients in institutions for mental disease;~~
- ~~(5) residing in North Carolina voluntarily with the intent to remain; and~~

~~(6) U.S. citizens or aliens lawfully admitted for permanent residence under color of law.~~

Authority G.S. 143B-153.

10A NCAC 71P .0802 AD-SA: GROUP I

~~AD SA Group I coverage shall be provided only for persons who are:~~

- ~~(1) at least 18 years of age but less than 65 years of age who, in December 1973, were receiving aid to the disabled;~~
- ~~(2) in need;~~
- ~~(3) disabled under the state's 1973 definition of disability;~~
- ~~(4) not inmates of public institutions;~~
- ~~(5) not patients in institutions for mental disease;~~
- ~~(6) residing in North Carolina voluntarily with the intent to remain; and~~
- ~~(7) U.S. citizens or aliens lawfully admitted for permanent residence under color of law.~~

Authority G.S. 143B-153.

10A NCAC 71P .0803 SAA

~~AA SA Group II SAA coverage shall be provided only for persons who are:~~

- ~~(1) aged 65 or older;~~
- ~~(2) residing in domiciliary-duly licensed adult care facilities; facilities or residing in a private living arrangement if eligible for Special Assistance In-Home;~~
- ~~(3) receiving SSI or financially ineligible for SSI; SSI due to excess income;~~
- ~~(4) in need; need of the level of care provided in licensed adult care facilities;~~
- ~~(5) not inmates of public institutions;~~
- ~~(6) not patients in institutions for mental disease;~~
- ~~(7)(6) residing in North Carolina voluntarily with the intent to remain and meet the North Carolina residency requirement for Special Assistance; and~~
- ~~(8)(7) U.S. citizens or qualified aliens lawfully admitted for permanent residence. aliens;~~
- ~~(8) Meet income requirements;~~
- ~~(9) Meet resource requirements.~~

Authority G.S. 108A-41(b); 143B-153.

10A NCAC 71P .0804 SAD

~~AD SA Group II SAD coverage shall be provided only for persons who are:~~

- ~~(1) aged 18 or older but under 65; 65 or under 18 and legally blind;~~
- ~~(2) disabled according to Social Security definition and standards;~~
- ~~(2)(3) residing in domiciliary-duly licensed adult care facilities or residing in a private living arrangement if eligible for State/County Special Assistance In-Home;~~

- ~~(3)~~(4) receiving SSI or financially ineligible for SSI due to excess income;
- (4)(5) in need of the level of care provided in licensed adult care facilities;
- ~~(5)~~(6) not inmates of public institutions;
- ~~(6)~~(7) not patients in institutions for mental disease;
- ~~(7)~~(8) residing in North Carolina voluntarily with the intent to remain and meet the North Carolina residency requirement for ~~Special Assistance~~; State/County Special Assistance; and
- ~~(8)~~(9) U.S. citizens or qualified aliens lawfully admitted for permanent residence; ~~aliens~~;
- (10) Meet income requirements;
- (11) Meet resource requirements.

Authority G.S. 108A-41(b); 143B-153.

10A NCAC 71P .0805 SA: CERTAIN DISABLED
~~CD-SA~~ State County Special Assistance for the Certain Disabled coverage shall be provided only for persons who are:

- (1) ineligible for SSI and not receiving SSI;
- (2) in need of the level of care provided in licensed adult care facilities;
- (3) not inmates of ~~correctional~~ public institutions;
- ~~(4)~~ ~~not patients in institutions for mental disease~~;
- ~~(5)~~(4) residing in North Carolina voluntarily with the intent to remain and meet the North Carolina residency requirement for Special Assistance; and
- ~~(6)~~(5) U.S. citizens or qualified aliens lawfully admitted for permanent residence; ~~aliens~~;
- ~~(7)~~(6) not receiving Medicaid for the same month.

Authority G.S. 108A-25; 108A-41(b); 143B-153.

SECTION .0900 - ELIGIBILITY FACTORS

10A NCAC 71P .0902 UNITED STATES CITIZENSHIP

- (a) Eligibility Requirement. An applicant or recipient must be:
 - (1) A citizen of the United States; or
 - (2) An alien lawfully admitted for permanent residence, or an alien residing in the United States under color of law.
- (b) Verification. The worker shall ~~accept the applicant's statement unless there is some reason to doubt it~~ require documentary evidence to verify citizenship and alien status. If there is doubt, documentary evidence shall be required.

Authority G.S. 143B-153.

10A NCAC 71P .0903 RESIDENCE

- (a) State Residence Eligibility Requirement. An individual must be a resident of North Carolina and meet the requirements in G.S. 108A-41(b)(3) to be eligible for Special Assistance.
- (b) Moving Into, Visiting In, or Moving Out of North Carolina:
 - (1) Moving into or visiting in North Carolina from other states:
 - ~~(A) An individual who moves to or visits in North Carolina cannot be Group I~~

~~regardless of his status in the previous state.~~

- ~~(B)~~(A) If an individual moves to North Carolina ~~voluntarily and voluntarily~~, states ~~his~~ an intent to remain, and meets the Special Assistance Residence requirements in G.S. 108A-41(b)(3), the individual meets the residence requirements for Special Assistance. he is a resident of North Carolina. This includes anyone who enters North Carolina because of a job commitment or seeking work but is not receiving assistance from another state. He must apply at the county department of social services in the county in which he resides.

- ~~(C)~~(B) An individual visiting in the state without a stated intent to remain is ineligible for Special Assistance.

- (2) An individual who moves to another state and intends to remain there is not eligible for Special Assistance.

(c) County Residence Eligibility Requirement:

- (1) An individual ordinarily has residence in the county in which he resides. However, if he or she is in a ~~hospital, mental institution, intermediate care facility, skilled nursing home, boarding home, confinement center or similar facility, adult care facility and receives or is applying for Special Assistance,~~ the county in which the facility is located may not be his or her legal residence. Except for (2) ~~and (3)~~ of this Paragraph, the county of legal residence would be the county in which the individual lived in private living arrangements prior to entering a facility.

- ~~(2) A woman in domiciliary care has the county residence of her husband.~~

- ~~(3)~~(2) If a disabled adult child (DAC) has remained in a facility (Example: ~~domiciliary~~ adult care), he or she remains a resident of the county and state in which his or her parent(s) had residence immediately prior to ~~his~~ him or her reaching age 18. If he or she as an adult is entering ~~domiciliary~~ an adult care home and it is not possible to trace his or her county of residence as a minor, he or she may establish residence based on his intent to remain regardless of his parent's current legal residence.

(d) Temporary Absence.

- (1) A ~~domiciliary~~ adult care applicant or ~~recipient~~ beneficiary shall not receive Special Assistance for days he or she is not living in the ~~rest~~ adult care home unless he or she is expected to return within 30 days.
- (2) Temporary absence from the state or county of residence with subsequent return or intent to return does not make a Certain Disabled

recipient in a private living arrangement ineligible.

(e) Verification. The worker shall accept the applicant's or recipient's statement unless there is some reason to doubt it. If there is doubt, documentary evidence shall be required. If a Certain Disabled recipient's visit to another county within the state or to another state exceeds three months, the eligibility specialist in the responsible county shall verify the following:

- (1) the recipient's intent to return;
- (2) reason for the continuing absence; and
- (3) the continuing maintenance of a home in the first county.

Authority G.S. 108A-41; 108A-41(b); 143B-153.

10A NCAC 71P .0904 RESOURCES

~~(a)~~ Eligibility Requirement. ~~requirements for resources include:~~

- (1) Eligibility shall be determined using the ~~reserve resource~~ rules governing the federal Supplemental Security Income Program (SSI) found in Title XVI of the Social Security Act which is hereby incorporated by reference including all subsequent amendments and editions. ~~Copies of this law may be obtained from the North Carolina Division of Social Services, Adult and Family Section, 325 N. Salisbury St., 2405 Mail Service Center, Raleigh, North Carolina 27699-2405, telephone number (919) 733-3677, at a cost of five cent (\$0.05) per copy. This law can be accessed free of charge through the federal Social Security website www.ssa.gov.~~

(2) Mental Incompetence.

~~(A)~~(a) When a representative alleges that an applicant or recipient is mentally incompetent (and the allegation can be supported by a physician's statement) and does not have a legal representative appointed to act in his or her behalf, the resources held solely by the applicant or recipient or held jointly shall be excluded in determining countable ~~reserve~~ resources provided the following two conditions are met:

- (i) the petition to have an applicant or recipient declared incompetent is filed with the court within 30 calendar days from the date the applicant's or recipient's representative is informed of the requirement; and
- (ii) the petition to have a legal guardian appointed is filed with the court within 30 calendar days of the date the applicant's or recipient's

representative is informed of the requirement.

~~(B)~~(b) The county department of social services shall petition the court for incompetency and appointment of a guardian if:

- (i) the applicant or recipient has no representative willing to act in his behalf or the representative or guardian refuses to take the required action. The county shall petition the court to have the applicant or recipient declared incompetent and to have a guardian appointed within 30 calendar days from the date it learns of the representative's refusal; or
- (ii) the applicant's or recipient's representative fails to take the required action within 30 calendar days of the date he was informed of the requirement. The county shall within 15 calendar days from this date, petition the court to have the applicant or recipient declared incompetent and to have a legal guardian appointed.

If the county department of social services is required to act under Subparagraph (B)(i) or (ii), the resources held solely by the applicant or recipient or held jointly shall be excluded in determining countable ~~reserve resources~~.

~~(C)~~(c) When the court rules that the applicant or recipient is competent, his resources shall be counted beginning the first day of the month following the month he is declared competent.

~~(D)~~(d) When the court declares the applicant or recipient incompetent and appoints a guardian, the guardian must take appropriate action to dispose of or make exempt the resource within 30 calendar days of his appointment. If he does not, the county department of social services shall determine if the guardian is acting appropriately under the terms of the guardianship.

~~(E)~~(e) If the guardian takes the appropriate action to dispose of or make exempt the resource, the resource shall be excluded until the clerk of court confirms the action taken by the guardian. The resource, if otherwise

includible, shall be counted in reserve beginning the first day of the month following the month the action is confirmed by the clerk of court.

Authority G.S. 108A-41; 108A-46; 143B-153.

10A NCAC 71P .0905 INCOME

(a) Eligibility Requirement. Eligibility shall be determined using the income rules governing the federal Supplemental Security Income Program (SSI) found in Title XVI of the Social Security Act which is hereby incorporated by reference including all subsequent amendments and editions. ~~Copies of this law may be obtained from the North Carolina Division of Social Services, Adult and Family Section, 325 N. Salisbury St., 2405 Mail Service Center, Raleigh, North Carolina 27699-2405, telephone number (919) 733-3677, at a cost of five cent (\$0.05) per copy. This law can be accessed free of charge through the federal Social Security website www.ssa.gov.~~

(b) Long term care insurance payments for claims on policies purchased on behalf of the beneficiary are considered income for State/County Special Assistance regardless of whether the payment is made to the provider or to the beneficiary or his/her representative.

Authority G.S. 108A-26; 108A-41; 143B-153.

10A NCAC 71P .0906 EVALUATION

Eligibility for State/County Special Assistance for Adults shall be determined based on verification that an evaluation has been completed using the Resident Assessment Instrument for Adult Care Homes and other supportive information which documents the need for care in an adult care home licensed under G.S. 131D-2, a combination home licensed under G.S. 131E, Article 6, Part A, or a facility licensed under G.S. 122C, Article 2.

Authority G.S. 143B-153; S.L. 1999-237.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Coastal Resources Commission intends to adopt the rules cited as 15A NCAC 07B .0801, .0804, amend the rules cited as 15A NCAC 07L .0102, .0502-.0504, repeal the rules cited as 15A NCAC 07L .0505-.0514, .0601-.0603, .0701-.0705, and readopt with substantive changes the rules cited as 15A NCAC 07B .0601, .0701, .0702, .0802, .0803

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.nccoastalmanagement.net/web/cm/proposed-rules>

Proposed Effective Date: January 1, 2016

Public Hearing:
Date: October 14, 2015
Time: 5:00 p.m.

Location: NC Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557

Reason for Proposed Action: The Coastal Resources Commission (CRC) is proposing amendments to the CAMA Land Use Planning Program and the Planning & Management Grant Program. These amendments include increased flexibility for plan content and format, clarification that updates and amendments are voluntary, a new process option for CAMA Major Permit Review, streamlined plan approval, amendment, and update processes, and integrated planning efforts. The CRC is proposing new language for 7B .0801. Existing language and amendments to the current 15A NCAC 07B .0801 and 15A NCAC 07B .0802 have been renumbered to 7B .0802 and 7B .0803 respectively. Pursuant to G.S. 150B-21.3A, 15A NCAC 07B .0602 and 15A NCAC 07B .0901 expired effective September 1, 2015.

Comments may be submitted to: Braxton Davis, NC Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557, email Braxton.davis@ncdenr.gov

Comment period ends: November 16, 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
- No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07B – STATE GUIDELINES FOR LAND USE PLANNING

SECTION .0600 – INTRODUCTION

15A NCAC 07B .0601 AUTHORITY

This Subchapter establishes the rules that local governments shall follow in developing and adopting a Coastal Area Management Act (CAMA) Land Use Plan, land use plan or comprehensive plan that meets the Coastal Resources Commission's (CRC) planning requirements.

Authority G.S. 113A-107(a); 113A-110; 113A-124.

SECTION .0700 – LAND USE PLANNING REQUIREMENTS

15A NCAC 07B .0701 PLANNING OPTIONS

(a) Each county within the coastal area may prepare and adopt a CAMA land use plan or comprehensive plan that meets the planning requirements adopted by the Coastal Resources Commission (CRC). The CRC Secretary shall prepare and adopt a CAMA Land Use Plan, land use plan that meets the CRC's planning requirements for each county that chooses not to prepare

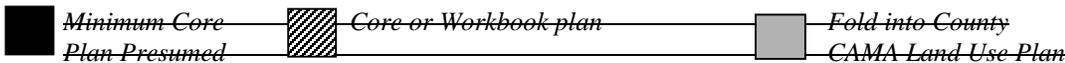
and adopt a CAMA Land Use Plan, land use plan. Municipalities may develop individual CAMA Land Use Plans, land use plans or comprehensive plans that meet the CRC's requirements if:

- (1) the County delegates this authority to the municipality; or
- (2) the CRC Secretary grants this authority upon application from a municipality that is currently enforcing its zoning ordinance, its subdivision regulations and the State Building Code within its jurisdiction.

(b) ~~The minimum types of plans presumed for municipalities, based on population, growth rates and the presence of Areas of Environmental Concern (AECs) are illustrated in Figure 1. In addition, community characteristics other than those listed in Figure 1, such as extent of growth and resource protection issues (e.g., water quality concerns), shall be considered when determining the type of plan to be prepared.~~

Figure 1: ~~TYPES OF CAMA PLANS PRESUMED FOR MUNICIPALITIES~~

		AREAS OF ENVIRONMENTAL CONCERN (AECs)		
POPULATION	GROWTH RATE*	OCEAN HAZARD AREAS	NON-OCEAN HAZARD AREAS**	DO NOT MEET STATUTORY THRESHOLD IN §113A-110(c)***
≥ 5,000	N/A			
≥ 2,500	HIGH			
>1,000 and < 2,500	HIGH			
< 1,000	HIGH			
≥ 2,500	MODERATE			
< 2,500	MODERATE			
≥ 2,500	LOW			
< 2,500	LOW			



_____ [*] GROWTH RATE (Source: Office of State Planning)	
High	≥ 18.4%
Moderate	> 9.2% and < 18.4%
Low	≤ 9.2%
_____ ^{**} Estuarine Waters, Coastal Shorelines, Public Trust Areas, and Coastal Wetlands	
*** 113A-110 (c) provides that municipalities may develop individual plans if (1) the County delegates this authority to the municipality or (2) the CRC grants this authority upon application from a municipality that is currently enforcing its zoning ordinance, its subdivision regulations and the State Building Code within its jurisdiction.	

(e) Types of Plans

- (1) ~~Workbook plan: This is a simplified CAMA Land Use Plan that addresses the following elements:~~
 - (A) ~~statement of community concerns, aspirations and vision;~~
 - (B) ~~existing land use map;~~
 - (C) ~~land suitability analysis;~~
 - (D) ~~local growth and development policies addressing each Management Topic and applicable Areas of Environmental Concern; and~~
 - (E) ~~future land use map.~~
- (2) ~~Core plan: This plan addresses all of the plan elements in Rule .0702 of this Section (Elements of CAMA Core and Advanced Core Land Use Plans) in a complete and thorough manner. This type of plan is the standard CAMA Land Use Plan required for all 20 coastal counties.~~
- (3) ~~Advanced core plan: The plan prepared by local governments that, due to consideration of specific local conditions, elect to exceed the core plan requirements in two or more areas. This plan also may be used to help meet the requirements of other planning programs, such as the Environmental Protection Agency's (EPA) Phase II Stormwater requirements or hazard mitigation plans, that address the CAMA goals, or to address issues of local concern, (i.e. location of a new industry or redevelopment after storm events.)~~

~~(d) Counties preparing a CAMA Land Use Plan shall prepare a core plan at a minimum.~~

~~(e) Municipalities that contain AECs may prepare a Workbook Plan, Core Plan, or Advanced Core Plan, depending on the presumptive type of plan shown in Figure 1. However, the type of plan to be prepared may change depending on needs that are identified in the scoping process described in 15A NCAC 07L. Municipalities with Ocean Hazard AECs that choose to plan shall~~

~~prepare a minimum of a Core Plan. Municipalities with only Non-Ocean Hazard AECs that choose to plan shall prepare a Core Plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only Non-Ocean Hazard AECs that choose to plan and are at or below the population and growth rate thresholds shown in Figure 1 may prepare a Core Plan or a Workbook Plan.~~

~~(f)(b) A County shall accept a municipality's locally adopted policies and implementation actions for inclusion in the County CAMA Land Use Plan land use plan for the municipality's jurisdiction if requested to do so by any municipality not preparing an individual CAMA Land Use Plan. its own land use plan. Inclusion of a municipality's adopted policies and implementation actions shall occur either at the time of County CAMA Land Use Plan land use plan preparation or a subsequent County CAMA Land Use Plan land use plan amendment. The municipality's policies and implementation actions are limited to its jurisdiction and may differ from the County's policies, policies and implementation actions.~~

~~(g)(c) Municipalities may seek CRC certification for these plans if all requirements found in 15A NCAC 07B and G.S. 113A-110 are met.~~

Authority G.S. 113A-107(a); 113A-110; 113A-124.

15A NCAC 07B .0702 LAND USE PLAN ELEMENTS

~~(a) Organization of the Plan. The elements in this Rule provide general direction for development of the CAMA Core and Advanced Core Land Use Plans. A detailed Table of Contents shall be included and if the local government does not follow the outline described in this Rule, a matrix shall be included. Include a matrix in the land use plan or comprehensive plan that shows the exact location of the following required elements.~~

~~(b) Community Concerns and Aspirations: Aspirations. The purpose of this element is to provide an understanding of the underlying planning needs and desires of the community.~~

- (1) ~~Significant existing and emerging conditions: The plan shall include a description of Describe the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.~~
- (2) ~~Key issues: The plan shall include a description of Describe the land use~~

and development topics most important to the future of the planning area. At a minimum, this description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, water quality, and may also include local areas of concern as described in Subparagraph (d)(3)(2) (Land Use Plan Management Topics) of this Rule.

- (3) A community vision: ~~This shall consist of a description of~~ Describe the general physical appearance and form that represents the local government's plan for the future. ~~The community vision shall include statements of general~~ Include objectives to be achieved by the plan. ~~These objectives shall serve as the foundation for more specific objectives and policies stated elsewhere in the CAMA Land Use Plan. The objectives shall include plan and identify changes that the local government feels are~~ may be needed to achieve the planning vision.

(c) ~~Analysis of Existing and Emerging Conditions within the planning jurisdiction.~~ Conditions. The purpose of this element is to provide a sound factual ~~and analytical~~ base that is necessary to support the land use and development policies included in the plan. ~~The analysis shall be based upon the best available data or mapping information from state, federal and local sources. This element shall describe~~ Describe the following:

- (1) Population, Housing, and Economy. ~~The plan shall include an analysis and~~ Include discussion of the following data and trends:
 - (A) Population:
 - (i) Permanent population growth trends using data from the two most recent decennial Censuses;
 - (ii) Current permanent and seasonal population estimates;
 - (iii) Key population characteristics;
 - (iv) Age; ~~and~~
 - (v) ~~Income.~~ Income; and
 - (vi) Thirty year projections of permanent and seasonal population in five year increments.
 - (B) Housing stock: Estimate current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured).

- (i) ~~Estimate of current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured); and~~
- (ii) ~~Building permits issued for single-family, multifamily, and manufactured homes since last plan update.~~

(C) Local economy: Employment Describe employment by major sectors and ~~description of~~ community economic activity.

~~(D) Projections. Short term (five and ten year) and long term (20 year) projections of permanent and seasonal population.~~

- (2) Natural systems analysis. ~~The purpose of the natural systems analysis is to describe and analyze the systems. Describe the natural features and~~ discuss the environmental conditions of the planning jurisdiction, and to assess their capabilities and limitations for development. ~~This analysis shall~~ jurisdiction to include:

(A) ~~Mapping and analysis of natural~~ Natural features. ~~The 14 digit hydrological units delineated by the Natural Resources Conservation Service shall be used as the basic unit of analysis of natural features. Maps of the following natural features shall be developed with data provided by DCM or other state agencies for analysis and plan development. These maps may be reproduced and included in the CAMA Land Use Plan at the option of the local government. If the maps are not included in the plan, they shall be made available to the public:~~

- (i) Areas of Environmental Concern (AECs);
- (ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;
- (iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HQW, and ORW) and related use support designations, and Division of ~~Environmental Health~~ Environmental Health (DEH) of Marine Fisheries (DMF) shellfish growing areas and water quality conditions;

- (iv) Flood and other natural hazard areas;
 - (v) Storm surge areas;
 - (vi) Non-coastal wetlands including forested wetlands, shrub-scrub wetlands and freshwater marshes;
 - (vii) Water supply watersheds or wellhead protection areas;
 - (viii) Primary nursery areas, where mapped; areas;
 - (ix) Environmentally fragile areas, such as, but not limited to wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and
 - (x) Additional natural features or conditions identified by the local government.
- (B) Composite map of environmental conditions:
- (i) Composite map of environmental conditions: The plan shall include a map that shows the extent and overlap of natural features listed in Part (c)(2)(A) of this Rule and, based on the local government's determination of the capabilities and limitations of these features and conditions for development, shows the location of the following three categories of land:
 - (I) Class I land containing only minimal hazards and limitations that may be addressed by commonly accepted land planning and development practices;
 - (II) Class II land containing development hazards and limitations that may be addressed by methods such as restrictions on types of land uses; special site planning; or the provision of public services; and
- (iii) Class III land containing serious hazards for development or lands where the impact of development may cause serious damage to the functions of natural systems.
 - (ii) The CAMA Land Use Plan shall describe or list the features or conditions selected by the local government for inclusion in each class.
- (C)(B) Environmental conditions. The plan shall provide an assessment of the following environmental conditions and features and discuss their limitations or opportunities for development:
- (i) Water quality:
 - (I) Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Quality Basinwide Water Quality Plans, Resources Basin Planning Branch Reports, Clean Water Act 303(d) List List, and other comparable data;
 - (II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation and Recreational Water Quality Section of the N.C. Division of Environmental Health; Marine Fisheries;
 - (III) Areas experiencing chronic wastewater

- that may be impacted or lost as a result of incompatible development land.
- (IV) Areas with water quality or public health problems related to non-point source pollution.
- (ii) Natural hazards:
- (I) Areas subject to storm hazards such as recurrent flooding, storm surges and high winds; and
 - (II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities; and facilities.
 - (III) ~~Where data is available, estimates of public and private damage resulting from floods and wind that has occurred since the last plan update.~~
- (iii) Natural resources:
- (I) Environmentally fragile areas (as defined in Part (c)(2)(A)(ix) of this Rule) or areas where resource functions may be are being impacted as a result of development; and
 - (II) ~~Areas containing potentially valuable natural resources. Valuable natural resource areas that are being impacted or lost as a result of incompatible development.~~ These may include, but are not limited to the following: beach quality sand deposits, coastal wetlands, protected open space, and agricultural land,
- (3) ~~Analysis of Existing Land Use and Development. The purpose of the analysis of land use and development is to describe and quantify existing patterns of land uses, identify potential land use and land use/water use conflicts, determine future development trends, and project future land needs. The plan shall include the following mapping and analysis of existing land use: Include a map and descriptions of the following:~~
- (A) ~~A map of land including the following: Existing land use patterns, which may include the following categories: Residential, commercial, industrial, institutional, public, dedicated open space, vacant, agriculture, forestry, confined animal feeding operations, and undeveloped; and forestry. Land use descriptions shall include estimates of the land area allocated to each land use and characteristics of each land use category.~~
 - (B) ~~The land use analysis shall include the following:~~
 - (i) ~~Table that shows estimates of the land area allocated to each land use;~~
 - (ii) ~~Description of any land use conflicts;~~
 - (iii) ~~Description of any land use water quality conflicts;~~
 - (iv) ~~Description of development trends using indicators. These development trends may include, but are not limited to the following: building permits and platted but un-built lots; and~~
 - (v) ~~Location of areas expected to experience development during the five years following plan certification by the CRC and a description of any potential conflicts with Class II or Class III land identified in the natural systems analysis.~~
 - (C) ~~(B) Historic, cultural, and scenic areas designated by a state or federal agency or by local government. These areas and sites shall be located on either the existing land use map or a separate map; and~~

- ~~(D) — Projections of future land needs. The analysis shall include short term (five and ten year) and long term (20 year) projections of residential land area needed to accommodate the planning jurisdiction's projected future permanent and seasonal population (population projections as defined in Part (e)(1)(D) of this Rule (Analysis of Existing and Emerging Conditions). The projections of land needs may be increased up to 50% to allow for unanticipated growth and to provide market flexibility. For local governments experiencing low or no growth (as shown in Figure 1 in 15A NCAC 07B .0701), the projections of land needs may consider economic strategies in the final calculations.~~
- (4) ~~Analysis of Community Facilities. The purpose of the analysis of community facilities is to evaluate~~ Evaluate existing and planned capacity, location, and adequacy of key community facilities that serve the community's existing and planned population and economic base; that protect important environmental factors such as water quality; and that guide land development in the coastal area. ~~This analysis~~ These shall include:
- (A) ~~Public and private water supply and wastewater systems. The analysis of water and sewer systems shall include a description and map(s) of~~ Describe existing public and private systems, including existing condition and capacity; location of pipelines; documentation of any capacity. ~~Describe any documented overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health; existing and planned service areas; and future needs based on population projections. If any required information is not available for private systems, the local government shall so state in the plan and this factor may be eliminated from the analysis.~~ health. Indicate future needs based on population projections. Map existing and planned service areas.
- (B) ~~Transportation systems. The analysis of the transportation system shall include a map showing: the existing highway system; any~~ Map the existing and planned multimodal systems and port and airport facilities. Describe any highway segments deemed by the North Carolina Department of Transportation (NCDOT) as having unacceptable service levels; highway levels. Describe highway facilities on the current thoroughfare plan; and plan or facilities on the current transportation improvement program. The analysis shall also assess the impact of planned highway or other transportation facilities on growth levels and development patterns. plan. Describe the impact of existing facilities on land use patterns.
- (C) ~~Stormwater systems. The analysis of public and permitted private stormwater systems shall include identification of existing drainage problems in the planning area; identification of~~ Describe the existing public stormwater management system. Identify existing drainage problems and water quality issues related to point-source discharges of stormwater runoff; and an overview of potential stormwater system requirements for local governments subject to the EPA's Storm Water Phase II Final Rules. runoff.
- (D) ~~Other facilities. The local government may include additional facilities and services such as solid waste and health and safety in the analysis.~~
- (5) ~~Land Suitability Analysis. The purpose of the land suitability analysis is to determine the planning area's supply of land suited for development based on the following considerations: natural system constraints, compatibility with existing land uses and development patterns, the existing land use and development criteria of local, state, and federal agencies and the availability and capacity of water, sewer, stormwater management facilities, and transportation systems. The analysis shall include a land suitability map showing vacant or under utilized land that is suitable for development. The following factors shall be considered to assess land suitability:~~
- (A) ~~Water quality;~~
- (B) ~~Land Classes I, II, and III summary environmental analysis;~~
- (C) ~~Proximity to existing developed areas and compatibility with existing land uses;~~
- (D) ~~Potential impact of development on areas and sites designated by local historic commissions or the North Carolina Department of Cultural Resources as historic, culturally significant, or scenic;~~

(E) Land use and development requirements of local development regulations, CAMA Use Standards and other applicable state regulations, and applicable federal regulations; and

(F) Availability of community facilities, including water, sewer, stormwater and transportation.

(6) ~~Review of Current CAMA Land Use Plan.~~ The purpose of the review of the current CAMA Land Use Plan is for the local governing body to review its success in implementing the policies and programs adopted in the plan and the effectiveness of those policies in achieving the goals of the plan. The review shall include consideration of the following factors:

(A) Consistency of existing land use and development ordinances with current CAMA Land Use Plan policies;

(B) Adoption of the land use plan's implementation measures by the governing body; and

(C) Efficacy of current policies in creating desired land use patterns and protecting natural systems.

(d) ~~Plan for the Future. Future Land Use.~~ This element of the plan is intended to guide the development and use of land in the planning jurisdiction in a manner that achieves its goals for the community and CAMA. Policies affecting AECs shall also be used in making CAMA permit decisions. The plan for the future includes the local government's goals, land use and development policies, and future land use map: the goals of the CAMA through local government land use and development policies, including a future land use map.

(1) Land use and development goals. The following shall be considered in the development of the plan's goals: Policies.

(A) Community concerns and aspirations identified at the beginning of the planning process; and Concerns and Aspirations and Existing and Emerging Conditions shall be considered in the development of local government land use plan policies as required in Paragraphs (b) and (c) of this Rule.

(B) Needs and opportunities identified in the analysis of existing and emerging conditions.

(2) Policies:

(A)(B) Policies included in the land use plan shall be consistent with the goals of the CAMA, shall address the CRC management topics for land use plans, and comply with all state and federal rules. The CAMA Land Use Plan shall demonstrate how the land use and development goals, policies and future land use map, as required in

Subparagraph (d)(4) of this Rule, will guide the development and use of land in the planning jurisdiction in a manner that is consistent with the specific management goal(s), planning objective(s) and land use plan requirements of each Management Topic.

(B) The plan shall contain a description of the type and extent of analysis completed to determine the impact of CAMA Land Use Plan policies on the management topics; a description of both positive and negative impacts of the land use plan policies on the management topics; and a description of the policies, methods, programs and processes to mitigate any negative impacts on applicable management topics.

(C) The plan shall contain a statement that the governing body either accepts state and federal law regarding land uses and development in AECs or, that the local government's policies exceed the requirements of state and federal agencies. If local policies exceed the State and Federal requirements, the CAMA Land Use Plan shall identify which policies exceed these requirements and to what extent. If the governing body intends to rely on Federal and State laws and regulations it shall reference these in the plan. Policies that exceed use standards and permitting requirements found in Subchapter 07H of this Chapter, State Guidelines for Areas of Environmental Concern, shall be identified in the plan.

(3)(2) Land Use Plan Management Topics. The purposes of the CRC management topics are to insure that CAMA Land Use Plans ensure that land use plans support the goals of the CAMA, to define the CRC's expectations for the land use planning process, land use policies, and to give the CRC a substantive provide a basis for land use plan review and certification of CAMA Land Use Plans. certification. Each of the following management topics (Public Access, Land Use Compatibility, Infrastructure Carrying Capacity, Natural Hazard Areas, Water Quality, and Local Areas of Concern) include three components: a management goal, a statement of the CRC's planning objective, and requirements for the CAMA Land Use Plans: In addition to the management topics outlined below, plans may also include policies to address local areas of concern. Each

management topic includes two components: a management goal and planning objectives.

(A) Public Access:

(i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.

(ii) ~~Planning Objective: Develop comprehensive policies that provide beach and public trust water access opportunities for the public along the shoreline within the planning jurisdiction.~~ Objectives: Policies shall that address access needs and opportunities, include with strategies to develop public access, and identify feasible funding options. access and provisions for all segments of the community, including persons with disabilities. Oceanfront communities shall establish access policies for beach areas targeted for nourishment.

~~(iii) Land Use Plan Requirements: Land use plan policies on ocean and public waterfront access shall establish local criteria for frequency and type of access facilities. These policies shall contain provisions for public access for all segments of the community, including persons with disabilities, and shall establish access criteria for beach areas targeted for nourishment.~~

(B) Land Use Compatibility:

(i) Management Goal: Ensure that development and use of resources or preservation of land ~~minimizes direct and secondary environmental impacts, balance protection of natural resources and fragile areas with economic development,~~ avoids risks to public health, safety and ~~welfare-welfare,~~ and ~~is~~ are consistent with the capability of the ~~land based on~~ considerations of interactions of natural and manmade features. land.

(ii) Planning Objective: Objectives: Policies that characterize future land use development patterns and establish mitigation criteria and concepts to minimize conflicts.

~~(I) Adopt and apply local development policies that balance protection of natural resources and fragile areas with economic development.~~

~~(II) Policies shall provide direction to assist local decision making and consistency for zoning, divisions of land, and public and private projects.~~

~~(iii) Land Use Plan Requirements:~~

~~(I) Establish building intensity and density criteria, such as floor area ratio and units per acre, consistent with the land suitability analysis for each land use designation on the Future Land Use Map.~~

~~(II) Establish local mitigation criteria and concepts. These may include, but are not limited to the following: eluster subdivision design, enacting local buffers, impervious surface limits, and innovative stormwater management alternatives.~~

(C) Infrastructure Carrying Capacity:

(i) Management Goal: Ensure that public infrastructure systems are appropriately sized, located and managed so the quality and productivity of AECs and

- other fragile areas are protected or restored.
- (ii) ~~Planning Objective: Establish level of service policies and criteria for infrastructure consistent with Part (e)(3)(D) (Projections of Future Land Needs) of this Rule. Objectives: Policies that establish service criteria and ensure improvements minimize impacts to AECs and other fragile areas.~~
- (iii) ~~Land Use Plan Requirements:~~
- (I) ~~Identify/establish service area boundaries for existing and future infrastructure.~~
- (II) ~~Correlate future land use map categories with existing and planned infrastructure such as wastewater, water infrastructure and transportation.~~
- (D) Natural Hazard Areas:
- (i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.
- (ii) ~~Planning Objective: Develop policies Objectives: Policies that establish mitigation and adaptation concepts and criteria for development and redevelopment, including public facilities, and that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise. other natural hazards.~~
- (iii) ~~Land Use Plan Requirements:~~
- (I) ~~Develop location, density, and intensity criteria for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.~~
- (II) ~~Correlate existing and planned development with existing and planned evacuation infrastructure.~~
- (E) Water Quality:
- (i) Management Goal: Maintain, protect and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries.
- (ii) ~~Planning Objective: Adopt policies for coastal waters within the planning jurisdiction to help ensure that water quality is maintained if not impaired and improved if impaired. Objectives: Policies that establish strategies and practices to prevent or control nonpoint source pollution and maintain or improve water quality.~~
- (iii) ~~Land Use Plan Requirements:~~
- (I) ~~Devise policies that help prevent or control nonpoint source discharges (sewage and storm water) such as, but not limited to the following: impervious surface limits, vegetated riparian buffers, natural areas, natural area buffers, and wetland protection.~~
- (II) ~~Establish policies and land use categories aimed at protecting open~~

~~shellfishing waters and restoring closed or conditionally closed shellfishing waters.~~

- (F) ~~Local Areas of Concern:~~
- (i) ~~Management Goal: Integrate local concerns with the overall goals of CAMA in the context of land use planning.~~
 - (ii) ~~Planning Objective: Identify and address local concerns and issues, such as cultural and historic areas, scenic areas, economic development, downtown revitalization or general health and human services needs.~~
 - (iii) ~~Land Use Plan Requirements: Evaluate local concerns and issues for the development of goals, policies and implementation strategies. These may include timelines and identification of funding options.~~

(4)(3) ~~Future land use map. This map depicts application of. Depict the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure. policies. The local government shall include such categories and. Include designations with descriptions of land uses and development as are required to accurately illustrate the application of its policies. At a minimum, the map shall show the following: development.~~

- (A) ~~14 digit hydrological units encompassed by the planning area;~~
- (B) ~~areas and locations planned for conservation or open space and a description of compatible land uses and activities;~~
- (C) ~~areas and locations planned for future growth and development with descriptions of the following characteristics:~~
 - (i) ~~predominant and supporting land uses that are encouraged in each area;~~
 - (ii) ~~overall density and development intensity planned for each area; and~~
 - (iii) ~~infrastructure required to support planned development in each area.~~

(D) ~~areas in existing developed areas for infill, preservation, and redevelopment;~~

(E) ~~existing and planned infrastructure, including major roads, water, and sewer.~~

The local government may use additional or more detailed categories if required to depict its land use policies. If the future land use map shows development patterns or land uses that are not consistent with the natural systems analysis, or the land suitability analysis, then the plan shall include a description of the steps that the local government shall take to mitigate the impacts. In addition, the plan shall include an estimate of the cost of any community facilities or services that shall be extended or developed. The amount of land allocated to various uses shall be calculated and compared to the projection of land needs. The amount of land area thus allocated to various uses may not exceed projected needs as delineated in Part (c)(3)(D) of this Rule (Projections of Future Land Needs).

(e) ~~Tools for Managing Development. This element of the plan provides a description of. The purpose of this element is to describe the management tools that and actions the local government selects and the actions to be taken will use to implement the CAMA Land Use Plan. land use plan. It also includes a five year schedule for implementation. This element shall include:~~

- (1) ~~Guide for land use decision-making. Describe the specific role and the status of the land use plan policies and policies, including the future land use plan map map, in local decisions regarding land use and development.~~
- (2) ~~Existing development program. Describe the community's existing development management program, including local ordinances, codes, plans and policies, state and federal laws and regulations, and the role that the existing management program plays in implementing the plan. This description shall also include the community's approach to coordinating these codes and rules to implement the land use and development policies. policies.~~
- (3) ~~Additional tools. Describe any of the following additional tools selected by the local government to implement the CAMA land use plan policies:~~
 - (A) ~~Ordinances:~~
 - (i) ~~Amendments or adjustments in existing development codes required for consistency with the plan;~~
 - (ii) ~~New ordinances or codes to be developed;~~
 - (B) ~~Capital improvements program. New, upgraded or expanded community facilities, such as but not limited to the following: water, sewer, stormwater, transportation, and other facilities, and~~

- ~~policies regarding connections to and extensions of community facilities;~~
- ~~(C) Acquisition program. Planned acquisition of property, easements, or rights-of-way; and~~
- ~~(D) Specific projects to reach goals.~~
- ~~(4)(3) Action plan/schedule-plan and implementation schedule. Describe the priority actions that will be taken by the local government to implement the CAMA Land Use Plan and specify policies that meet the CRC's Management Topic goals and objectives. Specify the fiscal year(s) in which each action is anticipated to start and finish. The document shall contain a description of Describe the specific steps that the local government plans to take to involve the public in monitoring implementation of the CAMA Land Use Plan, implement the policies, including the adoption and amendment of local ordinances that affect AECs, ordinances, plans, and special projects. The action plan shall be used to prepare the implementation status report for the CAMA Land Use Plan-land use plan.~~

Authority G.S. 113A-102; 113A-107(a); 113A-110; 113A-111; 113A-124.

SECTION .0800 – LAND USE PLAN AND AMENDMENT REVIEW AND CERTIFICATION

15A NCAC 07B .0801 STATE REVIEW AND COMMENT ON DRAFT PLAN

Procedure for Agency Review and Comment. The Division shall review all draft land use plans for consistency with the CRC's requirements for land use plans prior to local adoption. The Division shall provide notice to the CRC, other State and Federal Agencies, and adjacent jurisdictions (including non-CAMA areas and if applicable, out of state areas) that the plan is available for review and comment. The review period shall be 30 calendar days. After the review period ends, comments shall be provided to the local government within 45 calendar days.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07B .0801 .0802 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

~~(a) Public Hearing Requirements. The local government shall provide documentation to DCM that it has followed the process required in G.S. 113A 110; and such notice shall include per .0802(b)(3), the disclosure of the public opportunity to provide written comment following local adoption of the Land Use Plan.~~

(a) Notice of Public Hearing. The local government shall provide the Secretary or his designee written notice of the public hearing for local adoption and a copy of the proposed land use plan or amendment no less than five business days prior to publication of a public hearing notice. The public hearing notice shall include, per Rule .0803(a)(2) of this Section, disclosure of the public's opportunity to provide written comment to the Secretary following local adoption of the land use plan.

~~(b) Final Plan Content. The final decision on local policies and all contents of the CAMA Land Use Plan consistent with the CAMA land use planning rules-land use plan or amendment shall be made-adopted by the elected body of each participating local government.~~

~~(c) Transmittal to the CRC-Division for Certification. The local government shall provide the Executive Secretary of the CRC with as many copies of or his designee the locally adopted land use plan as the Executive Secretary requests, and-plan, a certified statement of the local government adoption action no earlier than 45 days and no later than 30 days prior to the next CRC meeting. If the local government fails to submit the requested copies of the locally adopted land use plan and certified statement to the Executive Secretary within the specified timeframe, the local government may resubmit documents within the specified timeframe for consideration at the following CRC meeting-action, and documentation that it has followed the public hearing process required in G.S. 113A-110.~~

Authority G.S. 113A-107(a); 113A-110; 113A-124.

15A NCAC 07B .0802 .0803 CERTIFICATION AND USE OF THE PLAN

~~(a) Re Certification: If the CRC adopts new CAMA Land Use Plan rules, plans shall be updated within six years of the effective date of the new rules. If a scoping process is held, a summary shall be provided to the CRC along with the request for re-certification of the existing CAMA Land Use Plan.~~

~~(b)(a) Committee Designated by CRC to Review Local Secretary Certification of Land Use Plans:-Plans and Amendments:~~

- ~~(1) The appropriate DCM-Division District Planner shall submit a written report to the committee designated by the CRC as to the type of plan being presented, highlight any unique characteristics of the plan, identify any land use conflicts with adjacent planning jurisdictions or other state/federal agencies, identify any inaccuracy or inconsistency of items in the plan, and recommend certification, conditional certification, or non-certification. Secretary on the locally adopted land use plan or amendment and either recommend certification or identify how the plan or amendment does not meet the procedures and conditions for certification.~~
- ~~(2) The local government shall submit its draft Land Use Plan to the committee designated by the CRC.~~
- ~~(3)(2) The public shall have an opportunity to submit written objections, comments, or statements of support prior to action by the committee designated by the CRC. objections or comments on the locally adopted land use plan or amendment prior to action by the Secretary. Written objections shall be received by DCM no less than 15 business days prior to the next scheduled CAMA Land Use Plan review meeting and the Division no more than 30 calendar days after local adoption of the land use plan or amendment, shall be limited to the~~

criteria for ~~CRC~~ certification as defined in Subparagraph ~~(e)(3)~~ ~~(a)(3)~~ of this ~~Rule~~. ~~Written objections Rule, and shall identify the specific plan elements that are opposed. A copy of any~~ Written objections or comments shall be sent by the DCM-Division to the local government submitting the CAMA Land Use Plan, land use plan or amendment. Written objections shall be considered in the certification of the local land use plan or amendment.

- ~~(4)(3)~~ The local government may withdraw the submitted CAMA Land Use Plan from CRC consideration at any time before review. The Secretary shall certify land use plans and amendments following the procedures and conditions specified in this Rule. The Secretary shall certify plans and amendments which:
- (A) are consistent with the current federally approved North Carolina Coastal Management Program;
 - (B) are consistent with the Rules of the CRC;
 - (C) do not violate state or federal law; and
 - (D) contain policies that address each Management Topic.

~~(4)~~ If the land use plan or amendment does not meet certification requirements the Secretary shall within 45 calendar days inform the local government how the plan or amendment does not meet the procedures and conditions for certification.

(b) Copies of the Plan. Within 90 calendar days of certification of the land use plan or an amendment the local government shall provide one printed and one digital copy of the land use plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.

(c) Use of the Plan. Once certified, the land use plan shall be utilized in the review of CAMA permits in accordance with G.S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:

- (1) Local administration. The local government reviews CAMA permits for consistency with the land use plan.
- (2) Joint administration. The local government identifies policies, including the future land use map and implementation actions that will be used by the Division for CAMA permit consistency reviews.
- (3) Division administration. The Division reviews CAMA permits for consistency with the land use plan policies, including the future land use map and implementation actions.

(d) Plan updates and Amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.

~~(e) CRC Certification:~~

~~(1) The CRC shall certify the CAMA Land Use Plan following the procedures and conditions specified in this Rule.~~

~~(2) Provided the locally adopted land use plan has been received by the Executive Secretary no earlier than 45 days and no later than 30 days prior to the next CRC meeting, the CRC shall certify, conditionally certify or not certify the plan at that meeting or mutually agreed upon date. If the CRC fails to take action as specified above the plan shall be certified.~~

- ~~(3) The CRC shall certify plans which:~~
- ~~(A) are consistent with the current federally approved North Carolina Coastal Management Program;~~
 - ~~(B) are consistent with the Rules of the CRC;~~
 - ~~(C) do not violate state or federal law;~~
 - ~~(D) contain policies that address each Management Topic. If a local government cannot meet any CAMA Land Use Plan requirement contained within Paragraphs (d) and (e) of 15A NCAC 07B .0702 the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to address the CAMA Land Use Plan requirements. If such description(s) are not included in the plan, it shall not be certified; and~~
 - ~~(E) contain a local resolution of adoption that includes findings which demonstrate that policy statements and the Future Land Use Plan Map (FLUP) have been evaluated, and determine that no internal inconsistencies exist.~~

~~(d) Non-Certification: If the plan is not certified the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. Until the plan is certified, the pre-existing certified CAMA Land Use Plan shall remain in effect.~~

~~(e) Conditional Certification: If the plan is conditionally certified, the CRC shall within 30 days provide the local government with condition(s) that shall be met for certification. Until the condition(s) is met on a conditionally certified plan, the pre-existing certified CAMA Land Use Plan shall remain in effect. When the local government complies with all conditions for a conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC.~~

Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124.

15A NCAC 07B .0804 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

(a) Jurisdictions with a locally adopted and certified land use plan shall submit an Implementation Status Report every two years from the date of initial certification. This report shall be based on implementation actions that meet the CRC's Management Topic goals and objectives, as indicated in the action plan. The Implementation Status Report shall also identify:

- (1) All local, state, federal and joint actions that have been undertaken successfully to implement its certified land use plan;
- (2) Any actions that have been delayed and the reasons for the delays;
- (3) Any unforeseen land use issues that have arisen since certification of the land use plan; and
- (4) Consistency of existing land use and development ordinances with current land use plan policies.

Authority G.S. 113A-112; 113A-124.

SUBCHAPTER 07L - LOCAL PLANNING AND MANAGEMENT GRANTS

SECTION .0100 - PURPOSE AND AUTHORITY

15A NCAC 07L .0102 PURPOSE

The purpose of the Rules in this Subchapter is to establish the criteria and procedures for funding the DENR program of grants for local Coastal Area Management Act (CAMA) land use plans or comprehensive plans and coastal planning and management projects within North Carolina's coastal area. These funds are made available to assist local governments in developing and implementing CAMA-land use plans and management strategies for their coastal resources, as mandated and encouraged by the CAMA. Funds are to be used in refining and carrying out local land use planning and management programs by local governments within the 20 counties defined by the CAMA.

Authority G.S. 113A-112; 113A-124.

SECTION .0500 - GENERAL STANDARDS

15A NCAC 07L .0502 CONSISTENCY WITH PLANS AND RULES

All proposed projects must be consistent with CAMA, with CAMA, state rules and standards implementing CAMA, certified local CAMA land use plans certified by the Coastal Resources Commission (CRC), and the state's federally approved coastal management program.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0503 PRIORITIES FOR FUNDING CAMA-LAND USE PLANS AND IMPLEMENTATION PROJECTS

(a) In funding local planning and management grants, DENR shall follow the general priorities set out in 15A NCAC 07L .0503(b). Examples of the types of eligible projects are listed and

have been placed in the appropriate priority category. ~~Any applications for project funding not specifically identified and placed in a priority category shall be assigned the appropriate priority category by DENR upon receipt of the application. Funding priorities and eligibility for the Sustainable Communities Component of the planning program are described in 15A NCAC 07L .0512.~~

(b) General priority categories for local planning and management grants are as follows:

- (1) The highest priority includes projects directly mandated by statute, including initial and updated ~~CAMA~~ land use plans, local participation in projects initiated by DENR, and projects DENR indicates urgently need local attention in order to meet CRC management topics. ~~In general, grants for projects in this priority category, except CAMA Workbook land use plans, shall be funded for no more than 85 percent of the total project cost, although lower funding percentages may be awarded. The type of CAMA land use plan to be funded and the corresponding percentage of funding shall be based on community characteristics as determined during the scoping process described in 15A NCAC 07L .0505 to be held prior to project application.~~
 - (2) The second priority includes projects directly related to carrying out the explicit goals of CAMA, for which DENR indicates there is a high priority for local actions or projects which are coastally dependent (water-related) or projects to implement ~~the CAMA~~ a land use plan such as public facilities planning or land use regulations preparation. ~~Grants for projects in this category shall be for no more than 65 percent of the total project cost, although lower funding percentages may be awarded.~~
 - (3) The third priority includes projects related to improving local coastal management and land use management capabilities. ~~Grants for projects in this priority category shall be for no more than 50 percent of the total project cost, although lower funding percentages may be awarded.~~
- (c) In addition, DENR shall take into consideration the following factors listed in order of importance to establish priorities for individual projects within the general priority categories:
- (1) project's contribution towards meeting CRC management topics;
 - (2) the extent to which the project includes measures of environmental protection beyond Areas of Environmental Concern (AEC) standards;
 - (3) applicant's urgency of need;
 - (4) past history of applicant's implementation of CAMA planning and management activities;
 - (5) feasibility of successful completion of project by the applicant;

- (6) past experience with this program as well as present management and administrative capabilities;
- (7) potential applicability of the project to other coastal area municipalities and counties; and
- (8) geographic distribution of applicants.

~~(d) In priority categories two and three, the proportion of the grant award to total project costs shall be the same for all similar projects. For example, if one waterfront access plan is funded at a 60 percent level, all waterfront access plans shall be funded at a 60 percent level. The only exception to this involves multi-year projects which may receive a lower level of funding within a given priority category after the initial year.~~

~~(e)(d) Generally, available funds shall first be allocated to projects in priority category one; then, if there are funds remaining, grants shall be made to projects in priority category two; and then, if there are funds remaining, grants may be made to projects in priority category three. However, the factors listed in Paragraph (e) of this Rule shall also be considered in funding decisions. Sustainable Communities projects shall be funded as described in 15A NCAC 07L .0512. The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3) shall be used to determine the economic status of counties. Local government contributions for land use plan and implementation projects shall be at least 25 percent of the project costs except for Tier 1 designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.~~

~~(f)(e) Any local government whose CAMA-land use plan is not certified by the CRC due to failure to meet the criteria listed in 15A NCAC 07B .0803 or that has not submitted the most recent Required Periodic Implementation Status Report as described in 15A NCAC 07B, shall not receive further funding under this program until these inconsistencies are corrected.~~

~~(g) Any local government that is not implementing its certified CAMA land use plan shall not receive additional funding under this program. CAMA land use plan implementation shall be documented through periodic Implementation Status Reports provided to the Division of Coastal Management (DCM), as described in 15A NCAC 07L .0511 (Required Periodic Implementation Status Reports). A local government that is deemed by the DCM Planner to not have implemented its current CAMA land use plan may seek a review by the Director of the DCM to determine if the current CAMA land use plan implementation is acceptable to receive future funding.~~

~~(h) All funding decisions shall be based on availability and amount of state and federal appropriations.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0504 ELIGIBLE PROJECTS

(a) The lists in Paragraph (b) of this Rule constitute types of projects that will be considered for funding. Each type of project listed has been assigned to one of the priority categories described in 15A NCAC 07L .0503 (Priorities For Funding CAMA-Land Use Plans and Implementation Projects.) These lists are not intended to be exhaustive or restrictive. Local governments may

apply for funds for any related projects that will improve local planning and management capabilities.

(b) Examples of eligible projects and their associated priority category include:

- (1) Priority Category-Type 1
 - (A) Those activities specifically designated by DENR on an annual basis, following consultation with the CRC and local governments, to be necessary to bring local plans into compliance with state rules for land use planning;
 - (B) Adopting, amending, or updating CAMA land use plans to reflect changed conditions (these may include, but are not limited to: necessary data collection, public participation, policy development).
- (2) Priority Category-Type 2
 - (A) Adopting or amending ordinances to further secure compliance with state rules in AECs;
 - (B) Beach access plans and studies (these may include, but are not limited to: inventory and identification of sites, design of access improvements, acquisition plans and studies, legal studies necessary to determine the extent of public use rights);
 - (C) Erosion control plans and studies (these may include, but are not limited to: mapping, erosion rate measurement, design of protection strategies for public lands, cost-benefit analysis, relocation plans and strategies);
 - (D) Studies and planning leading to the nomination of new AECs as described in 15A NCAC 07H .0503, or locally significant environmental areas;
 - (E) Waterfront redevelopment and renewal plans and studies including feasibility studies, site design studies, and plans and studies for improving or enhancing water-front parks and public areas (these may include, but are not limited to: site design, use studies, cost analysis);
 - (F) Preparing, adopting, or amending ordinances necessary to carry out certified CAMA-land use plans, state rules, and the state coastal zone management plan (including but not limited to regulations on or for zoning, subdivision, stormwater management, dune protection beyond AEC standards, sanitation, building, mobile homes, historic preservation, signs,

- natural area protection, environmental impact statements); statements).
- (G) ~~Hazard mitigation plans.~~
- (3) Priority Category-Type 3
- (A) Initial water and sewer plans and studies;
- (B) Land use related capital facilities programming;
- (C) Base mapping as a management tool;
- (D) Other planning, studies, and data acquisition supportive of coastal planning and management including but not limited to public education or involvement on coastal issues; solid waste planning; port planning; sport and commercial fishing studies;
- (E) Enforcement of ordinances adopted to carry out certified CAMA land use plans;
- (F) Coordination of local coastal management activities with other local management activities (these may include, but are not limited to: internal coordination, city-county coordination);
- (G) Other coastally related management projects.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0505 SCOPING OF PLANNING NEEDS

- (a) If a local government intends to request funding from DENR for the development or update of a CAMA land use plan a scoping meeting shall occur between the local government and the DCM. This meeting shall occur prior to the submission of a grant application. The scoping meeting shall determine the extent of planning needs and the type of plan to be produced and funded.
- (b) The discussion and recommendations from the scoping meeting shall be presented at a regular meeting of the local governing board where action shall be taken to accept or modify the recommendations. Standard public meeting notification procedures common to the local government in question are sufficient public notice for these purposes, provided the notification specifically states that the scoping recommendations shall be discussed and acted upon. In addition, notification of the public meeting shall be provided to the DCM District Planner. Public input shall be accepted and considered at this meeting.
- (c) Assuming federal and state appropriations remain at or close to the 2001-02 fiscal year appropriations, DENR intends to provide funds for local governments to update their CAMA land use plans every six years. In the case of existing plans, the scoping process shall take place during the fourth year after the last certification. The local government may request scoping before the fourth year if special circumstances are identified in the Implementation Status Report described in 15A NCAC 07L .0511 ~~Required Periodic Implementation Status Reports.~~

(d) ~~The community characteristics to be discussed during the scoping process to help determine the type of plan to be prepared shall include:~~

- (1) ~~The capacity of the local government to administer the planning process;~~
- (2) ~~Population growth rate as projected by the State Planning Office;~~
- (3) ~~Development trends, such as number and type of building permits issued, number of lots subdivided, number of CAMA permits issued since certification of the current CAMA land use plan, and new and proposed industry;~~
- (4) ~~Extent of AECs;~~
- (5) ~~Water quality considerations including: Division of Water Quality (DWQ) classifications (outstanding resource waters, high quality waters) and current conditions (as per Basinwide Water Quality Plans, Use Support Designations.); and Division of Marine Fisheries (DMF) primary nursery areas and current conditions (as per Coastal Habitat Protection Plans); and shellfishing waters and their current conditions;~~
- (6) ~~Natural and manmade hazards and other issues affecting land use; and~~
- (7) ~~Natural and environmental constraints (these may include, but are not limited to: hydric soils and well head protection areas) which affect land use.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0506 PUBLIC PARTICIPATION

- (a) Local Governments receiving DENR funding for CAMA land use plan preparation shall be responsible for the development and implementation of a Citizen Participation Plan. Local governments shall employ a variety of educational efforts and participation techniques to assure that all socioeconomic segments of the community and non resident property owners have opportunities to participate during plan development.
- (b) ~~Extent of Required Effort. Prior to the start of CAMA land use plan development, the local governing board shall develop and adopt a Citizen Participation Plan. Interested citizens shall have an opportunity to participate in the development of the CAMA land use plan through oral and written comments as provided for in the Citizen Participation Plan. Copies of informational CAMA land use plan materials shall be provided at all meetings of the planning group. The Citizen Participation Plan shall be available to the public throughout the planning process. At a minimum, the Citizen Participation Plan shall include the following:~~
- (1) ~~Designation of the principal local board, agency, department or appointed group that shall take the lead role in preparing or updating the CAMA land use plan, including a contact name, address, and telephone number.~~
 - (2) ~~A specific date and time for an initial public information meeting or series of meetings.~~

- (A) ~~During the meeting(s) a local government updating its plan shall discuss the statements of local policy in the current CAMA land use plan, the effect of those policies on the community, and the ways the plan has been used to guide development during the past planning period. The local government shall explain the process by which it will report to the public and solicit the views of a wide cross section of citizens in the development of updated policy statements.~~
- (B) ~~Written notice of the public information meeting(s) shall be published in a newspaper of general circulation in the planning jurisdiction twice prior to the public information meeting(s). The first notice shall appear not less than 30 days prior to the public information meeting(s). The second notice shall appear not less than 10 days prior to the meeting. Notice of the meeting shall also be conveyed to local Coastal Resources Advisory Council (CRAC) member(s) and to the appropriate DCM District Planner.~~
- (C) ~~The local government shall offer an opportunity for public comment during the public information meeting(s).~~
- (D) ~~The tools to be used to report planning progress to the public during CAMA land use plan development, such as newspaper reports, local government newsletters, radio or television announcements or other reporting methods shall be described at the initial public meeting. More than one means is required.~~
- (3) ~~A description of the methods and techniques that shall be used to solicit public participation and input, such as citizen surveys, questionnaires, informational brochures, community outreach, town meetings or other pro active methods. The Citizen Participation Plan shall describe the results that are expected from the methods and techniques that are used. More than one means is required and at least one effort shall be made to solicit input from non resident landowners.~~
- (4) ~~A general outline of the meeting schedule for the group developing the CAMA land use plan,~~
- ~~as designated in Subparagraph (b)(1) of this Rule.~~
- (e) ~~All regular meetings of the designated planning group where the CAMA land use plan is discussed shall offer time on the agenda for public comment. A list of the names of speakers offering public comment and a copy of any written comments provided shall be kept on file by the local government and provided to the DCM staff for use in the CAMA land use plan review process.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0507 MINIMUM CAMA LAND USE PLANNING AND FUNDING REQUIREMENTS

- (a) ~~Each year DCM shall develop a list of local governments with whom DCM shall initiate a scoping process during the upcoming five years and the year in which DENR expects to have funds available for each local government desiring to seek DENR funding.~~
- (b) ~~To receive funding from DENR, counties shall, at a minimum, prepare a CAMA Core land use plan, as described in 15A NCAC 07B.~~
- (c) ~~To receive funding under this grant program for CAMA Core land use plan development, municipalities must have AECs within their jurisdiction and meet the population and growth rate thresholds as shown in Figure 1. To receive funding under this grant program, municipalities with Ocean Hazard AECs must, at a minimum, prepare a CAMA Core land use plan. Additionally, municipalities with non Ocean Hazard AECs shall at a minimum prepare a CAMA Core land use plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only non Ocean Hazard AECs that are at or below the population and growth rate thresholds shown in Figure 1 may prepare a CAMA Core land use plan or a Workbook Plan as described in 15A NCAC 07B. In addition, community characteristics other than those listed in Figure 1, such as extent of growth and resource protection issues (such as water quality concerns) being addressed by the municipality, shall be considered during the scoping process described in 15A NCAC 07L .0505 when determining the final planning option to be funded.~~
- (d) ~~Municipalities that do not meet the minimum plan making authority of G.S. 113A-110(e) or those with no AECs within their planning jurisdiction shall not be funded for individual plans except under special circumstances and if funds are available. Examples of special circumstances include: the existence of non-AEC fragile areas (such as federally regulated wetlands, historic and cultural resources, critical wildlife habitats and scenic areas); land use compatibility problems or unexpected growth pressures, such as the relocation of major industry to the area.~~
- (e) ~~Figure 1 illustrates the criteria DENR shall use to determine the minimum types of plans that shall be expected and funded for municipalities.~~

Figure 1: PRESUMED MINIMUM FUNDING FOR MUNICIPAL CAMA LAND USE PLANS

		AREAS OF ENVIRONMENTAL CONCERN (AECs)		
POPULATION	GROWTH RATE*	OCEAN HAZARD AREAS	NON-OCEAN HAZARD AREAS**	AECs NOT PRESENT -OR- DO NOT MEET 113A-110(e)***
≥ 5,000	N/A	■	■	■
≥ 2,500	HIGH	■	■	■
>1,000 and < 2,500	HIGH	■	■	■
<1,000	HIGH	■	▨	■
≥ 2,500	MODERATE	■	▨	■
< 2,500	MODERATE	■	▨	■
≥ 2,500	LOW	■	▨	■
< 2,500	LOW	■	▨	■

Core Plan
 Core or Workbook plan to be determined in the scoping process
 No Funding

(f) CAMA Land Use Plans shall be funded as follows:

- (1) The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3), shall be used to determine the economic status of counties. Counties designated as Tier 1 and Tier 2 shall be considered economically distressed. Economically distressed counties that prepare a CAMA Core land use plan shall be funded at no more than 75 percent of the project costs, although lower percentages of funding may be provided. Counties that prepare a CAMA Core land use plan and do not have a Tier 1 or Tier 2 designation shall be funded at no more than 65 percent of the project cost, although lower percentages of funding may be provided.
- (2) Municipalities preparing CAMA Core land use plans shall be funded at no more than 60 percent of the project cost, although lower percentages of funding may be provided.
- (3) Counties and municipalities preparing CAMA Advanced Core land use plans, as described in 15A NCAC 07B, shall be funded at no more than 75 percent, except for Tier 1 and Tier 2 designated counties preparing CAMA Advanced Core land use plans. If so designated, these County plans shall be funded at no more than 85 percent, although lower funding percentages may be provided. Eligibility for funding to prepare a CAMA

Advanced Core land use plan shall be determined during the scoping process and shall be based on the level of planning proposed by the local government. To be considered for funding to prepare a CAMA Advanced Core land use plan, the proposal must demonstrably maintain or improve local environmental conditions and advance the local government towards implementation of its currently certified CAMA land use plan.

- (4) Municipalities preparing CAMA Workbook land use plans may receive no more than three thousand dollars (\$3,000.00) for map preparation only.
- (5) Local governments that choose to combine individual plans into joint or regional plans shall be eligible for funding not to exceed the amount that would have been provided for individual plans.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0508 STATE TECHNICAL ASSISTANCE, REVIEW AND COMMENT ON PRELIMINARY DRAFT PLAN

(a) Educating Local Officials: At the beginning of the planning process, DCM shall provide opportunities for educating local officials about the CAMA land use planning rules, through such means as workshops and training videos.

(b) ~~Maps and Data:~~ DCM shall provide maps and data to assist with developing the CAMA land use plan. This data may include population, natural resources, water quality, economic activity and transportation infrastructure for counties, and where available, for municipalities. Local governments may supplement this data with additional, or more recent, data from federal, state, local, and other sources.

(c) ~~Procedures for Agency Review and Comment:~~ DCM shall review all draft CAMA land use plans for technical accuracy and consistency with the CRC's requirements for CAMA land use plans and shall provide notice to the CRC and other State and Federal Agencies that the plan is available for review and comment.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0509 INTERGOVERNMENTAL COORDINATION

(a) ~~Notification of Adjacent Jurisdictions (including non-CAMA areas, and if applicable, out of state areas):~~ Each local government receiving funding for CAMA land use planning from DENR shall solicit comments on its preliminary draft CAMA land use plan or updates submitted for state review from adjacent jurisdictions and applicable regional planning entities. Solicitation shall be made in writing and a copy of the draft CAMA land use plan shall accompany the request. The review period shall be, at a minimum, 45 calendar days. After the review period ends, any comments from the adjacent planning jurisdictions and regional planning entities shall be provided to the local governing body and to the applicable DCM District Planner. Additionally, within 90 days after CRC certification of a CAMA land use plan, the local government shall provide one copy of its plan to each jurisdiction with which it shares a common border and with the regional planning entity.

(b) ~~Coordination of Policies:~~ Where watershed(s) that contain an AEC fall within more than one planning jurisdiction, the jurisdictions shall coordinate the development of land use policies affecting shared AECs to the greatest extent practical.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0510 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

(a) ~~Public Hearing Requirements For Local Governments Receiving Funding From DENR For Land Use Planning:~~ Local adoption of the CAMA land use plan requires a public hearing. Notice of the hearing shall state the date, time, place, proposed action, and that copies of the document may be reviewed at a particular office in the county courthouse, county office building, or town hall during designated hours. Any other public facility where the document can be reviewed such as a library or community center shall be designated in the notice. The notice must appear at least twice in a newspaper of general circulation in the planning jurisdiction. The first notice must appear not less than 30 days prior to the hearing. The second notice must appear not less than 10 days prior to the hearing. Written notice of the public hearing shall be posted on the local government's principal bulletin board 30 days prior to the hearing or, if there is no such bulletin board, at the door of the governing body's usual meeting

room. If possible, an electronic hearing notice shall be provided on the World Wide Web at the time of the original notice.

(b) ~~30 Day Local Review Period:~~ Copies of the proposed CAMA land use plan or update (final draft) shall be available for public review at the time the first notice is provided and in the place(s) listed in the notice. At least one copy of the draft plan shall be available for checkout for a 24 hour period by residents and property owners of the planning jurisdiction.

(c) ~~Minor editorial changes after the public hearing are acceptable without re-advertising the notice.~~ Substantive changes such as rewordings that alter the basic intent of policy statements or changes in timelines for actions in the original notice shall require a new public hearing. This notice shall be advertised in the same manner as the original.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0511 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

(a) ~~To be eligible for future funding each local government engaged in CAMA land use planning shall complete a CAMA land use plan Implementation Status Report every two years as long as the current plan remains in effect.~~ DCM shall provide a standard implementation report form to local governments. This report shall be based on the action plan and schedule provided in 15A NCAC 07B Tools for Managing Development.

(b) ~~The Implementation Status Report shall identify:~~

- (1) ~~All local, state, federal, and joint actions that have been undertaken successfully to implement its certified CAMA land use plan;~~
- (2) ~~Any actions that have been delayed and the reasons for the delays;~~
- (3) ~~Any unforeseen land use issues that have arisen since certification of the CAMA land use plan;~~
- (4) ~~Consistency of existing land use and development ordinances with current CAMA land use plan policies; and~~
- (5) ~~Current policies that create desired land use patterns and protection of natural systems.~~

(c) ~~Results shall be made available to the public and shall be forwarded to DCM.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0512 SUSTAINABLE COMMUNITIES COMPONENT OF THE PLANNING PROGRAM

(a) ~~Sustainable Communities Component:~~ Under conditions outlined in this rule, DENR may provide additional financial support for plans that exceed the minimum requirements of 15A NCAC 07B. This Rule establishes a Sustainable Communities Component of the planning program, which provides funds to selected communities to support actions to implement the CRC-certified CAMA land use plans of selected local governments.

(b) ~~The Sustainable Communities Component brings current techniques in coastal management and sustainability to the North Carolina coast.~~ Local governments designated as Sustainable Communities shall execute multi year, land/water projects that are consistent with CRC management topics and the CRC-certified CAMA local land use plan. Examples of sustainable

projects include but are not limited to, oyster re-seeding projects, establishment of greenway systems, and eco-tourism projects.

(c) The CRC may identify priority issue areas and goals on which Sustainable Communities projects shall focus. These focus areas shall be provided in the Notice of Availability of Funds and Request for Proposals.

(d) The following factors shall be considered by DENR in the selection of Sustainable Communities: merit of proposal and its relevance to CRC management topics; proposed education and public participation throughout the life of the project; financial and administrative capacity of the local government to implement the project; and past history of CAMA land use plan implementation by that local government.

(e) DENR shall accept applications for the Sustainable Communities Component once every three years from counties and municipalities whose CAMA land use plans have been certified within the past three years. During the first year the Sustainable Communities Component is offered, local governments with CAMA land use plans older than three years will be eligible to apply. DENR shall make final selections of no more than four communities per funding cycle, based on recommendations of the CRC and the CRAC. Every effort shall be made to select local governments on an equitable geographic distribution throughout the coastal area.

(f) Selected communities shall document their methodology and progress throughout the length of the planning program and provide yearly progress reports to DENR.

(g) Sustainable Communities shall receive the following assistance: planning grant funds for the initial phase of the project and a local CAMA land use plan addendum for up to 80 percent of the project costs, not to exceed forty thousand dollars (\$40,000); priority funding consideration for Planning and Management Grant Funds for related projects for two of the following three years, provided funds are available for priority two and priority three projects, for a maximum of twenty thousand dollars (\$20,000) for each grant, and DCM support for all grant applications to other agencies for project funding.

(h) DCM will catalog, advertise and distribute summary reports on projects funded under this program to other local governments in the coastal area.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0513 PROJECT DURATION

(a) CAMA Core and Advanced Core land use plans may be funded over a two year period. Funding during the first year will be to prepare background material, with second year funding primarily used for policy development.

(b) Other planning and management projects may be approved for up to three years. However, individual grants will usually be for a period of one year. Where the project exceeds one year, the annual grant application shall set forth annual objectives, products and budgetary requirements. If a project requires more than one year to complete, and is funded for its first year, this action does not commit DENR to subsequent funding throughout the estimated duration of the project, except that multi-year CAMA land use plans will be given priority funding for Phase II.

(c) In the event that any local planning and management funds remain or become available after the initial disbursement of funds,

DENR may provide additional grants to local governments to supplement existing projects or to initiate new projects based on need and ability of the local government to initiate a new project. All previous unfunded applications will be considered for available supplemental funding. In addition, applications for supplemental funding may be submitted by local governments at specified times during the year.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0514 RELATION TO OTHER FUNDING

Applicants may combine these funds with other local, state, and federal funds to finance appropriate projects. However, these funds may not be used as "local matching funds" for other state or federal grants, except that Sustainable Community funds may be used for match if allowed by other state or federal programs.

Authority G.S. 113A-112; 113A-124.

SECTION .0600 - APPLICATION PROCESS

15A NCAC 07L .0601 APPLICATION FORM

(a) At least 30 days prior to each new land use planning and management grant period, DENR shall distribute to each eligible applicant a grant application form and notice of availability of funds.

(b) The grant application form shall request a project description, project objectives, project deliverables, project budget, consistency of the proposed project with the certified CAMA land use plan (if applicable), and other information as deemed necessary by DENR. A project narrative that more completely describes the proposed project may supplement the form. Incomplete, vague or inadequate applications may not be processed.

(c) The grant application form shall be signed by a person who has been authorized by the local government to enter into contracts relating to the implementation of CAMA.

(d) A separate application form shall be completed for each proposed project.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0602 ASSISTANCE IN COMPLETING APPLICATIONS AND SUBMITTAL

Local governments may contact the DCM offices for further assistance and information in completing grant applications. Completed applications shall be submitted to the appropriate office as described in the Notice of Availability of Funds and Request for Proposals.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0603 PROCEDURE FOR APPROVAL OR DISAPPROVAL

(a) DENR shall, within 90 days after the deadline for receiving applications, notify all applicants as to the status of the application. If deemed necessary, DENR may request the

applicant to submit additional information or agree to a revised project proposal or project budget.

~~(b) No approval of a grant application shall be deemed to be final prior to execution of the contract agreement required by 15A NCAC 07L .0701.~~

Authority G.S. 113A-112; 113A-124.

SECTION .0700 - GRANT ADMINISTRATION

15A NCAC 07L .0701 CONTRACT AGREEMENT

~~(a) Prior to the disbursement of funds, the local government and DENR will become parties to the contract.~~

~~(b) DENR shall prepare the contract and submit it to the local government, following tentative approval of the grant application. The contract shall specify the amount of the grant, the work to be performed under the grant, and all terms and conditions of the grant. The contract must be executed by a person who is authorized by the local government to enter into contracts, and then returned to DENR. The contract is effective, and approval of the grant application final, when signed by the Secretary of DENR or the Secretary's designee.~~

~~(c) Subcontracts shall be reviewed and approved by DENR prior to execution by the local government. Past work history with DENR of the proposed subcontractor will be considered in reviewing the subcontract. No subcontracts may be made without the written approval of DENR.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0702 PROGRESS REPORTS AND GRANT MONITORING

~~(a) Specific requirements for progress reports will be set out in each contract with grantees.~~

~~(b) A progress report will be required of all grantees prior to the distribution of funds.~~

~~(c) DENR shall make such site visits and consultations as deemed necessary.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0703 PAYMENT

~~(a) Payment by DENR will be made periodically as specified in the contract upon the submittal of a requisition for payment and DCM certification that reasonable and satisfactory progress is being made on the project. Payments will be proportional to the work demonstrated by the grantee to have been completed.~~

~~(b) DENR may withhold payment at any time if the grantee is in violation of the terms of the contract or cannot demonstrate satisfactory progress towards completion of the project.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0704 PROJECT COMPLETION REPORT

~~(a) A project completion report shall be required for all projects. DENR shall transmit information concerning the content and format of this report to all grantees at least 60 days prior to the due date for the report.~~

~~(b) A draft project completion report shall be submitted to DENR with or prior to submission of the final requisition for payment. This report shall include an assessment by the local government of the consistency of the project with the certified CAMA land use plan and the rules of the CRC. If the project is found to be inconsistent by DENR, the local government shall include a satisfactory plan for creating consistency, including timelines for implementation. Final payment will not be made to the local government until this information is provided.~~

Authority G.S. 113A-112; 113A-124.

15A NCAC 07L .0705 ACCOUNTABILITY

~~Grantees will be subject to accounting techniques and procedures similar to those applicable to DENR as grantee of federal funds administered by the National Oceanic and Atmospheric Administration. The requirements of the General Statutes, OMB Circular A 102 and the National Oceanic and Atmospheric Administration's administrative grants standards shall be followed.~~

Authority G.S. 113A-112; 113A-124.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 - MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to amend the rules cited as 21 NCAC 32B .1370, .1402; 32S .0202.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncmedboard.org/about_the_board/rule_changes

Proposed Effective Date: *January 1, 2016*

Public Hearing:

Date: *November 16, 2015*

Time: *10:00 a.m.*

Location: *North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609*

Reason for Proposed Action:

21 NCAC 32B .1370: This rule change formally expands the reentry process to a three path system that better addresses individual applicants' reentry needs.

21 NCAC 32B .1402: To be consistent with 21 NCAC 32B .1303 the Board is including the Medical Council of Canada Qualifying Examination (MCCQE) so that Canadian graduates may obtain a training license in NC.

21 NCAC 32S .0202: The Board is changing the required number of recommendations from three to two in order to be consistent with what is required for physicians. Also, to clarify that applicants currently certified with the NCCPA will be considered in compliance with the CME portion of the rule.

Comments may be submitted to: *Wanda Long, Rules Coordinator, NC Medical Board, P.O. Box 20007, Raleigh, NC 27619, fax 919-326-0036, email rules@ncmedboard.org*

Comment period ends: *November 16, 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

**SUBCHAPTER 32B – LICENSE TO PRACTICE
MEDICINE**

SECTION .1300 - GENERAL

21 NCAC 32B .1370 REENTRY TO ACTIVE PRACTICE

- (a) ~~A~~An applicant for licensure physician or physician assistant applicant ("applicant" or "licensee") who has not actively practiced or who has not maintained continued competency, as determined by the Board, for the two-year period immediately preceding the filing of an application for a license ~~from the Board~~ shall complete a reentry agreement as a condition of licensure.
- (b) ~~The applicant shall identify a mentoring physician.~~The first component of a reentry agreement involves formulating a reentry plan that assesses the applicant's current strengths and weaknesses in the intended area(s) of practice. The process may include testing and evaluation by colleagues, educators or others.
- (c) ~~The applicant shall propose a reentry plan containing the components outlined in Paragraphs (g) and (h) of this Rule to the Board. The Board shall review the proposed reenter plan and interview the applicant.~~The second component of the reentry plan is education. Education shall address the applicant's area(s) of needed improvement and consist of a reentry period of retraining and education upon terms as the Board may decide.
- (d) Factors that may affect the length and scope of the reentry plan include:

- (1) The applicant's amount of time out of practice;
- (2) The applicant's prior intensity of practice;
- (3) The reason for the interruption in practice;
- (4) The applicant's activities during the interruption in practice, including the amount of practice-relevant continuing medical education;
- (5) The applicant's previous and intended area(s) of practice;
- (6) The skills required of the intended area(s) of practice;
- (7) The amount of change in the intended area(s) of practice over the time the applicant has been out of continuous practice;
- (8) The applicant's number of years of graduate medical education;
- (9) The number of years since completion of graduate medical education; and
- (10) As applicable, the date of the most recent ABMS, AOA or equivalent specialty board, or National Commission on Certification of Physician Assistant certification or recertification.

(e) If the Board approves an applicant's reentry plan, it shall be incorporated by reference into a reentry agreement and executed by the applicant, the Board and ~~the mentoring physician.~~ any applicable Board agents assisting with the reentry plan.

(f) After the reentry agreement has been executed, and the applicant has completed all other requirements for licensure, the applicant shall receive a ~~restricted~~-License. The licensee may not practice outside of the scope of the reentry agreement and its referenced reentry plan during the reentry period.

~~(g) The first component of a reentry plan is an assessment of the applicant's current strengths and weaknesses in his or her intended area of practice. The process used to perform the assessment shall be described by the applicant and confirmed by the mentoring physician. The process may include self reflection, self-assessment, and testing and evaluation by colleagues, educators or others. The applicant and mentoring physician shall evaluate and describe applicant's strengths and areas of needed improvement in regard to the core competencies. The assessment shall continue throughout the reentry period as the licensee and the mentoring physician practice together.~~

~~(h) The second component of the reentry plan is education. Education shall address the licensee's areas of needed improvement. Education shall consist of:~~

- (1) ~~a reentry period of retraining and education under the guidance of a mentoring physician, upon terms as the Board may decide, or~~
- (2) ~~a reentry period of retraining and education under the guidance of a mentoring physician consisting of the following:~~
 - (A) ~~Phase I — The observation phase. During the observation phase, the licensee will not practice, but will observe the mentoring physician in practice.~~
 - (B) ~~Phase II — Direct supervision phase. During the direct supervision phase, the licensee shall practice under the~~

~~direct supervision of the mentoring physician. Guided by the core competencies, the mentoring physician shall reassess the licensee's progress in addressing identified areas of needed improvement.~~

- ~~(C) Phase III Indirect supervision phase. During the indirect supervision phase, the licensee shall continue to practice with supervision of the mentoring physician. Guided by the core competencies, and using review of patient charts and regular meetings, the mentoring physician shall reassess the licensee's progress in addressing the areas of needed improvement.~~
- ~~(D) No later than 30 days after the end of phase I and II, the mentoring physician shall send a report to the Board regarding the licensee's level of achievement in each of the core competencies. At the completion of phase III the mentoring physician shall submit a summary report to the Board regarding the licensee's level of achievement in each of the core competencies and affirm the licensee's suitability to resume practice as a physician or to resume practice as a physician assistant.~~
- ~~(E) If the mentoring physician reassesses the licensee and concludes that the licensee requires an extended reentry period or if additional areas of needed improvement are identified during Phases II or III, the Board, the licensee and the mentoring physician shall amend the reentry agreement.~~

~~(i) Under the terms of either reentry periods Subparagraph (h)(1) or (h)(2) of this Rule, the mentoring physician may terminate his role as the mentoring physician upon written notice to the Board. Such written notice shall state the reasons for termination. The licensee's approval is not required for the mentoring physician to terminate his role as mentoring physician. Upon receipt of the notice of termination, the Board shall place the licensee's license on inactive status. Within six months from the effective date of the mentoring physician's termination, the licensee shall provide a substitute mentoring physician, who must be approved by the Board in writing, and resume the reentry plan upon such terms as are acceptable to the Board. In such event, an amended reentry agreement must be executed prior to resumption of the reentry plan. If licensee does not resume the reentry plan as required herein within six months from the effective date of the mentoring physician's termination, then the Board shall not return the licensee to active status unless and until licensee applies and is approved for reactivation of the license with a new reentry agreement and reentry plan, which must be in place before licensee may resume practice as a physician or physician assistant.~~

~~(j) Under the terms of either reentry periods Subparagraph (h)(1) or (h)(2) of this Rule, the licensee may terminate the relationship with the mentoring physician upon written notice to the Board. Such written notice shall state the reasons for termination. The mentoring physician's approval is not required for the licensee to terminate this relationship. Upon receipt of the notice of termination, the Board shall place the licensee's license on inactive status. Within six months from the effective date of the mentoring physician's termination, the licensee shall provide a substitute mentoring physician, who must be approved by the Board in writing, and resume the reentry plan upon such terms as are acceptable to the Board. In such event, an amended reentry agreement must be executed prior to resumption of the reentry plan. If licensee does not resume the reentry plan as required herein within six months from the effective date of the mentoring physician's termination, then the Board shall not return the licensee to active status unless and until licensee applies and is approved for reactivation of the license with a new reentry agreement and reentry plan, which must be in place before licensee may resume practice as a physician or physician assistant.~~

~~(k) The licensee shall meet with members of the Board at such dates, times and places as directed by the Board to discuss the licensee's transition back into practice and any other practice-related matters.~~

~~(l)(g) Unsatisfactory completion of the reentry plan or practicing outside the scope of the reentry agreement, as determined by the Board, shall result in the automatic inactivation of the licensee's license, unless the licensee requests a hearing within 30 days of receiving notice from the Board.~~

~~(m)(h) If the Board determines the licensee has successfully completed Upon successful completion of the reentry plan, the Board shall terminate the reentry agreement and notify the licensee that the license is no longer restricted.~~

Authority G.S. 90-8.1; 90-14(a)(11a).

SECTION .1400 - RESIDENT'S TRAINING LICENSE

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

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

- (1) submit a completed application which can be found on the Board's website in the application section at <http://www.ncmedboard.org/licensing>, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) submit a photograph, two inches by two inches, affixed to the oath or affirmation which has been attested to by a notary public;
- (4) submit proof on the Board's Medical Education Certification form that the applicant has

completed at least 130 weeks of medical education.

- (5) furnish an original ECFMG certification status report of a currently valid ECFMG certification ~~of the ECFMG~~ if the applicant is a graduate of a medical school other than those approved by LCME, AOA, COCA, or CACMS. The ECFMG certification status report requirement shall be waived if:
 - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
 - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (6) submit an appointment letter from the program director of the GME program or his or her appointed agent verifying the applicant's appointment and commencement date;
- (7) submit two completed fingerprint record cards supplied by the Board;
- (8) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (9) pay a non-refundable fee pursuant to G.S. 90-13.1(b), plus the cost of a criminal background check;
- (10) provide proof that the applicant has taken and passed within three attempts:
 - (A) ~~the COMLEX Level 1, and~~ each component of COMLEX Level 2 (cognitive evaluation and performance evaluation) ~~and~~ and, if taken, COMLEX Level 3; or
 - (B) ~~the USMLE Step 1 Step 1, and~~ each component of ~~the USMLE Step 2 (Clinical Knowledge and Clinical Skills); and Skills) and~~, if taken USMLE Step 3; ~~and or~~
 - (C) MCCQE Part 1 and, if taken, MCCQE Pat 2;
- (11) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

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

(c) If the applicant previously held a North Carolina residency training license, the licensure requirements established by rule at the time the applicant first received his or her North Carolina residency training license shall apply. Information about these Rules is available from the Board.

Authority G.S. 90-8.1; 90-12.01; 90-13.1.

SUBCHAPTER 32S - PHYSICIAN ASSISTANTS

SECTION .0200 - PHYSICIAN ASSISTANT REGISTRATION

21 NCAC 32S .0202 QUALIFICATIONS AND REQUIREMENTS FOR LICENSE

(a) Except as otherwise provided in this Subchapter, an individual shall obtain a license from the Board before practicing as a physician assistant. An applicant for a physician assistant license shall:

- (1) submit a completed application, available at www.ncmedboard.org, to the Board;
- (2) meet the requirements set forth in G.S. 90-9.3 and has not committed any of the acts listed in G.S. 90-14;
- (3) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant shall provide information about the applicant's immigration and work status that the Board shall use to verify applicant's ability to work lawfully in the United States;
- (4) submit to the Board proof that the applicant completed a Physician Assistant Educational Program. He or she shall also show successful completion of the Physician Assistant National Certifying Examination;
- (5) pay to the Board a non-refundable fee of two hundred dollars (\$200.00) plus the cost of a criminal background check. There is no fee to apply for a physician assistant limited volunteer license;
- (6) submit National Practitioner Data Bank (NPDB) and Healthcare Integrity and Protection Data Bank (HIPDB) reports. These reports shall be requested by the applicant and submitted to the Board within 60 days of the request;
- (7) submit a Board Action Data Bank Inquiry from the Federation of State Medical Boards (FSMB). This report shall be requested by the applicant and submitted to the Board within 60 days of the request;
- (8) submit to the Board two complete original fingerprint record cards, on fingerprint record cards supplied by the Board upon request;
- (9) submit to the Board a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
- (10) disclose whether he or she has ever been suspended from, placed on academic probation, expelled, or required to resign from any school, including a PA educational program;

- (11) attest that he or she has no license, certificate, or registration as a physician assistant currently under discipline, revocation, suspension, or probation or any other adverse action resulting from a health care licensing board;
- (12) certify that he or she is mentally and physically able to safely practice as a physician assistant and is of good moral character;
- (13) provide the Board with ~~three~~two original recommendation forms dated within six months of the application. These recommendations shall come from persons under whom the applicant has worked or trained who are familiar with the applicant's academic competence, clinical skills, and character. At least one reference form shall be from a physician and two reference forms must be from peers under whom the applicant has worked or trained. References shall not be from any family member or in the case of applicants who have not been licensed anywhere, references shall not be from fellow students of the applicant's Educational Program;
- (14) if two years or more have passed since graduation from a Physician Assistant Educational Program, document that he or she has completed at least 100 hours of continuing medical education (CME) during the preceding two years, at least 50 hours of which must be recognized by the National Commission on Certification of Physician Assistants as Category I CME; and CME. An applicant who is currently certified with the NCCPA will be deemed in compliance with this Rule; and
- (15) supply any other information the Board deems necessary to evaluate the applicant's qualifications, including explanation or documentation of the information required in this Rule.

(b) An applicant may be required to appear in person for an interview with the Board, if the Board determines in its discretion that more information is needed to evaluate the application.

Authority G.S. 90-9.3; 90-11; 90-18(c)(13); 90-18.1.

CHAPTER 65 - BOARD OF RECREATIONAL THERAPY LICENSURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Recreational Therapy Licensure intends to adopt the rules cited as 21 NCAC 65 .0604, .0902 and amend the rules cited as 21 NCAC 65 .0203 - .0205, .0301, .0302, .0401, .0501, .0602, .0603, .0801.

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

Proposed Effective Date: January 1, 2016

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Write, phone or email the Board Office. Contact, Becky Garrett, P.O. Box 2655, Durham, NC 27715, Becky@ncbrtl.org, 336-212-1133.

Reason for Proposed Action:

- 21 NCAC 65 .0203 & .0204 - Updating website address where ATRA Standards of Practice may be purchased.
- 21 NCAC 65 .0205 - Technical changes.
- 21 NCAC 65 .0301 & .0302 - Technical changes, removal of old outdated requirement language.
- 21 NCAC 65 .0401 - Technical changes, putting all application requirements in one rule.
- 21 NCAC 65 .0501 - Removal of address label fee.
- 21 NCAC 65 .0602 - Addition of online payment and continuing education documents to online profiles.
- 21 NCAC 65 .0603 - Addition of online profile for contact information changes.
- 21 NCAC 65 .0604 - Establishes Rule for required documentation of Licensed Recreational Therapy Assistant's supervision.
- 21 NCAC 65 .0801 - Defined requirements for licensees wanting to return after staying on Inactive status more than 5 years Removal of old out dated language.
- 21 NCAC 65 .0902 - Military Endorsement, establishes new rule.

Comments may be submitted to: Becky Garrett, Address P.O. Box 2655 Durham, NC 27715, Phone 336-212-1133, email becky@ncbrtl.org

Comment period ends: November 16, 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

SECTION .0200 – REQUIREMENTS FOR PRACTICE

21 NCAC 65 .0203 LICENSED RECREATIONAL THERAPIST STANDARDS OF PRACTICE

A Licensed Recreational Therapist ~~must~~ shall practice recreational therapy, also known as therapeutic recreation, in accordance with the most recent version of the American Therapeutic Recreation Association, ATRA Standards for the Practice (ATRA SOP) of Therapeutic Recreation and Self-Assessment Guide published by the American Therapeutic Recreation Association (ATRA) and including any subsequent amendments or changes. A copy ~~can~~ may be purchased from ATRA at: <http://www.atra-tr.org>, <https://www.atra-online.com/> at a cost of twenty-eight dollars (\$28.00) for ATRA members and forty dollars (\$40.00) for non ATRA members.

Authority G.S. 90C-22(2); 90C-24(a)(1); 90C-24(a)(13).

21 NCAC 65 .0204 LICENSED RECREATIONAL THERAPY ASSISTANT STANDARDS OF PRACTICE

Under the supervision of a Licensed Recreational Therapist, a Licensed Recreational Therapy Assistant ~~must~~ shall practice recreational therapy in accordance to ATRA SOP Self-Assessment guide as incorporated by reference in Rule .0203 of this section ~~with the most recent version of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide~~ published by the American Therapeutic Recreation Association (ATRA) and any subsequent amendments or changes. A copy ~~can~~ may be purchased from ATRA at: <http://www.atra-tr.org>, <https://www.atra-online.com/> at the cost of twenty-eight (\$28.00) for ATRA members and forty dollars (\$40.00) for non ATRA Members.

Authority G.S. 90C-22(3); 90C-22(7); 90C-24(a)(1); 90C-24(a)(3).

21 NCAC 65 .0205 SUPERVISION OF A LICENSED RECREATIONAL THERAPY ASSISTANT

(a) The Licensed Recreational Therapy Assistant (LRTA) ~~must~~ shall perform duties and functions under the clinical supervision of the Licensed Recreational Therapist (LRT). Once the LRT determines the LRTA has demonstrated competence to provide ~~specific~~ interventions, client documentation, and to make recommendations for program modification, the LRTA shall practice in accordance with ATRA SOP as referred to in Rule .0203 ~~as defined and described in the most recent version of ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide.~~

(b) Clinical supervision, ~~as defined in the glossary of the ATRA Standards of Practice~~, must shall be performed in accordance with ATRA SOP ~~in accordance with a written agency policy that includes, at minimum,~~ the following elements:

- (1) The Licensed Recreational Therapist ~~must~~ shall:
 - (A) Determine the recreational therapy treatment plan and the elements of that plan appropriate for delegation to a ~~licensed recreational therapy assistant (LRTA); LRTA;~~

- (B) Determine whether ~~licensed recreational therapy assistants~~ LRTA acting under his or her supervision possess the competence to perform the delegated duties;
 - (C) Delegate responsibilities to the LRTA that are consistent with assessed competencies and within the overall LRTA scope of practice as defined and described in the most recent version of the ~~ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide; ATRA SOP;~~
 - (D) Review chart documentation, ~~re-examine~~ re-examine, and reassess the patient or client and revise the recreational therapy treatment ~~plan as warranted; plan;~~
 - (E) Establish the recreational therapy discharge plan;
 - (F) Determine whether co-signature of chart documentation done by the LRTA is necessary for safe and effective care and treatment;
 - (G) Be ~~immediately~~ available directly or by telecommunication to the LRTA while in practice; and
 - (H) Be limited to clinically supervising only the number of LRTAs ~~as is appropriate~~ for providing safe and effective patient or client intervention at all times.
- (2) A Licensed Recreational Therapy Assistant ~~must; shall~~:
- (A) Assist in the practice of recreational therapy only to the extent allowed by the supervising LRT;
 - (B) Assist in the assessment of patient or client needs to the extent defined by the most recent version of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide and described in written agency policy ATRA SOP and employer policy;
 - (C) Make modifications of the recreational therapy treatment programs that are consistent with the recreational therapy treatment plan and under the supervision of the LRT;
 - (D) Engage in off-site patient or client related functions that are appropriate for the LRTA's qualifications and assessed competency in consideration of the functional status of the patient or client; and
 - (E) Document client care provided in accordance with written ~~agency~~ employer policy.

- (3) Prohibited Practice:
- (A) A LRTA must not engage in practices of a LRT as defined and described in the most recent version of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide and any subsequent changes and amendments. A copy can be purchased from ATRA at: <http://www.atra-tr.org>; <https://www.atra-online.com/>; and
- (B) A LRTA must not engage in acts beyond the scope of practice delegated by the supervising LRT.

Authority G.S. 90C-22(3); 90C-24(3); 90C-24(a)(1); 90C-24(a)(2); 90C-24(a)(13).

SECTION .0300 - REQUIREMENTS FOR LICENSURE

21 NCAC 65 .0301 MINIMUM LEVEL OF EDUCATION AND COMPETENCY FOR LICENSED RECREATIONAL THERAPIST

(a) ~~In accordance with the grandfathering provision, Section 4 of G.S.90C, these educational requirements do not apply to those currently certified by the North Carolina Therapeutic Recreation Certification Board who apply for licensure prior to January 15, 2008. For the purposes of G.S. 90C-27(a), a candidate for licensure as a recreational therapist ~~must~~ shall have graduated from an accredited college or university with a baccalaureate degree or higher and with a major or specialization in recreational therapy or therapeutic recreation. ~~An academic major is defined as a degree in recreational therapy or therapeutic recreation. A specialization in recreational therapy or therapeutic recreation is defined as a degree in recreation and leisure studies, or recreation, or health and physical education, or health and human performance with a specialization, also known as an option, emphasis or concentration, in therapeutic recreation or recreational therapy. An accredited college or university is defined as a college or university accredited by an accreditation body recognized by the United States Department of Education. The academic major or specialization must be verified by an official transcript.~~~~

(b) For the purposes of this Rule, the following terms mean:

- (1) An academic major is defined as a degree in recreational therapy or therapeutic recreation.
- (2) A specialization in recreational therapy or therapeutic recreation is defined as a degree in recreation and leisure studies, or recreation, or health and physical education, or health and human performance with a specialization, also known as an option, emphasis or concentration, in therapeutic recreation or recreational therapy.
- (3) An accredited college or university is defined as a college or university accredited by an accreditation body recognized by the United States Department of Education.

(c) An academic major or specialization is defined by the following components:

- (1) ~~Coursework for a degree or specialization in recreational therapy or therapeutic recreation ~~must~~ shall reflect a ~~minimum of three courses (nine semester hours) and as of December 31, 2007 four courses (12 semester hours) and as of July 1, 2010 five courses~~ courses, three hours per course (15 semester hours) in which the title, course description and course outline reflects recreational therapy or therapeutic recreation content according to the current National Council for Therapeutic Recreation Certification (NCTRC) Job Analysis Study published by the ~~National Council for Therapeutic Recreation Certification (NCTRC) NCRTC~~, which is herein incorporated by reference, including any subsequent amendments and changes. A copy may be obtained at no cost on the ~~National Council for Therapeutic Recreation Certification (NCTRC) NCRTC~~ website at: <http://www.nctrc.org>. For candidates for licensure who have passed the ~~National Council for Therapeutic Recreation Certification (NCTRC) NCRTC~~ examination and were certified by the National Council for Therapeutic Recreation Certification ~~prior to December 31, 2002~~, a therapeutic recreation or recreational therapy content course taught is considered the same as a therapeutic recreation or recreational therapy content course taken.~~
- (2) Supportive coursework are courses, not including the recreational therapy or therapeutic recreation content courses, ~~which~~ that provide knowledge necessary to develop the ability to safely and effectively practice recreational therapy or therapeutic recreation and are required for the major or specialization in recreational therapy or therapeutic recreation. ~~Support content~~ Supportive courses provide knowledge about human development, human functioning, health, health care and human services, illness and disabling conditions. Supportive ~~coursework~~ courses for a degree or specialization in recreational therapy or therapeutic recreation ~~must~~ shall include three semester hours of anatomy and physiology, three semester hours of abnormal psychology, three semester hours of human growth and development across the lifespan, and nine semester hours in the area of health and human services. Health and human services coursework may include content in the areas of education, ethics, and other supportive ~~coursework~~ courses related to the practice of recreational therapy.
- (3) In addition to the coursework required in Subparagraph ~~(a)(1)-(c)(1)~~ (1) and (2) of this Rule, a field placement course ~~is also~~ shall be

required for a major or specialization in therapeutic recreation or recreational therapy.

(A) A field placement course, sometimes called an internship course, is a course taken for college or university credit and shall require clinical education in an agency providing therapeutic recreation services to clients. The field placement or internship course ~~must~~ shall meet the criteria for a field placement set forth by the National Council for Therapeutic Recreation Certification (NCTRC) in the ~~July 2007~~ NCTRC Standards publication herein incorporated by reference including any subsequent changes. A copy of the NCTRC field placement requirements may be obtained at no cost on the National Council for Therapeutic Recreation Certification (NCTRC) website at: <http://www.nctrc.org>.

(B) A ~~university supervisor~~ "university supervisor" of a field placement course is defined as the university faculty assigned to supervise the student and course from the university.

(C) An ~~agency supervisor~~ "agency supervisor" is the recreational therapist or therapeutic recreation specialist, in an agency providing therapeutic recreation or recreational therapy services to patients or clients, assigned to provide clinical supervision to the field placement student from the agency. Supervisors of students completing field placements in North Carolina ~~must~~ shall be licensed by the North Carolina Board of Recreational Therapy Licensure (NCBRTL).

(D) ~~Successful performance in a field placement course must be demonstrated to the NCBRTL.~~ Successful performance "Successful performance" in a field placement course is defined as a grade of D or Pass ~~or higher~~ awarded by the ~~university field placement supervisor~~ "university supervisor", and "Successful Performance" from the "agency supervisor" is defined by an ~~Overall Rating~~ overall rating of "Achieves Performance-Expectations" awarded by the agency supervisor ~~documented on the performance appraisal form~~ Clinical Performance Appraisal and Summary Reference Form, (CPASRF) provided by the

NCBRTL. ~~The performance appraisal form~~ CPASRF includes the content and performance criteria from the ~~ATRA SOP~~ Standards for Practice of Therapeutic Recreation and Self-Assessment Guide, as referred to be Rule.0203 Clinical Performance Appraisal Summary CPASRF provided by the Board or Board's website www.ncbrtl.org which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: <http://www.atra-TR.org>.

(4) Candidates for ~~licensure~~, licensure who have been continuously certified as a Certified Therapeutic Recreation Specialist, CTRS™ by the National Council for Therapeutic Recreation Certification (NCTRC) since 1990 and have completed all recreational therapy or therapeutic recreation content courses, ~~and all support content course requirements, but have not completed an internship or field placement course shall be issued a license to practice as a recreational therapist if they verify a minimum of one year of successful work performance as a recreational therapist or therapeutic recreation specialist during which time they were a "Certified Therapeutic Recreation Specialist" CTRS™ by the National Council for Therapeutic Recreation Certification~~ NCTRC. Successful work performance ~~must shall~~ be verified to the North Carolina Board of Recreational Therapy Licensure (NCBRTL) on a ~~performance appraisal form~~ CPASRF provided by the North Carolina Board of Recreational Therapy Licensure (NCBRTL) NCBRTL as referred to in Rule .0203, ~~that includes the content and performance criteria from the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide, Clinical Performance Appraisal Summary, which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: http://www.atra-TR.org.~~ Successful performance "Successful performance" is defined as an overall rating completed by the ~~immediate supervisor~~ "agency supervisor" of "Achieves Expectations" on the ~~performance appraisal form~~ CPASRF provided by the North Carolina Board of Recreational Therapy Licensure, NCBRTL.

~~(b)(d) Candidates must submit evidence of a passing score on the National Council for Therapeutic Recreation Certification examination. The passing score on the National Council for Therapeutic Recreation Certification Examination is determined by the National Council for Therapeutic Recreation Certification. Successful passage of the NCTRC examination is shall be determined by the NCTRC. Applicants for licensure shall submit evidence of successful passage of the NCTRC examination to the NCBRTL. Evidence of successful passage of the NCTRC examination shall be copy of his or her NCTRC certificate or a successful passage notification letter from NCTRC.~~

Authority G.S. 90C-22(2)(i), (7), 90C-24; 90C-27(a) (2)(3).

21 NCAC 65 .0302 MINIMUM LEVEL OF EDUCATION AND COMPETENCY FOR LICENSED RECREATIONAL THERAPY ASSISTANTS

(a) For the purposes of ~~G.S. 90C-27(b)~~ G.S. 90C-27(b), an academic major is defined as an Associate of Applied Science Degree in therapeutic recreation or recreational therapy from a community college by an accrediting agency approved by the United States Department of Education.

(b) Course work for an Associate degree ~~must~~ shall reflect the following:

- (1) ~~A minimum of nine~~ Nine semester hours in therapeutic recreation or recreational therapy content courses. ~~January 15, 2008, nine hours in recreational therapy or therapeutic recreation content courses.~~
- (2) Ten semester hours in therapeutic recreation or recreational therapy ~~intervention;~~ intervention courses;
- (3) ~~A minimum of 15~~ Fifteen semester hours of supportive ~~coursework~~ coursework, including ~~at least one~~ at least one course from three of the following areas: psychology, sociology, physical and biological science, human services and physical education courses. ~~Beginning January 15, 2008, the~~ The degree requirements for supportive coursework ~~must~~ shall include a minimum of five semester hours of anatomy and physiology and three semester hours of abnormal psychology, three semester hours of growth and development across life span the remaining four semester hours in any combination of supportive coursework ~~must~~ shall be in the areas of psychology, sociology, ~~physical~~ physical, and biological science, human services ~~and~~ and/or physical education;
- (4) A course with a ~~minimum~~ 380 hour field placement experience in a clinical, residential, ~~or~~ or community-based agency under the supervision of a Licensed Recreational Therapist or Licensed Recreational Therapy Assistant. The field placement ~~must~~ shall be a minimum of 12 consecutive weeks with each week including a minimum of 20 hours. Supervisors of field placements in North Carolina ~~must~~ shall be licensed by the North

~~Carolina Board of Recreational Therapy Licensure (NC BRTL) NCBRTL. Successful performance in a field placement course must shall be demonstrated to the NCBRTL. Successful performance in a field placement course is defined as a grade of D or pass or higher awarded by the university field placement supervisor and an Overall Rating of "Achieves Performance Expectations" awarded by the agency supervisor. "agency supervisor" on the performance appraisal form (CPASRF) provided by the NC BRTL NCBRTL, available on the Board's website, www.ncbrtl.org. The performance appraisal form includes the content and performance criteria from the ATRA Standards for Practice of Therapeutic Recreation and Self Assessment Guide, Clinical Performance Appraisal Summary, which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: http://www.atra-TR.org.~~

Authority G.S. 90C-27(b); 90C-24(a)(3); 90C-22(2) (i), (7), (8).

SECTION .0400 - APPLICATION

21 NCAC 65 .0401 APPLICATION PROCEDURES FOR LICENSED RECREATIONAL THERAPIST AND LICENSED RECREATIONAL THERAPY ASSISTANT

(a) An applicant for licensure may request, in writing ~~or on the Board's website, www.ncbrtl.org~~ a current application package from the North Carolina Board of Recreational Therapy Licensure.

(b) All materials ~~must~~ shall be postmarked by the application deadline, the 15th of each month, and posted on the Board ~~website.~~ website for preview and correction. Those received after the 15th shall go to the Board as received.

(c) All items ~~must~~ shall be provided to constitute a full application package, including:

- (1) A ~~current~~ head and shoulders color photograph of the applicant;
- (2) The initial application for licensure fee as stated in Rule .0500 of this Chapter; ~~and~~
- (3) Official transcripts from each college or university ~~attended.~~ attended;
- (4) Clinical Performance Appraisal and Summary Reference Form signed by agency internship supervisor as referenced in Rule .0301;
- (5) A completed NCBRTL application; and
- (6) Proof of successful exam passage as referenced in Rule.0301.

(d) The Board or staff designee shall review each application to determine an applicant's eligibility for licensure as a Recreational Therapist or a Recreational Therapy Assistant. The Board shall notify the applicant in writing if the applicant is ineligible for licensure. ~~The Board may require supplemental information to~~

~~the application to determine the facts governing qualifications and competency of an applicant. The procedure for gathering such information may include an interview of the applicant by the Board.~~

~~(e) The individual who is issued a license shall be issued a license number. The Board shall issue all licensees a license number. Should If that number be retired for any reason (such as death or failure to renew the license), such as death or failure to renew the license, that number shall not be re-issued.~~

~~(f) The Board shall issue all licensees a A-licensure card and certificate bearing the current name of the licensee, and licensee number. number be issued to and the expiration date shall each person having an active license.~~

~~(g) The Board shall mail-send any notices to a licensee at-to the last known address-contact information.~~

~~(h) A license issued by the Board is the property of the Board and must be surrendered by the licensee to the Board upon demand according to these Rules.~~

Authority G.S. 90C-24(a)(3); 90C-27(a)(2), (b)(2); 90C-32.

SECTION .0500 - LICENSURE FEES

21 NCAC 65 .0501 LICENSURE FEES

(a) A cashier's check, money order, certified ~~check-check~~, an employer's ~~check-check~~, or online payment is acceptable for the initial application licensure fees.

(b) Fees are nonrefundable and payable to the North Carolina Board of Recreational Therapy Licensure. A cashier's check, money order, certified check, an employer's check, Personal personalechecks checks, or online payment shall be accepted for payment of renewal fee and record maintenance fee. Processing fee for returned checks shall be the maximum allowed by law.

(c) The Board shall collect the following fees:

- (1) Initial Application for Licensure Fee
 - (A) Licensed Recreational Therapist ~~(\$100.00)~~ \$100.00
 - (B) Licensed Recreational Therapy Assistant ~~(\$50.00)~~ \$50.00
- (2) Licensure renewal fees (due every two years)
 - (A) Licensed Recreational Therapist ~~(\$75.00)~~ \$75.00
 - (B) Licensed Recreational Therapy Assistant ~~(\$35.00)~~ \$35.00
- (3) Inactive status ~~(\$35.00)~~ \$35.00
- (4) Record Maintenance fee (due non-renewal yr)
 - (A) Licensed Recreational Therapist ~~(\$75.00)~~ \$75.00
 - (B) Licensed Recreational Therapy Assistant ~~(\$35.00)~~ \$35.00
- ~~(5) Purchase of mailing labels to promote continuing education (\$50.00)~~

Authority G.S. 90C-24(a)(3); 90C-24(a)(10); 90C-28.

SECTION 0600 - CONTINUING EDUCATION REQUIREMENTS

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

(a) Board staff shall send a renewal notice and fee to a licensee 60 days prior to the expiration date at the licensees' last known ~~preferred~~ contact address unless a person has advised the Board that he or she does not intend to renew the license. It is the responsibility of the licensee to keep his or her address current on the their online profile on Board website, www.ncbrtl.org.

(b) Licenses issued shall be subject to renewal every two years and include documentation to support completion of continuing education requirements as set forth in Rule .0601 of this Section.

(c) Each licensee ~~must shall~~ complete and submit a renewal application ~~package~~. And continuing education documentation and color photo. All materials ~~must shall~~ be postmarked or submitted on his or her online profile on the Board website www.ncbrtl.org by the 15th of the licensees' birth month. If renewal application and fee is not received or postmarked by the 30th of the licensees' birth month, the license will expire. ~~The renewal application package must shall be submitted to the Board accompanied by the proper fees, color photo and continuing education documentation.~~

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

21 NCAC 65 .0603 CHANGE OF ADDRESS OR NAME REQUIREMENTS FOR LICENSED RECREATIONAL THERAPIST AND LICENSED RECREATIONAL THERAPY ASSISTANT

(a) Each licensee ~~must shall~~ notify the Board and make changes to his or her online profile within 30 days of a change of name, ~~workwork~~, or home address. Board shall issue each licensee a User name and Password to log onto the Board website (www.ncbrtl.org) to update contact information.

(b) The licensee requesting a name change shall provide to the Board a copy of a ~~current~~ government issued ~~identification~~ identification, ~~and~~ or a copy of a marriage certificate, marriage license, divorce ~~decree~~ decree, or evidence of legal change of name.

Authority G.S. 90C-2; 90C-24(a)(3); 90C-29.

21 NCAC 65 .0604 LRTA RENEWAL SUPERVISION REQUIREMENT

Each Licensed Recreational Therapy Assistant shall submit proof of supervision by submitting the LRTA Supervision Verification Form with renewal application every two years. This form documents duties and functions referred to in Rule .0205. This form may be obtained through NCBRTL office or Board website (www.ncbrtl.org).

Authority G.S. 90C-22(3); 90C-29.

SECTION .0800 - INACTIVE STATUS

21 NCAC 65 .0801 INACTIVE STATUS

(a) A licensee shall request inactive status by completing Inactive Status Request Form including contact information, reason for request and pay the thirty-five dollars (\$35.00) fee in accordance

with Rule .0501. The form is available through the Board or Board's website, www.ncbrtl.org.

~~(a)~~(b) While on the inactive status list, an individual ~~must~~ shall not practice recreational therapy in North Carolina.

~~(b)~~(c) A Licensed Recreational Therapist or Licensed Recreational Therapy Assistant, Assistant who has been on the inactive status list for a period of one year or less, less may convert to active status by:

- (1) Submission of a reinstatement application as defined in Rule .0701 to the Board;
- (2) Completion of a minimum of 10 continuing education ~~point~~hours, or the amount of ~~points~~ hours pro-rated to the amount of time inactive, as defined in Rule .0601 for license renewal for a Licensed Recreational Therapist or Licensed Recreational Therapy Assistant; and
- (3) Payment of the ~~current~~ license renewal fee.

~~(c)~~(d) A Licensed Recreational Therapist or Licensed Recreational Therapy Assistant who has been on the inactive list status for a period greater than one year may convert to active status by:

- (1) Submission of a reinstatement application as defined in Rule .0701 to the Board;
- (2) Completion of a minimum of 10 continuing education ~~point~~hours, per year of inactive status, or the amount of ~~point~~hours, pro-rated to the amount of time inactive, as defined in Rule .0601 for license renewal; and
- (3) Payment of the current license renewal fee; and fee.

(e) A Licensed Recreational Therapist who has been on the inactive status for five years or longer may convert to active status by:

- (1) Submission of a reinstatement application as defined in Rule .0701 to the Board;
- ~~(4)~~(2) Submission of proof of passage completion of the examination as referred to in Rule .0301 of the National Council for Therapeutic Recreation Certification for the Licensed Recreational Therapist.

~~(d)~~ Persons certified by the State of North Carolina as a Therapeutic Recreation Specialist or Therapeutic Recreation Assistant presently on the inactive status list when this Rule takes effect will be notified of the rule change at their last known address.

~~(e)~~ Persons listed as Inactive Status by the State of North Carolina Therapeutic Recreation Certification Board have until January 15, 2008 to apply for licensure through the exemption clause.

Authority G.S. 90C-24(a)(3); 90C-31.

SECTION .0900 - RECIPROCITY

21 NCAC 65 .0902 MILITARY ENDORSEMENT

(a) The military trained applicant for licensure by endorsement, substantially equivalent or exceeds the requirements for licensure, must make application with and be evaluated by the Board as set forth in Section .0300 of this Chapter.

(b) The application in paragraph (a) shall be accompanied by:

- (1) A color photograph;
- (2) Official college transcripts from all colleges attended;
- (3) Verification of passage of the Therapeutic Recreation Exam given by National Council for Therapeutic Recreation Certification;
- (4) Licensure Fees as set forth in Rule .0501 in this Chapter;
- (5) Verification of military training as a MOS Recreational Therapist or MOS Recreational Therapy Assistant;
- (6) Verification of two years of active practice within the five years preceding the date of application as a MOS Recreational Therapist or MOS Recreational Therapy Assistant; and
- (7) A statement that the applicant has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.

(c) A military spouse applicant for licensure by endorsement, who possesses a current license whose licensure requirements are substantially equivalent, or exceeds requirements for licensure in North Carolina shall make application with and be evaluated by the Board as set forth in Section .0300 of this Chapter.

(d) The application shall be accompanied by:

- (1) A color photograph;
- (2) Official college transcripts from all colleges attended;
- (3) Verification of current state license;
- (4) Verification of passage of the Therapeutic Recreation Exam given by National Council for Therapeutic Recreation Certification;
- (5) Licensure Fees as set forth in Rule .0501 in this Chapter;
- (6) Verification of two years of active practice within the five years preceding the date of application as a MOS Recreational Therapist or MOS Recreational Therapy Assistant; and
- (7) A statement that the applicant has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.

Authority G.S. 90C-27; 90C-33; 93B-15.1.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission August 20, 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 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Jeff Hyde (1st Vice Chair)
Margaret Currin
Jay Hemphill
Faylene Whitaker

Appointed by House
Garth Dunklin (Chair)
Stephanie Simpson (2nd 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
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

September 17, 2015	October 15, 2015
November 19, 2015	December 17, 2015

**RULES REVIEW COMMISSION MEETING
MINUTES
August 20, 2015**

The Rules Review Commission met on Thursday, August 20, 2015, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Stephanie Simpson, Ralph Walker, and Faylene Whitaker.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:02 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the July 16, 2015 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Pesticide Board

02 NCAC 09L .0504, .0505, .0507, .0522, .1102, .1104, and .1108 - These Rules were withdrawn at the request of the agency. No action was required by the Commission.

Board of Electrolysis Examiners

21 NCAC 19 .0201, .0202, .0203, .0204, .0407, .0409, .0602, .0608, .0622, and .0702 – The Commission approved the rewritten rules.

21 NCAC 19 .0501 and .0701 - The Commission extended the period of review for these Rules.

Board of Massage and Bodywork Therapy

21 NCAC 30 .0201, .0701, .0702, .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, and .1015 - The review of these Rules will occur at the September meeting. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Veterans Affairs Commission

The Commission voted to extend the period of review for these Rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Veterans Affairs Commission to extend the period in order to allow the agency to make technical changes and submit the rewritten rules at a later meeting.

Prior to the discussion of the rules from the Veterans Affairs Commission, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning these rules because his private practice routinely involves veteran's rights.

State Board of Elections

All rules were unanimously approved.

Prior to the discussion of the rules from State Board of Elections, Commissioner Doran recused herself and did not participate in any discussion or vote concerning these rules because she has an open matter before the State Board of Elections.

Medical Care Commission

All rules were unanimously approved.

Environmental Management Commission, Subchapter 02B

The Commission objected to 15A NCAC 02B .0295, finding the agency failed to comply with the Administrative Procedure Act. Specifically, the Commission found that changing "are" to "may" in Subparagraph (l)(6) after publication constitutes a "substantial change" pursuant to G.S. 150B-21.2(g).

The Commission also objected based upon a lack of statutory authority. Specifically, the Commission found that Session Law 2014-95 required the agency to adopt a rule that was substantively identical to the recommended rule text contained in the April 10, 2014 Consolidated Buffer Mitigation Rule Stakeholder Report. The Commission found that the agency did not comply with the statutory mandate because it moved the language that was identified as an Alternative Buffer Mitigation Option in the stakeholder report (located in Paragraph (m)) to an accepted mitigation option in Paragraph (l) of the permanent rule. Therefore, the agency did not act within the statutory authority granted to it by the Session Law.

Karen Higgins with the agency addressed the Commission.

John Hutton with Wildlands Engineering addressed the Commission.

Between reviewing Permanent Rules, Chairman Dunklin introduced OAH extern Jerod Godwin.

Environmental Management Commission, Subchapters 02D and 02Q

All rules were unanimously approved.

Coastal Resources Commission

All rules were unanimously approved.

Veterinary Medical Board

21 NCAC 66 .0209 was unanimously approved.

Building Code Council

All rules were approved with the following exception:

The Commission objected to Rule 2011 NC Electrical Code/Raceways in Wet Locations Above Grade, 300.9 with Commissioners Choi, Currin, Doran, Dunklin, Hemphill, Hyde, and Whitaker voting to adopt staff's recommendation to object to the rule, and Commissioners Simpson and Walker voting against.

The Commission objected to the Rule for failure to comply with Part 2 of the Administrative Procedure Act, specifically by adopting a rule that differs substantially from a proposed rule published in the Register. The Council published a rule in the NC Register, Volume 29, Issue 18, and proposed the deletion of one sentence and the addition of one sentence. As adopted by the Council and submitted to the Rules Review Commission, the rule did not reflect any of the published proposed changes and added an exception with three requirements. The Commission found that the change made to the text of the rule from the content proposed in the Register to the content as adopted by the Council creates a substantial change pursuant to G.S. 150B-21.2(g).

Barry Gupton with the agency addressed the Commission.

EXISTING RULES REVIEW

Tobacco Trust Fund Commission

02 NCAC 57 - The Commission unanimously approved the report as submitted by the agency.

Medical Care Commission

10A NCAC 13H – These rules were repealed effective April 1, 2015. No action was required by the Commission.

Social Services Commission

10A NCAC 70I – At the July 2015 meeting, the Commission granted the motion for an extension of time, and rescheduled the reports to be reviewed at the March 2016 meeting. No action was required by the Commission.

10A NCAC 70K - At the July 2015 meeting, the Commission granted the motion for an extension of time, and rescheduled the reports to be reviewed at the March 2016 meeting. No action was required by the Commission.

Department of Transportation

19A NCAC 01 - The Commission unanimously approved the report as submitted by the agency.

19A NCAC 04 - The Commission unanimously approved the report as submitted by the agency.

19A NCAC 05 - The Commission unanimously approved the report as submitted by the agency.

19A NCAC 06 - The Commission unanimously approved the report as submitted by the agency.

Board of Agriculture

02 NCAC 09 - As reflected in the attached letter, the Commission voted for readoption of these rules pursuant to G.S. 150B-21.3A(c)(2) no later than November 30, 2016.

02 NCAC 38 - As reflected in the attached letter, the Commission voted for readoption of these rules pursuant to G.S. 150B-21.3A(c)(2) no later than November 30, 2016.

Prior to the discussion of the reports from the Board of Agriculture, Commissioner Whitaker recused herself and did not participate in any discussion or vote concerning the reports because they affect her business operation.

Department of Cultural Resources

07 NCAC 04 - As reflected in the attached letter, the Commission voted for readoption of these rules pursuant to G.S. 150B-21.3A(c)(2) no later than December 31, 2016.

Office of Information Technology Services

09 NCAC 06 - As reflected in the attached letter, the Commission voted for readoption of these rules pursuant to G.S. 150B-21.3A(c)(2) no later than April 30, 2016.

Child Care Commission

10A NCAC 09 - As reflected in the attached letter the Commission voted for readoption of these rules pursuant to G.S. 150B-21.3A(c)(2) no later than March 31, 2019 with Commissioners Choi, Currin, Dunklin, Hyde, Simpson, Walker, and Whitaker voting in favor of the adoption date, and Commissioners Doran and Hemphill voting against.

Jim Wellons, with the Attorney General's office representing the agency, addressed the Commission.

Commission for Mental Health

10A NCAC 26D - As reflected in the attached letter, the Commission voted for readoption of these rules pursuant to G.S. 150B-21.3A(c)(2) no later than December 31, 2018.

Coastal Resources Commission

15A NCAC 07B - As reflected in the attached letter, the Commission voted for readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than February 29, 2016.

Department of Revenue

17 NCAC 06 - As reflected in the attached letter, the Commission voted for readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than February 29, 2016.

COMMISSION BUSINESS

Staff gave the Commission a brief legislative update.

At 11:57 a.m., Chairman Dunklin ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the State Board of Education against the Rules Review Commission, and the Commission's new authority to hire outside counsel pursuant to S.L. 2015-196.

The Commission came out of closed session and reconvened at 1:07 p.m. Upon reconvening the public meeting, Chairman Dunklin noted on the record that pursuant to S.L. 2015-196, the Rules Review Commission acted to engage outside counsel with connection to the lawsuit with the State Board of Education against the Rules Review Commission.

The meeting adjourned at 1:08 p.m.

The next regularly scheduled meeting of the Commission is Thursday, September 17th at 10:00 a.m.

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

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

August 2015

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Nadine Pfeiffer	DHSR
BARRY GUPTON	NCDOI - NCBCC
Sue Homewood	NCDOQ - DENR
Jennifer Everett	NC DENR
Richard Hamson	TTFC/NCDOJ
THOMAS Mickey	NCVMB
Asste Conky	DHSR
Janice W Davidson	NC DOR
Brittany Johnson	NC DOR
Susan Magas	NCBEE
John Hutton	Wildlands Engineering
Bill Teuslee	DOA
Steve Schliesser	DENR-DAQ
Joelle Burleson	DENR-DAQ
Sam Mayer	DENR-OGC
Karen Higgins	DENR-DWR
Raymond Hoke	RESTORATION Systems
Helen Vand	DOT
GEORGE MCCUE	STATE BOARD OF ELECTIONS
William Upchurch	TTFC
Brian Neesby	State Board of Elections



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 21, 2015

Christina L. Waggett
Department of Agriculture & Consumer Services
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 02 NCAC 09 and 02 NCAC 38

Dear Ms. Waggett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 20, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2016.

Please note that the rules set forth in 02 NCAC 09L are not subject to this readoption date. 02 NCAC 09L is scheduled for a separate periodic review date of September 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

8/21/2015

RRC Determination - Periodic Rule Review

Generated 8/21/2015 at 10:18 AM

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2015 through June 30, 2015
Agriculture, Board of
Total: 69**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
02 NCAC 09C .0501	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0502	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0503	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0504	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0505	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0506	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0507	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0601	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0701	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0702	Necessary with substantive public interest	March 22, 2015
02 NCAC 09C .0703	Necessary with substantive public interest	March 22, 2015
02 NCAC 09E .0102	Necessary with substantive public interest	March 22, 2015
02 NCAC 09E .0103	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .0101	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .0103	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2001	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2002	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2003	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2004	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2005	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2006	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2007	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2008	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2009	Necessary with substantive public interest	March 22, 2015
02 NCAC 09G .2010	Necessary with substantive public interest	March 22, 2015
02 NCAC 09H .0109	Necessary with substantive public interest	March 22, 2015
02 NCAC 09J .0101	Necessary with substantive public interest	March 22, 2015
02 NCAC 09J .0102	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0101	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0102	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0103	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0104	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0105	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0106	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0107	Necessary with substantive public interest	March 22, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 1/2

RULES REVIEW COMMISSION

8/21/2015

RRC Determination - Periodic Rule Review

02 NCAC 09K .0108	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0109	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0112	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0113	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0114	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0201	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0202	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0203	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0204	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0205	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0206	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0207	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0208	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0209	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0210	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0211	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0212	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0213	Necessary with substantive public interest	March 22, 2015
02 NCAC 09K .0214	Necessary with substantive public interest	March 22, 2015
02 NCAC 09O .0101	Necessary with substantive public interest	March 22, 2015
02 NCAC 09O .0102	Necessary with substantive public interest	March 22, 2015
02 NCAC 09O .0103	Necessary with substantive public interest	March 22, 2015
02 NCAC 09O .0104	Necessary with substantive public interest	March 22, 2015
02 NCAC 09O .0105	Necessary with substantive public interest	March 22, 2015
02 NCAC 09O .0106	Necessary with substantive public interest	March 22, 2015
02 NCAC 09O .0107	Necessary with substantive public interest	March 22, 2015
02 NCAC 38 .0201	Necessary with substantive public interest	March 22, 2015
02 NCAC 38 .0202	Necessary with substantive public interest	March 22, 2015
02 NCAC 38 .0301	Necessary with substantive public interest	March 22, 2015
02 NCAC 38 .0401	Necessary with substantive public interest	March 22, 2015
02 NCAC 38 .0504	Necessary with substantive public interest	March 22, 2015
02 NCAC 38 .0601	Necessary with substantive public interest	March 22, 2015
02 NCAC 38 .0604	Necessary with substantive public interest	March 22, 2015
02 NCAC 38 .0701	Necessary with substantive public interest	March 22, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 2/2



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 21, 2015

Joshua Davis
Department of Cultural Resources
4605 Mail Service Center
Raleigh, North Carolina 27699-4605

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 07 NCAC 04

Dear Mr. Davis:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 20, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2016.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

8/21/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2015 through June 30, 2015
Cultural Resources, Department of
Total: 42**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
07 NCAC 04R .0203	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0204	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0205	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0206	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0304	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0702	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0703	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0704	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0705	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0706	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0707	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0708	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0709	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0710	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0711	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0712	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0713	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0714	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0715	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0716	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0717	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0718	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0801	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0802	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0803	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0804	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0805	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0806	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0807	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .0808	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1002	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1003	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1004	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1005	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1006	Necessary with substantive public interest	July 26, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 1/2

8/21/2015

RRC Determination - Periodic Rule Review

07 NCAC 04R .1007	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1008	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1009	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1010	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1011	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1012	Necessary with substantive public interest	July 26, 2015
07 NCAC 04R .1013	Necessary with substantive public interest	July 26, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCDetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 2/2



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 21, 2015

Teresa Bank
Office of Information Technology Services
PO Box 17209
Raleigh, North Carolina 27619-7209

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 09 NCAC 06

Dear Ms. Bank:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 20, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than April 30, 2016.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

8/21/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2015 through June 30, 2015
Information Technology Services, Office of
Total: 8**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>09 NCAC 06B .0301</u>	Necessary with substantive public interest	April 25, 2015
<u>09 NCAC 06B .0302</u>	Necessary with substantive public interest	April 25, 2015
<u>09 NCAC 06B .0314</u>	Necessary with substantive public interest	April 25, 2015
<u>09 NCAC 06B .0315</u>	Necessary with substantive public interest	April 25, 2015
<u>09 NCAC 06B .0316</u>	Necessary with substantive public interest	April 25, 2015
<u>09 NCAC 06B .0405</u>	Necessary with substantive public interest	April 25, 2015
<u>09 NCAC 06B .0701</u>	Necessary with substantive public interest	April 25, 2015
<u>09 NCAC 06B .0901</u>	Necessary with substantive public interest	April 25, 2015



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 21, 2015

Dedra Alston
Division of Child Development
2201 Mail Service Center
Raleigh, North Carolina 27699-2201

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 09

Dear Ms. Alston:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 20, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than March 31, 2019.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration 919/431-3000 fax: 919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk's Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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An Equal Employment Opportunity Employer

8/21/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2015 through June 30, 2015
Child Care Commission
Total: 151**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
10A NCAC 09 .0102	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0201	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0204	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0205	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0301	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0302	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0304	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0401	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0403	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0501	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0505	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0508	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0509	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0510	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0511	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0512	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0601	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0602	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0603	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0604	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0605	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0606	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0701	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0702	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0703	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0704	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0705	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0707	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0708	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0709	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0710	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0711	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0712	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0713	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0714	Necessary with substantive public interest	May 23, 2015

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RULES REVIEW COMMISSION

8/21/2015

RRC Determination - Periodic Rule Review

10A NCAC 09 .0801	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0802	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0803	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0804	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0806	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0901	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0902	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .0903	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1001	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1002	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1003	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1004	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1301	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1302	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1303	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1304	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1401	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1402	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1403	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1701	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1702	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1703	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1705	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1706	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1716	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1718	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1719	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1720	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1721	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1722	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1723	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1724	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1801	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1901	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1903	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .1904	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2101	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2201	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2202	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2203	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2204	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2205	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2206	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2207	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2208	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2209	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2213	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2318	Necessary with substantive public interest	May 23, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 2/4

RULES REVIEW COMMISSION

8/21/2015

RRC Determination - Periodic Rule Review

10A NCAC 09 .2401	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2402	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2403	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2404	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2405	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2406	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2407	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2408	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2409	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2410	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2411	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2501	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2502	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2503	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2504	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2505	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2506	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2507	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2508	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2509	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2510	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2701	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2702	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2703	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2704	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2801	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2802	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2804	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2805	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2806	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2807	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2808	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2809	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2817	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2818	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2819	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2820	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2821	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2822	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2823	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2824	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2825	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2826	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2827	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2828	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2829	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2830	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2831	Necessary with substantive public interest	May 23, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 3/4

RULES REVIEW COMMISSION

8/21/2015

RRC Determination - Periodic Rule Review

10A NCAC 09 .2901	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2902	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2903	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2904	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .2905	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3001	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3002	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3003	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3005	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3006	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3007	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3008	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3009	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3010	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3011	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3012	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3013	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3014	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3015	Necessary with substantive public interest	May 23, 2015
10A NCAC 09 .3016	Necessary with substantive public interest	May 23, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 4/4



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 21, 2015

Denise Baker
Division of Mental Health
3001 Mail Service Center
Raleigh, North Carolina 27699-3001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 26D

Dear Ms. Baker:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 20, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

8/21/2015

RRC Determination - Periodic Rule Review

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**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2015 through June 30, 2015
Mental Health, Commission for
Total: 6**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>10A NCAC 26D .1104</u>	Necessary with substantive public interest	June 20, 2015
<u>10A NCAC 26D .1105</u>	Necessary with substantive public interest	June 20, 2015
<u>10A NCAC 26D .1202</u>	Necessary with substantive public interest	June 20, 2015
<u>10A NCAC 26D .1203</u>	Necessary with substantive public interest	June 20, 2015
<u>10A NCAC 26D .1204</u>	Necessary with substantive public interest	June 20, 2015
<u>10A NCAC 26D .1206</u>	Necessary with substantive public interest	June 20, 2015



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 21, 2015

Jennifer Everett
Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 07B**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 20, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than February 29, 2016.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

8/21/2015

RRC Determination - Periodic Rule Review

Generated 8/21/2015 at 11:16 AM

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2015 through June 30, 2015
Coastal Resources Commission
Total: 4**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>15A NCAC 07B .0701</u>	Necessary with substantive public interest	August 22, 2015
<u>15A NCAC 07B .0702</u>	Necessary with substantive public interest	August 22, 2015
<u>15A NCAC 07B .0801</u>	Necessary with substantive public interest	August 22, 2015
<u>15A NCAC 07B .0802</u>	Necessary with substantive public interest	August 22, 2015



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 21, 2015

Janice Davidson
Department of Revenue
Post Office Box 871
Raleigh, North Carolina 27602

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 17 NCAC 06

Dear Ms. Davidson:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the August 20, 2015 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than February 29, 2016.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

8/21/2015

RRC Determination - Periodic Rule Review

Generated 8/21/2015 at 11:17 AM

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2015 through June 30, 2015
Revenue, Department of
Total: 34**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
17 NCAC 06B .0104	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .0106	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .0107	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .0109	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .0112	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .0113	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .0114	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .0115	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .0116	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3203	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3204	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3407	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3501	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3503	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3513	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3529	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3718	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3723	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3804	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3904	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .3905	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .4003	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .4005	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .4101	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .4102	Necessary with substantive public interest	July 26, 2015
17 NCAC 06B .4103	Necessary with substantive public interest	July 26, 2015
17 NCAC 06C .0110	Necessary with substantive public interest	July 26, 2015
17 NCAC 06C .0117	Necessary with substantive public interest	July 26, 2015
17 NCAC 06C .0123	Necessary with substantive public interest	July 26, 2015
17 NCAC 06C .0124	Necessary with substantive public interest	July 26, 2015
17 NCAC 06C .0126	Necessary with substantive public interest	July 26, 2015
17 NCAC 06C .0203	Necessary with substantive public interest	July 26, 2015
17 NCAC 06C .0204	Necessary with substantive public interest	July 26, 2015
17 NCAC 06D .0102	Necessary with substantive public interest	July 26, 2015

<http://rats/Reports/RRC/periodicRuleReview.pl?sType=RRCdetermination&sDetermination=Necessary%20with%20substantive%20public%20interest&bCo...> 1/1

**LIST OF APPROVED PERMANENT RULES
August 20, 2015 Meeting**

ELECTIONS, STATE BOARD OF

<u>Determination of Reasonable Resemblance at Check-In</u>	08	NCAC	17	.0101
<u>Determination of Reasonable Resemblance by Judges of Elec...</u>	08	NCAC	17	.0102
<u>Identification of Curbside Voters</u>	08	NCAC	17	.0103
<u>Opportunity to Update Name or Address After Reasonable Re...</u>	08	NCAC	17	.0104
<u>Declaration of Religious Objection to Photograph</u>	08	NCAC	17	.0105

MEDICAL CARE COMMISSION

<u>Definitions</u>	10A	NCAC	13B	.2101
<u>Reporting Requirements</u>	10A	NCAC	13B	.2102
<u>Definitions</u>	10A	NCAC	13C	.0103
<u>Reporting Requirements</u>	10A	NCAC	13C	.0206

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>PM2.5 Particulate Matter</u>	15A	NCAC	02D	.0410
<u>Prevention of Significant Deterioration Requirements for ...</u>	15A	NCAC	02D	.0544
<u>Payment of Fees</u>	15A	NCAC	02Q	.0206
<u>Applications</u>	15A	NCAC	02Q	.0304
<u>Applicability</u>	15A	NCAC	02Q	.0502
<u>Application</u>	15A	NCAC	02Q	.0507

COASTAL RESOURCES COMMISSION

<u>AECs Within Ocean Hazard Areas</u>	15A	NCAC	07H	.0304
<u>Single Family Residences Exempted from the CAMA Permit Re...</u>	15A	NCAC	07K	.0213

ELECTROLYSIS EXAMINERS, BOARD OF

<u>Fees</u>	21	NCAC	19	.0201
<u>Application for Licensure</u>	21	NCAC	19	.0202
<u>Application for Renewal, Reinstatement, or Reactivation o...</u>	21	NCAC	19	.0203
<u>Application for Renewal, Reinstatement, or Reactivation o...</u>	21	NCAC	19	.0204
<u>Cleaning, Sterilization, and Safety Precautions for Instr...</u>	21	NCAC	19	.0407
<u>Client Evaluation</u>	21	NCAC	19	.0409
<u>Application for and Renewal of School Certification</u>	21	NCAC	19	.0602
<u>School Equipment</u>	21	NCAC	19	.0608
<u>Certification of Schools in Other States or Jurisdictions</u>	21	NCAC	19	.0622
<u>Board Approval of Courses</u>	21	NCAC	19	.0702

VETERINARY MEDICAL BOARD

<u>Practice of Veterinary Medicine</u>	21	NCAC	66	.0209
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BUILDING CODE COUNCIL

<u>2012 NC Building Code/Cross-Laminated Timber</u>	Chapter 2, 602.4, 2302.1, 2303.1.4, Chapter 35
<u>2012 NC Energy Conservation Code/Fenestration</u>	402
<u>2012 NC Energy Conservation Code/Building Envelope</u>	Table 502.1.2
<u>2012 NC Existing Building Code/Smoke Alarms</u>	403.6.1, 404.6, 603.2, 703.3, 1203.3
<u>2012 NC Existing Building Code/Carbon Monoxide Detection</u>	Ch. 2, Section 403.7, 703.2, 1203.13, 1401.2.6, Ch. 47
<u>2012 NC Fire Code/Inspections</u>	106
<u>2012 NC Fire Code/Carbon Monoxide Detection</u>	Chapter 2, Section 915, Chapter 47
<u>2012 NC Fuel Gas Code/CSST</u>	310.1.1, Chapter 8
<u>2012 NC Plumbing Code/Sewage Backflow</u>	715.1
<u>2012 NC Residential Code/Cross-Laminated Timber</u>	Ch. 2, R502.1.6, R502.8.2, R506.1.3, R802.1.5, Ch. 44
<u>2012 NC Residential Code/Fenestration</u>	N1102

**RRC DETERMINATION
PERIODIC RULE REVIEW
August 20, 2015**

Necessary with Substantive Public Interest

Transportation, Department of	19A NCAC 06C .0111	19A NCAC 06C .0401
19A NCAC 06B .0402	19A NCAC 06C .0112	19A NCAC 06C .0403
19A NCAC 06B .0405	19A NCAC 06C .0123	19A NCAC 06C .0408
19A NCAC 06B .0406	19A NCAC 06C .0124	19A NCAC 06C .0502
19A NCAC 06B .0410	19A NCAC 06C .0125	19A NCAC 06C .0503
19A NCAC 06B .0411	19A NCAC 06C .0126	19A NCAC 06C .0703
19A NCAC 06B .0413	19A NCAC 06C .0127	19A NCAC 06C .0704
19A NCAC 06C .0107	19A NCAC 06C .0129	19A NCAC 06C .0705
19A NCAC 06C .0108	19A NCAC 06C .0134	19A NCAC 06C .0706
19A NCAC 06C .0109	19A NCAC 06C .0301	19A NCAC 06D .0203
19A NCAC 06C .0110	19A NCAC 06C .0304	

**RRC DETERMINATION
PERIODIC RULE REVIEW
August 20, 2015**

Necessary without Substantive Public Interest

Tobacco Trust Fund Commission	02 NCAC 57 .0210	19A NCAC 01A .0104
02 NCAC 57 .0101	02 NCAC 57 .0301	19A NCAC 01A .0201
02 NCAC 57 .0102	02 NCAC 57 .0302	19A NCAC 01A .0301
02 NCAC 57 .0103	02 NCAC 57 .0303	19A NCAC 01A .0401
02 NCAC 57 .0201	02 NCAC 57 .0304	19A NCAC 01B .0102
02 NCAC 57 .0202	02 NCAC 57 .0306	19A NCAC 01B .0103
02 NCAC 57 .0203	02 NCAC 57 .0307	19A NCAC 01B .0201
02 NCAC 57 .0204	02 NCAC 57 .0308	19A NCAC 01B .0202
02 NCAC 57 .0205	02 NCAC 57 .0309	19A NCAC 01B .0203
02 NCAC 57 .0207		19A NCAC 01B .0301
02 NCAC 57 .0208	Transportation, Department of	19A NCAC 01B .0302
02 NCAC 57 .0209	19A NCAC 01A .0101	19A NCAC 01B .0401

RULES REVIEW COMMISSION

19A NCAC 01B .0402	19A NCAC 05B .0301	19A NCAC 06B .0101
19A NCAC 01B .0403	19A NCAC 05C .0501	19A NCAC 06B .0201
19A NCAC 01B .0501	19A NCAC 05C .0502	19A NCAC 06B .0202
19A NCAC 01B .0502	19A NCAC 05C .0503	19A NCAC 06B .0203
19A NCAC 01C .0102	19A NCAC 05C .0601	19A NCAC 06B .0204
19A NCAC 01C .0209	19A NCAC 05C .0602	19A NCAC 06B .0205
19A NCAC 04A .0102	19A NCAC 05C .0603	19A NCAC 06B .0301
19A NCAC 04A .0104	19A NCAC 05C .0701	19A NCAC 06B .0302
19A NCAC 04A .0105	19A NCAC 05C .0702	19A NCAC 06B .0303
19A NCAC 04A .0106	19A NCAC 05C .0703	19A NCAC 06B .0304
19A NCAC 04A .0107	19A NCAC 05D .0201	19A NCAC 06B .0401
19A NCAC 04A .0108	19A NCAC 05D .0205	19A NCAC 06B .0403
19A NCAC 04A .0109	19A NCAC 05D .0207	19A NCAC 06B .0404
19A NCAC 05B .0101	19A NCAC 05D .0208	19A NCAC 06B .0407
19A NCAC 05B .0104	19A NCAC 05D .0211	19A NCAC 06B .0408
19A NCAC 05B .0201	19A NCAC 05D .0301	19A NCAC 06B .0409
19A NCAC 05B .0202	19A NCAC 05D .0302	19A NCAC 06B .0415
19A NCAC 05B .0203	19A NCAC 05D .0303	19A NCAC 06B .0416
19A NCAC 05B .0204	19A NCAC 05D .0402	19A NCAC 06B .0417
19A NCAC 05B .0209	19A NCAC 05D .0403	19A NCAC 06B .0418

**RRC DETERMINATION
PERIODIC RULE REVIEW
August 20, 2015
Unnecessary**

Transportation, Department of	19A NCAC 05D .0204	19A NCAC 06D .0204
19A NCAC 04B .0101	19A NCAC 05D .0401	19A NCAC 06D .0205
19A NCAC 05A .0101	19A NCAC 05D .0404	19A NCAC 06D .0206
19A NCAC 05A .0102	19A NCAC 06C .0133	
19A NCAC 05B .0103	19A NCAC 06D .0202	

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
Chief's Inc. v. Alcoholic Beverage Control Commission	13 ABC 18939	02/19/15	
American Legion, T/A Linton J Sutton Post 223-1 v. Alcoholic Beverage Control Commission	14 ABC 03686	12/23/14	
Alcoholic Beverage Control Commission v. AMH Diana Market Corp., T/A Green's Market	14 ABC 05071	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07115	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07116	01/14/15	
The Geube Group, Michael K Grant Sr v. Alcoholic Beverage Control Commission	14 ABC 08696	02/16/15	
Alcoholic Beverage Control Commission v. Bhavesh Corp T/A K and B Foodmart	14 ABC 09023	02/04/15	
Alcoholic Beverage Control Commission v. Greenleaf Food and Beverage Inc T/A Bunker Jacks	14 ABC 09037	03/07/15	
Alcoholic Beverage Control Commission v. S.D.C. Group Inc T/A Perkeo Wine Bistro	14 ABC 09039	02/09/15	
Alcoholic Beverage Control Commission v. Alquasem Mustafa Salameh T/A KP Mini Mart	14 ABC 09231	02/04/15	
<u>BOARD OF ARCHITECTURE</u>			
Board of Architecture v. Anthony Hunt	14 BOA 04954	03/03/15	30:01 NCR 77
<u>BOARD OF BARBER EXAMINERS</u>			
Arthur Donald Darby Jr v. Board of Barber Examiners - Staff	14 BBE 04565	12/05/14	
<u>BOARD OF FUNERAL SERVICES</u>			
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 05389	02/23/15	
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 07597	02/23/15	
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 08028	02/23/15	
<u>DEPARTMENT OF COMMERCE</u>			
Hog Slat, Inc v. Department of Commerce	13 COM 20122	12/05/14	
<u>DEPARTMENT OF PUBLIC SAFETY</u>			
Kimberly H. Oliver v. Victims Compensation Commission	13 CPS 14371	04/17/15	30:03 NCR 354
Jose Guadalupe Munoz Nunez v. Victims Compensation Commission	14 CPS 02633	02/16/15	
Jack Norris v. Victims Compensation Commission	14 CPS 06019	03/30/15	30:01 NCR 89
Yessika Murga Martinez v. Crime Victims Compensation Commission	14 CPS 07544	05/29/15	
Joanne Sanon v. Department of Public Safety	14 CPS 07995	01/16/15	
Bonnie Hall v. Crime Victims Compensation Commission	14 CPS 08618	01/23/15	

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Strategic Interventions Inc. v. Western Highlands Network A LME-MCO	13 DHR 05119	06/21/13	
Kenneth Terrell Ford v. DHHS, Division of Facility Services	13 DHR 10745	05/04/15	30:03 NCR 360
Joyce Carol Hunter v. DHHS, Division of Health Service Regulation	13 DHR 17855	01/03/14	
Rex Hospital v. DHHS, Division of Medical Assistance	13 DHR 18151	05/29/15	30:03 NCR 372
Paul M Stella v. DHHS, Division of Public Health	13 DHR 19269	02/06/14	
UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance	13 DHR 19653	05/29/15	30:03 NCR 387
UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance	13 DHR 19654	05/29/15	30:03 NCR 387
A+ Residential Care, Daniel Saft v. NCDHHS, Division of Health Service Regulation	13 DHR 19835	05/22/15	
Stepping Stone Counseling v. NCDHHS, Division of Medical Assistance	13 DHR 19837	05/12/15	
Carolina Community Support Services, Inc. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01500	04/02/15	30:04 NCR 480
Sunrise Clinical Associates PLLC. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01503	04/02/15	30:01 NCR 97
Fidelity Community Support Group Inc. v. Alliance Behavioral Healthcare, NCDHHS	14 DHR 01594	04/02/15	30:01 NCR 133
Regina Joyner v. Division of Child Development and Early Education, DHHS	14 DHR 04463	12/10/14	
Cumberland County Hospital System, Inc d/b/a Cape Fear Valley Health System and Hoke Healthcare LLC v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section	14 DHR 04692	01/21/15	
Bio-Medical Applications of NC, Inc d/b/a BMA Rocky Mount v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section and Total Renal Care Inc d/b/a Nash County Dialysis	14 DHR 05495	03/26/15	30:02 NCR 196
Bernita Webster v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 05566	03/10/15	30:02 NCR 229
First Image Grace Court/RHCC and Shirley Williams v. DHHS, Division of Health Service Regulation	14 DHR 06332	02/12/15	
Carrie's Loving Hands, Felicia McGee v. NCDHHS, Division of Health Service Regulation, Certification	14 DHR 06565	02/13/15	
Erica Chante Johnson v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 06571	03/10/15	30:02 NCR 236
Brenda Buck v. NCDHHS, Division of Health Service Regulation	14 DHR 07027	01/02/15	
Humble Beginnings Child Care Inc v. Division of Child Development and Early Education	14 DHR 07029	05/22/15	
Peace Of Mind Adult Group Home Kimberly Goolsby v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section	14 DHR 07325	05/22/15	
Peace of Mind Adult Group Home Kimberly Goolsby, v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section	14 DHR 07327	05/22/15	
Dennis Reid v. NCDHHS	14 DHR 07992	04/17/15	
Hanna Lawrence v. DHHS	14 DHR 08026	01/09/15	
Sharda R Wilkes v. NCDHHS, Division of Health Service Regulation	14 DHR 08575	01/21/15	
Sandy's Playschool LLC, Michelle Bailey-Motley v. DHHS, Division of Child Development	14 DHR 08580	02/16/15	
Alicia Staton v. Department of Health and Human Services	14 DHR 08589	02/02/15	
Tiffany Leary v. NCDHHS, Division of Health Services, Health Care Personnel Registry	14 DHR 08785	01/06/15	
Tomika Jones Moore v. NCDHHS, Division of Health Service Regulation	14 DHR 10137	04/06/15	
Jones Country Mart, Inesar M Ahmad v. NCDHHS, WIC	14 DHR 10138	02/03/15	
Theresa L Greene v. DHHS, Division of Health Service Regulation	14 DHR 10160	02/10/15	
Jeanette Peele v. Health Care Personnel Registry, Nurse Aide I	14 DHR 10162	05/18/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	14 DHR 10167	04/27/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	14 DHR 10171	04/27/15	
Sophia B Pierce and Associates d/b/a Sunny Acres Group Home v. DHHS, Division of Facility Services, Mental Health Licensure and Certification Section	14 DHR 10281	04/02/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	15 DHR 00462	04/27/15	

DEPARTMENT OF JUSTICE

Thomas Eliza Anderson v. Private Protective Services Board	11 DOJ 10367	06/24/14	
Ronnie Earl Smith Jr. v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 04114	04/09/15	30:02 NCR 243
Susan Maney v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05067	04/14/15	30:02 NCR 252
Rachel Elisabeth Hoffman v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05502	03/11/15	30:04 NCR 513
Rayburn Darrell Rowe v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05503	04/20/15	30:06 NCR 692
Waseen Abdul-Haq v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08259	07/21/15	30:06 NCR 699

CONTESTED CASE DECISIONS

Donald Earl Schwab v. NC Sherriff's Education and Training Standards Commission	14 DOJ 08347	05/28/15	30:04 NCR 518
Martin Luther Locklear v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00052	06/05/15	30:05 NCR 580
Ronald Corbett Jr. v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00055	05/04/15	30:05 NCR 587
<u>DEPARTMENT OF TRANSPORTATION</u>			
Barnhill Contracting Co. Inc v. Department of Transportation, Division of Highways	12 DOT 04647	02/03/15	
<u>DEPARTMENT OF STATE TREASURER</u>			
Stephanie T. Treio v. NC Department of State Treasurer	14 DST 06380	05/08/15	30:04 NCR 531
<u>STATE BOARD OF EDUCATION</u>			
Danny Lorenzo Scott v. Public Schools of NC, Department of Public Instruction	14 EDC 09883	07/10/15	30:06 NCR 705
<u>DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES</u>			
Alcoa Power Generating Inc. v. Division of Water Resources, DENR	13 EHR 18085	05/29/15	30:03 NCR 402
<u>DEPARTMENT OF INSURANCE</u>			
Thelma Grant POA Marilyn Howard v. State Health Plan for Teachers and State Employees	13 INS 20396	05/22/15	
<u>MISCELLANEOUS</u>			
Thomas Charles Fogarty v. Town of Maggie Valley	13 MIS 19252	01/14/14	
<u>OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)</u>			
Linda Huggins v. Department of Administration, NC Human Relations Commission	08 OSP 01153	01/23/15	
Lauren Wilson Burch v. NC Alcohol law Enforcement	12 OSP 08548	04/14/15	30:06 NCR 681
Deni Crawley v. NCDPS Foothills Correctional Institution	13 OSP 11438	04/28/15	30:01 NCR 62
Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety	13 OSP 14194	08/14/14	
Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety	13 OSP 14195	08/14/14	
Willie Joyce Partin v. DOT, Division of Motor Vehicles, Traffic Records, Crash Report Unit	13 OSP 17728	12/04/13	
Deni Crawley v. NCDPS Foothills Correctional Institution	13 OSP 19135	04/28/15	30:01 NCR 62
Raymond Gene Gonzales v. NCDHHS, Division of Vocational Rehabilitation Services	14 OSP 07804	02/27/15	30:04 NCR 534
Joseph Tenhagen v. NC Department of Public Safety, Employee Advisory Committee	14 OSP 07837	03/23/15	30:05 NCR 571
Zoila Brock v. Nanette Outlaw, Director Duplin County Social Services	14 OSP 10048	04/17/15	30:06 NCR 711
<u>OFFICE OF THE SECRETARY OF STATE</u>			
Carolyn Marie Aikens v. Secretary of State, Notary Public	13 SOS 15500	11/05/13	

FILED

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 OSP 8548

LAUREN WILSON BURCH,

Petitioner,

v.

NORTH CAROLINA ALCOHOL LAW
ENFORCEMENT,

Respondent.

OFFICE OF
ADMINISTRATIVE HEARINGS

FINAL DECISION

The contested case of Lauren Wilson Burch, Petitioner herein, was heard before Administrative Law Judge Selina M. Brooks on January 15, 2015, in Goldsboro, North Carolina and on January 16, 2015, in Raleigh, North Carolina.

APPEARANCES

PETITIONER: Glenn Barfield
Bryan King
Haithcock Barfield Huse & Kinsey
231 East Walnut Street
P.O. Drawer 7
Goldsboro, NC 27533

RESPONDENT: Tammera S. Hill
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27609

WITNESSES

The following witnesses testified for the Petitioner:

Petitioner, Lauren Wilson Burch
Diane J. Chapin
Alan Fields
Kendall E. Pike
Samantha Williams

The following witnesses testified for the Respondent:

None.

EXHIBITS

Petitioner's exhibits ("P Exs") A-O were admitted into evidence.

Respondent's exhibits ("R Exs") 1-16 were admitted into evidence.

PARTY REPRESENTATIVES

The Petitioner's party representative was Petitioner, Lauren Burch.

The Respondent's party representative was Kendall E. Pike.

ISSUES

After discussion on the record on December 11, 2014 (T pp 20-21) and as memorialized in the Order entered on December 15, 2014, Counsel for both Parties agreed that the issues are as follows:

The Petitioner has the burden of proof that she was constructively suspended as a result of discrimination because of pregnancy.

If Petitioner prevails in meeting her burden of proof, then Respondent has the burden of proof that its action(s) had just cause, and that there was neither constructive suspension nor discrimination.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact and Conclusions of Law. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

BASED UPON the foregoing and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

FINDINGS OF FACT

1. Petitioner has been employed as a Special Agent with the North Carolina Alcohol Law Enforcement (NCALE) since 2006, and currently is assigned to the New Bern district. (T p 216)
2. Respondent is the North Carolina Department of Public Safety of which NCALE was a division.
3. In 2011, Deputy Director of Administration of NCALE Mark J. Senter (Senter) instituted disciplinary proceedings against Petitioner for expense reimbursements and irregularities in her time keeping. (P Ex E p 12) One of the irregularities concerned a report for overnight stay in Raleigh that covered meals and transportation, but not overnight lodging, because Petitioner stayed with family living in Raleigh. (T pp 134-136; P Ex E p 8; R Ex 16 p 17) Initially, Petitioner was suspended for five days without pay which she grieved and eventually resulted in a written warning after the case was settled in February of 2012. (T pp 234-235; P Ex O; R Ex 16 p 34)
4. Assistant Director Alan Fields (Fields) investigated the allegations against Petitioner in 2011. Fields concluded that Petitioner had not intentionally submitted inaccurate records and he recommended that she and her supervisors be given written warnings. (T pp 149, 151; P Ex E) He thought the 5-day suspension initially given to Petitioner in 2011 was "brutal" and he was concerned that her supervisors were not disciplined. (T pp 151-152, 172)
5. During the investigation Petitioner alleged that Senter was unfair to her and she felt abused by him. (T p 147; P Ex E p 8) Fields noted that Petitioner felt Senter was out to get her and singled her out. Fields never questioned the veracity of Petitioner's feelings, but each of Petitioner's examples of disparate treatment by Senter had a reasonable explanation. (T pp 173-175; R Ex 16 pp 113, 223-231) Senter was Petitioner's supervisor in the Hickory district office for less than 45 days in 2008 and other than that brief period of time, Senter never had direct supervision or contact with Petitioner. (T p 219) There was no follow-up investigation into Petitioner's allegations regarding Senter. (T pp 139-144, 149)
6. In March 2012, Petitioner discovered she was pregnant and, in accordance with NCALE policy, she submitted a Pregnancy Statement confirming her pregnancy and providing her anticipated due date of November 7, 2012. (P Ex D; R Ex 16 p 35)
7. Petitioner's supervisor was Special Agent in Charge Diane J. Chapin (Chapin) whose duties included providing direction and supervisory control of all assigned NCALE personnel. (R Exs 3 & 16 pp 108-109, 218) Chapin had been the first pregnant agent in the history of NCALE. (T p 218)
8. Supervisors have discretion to change subordinates' work assignments without approval of others higher in the chain of command even in situations where an agent is pregnant. (T p 311; P Ex O pp 49-50; R Ex 16 pp 108, 115-116) It is the practice of NCALE to accommodate pregnant agents by allowing them to participate in less hazardous assignments upon request, remaining on duty for all purposes with their badge, gun and state vehicle, including law enforcement action, whenever it was needed. (T p 311; R Ex 16 pp 62-63) Pregnant agents are not to be treated any

differently than any other agent as long as she and her doctor agree that she can still perform her job functions. (T pp 312-313)

9. Chapin told Petitioner that she would work with her regarding her duties and when Petitioner was “too pregnant” to work enforcement activities, Chapin would work with her to modify her assignments. (T pp 399, 401, 408-409) Chapin identified various assignments within the district for Petitioner. (P Ex I)

10. While Petitioner was still in the early stages of her pregnancy, Chapin felt that Petitioner attempted to pick and choose assignments because of her pregnancy: Petitioner didn’t do her undercover inspections at ABC-licensed establishments; she did not want to work during the evening because she got tired; she did not want to work at a prom party on a Saturday evening because she tired easily and, alternatively, refused to work a drug interdiction operation the following Sunday morning; she rejected the offer of hours to do evidence destruction because she was dressed nicely. (T pp 411-414) Petitioner wanted to continue to do the work related to confidential informants but did not want to do enforcement duties. (T pp 418-419) Chapin told Petitioner that she needed to do the entire scope of her work. (T p 419)

11. On April 30, 2012, Petitioner gave a Work Excuse Note completed by her doctor, dated April 30, 2012, to Chapin that stated she “was seen on 4/23/2012” and “regular duties-not to lift more than 25 lbs. not to be subjected to the possibility of physical altercations, must be able to ambulate on a regular basis.” (T p 244; P Ex D; R Ex 5)

12. Chapin asked Petitioner why she obtained the Work Excuse Note even after she had promised to work with her. Petitioner replied that she was unsure what Headquarters would do with her. (T p 417; P Ex D; R Ex 5)

13. Kendall E. Pike has been the Assistant Director for Professional Standards at NCALE since 1989. (T p 304; P Ex O p 6) He is familiar with Petitioner through various investigations he has conducted concerning her on issues such as insubordination, mislabeling of evidence, damaged property, timekeeping and reimbursement errors, which resulted in written warnings or counseling. (P Ex O, pp 8-9, 23-25)

14. The Work Excuse Note submitted by Petitioner contained some restrictions that Pike had never seen before for a pregnant agent. (P Ex P p 10)

15. Pike understood the language in the Work Excuse Note to prohibit Petitioner not only from engaging in physical altercations but also from any situation that would place her at the risk of such an altercation. (T pp 327, 332) NCALE had an obligation to follow the note’s restrictions. (T p 319)

16. Command staff reviewed Petitioner’s Work Excuse Note and were specifically concerned about the language “I feel that it is appropriate for us to avoid any situation that would put her at risk for physical altercations.” (P O pp 11, 49)

17. The command staff sought both medical and legal opinions, and were concerned about

- liability if Petitioner was hurt on the job. (T p 366; P Ex O pp 44-44, 56-57; R Ex 16 p 110)
18. DPS legal staff concurred that the Work Excuse Note required placing Petitioner on limited duty. (R Exs 14 & 16 p 110)
19. According to Senter, no other pregnant agent had produced a note with such restrictive language. He sent the note to Dr. Griggs, NCALE Medical Director, and asked for direction concerning the meaning of the Work Excuse Note who responded to Senter that the restrictions were consistent with limited duty. (R Exs 7 & 16 pp 109-110)
20. Limited duty is granted at the discretion of the NCALE Director and is never guaranteed. Agents on limited duty must be able to perform meaningful work for the agency. (T p 284; R Exs 1, 4 & 16 p 107) "The Division may provide work suitable to the employee's capacity that is meaningful, productive, and advantageous to the employee and the Division." (R Exs 4 p 7 & 16 p 61)
21. NCALE policy states, to wit: "An employee assigned to limited duty may not drive or ride as a passenger in an assigned ALE vehicle and he/she must provide personal transportation to the work place. ... Employee limited duty assignments shall not include enforcement actions. ... If it appears an employee will be on limited duty for 90 calendar days or more, the issued Division vehicle and firearms shall be surrendered to his/her immediate supervisor." (R Ex 4 pp 7-8)
22. An agent on limited duty doesn't have to lose the badge, gun and state vehicle unless the agent is on leave for an extended period of time. (R Ex 16 p 119)
23. Because of her pregnancy, Petitioner was technically a Class C status agent, one whose physical condition can cause significant risk to her safety pursuant to Medical Services Program Directive and, as such, policy required that she be dismissed or reassigned. (R Ex 4 p 3; T p 366)
24. Command staff felt that they had no choice but to place Petitioner on limited duty due to the restrictions in the Work Excuse Note. (T p 340; R Ex 16 pp 116-117)
25. Petitioner was given the option of limited duty or no duty. (P O Ex p 58; R Ex 16 pp 50, 85, 124-125)
26. On April 30, 2012, after receiving Dr. Griggs's response, Senter ordered Chapin to take away Petitioner's weapon and state vehicle and take her home. (T pp 248-252; R Ex 8)
27. Petitioner testified that Chapin told her that she could not return to work unless she sent a memo to Senter and requested limited duty. (T p 252)
28. Petitioner sent a memorandum, dated April 30, 2012, to Ledford, stating that "I am no longer able to perform duties with NCALE, due to being pregnant, I am requesting to work limited/light duty." (P Ex D)
29. On May 1, 2012, Senter inquired of Chapin whether there was sufficient limited duty

available for Petitioner within the confines of the note at the New Bern district office and advised that there may be duties at headquarters in Raleigh so that she would not have to use leave time. Chapin identified some limited duty work available in Petitioner's district. (R Ex 9)

30. Petitioner testified that she then contacted her doctor's office, explained the situation, and a letter dated April 23, 2012 was provided to her. (P Ex D; R Ex 6)

31. On May 1, 2012, the letter from Petitioner's doctor, dated April 23, 2012, was faxed to Respondent which stated that she should "avoid any situations that would put her at risk for physical altercations. She states that she will often be in a patrol car and I feel that is reasonable for her. I would avoid any high speed pursuits or other activities that would be high risk for her. If she is going to be in a vehicle for more than three-four hours, I would recommend that she have the opportunity to get out and stretch her legs for a few minutes." (T pp 247, 286-287; P Ex D; R Ex 6)

32. On May 2, 2012, Director C. John Ledford approved Petitioner for "limited duty with the restrictions of 'not lifting more than 25 lbs, not subjected to the possibility of physical altercations, and must be able to ambulate on a regular basis' [i]n order to comply with these restrictions as indicated by your doctor" and informed Petitioner that she should report to Fields in the Boxing and Lottery Section at Headquarters in Raleigh on May 3, 2012. (T pp 154, 290; P Ex K; R Ex 11)

33. The Boxing and Lottery Section of NCALE is a high volume paperwork intensive section, and the work must be done onsite because of the sensitive nature of the documents. The section always has work available for limited duty. (T pp 155, 167-168; R Ex 16 pp 58-69, 111)

34. Chapin "was thrilled" with Petitioner's assignment in Raleigh because it showed NCALE's attempt to accommodate her and Petitioner had family in Raleigh. (T p 416)

35. The decision to offer limited duty at the Boxing and Lottery office in Raleigh was made with the knowledge that Petitioner had family in the area that could assist her. The Raleigh assignment was a way to help Petitioner save her leave time. If Petitioner was interested in the assignment, she was to figure out the best way to make it work for her. (T p 326; P Ex O pp 27-29; R Ex 16 pp 54, 112)

36. Petitioner testified that no one told her that her family's residence in Raleigh was a part of the consideration. (T pp 265-266)

37. The Director has the discretion to reassign an agent from one district to another. (R Exs 1 p 1 & 16 p 120) An agent has the option of reporting for duty at the new assigned station or resigning. Limited duty is not guaranteed and an agent may accept it or take leave. (R Ex 16 pp 84, 106-107)

38. At least two other ALE agents on limited duty were sent to headquarters in Raleigh. In both cases, the agents resided in the Fayetteville district and were required to drive their personal vehicles to report for work. (P Ex O pp 29, 107-108; R Ex pp 107-108)

39. Raleigh headquarters was a three-hour drive from Petitioner's home. (T p 255)
40. Petitioner testified that she did not report to work in Raleigh on May 3, 2012, because she thought that she was being treated unfairly. (T pp 257-258) Petitioner never contacted Fields about making a schedule in Raleigh with which she would be comfortable. (T p 291)
41. On May 3, 2012, a nurse practitioner sent a note stating that Petitioner should not travel more than one and a half hours to and from work. (T pp 256-257; P Exs D & I; R Ex 13)
42. The note from the nurse practitioner did not change the decision of command staff as stated in the May 2, 2012 letter. (T p 282; R Ex 14)
43. In a series of emails on May 4 and 7, 2012, Petitioner advised Chapin and Senter that she would be out on sick leave May 7 through 11, 2012. (R Ex 13)
44. On May 7, 2012, Chapin informed Senter and Fields of several administrative activities available on specific dates in the New Bern district for Petitioner. (R Ex 10)
45. It was determined that Petitioner could not do any activity at an ABC-permitted business, including grocery stores, because of the inherent danger associated with intoxicated people and illegal activities, such as drugs, at bars which results in physical altercations. The only ALE agent killed in the line of duty was killed one night after leaving a bar after a BARS program. (T p 169-170) Inspections are enforcement activities that are inherently dangerous. (T pp 263-265, 371)
46. Petitioner was not allowed to attend court. Fields did not believe it safe for Petitioner to attend court without her weapon and referred to the recent shooting of a federal agent in a courthouse in Atlanta. (T pp 170, 262-263)
47. It is in the nature of law enforcement work to encounter situations involving physical altercations and high-speed chases. NCALE could not avoid the potential for these situations without assigning duties in a protective environment. (P Ex P pp 14-16; R Ex 16 pp 116-118)
48. District offices are not a "protective environment" because they are open to the public. The headquarters office in Raleigh is the only place with NCALE where the risk of physical altercations could be eliminated. (P Ex P p 69)
49. In an email on May 24, 2012, Petitioner informed Fields that "I will be continuing to take sick leave until my next doctors [sic] appointment on June 15, 2012 (other than the dates we discussed I would be reporting to New Bern.)" (R Ex 13)
50. Several times during her pregnancy, Petitioner worked duties in her home district of New Bern that were consistent with her restrictions. The activities were individually reviewed by Fields and Senter and either approved or disapproved for Petitioner. (T pp 160-161) For the remainder of her pregnancy, Petitioner utilized leave time until it was exhausted. (T pp 157-159, 287, 291-292; R Ex 13)

51. Although Petitioner never reported to Raleigh Headquarters, Fields remained her supervisor while she was pregnant with her first child and allowed Petitioner to complete some duties at her district office that were consistent with her restrictions. (T pp 157-159, 178; R Ex 13)
52. Petitioner filed the within Petition for a Contested Case Hearing with the Office of Administrative Hearings on October 9, 2012.
53. On October 10, 2012, Respondent's Human Resources Director sent a letter to Petitioner, confirming her employment status, informing her that all accrued leave and voluntary shared leave time would be exhausted as of October 12, 2012, and directing her to report for duty at NCALE Headquarters on October 15, 2012. (T p 269; R Ex 15)
54. Petitioner needed to submit a request for leave of absence or else her failure to report would be considered a voluntary resignation. (R Ex 16 pp 89-90, 94)
55. Also on October 10, 2012, Petitioner requested reassignment to the New Bern district office due to her impending delivery.
56. On October 12, 2012, Petitioner began leave without pay status. As a result, Petitioner was no longer eligible for state sponsored health insurance. (R Ex 15) Petitioner was able to obtain health insurance through her husband's employer. (T pp 258-259, 266)
57. On October 18, 2012, Respondent sent a letter to Petitioner informing her that her duty station assignment to the New Bern district had not changed but her limited duty assignment remained available in Raleigh. (T p 268, R Ex 12)
58. Petitioner was not disciplined for refusing her limited duty assignment to Raleigh Headquarters. (T p 278)
59. On October 23, 2012, a letter was sent to Petitioner confirming her leave of absence status and reviewing her benefit options, including her ineligibility for state sponsored health insurance after her family medical leave time was exhausted. (R Ex 15)
60. Petitioner gave birth on October 28, 2012 and returned to work without restrictions eight weeks later. (T p 278)
61. Petitioner returned to work after the birth of her child and resumed her normal duties. She became pregnant a second time, provided a doctor's note markedly different from the first note, worked until she delivered her second child, and never went on limited duty. (T pp 272-273, 280)
62. During the course of the administrative hearing held on January 15-16, 2015, evidence was received concerning the duty assignments given to other pregnant agents at NCALE.
63. Special Agent Kelli Lawrence (Lawrence) was employed by NCALE from 2005 to 2013. She was assigned to the Hickory district at the same time as Petitioner and Senter. (P Ex M p12)

64. At some point during her pregnancy in 2010, Lawrence did not do outside enforcement work. She was allowed to keep her badge, gun and state vehicle. (P Ex A & M pp 20, 23, 25)

65. Samantha Williams (Williams) was a NCALE agent who was pregnant in 2011. She submitted a doctor's note that specifically restricted her from combat, taser and pepper spray training. Williams was not restricted from using her weapons, but rather could not have them used on her during training. She was allowed to wear her gun and badge which gave her law enforcement authority. (T pp 190-193; P Ex B) Williams was not allowed to qualify with her rifle due to doctor's restrictions and NCALE took her rifle from her as a result. (T p 193-94)

66. Williams continued to work enforcement until her sixth month of pregnancy when she presented her doctor's note limiting her to office duty after which she worked at the Raleigh district office and at Headquarters in Raleigh. (T pp 195, 207-208; P Ex B) She used her state vehicle, carried her weapon and badge, and was paid for drive time until her doctor ordered her on bed rest. She used her vacation and sick leave time. (T pp 196-199; P Ex O pp 43-49)

67. Meredith Shoaf (Shoaf) began employment with NCALE in 2009 and became pregnant in 2013. Shoaf submitted a doctor's note with the restriction "not to lift anything greater than 10-15 pounds". (P Ex C)

68. At Shoaf's request, her duties were restricted to office work and she was not allowed to use her state vehicle. (P Ex N pp 21, 29-30) Her badge and gun were not taken away but she was directed to store them in the trunk of her car. (P Ex N p 31)

69. None of these prior pregnant agents produced a note as restrictive as the note Petitioner submitted. (R Ex 16)

70. The Undersigned hereby finds the testimony of Chapin, Fields and Pike to be credible and to carry the greater weight and the testimony of Petitioner to be less credible and to carry the lesser weight.

CONCLUSIONS OF LAW

1. All parties are properly before this Administrative Law Judge and jurisdiction and venue are proper. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Petitioner was continuously employed as a State employee since 2006. At the time she went on Leave Without Pay status, she was a Career State Employee entitled to the protections of the North Carolina State Personnel Act (N.C. Gen. Stat. § 126-1 *et seq.*), and specifically the just cause provision of N.C. Gen. Stat. §126-35.

3. Petitioner has alleged that Respondent constructively suspended her without pay and without just cause. Therefore, the Office of Administrative Hearings has jurisdiction to hear his appeal and issue the final decision in this matter.

4. Pursuant to N.C. Gen. Stat. § 126-35(d), in an appeal of a disciplinary action, the employer bears the burden of proving that “just cause” existed for the disciplinary action, if any. Here, the Respondent denies imposing any disciplinary or otherwise adverse employment action and, therefore, Petitioner bears the burden of proving the existence of a disciplinary action or adverse employment decision, to wit: constructive suspension.

5. Petitioner has failed to meet her burden of proof that she was constructively suspended without pay. The credible evidence is that Respondent acted reasonably when it followed the restrictions in Petitioner’s doctor’s note and letter, and placed Petitioner on limited duty status. Respondent had no obligation to grant limited duty and Respondent had no obligation to create a limited duty assignment in Petitioner’s home district. Petitioner was offered a limited duty assignment in Raleigh that she refused. Petitioner was given some limited duty work in her home district when it was available and the choice to either accept the limited duty assignment in Raleigh or use leave time was hers alone.

6. The Undersigned finds that Petitioner voluntarily exhausted her sick, vacation and donated leave time and, therefore, was not constructively suspended.

7. Respondent’s actions were in compliance with its policy concerning limited duty assignment.

8. Petitioner has not met her burden of establishing an adverse employment decision and therefore, the just cause provisions and protections of N.C. Gen. Stat. § 126-35 do not apply and judgment for the Respondent is appropriate.

BASED UPON the above-noted Findings of Fact and Conclusions of Law, the Undersigned makes the following:

DECISION

The Undersigned finds that Petitioner has failed to meet her burden of proving she was constructively suspended as a result of discrimination based on her pregnancy and enters Judgment in favor of Respondent.

NOTICE

This Final Decision is issued under the authority of N.C. Gen. Stat. § 150B-34. Pursuant to N.C. Gen. Stat. § 150B-45, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the

Administrative Law Judge's Decision and Order.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. N.C.G.S. § 150B-47 requires the Office of Administrative Hearings to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. To ensure the timely filing of the record, the appealing party must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings when the appeal is initiated.

This the 14th day of April, 2015.



Selina M. Brooks
Administrative Law Judge

2. What sanction, if any, should Respondent impose against Petitioner's law enforcement officer certification?

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. § 17E-1 et. seq.
12 NCAC 09A .0204 & 12 NCAC 09A. 0205(b)(4)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 – 11, 14

For Respondent: 1, 2

FINDINGS OF FACT

1. From 1982 until 1989, Petitioner was a commissioned officer in the North Carolina National Guard, while he also attended school at Campbell University. In 1989, Petitioner was honorably discharged from the National Guard. As a commissioned officer with the National Guard, Petitioner had purchased part of his equipment, and part of his equipment was issued by whichever service he served. After being honorably discharged, Petitioner turned in his equipment. (T. p. 8-9)

2. On October 16, 1989, Sheriffs Training and Standards Commission awarded Petitioner a certification to work as a full-time law enforcement officer with the Northampton County Sheriff's Office. From 1989 until 1991, Petitioner worked as a Deputy Sheriff for the Northampton County Sheriff's Office.

3. In 1990, Northampton County Sheriff Ellis Squire called Petitioner into his office, and informed Petitioner that he had a warrant for Petitioner from the National Guard. Petitioner was "to say the least, shocked." (T. p. 10) Sheriff Squire served the warrant on Petitioner by handing the warrant to Petitioner. Petitioner was not handcuffed or taken into custody. Neither was Petitioner "arrested" for such charge. (T. p. 20)

4. Petitioner contacted the National Guard and spoke with Sergeant Edgar Lewis. Sgt. Lewis told Petitioner "it was a mistake and it shouldn't have been done, to just turn in the equipment." Lewis also told Petitioner that, "As soon as they got it, it would be dismissed, which it was." (T. p. 10)

5. Petitioner never intended to take the property of the military to keep it for his personal use permanently. (T. p. 27) Petitioner kept the property by mistake and oversight. Petitioner returned the equipment to the National Guard in a bag. The equipment was inconsequential. He had never been contacted by the National Guard about the equipment before. (T. p.10)

6. Court records show that a "Conversion Of Military Property" charge was filed against Petitioner on January 26, 1990. On February 22, 1990, Petitioner met National Guard Sergeant Lewis in court, and the charge was voluntarily dismissed. There is no date and arrest number or warrant number listed on the court records. (Resp. Ex. 4)

7. In 1991, the Murfreesboro Police Chief Ed Harris asked Petitioner to come work for him as a detective. On June 24, 1991, Petitioner applied for certification with Respondent to serve as a law enforcement officer with the Murfreesboro Police Department. As part of his application for appointment and certification with the Murfreesboro Police Department, Petitioner was required to complete, sign, and submit a Form F-5A Report of Appointment/Application for Certification—Law Enforcement Officer to Respondent. This document contains, *inter alia*, the following section:

SECTION FOR ALL APPLICANTS

CRIMINAL OFFENSE RECORD: Exclude minor traffic offense, unless they are charged at the same time you were charged with DWI, DUI, driving while under the influence of drugs, driving while license permanently revoked or suspended, or duty to stop in event of accident.

1. Offense Charged _____ Law Enforcement Agency _____
Date _____ Disposition of Case _____

(Resp. Exh. 2)

8. Petitioner completed the 1991 Form F-5A while sitting across the desk from Murfreesboro Police Chief Harris. Petitioner and Harris discussed the "Conversion Of Military Property" charge against Petitioner as follows:

Chief Harris advised me since it was a mistake – and I explained it to him just like I explained it to you. On his guidance, I did not put it down. And to be completely honest with you, since that date I've thought no more about it until this issue arose.

(T. pp. 10-16) More specifically, Chief Harris advised Petitioner that:

[I]t was a mistake as the Sergeant had said. He said it was not necessary to put it down. And at 23 years old and a year's experience, I deferred to the chief because he's the chief. So that's what I did.

(T. p. 13) For the foregoing reason, Petitioner did not list the following offense: "Conversion of Military Property (Pasquotank Co. No. 90 CR 721) (voluntary dismissal)" under the "Criminal Offense Record" section on his 1991 Form F-5A. (Resp. Exh. 2. p. 5)

9. Petitioner's signature on the June 24, 1991, Murfreesboro P.D. Form F-5A, indicated, among other things, his understanding and agreement that:

[A]ny omission, falsification, or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial, suspension or revocation of my certification at any time, now or later.

(Resp. Ex. 2) Petitioner also attested by his signature:

[T]hat the information provided above and all other information submitted by me, both oral and written throughout the employment and certification process, is thorough, complete, and accurate to the best of my knowledge.

10. Petitioner worked as a Detective with Murfreesboro Police Department until Chief Harris passed away. From 1995 to 1997, Petitioner worked as a Police Sergeant for the Murfreesboro Police. From 1999 until August 31, 2005, Petitioner served as the Murfreesboro Chief of Police.

11. Recently, the new Northampton County Sheriff requested that Petitioner be sworn as a special Deputy Sheriff to assist the Sheriff, because the Sheriff prefers the Chiefs of Police in his county be sworn as deputies. (T. pp. 8-9)

12. Petitioner provided a notarized written statement to Respondent regarding his omission of the charge of "Conversion of Military Property" (Pasquotank Co. No. 90 CR 721) (voluntary dismissal) on his 1991 Form F-5A. (Resp. Ex. 2) In that statement, Petitioner thought the foregoing charge had been included with his paperwork, because he remembers speaking with the Chief of the Murfreesboro P.D. at the time regarding the incident. Petitioner explained that he had mistakenly kept some military equipment after being honorably discharged from the National Guard. Upon learning of the "Conversion of Military Property" charge, Petitioner immediately turned in the items and the charges were dismissed at the first court appearance.

13. On June 12, 2014, Respondent notified Petitioner that its Probable Cause Committee had found probable cause existed to suspend Petitioner's law enforcement certification, pursuant to 12 NCAC 09A .0204(b)(6), for knowingly making a material misrepresentation of information required for certification by failing to list the following charge on Petitioner's June 24, 1991 Report of Appointment/Application for Certification (Form F-5A) for Murfreesboro Police Department: "Conversion of Military Property (Pasquotank Co. -90CR 721/Voluntary Dismissal on February 22, 1990)."

14. At the administrative hearing in this matter, Petitioner acknowledged that he signed the Form F-5A in 1991, and failed to list the "Conversion of Military Property" charge from his application and certification documents. Petitioner's account is consistent with the notarized statement he provided to Respondent. Further, Petitioner explained that the National Guard Sergeant who charged him stated the charge was a mistake. In

1991, Petitioner relied upon the advice of Murfreesboro Police Chief Harris, who advised Petitioner not to include the charge on the form. "I was just following the advice of the chief, because it was dismissed." (T. p. 12)

15. The Form F-5A associated with Petitioner's application for employment and certification through the Murfreesboro P.D. was unequivocal in requesting criminal background information from Petitioner. Even though Petitioner did not make a material misrepresentation to his prospective employer, his omission of the conversion charge on his Form F-5A did constitute a material misrepresentation to the Commission, albeit upon the advice of his hiring chief.

16. Petitioner enjoys the full and unequivocal support of many respected members and elected officials of his community. He has not been charged with any other criminal offense during his lifetime. He has not violated any other rule of the Commission or policy of his employer during a law enforcement career spanning in excess of twenty years.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, and jurisdiction and venue are proper.

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions or Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

3. Pursuant to 12 NCAC 9A .0204(b)(6), the Commission may suspend or revoke the certification of a justice officer when the Commission finds the certified officer "has knowingly made a material misrepresentation of any information required for certification."

4. 12 NCAC 9A .0205 (b) states that the period of sanction, if imposed, for suspension of the certification of a criminal justice officer:

shall be not less than five years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (b) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is: . . .

(4) material misrepresentation of any information required for certification or accreditation; or

Alternatively, a period of probation may be imposed. *Id.*

5. The threshold for the element of “knowingly” must be lower than the threshold for the violation of 12 NCAC 9A .0204(b)(7), which prohibits an applicant or certified officer from obtaining or attempting to obtain certification from the Commission “knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever.” The intention to deceive is not necessary to be proven for violations of 12 NCAC 9A .0204(b)(6), which is charged here.

6. Given the nature of the law enforcement provision and the fact that criminal charges and convictions are pertinent to the investigation of possible violations of other rules of the Commission, Petitioner’s assertions that he omitted the above-referenced charge due to the instructions of Murfreesboro Police Chief Harris is credible in light of the preponderance of the evidence.

7. Petitioner made a material misrepresentation of fact on the Report of Appointment/Application for Certification (Form F-5A) he completed and signed on or about June 24, 1991, as part of his application for employment with the Murfreesboro Police Department, by failing to list the above-cited charge when he completed the criminal record section of that Form.

8. The Report of Appointment/Application for Certification (Form F-5A) Petitioner completed and signed on or about June 24, 1991, as part of his application with the Murfreesboro Police Department, were necessary and required parts of the application process to become a certified law enforcement officer.

9. Although the responsibility for completing the application ultimately rests with the Petitioner, Petitioner did not knowingly make material misrepresentations or omissions on his June 24, 1991 Form F-5A form as he relied on the expertise and advice of Chief Harris, the chief of the Murfreesboro Police Department, in completing his Form F-5A, and he gave all pertinent and required information to the Chief.

10. Petitioner has not been charged with any other criminal offense during his lifetime, and has not violated any other rule of the Commission or policy of his employer during a law enforcement career of more than sixteen years.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends that Respondent **GRANT** Petitioner’s law enforcement officer commission with a probationary status of one year.

NOTICE

The North Carolina Criminal Justice Education and Training Standards Commission will make the Final Decision in this case. That agency is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit

proposed Findings of Fact and to present oral and written arguments to the agency.
N.C.G.S. § 150B-40(e).

This 20th day of April, 2015


Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
7/21/2015 10:46 AM

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ08259

<p>Waseen Abdul-Haqq Petitioner</p> <p>v.</p> <p>N C Sheriffs' Education And Training Standards Commission Respondent</p>	<p>PROPOSAL FOR DECISION</p>
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, on March 26, 2015, in High Point, North Carolina, upon Respondent's request, pursuant to N.C. Gen. Stat. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. Throughout most of their proposed decisions, the parties agreed on precisely the same language, and this Proposal for Decision adopts much of their consensus language.

APPEARANCES

Petitioner: James B. Weeks, Esq.
Law Offices of James B. Weeks
Greensboro, North Carolina

Respondent: Matthew L. Boyatt, Assistant Attorney General
N.C. Department of Justice
Raleigh, North Carolina

ISSUE

Whether Petitioner, a certified Detention Officer, violated N.C. Gen. Stat. § 20-166(c)(1), "Duty to stop in event of a crash," a Class B misdemeanor.

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. §§ 20-4.01(33b) and 20-166(c1); 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205(2)(a)

EXHIBITS ADMITTED INTO EVIDENCE

Respondent's Exhibits ("R. Exs.") 1-10

WITNESSES

For Petitioner: Detention Officer Waseen Abdul-Haqq, Petitioner
Sgt. Katherine Netter, Guilford County Sheriff's Office

For Respondent: Officer R.D. Goad, Greensboro Police Department
Deputy James Sykes, Guilford County Sheriff's Office

UPON DUE CONSIDERATION of the arguments of counsel; the documents and other exhibits admitted; and the sworn testimony of each of the witnesses in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests the witnesses may have, and whether their testimony is reasonable and consistent with other credible evidence; and upon assessing the greater weight of the evidence from the record as a whole, in accordance with the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Upon Respondent's due notice to Petitioner of its proposed Revocation of his Justice Officer's Certification, Petitioner's timely request for a contested case hearing, and notice of hearing to both parties, this matter is properly before the Office of Administrative Hearings ("OAH") pursuant to N.C. Gen. Stat. § 150B-40(e).
2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Respondent") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certifications.
3. Petitioner obtained employment as a detention officer with the Guilford County Sheriff's Office in March 2011 and has remained employed with that agency since. Petitioner received his Detention Officer General Certification from Respondent on April 10, 2012. Petitioner is currently a certified detention officer.
4. Title 12 NCAC 10B .0204(d)(1) provides that Respondent may revoke the certification of a justice officer when Respondent finds that the officer has committed or was convicted of a crime defined as a Class B misdemeanor after the officer's date of appointment through Respondent.
5. On March 13, 2014, Petitioner was charged with failing to stop and report a crash in violation of N.C. Gen. Stat. § 20-166(c)(1). The collision occurred on March 11, 2014 in the parking deck of the Guilford County Courthouse in Greensboro. At approximately

8:54 a.m. on that date, Petitioner was operating his 2004 Yukon SUV, license plate ZNZ8825. Petitioner was on his way to court for a child custody hearing concerning his children and was accompanied by his then-fiancé, Katherine Netter, who is a sergeant with the Guilford County Sheriff's Office. Petitioner and Sgt. Netter are now married.

6. Sgt. Netter was in the front passenger seat, and Petitioner was driving his SUV when he entered the courthouse parking deck on the morning of March 11, 2014. Petitioner entered the parking area designated for employees at 201 South Eugene Street in Greensboro and proceeded to park in the space reserved for Sgt. Netter. Petitioner was "running a little behind," preoccupied with the custody hearing, and distracted by a maintenance man on a ladder installing a lightbulb near his vehicle when he was maneuvering to pull into the parking space. He struck the GMC pickup truck that was parked next to Sgt. Netter's assigned space. Petitioner and Sgt. Netter both sought to assess the damage before going to the courtroom. Petitioner was somewhat familiar with the law regarding the obligation of an at-fault driver in this situation and concluded correctly that the amount of damage did not make the accident "reportable" to law enforcement, but that the owner of the pickup truck should be informed. Sgt. Netter was familiar with the truck's owner, who parked beside her and had also taken one of the classes she taught local law enforcement officers, although she did not know his name. Sgt. Netter and Petitioner discussed that she would make contact with the truck's owner about the incident. Sgt. Netter wrote down the license plate number of the victim's truck with the intention of sending the individual an email with the necessary information, since the victim also worked in the courthouse. Petitioner and Sgt. Netter left the parking deck for the custody hearing at approximately 8:55 a.m.
7. The custody hearing continued into the following day, March 12, 2014. Petitioner testified that he never thought about the accident again until he was contacted by the police on the afternoon of March 13, 2014. Sgt. Netter was off work on March 13th and planned to "run [the owner's] plate" to obtain the contact information of the truck's owner when she returned to work on Friday, March, 14th. She contacted the truck's owner by phone on the afternoon of March 13th, after Petitioner was charged.
8. Deputy James Sykes owned the pickup truck that Petitioner struck. He did not notice the damage to his vehicle until he was called at his home about the accident. The maintenance man in the parking deck at the time of the accident reported the incident. The accident was initially investigated by a patrol officer who noted "minor damage" to the pickup truck and estimated repair costs of \$500.00. The case was then assigned to Officer R.D. Goad on March 13, 2014, who charged Petitioner later that day. Officer Goad has been a sworn justice officer for approximately 13 years and has earned his Advanced Law Enforcement Officer's Certification. Officer Goad is currently assigned to Special Operations and works exclusively with the Hit and Run Division. He investigates approximately 250 hit and run cases each year.
9. Officer Goad's investigation revealed that Deputy Sykes was alerted to the collision by courthouse personnel on the day following the accident, March 12, 2014. Officer Goad interviewed Deputy Sykes on March 13, 2014, and confirmed that his vehicle sustained a

dent to the rear left quarter panel of the truck, fairly depicted in Respondent's Exhibit 9, as a result of Petitioner striking the truck with his SUV. Deputy Sykes testified that it cost \$609.21 to repair his truck. Deputy Sykes testified that it would have been very easy for Petitioner to locate him following the collision on March 11, 2014, by notifying security at the courthouse about the collision. Deputy Sykes was first contacted on Petitioner's behalf by Sgt. Netter after 2 PM on March 13, 2014.

10. Officer Goad made contact with Petitioner via telephone on March 13, 2014. During the telephone interview, Petitioner admitted to Officer Goad that he was driving his Yukon SUV on the morning of March 11, 2014. Petitioner told Officer Goad that he was distracted when he entered the parking deck and that he overshot the parking space and struck the back of the pickup truck owned by Deputy Sykes. Petitioner told Officer Goad that he did not see much damage to the truck. Petitioner therefore entered the courthouse to attend his custody hearing. Petitioner told Officer Goad that he believed that the collision did not have to be reported to law enforcement. Officer Goad testified that the accident did not have to be reported to law enforcement but that Petitioner was obligated to notify the pickup truck's owner even if there was no damage or minor damage. He thought Petitioner should have written a note to leave on the pickup or sought out an officer to tell about the accident.
11. Officer Goad charged Petitioner with violating N.C. Gen. Stat. § 20-166(c)(1), alleging that he "[f]ailed to stop the vehicle defendant was driving at the scene of a crash resulting in property damage to a 2000 GMC Sierra when the defendant knew the crash occurred." He also charged Sgt. Netter with aiding and abetting "a hit and run." The prosecution voluntarily dismissed both charges when shown that Petitioner's insurance had paid for the damage to Deputy Sykes' pickup truck. Petitioner's employer suspended him for two days without pay when he was charged, and then reduced the suspension to one day after the charges were dismissed. The grounds for the suspension were not specified, but Sgt. Netter testified that it was because another law enforcement agency had to investigate the matter. (R. Ex. 10)
12. N.C. Gen. Stat. § 20-166 provides, in pertinent part:

(c) The driver of any vehicle, when the driver knows or reasonably should know that the vehicle which the driver is operating is involved in a crash which results:

(1) Only in damage to property; [...]

shall immediately stop the vehicle at the scene of the crash. *If the crash is a reportable crash, the driver shall remain with the vehicle at the scene of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave [...]*,

(c1) In addition to complying with the requirement of subsection (c) of this section, the driver as set forth in subsection (c) *shall give his or her name, address, driver's license number and the license plate number of his vehicle to the driver or occupants of any other vehicle involved in the crash or to any person whose property is damaged in the crash. If the*

damaged property is a parked and unattended vehicle and the name and location of the owner is not known to or readily ascertainable by the driver of the responsible vehicle, the driver shall furnish the information required by this subsection to the nearest available peace officer, or, in the alternative, and provided the driver thereafter within 48 hours fully complies with G.S. 20-166.1(c), shall immediately place a paper-writing containing the information in a conspicuous place upon or in the damaged vehicle. [. . .] A violation of this subsection is a Class 1 misdemeanor.

(Emphasis added.)

N.C. Gen. Stat. § 20-4.01(33b) provides, in pertinent part:

Reportable Crash. - A crash involving a motor vehicle that results in one or more of the following: a. Death or injury of a human being. b. Total property damage of one thousand dollars (\$1,000) or more

13. The subject accident was not a “reportable crash” within the meaning of § 20-4.01(33b). Petitioner did not fail to stop his vehicle at the scene of the accident in violation of § 20-166(c)(1). Petitioner might reasonably have believed that the name and location of the pickup’s owner was readily ascertainable. However, the statute requires that the driver at fault immediately seek to provide the required information to the owner of the parked vehicle and, failing that, to notify the “nearest available peace officer” or leave a note on the struck vehicle. While his reliance on Sgt. Netter and his distraction due to his custody case may be considered in mitigation by the Commission, Petitioner violated § 20-166(c1).
14. It is the contention of both parties that, “Petitioner has otherwise been a good detention officer,” and that, “Petitioner has the support of the Guilford County Sheriff’s Office,” and that agency would like to see Petitioner remain in his current position.
15. To the extent that portions of the following Conclusions of Law include findings of fact, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.
2. The parties and the subject matter of this hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §150B-40(e).
3. Pursuant to 12 NCAC 10B .0204(d)(1), the Commission may revoke, suspend, or deny

the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of "a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of appointment."

4. Violation of N.C. Gen. Stat. § 20-166(c1) is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by Respondent. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner violated § 20-166(c1) by failing to promptly "give his ... name, address, driver's license number and the license plate number of his vehicle to the ... person whose property [was] damaged in the crash."
5. Petitioner's certification through the Commission is subject to revocation pursuant to 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205(2)(a) based on Petitioner having committed the Class B misdemeanor offense in violation of N.C. Gen. Stat. § 20-166(c1). Pursuant to 12 NCAC 10B .0205, the Commission has the authority to issue a lesser sanction than revocation.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0205(2)(a), the undersigned recommends Respondent suspend Petitioner's certification for a period of 6 months, and that this suspension be stayed for 1 year, provided Petitioner does not violate any rules of the Commission.

NOTICE AND ORDER

The North Carolina Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 21st day of July, 2015.



J. Randolph Ward
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
7/10/2015 11:43 AM

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14EDC09883

<p>Danny Lorenzo Scott Petitioner</p> <p>v.</p> <p>Public Schools of North Carolina, Department Of Public Instruction Respondent</p>	<p>FINAL DECISION</p>
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THIS MATTER came on for hearing before the Hon. J. Randolph Ward on April 7, 2015 in Morganton, North Carolina. Following preparation of a transcript and expiration of the time allowed for the Parties to submit proposed Decisions, this Final Decision was prepared.

APPEARANCES

For Petitioner: *Pro Se*

For Respondent: Ms. Tiffany Y. Lucas, Assistant Attorney General
North Carolina Department of Justice
Raleigh, N.C.

ISSUE

Whether Respondent erroneously denied Petitioner's request for additional salary due to his attainment of a master's degree in Human Resource Management, substantially prejudicing his rights.

APPLICABLE STATUTES AND POLICIES

N.C. Gen. Stat. §§ 150B-23(a) & (f), 150B-34(a), 115C-12(9)a & 115C-296(a)
State Board of Education Policy TCP-A-006

WITNESSES

For Petitioner: Mr. Danny Lorenzo Scott, Petitioner

For Respondent: Mr. David Fairall
Ms. Toya Kimbrough

EXHIBITS

Petitioner's Exhibits ("P. Exs.") A-F, H, and I were admitted into evidence.

Respondent's Exhibits ("R. Exs.") A-H were admitted into evidence.

UPON DUE CONSIDERATION of the arguments of the parties, the documents and other exhibits admitted, and the sworn testimony of each of the witnesses in light of their opportunity to see, hear, know, and recall relevant facts and occurrences; any interests they may have in the outcome of the case; and whether their testimony is reasonable and consistent with other credible evidence; and upon assessing the preponderance of the competent evidence of the record as a whole in accordance with the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent State Board of Education is empowered by statute to "determine and fix the salary for each grade and type of license which it authorizes." N.C. Gen. Stat. 115C-296(a). Respondent has adopted a policy (TCP-A-006) to reward teachers with additional salary ("graduate pay") if they attain a postgraduate degree at the master's level or higher. This policy applies even if the postgraduate degree is in an academic field other than education, but only when: it is awarded by a regionally accredited institution of higher education; and is "directly related" to the teacher's existing area of licensure and current teaching assignment or instructional support responsibilities; and when the postgraduate degree applies to the assigned area to which the teacher devotes 50% or more of the school day. (See R. Ex. A, p. 3)
2. Petitioner Danny Lorenzo Scott is currently employed as a high school Navy Junior ROTC ("JROTC") instructor with the Newton Conover Public Schools System. He holds a bachelor's degree in liberal arts and obtained a master's degree in human resources management from Troy State University in 2004. Effective February 24, 2014, Petitioner was licensed to teach JROTC in North Carolina, subject to earning three (3) semester hours of educational or adolescent psychology and three (3) semester hours of methods and materials of teaching in the secondary schools before the beginning of the 2015-16 school year, as well as completion of a three-year Initial Licensure Program.
3. Petitioner was honorably discharged from the Navy in 1998 after 10 years of service. He taught Navy JROTC in Arizona before coming to North Carolina. He was induced to come to the Newton Conover schools to teach the same subject matter, in part with the expectation that he would receive additional funds due to his master's degree. He actually received graduate pay for the first four or five months he taught in North Carolina, but was then told Respondent had to approve it for him to continue to receive it.
4. The Newton Conover School District applied to Respondent for approval of graduate pay for Petitioner. The agency's staff denied the request because, "The master's degree in

Human Resource Management is not directly related to JROTC.” Petitioner appealed the initial denial, using application materials he prepared concerning his education and, particularly, how his master’s degree program prepared him to teach Naval JROTC.

5. Respondent has created an Appeals Panel to consider appeals of denials of requests for certification based on non-teaching work experience, military career experience, and experience in military leadership roles, as well as the additional salary for graduate degrees. The committee is composed of persons closely involved with traditional education organizations, including school district employees, administrators and professors from institutions of higher learning, and representatives of teacher advocacy organizations (such as NCAE and PENC).
6. Petitioner submitted documentation to the Appeals Panel, including official transcripts from the institution at which Petitioner earned his advanced degree, course descriptions, and his explanations of how specific course content related to and enhanced his ability to present pertinent material in the JROTC training he conducted. All of the information submitted by Petitioner in support of his request was provided to the Appeals Panel for consideration at its October 21, 2014 meeting. The Panel reviewed the material and compared Petitioner’s area of licensure and teaching assignment with the coursework that led to his master’s degree.
7. Mr. David Fairall, a member of the Appeals Panel since its creation, testified about the evaluation of Petitioner’s master’s degree. Mr. Fairall attended college on an ROTC scholarship and spent 9 ½ years in active duty with the Army. Following his honorable discharge, he worked as a human resources manager in private industry and has served consecutively as Director of Human Resources for the Winston-Salem/Forsyth and the Lexington school systems since 1997. Mr. Fairall testified that because of his military background, the panel “typically looks to me” when dealing with military experience and JROTC issues.
8. When asked for the “overriding guiding principle that you abide by when considering” cases like Petitioner’s, Mr. Fairall responded that “we’re really guided by that phrase ... ‘directly related.’” He described the Panel, at one of its first meetings, seeking a definition for the phrase, and “the representatives from the Ed[ucation] schools offered that in general” the required coursework for a master’s degree programs included “18 semester hours of content-relevant material.” Eighteen (18) hours would be approximately 55% - 60% of the total coursework required for a master’s degree in education. Mr. Fairall testified that, as a consequence, “that’s the guideline we adopted as a panel to determine whether not a particular master’s program was considered directly related to a particular content area,” and that it had been consistently applied over the intervening years.
9. In addition to an official transcript of his postgraduate courses and the syllabus for each of the JROTC courses he taught, Petitioner provided the Appeals Panel with a compilation of the course objectives for his students, matched with detailed descriptions of the graduate school courses he testified he drew on in teaching the course. Mr. Fairall testified that he reviewed these materials and concluded that the courses Petitioner took titled Organization Behavior, Training and Human Resource Development, and Business Research were

“directly related” to the courses that Petitioner taught. These courses constituted nine (9) hours of the thirty (30) hours of coursework required for Petitioner’s course of study for his master’s degree, or 30% of the total. As the nine (9) semester hours Mr. Fairall perceived were directly related were “well short of the 18 semester hours we typically are looking for,” he offered a motion to deny Petitioner’s request. The Appeals Panel voted unanimously for that motion.

10. Petitioner testified about the growing prominence of human resources management personnel in the Navy and introduced a Navy pamphlet concerning the Navy Human Resources Officer Program. There are currently over 800 Navy human resources positions “in the fields of education and training, information systems, recruitment, financial management, policy, manpower and personnel, research and analysis, and strategic planning.” (P. Ex. E)
11. Respondent, which is subject to the N.C. Administrative Procedures Act, has adopted no rules¹ implementing its authority to provide additional salary to encourage or reward teachers for postgraduate degrees or governing the work of its staff or Appeals Panel. It has created the nonbinding policy² referenced above to interpret the enabling statute and guide the work of its staff and the Appeals Panel. There is no evidence that this policy has been scrutinized pursuant to N.C. Gen. Stat. §150B-4 or 150B-20. The Appeals Panel had broad authority to interpret and apply the “directly related” concept, within the concrete parameters that the degree be granted by a regionally accredited institution and relate to the work done by the teacher during most of the school day.
12. While the Appeals Panel might reasonably have chosen to evaluate how the benefits of Petitioner’s knowledge gained in the course of earning his master’s degree directly related to his classroom instruction, without reference to the specific number of hours credit earned while gaining that knowledge, it was not irrational or unreasonable to consider that as a means of promoting the quality and consistency of their decisions.
13. Respondent’s decision was not arbitrary or capricious.
14. Petitioner timely appealed Respondent’s adverse decision by filing a Petition for a contested case hearing within 60 days after notice of the agency decision was given.
15. To the extent that portions of the following Conclusions of Law include Findings of Fact, such are incorporated by reference into these Findings of Fact.

¹ “‘Rule’ means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency.” N.C. Gen. Stat. § 150B-2(8a).

² “Policy” means any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. N.C. Gen. Stat. § 150B-2(7a).

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.
2. The parties and the subject matter of this contested case hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §§ 150B-1(e) and 150B-23(f).
3. The State Board of Education has the duty and authority “to certify and regulate the grade and salary of teachers and other school employees,” and to “determine and fix the salary for each grade and type of license which it authorizes....” N.C. Gen. Stat. §§ 115C-12(9)a.; 115C-296(a).
4. Petitioner bears the burden of showing that the Agency has substantially prejudiced his rights and that the agency's decision was erroneous in one or more of the ways enumerated in N.C. Gen. Stat. § 150B-23. *Surgical Care Affiliates, LLC v. N.C. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015).
5. An administrative law judge shall decide a contested case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. N.C. Gen. Stat. § 150B-34(a).
6. “[A]gency action is considered ‘arbitrary and capricious’ only if it indicates ‘a lack of fair and careful consideration’ and fails ‘to indicate ‘any course of reasoning and the exercise of judgment.’” *Watson v. N.C. Real Estate Com'n*, 87 N.C. App. 637, 649, 362 S.E.2d 294, 301 (1987), quoting *State ex rel. Comm'r of Insurance v. North Carolina Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980).
7. Respondent did not act erroneously, exceed its authority or jurisdiction, fail to use proper procedure, or fail to act as required by law or rule.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned enters the following:

FINAL DECISION

As Respondent exercised its authority lawfully and with due deliberation, its decision to deny Petitioner's request for additional salary for his master's degree, must be, and hereby is, **AFFIRMED**.

NOTICE

This is a **Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 10th day of July, 2015.



J. Randolph Ward
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
4/17/2015 9:15 AM

STATE OF NORTH CAROLINA
COUNTY OF DUPLIN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14OSP10048

ZOILA BROCK PETITIONER, V. NANETTE OUTLAW, DIRECTOR DUPLIN COUNTY SOCIAL SERVICES RESPONDENT.	FINAL DECISION
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On March 10, 2015, Administrative Law Judge J. Randall May conducted an administrative hearing in this contested case in Wilmington, North Carolina. The undersigned finds by the Preponderance of the Evidence that Respondent had just cause to discipline Petitioner for unacceptable personal conduct, and ordered Respondent's counsel to file a proposed decision.

APPEARANCES

For Petitioner: Zoila Brock, Pro Se
2877 Summerlin Crossroads Road
Mount Olive, NC 28365

For Respondent: Wendy Sivori
Duplin County Legal Department
P.O. Box 966
Kenansville, NC 28349

ISSUE

Whether Respondent had just cause to suspend Petitioner for three (3) days, require reimbursement for fees incurred to the Department, and to remove Respondent's wireless access point from Petitioner?

EXHIBITS

For Petitioner: None.
For Respondent: Exhibits 1 through 6.

FINDINGS OF FACT

1. Petitioner is employed as a Social Work Supervisor at the Duplin County Department of Social Services and has obtained career status.
2. Petitioner used a Duplin County wireless access point that was assigned to the Department of Social Services and accrued excessive overage charges in the amount of \$516.56. (Resp. Ex. 1)
3. Upon meeting with Petitioner, she admitted that she had been using the wireless access point for her school work during off work hours and during time she was placed out on Family Medical Leave. Respondent compared Petitioner's timesheets with the usage bills to determine how much of the charges were for personal use. (Resp. Ex. 1 and Resp. Ex. 2)
4. Petitioner incurred the overage charges to the Department due to her personal use of the wireless access point. Petitioner did not have approval of her Supervisor to use the wireless access point for school work.
5. Petitioner's actions violated Article IV, Section 3 of the Duplin County Personnel Policy in that she used the wireless access point for personal use and incurred a fee in the form of an overage during non-work hours and also while she was out on Family Medical Leave Act. (Resp. Ex. 2 and Resp. Ex. 4) This violation in and of itself is sufficient to justify the sanctions imposed by Respondent.
6. That Article IV, Section 3 of the Duplin County Personnel Policy applied to Petitioner in her position.
7. Petitioner signed two (2) separate acknowledgements admitting that she had received, read, and understood the Personnel Policy which contained Article IV, Section 3. The Policy contains a clear warning that any violation of the rules and guidelines of the policy could result in disciplinary action up to and including termination. (Resp. Ex. 3 and Resp. Ex. 5)
8. Petitioner's actions constituted unacceptable personal behavior in that she violated a written work rule.
9. Petitioner's actions constituted unacceptable personal behavior in that her conduct was such that no reasonable person should have expected to receive prior written warning. The Personnel Policy was a written warning advising employees what use of information technology was allowable for employees.
10. Petitioner's misuse of the wireless access point was conduct that was contrary to policy and was detrimental to the Department's funding.

11. The discipline imposed was the same standard as other Department employees that incurred overage charges to the County for personal use of their assigned wireless access points.

12. Respondent had just cause to require Petitioner to pay back the fees incurred by the Department.

13. Respondent had just cause to suspend Petitioner for three (3) days without pay.

14. Respondent had just cause to take the wireless access point away.

BASED UPON the foregoing findings of fact the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action and this matter is properly before the Court.

2. Pursuant to N.C. Gen. Stat. § 126-35(a) "No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause."

3. N.C. Gen. Stat. § 126-5(a)(2)(b) provides that the provision of Chapter 126 apply to local social service departments.

4. Pursuant to 25 NCAC 011 .2301 "Just Cause for Disciplinary Action" allows for an employee to be suspended by the Department but only for just cause.

5. Pursuant to N.C. Gen. Stat. § 126-35(a), Respondent had "just cause" by the preponderance of the evidence to impose suspension, reimbursement of fees, and removal of the wireless access point on Petitioner for unacceptable personal conduct.

6. By way of affirmation and based upon the foregoing, Respondent properly disciplined Petitioner for unacceptable personal conduct.

FINAL DECISION

BASED UPON the foregoing Findings of Fact and Conclusions of Law, it is ordered that the sanctions imposed by Respondent for Petitioner's unacceptable personal conduct have been proved by a preponderance of the evidence and are therefore upheld and affirmed. Respondent did have just cause to require Petitioner to reimburse the \$516.56, to suspend Petitioner for three (3) days, and to remove Petitioner's wireless access point.

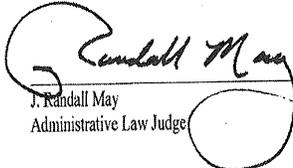
NOTICE

This **Final Decision** is issued under the authority of N.C.G.S. § 150B-34.

Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29 (a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

IT IS SO ORDERED.

This the 17th day of April, 2015.


J. Randall May
Administrative Law Judge

On this date mailed to:

ZOILA BROCK
2877 SUMMERLIN CROSSROADS ROAD
MOUNT OLIVE NC 28365
PETITIONER

WENDY SIVORI
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PO BOX 966
KENANSVILLE NC 28349
ATTORNEY FOR RESPONDENT

This the 17th day of April, 2015.


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