

NORTH CAROLINA REGISTER

VOLUME 30 • ISSUE 19 • Pages 2038 - 2132

April 1, 2016

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings

Rules Division

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Raleigh, North Carolina 27609

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Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919)807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Sarah Collins

scollins@nclm.org

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545 Legislative Office Building

300 North Salisbury Street

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Raleigh, North Carolina 27611

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2016 – December 2016

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
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
30:21	05/02/16	04/11/16	05/17/16	07/01/16	07/20/16	09/01/16	01/2017	01/27/17
30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
30:24	06/15/16	05/24/16	06/30/16	08/15/16	08/22/16	10/01/16	01/2017	03/12/17
31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
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31:05	09/01/16	08/11/16	09/16/16	10/31/16	11/21/16	01/01/17	01/2017	05/29/17
31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

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



State of North Carolina

PAT McCRORY
GOVERNOR

February 25, 2016

EXECUTIVE ORDER NO. 89

TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE RESTORATION OF UTILITY SERVICES THROUGHOUT THE STATE

WHEREAS, due to the impacts of a state-wide severe weather event which included tornadoes and straight-line winds on February 24, 2016, vehicles bearing equipment and supplies needed to restore power and utility service to communities within this State need to be moved on the highways of North Carolina; and

WHEREAS, I hereby declare that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to the impacts of the storms and for the purpose of restoring power and other utility service to the impacted areas. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina.

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

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to assist in the restoration of utility services in North Carolina must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116, 20-118 and 20-119. I have further found that citizens in this State have suffered losses and will likely suffer imminent further widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b) will occur and;

WHEREAS, the prompt restoration of utility services to citizens is essential to their safety and well-being; and

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

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

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

Section 1.

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

Section 2.

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116, 20-118 and 20-119, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for the vehicles transporting equipment and supplies to restore power and utility service to areas within North Carolina.

Section 3.

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

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

Section 4.

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

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

Section 5.

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

Section 6.

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

Section 7.

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

Section 8.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with transporting equipment and supplies to restore power and utility services.

Section 9.

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

Section 10.

This declaration will not trigger the prohibitions against excessive pricing in the emergency area, notwithstanding the provisions of N.C.G.S. § 166A-19.23.

Section 11.

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

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 25th day of February in the year of our Lord two thousand and sixteen, and of the Independence of the United States of America the two hundred and forty.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Chief Deputy Secretary of State





State of North Carolina

PAT McCRORY
GOVERNOR

February 29, 2016

EXECUTIVE ORDER NO. 90

NOTICE OF TERMINATION OF EXECUTIVE ORDER

WHEREAS, Executive Order No. 89 issued on February 25, 2016, declared a state of emergency for a severe weather event, which included tornadoes and straight-line winds. The order also waived certain safety, size, weight and hour of service regulations on vehicles traveling through North Carolina to expedite utility restoration.

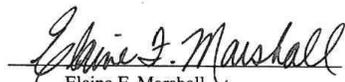
NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

Pursuant to N.C.G.S § 166A-19.20(c) the state of emergency and waiver that was declared by Executive Order 89 is hereby terminated on Monday, February 29, 2016 at 5:00 p.m.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 29th day of February in the year of our Lord two thousand and sixteen, and of the Independence of the United States of America the two hundred and forty.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



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

PARKS AND RECREATION AUTHORITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Parks and Recreation Authority intends to amend the rule cited as 15A NCAC 12K .0103.

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

Proposed Effective Date: August 1, 2016

Public Hearing:

Date: Wednesday, April 6, 2016

Time: 10:00 a.m.

Location: William B. Umstead State Park Visitor Center, 8801 Glenwood Avenue, Raleigh, NC 27617

Reason for Proposed Action:

- a) The rule change does four things:*
- 1) Changes the name of the Department;*
 - 2) Allows the Parks and Recreation Authority to adjust the maximum grant request;*
 - 3) Allows the Parks and Recreation Authority to set the due date for grant applications to a day between January 31 and April 30; and*
 - 4) Requires an Authority meeting to select grant recipients within 180 days of the application deadline.*

The name of the department has been changed by the General Assembly to the Department of Natural and Cultural Resources. Funding for the Parks and Recreation Trust Fund (PARTF) has decreased and increased significantly in recent years because the source of the funds for PARTF has changed from a stream of revenue from the excise tax on real estate transfers to annual appropriation. This also effects when funds are available. The rule change would allow the Parks and Recreation Authority to adjust the maximum grant request amount for local governments based on the availability of funds. Also, the rule change would allow the Parks and Recreation Authority to adjust the application deadline and grant selection meeting dates to correspond with when the funds will be available.

Comments may be submitted to: Tim R. Johnson, 1615 Mail Service Center, Raleigh, NC 27699-1615, email denr.dpr.partf@ncparks.gov

Comment period ends: May 31, 2016

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 12 - PARKS AND RECREATION AREA RULES

SUBCHAPTER 12K - PARKS AND RECREATION TRUST FUND GRANTS FOR LOCAL GOVERNMENT

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 12K .0103 FUNDING CYCLE

Annual funding schedule dates shall be the following:

- (1) An announcement letter describing the funding schedule and how to apply shall be mailed to all eligible applicants by ~~September 30~~November 1. This information shall be made available to other interested parties who contact the Department of ~~Environment and Natural Resources~~Natural and Cultural Resources (Department) at: NC Division of Parks and Recreation, ~~PO Box 27687, 1615 MSC,~~ Raleigh, North Carolina ~~27611 7687, 27699-1615~~ as well as the following website: <http://www.ncparks.gov/partf>.
- (2) Local governments may request a maximum of five hundred thousand dollars (\$500,000) in PARTF assistance with each application. The Parks and Recreation Authority may reduce the maximum grant amount by up to two hundred fifty thousand dollars (\$250,000) if total amount of grant funds available is below five

million dollars (\$5,000,000) for the fiscal year. Changes to the maximum grant amount will be included in the announcement letter for the current grant cycle pursuant to Item (1) of this Rule.

- (3) Applications shall be received by the Department or its designee by 5:00 p.m. ~~on January 31~~ of the deadline date stated in the announcement letter for the current grant cycle pursuant to Item (1) of this Rule. The Parks and Recreation Authority will set the deadline date for between January 31 and May 30. If the deadline falls on a weekend or holiday, applications are due by 5:00 p.m. on the following business day.
- (4) The Authority shall meet within ~~120~~ 180 days of the application deadline to select projects for funding. ~~The Authority shall meet within 30 days after the end of the fiscal year to select projects for funding using revenues credited to PARTF during the fourth quarter.~~

Authority G.S. 143B-135.56.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Chiropractic Examiners intends to amend the rule cited as 21 NCAC 10 .0503.

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

Proposed Effective Date: August 1, 2016

Public Hearing:

Date: May 4, 2016

Time: 10:00 a.m.

Location: Board Office, 174 Church St, NE, Concord, NC 28025

Reason for Proposed Action: *The existing rule describes the composition of the Chiropractic Review Committee and its function: to investigate disciplinary complaints and determine whether probable cause exists to refer a complaint to the full Board of Examiners for further action. The proposed amendments would enhance the committee's capability by (1) allowing another physician Board member to substitute when the Secretary cannot attend a Committee hearing, and (2) enlarging the pool of licensed physicians who would be eligible to serve on the Committee.*

Comments may be submitted to: Tom Sullivan, Executive Director, NC Board of Chiropractic Examiners, 174 Church Street, NC, Concord, NC 28025

Comment period ends: May 31, 2016

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 .0500 - INVESTIGATION OF COMPLAINTS

21 NCAC 10 .0503 DETERMINATION OF PROBABLE CAUSE

(a) General. Formal complaints shall be investigated by the Chiropractic Review Committee. The committee shall hold a hearing to determine whether there is probable cause to believe a violation of the laws governing Chiropractic has occurred.

(b) Composition of Review Committee. The committee shall be composed of:

- (1) the secretary of the Board of ~~Examiners, Examiners. If the secretary is unable to attend a particular probable cause hearing, h-e may designate another physician member of the Board to serve in his stead and assume his duties at said hearing;~~
- (2) the attorney for the Board of ~~Examiners, Examiners;~~
- (3) ~~a licentiate selected by the secretary from among those who, at the most recent election held pursuant to 21 NCAC 10 Rule .0103(e), were elected candidates for Board membership but were not appointed to the Board. an alternate Board member. "Alternate Board member" means:~~
 - (A) a former Board member selected by the secretary; or
 - (B) a licentiate selected by the secretary from among those who, at any election held pursuant to Rule .0103(c) of this

Chapter, have been elected nominees for Board membership but not appointed to the Board.

(c) Notice of hearing. The secretary shall provide notice of the probable cause hearing to the chiropractor complained against by certified mail at least 15 days in advance of the hearing.

(d) Conduct of Probable Cause Hearing. The probable cause hearing shall be informal, and the secretary may establish at his discretion such procedures as are necessary to facilitate examination of the evidence. The Review Committee may consider evidence at the probable cause hearing which would not be admissible if offered at the hearing in a contested case.

(e) Action by the Review Committee. After examining the evidence presented at the probable cause hearing, the Review Committee may dispose of each charge in the formal complaint as follows:

- (1) If no probable cause exists to believe that a violation of G.S. 90-154 has occurred, the charge may be dismissed.
- (2) If the respondent admits the charge, he may be directed to cease and desist from commission of those acts which violate the provisions of G.S. 90-154.
- (3) If a charge is denied and probable cause is found, or if a charge, while admitted, is of such gravity as to make the imposition of punitive sanctions appropriate, the complaint shall be presented to the Board of Examiners for its decision on the merits in accordance with the statutes governing contested cases.

Authority G.S. 90-143; 90-154.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to amend rules cited as 21 NCAC 16I .0109 and 16R .0110.

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

Proposed Effective Date: August 1, 2016

Public Hearing:

Date: April 16, 2016

Time: 8:00 a.m.

Location: 2000 Perimeter Park Dr., Suite 160, Morrisville, NC 27560

Reason for Proposed Action:

21 NCAC 16I .0109 is proposed for amendment to clarify the requirements for displaying a dental hygiene license and renewal certificate.

21 NCAC 16R .0110 is proposed for amendment to clarify the requirements for displaying a dental renewal certificate.

Comments may be submitted to: Bobby D. White, Esq., 2000 Perimeter Park Dr., Suite 160, Morrisville, NC 27560

Comment period ends: May 31, 2016

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 16I - ANNUAL RENEWAL OF DENTAL HYGIENIST LICENSE

SECTION .0100 - ANNUAL RENEWAL

21 NCAC 16I .0109 CERTIFICATE DISPLAYED

(a) The original license and current certificate of renewal of license shall at all times be displayed in a conspicuous place where it is visible to patients receiving treatment at the office where the dental hygienist is employed, employed, and whenever requested the license and the current certificate of renewal shall be exhibited to or produced before

(b) Hygienists providing treatment at more than one office shall only be required to display a current renewal certificate of license at each additional office where they provide dental hygiene services, as long as the original license is displayed in at least one office.

(c) Hygienists shall produce their original license and current renewal certificate on demand of the North Carolina State Board of Dental Examiners or its authorized agents.

Authority G.S. 90-227.

SUBCHAPTER 16R - CONTINUING EDUCATION REQUIREMENTS: DENTISTS

SECTION .0100 - RENEWAL OF LICENSE

**21 NCAC 16R .0110 RENEWAL CERTIFICATE
MUST BE DISPLAYED**

The current certificate of renewal of license shall be posted where it is visible to patients receiving treatment in the office where the dentist is employed, and shall be exhibited or produced to the North Carolina State Board of Dental Examiners or its

investigators during every visit to the office. ~~Photocopies may not be substituted for the current certificate of renewal or duplicates issued by the Board.~~

Authority G.S. 90-33.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on February 18, 2016.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

COMMERCE, DEPARTMENT OF - CREDIT UNION DIVISION

<u>Surety Bond and Insurance Coverage</u>	04	NCAC	06C	.0311*	30:09 NCR
<u>Prohibited Fees</u>	04	NCAC	06C	.0410*	30:09 NCR
<u>Permanent Records</u>	04	NCAC	06C	.1001*	30:09 NCR
<u>Non-permanent Records</u>	04	NCAC	06C	.1002*	30:09 NCR
<u>Federal Funds</u>	04	NCAC	06C	.1204	30:09 NCR

ELECTIONS, STATE BOARD OF

<u>Signage Notifying One-Stop Voters of the Option</u>	08	NCAC	17	.0106*	30:08 NCR
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INFORMATION TECHNOLOGY, DEPARTMENT OF

<u>Procurement Procedures</u>	09	NCAC	06B	.0301*	29:24 NCR
<u>Methods of Source Selection</u>	09	NCAC	06B	.0302*	29:24 NCR
<u>Advertisement and Notice</u>	09	NCAC	06B	.0314	29:24 NCR
<u>Mandatory Conferences/Site Visits</u>	09	NCAC	06B	.0315*	29:24 NCR
<u>Negotiation</u>	09	NCAC	06B	.0316*	29:24 NCR
<u>Debriefing Offerors</u>	09	NCAC	06B	.0405*	29:24 NCR
<u>Use and Description</u>	09	NCAC	06B	.0701*	29:24 NCR
<u>Conditions for Limited or Waived Competition</u>	09	NCAC	06B	.0901*	29:24 NCR
<u>Emergency Situations or Pressing Need</u>	09	NCAC	06B	.1302	29:24 NCR
<u>General Delegations</u>	09	NCAC	06B	.1304	29:24 NCR
<u>Procurement File Records</u>	09	NCAC	06B	.1402	29:24 NCR

911 BOARD

<u>Service Provider Failure to Comply with Rules</u>	09	NCAC	06C	.0105*	29:24 NCR
<u>PSAP Failure to Comply with Rules</u>	09	NCAC	06C	.0106*	29:24 NCR
<u>Review 911 Funds Expenditures, Disbursements</u>	09	NCAC	06C	.0107*	29:24 NCR
<u>CMRS Service Provider Reimbursement</u>	09	NCAC	06C	.0302*	29:24 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Purpose and Scope</u>	15A	NCAC	02L	.0501*	30:03 NCR
<u>Definitions</u>	15A	NCAC	02L	.0502*	30:03 NCR
<u>Rule Application</u>	15A	NCAC	02L	.0503*	30:03 NCR
<u>Required Initial Abatement Actions by</u>	15A	NCAC	02L	.0504*	30:03 NCR
<u>Requirements for Limited Site Assessment</u>	15A	NCAC	02L	.0505*	30:03 NCR
<u>Discharge or Release Classifications</u>	15A	NCAC	02L	.0506*	30:03 NCR

APPROVED RULES

<u>Reclassification of Risk Levels</u>	15A NCAC 02L .0507*	30:03 NCR
<u>Assessment and Remediation Procedures</u>	15A NCAC 02L .0508*	30:03 NCR
<u>Notification Requirements</u>	15A NCAC 02L .0509*	30:03 NCR
<u>Departmental Listing of Discharges or Releases</u>	15A NCAC 02L .0510	30:03 NCR
<u>Establishing Maximum Soil Contamination</u>	15A NCAC 02L .0511	30:03 NCR
<u>Analytical Procedures for Soil Samples</u>	15A NCAC 02L .0512	30:03 NCR
<u>Analytical Procedures for Groundwater Samples</u>	15A NCAC 02L .0513	30:03 NCR
<u>Required Laboratory Certification</u>	15A NCAC 02L .0514*	30:03 NCR
<u>Discharges or Releases from Other Sources</u>	15A NCAC 02L .0515	30:03 NCR

COASTAL RESOURCES COMMISSION

<u>Purpose</u>	15A NCAC 07L .0102*	30:06 NCR
<u>Consistency with Plans and Rules</u>	15A NCAC 07L .0502*	30:06 NCR
<u>Priorities for Funding Land Use Plans and Eligible Projects</u>	15A NCAC 07L .0503*	30:06 NCR
<u>Scoping of Planning Needs</u>	15A NCAC 07L .0505	30:06 NCR
<u>Public Participation</u>	15A NCAC 07L .0506	30:06 NCR
<u>Minimum CAMA Land Use Planning and Funding</u>	15A NCAC 07L .0507	30:06 NCR
<u>State Technical Assistance, Review and Comment</u>	15A NCAC 07L .0508	30:06 NCR
<u>Intergovernmental Coordination</u>	15A NCAC 07L .0509	30:06 NCR
<u>Public Hearing and Local Adoption Requirements</u>	15A NCAC 07L .0510	30:06 NCR
<u>Required Periodic Implementation Status Reports</u>	15A NCAC 07L .0511	30:06 NCR
<u>Sustainable Communities Component of the Project Duration</u>	15A NCAC 07L .0512	30:06 NCR
<u>Relation to Other Funding</u>	15A NCAC 07L .0514	30:06 NCR
<u>Application Form</u>	15A NCAC 07L .0601	30:06 NCR
<u>Assistance in Completing Applications and Procedure for Approval and Disapproval</u>	15A NCAC 07L .0602	30:06 NCR
<u>Contract Agreement</u>	15A NCAC 07L .0603	30:06 NCR
<u>Progress Reports and Grant Monitoring</u>	15A NCAC 07L .0701	30:06 NCR
<u>Payment</u>	15A NCAC 07L .0702	30:06 NCR
<u>Project Completion Report</u>	15A NCAC 07L .0703	30:06 NCR
<u>Accountability</u>	15A NCAC 07L .0704	30:06 NCR
	15A NCAC 07L .0705	30:06 NCR

REVENUE, DEPARTMENT OF

<u>Made to Order and Installation Sales: Generally</u>	17 NCAC 07B .0802	n/a G.S. 150B-1(d)(4)
<u>Cabinetmakers</u>	17 NCAC 07B .0803	n/a G.S. 150B-1(d)(4)
<u>Sign Fabricating and Painting</u>	17 NCAC 07B .0805	n/a G.S. 150B-1(d)(4)
<u>Repairs and Alterations: Generally</u>	17 NCAC 07B .0806	n/a G.S. 150B-1(d)(4)
<u>Clothing Alterations</u>	17 NCAC 07B .0807	n/a G.S. 150B-1(d)(4)
<u>Reupholstering</u>	17 NCAC 07B .0808	n/a G.S. 150B-1(d)(4)
<u>Laminating Services</u>	17 NCAC 07B .0809	n/a G.S. 150B-1(d)(4)
<u>Bullets and Shells-Reloading</u>	17 NCAC 07B .0810	n/a G.S. 150B-1(d)(4)

APPROVED RULES

<u>Fire Extinguishers: Recharging</u>	17	NCAC	07B	.0811	n/a G.S. 150B-1(d)(4)
<u>Shoe Repairmen</u>	17	NCAC	07B	.1002	n/a G.S. 150B-1(d)(4)
<u>Watch: Clock and Jewelry Repairmen</u>	17	NCAC	07B	.1003	n/a G.S. 150B-1(d)(4)
<u>Tire Recapping Materials</u>	17	NCAC	07B	.1901	n/a G.S. 150B-1(d)(4)
<u>Tire Repair Materials</u>	17	NCAC	07B	.1903	n/a G.S. 150B-1(d)(4)
<u>Sales by Tire Recappers</u>	17	NCAC	07B	.1904	n/a G.S. 150B-1(d)(4)
<u>Memorial Stone Sales</u>	17	NCAC	07B	.3401	n/a G.S. 150B-1(d)(4)
<u>Supplies to Install Memorial Stones/Monuments/</u>	17	NCAC	07B	.3403	n/a G.S. 150B-1(d)(4)
<u>Funeral Expenses</u>	17	NCAC	07B	.3601	n/a G.S. 150B-1(d)(4)
<u>Lubricating Service</u>	17	NCAC	07B	.3701	n/a G.S. 150B-1(d)(4)
<u>Sales by Laundries: Linen Rentals: and</u>	17	NCAC	07B	.4501	n/a G.S. 150B-1(d)(4)
<u>Solicitors</u>					
<u>Garment Repairs and Storage</u>	17	NCAC	07B	.4506	n/a G.S. 150B-1(d)(4)
<u>Rug Reinstallation Charges</u>	17	NCAC	07B	.4507	n/a G.S. 150B-1(d)(4)
<u>Motor Vehicle Service Businesses</u>	17	NCAC	07B	.4603	n/a G.S. 150B-1(d)(4)
<u>Special Equipment-Accessories: Motor Vehicles</u>	17	NCAC	07B	.4604	n/a G.S. 150B-1(d)(4)
<u>Manufactured Homes</u>	17	NCAC	07B	.4615	n/a G.S. 150B-1(d)(4)

ARCHITECTURE, BOARD OF

<u>Examination</u>	21	NCAC	02	.0302*	30:08 NCR
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CHIROPRACTIC EXAMINERS, BOARD OF

<u>Random Office Inspections</u>	21	NCAC	10	.0214*	30:04 NCR
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EXAMINERS OF FEE-BASED PRACTICING PASTORAL COUNSELORS, BOARD OF

<u>Certification Renewal Form</u>	21	NCAC	45	.0401	n/a G.S. 150B-21.5(a)(5)
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PODIATRY EXAMINERS, BOARD OF

<u>Continuing Education</u>	21	NCAC	52	.0208*	30:08 NCR
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RECREATIONAL THERAPY LICENSURE, BOARD OF

<u>Licensed Recreational Therapist Standards of</u>	21	NCAC	65	.0203*	30:06 NCR
<u>Licensed Recreational Therapy Assistant</u>	21	NCAC	65	.0204*	30:06 NCR
<u>Supervision of a Licensed Recreational Therapy</u>	21	NCAC	65	.0205*	30:06 NCR
<u>Minimum Level of Education and Competency</u>	21	NCAC	65	.0301*	30:06 NCR
<u>for</u>					
<u>Minimum Level of Education and Competency</u>	21	NCAC	65	.0302*	30:06 NCR
<u>for</u>					
<u>Application Procedures for Licensed</u>	21	NCAC	65	.0401*	30:06 NCR
<u>Recreational</u>					
<u>Licensure Fees</u>	21	NCAC	65	.0501*	30:06 NCR
<u>Renewal Requirements for Licensed</u>	21	NCAC	65	.0602*	30:06 NCR
<u>Recreational</u>					
<u>Change of Address or Name Requirements for</u>	21	NCAC	65	.0603*	30:06 NCR
<u>LRTA Renewal Supervision Requirement</u>	21	NCAC	65	.0604*	30:06 NCR
<u>Inactive Status</u>	21	NCAC	65	.0801*	30:06 NCR

APPROVED RULES

Military Endorsement 21 NCAC 65 .0902* 30:06 NCR

ADMINISTRATIVE HEARINGS, OFFICE OF

General 26 NCAC 03 .0101* 30:10 NCR
Definitions and Construction 26 NCAC 03 .0102* 30:10 NCR
Definitions 26 NCAC 03 .0501 30:10 NCR
General 26 NCAC 03 .0502 30:10 NCR
Registrants 26 NCAC 03 .0503 30:10 NCR
Integration with Other Rules 26 NCAC 03 .0504 30:10 NCR

These Rules are subject to the Legislative Session. (see G.S. 150B-21.3(b1))

ENVIRONMENTAL MANAGEMENT COMMISSION

Activities Exempted from Permit Requirements 15A NCAC 02Q .0102* 30:07 NCR
Facilities Not Likely to Contravene Demonstration 15A NCAC 02Q .0302 30:07 NCR
Changes Not Requiring Permit Revisions 15A NCAC 02Q .0318* 30:07 NCR
Emergency Generators and Stationary Reciprocating 15A NCAC 02Q .0903* 30:07 NCR

These rules were approved on January 21, 2016.

911 BOARD

Forms 09 NCAC 06C .0101* 29:24 NCR
Physical Address of 911 Board 09 NCAC 06C .0102* 29:24 NCR
Definitions 09 NCAC 06C .0103* 29:24 NCR
Failure to Comply with Rules 09 NCAC 06C .0104* 29:24 NCR
Waiver of Rules 09 NCAC 06C .0108* 29:24 NCR
Hearings 09 NCAC 06C .0109* 29:24 NCR
Declaratory Rulings 09 NCAC 06C .0110* 29:24 NCR
PSAP Eligibility 09 NCAC 06C .0201* 29:24 NCR
PSAP Eligible Expenses 09 NCAC 06C .0202* 29:24 NCR
Effect of 911 Fund Distributions and Suspensions 09 NCAC 06C .0203* 29:24 NCR
PSAP Reporting 09 NCAC 06C .0204* 29:24 NCR
Back-up PSAPS 09 NCAC 06C .0206* 29:24 NCR
PSAP Operations and Management 09 NCAC 06C .0207* 29:24 NCR
Telecommunicator Qualifications, Training and PSAP Call Operating Procedures 09 NCAC 06C .0208* 29:24 NCR
Public Safety Answering Point (PSAP) Facilities 09 NCAC 06C .0210* 29:24 NCR
Telephones 09 NCAC 06C .0211* 29:24 NCR
Dispatching Systems 09 NCAC 06C .0212* 29:24 NCR
Computer Aided (CAD) Dispatching Systems 09 NCAC 06C .0213* 29:24 NCR
Testing 09 NCAC 06C .0214* 29:24 NCR
Records 09 NCAC 06C .0215* 29:24 NCR
Registration of CMRS Service Providers 09 NCAC 06C .0301* 29:24 NCR
Remittance of Service Charges 09 NCAC 06C .0305* 29:24 NCR
Prepaid Wireless Service 09 NCAC 06C .0306* 29:24 NCR

<u>PSAP Grants</u>	09 NCAC 06C .0401*	29:24 NCR
<u>Grants for Construction or Renovation</u>	09 NCAC 06C .0402*	29:24 NCR
<u>Grant Agreements</u>	09 NCAC 06C .0403*	29:24 NCR
<u>Grant Funds</u>	09 NCAC 06C .0404*	29:24 NCR
<u>Grantee Reports</u>	09 NCAC 06C .0405*	29:24 NCR

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 06C .0311 FIDELITY AND SURETY BONDS AND INSURANCE COVERAGE

(a) The Board of Directors of a Credit Union shall purchase a blanket fidelity bond as required by G.S. 54-109.44(2). Fidelity bonds shall provide coverage for the fraud and dishonesty of all employees, directors, officials, and supervisory and credit committee members.

(b) Every Credit Union shall maintain the minimum bond and insurance coverage as required by G.S. 54-109.11(5).

(c) No form of surety bond shall be used except as is approved by the Administrator as set forth in G.S. 54-109.11(5). The approved bond forms shall be Credit Union Blanket Bond 500 Bond Series, plus faithful performance rider, Credit Union Blanket Bond, Standard Form No. 23 of the Surety Association of America, or an equivalent approved Bond Form including a faithful performance rider on a current listing on the Credit Union Division website (www.nccud.org). These bond forms shall be considered the minimum coverages required for the purpose of this section. The approved bond forms in this Paragraph provide faithful performance coverage for all employees and officials. Other forms, or changes in the amount of bond coverage, shall be approved by the Administrator based upon the applicable rules and laws.

(d) Maximum deductible limits may be applied to the required coverage contained in 500 Bond Series, and Standard Form No. 23, as specified in this Paragraph:

\$0 to 100,000	0
\$100,001 to \$250,000	\$1,000
\$250,000 to \$1,000,000	2,000
Over \$1,000,000	2,000

plus 1/1000 of total assets up to a maximum of \$200,000

Deductibles in excess of those provided in this Paragraph shall be approved by the Administrator based upon the applicable rules and laws.

(e) In considering a request to deviate from the bond coverage and deductible amounts set forth in this Rule, the Administrator shall consider the following factors about the credit union:

- (1) Financial strength;
- (2) Net worth;
- (3) Return on assets;
- (4) Quality of assets; and
- (5) Capital, Assets, Management, Earnings, and Liquidity (CAMEL) rating, used by the Division and NCUA to evaluate the soundness of credit unions on a uniform basis.

History Note: Authority G.S. 54-109.11 (5); 54-109.12; 54-109.44 (2);
Eff. April 1, 1981;
Amended Eff. March 1, 2016; July 1, 2013; February 1, 1992;
April 1, 1985.

04 NCAC 06C .0410 PROHIBITED FEES

(a) A North Carolina Credit Union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee, or other compensation is to be received by the Credit Union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. For the purposes of this Rule, the following definitions shall apply:

- (1) "senior management employees" shall mean the Credit Union's Chief Executive Office or President, the Treasurer or Manager, the Vice President, the Assistant Vice President, the Assistant Treasurer or Manager, the Chief Financial Officer, and the Comptroller; and
- (2) "immediate family member" shall include a spouse or other family member living in the same household.

(b) For purposes of this Rule, "compensation" shall include non-monetary items, except those of nominal value.

(c) For purposes of this Rule, the following shall not be considered a "commission, fee, or other compensation":

- (1) the annual salary of an employee;
- (2) the payment of an incentive or bonus based on the Credit Union's overall financial performance; and
- (3) the payment of an incentive or bonus to an employee other than a senior management employee, made in connection with a loan or loans made by the Credit Union. The Board of Directors of the Credit Union shall establish written policies and internal controls in connection with the payment of incentives or bonuses and shall monitor compliance with the policies and controls at least annually.

History Note: Authority G.S. 54-109.12; 54-109.21(25); 54-109.22;
Eff. March 1, 2016.

04 NCAC 06C .1001 PERMANENT RECORD

(a) Each Credit Union shall retain its records in a manner consistent with reasonable business practices and applicable state and federal laws, rules, and regulations.

(b) The Credit Union shall permanently retain the original records of the Credit Union's charter, bylaws, and any amendments to those documents.

(c) The following records shall be retained permanently in their original form or in any electronic or digital form that permits their retrieval and replication:

- (1) the minutes of meetings of members and of the board of directors;
- (2) audit reports;
- (3) copies of the examination reports of the Credit Union Division;
- (4) rulings and opinions from the Credit Union Division;
- (5) signature cards;
- (6) journal and cash record;
- (7) general ledger;
- (8) loan and shares subsidiary ledgers;
- (9) bank reconciliations; and
- (10) a list of all records destroyed.

(d) Credit Unions shall reference 12 C.F.R. Part 749 Appendix A for retention schedule guide lines.

History Note: Authority G.S. 54-109.12; 54-109.17; Eff. February 1, 1976; Readopted Eff. April 4, 1978; Amendment Eff. March 1, 2016.

04 NCAC 06C .1002 NONPERMANENT RECORDS

(a) Each Credit Union shall retain nonpermanent records as defined in Paragraph (b) of this Rule, in a manner consistent with reasonable business practices and in accordance with this Section and applicable state and federal laws, rules, and regulations.

(b) Nonpermanent records shall include any Credit Union records not referenced in Rule .1001 of this Section.

(c) Nonpermanent records shall be kept in the original, or any electronic or digital form that permits their retrieval and replication. The Board of Directors of the Credit Union shall determine the length of time that each nonpermanent record is to be retained based upon reasonable business practices and the applicable state and federal laws, rules, and regulations.

History Note: Authority G.S. 54-109.12; 54-109.17; Eff. February 1, 1976; Readopted Eff. April 4, 1978; Amended Eff. March 1, 2016.

04 NCAC 06C .1204 FEDERAL FUNDS

A credit union may invest in federal funds through any federally-insured financial institution.

History Note Authority G.S. 54-109.21(8); 54-109.21(25); Eff. May 15, 1981; Amended Eff. March 1, 2016; October 1, 1983.

TITLE 08 – STATE BOARD OF ELECTIONS

08 NCAC 17 .0106 SIGNAGE NOTIFYING ONE-STOP VOTERS OF THE OPTION TO REQUEST AN ABSENTEE BALLOT

(a) At every location offering one-stop voting for an election pursuant to G.S. 163-227.2(b) and (g), the county board of elections shall ensure signage is displayed as specified in this Rule, until the deadline for submission of requests for absentee ballots provided in G.S. 163-230.1.

(b) The County Board of Elections shall provide signage, either designed and authorized by the State Board of Elections, or designed by the County Board of Elections according to the following requirements:

(1) The signage shall include the following language:

(A) The following language in type no smaller than 56-point sans serif type: "NOTICE TO VOTERS: Photo identification is not required to vote a mail-in absentee ballot.* A mail-in absentee ballot can be requested here. For a mail-in absentee ballot request form, or for more information and the deadline to request a mail-in absentee ballot, please ask an election official."

(B) The following language in type no smaller than 28-point sans serif type: "*Although photo identification is not required for mail-in absentee voting generally, some recently-registered voters may be required to provide a copy of document showing proof of residence, or a photo identification, in order to complete verification processes. If such documentation is required, it would be requested in the instructions accompanying the absentee ballot. For more information, please ask an election official."

(2) The dimensions of the signage shall be at least 17 inches wide by 22 inches tall.

(c) The signage shall be displayed at each entrance to the voting site and in a location viewable to voters at the time the voter is at or approaching each check-in table of the voting site.

History Note: Authority G.S. 163-166.12(b),(b2); 163-227.2(b1),(j); 163-230.1; Eff. March 1, 2016.

TITLE 09 – OFFICE OF THE GOVERNOR AND LT. GOVERNOR

09 NCAC 06B .0301 PROCUREMENT PROCEDURES

(a) The procurement process of requesting or inviting an offer(s) shall be managed by the purchasing agency, including use of standard solicitation document language and terms and conditions established by the State (Rule .0201 of this Subchapter). If an emergency situation or pressing need exists, the procurement process requesting or inviting an offer(s) shall also be managed

by the purchasing agency, including the standard terms and conditions issued by the State CIO, unless circumstances prohibit their use. The standard solicitation documents are located at <http://it.nc.gov/it-procurement-forms-and-templates>.

(b) All information technology purchases involving the expenditure of state funds by the purchasing agency shall be competitively bid in conformity with the "Best Value" information technology procurement requirements in G.S. 143-135.9 and Rule .0302 of this Section. Exemptions may be granted by the State CIO where limited competition, waiver of competition (See Rule .0901 of this Subchapter), special delegation (see Rules .1303 and .1304 of this Section), exemption, or an emergency purchase is permitted by rule. Purchasing agency procurements not included in a statewide term, convenience, enterprise contract, or master agreement established by the State CIO shall comply with the applicable general delegations and procedures (Rule .1304 of this Subchapter).

(c) The agency head, or designee, shall set forth in writing procedures for making purchases under the agency's general delegation (Rule .1304 of this Subchapter). For purchases where the total requirements for goods and services involve an expenditure of state funds that does not exceed the purchasing agency's general delegation established by the State CIO, offers in conformity with G.S. 143-135.9 shall be solicited as follows:

- (1) The purchasing agency may advertise solicitations for offers to provide small purchases through the State's designated IT procurement website(s) or by an alternate method of advertising, as may be approved by the State CIO in accordance with Rule .0314 of this Section;
- (2) The purchasing agency shall award contracts for purchases.

(d) For purchases governed by statute, where the total requirements for goods and services involve an expenditure of State funds that exceeds the purchasing agency's general or special delegation established by the State CIO, offers in conformity with G.S. 143-135.9 shall be solicited as follows to encourage competition:

- (1) The purchasing agency shall issue documents soliciting, requesting or inviting offers, as published by DIT;
- (2) The purchasing agency shall include in solicitation documents standard language, including general or standard terms and conditions for technology purchases as published by DIT and in conformance with Rule .0316 of this Section. If additional terms and conditions are used, they shall not conflict with standard terms and conditions published pursuant to 09 NCAC 06A .0101 unless prior written approval is obtained under Rule .0201 of this Subchapter; and
- (3) The purchasing agency may also request from the State CIO, known vendor sources amenable to competing for award of various State procurements.
- (4) For purchases exceeding an agency's general delegation, the purchasing agency shall submit

drafts of solicitation documents to the State CIO for approval prior to proceeding with the procurement process. The State CIO shall then engage in a review and approval process of such solicitation documents to ensure that proposed and actual IT procurements are advantageous to the State:

- (A) After completing review and evaluation of offers received, the purchasing agency may prepare and submit to the State CIO for review a draft recommendation for award;
 - (B) After completing review and evaluation of offers received, the purchasing agency shall submit to the State CIO a written, final recommendation for award, including a copy of all offers received and all supporting documentation with its recommendation;
 - (C) The State CIO shall then review and either approve the recommendation or direct modification to the recommended procurement action as deemed in the best interest of the State or as directed by the State CIO, (e.g., award, cancellation, rebid, negotiation with known sources of supply, etc.);
 - (D) The State CIO shall notify the purchasing agency of any decision regarding that recommended procurement action; and
 - (E) Upon receipt of the State CIO notification, the purchasing agency shall proceed with the respective procurement action as directed.
- (5) A contract term shall not be awarded for more than three years including extensions and renewals, without the prior approval of the State CIO, based on a determination that it is advantageous to the State pursuant to best value procurement.

History Note: Authority G.S. 143-135.9; 143B-1322(c); 143B-1350; 143B-1351(a); Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Amended Eff. September 1, 2013; Readopted Eff. March 1, 2016.

09 NCAC 06B .0302 METHODS OF SOURCE SELECTION

Purchases governed by general delegation or statute shall be solicited, and offers evaluated, in accordance with the following best value methods:

- (1) The purchasing agency shall use the following steps for best value procurements;
 - (a) The purchasing agency determines the appropriate best value bidding method

- through development of one of the solicitations set forth in Sub-item (1)(b) of this Rule;
- (b) The following types of solicitations are available from the State CIO or other types as may be approved by the State CIO pursuant to applicable laws and regulations:
 - (i) Requests for Information (RFI), used for gathering information to prepare a solicitation for offers;
 - (ii) Invitations for Bid (IFB), used when the best value recommendation for award is based on the lowest priced or highest qualified and technically acceptable selection method;
 - (iii) Requests for Quotation are used to contract with a single vendor or a limited group of vendors for purchases of specific goods and services or small purchases of goods, or pursuant to a waiver of competition that satisfies Rule .0901 of this Subchapter;
 - (iv) Requests for Proposal (RFP), used for purchases when the State needs to solicit solutions-based offers, where negotiations with one or more vendors may be needed, or when the best value recommendation for award is based on ranking all offers and will not be based solely on the lowest priced-technically acceptable source;
 - (v) One-Step solicitation, used when both the technical step one offer and price step two offer are submitted at the same time;
 - (vi) Two-Step solicitation, used when the technical step one offer and price step two offer are submitted and evaluated separately;
 - (c) The purchasing agency shall develop, advertise, and publish its solicitation for offers in accordance with the rules of this Subchapter;
 - (d) The purchasing agency shall hold any scheduled conferences or site visits in accordance with standard solicitation
 - (e) document language established by the State CIO;
The purchasing agency shall receive offers in response to its solicitation and it shall then conduct a public bid opening and prepare a tabulation of all offers received. For solicitations that allow for negotiation after receipt of offers, only the names of offerors shall be disclosed at the public bid opening or on the tabulation of offers received;
 - (f) The purchasing agency's evaluation committee shall evaluate offers in accordance with the stated solicitation selection method and evaluation criteria. For solicitations that include a best value ranking process, the purchasing agency shall rank offers by using any consistent rating or scoring methodology, which may include adjectival, numerical, or ordinal rankings. The purchasing agency's evaluation shall document relative strengths, deficiencies, weaknesses, and risks supporting its award recommendation. Best-Value evaluation shall include evaluating quality factors such as:
 - (i) State's total cost of ownership, meaning summation of the State's total cost for acquiring, operating, maintaining, and supporting a product or service over its projected lifetime to include competitive price data; evaluation of the offeror's cost for actual and anticipated components comprising its quotation, as applicable; and value-added conditions or additional services included in the offer;
 - (ii) Technical merit of the offer including as applicable, consideration for consistency and compatibility of the proposed solution with the State's strategic program direction; maximum facilitation of data exchange or systems integration; effectiveness of business solution and approach to solicitation's specific purpose or objective; delivery and implementation schedules; and guarantees, warranties, and return policies; and

- (iii) Probability of the offeror performing the work as stated in the solicitation on time, in a manner that accomplishes the stated intent and business objectives, and that maintains compliance with industry standards including, as applicable, consideration of the offeror's financial stability; program or industry experience; past performance with the State; expertise with similar projects, solutions, or technologies; its proven development methodologies and tools, innovative use of technologies; or key personnel and depth of additional resources, compared to scope and intent of business need stated in the solicitation; etc.;
 - (g) The purchasing agency may communicate with offerors after receipt of offers and in accordance with instructions, procedures and terms set forth in the solicitation as well as those procedures appropriate to the designated method of source selection. If negotiation is permitted in the solicitation, the purchasing agency may also allow offerors to submit best and final offers subsequent to negotiated changes in the initial offer or previous offer;
 - (h) The purchasing agency evaluation committee shall determine a final ranking of all offers under consideration using only the criteria set forth in the solicitation. The purchasing agency evaluation committee shall rank all responsive and responsible offerors from most advantageous to least advantageous to the State, and document such in its final award recommendation;
 - (i) Award must be made to the responsive and responsible offeror whose offer is determined to be the most advantageous and best value to the State, using all evaluation criteria set forth in the solicitation (e.g., if the lowest price or highest qualified technically acceptable method is designated in the solicitation, then award must be made to the responsive and responsible offeror with the lowest price or highest qualified technically accepted method.)
- (2) A trade off method of source selection may be utilized when it is in the best interest of the State to award a contract using a comparative evaluation of technical merit and costs. For a solicitation that designates the trade-off source selection method, the following shall apply:
 - (a) All factors that will affect the contract award recommendation and the relative importance of each shall be stated as evaluation criteria in the published solicitation;
 - (b) The solicitation shall state the importance or numerical weight of all evaluation criteria including consideration of price and total cost of ownership;
 - (c) Offers shall be ranked according to the evaluation criteria stated in the solicitation. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off against, other non-price factors. For example, an offer with the lowest price when compared to other offers would receive the best ranking in the price evaluation category. However, if other non-price evaluation factors received low rankings, the overall ranking of the offer would be reduced;
 - (d) Clarifications are permitted;
 - (e) If permitted in the solicitation terms, the purchasing agency may also use negotiations, or other communications, after receipt of an offer.
 - (3) The lowest priced or highest qualified technically acceptable source selection method may be used when best value is expected to result from selection of the highest qualified or technically acceptable offer with the lowest evaluated price. When this method is designated in a solicitation, the following shall apply:
 - (a) The factors that establish the requirements for technical acceptability shall be set forth in the solicitation's evaluation criteria. Evaluation criteria shall specify that the award will be made on the basis of the lowest evaluated price or most highly qualified technically acceptable of those offers that meet or exceed the acceptability requirements for non-price factors;
 - (b) Trade-offs between price and non-price factors are not permitted;

- (c) Proposals are evaluated for acceptability but are not ranked using the non-price factors.
 - (d) Clarifications are permitted;
 - (e) Negotiations are permitted with this selection method for purchases over the purchasing agency's general delegation, when so specified in the published solicitation. The purchasing agency may negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, or terms and conditions.
- (4) Other competitive best value source selection methodologies may be used if they are determined to be advantageous to the state and are approved for use by the State CIO.
- (A) Acquisition of commodities or services that are subject to rapid price fluctuations or immediate acceptance;
 - (B) Emergency situations or pressing needs;
 - (C) Acquisition of goods or services needed for any ongoing job, task, or project;
 - (D) Acquisition of goods or services where performance or price competition is not available;
 - (E) Any determination that no useful purpose would be served by requiring such; or
 - (F) Exceptions identified under Rule .1303 of this Subchapter.
- (b) Required method for Advertising, Publishing, and Notifying:
To maintain transparency and promote competitiveness:

(1) Solicitations:

History Note: Authority G.S. 143-135.9; 143B-1322(c); 143B-1343; 143B-1350; 143B-1355; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Amended Eff. September 1, 2013; Readopted Eff. March 1, 2016.

09 NCAC 06B .0314 ADVERTISEMENT AND NOTICE

(a) Requirement to Advertise, Publish and Notify:

- (1) Solicitations: To maintain transparency and encourage competition for award of business, the purchasing agency shall advertise and publish solicitations for purchases exceeding the general delegation as established by the State CIO for no less than 10 calendar days, unless the State CIO waives the requirement for advertising;
 - (2) Addenda or Changes: Any changes or addenda to a solicitation must be advertised and published with enough time to allow for reasonable consideration and possible incorporation of any changes into potentially competing vendors' response offers. Any changes or addenda to a solicitation must be advertised and published for no less than two business days from the scheduled offer due and opening date, unless the State CIO waives the requirement to advertise and publish changes or addenda to a solicitation;
 - (3) Notices of Award: To maintain transparency and promote future competitiveness, the notice of award shall be advertised for no less than 30 calendar days, unless the State CIO waives the requirement to advertise, publish, and issue a notice of award;
 - (4) Waiver of requirement to advertise and notify must fall under one of the following conditions in order for the State CIO to waive the requirement:
- (A) The purchasing agency shall electronically advertise and continually publish solicitations via posting to the State's designated IT procurement website, unless a waiver of advertisement method is granted by the State CIO pursuant to waiver of competition under Rule .0901 of this Subchapter, for cooperative agreements under Rule .1006 of this Subchapter, or direct negotiation with vendors as permitted by Rule .0316 of this Subchapter;
 - (B) This Rule does not preclude a purchasing agency from soliciting offers by additional direct mailings or additional advertisement;
 - (C) Required advertisement and publication data shall include all relevant information pertaining to contacts and due dates, and the complete solicitation document and any attachments (i.e., specifications; requirements; terms and conditions; price model; etc.);
 - (D) If a purchasing agency head (or his/her designee) determines that it is not feasible to electronically transmit (due to file size, etc.) a particular solicitation document or attachment(s) through the required method (e.g., a procurement library, architecture reference documents, price model forms, etc.), then the purchasing agency must still electronically transmit a summary notice or advertisement through the designated IT procurement website. In such instance, the advertisement shall include the required information with

- the addition of a brief explanation for why the entire solicitation is not included, and shall instruct anyone inquiring about the solicitation to contact the purchasing agency for a copy of the actual solicitation document and any respective attachments.
- (2) The required advertisement information shall include:
- (A) Purchasing agency name and website reference, and designated IT procurement website reference;
 - (B) Assigned purchasing agency contact's name, telephone number, and electronic mail address;
 - (C) Location address for delivery/receipt of offers;
 - (D) Solicitation identification number or reference;
 - (E) Title (i.e., scope or short description of the good or service solicited);
 - (F) Due date and time for solicitation clarifications or questions;
 - (G) Date, time, and location for opening of offers received;
 - (H) In addition to the specifications, offer terms and conditions, award terms and conditions, etc., the solicitation document must furnish the due date and time; method of request, e.g., regular mail, or electronically via e-mail or facsimile, etc.; and an address for receipt of requests for solicitation clarifications or questions; and
 - (I) Conference or site visit date, time and location; assigned meeting contact person and that contact person's telephone number and electronic mail address; and other relevant information relating to attendance. If no conference or site visit is scheduled, then this shall be stated in the advertisement and the solicitation document.
- (3) Addenda or Changes: The same advertisement method that is approved and followed for publishing a solicitation document must also be followed for publishing any respective addenda or changes to the solicitation and resulting notice of award, unless an exception is permitted Subparagraph (5) of this Paragraph.
- (4) Notices of Award:
- (A) To the extent practicable, the purchasing agency shall simultaneously issue an individual notice of award to all offerors responding to the respective solicitation and shall publish the notice of award via the approved method of advertisement for that solicitation and addendum Paragraph (a) of this Rule;
 - (B) Notice of Award shall summarize the resulting contract award information including identification of the advertised solicitation; the awardee name and location; scope, start and end dates; authorized value through original end date; and renewal options.
- (5) Exceptions to Required Method:
- (A) When the purchasing agency (or its designee) deems there is a valid reason not to publish via the State's designated IT procurement website, the purchasing agency may request from DIT a waiver of the required method for advertising, publishing, and notifying;
 - (B) Valid reasons to request a waiver to the required method include computer failure and networking difficulties;
 - (C) The purchasing agency's request for waiver of required method shall include the rationale for requesting, a description of a proposed alternate method, length of time proposed for advertising, and explanation if the solicitation document and any attachments or addenda will not be included or published with the advertisement;
 - (D) The purchasing agency's proposed alternate method to the State's designated IT procurement website must be via other medium widely distributed or commonly available to the public, such as publishing in a newspaper, etc.;
 - (E) The rationale for requesting waiver of required advertising method, requested alternate method, and respective DIT approval, shall be documented and become part of the procurement file, open for public inspection after award.

History Note: Authority G.S. 143B-1322; 143B-1350; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Amended Eff. September 1, 2013; Readopted Eff. March 1, 2016.

09 NCAC 06B .0315 MANDATORY CONFERENCES/SITE VISITS

(a) When a solicitation requires potential offerors to attend a mandatory conference or site visit, then the date, time, location,

and other details relating to attendance shall be given in the solicitation document and in the advertisement.

(b) If only one potential offeror attends the mandatory conference or mandatory site visit, the conference or site visit may be conducted, but the purchasing agency shall endeavor to ascertain why only one potential offeror attended, and whether there is any competition available. If it is determined that competition is available, the purchasing agency may schedule another conference or site visit, if deemed to be to the advantage of the State. If it is determined that there is no competition available, then the procurement may be handled as a waiver of competition as permitted by Rule .0901 of this Subchapter.

(c) The purchasing agency shall document details of the conference or site visit as part of the official records required in Rule .1402 of this Subchapter.

(d) Any and all questions or clarifications by a potential offeror regarding a solicitation document shall be addressed to the purchasing agency contact so designated in the solicitation. Any and all revisions to the solicitation document shall be made only by published addendum from the purchasing agency.

History Note: Authority G.S. 143B-1233(c); 143B-1350; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Amended Eff. September 1, 2013; Readopted Eff. March 1, 2016.

09 NCAC 06B .0316 NEGOTIATION

(a) The purchasing agency shall conduct negotiations under its general delegation. Negotiations may also be conducted to establish contracts exceeding the purchasing agency's delegation, if the purchasing agency receives prior approval to negotiate from the State CIO as permitted by these Rules. Prior approval may be granted upon finding that the capabilities and subject matter knowledge of the agency, availability of knowledgeable personnel within the agency or DIT, use of non-state personnel, and costs of engaging additional resources demonstrate that the agency's negotiation will be more responsive, efficient, and cost-effective consistent with the requirements of best value procurement.

(b) If a purchasing agency deems negotiations to be advantageous to the State after receiving offers and then determines that soliciting offers again would serve no purpose, the purchasing agency may then conduct negotiations with sources of supply that appear to be capable of satisfying the purchasing agency's business needs. The purchasing agency's negotiation documentation shall include identification of issues or subjects of negotiation, the agency's risk assessment therefor, trade off principles as permitted by G.S. 143-135.9, and other matters directly arising from the solicitation or offer. Negotiations shall be finalized in writing and shall include standard solicitation document language and terms and conditions issued by DIT, or such terms as may be established pursuant to Paragraphs (c) or (d) of this Rule. If the purchasing agency's negotiations are conducted with only one offeror, or if only one offeror responds to a request to negotiate, then the purchasing agency shall document the reasons for the lack of competition as part of the procurement record under Rule .1402 of this Subchapter.

(c) Purchasing agency negotiations may be conducted under Section .0900 of this Subchapter when conditions merit a limited or waiver of competition or in other situations that are advantageous to the State as determined by the State CIO.

(d) Modifications, waivers, or any other changes or amendments to a solicitation, including language and terms and conditions issued by the State CIO, made in the course of negotiations must be accompanied by:

- (1) Approval of the negotiating agency;
- (2) Requested approval from DIT;
- (3) Appropriate evaluation documentation reflecting trade-offs between price and non-price factors; and
- (4) Such other documentation as the State CIO may require to conform with Rule .1402 of this Subchapter.

(e) Negotiations shall not materially alter the intent or scope of the original solicitation document.

History Note: Authority G.S. 143B-1322(c); 143B-1340(f); 143B-1343; 143B-1350; Eff. September 1, 2013; Readopted Eff. March 1, 2016.

09 NCAC 06B .0405 DEBRIEFING OFFERORS

(a) Pre- or post-award-debriefings of successful and unsuccessful offerors may be completed by personal meeting or by written or electronic communication (e.g., telephone, email, etc.).

(b) Debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, debriefing shall not reveal any information not then available for public inspection or properly designated as confidential in accordance with Rule .1001 of this Subchapter, the N.C. Public Records Law, or any other applicable laws.

(c) If debriefing is authorized by terms of the solicitation:

- (1) The purchasing agency shall implement the debriefing process as follows:
 - (A) Include an official summary of the debriefing in the record, per Rule .1402 of this Subchapter, by the protest-period due-date;
 - (B) Schedule a debriefing within five business days after receipt of an offeror's written request for a debriefing;
 - (C) If requested, grant at its discretion, rejected offeror(s) a delayed debriefing for any good cause shown;
- (2) Accommodation of a competing offeror request for delayed debriefing does not extend the due dates for filing protests.
- (3) All competing offerors may request a debriefing by submission of a written request to the purchasing agency not more than three business days from notice of award date.
- (4) Offeror may, if notified that it is not included in the competitive range:
 - (A) Request a pre-award debriefing by delivering such request to the

including facts supporting conditions set forth in Paragraph (b) of this Rule for limited or waived competition to the State CIO for approval.

(b) Competition may be limited or waived under the following conditions:

- (1) competition is not available;
- (2) a needed product or service is available from only one source of supply;
- (3) emergency action is indicated;
- (4) competition has been solicited but no responsive offers have been received;
- (5) standardization or compatibility is the overriding consideration;
- (6) a donation stipulates the source of supply;
- (7) personal or particular professional services are required;
- (8) a product or service is needed for a person with disabilities and there are overriding considerations for its use;
- (9) additional products or services are needed to complete an ongoing job or task;
- (10) a particular product or service is desired for educational, training, experimental, developmental or research work;
- (11) equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
- (12) items are subject to rapid price fluctuation or immediate acceptance;
- (13) there is evidence of resale price maintenance or other control of prices or collusion on the part of persons or entities that thwarts normal competitive procedures unless otherwise prohibited by law;
- (14) a purchase is being made and a price is available from a previous contract;
- (15) the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); or
- (16) a used item is available on short notice and subject to prior sale.

History Note: Authority G.S. 143B-1322(c); 143B-1350; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Amended Eff. September 1, 2013; Readopted Eff. March 1, 2016.

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.

History Note: Authority G.S. 143-52.1; 143B-1322(c); 143B-1350; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Recodified from 09 NCAC 06B .1102 Eff. March 19, 2008; Amended Eff. September 1, 2013; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015; Amended Eff. March 1, 2016.

09 NCAC 06B .1304 GENERAL DELEGATIONS

- (a) The State CIO may suspend, rescind, lower or raise this general delegation for a specific agency, up to the benchmark established 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.
- (b) If an agency wishes to obtain an increase in its general delegation, to the IT benchmark set by the DOA Secretary, it shall submit a request in writing, outlining its overall capabilities, to the State CIO for the State CIO's consideration.

History Note: Authority G.S. 143B-1322(c); 143B-1350; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Amended Eff. March 1, 2001; Recodified from 09 NCAC 06B .1104 Eff. March 19, 2008; Amended Eff. September 1, 2013; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015; Amended Eff. March 1, 2016.

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) 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.

History Note: Authority G.S. 143B-1350(e); Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000; Recodified from 09 NCAC 06B .1202 Eff. March 19, 2008; Amended Eff. September 1, 2013; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest April 25, 2015; Amended Eff. March 1, 2016.

09 NCAC 06C .0101 FORMS

- (a) The 911 Board shall prescribe forms by or for use by Public Safety Answering Points (PSAPs), service providers, and any other parties as may be needed to ensure uniformity in the operation of these Rules and policies adopted by the Board.
- (b) All forms referenced in this Subchapter are published on the Board's website at <https://www.nc911.nc.gov> and may be accessed free of charge.

History Note: Authority G.S. 62A-42; Eff. July 1, 2016.

09 NCAC 06C .0102 PHYSICAL ADDRESS OF 911 BOARD

- (a) The physical and mailing address of the 911 Board is:
 911 Board
 c/o NC Department of Information Technology 3700 Wake Forest Road
 Raleigh, NC 27609
- (b) Contact information for staff is located on the Board's website at <https://www.nc911.nc.gov>.

History Note Authority: G.S. 62A-42; Eff. July 1, 2016.

09 NCAC 06C .0103 DEFINITIONS

In addition to the terms defined in G.S. 62A-40, the following terms have the following definition when used in this Subchapter:

- (1) "911 Line/Trunk" means a telephone line/trunk which is dedicated to providing a caller with

- (2) access to the designated PSAP by dialing the digits 911.
- "Addressing" means the local government's assigning of a numerical address and street name (the street name may be numerical) to all locations within a local government's geographical service area for the purpose of providing Enhanced 911 service.
- (3) "Back-up PSAP" means a facility equipped with automatic number identification, automatic location identification displays, and all other features of a primary PSAP that it serves. A back-up PSAP shall receive 911 calls only when they are transferred from the primary PSAP or on an alternate routing basis when calls cannot be completed to the primary PSAP. A back-up PSAP facility may be unattended when not in use, remote from the Public Safety Answering Point, and used to house equipment necessary for the functioning of an emergency communications system.
- (4) "Circuit" means the conductor or radio channel and associated equipment used to perform a specific function in connection with a 911 call system.
- (5) "CMRS" means a commercial mobile radio service.
- (6) "CMRS Non-recurring cost (NRC)" means one-time costs incurred by CMRS service providers for initial connection to selective routers and the wireless systems service provider (third party vendor non-recurring) cost.
- (7) "Communications System" means a combination of links or networks that serve a general function such as a system made up of command, tactical, logistical, and administrative networks supporting the operations of an individual PSAP.
- (8) "Comprehensive Emergency Management Plan (CEMP)" means a disaster recovery plan that conforms to guidelines established by the PSAP and is designed to address natural, technological, and man-made disasters.
- (9) "Computer-Aided Dispatch (CAD)" means a combination of hardware and software that provides data entry, makes resource recommendations, and notifies and tracks those resources before, during, and after 911 calls, and preserves records of those calls and status changes for later analysis by a PSAP or the Board.
- (10) "Computer-Aided Dispatch (CAD) Terminal" means an electronic device that combines a keyboard and a display screen to allow the exchange of information between a telecommunicator and one or more computers in the system or network.

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| <p>(11) "Control Console" means a wall-mounted or desktop panel or cabinet containing controls to operate communications equipment.</p> <p>(12) "Designated Public Safety Answering Point (PSAP)" means a Primary PSAP determined pursuant to the FCC Order or a Board approved Back-up PSAP.</p> <p>(13) "Dispatch Circuit" means a circuit over which a signal is transmitted from the PSAP to an Emergency Response Facility (ERF) or Emergency Response Unit (ERU) to notify the Emergency Response Unit to respond to an emergency.</p> <p>(14) "Emergency 911 Call Processing/Dispatching" means a process by which a 911 call answered at the PSAP is transmitted to Emergency Response Facilities (ERFs) or to Emergency Response Units (ERUs) in the field.</p> <p>(15) "Emergency Response Facility (ERF)" means a structure or a portion of a structure that houses PSAP equipment and personnel for receiving and dispatching 911 calls.</p> <p>(16) "Emergency Response Unit (ERU)" means a first responder, such as a police vehicle, a fire truck, or an ambulance. It also includes personnel who respond to fire, medical, law enforcement, or other emergency situations for the preservation of life and safety.</p> <p>(17) "FCC Order" means the Order in FCC Docket 94-102 adopted by the Federal Communications Commission on December 1, 1997, and subsequent Orders, decisions, consent decrees, rules, and regulations including 47 C.F.R. 20.18 which are incorporated by reference in these rules. The FCC Order and regulations may be obtained free of charge from the FCC website: http://transition.fcc.gov/pshs/services/911-services/, http://www.fcc.gov/encyclopedia/9-1-1-and-e9-1-1-services and http://www.fcc.gov/encyclopedia/rules-regulations-title-47.</p> <p>(18) "Geographic Information Systems (GIS)" means computer programs linking features seen on maps, such as roads, town boundaries, water bodies, with related information including type of road surface, population, type of agriculture, type of vegetation, or water quality information.</p> <p>(19) "GIS Base Map" means a map comprising streets and centerlines used in a Geographic Information System.</p> <p>(20) "Logging Voice Recorder" means a device that records voice conversations and automatically logs the time and date of such conversations; normally, a multichannel device that keeps a semi-permanent record of operations.</p> <p>(21) "Notification" means the time at which a 911 call is received and acknowledged at a PSAP.</p> | <p>(22) "Operations Room" means the room in the PSAP where 911 calls are received and processed and communications with emergency response personnel are conducted.</p> <p>(23) "Phase I Wireless Enhanced 911 Service" has the same meaning as provided in the FCC Order and FCC regulations. The FCC Order and regulations may be obtained free of charge from the FCC website: http://transition.fcc.gov/pshs/services/911-services/, http://www.fcc.gov/encyclopedia/9-1-1-and-e9-1-1-services and http://www.fcc.gov/encyclopedia/rules-regulations-title-47.</p> <p>(24) "Phase II Wireless Enhanced 911 Service" has the same meaning as provided in the FCC Order and FCC regulations, as defined in Item (16) of this Rule.</p> <p>(25) "Place of Primary Use" has the same meaning as provided in the Mobile Telecommunications Sourcing Act, 4 U.S.C. 124(8), if applicable; and otherwise sourcing shall be determined pursuant to G.S. 105-164.3 or G.S. 105-164.4B.</p> <p>(26) "PSAP Nonrecurring Costs" means non-repetitive charges incurred by a Primary PSAP to pay for equipment or services that do not occur on a fixed schedule. Examples include computer equipment that has become functionally outdated, software upgrades, or repair costs that are not covered by any maintenance agreement.</p> <p>(27) "PSAP Recurring Costs" means repetitive charges incurred by a primary PSAP, such as database management, lease of access lines, lease of equipment, network access fees, and applicable maintenance costs.</p> <p>(28) "Public Safety Agency" means an organization that provides law enforcement, emergency medical, fire, rescue, communications, or related support services.</p> <p>(29) "Public Safety Answering Point (PSAP)" means the public safety agency that receives incoming 911 calls.</p> <p>(30) "Selective Routing" or "Tandem Routing" means routing a 911 call to the designated PSAP based upon the caller's location.</p> <p>(31) "Service provider" means an entity that provides voice communications service, including resellers of such service.</p> <p>(32) "Standard" shall refer to and include such standards, policies, and procedures adopted by the Board pursuant to authority found in Article 3 of Chapter 62A of the N.C. General Statutes.</p> <p>(33) "Standard Operating Procedures (SOPs)" means written organizational directives that establish or prescribe specific operational or administrative methods that are to be followed for the performance of designated operations or actions.</p> |
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- (34) "Stored Emergency Power Supply System (SEPSS)" means a system consisting of a Uninterruptible Power Supply, or a motor generator, powered by a stored electrical energy source, together with a transfer switch designed to monitor preferred and alternate load power source and provide desired switching of the load, and all necessary control equipment to make the system functional.
- (35) "Sworn Invoice" means an invoice prepared by a CMRS service provider's vendor that describes the goods or services and identifies the costs that the CMRS service provider submits for cost recovery pursuant to an approved cost recovery plan, and that is accompanied by an affidavit that complies with a form provided by the Board.
- (36) "Telecommunicator" means any person engaged in or employed as a full-time or part-time 911 communications center call taker, whether called by that or another term, such as emergency communications specialist or emergency dispatcher.
- (37) "Uninterruptible Power Supply (UPS)" means a system designed to provide power, without delay or transients, during any period when the primary power source is incapable of performing.
- (38) "Voice Communication Channel" means a single path for communication by spoken word that is distinct from other parallel paths.

History Note: Authority G.S. 62A-42; 47 C.F.R. 20.18; Eff. July 1, 2016.

09 NCAC 06C .0104 FAILURE TO COMPLY WITH RULES

If the Board determines that a PSAP or CMRS service provider is not adhering to an approved plan or is not using funds in the manner prescribed in these Rules or G.S. 62A, the Board may, after notice and hearing, take action authorized by G.S. 62A affecting distributions or reimbursements until satisfactory evidence of compliance is provided to the Board.

History Note: Authority G.S. 62A-42; 62A-46; 62A-48; Eff. July 1, 2016.

09 NCAC 06C .0105 SERVICE PROVIDER FAILURE TO COMPLY WITH RULES

- (a) If the Board determines that a service provider does not appear to have complied with G.S. Chapter 62A, these Rules, or the requirements of the FCC Order, a certified, return receipt letter shall be mailed to the company representative known to the Board. The letter shall request justification or an explanation from the service provider for the apparent non-compliance. The service provider shall have 15 calendar days to respond to the letter.
- (b) Board staff shall send a report to the Board. The Board shall review the staff's report. If it appears to the Board that the service

provider has failed to comply with applicable law, these Rules, or the FCC Order, the Board shall notify the service provider to that effect and to the consequences arising from such failure, and shall provide an opportunity for the service provider to appear before the Board.

(c) If the non-compliant service provider is a CMRS service provider eligible for reimbursement pursuant to G.S. 62A-45, all reimbursements shall be suspended until compliance with applicable law, these Rules, or the FCC Order has been completed.

(d) If after notice and hearing, the Board determines that the service provider's failure was caused by one or more primary PSAPs, Rule .0106 and procedures regarding PSAP compliance shall be followed.

History Note: Authority G.S. 62A-42; 62A-48; Part 20 of Title 47 of the Code of Federal Regulations; Eff. July 1, 2016.

09 NCAC 06C .0106 PSAP FAILURE TO COMPLY WITH RULES

(a) If the Board determines that a Primary PSAP does not appear to have complied with G.S. 62A, these Rules, or the requirements of FCC Order, a certified, return receipt letter shall be mailed to the PSAP representative known to the Board. The letter shall request justification or an explanation from the Primary PSAP for the apparent non-compliance. The Primary PSAP shall have 15 calendar days to respond to the letter.

(b) Board staff shall send a report to the Board. The Board shall review the staff's report. If it appears to the Board that the PSAP has failed to comply with applicable law, these Rules, or the FCC Order, the Board shall notify the PSAP to that effect and to the consequences arising from such failure, and shall provide an opportunity for the PSAP to appear before the Board.

(c) If after notice and hearing, the Board determines that the Primary PSAP is not at fault, the Board shall investigate to determine the cause of failure and take action to achieve a reasonable solution. A "reasonable solution" shall be defined as one that complies with applicable law, these Rules, or the FCC Order within 30 days or upon such other conditions as the Board may find reasonable.

History Note: Authority G.S. 62A-46; 62A-48; Eff. July 1, 2016.

09 NCAC 06C .0107 REVIEW 911 FUNDS EXPENDITURES, DISBURSEMENTS AND REIMBURSEMENTS

(a) PSAPs shall maintain books and records of 911 Funds received and use of such funds in accordance with the Local Government Budget and Fiscal Control Act G.S. 159-7 et seq. PSAPs shall maintain these books and records to support Fund distributions, reviews, or audits, in accordance with the funding formula adopted by the Board pursuant to G.S. 62A-46(a)(3). All books and records shall be available for review by the Board or its representatives, or audit by other governmental entities with such authority. If any review or audit indicates excess distributions to a PSAP, the Board shall adjust future or final distributions otherwise due. If no distributions are due and owed

to a PSAP, or if the excess distribution exceeds the amount otherwise due during that fiscal year, the PSAP shall refund all amounts due to the 911 Fund as requested by the Board.

(b) PSAPs shall provide copies of any audit reports to the Board if such audit reports include receipts or expenditures for 911 systems.

(c) CMRS service providers subject to G.S. 147-64.7 shall maintain records related to service charges remitted, and records necessary to support requested reimbursements in accordance with applicable law and generally accepted accounting principles. If any audit or review indicates excess distributions to a CMRS service provider, or subcontractor, the Board shall adjust future or final distributions otherwise due. If no distributions are due and owed to a CMRS service provider, or if the excess distribution exceeds the amount otherwise due during that fiscal year, the CMRS service provider shall refund all amounts that may be due to the 911 Fund.

History Note: Authority G.S. 62A-42(a)(5); 62A-46(d); 62A-46(e); 62A-48; 62A-50; Eff. July 1, 2016.

09 NCAC 06C .0108 WAIVER OF RULES

Upon receipt of a written request to waive a rule, the Board shall consider the request and may waive any rule in this Chapter. The factors the Board shall use in determining whether to grant a waiver are:

- (1) Whether the requested waiver is consistent with Article 3 of Chapter 62A or other North Carolina Statutes;
- (2) Whether any applicable Rule should be amended;
- (3) Costs to the 911 Fund if the waiver is granted;
- (4) Costs to the party requesting a waiver if the waiver is not granted;
- (5) Whether granting the waiver is consistent with the statewide 911 plan;
- (6) The benefit to the public;
- (7) Whether granting the waiver is consistent with the requirements and intent of the FCC Order;
- (8) Prior, concurrent, or similar waiver requests; and
- (9) Whether the waiver is supported or opposed by PSAPs or service providers.

History Note: Authority G.S. 62A-42; 150B-19(6); Eff. July 1, 2016.

09 NCAC 06C .0109 HEARINGS

(a) The following, if aggrieved pursuant to G.S. 62A in connection with any action by the Board, may request a hearing before the Board:

- (1) A PSAP; or
- (2) A service provider.

(b) A request for a hearing shall be made in writing to the Executive Director of the Board and shall be filed within 30 calendar days after the aggrieved party knows or should have known of the facts giving rise to the request. A request for hearing is considered filed when physically received by the Executive

Director. Requests filed after the 30 calendar day period shall not be considered. To expedite handling of requests, the envelope shall be labeled "911 Funds Request for Hearing." The written request shall include the following:

- (1) The name and address of the party;
- (2) The action of the Board;
- (3) A statement of reasons for the hearing; and
- (4) Supporting exhibits, evidence, or documents necessary to substantiate the party's complaint.

Requests for hearing shall be sent to the Executive Director at the address listed in .0102 of this Section.

(c) Following review of the information set forth in Paragraph (b) of this Rule, if the Board determines it needs additional information, it shall request the information from the aggrieved party. Any additional information requested by the Board shall be submitted at the address listed in Rule .0102 of this Section within the time periods established by this Paragraph in order to expedite consideration of the request. Failure of the aggrieved party to comply with a request for information by the Board within 60 days shall result in resolution of the request without consideration of that information.

(d) A decision on a request shall be made by the Board within 120 days after receiving all relevant requested information.

History Note: Authority G.S. 62A-42; 62A-48; Eff. July 1, 2016.

09 NCAC 06C .0110 DECLARATORY RULINGS

(a) Any request for a determination regarding the application of a rule, statute, or order established by the 911 Board to a specific factual situation shall be directed to the Board Chair or Executive Director at the address in Rule .0102 of this Section. The request for a ruling shall follow Rules .0109 through .0114 of this Section. A declaratory ruling proceeding may include written submissions, an oral hearing, or other procedure as may be appropriate in the circumstances of the particular request.

(b) Declaratory rulings pursuant to G.S. 150B-4 shall be issued by the Board only on the validity of a rule or on the applicability of a statute, rule, or order of the Board to stipulated facts. A declaratory ruling shall not be issued on a matter requiring an evidentiary proceeding.

(c) A person aggrieved must possess such an interest in the question to be ruled on that the petitioner's need to have such a ruling in order to comply with statutory requirements, rules, or standards shall be apparent from the petition and shall be explained therein.

History Note: Authority G.S. 62A-42(a)(4); 62A-46(e)(5); 150B-4; Eff. July 1, 2016.

09 NCAC 06C .0201 PSAP ELIGIBILITY

(a) Before receiving distributions from the 911 Fund, a primary PSAP shall meet the following criteria and confirm in writing to the Board:

- (1) The PSAP is separately identified in its governing agency's budget and in any audit conducted under the Local Government Budget and Fiscal Control Act.

- (2) The PSAP meets the definition of primary PSAP under G.S. 62A-40. Callers shall be able to reach the PSAP by placing a call using only the digits 911. The PSAP shall operate an Enhanced 911 system.

(b) The PSAP equipment vendor or a service provider operating in the PSAP's jurisdiction shall also certify that the PSAP is capable of receiving and dispatching Phase I wireless Enhanced 911 service. If neither an equipment vendor nor a service provider is available, a city or county may use certification from a technology specialist who demonstrates compliance with FCC regulation 47 C.F.R. 20.18.

(c) The PSAP shall provide copies of all documentation evidencing agreements with other PSAPs governing the manner in which 911 Funds are used in overlapping geographic service areas, as identified by zip code or other identifier such as telephone exchange or township.

History Note: Authority G.S. 62A-46; Eff. July 1, 2016.

09 NCAC 06C .0202 PSAP ELIGIBLE EXPENSES

(a) Expenses that are solely incurred to enable a PSAP to receive and utilize the voice and data elements necessary for wireline 911 and wireless Phase I or Phase II compliance may be fully paid from a PSAP's 911 Fund distributions if approved by the Board. A PSAP may submit a request for approval for an expense by identifying the expense item together with an explanation of the necessity of the expense item to the Executive Director.

- (1) Eligible costs for necessary computer hardware include Computer Aided Dispatch (CAD) workstation computers, servers, and ancillary equipment; GIS workstation computers, servers, and ancillary equipment; and voice logging recorder computers;
- (2) Eligible costs for necessary computer software include software used in conjunction with the computer hardware to provide callers with access to the PSAP by dialing 911;
- (3) Database provisioning includes creation of the automatic location identification (ALI) database and the GIS base map database;
- (4) GIS base map eligible expenses include mapped street centerlines, together with costs for creation and maintenance of the base map;
- (5) Nonrecurring costs of establishing a wireless Enhanced 911 system include emergency generator or uninterruptible power supplies, and telecommunicator furniture necessary for 911 system operation; and
- (6) Rates associated with local telephone companies' charges related to the operation of the 911 system include monthly charges for delivery of 911 calls, automatic number identification (ANI), ALI, and monthly charges for telephone interpreter services.

(b) Eligible lease, purchase, and maintenance expenses for emergency telephone equipment include 911 telephone equipment/system costs.

The 911 Board shall publish on its website <https://www.nc911.nc.gov/> and periodically revise a list of approved eligible expenditures.

(c) Ineligible costs include:

- (1) Basic termination charges incurred due to the disconnection of telephone equipment to be replaced with 911 equipment;
- (2) Capital outlay expenditures, such as buildings, remodeling, communication towers, and equipment not directly related to providing the user of a voice communications service connection access to a PSAP by dialing the digits 911;
- (3) Mobile or base station radios, pagers, or other devices used for response to, rather than receipt of, 911 calls, including mobile data terminals (MDT) and automatic vehicle location (AVL) systems used in response vehicles;
- (4) Seven-digit transfer-to-lines;
- (5) Private line circuit costs;
- (6) Directory listings; and
- (7) Maintenance costs for radio equipment or other miscellaneous equipment not necessary, as determined by the Board and the affected PSAP, to provide the user of a voice communications service connection access to a PSAP by dialing the digits 911.

History Note: Authority G.S. 62A-46(c); Eff. July 1, 2016.

09 NCAC 06C .0203 EFFECT OF 911 FUND DISTRIBUTION TERMINATIONS AND SUSPENSIONS

(a) A primary PSAP operated by or for a local government that is not identified or included in its governing agency's budget or in any audit conducted pursuant to the Local Government Budget and Fiscal Control Act shall not be eligible for distributions from the 911 Fund.

(b) 911 Fund distributions that lapse due to termination of a primary PSAP shall be re-allocated by the Board.

(c) 911 Fund distributions that are suspended shall be maintained by the Board until such time as the PSAP entitled to such distributions complies with the requirements of applicable statutes, these Rules, and the Board's standards, policies, and procedures.

(d) Primary PSAPs that cease independent operation due to consolidation with other such PSAPs, or that are consolidated with newly formed PSAPs, shall give notice to the Board. 911 Fund distributions for such PSAPs that cease operations shall revert to the 911 Fund for distribution under G.S. 62A-46.

History Note: Authority G.S. 62A-46; 62A-48; Eff. July 1, 2016.

09 NCAC 06C .0204 PSAP REPORTING

(a) PSAPs shall submit the following to the Board by September 1 of each year:

- (1) A copy of the PSAP's governing agency's approved budget;

- (2) A report detailing the revenues and expenditures associated with the operation of its 911 system; and
- (3) Additional information if requested by the Board including installation schedules, installation expenses, anticipated 911 system changes, other system related costs, expenses and other information deemed necessary by the Board or by the PSAP to ensure funding in compliance with G.S. 62A-46(e).

(b) If a PSAP fails to report its revenues and expenditures, the Board shall inform the PSAP's governing agency. The notice shall also inform the governing agency that failure to provide the requested information within 15 days shall be cause for suspension of monthly PSAP fund distributions until the information is received. The notice shall further inform the governing agency that continuing failure to provide the information shall result in a report to the North Carolina Local Government Commission of the PSAP's failure.

(c) After 60 days from September 1 the Board shall inform the North Carolina Local Government Commission in writing of the PSAP's failure to respond to the requested information. A copy of the notice to the North Carolina Local Government Commission shall also be sent to the PSAP manager and the governing agency.

(d) Each county or municipality shall submit a list of PSAPs operating within its jurisdiction each year; or, if none are known, a statement to that effect.

History Note: Authority G.S. 62A-4; 62A-46; 62A-49; Eff. July 1, 2016.

09 NCAC 06C .0206 BACK-UP PSAPS

(a) Each Primary PSAP shall establish a back-up PSAP or have an arrangement for back-up provided by another PSAP. Agencies may also pool resources and create regional back-up centers. Alternate methods for receiving and processing 911 calls may include interlocal agreements among one or more PSAPs for sharing physical resources, entail a use of portable equipment that may be implemented wherever secure network connectivity is accessible, construction and maintenance of a back-up PSAP facility that would only be utilized when the Primary PSAP is inoperable, or other alternative solution.

(b) Back-up Plan. There shall be a local management approved, written, dated, and annually tested back-up PSAP plan.

(c) The Board shall disburse 911 Funds for back-up PSAPs to the extent eligible expenses are incurred for such PSAPs, and provided:

- (1) A back-up PSAP plan is submitted to the 911 Board. The plan shall include start-up costs, projected recurring expenses, and any local agreements which may exist, or which are anticipated, that provide for the back-up PSAP.
- (2) Any back-up PSAP plan revisions have been provided to the 911 Board staff.

(d) The back-up PSAP shall be capable, when staffed, of performing the emergency functions performed at the primary PSAP.

(e) The back-up PSAP shall be separated geographically from the primary PSAP at a distance that ensures the survivability of the alternate center.

(f) Each PSAP shall develop a formal written plan to maintain and operate the back-up PSAP or, if back-up is provided by another PSAP, a formal written plan that defines the duties and responsibilities of the alternate PSAP.

- (1) The plan shall include the ability to reroute incoming 911 call traffic to the back-up center and to process and dispatch 911 calls at that center.
- (2) The plan shall be included in the Comprehensive Emergency Management Plan (CEMP).

(g) The PSAP shall be capable of operation long enough to enable the transfer of operations to the back-up PSAP in the event of an emergency in the PSAP or in the building that houses the PSAP.

History Note: Authority G.S. 62A-42(a); Eff. July 1, 2016.

09 NCAC 06C .0207 PSAP OPERATIONS AND MANAGEMENT

(a) Personnel:

- (1) PSAP equipment and systems shall be under the oversight of an employee or employees of the PSAP.
- (2) The PSAP Emergency services dispatching entities shall have trained and qualified technical assistance available for trouble analysis and repair by in-house personnel or by authorized outside contract maintenance services. Where maintenance is provided by an organization or person other than an employee of the PSAP, written records of all installation, maintenance, test, and extension of the system shall be forwarded to the responsible employee of the PSAP. Maintenance performed by an organization or person other than an employee of the PSAP shall be by written contract that contains a guarantee of performance.
- (3) Maintenance personnel other than an employee of the PSAP shall be approved by the PSAP pursuant to its access controls as presenting no threat to the security of the facility or the employees and equipment within it.
- (4) All equipment shall be accessible to the PSAP for the purpose of maintenance.
- (5) When a device monitoring the 911 system for integrity indicates that trouble has occurred, the telecommunicator shall act as follows:
 - (A) Take appropriate steps as provided in the PSAP manual or operating procedures to repair the fault.
 - (B) If the telecommunicator determines repair is not possible, isolate the fault and notify the official responsible for maintenance.

(b) Time.

- (1) The clock for the main recordkeeping device in the PSAP shall be synchronized with all timekeeping devices in the 911 system.
 - (2) All timekeeping devices in the PSAP shall be maintained within ± 5 seconds of the main recordkeeping device clock.
- (c) Recording.
- (1) PSAPs shall have a logging voice recorder with one channel for each of the following:
 - (A) Transmitted or received emergency radio channel or talk group;
 - (B) Voice dispatch call for service circuit; and
 - (C) Telecommunicator telephone that receives emergency 911 calls for service.
 - (2) Each Telecommunicator workstation shall have the ability to recall telephone and radio recordings from that workstation without delay.
 - (3) 911 calls that are transmitted over the required dispatch circuit(s) shall be automatically recorded, including the dates and times of transmission.
- (d) Quality Assurance/Improvement.
- (1) PSAPs shall establish a quality assurance/improvement process to ensure the consistency and effectiveness of 911 call taking.
 - (2) Statistical analysis of 911 call taking shall be completed monthly and compiled over a one year period and retained as operational records under Rule .0215 of this Section.

History Note: Authority G.S. 62A-42(a)(4); 62A-46(e); 62A-46(a)(3); Eff. July 1, 2016.

09 NCAC 06C .0208 TELECOMMUNICATOR QUALIFICATIONS, TRAINING AND STAFFING

- (a) There shall be sufficient telecommunicators available to complete the call taking process for 911 calls.
- (b) Where communications systems, computer systems, staff, or facilities are used for both emergency and non-emergency functions, the non-emergency use shall not delay use of those resources for 911 operations.
- (c) 911 calls for service and completing the call taking process shall have priority above nonemergency activities.
- (d) The PSAP shall provide standard operating procedures to its telecommunicators.
- (e) Telecommunicators shall not be assigned any duties prohibiting them from receiving 911 calls and completing the call taking process in accordance with Rule .0209(a) of this Section and the PSAP standard operating procedures.

History Note: Authority G.S. 62A-42(a)(4); Eff. July 1, 2016.

09 NCAC 06C .0209 PSAP 911 CALL OPERATING PROCEDURES

- (a) Ninety percent of 911 calls received on emergency lines shall be answered within 10 seconds, and 95 percent of 911 calls received on emergency lines shall be answered within 20 seconds. The PSAP and the Board shall evaluate call answering times monthly by using data from the previous month.
- (b) When 911 calls need to be transferred to another PSAP, the telecommunicator shall transfer the call without delay. The Telecommunicator shall advise the caller of the transfer. The telecommunicator shall maintain the call connection until it is certain that the transfer is complete and verified by the agency receiving the call transfer.
- (c) An indication of the status of all Emergency Response Units shall be available to Telecommunicators at all times.
- (d) The PSAP shall establish and maintain standard operating procedures including:
 - (1) The procedures shall specify that the telecommunicator is expected to perform without direct supervision;
 - (2) The procedures shall specify operations, facilities, and communications systems that receive 911 calls from the public;
 - (3) An implementation plan for testing and fail-over operation to a back-up PSAP pursuant to Rule .0206 of this Section;
 - (4) Procedures related to the CEMP required in Rule .0205 of this Section;
 - (5) Emergency response personnel emergencies;
 - (6) Activation of an emergency distress function;
 - (7) Assignment of incident radio communications plan;
 - (8) Time limit for acknowledgment by units that have been dispatched;
 - (9) Responding to and processing TDD /TTY calls or other calls from hearing impaired callers;
 - (10) Providing requirements for dispatching of appropriate emergency response personnel;
 - (11) A policy that limits access to the PSAP to authorized personnel;
 - (12) Procedures for answering open-line or "silent calls"; and
 - (13) Maintaining training records for each employee required by the PSAP.

History Note: Authority G.S. 62A-42(a)(4); Eff. July 1, 2016.

09 NCAC 06C .0210 PUBLIC SAFETY ANSWERING POINT (PSAP) FACILITIES

- (a) All 911 system equipment, software, and services used in the operation of the PSAP shall be implemented and maintained to ensure continuity of 911 call taking.
 - (1) Systems that are essential to the operation of the PSAP shall be designed to accommodate peak workloads.
 - (2) PSAPs shall be designed to accommodate the staffing level necessary to accommodate peak workloads.

- (b) Primary and secondary power sources shall be determined by the PSAP including the following provisions:
- (1) At least two independent and reliable power sources, one primary and one secondary, shall be provided. Each shall be of adequate capacity for operation of the PSAP.
 - (2) Power sources shall be monitored for integrity, with annunciation provided in the operations room.
 - (3) Primary Power Source. One of the following shall supply primary power:
 - (A) A feed from a commercial utility distribution system;
 - (B) An engine-driven generator installation or equivalent designed for continuous operation, with a person specifically trained in its operation on duty at all times; or
 - (C) An engine-driven generator installation or equivalent arranged for cogeneration with commercial light and power, with a person specifically trained in its operation on duty or available at all times.
 - (4) Secondary Power Source.
 - (A) The secondary power source shall consist of one or more standby engine-driven generators. The PSAP shall ensure that a person specifically trained in its operation is on duty or available at all times.
 - (B) Upon failure of primary power, transfer to the standby source shall be automatic.
 - (5) Engine-driven generators shall be sized to supply power for the operation of all functions of the PSAP.
 - (A) When installed indoors, engine-driven generators shall be located in a ventilated and secured area that is separated from the PSAP by fire barriers having a fire resistance rating of at least two hours.
 - (B) When installed outdoors, engine-driven generators shall be located in a secure enclosure.
 - (C) The area that houses an engine-driven generator shall not be used for storage other than spare parts or equipment related to the generator system.
 - (D) Fuel to operate the engine-driven generator for a minimum of 24 hours at full load shall be available on site.
 - (E) Equipment essential to the operation of the generator shall be supplied with standby power from the generator.
 - (F) Generators shall not use the public water supply for engine cooling.
 - (6) A Stored Emergency Power Supply System (SEPSS) shall be provided for telecommunications equipment, two-way radio systems, computer systems, and other electronic equipment determined to be essential to the operation of the PSAP.
 - (A) The SEPSS shall be of a class that is able to maintain essential operations long enough to implement the formal Comprehensive Emergency Management Plan.
 - (B) The instrumentation required to monitor power shall be remotely annunciated in the operations room.
 - (7) Power circuits shall include their associated motors, generators, rectifiers, transformers, fuses, and controlling devices.
 - (8) The power circuit disconnecting means shall be installed so that it is accessible only to authorized personnel.
 - (9) Surge Arresters otherwise known as Transient Voltage Surge Suppression (TVSS) shall be provided for protection of telecommunications equipment, two-way radio systems, computers, and other electronic equipment essential to the operation of the PSAP.
 - (10) Isolated Grounding System. Telecommunications equipment, two-way radio systems, computers, and other electronic equipment essential to the operation of the PSAP shall be connected to an isolated grounding system.
 - (11) Uninterruptible Power Supply (UPS) and Battery Systems. A UPS and battery system shall be installed in accordance with local, State, and the federal safety regulations and be sufficient to prevent power surges from damaging equipment in the PSAP as well as provide power for all essential 911 Emergency Center operations until the backup power source can be fully activated.
 - (A) Each UPS shall be provided with a bypass switch that maintains the power connection during switch over and that is capable of isolating all UPS components while allowing power to flow from the source to the load.
 - (B) The following UPS conditions shall be annunciated in the operations room:
 - (i) Source power failure, overvoltage, and under-voltage;
 - (ii) High and low battery voltage; and
 - (iii) UPS in bypass mode.
 - (C) The UPS and Battery Systems shall be capable of providing power for the PSAP when the Primary Power Source is not functioning but the duration of

the outage is not sufficient to activate the Secondary Power Source.

History Note: Authority G.S. 62A-42; Eff. July 1, 2016.

09 NCAC 06C .0211 TELEPHONES

(a) Equipment and Operations.

- (1) PSAPS shall be equipped with telephone lines and telephone devices as follows:
 - (A) A minimum of two 911 telephone lines and 911 telephone devices shall be assigned exclusively for receipt of 911 calls. These lines shall appear on at least two telephone devices within the PSAP.
 - (B) Additional 911 telephone lines and 911 telephone devices shall be provided as necessary for the volume of calls handled by the PSAP.
 - (C) Additional telephone lines shall be provided for the normal business (non-emergency) use as needed.
 - (D) At least one outgoing-only line and telephone device shall be provided.
- (2) 911 lines and 911 telephone devices shall be answered prior to non-emergency telephone lines and non-emergency telephone devices.
- (3) When all 911 telephone lines and 911 telephone devices are in use, y 911 calls shall be routed to other predetermined telephone lines and telephone devices that shall be monitored for integrity, and that are approved by the PSAP.
- (4) Calls to the business number shall not hunt to the designated emergency lines.
- (5) When transferring a 911 call pursuant to Rule .0209(b) of this Section, the PSAP shall transfer the call data to the designated PSAP when possible. If the call transfer is not possible, call data shall be relayed by the telecommunicator.
- (6) All 911 calls shall be recorded.

(b) Circuits/Trunks.

- (1) PSAPS shall have at least two 911 call delivery paths with diverse routes arranged so that no single incident interrupts both routes.
- (2) Where multiple PSAPs that serve a jurisdiction are not located in a common facility, at least two circuits with diverse routes, arranged so that no singular incident interrupts both routes, shall be provided between PSAPs.
- (3) The PSAP shall have sufficient 911 trunk capacity to receive 99.9 percent of all calls during the busiest hour of the average week of the busiest month of the year.

History Note: Authority G.S. 62A-42; Eff. July 1, 2016.

09 NCAC 06C .0212 DISPATCHING SYSTEMS

- (a) A 911 call dispatching system shall be designed, installed, operated, and maintained to provide for the receipt and retransmission of calls.
- (b) Telecommunicators who receive 911 calls shall have redundant means within the PSAP premises to dispatch calls.
- (c) The failure of any system component or one dispatching means shall not affect the operation of another dispatching means.

History Note: Authority G.S. 62A-42; Eff. July 1, 2016.

09 NCAC 06C .0213 COMPUTER AIDED DISPATCHING (CAD) SYSTEMS

(a) PSAPs shall use computer-aided dispatching (CAD) systems. The CAD system shall contain all hardware and software components necessary for interface with the 911 system.

- (1) The CAD system shall include data entry; resource recommendations, notification, and tracking; store records relating to all 911 calls and all other calls for service and status changes; and track those resources_before, during, and after emergency calls, preserving records of those 911 calls and status changes for later analysis by the PSAP.
- (2) The CAD system shall include a data backup system, utilizing either removable media or independent disk storage arrays dedicated to the backup task and additional equipment as needed, as determined by the PSAP.
- (3) The failure of any single component shall not disable the entire system.
 - (A) The CAD system shall provide automatic switchover in case of failure of the required system component(s).
 - (B) Manual intervention by telecommunicators or others shall not be required.
 - (C) Notwithstanding automatic switchover, the CAD system shall provide the capability to manually initiate switchover.
 - (D) CAD systems that utilize server and workstation configuration shall accomplish automatic switchover by having a duplicate server available with access to all the data necessary and required to restart at the point where the primary server stopped.
 - (E) CAD systems that utilize distributed processing, with workstations in the operations room also providing the call processing functions, shall be considered to meet the requirements of automatic switchover, as long as all such workstations are continuously sharing data and all data necessary to pick up at the point where the failed workstation stopped are available to

all other designated dispatch workstations.

- (4) The system shall continuously monitor the CAD interfaces for equipment failures, device exceptions, and time-outs. Upon detection of faults or failures, the system shall send an appropriate message consisting of visual and audible indications to personnel designated by the PSAP. A log of system messages and transactions shall be generated and maintained as determined by the PSAP.

(b) PSAPS shall maintain a secondary CAD for use in the event of a failure of the CAD system.

(c) Operation of the CAD system software shall be limited to authorized personnel by log-on/password control, workstation limitations, or other means as required by the PSAP.

(d) The PSAP shall provide network isolation necessary to preserve bandwidth for the efficient operation of the CAD system and processing of 911 calls.

(e) The CAD system shall have the capability to allow 911 call data exchange between the CAD system and other CAD systems, and between the CAD system and other systems.

(f) CAD configurations shall include:

- (1) Recommending units for assignment to calls.
 - (A) Ensuring that the optimum response units are selected.
 - (B) Allowing the telecommunicator to override the CAD recommendation for unit assignment.
 - (C) The CAD system shall have the ability to prioritize all system processes so that emergency operations take precedence.
- (2) Detecting and reporting errors, faults or failures.
- (3) The CAD system shall include automatic power-fail recovery capability.

History Note: Authority G.S. 62A-42; Eff. July 1, 2016.

09 NCAC 06C .0214 TESTING

(a) Tests and inspections of all systems necessary for receiving 911 calls and completing the call taking process shall be made at the intervals specified in a PSAP standard operating procedures conforming to Rules .0207, .0209, and .0210 of this Section.

(b) All equipment shall be restored to operating condition after each test or 911 call for which the equipment functioned.

(c) When tests detect failure or poor performance anywhere on the system, the PSAP shall take appropriate steps to repair or isolate the failure or poor performance and notify the person(s) responsible for repair or maintenance.

(d) All new equipment shall be tested in accordance with the manufacturers' specifications and accepted PSAP practices before being placed in service. PSAPs shall provide equipment operation manuals for operations and testing procedures to PSAP personnel.

History Note: Authority G.S. 62A-42; Eff. July 1, 2016.

09 NCAC 06C .0215 RECORDS

(a) PSAPs shall maintain records to ensure operational capability of all system functions for at least five years.

(b) After completion of acceptance tests, the PSAP shall retain:

- (1) A set of reproducible, as-built installation drawings;
- (2) Operation and maintenance manuals;
- (3) Written sequence of operation; and
- (4) Results of all operational tests and values at the time of installation.

(c) PSAPS shall have access to site-specific software for software-based systems..

(d) Operational Records.

- (1) Call and dispatch performance statistics shall be compiled and maintained by the PSAP.
- (2) Statistical analysis for call and dispatch performance measurement shall be done monthly and compiled over a one year period. A management information system (MIS) program shall track incoming 911 calls and dispatched 911 calls and provide real-time information and strategic management reports.
- (3) Records of the following, including the corresponding dates and times, shall be kept:
 - (A) Test, 911 call, and dispatch signals;
 - (B) Circuit interruptions and observations or reports of equipment failures; and
 - (C) Abnormal or defective circuit conditions indicated by test or inspection.

(e) Maintenance Records.

- (1) Records of maintenance, both routine and emergency, shall be kept for all 911 call receiving equipment and 911 call dispatching equipment.
- (2) All maintenance records shall include the date, time, nature of maintenance, and repairer's name and affiliation.

History Note: Authority G.S. 62A-42; Eff. July 1, 2016.

09 NCAC 06C .0301 REGISTRATION OF CMRS SERVICE PROVIDERS

(a) CMRS service providers or resellers of any CMRS that receive authority to serve any area within the State of North Carolina, shall register with the Board within 30 calendar days of the later of receiving authority to operate, or of beginning operations, in North Carolina.

(b) Such registration shall be filed with the Commission's Executive Secretary and shall include the following information:

- (1) The legal name of CMRS service provider;
- (2) All business names used by the CMRS service provider in North Carolina;
- (3) The name, title, mailing address, telephone number, fax number, and email address (if available) of the person to be contacted regarding 911 matters;

- (4) A listing of all areas in which the CMRS service provider is authorized to serve any portion of North Carolina; and
- (5) The FCC filer ID and FCC Registration Number of the CMRS service provider.

(c) Changes to any of the information required by Paragraph (b) of this Rule shall be filed with the Board's Executive Director within 30 calendar days of the effective date of such change(s). This filing requirement includes providing notice to the Board's Executive Director of any and all mergers, divestitures, acquisitions, or other similar actions affecting North Carolina service areas.

History note: Authority: G.S. 62A-42(a)(9); 62A-45; 62A-49; Part 20, Title 47 Code of Federal Regulations; Eff. July 1, 2016.

09 NCAC 06C .0302 CMRS SERVICE PROVIDER REIMBURSEMENT

(a) Sworn invoices shall be attested to by a person having authority to represent the CMRS service provider. Only costs that are commercially reasonable are eligible for cost recovery. The CMRS service provider may present costs as the actual incurred costs of the CMRS service provider, an estimate of the incurred costs, or the approved rate per subscriber multiplied by the actual subscriber count. If estimated costs are used, the CMRS service provider shall annually true up its costs to ensure that over-recovery does not occur. CMRS service providers shall maintain records consistent with Generally Accepted Accounting Principles as applied by the provider to demonstrate that costs were actually incurred as submitted for reimbursement. Internal costs (engineering time, facilities, proportionate share of software, etc.) shall be supported by documentation. All costs are subject to review by the Board.

(b) As used in this Rule, "commercially reasonable" shall mean the cost that takes into account the facts and circumstances at the time the cost is incurred. The Board shall determine whether costs are commercially reasonable pursuant to Chapter 25 of the General Statutes.

History note: Authority G.S. 62A-45; Eff. July 1, 2016.

09 NCAC 06C .0305 REMITTANCE OF SERVICE CHARGES

(a) Service providers shall remit service charges to the 911 Board at the address listed in Rule .0102 of this Subchapter.

(b) Service providers may remit funds by check payable to the Board, or by electronic funds transfer upon satisfaction of transaction processing requirements.

(c) Voice communications service providers that assess the service charge to resellers of their services shall remit such service charges to the Board.

(d) The Department of Information Technology Fiscal Services shall act as the receiving agent for the service providers' monthly reimbursements and as the administrator of the 911 Fund.

History note: Authority G.S. 62A-43; 147-86.11; Eff. July 1, 2016.

09 NCAC 06C .0306 PREPAID WIRELESS SERVICE

(a) A voice communications service provider of prepaid wireless service is not eligible for reimbursements to CMRS providers.

(b) Rules .0109 through .0114 of this Chapter governing hearings and declaratory rulings shall not apply to a voice communications service provider of prepaid wireless service for issues arising under the administration authority of the Department of Revenue.

(c) Contract or other information submitted to the Board by a voice communications service provider of prepaid wireless service may be proprietary under G.S. 62A-52. Service providers shall mark any proprietary or other non-public information as such before sending to the Board.

History Note: Authority G.S. 62A-43; 62A-44; 62A-52; 62A-54; Eff. July 1, 2016.

09 NCAC 06C .0401 PSAP GRANTS

(a) When there are funds available, the Board shall publish a notice on its website, as set forth in Rule .0102 of this Subchapter, of grant availability to primary PSAPs and governing entities operating primary PSAPs.

(b) Any primary PSAP or the governing entity operating a primary PSAP may apply for a grant.

(c) Each applicant applying for grant funds shall complete and submit an application that may be obtained from the Board office or from the Board website at the address as set forth in Rule .0102 of this Subchapter.

(d) The Board shall accept grant applications as stated in the Board's published notice of grant availability. Grant applications submitted that do not conform to the Board's published requirements may be considered at the discretion of the Board, provided that grant funds are not exhausted by conforming grant applications and the non-conforming grant applications satisfy G.S. 62A-47.

(e) Applications for grants for each item over twenty-five thousand dollars (\$25,000) shall be accompanied by at least three written competitive quotes. The Board shall compare the three quotes to any existing State contract in order to determine appropriate funding.

History note: Authority G.S. 62A-47; Eff. July 1, 2016.

09 NCAC 06C .0402 GRANTS FOR CONSTRUCTION OR RENOVATION

(a) The requirements in this Rule, Grants for Construction or Renovation, shall apply only to new construction and construction renovations of an existing structure or facility funded by the North Carolina 911 Board. PSAPs receiving grants for construction or renovation shall ensure compliance with the provisions of this Rule.

(b) HVAC.

- (1) HVAC systems shall be designed to maintain temperature and relative humidity within limits specified by the manufacturer of the equipment critical to the operation of the PSAP.

- (2) HVAC systems shall be independent systems that serve only the PSAP.
 - (3) HVAC system intakes for fresh air shall be arranged to minimize smoke intake from a fire inside or outside the building and to resist intentional introduction of irritating, noxious, toxic, or poisonous substances into the HVAC system.
 - (4) HVAC emergency controls shall be provided in the operations room to permit closing of outside air intakes.
 - (5) Back-up HVAC systems shall be provided for the operations room and other spaces housing electronic equipment essential to the operation of the PSAP.
 - (6) HVAC systems shall be designed so that the PSAP is capable of uninterrupted operation with the largest single HVAC unit or component out of service.
- (c) Fire Protection.
- (1) The PSAP and spaces adjoining the PSAP shall be provided with an automatic fire detection, alarm, and notification system.
 - (2) The alarm system shall be monitored in the operations room.
 - (3) Operation of notification appliances shall not interfere with communications operations.
 - (4) Electronic computer and data processing equipment shall be protected in accordance with the manufacturer's recommended specifications, and common business practices.
- (d) Security.
- (1) The PSAP and other buildings that house essential operating equipment shall be protected against damage from vandalism, terrorism, and civil disturbances.
 - (2) Entry to the PSAP shall be restricted to authorized persons.
 - (3) Exterior entryways to the PSAP shall have a security vestibule. "Security Vestibule" means comprising a compartment with two or more doors to prevent unobstructed passage by allowing the release of only one door at a time.
 - (4) Door openings shall be protected by listed, self-closing fire doors that have a fire resistance rating of not less than 1 hour.
 - (5) Where a PSAP has windows, the following requirements shall apply:
 - (A) Windows shall be a minimum of 4 ft (1.2 m) above floor level.
 - (B) Windows shall be rated for bullet resistance to Level 4 as defined in UL 752, Standard for Safety Bullet-Resistant Equipment, which is hereby incorporated by reference, including subsequent amendments and editions. This may be accessed at no cost at <http://ulstandards.ul.com/standard/?id=752>.
- (C) Windows that are not bullet resistant shall be permitted provided that they face an area that cannot be accessed or viewed by the general public.
 - (D) Windows that are required to be bullet resistant shall be configured so that they cannot be opened.
 - (E) Walls with bullet-resistant windows shall be required to provide the same level of protection as the window.
- (6) Means shall be provided to prevent unauthorized vehicles from approaching the building housing the PSAP to a distance of no less than 82 ft (25 m). Alternatively, unauthorized vehicles shall be permitted to approach closer than 82 ft (25 m) if the building has been designed to be blast resistant.
- (e) Lighting.
- (1) Artificial lighting shall be provided to enable personnel to perform their assigned duties.
 - (2) The PSAP shall be equipped with emergency lighting that shall illuminate automatically immediately upon failure of normal lighting power.
 - (3) Illumination levels shall be sufficient to allow all essential operations.
- (f) Circuit Construction and Arrangement.
- (1) As-built drawings shall be provided.
 - (2) Circuits shall not pass over, under, through, or be attached to buildings or property that are not owned by, or under the control of, the PSAP or the entity that is responsible for maintaining the system.
 - (3) 911 call instruments installed in buildings not under control of the PSAP shall be on separate dedicated circuits.
 - (4) The combination of public emergency services communication and signaling (C&S) circuits in the same cable with other circuits shall comply with the following:
 - (A) Other municipally controlled C&S circuits shall be permitted; or
 - (B) Circuits of private signaling organizations shall be permitted only by permission of the PSAP.
- (g) Underground Cables.
- (1) Underground communication and signal cables shall be brought above ground only at points where the PSAP has determined there is no potential for mechanical damage or damage from fires in adjacent buildings.
 - (2) All cables that are installed in manholes, vaults, and other enclosures intended for personnel entry shall be racked and marked for identification.
 - (3) Cable splices, taps, and terminal connections shall be located only where accessible for maintenance and inspection and where no

potential for damage to the cable due to falling structures or building operations exists.

- (4) Cable splices, taps, and terminal connections shall be made to provide and maintain levels of conductivity, insulation, and protection that are at least equivalent to those afforded by the cables that are joined.

(h) Aerial Cables and Wires. Protection shall be provided where cables and wires pass through trees, under bridges, and over railroads, and at other locations where damage or deterioration is possible.

(i) Wiring Inside Buildings.

- (1) Wiring at the PSAP shall extend to the operations room in conduits, ducts, shafts, raceways, or overhead racks and troughs of a construction type that protects against fire and mechanical damage.
- (2) Cables or wiring exposed to fire hazards shall be protected from the hazards.
- (3) At the PSAP, cable terminals and cross connecting facilities shall be located either in or adjacent to the operations room.
- (4) All wired dispatch circuit devices and instruments whose failure can adversely affect the operation of the system shall be mounted in accordance with the following:
 - (A) On noncombustible bases, pedestals, switchboards, panels, or cabinets; and
 - (B) With mounting designed and constructed so that all components are readily accessible to authorized personnel.

(j) Circuit Protection.

- (1) All protective devices shall be accessible for maintenance and inspection.
- (2) Wired surge arresters shall be designed and listed for the specific application.
- (3) Each conductor that enters a PSAP from a partial or entirely aerial line shall be protected by a surge arrester.

(k) Grounding.

- (1) Sensitive electronic equipment determined by the PSAP to be essential to the operation of telecommunications and dispatching systems shall be grounded.
- (2) Listed isolated ground receptacles shall be provided for all cord-and-plug-connected essential and sensitive electronic equipment.
- (3) Unused wire or cable pairs shall be grounded.
- (4) Ground connection for surge suppressors shall be made to the isolated grounding system.
- (5) All surge arresters shall be connected to earth ground.

(l) Access. All equipment shall be accessible to authorized personnel for the purpose of maintenance.

History Note: Authority G.S. 62A-42; 62A-47; Eff. July 1, 2016.

09 NCAC 06C .0403 GRANT AGREEMENTS

- (a) Grant agreements shall comply with G.S. 62A-47.
- (b) Unless otherwise determined by the Board based upon the grant application, grant agreements shall be for a term not to exceed one year.
- (c) Grant agreements shall include terms ensuring compliance with G.S. 159-26, G.S. 159-28, and G.S. 159-34.

History Note: Authority G.S. 62A-42; 62A-47; 143C-6-22; 143C-6-23; Eff. July 1, 2016.

09 NCAC 06C .0404 GRANT FUNDS

- (a) The grantee shall deposit grant funds in a bank account maintained by the grantee and the grantee shall assign each grant a unique accounting code designation for deposits, disbursements, and expenditures. All grant funds in the account shall be accounted for separately from other grantee funds. Grant funds may be used only between the beginning and ending dates of the grant, unless the grantee requests an extension and it is granted by the Board.
- (b) Grant funds are not transferable to any other entity. If equipment purchased using grant funds is sold or transferred within three years of the end of the grant period, the grantee shall return the grant funds to the Board on a pro-rata basis using depreciation schedules.

History note: Authority G.S. 62A-47; Eff. July 1, 2016.

09 NCAC 06C .0405 GRANTEE REPORTS

- (a) Grantees shall submit reports to the Board summarizing expenditures of the grant funds and the activities supported by the grant funds.
- (b) Unless otherwise stated in a grant agreement, the reports are due 15 days after September 30, December 31, March 31, and June 30.
- (c) A final report shall be submitted to the Board no more than 45 days after completion of the grant, detailing the activities, expenditures of the funds, and the ways in which the needs identified in the grant application were met. The final report shall be accompanied by supporting documentation for all expenditures of the grant funds.

History Note: Authority G.S. 62A-47; 143C-6-22; 143C-6-23; Eff. July 1, 2016.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02L .0501 PURPOSE AND SCOPE

- (a) The purpose of this Section is to establish procedures for risk-based assessment and corrective action sufficient to:
 - (1) protect human health and the environment;
 - (2) abate and control contamination of the waters of the State as deemed necessary to protect human health and the environment;

- (3) permit management of the State's groundwaters to protect their designated current usage and potential future uses;
- (4) provide for anticipated future uses of the State's groundwater;
- (5) recognize the diversity of contaminants, the State's geology, and the characteristics of each individual site; and
- (6) accomplish these goals in a cost-efficient manner to assure the best use of the limited resources available to address groundwater pollution within the State.

- (9) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing into groundwater, surface water, or surface or subsurface soils.
- (10) "Tank" means a device used to contain an accumulation of petroleum and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provides structural support.

(b) The applicable portions of Section .0100 not specifically excluded apply to this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0502 DEFINITIONS

The definitions as set out in Rule .0102 of this Subchapter apply to this Section, in addition the following definitions apply throughout this Section:

- (1) "Aboveground storage tank" or "AST" means any one or a combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of petroleum.
- (2) "AST system" means an aboveground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.
- (3) "Discharge" includes any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil into groundwater or surface water or upon land in such proximity to such water that it is likely to reach the water and any discharge upon land which is intentional, knowing, or willful.
- (4) "Non-UST" means as defined in G.S. 143-215.104AA(g) and excludes underground storage tank releases governed by G.S. 143-215.94V.
- (5) "Operator" means any person in control of, or having responsibility for the daily operation of the AST system.
- (6) "Owner" means any person who owns a petroleum aboveground storage tank or other non-UST petroleum tank, stationary or mobile, used for storage, use, dispensing, or transport.
- (7) "Person" means an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.
- (8) "Petroleum" or "petroleum products" means as defined in G.S. 143-215.94A(10).

History Note: Authority G.S. 143-212(4); 143-215.3(a)(1); 143-215.77; 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0503 RULE APPLICATION

This Section applies to any non-UST petroleum discharge. The requirements of this Section shall apply to the owner and operator of a petroleum aboveground storage tank or other non-UST petroleum tank, stationary or mobile, from which a discharge or release occurred and any person determined to be responsible for assessment and cleanup of a discharge or release from a non-UST petroleum source. This includes any person who has conducted or controlled an activity that results in the discharge or release of petroleum or petroleum products (as defined in G.S. 143-215.94A(10)) to the groundwaters of the State, or in proximity thereto. These persons shall be collectively referred to as the "responsible party" for purposes of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0504 REQUIRED INITIAL RESPONSE AND ABATEMENT ACTIONS BY RESPONSIBLE PARTY

A responsible party shall:

- (1) take actions to prevent any further discharge or release of petroleum from the non-UST petroleum source; identify and mitigate any fire, explosion, or vapor hazard; and report the release within 24 hours of discovery, in compliance with G.S. 143-215.83(a), 84(a), and 85(b);
- (2) perform initial abatement actions to measure for the presence of a release where contamination is most likely to be present and to confirm the precise source of the release; to investigate to determine the possible presence of free product and to begin free product removal; and to continue to monitor and mitigate any additional fire, explosion, or vapor hazards posed by vapors or by free product; and submit a report to the Department of Environmental Quality, UST Section, Regional Office Supervisor in accordance with 15A NCAC 02B .0309 and .0311, within 20 days after release confirmation summarizing these initial abatement actions;
- (3) remove contaminated soil that would act as continuing source of contamination to

groundwater. For a new release, no further action shall be necessary where:

- (a) initial abatement actions involving control and removal of contaminated materials are initiated within 48 hours from discovery and before contaminated materials begin to impact groundwater; and
- (b) analysis, in accordance with the approved methods in Rule .0412 of this Subchapter, of representative samples of remaining soils shows concentrations:
 - (i) at or below the more stringent of the soil-to-groundwater concentration value and the residential maximum soil contamination concentration value, or
 - (ii) using other EPA approved analytical methods in accordance with Rule .0412(b)(7) of this Subchapter concentration values below the more stringent of the soil-to-groundwater concentration alkane and aromatic carbon fraction class values and the residential maximum soil contamination concentration alkane and aromatic carbon fraction class values,

Provided that, for new releases, if the abatement actions cannot be initiated within 48 hours of discovery, or if soil concentrations remain above the values in this Paragraph, the responsible party shall conduct all activities under Items (1) through (5) of this Rule;

- (4) conduct initial site assessment, assembling information about the site and the nature of the release, including the following:
 - (a) site history and site characterization, including data on nature and estimated quantity of release and data from available sources and site investigations concerning surrounding populations, water quality, use, and approximate locations of wells, surface water bodies, and subsurface structures potentially effected by the release, subsurface soil conditions, locations of subsurface utilities, climatological conditions, and landuse;
 - (b) results of free product investigations and free product removal, if applicable;
 - (c) results of groundwater and surface water investigations, if applicable;

- (d) summary of initial response and abatement actions; and submit this information in the report required under Item (5) of this Rule; and
- (5) submit as required in Item (2) of this Rule, within 90 days of the discovery of the discharge or release an initial assessment and abatement report containing the site characterization information required in Item (4) of this Rule; soil assessment information sufficient to show that remaining unsaturated soil in the side walls and at the base of the excavation does not contain contaminant levels which exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to Rule .0511 of this Section, whichever is lower; and documentation to show that neither bedrock nor groundwater was encountered in the excavation (or if groundwater was encountered, that contaminant concentrations in groundwater were equal to or less than the groundwater quality standards established in Rule .0202 of this Subchapter). If such showing is made, the discharge or release shall be classified as low risk by the Department.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0505 REQUIREMENTS FOR LIMITED SITE ASSESSMENT

If the required showing cannot be made by the responsible party under Rule .0504 of this Section, the responsible party shall submit within 120 days of the discovery of the discharge or release, a report as required in Rule .0504 of this Section, containing information needed by the Department to classify the level of risk to human health and the environment posed by a discharge or release under Rule .0506 of this Section. The responsible party may request an extension prior to the deadline that demonstrates to the Department that the extension would not increase the risk posed by the release. Such report shall include the following:

- (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source area of a confirmed release or discharge and depicting all water supply wells, surface waters, and designated "wellhead protection areas" as defined in 42 U.S.C. 300h-7(e) within the 1500-foot radius. 42 U.S.C. 300h-7(e), is incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the U.S. Government Bookstore's website at <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap6A-subchapXII-partC-sec300h-7.htm>. The material is available for inspection at the

Department of Environmental Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603. For purposes of this Section, "source area" means point of release or discharge from the non-UST petroleum source, or if the point of release cannot be determined precisely, "source area" means the area of highest contaminant concentrations;

- (2) a determination of whether the source area of the discharge or release is within a designated "wellhead protection area" as defined in 42 U.S.C. 300h-7(e);
- (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, a determination of whether the source area of the discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer that is being used or may be used as a source of drinking water;
- (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to the accumulation of vapors in a confined space; pose a risk to public health from exposure; or pose any other serious threat to public health, public safety, or the environment;
- (5) scaled site map(s) showing the location of the following that are on or adjacent to the property where the source is located:
 - (a) site boundaries;
 - (b) roads;
 - (c) buildings;
 - (d) basements;
 - (e) floor and storm drains;
 - (f) subsurface utilities;
 - (g) septic tanks and leach fields;
 - (h) underground and aboveground storage tank systems;
 - (i) monitoring wells;
 - (j) water supply wells;
 - (k) surface water bodies and other drainage features;
 - (l) borings; and
 - (k) the sampling points;
- (6) the results from a limited site assessment that shall include the following actions:
 - (a) determine the presence, the lateral and vertical extent, and the maximum concentration levels of soil and, if possible, groundwater contamination and free product accumulations;
 - (b) install monitoring wells constructed in accordance with 15A NCAC 02C .0108, within the area of maximum soil or groundwater contamination to determine the groundwater flow direction and maximum concentrations of dissolved

groundwater contaminants or accumulations of free product. During well construction, the responsible party shall collect and analyze soil samples that represent the suspected highest contaminant-level locations by exhibiting visible contamination or elevated levels of volatile organic compounds, from successive locations at five-foot depth intervals in the boreholes of each monitoring well within the unsaturated zone; collect potentiometric data from each monitoring well; and collect and analyze groundwater or measure the amount of free product, if present, in each monitoring well;

- (7) the availability of public water supplies and the identification of properties served by the public water supplies within 1500 feet of the source area of a confirmed discharge or release;
- (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed discharge or release;
- (9) a discussion of site specific conditions or possible actions that may result in lowering the risk classification assigned to the release. Such discussion shall be based on information known or required to be obtained under this Item; and names and current addresses of all responsible parties for all petroleum sources for which a discharge or release is confirmed, the owner(s) of the land upon which such petroleum sources are located, and all potentially affected real property owners. Documentation of ownership of ASTs or other sources and of the property upon which a source is located shall be provided. When considering a request from a responsible party for additional time to submit the report, the Department shall consider the following:
 - (a) the extent to which the request for additional time is due to factors outside of the control of the responsible party;
 - (b) the previous history of the person submitting the report in complying with deadlines established under the Commission's rules;
 - (c) the technical complications associated with assessing the extent of contamination at the site or identifying potential receptors; and
 - (d) the necessity for action to eliminate an imminent threat to public health or the environment.
- (10)

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.

Eff. March 1, 2016.

15A NCAC 02L .0506 DISCHARGE OR RELEASE CLASSIFICATIONS

The Department shall classify the risk of each known discharge or release as high, intermediate or low risk, unless the discharge or release has been classified under Rule .0504 of this Section. For purposes of this Section:

- (1) "High risk" means that:
 - (a) a water supply well, including one used for non-drinking purposes, has been contaminated by the release or discharge;
 - (b) a water supply well used for drinking water is located within 1000 feet of the source area of a confirmed discharge or release;
 - (c) a water supply well not used for drinking water is located within 250 feet of the source area of a confirmed discharge or release;
 - (d) the groundwater within 500 feet of the source area of a confirmed discharge or release has the potential for future use in that there is no source of water supply other than the groundwater;
 - (e) the vapors from the discharge or release pose a serious threat of explosion due to accumulation of the vapors in a confined space or pose a risk to public health from exposure; or
 - (f) the discharge or release poses an imminent danger to public health, public safety, or the environment.
- (2) "Intermediate risk" means that:
 - (a) surface water is located within 500 feet of the source area of a confirmed discharge or release and the maximum groundwater contaminant concentration exceeds the applicable surface water quality standards and criteria found in 15A NCAC 02B .0200 by a factor of 10;
 - (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, the source area of a confirmed discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer that the Department determines is being used or may be used as a source of drinking water;
 - (c) the source area of a confirmed discharge or release is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);

(d) the levels of groundwater contamination for any contaminant except ethylene dibromide, benzene, and alkane and aromatic carbon fraction classes exceed 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower; or

(e) the levels of groundwater contamination for ethylene dibromide and benzene exceed 1,000 times the federal drinking water standard as referenced in 15A NCAC 18C .1518 is hereby incorporated by reference including subsequent amendments and editions and is available free of charge at [http://reports.oah.state.nc.us/ncac/title15a-environmental quality/chapter18-environmental health/subchapter c/15a ncac 18c .1518.pdf](http://reports.oah.state.nc.us/ncac/title15a-environmental%20quality/chapter18-environmental%20health/subchapterc/15a%20ncac%2018c%20.1518.pdf).

(3) "Low risk" means that:

- (a) the risk posed does not fall within the high or intermediate risk categories; or
- (b) based on review of site-specific information, limited assessment, or interim corrective actions, the Department determines that the discharge or release poses no significant risk to human health or the environment.

If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk level identified in Rule .0507 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0507 RECLASSIFICATION OF RISK LEVELS

(a) The Department may reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions that the Department believes may result in a lower risk classification. It shall be a continuing obligation of each responsible party to notify the Department of any changes that may affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party. Such changes may include changes in zoning of real property, use of real property, or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release.

(b) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c), (g), and (h) of this Subchapter. The goal of any required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in Rule .0202 of this Subchapter, or as closely thereto as is economically and technologically feasible as determined by the Department. In any corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used when the benefits of its use shall not increase the risk to the environment and human health as determined by the Department. If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

(c) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of Rule .0106(c) and (g) of this Subchapter. As part of the comprehensive site assessment, the responsible party shall evaluate, based on site specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in Rule .0106(h) of this Subchapter. Discharges or releases that are classified as intermediate risk shall be remediated, at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower for any groundwater contaminant except ethylene dibromide, benzene, and alkane and aromatic carbon fraction classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard as referenced in 15A NCAC 18C .1518 is hereby incorporated by reference including subsequent amendments and editions and is available free of charge at http://reports.oah.state.nc.us/ncac/title_15a_environmental_quality/chapter_18_environmental_health/subchapter_c/15a_ncac_18c_.1518.pdf. Additionally, if a corrective action plan or groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a violation of:

- (1) the rules contained in 15A NCAC 02B;
- (2) the standards contained in Rule .0202 of this Subchapter in a deep aquifer as described in Rule .0506(2)(b) of this Section; and
- (3) the standards contained in Rule .0202 of this Subchapter at a location no closer than one year time of travel upgradient of a well within a designated wellhead protection area, based on travel time and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater migration that exists or

will be installed by the person making the request.

In any corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used when the benefits of its use shall not increase the risk to the environment and human health and shall not increase the costs of the corrective action.

(d) If the risk posed by a discharge or release is determined by the Department to be a low risk, the Department shall notify the responsible party that no cleanup, no further cleanup, or no further action will be required by the Department, unless the Department later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification shall be issued pursuant to this Paragraph, however, until the responsible party has completed soil remediation pursuant to Rule .0508 of this Section or as closely thereto as economically or technologically feasible as determined by the Department; has submitted proof of public notification and has recorded any land-use restriction(s), if required; and paid any applicable statutorily authorized fees. The issuance by the Department of a notification under this Paragraph shall not affect any private right of action by any party that may be affected by the contamination.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0508 ASSESSMENT AND REMEDIATION PROCEDURES

Assessment and remediation of soil contamination shall be addressed as follows:

- (1) At the time that the Department determines the risk posed by the discharge or release, the Department shall also determine, based on site-specific information, whether the site is "residential" or "industrial/commercial." For purposes of this Section, a site is presumed residential, but may be classified as industrial/commercial if the Department determines based on site-specific information that exposure to the soil contamination is limited in time due to the use of the site and does not involve exposure to children. For purposes of this Item, "site" means both the property upon which the discharge or release has occurred and any property upon that soil has been affected by the discharge or release.
- (2) The responsible party shall submit a report to the Department assessing the vertical and horizontal extent of soil contamination.
- (3) For a discharge or release classified by the Department as low risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to either the residential or industrial/commercial maximum soil contaminant concentration established by the Department pursuant to Rule .0511 of this Section, whichever is applicable.

- (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to the lower of:
- (a) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has been established by the Department pursuant to Rule .0511 of this Section; or
 - (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to Rule .0511 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0509 NOTIFICATION REQUIREMENTS

(a) A responsible party who submits a corrective action plan that proposes natural attenuation or to cleanup groundwater contamination to a standard other than a standard or interim standard established in Rule .0202 of this Subchapter, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant concentration established pursuant to this Section, whichever is lowest, shall give notice to:

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing the contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

Such notice shall describe the nature of the plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of 30 days following receipt of the request so that the Department may consider comments submitted. The responsible party shall, within 60 days, provide the Department with a copy of the notice and proof of receipt of each required notice, or of refusal by the addressee to accept delivery of a required notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give notice by posting such notice in a prominent manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall provide the Department with a copy of the posted notice and a description of the manner in which such posted notice was given.

(b) A responsible party who receives a notice pursuant to Rule .0507(d) of this Section for a discharge or release that has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this Subchapter or to the lower of the

residential or soil-to-groundwater contaminant concentrations established under Rule .0511 of this Section, shall, within 30 days of the receipt of such notice, provide a copy of the notice to:

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

Notification shall be made by certified mail. The responsible party shall, within 60 days, provide the Department with proof of receipt of the copy of the notice, or of refusal by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give notice by posting a copy of the notice in a prominent manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall provide the Department with a description of the manner in which such posted notice was given.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0510 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES

To the extent feasible, the Department shall maintain in each of the Department's regional offices a list of all non-UST petroleum discharges or releases discovered and reported to the Department within the region.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; Eff. March 1, 2016.

15A NCAC 02L .0511 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS

For purposes of risk-based assessment and remediation for non-UST petroleum releases, refer to Rule .0411 of this Subchapter for establishment of maximum soil contamination concentrations.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0512 ANALYTICAL PROCEDURES FOR SOIL SAMPLES

For purposes of risk-based assessment and remediation for non-UST petroleum releases, refer to Rule .0412 of this Subchapter for analytical procedures for soil samples.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0513 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES

For purposes of risk-based assessment and remediation for non-UST petroleum releases, refer to Rule .0413 of this Subchapter for analytical procedures for groundwater samples.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0514 REQUIRED LABORATORY CERTIFICATION

In accordance with 15A NCAC 02H .0804, laboratories shall obtain North Carolina Division of Water Resources laboratory certification for parameters that shall be reported to the State in compliance with the State's surface water, groundwater, and pretreatment rules.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02L .0515 DISCHARGES OR RELEASES FROM OTHER SOURCES

This Section shall not relieve any person responsible for assessment or cleanup of contamination from a source other than a non-UST petroleum release from its obligation to assess and clean up contamination resulting from such discharge or releases.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016.

15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) For the purposes of this Rule, the definitions listed in 15A NCAC 02D .0101 and 15A NCAC 02Q .0103 shall apply.

(b) This Rule does not apply to:

- (1) facilities whose potential emissions require a permit pursuant to 15A NCAC 02Q .0500 (Title V Procedures); or
- (2) a source emitting a pollutant that is part of the facility's 15A NCAC 02D .1100 (Control of Toxic Air Pollutants) modeling demonstration if that source is not exempted pursuant to 15A NCAC 02Q .0702.

(c) The owner or operator of an activity exempt from permitting pursuant to this Rule shall not be exempt from demonstrating compliance with any other applicable State or federal requirement.

(d) Any facility whose actual emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, hazardous air pollutants, and toxic air pollutants are each less than five tons per year and whose actual total aggregate emissions are less than 10 tons per year shall not be required to obtain a permit pursuant to 15A NCAC 02Q .0300. This Paragraph shall not apply to synthetic minor facilities that are regulated pursuant to Rule .0315 of this Subchapter.

(e) Any facility that is not exempted from permitting pursuant to Paragraph (d) of this Rule and whose actual total aggregate emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, hazardous air pollutants, and toxic air pollutants are greater than or equal to five tons per year and less than 25 tons per year may register their facility pursuant to 15A NCAC 02D .0202 instead of obtaining a permit pursuant to 15A NCAC 02Q .0300. This Paragraph shall not apply to any facility as follows:

- (1) synthetic minor facilities that are regulated pursuant to Rule .0315 of this Subchapter;
- (2) facilities with a source subject to maximum achievable control technology pursuant to 40 CFR Part 63;
- (3) facilities with sources of volatile organic compounds or nitrogen oxides that are located in a nonattainment area; or
- (4) facilities with a source regulated pursuant to New Source Performance Standards (NSPS), unless the source is exempted pursuant to Paragraph (g) or (h) of this Rule.

(f) The Director may require the owner or operator of a facility to register such facility pursuant to 15A NCAC 02D .0200 or obtain a permit pursuant to 15A NCAC 02Q .0300, if necessary to obtain compliance with any other applicable State or federal requirement.

(g) The following activities do not require a permit or permit modification pursuant to 15A NCAC 02Q .0300:

- (1) maintenance, upkeep, and replacement:
 - (A) maintenance, structural changes, or repair activities which do not increase the capacity of such process and do not cause any change in the quality or nature or an increase in quantity of an emission of any regulated air pollutant;
 - (B) housekeeping activities or building maintenance procedures, including painting buildings, paving parking lots, resurfacing floors, repairing roofs, washing, using portable vacuum cleaners, sweeping, using and associated storing of janitorial products, or removing insulation;
 - (C) using office supplies, supplies to maintain copying equipment, or blueprint machines;
 - (D) using firefighting equipment (excluding engines regulated pursuant to 40 CFR 63, Subpart ZZZZ); or
 - (E) replacing existing equipment with equipment of the same size (or smaller), type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants, does not affect the facility's compliance with any other applicable State or federal requirements, and that fits the description of the existing

- equipment in the permit, including the application, such that the replacement equipment can be lawfully operated pursuant to that permit without modifying the permit;
- (2) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
 - (3) laboratory or classroom activities:
 - (A) bench-scale, on-site equipment used for experimentation, chemical or physical analysis for quality control purposes or for diagnosis of illness, training, or instructional purposes;
 - (B) research and development activities that produce no commercial product or feedstock material; or
 - (C) educational activities, including wood working, welding, and automotive repair;
 - (4) storage tanks with no applicable requirements other than Stage I controls pursuant to 15A NCAC 02D .0928, Gasoline Service Stations Stage I;
 - (5) combustion and heat transfer equipment:
 - (A) heating units used for human comfort, excluding space heaters burning used oil, that have a heat input of less than 10 million Btu per hour and that do not provide heat for any manufacturing or other industrial process;
 - (B) residential wood stoves, heaters, or fireplaces; or
 - (C) water heaters that are used for domestic purposes only and are not used to heat process water;
 - (6) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no state or federal air requirements;
 - (7) dispensing equipment: equipment used solely to dispense gasoline, diesel fuel, kerosene, lubricants or cooling oils;
 - (8) electric motor burn-out ovens with secondary combustion chambers or afterburners;
 - (9) electric motor bake-on ovens;
 - (10) burn-off ovens with afterburners for paint-line hangers;
 - (11) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
 - (12) woodworking operations processing only green wood;
 - (13) solid waste landfills: This does not apply to flares and other sources of combustion at solid waste landfills. These flares and other combustion sources are required to be permitted pursuant to 15A NCAC 02Q .0300 unless they qualify for another exemption pursuant to this Paragraph; or
- (14) miscellaneous:
- (A) equipment that does not emit any regulated air pollutants;
 - (B) sources for which there are no applicable requirements;
 - (C) motor vehicles, aircraft, marine vessels, locomotives, tractors, or other self-propelled vehicles with internal combustion engines;
 - (D) engines regulated pursuant to Title II of the Federal Clean Air Act (Emission Standards for Moving Sources);
 - (E) equipment used for preparing food for direct on-site human consumption;
 - (F) a source whose emissions are regulated only pursuant to Section 112(r) or Title VI of the Federal Clean Air Act;
 - (G) exit gases from in-line process analyzers;
 - (H) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
 - (I) refrigeration equipment that complies with the regulations set forth in Sections 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA pursuant to Title VI for stratospheric ozone protection, except those units refrigeration equipment used as or in conjunction with air pollution control equipment. Refrigeration equipment used as or in conjunction with air pollution control equipment is required to be permitted pursuant to 15A NCAC 02Q .0300 unless it qualifies for another exemption pursuant to this Paragraph;
 - (J) equipment not vented to the outdoor atmosphere, with the exception of equipment that emits volatile organic compounds. Equipment that emits volatile organic compounds is required to be permitted pursuant to 15A NCAC 02Q .0300 unless it qualifies for another exemption pursuant to this Paragraph;
 - (K) animal operations not required to have control technology pursuant to 15A NCAC 02D .1800. If an animal operation is required to have control technology, it shall be required to have a permit pursuant to this Subchapter;

- (L) any incinerator that meets the requirements set forth in 15A NCAC 02D .1201(c)(4); or
- (M) dry cleaning operations, regardless of NSPS or NESHAP applicability.

- (4) electrostatic dry powder coating operations with filters or powder recovery systems;
- (5) miscellaneous: any source whose potential uncontrolled emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide shall each be no more than five tons per year; or
- (6) case-by-case exemption: activities that the applicant demonstrates to the Director do not violate any applicable emission control standard.

(h) The following activities do not require a permit or permit modification pursuant to 15A NCAC 02Q .0300. These activities are included in determining applicability of any rule or standard that requires facility-wide aggregation of source emissions, including activities regulated by 15A NCAC 02D .0530, 15A NCAC 02D .0531, 15A NCAC 02Q .0500, and 15A NCAC 02Q .0700:

- (1) combustion and heat transfer equipment (including direct-fired equipment that only emit regulated pollutants from fuel combustion):
 - (A) fuel combustion equipment (excluding internal combustion engines) not regulated pursuant to 40 CFR Part 60, NSPS, firing exclusively unadulterated liquid fossil fuel, wood, or an approved equivalent unadulterated fuel as defined in 15A NCAC 02Q .0103;
 - (B) fuel combustion equipment (excluding internal combustion engines) firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels; or
 - (C) space heaters burning waste oil if:
 - (i) the heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes; and
 - (ii) the heater is designed to have a maximum heat input of not more than 500,000 Btu per hour;
- (2) gasoline distribution: bulk gasoline plants as defined in 15A NCAC 02D .0926(a)(3), with an average daily throughput of less than 4,000 gallons;
- (3) paint spray booths or graphic arts operations, coating operations, and solvent cleaning operations as defined in 15A NCAC 02Q .0803 located at a facility whose facility-wide actual uncontrolled emissions of volatile organic compounds are less than five tons per year, except that such emission sources whose actual uncontrolled emissions of volatile organic compounds are less than 100 pounds per year shall qualify for this exemption regardless of the facility-wide emissions. For the purpose of this exemption water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices;

(i) The owner or operator of a facility or source claiming that an activity is exempt pursuant to Paragraphs (d), (e), (g) or (h) of this Rule shall submit emissions data, documentation of equipment type, or other supporting documents to the Director upon request that the facility or source is qualified for that exemption.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. April 1, 1999; July 1, 1998; July 1, 1997; November 1, 1996; Temporary Amendment Eff. December 1, 1999; Amended Eff. May 1, 2013; January 1, 2009; July 1, 2007; June 29, 2006; July 18, 2002; July 1, 2000; Amended Eff. Pending Legislative Review.

15A NCAC 02Q .0302 FACILITIES NOT LIKELY TO CONTRAVENE DEMONSTRATION

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1998; July 1, 1996; Repealed Eff. Pending Legislative Review.

15A NCAC 02Q .0318 CHANGES NOT REQUIRING PERMIT REVISIONS

- (a) This rule applies to sources that are not exempt pursuant to Rule .0102 of this Subchapter. This rule applies to facilities that have been issued an air quality permit pursuant to this Section.
- (b) An owner or operator of a facility may make changes to that facility without first modifying any applicable air permit if:
 - (1) the change does not violate any existing requirements or new applicable requirements;
 - (2) the change does not cause emissions allowed under the current permit to be exceeded;
 - (3) the change does not require a modification of a permit term or condition pursuant to Rule .0315 or avoidance condition pursuant to Rule .0317 of this Section;

- (4) the change does not require a permit pursuant to 15A NCAC 02Q .0700, Toxic Air Pollutant Procedures;
- (5) the change does not require a P.E. Seal pursuant to Rule 15A NCAC 02Q .0112; and
- (6) the owner or operator shall notify the Director with written notification seven calendar days before the change is made. Within seven calendar days of receipt of the notice, the Division of Air Quality shall notify the owner or operator of its determination that the change meets the requirements of Subparagraphs (b)(1) through (b)(5) of this Rule.

(c) The written notification from the owner or operator required pursuant to Subparagraph (b)(6) of this Rule shall include:

- (1) a description of the change;
- (2) the date on which the change will occur;
- (3) any change in emissions; and
- (4) all permit terms or conditions of the current permit that may be affected by this change.

(d) A copy of the notification from the owner or operator required pursuant to Subparagraph (b)(6) of this Rule shall be attached to the current permit until the permit is revised at the next modification, name change, ownership change, or renewal.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Eff. Pending Legislative Review.

15A NCAC 02Q .0903 EMERGENCY GENERATORS AND STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES

(a) For the purposes of this Rule, the following definitions apply:

- (1) "Emergency generator" means an emergency stationary reciprocating internal combustion engine as defined in 40 CFR 63.6675.
- (2) "Stationary reciprocating internal combustion engine" shall be defined as set forth in 40 CFR 63.6675.

(b) This Rule applies to emergency generators and stationary reciprocating internal combustion engines at a facility whose only sources that would require a permit are emergency generators and stationary reciprocating internal combustion engines whose facility-wide actual emissions are less than 100 tons per calendar year of any regulated pollutant, 10 tons per calendar year of any hazardous air pollutant, or 25 tons per calendar year of any combination of hazardous air pollutants.

(c) The owner or operator of emergency generators and stationary reciprocating internal combustion engines regulated pursuant to this Rule shall comply with 15A NCAC 02D .0516, .0521, .0524, and .1111.

(d) The owner or operator of emergency generators and stationary reciprocating internal combustion engines regulated pursuant to this Rule shall provide the Director with documentation, upon request, that the emergency generators and stationary reciprocating internal combustion engines meet the applicability requirements set forth in Paragraph (b) of this Rule.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108;

Eff. June 1, 2008; Amended Eff. Pending Legislative Review.

15A NCAC 07L .0102 PURPOSE

The purpose of the Rules in this Subchapter is to establish the criteria and procedures for funding the Department of Environmental Quality program of grants for local land use plans or comprehensive plans, hereinafter referred to as "the plan", 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 plans and management strategies for their coastal resources, as mandated by the CAMA. Funds shall be used in refining and carrying out local land use planning and management programs by local governments within the 20 counties defined by the Coastal Area Management Act in G.S. 113A-103.

History Note: Authority G.S. 113A-112; 113A-124; Eff. September 1, 1978; Amended Eff. March 1, 2016; August 1, 2002; June 1, 1980.

15A NCAC 07L .0502

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002; Repealed Eff. March 1, 2016.

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

(a) In funding local planning and management grants, the Department of Environmental Quality (DEQ) shall follow these general priorities for local planning and management grants:

- (1) The highest priority, Category I, includes projects mandated by statute, including initial and updated or amended land use plans or comprehensive plans, hereinafter referred to as the plan, local participation in projects initiated by DEQ, and projects DEQ indicates urgently need local attention in order to meet Coastal Resources Commission (CRC) management topics pursuant to 15A NCAC 07B .0702(d)(2). Examples of eligible projects and their associated priority category include:
 - (A) Those activities designated by DEQ 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; or
 - (B) Adopting, amending, or updating plans to reflect changed conditions which may include necessary data collection, public participation, and policy development.
- (2) The second priority, Category II, includes projects related to carrying out the explicit

goals of the Coastal Area Management Act (CAMA), for which DEQ indicates there is a high priority for local actions or projects which are coastally dependent (water-related) or projects to implement the plan such as public facilities planning or land use regulations preparation. Examples of eligible projects and their associated priority category include:

- (A) Adopting or amending ordinances to further secure compliance with state rules in AECs pursuant to 15A NCAC 07H;
 - (B) Beach access plans and studies which may include inventory and identification of sites, design of access improvements, acquisition plans and studies, and legal studies necessary to determine the extent of public use rights;
 - (C) Erosion control plans and studies which may include mapping, erosion rate measurement, design of protection strategies for public lands, cost-benefit analysis, and 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 waterfront parks and public areas which may include site design, use studies, and cost analysis;
 - (F) Preparing, adopting, or amending ordinances necessary to carry out CRC certified plans, state rules, and the state coastal zone management plan which may include regulations related to zoning, subdivision, stormwater management, dune protection beyond AEC standards, sanitation, building, mobile homes, historic preservation, signs, natural area protection, and environmental impact statements.
- (3) The third priority, Category III, includes projects related to improving local coastal management and land use management capabilities. Examples of eligible projects and their associated priority category include:
- (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 which may include public education or involvement on coastal issues; solid waste planning; port planning; and sport and commercial fishing studies;

- (E) Enforcement of ordinances adopted to carry out certified plans;
- (F) Coordination of local coastal management activities with other local management activities which may include internal coordination, and city-county coordination; or
- (G) Other coastally related management projects.

(b) In addition, DEQ 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 in 15A NCAC 07B .0702(d)(2);
- (2) the extent to which the project includes measures of environmental protection beyond Areas of Environmental Concern (AEC) standards of Subchapter 15A NCAC 07H;
- (3) applicant's urgency of need;
- (4) past history of applicant's implementation of planning and management grant program activities;
- (5) feasibility of completion of project by the applicant;
- (6) past experience with land use planning and implementation projects 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.

(c) Matching fund requirements are based on the North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3). Local government contributions for land use planning 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.

(d) Any local government whose plan is not certified due to failure to meet the criteria listed in 15A NCAC 07B 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.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002; Amended Eff. March 1, 2016.

15A NCAC 07L .0504

History Note: Authority G.S. 113A-112; 113A-124;

*Eff. August 1, 2002;
Repealed Eff. March 1, 2016.*

15A NCAC 07L .0505 SCOPING OF PLANNING NEEDS
15A NCAC 07L .0506 PUBLIC PARTICIPATION
15A NCAC 07L .0507 MINIMUM CAMA LAND USE PLANNING AND FUNDING REQUIREMENTS

15A NCAC 07L .0508 STATE TECHNICAL ASSISTANCE, REVIEW AND COMMENT ON PRELIMINARY DRAFT PLAN
15A NCAC 07L .0509 INTERGOVERNMENTAL COORDINATION
15A NCAC 07L .0510 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS
15A NCAC 07L .0511 REQUIRED PERIODIC IMPLEMENTATIONAL STATUS REPORTS
15A NCAC 07L .0512 SUSTAINABLE COMMUNITIES COMPONENT OF THE PLANNING PROGRAM
15A NCAC 07L .0513 PROJECT DURATION
15A NCAC 07L .0514 RELATION TO OTHER FUNDING

*History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002;
Repealed Eff. March 1, 2016.*

15A NCAC 07L .0601 APPLICATION FORM
15A NCAC 07L .0602 ASSISTANCE IN COMPLETING APPLICATIONS AND SUBMITTAL
15A NCAC 07L .0603 PROCEDURE FOR APPROVAL AND DISAPPROVAL

*History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002;
Repealed Eff. March 1, 2016.*

15A NCAC 07L .0701 CONTRACT AGREEMENT
15A NCAC 07L .0702 PROGRESS REPORTS AND GRANT MONITORING
15A NCAC 07L .0703 PAYMENT
15A NCAC 07L .0704 PROJECT COMPLETION REPORT
15A NCAC 07L .0705 ACCOUNTABILITY

*History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2001;
Repealed Eff. March 1, 2016.*

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 07B .0802 MADE TO ORDER AND INSTALLATION SALES: GENERALLY
17 NCAC 07B .0803 CABINETMAKERS

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;
October 1, 1988;
Repealed Eff. March 1, 2016.*

17 NCAC 07B .0805 SIGN FABRICATING AND PAINTING
17 NCAC 07B .0806 REPAIRS AND ALTERATIONS: GENERALLY
17 NCAC 07B .0807 CLOTHING ALTERATIONS
17 NCAC 07B .0808 REUPHOLSTERING
17 NCAC 07B .0809 LAMINATING SERVICES
17 NCAC 07B .0810 BULLETS AND SHELLS-RELOADING
17 NCAC 07B .0811 FIRE EXTINGUISHERS: RECHARGING

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;
Repealed Eff. March 1, 2016.*

17 NCAC 07B .1002 SHOE REPAIRMEN
17 NCAC 07B .1003 WATCH: CLOCK AND JEWELRY REPAIRMEN

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;
February 1, 1988;
Repealed Eff. March 1, 2016.*

17 NCAC 07B .1901 TIRE RECAPPING MATERIALS

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Repealed Eff. March 1, 2016.*

17 NCAC 07B .1903 TIRE REPAIR MATERIALS
17 NCAC 07B .1904 SALES BY TIRE RECAPPERS

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. May 1, 2009; October 1, 1993;
Repealed Eff. March 1, 2016.*

17 NCAC 07B .3401 MEMORIAL STONE SALES

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-262;
Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;*

Amended Eff. August 1, 2009; December 1, 1994; October 1, 1993; June 1, 1992; October 1, 1991;
Repealed Eff. March 1, 2016.

**17 NCAC 07B .3403 SUPPLIES TO INSTALL
 MEMORIAL STONES/MONUMENT/BRONZE GRAVE
 MARKERS**

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. May 1, 2009; December 1, 1994; October 1, 1993; October 1, 1991;
Repealed Eff. March 1, 2016.

17 NCAC 07B .3601 FUNERAL EXPENSES

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; October 1, 1993; June 1, 1992; October 1, 1991; February 1, 1987;
Repealed Eff. March 1, 2016.

17 NCAC 07B .3701 LUBRICATING SERVICE

History Note: Authority G.S. 105-164.3; 105-164.4; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991;
Repealed Eff. March 1, 2016.

17 NCAC 07B .4501 SALES BY LAUNDRIES: ECT.

History Note: Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 2009; April 1, 1997; October 1, 1993; June 1, 1992; October 1, 1991;
August 1, 1988;
Repealed Eff. March 1, 2016.

**17 NCAC 07B .4506 GARMENT REPAIRS AND
 STORAGE**

**17 NCAC 07B .4507 RUG REINSTALLATION
 CHARGES**

History Note: Authority G.S. 105-164.3; 105-164.4; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46;
Eff. February 1, 1976;
Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991;
Repealed Eff. March 1, 2016.

**17 NCAC 07B .4603 MOTOR VEHICLE SERVICE
 BUSINESSES**

**17 NCAC 07B .4604 SPECIAL EQUIPMENT-
 ACCESSORIES: MOTOR VEHICLES**

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.5; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. September 1, 2006; October 1, 1993; June 1, 1992; October 1, 1991; July 1, 1990;
Repealed Eff. March 1, 2016.

17 NCAC 07B .4615 MANUFACTURED HOMES

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991; July 1, 1990; January 3, 1984;
Repealed Eff. March 1, 2016.

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

CHAPTER 02 – BOARD OF ARCHITECTURE

21 NCAC 02 .0302 EXAMINATION

(a) Licensure by Examination. Upon successful completion of all sections of the Architectural Registration Exam (ARE) as prepared by the National Council of Architecture Registration Boards (NCARB), fulfillment of all NCARB Intern Development Program (IDP) requirements and completion of the National Architectural Accrediting Board (NAAB) accredited degree, an individual may submit the application and fee for licensure by exam and may then be granted a license to practice architecture. G.S. 83A-7(a)(1)a. shall be deemed satisfied through completion of the requirements set forth in Subparagraphs (1) through (4) of this Paragraph. The Board shall grant eligibility to take the ARE to those individuals who:

- (1) are of good moral character as defined in G.S. 83A-1(5);
- (2) are at least 18 years of age;
- (3) have completed a NAAB accredited professional degree in architecture or who are actively enrolled in a NAAB accredited degree program that is identified by the college or university as an NCARB endorsed Integrated Path To Architectural Licensure Degree Program;
- (4) are actively enrolled in the NCARB IDP or a program approved as equivalent by the North Carolina Board of Architecture as set forth in G.S. 83A-7(a)(2).

(b) Retention of credit for purposes of licensure by examination in North Carolina.

- (1) Passing scores received after July 1, 2006 on any part of the ARE remain valid for a period

of time established by the exam provider, NCARB.

(2) Scores received on any part of the ARE prior to July 1, 2006 are invalid.

(c) Practical training pursuant to G.S. 83A-7(a)(2) means practical experience and diversified training as defined by the Intern Development Program through the NCARB.

(d) During the application process, the applicant may be interviewed by the Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to qualifications required in Paragraph (a) of this Rule.

(e) The ARE shall be graded in accordance with the methods and procedures recommended by NCARB. To successfully complete the ARE, an exam candidate shall receive a passing grade in each division of the ARE. Information regarding NCARB grading methods and procedures is found on their web site at www.ncarb.org.

(f) A person currently employed under the responsible control of an architect, who holds a Professional Degree from a NAAB accredited program, and who maintains an active NCARB IDP record or has successfully completed the NCARB IDP may use the title "Architectural Intern" or "Intern Architect" in conjunction with his or her current employment.

History Note: Authority G.S. 83A-1; 83A-6; 83A-7; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. March 1, 2016; July 1, 2014; November 1, 2010; July 1, 2006; July 1, 2000; July 1, 1996; June 1, 1995; December 1, 1992; July 1, 1991.

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

21 NCAC 10 .0214 RANDOM OFFICE INSPECTIONS

(a) Random Inspections Authorized. The Board shall conduct periodic inspections of chiropractic offices for the purpose of assessing compliance with G.S. 90, Article 8 and the rules of the Board. Inspections shall be conducted as follows:

- (1) Physicians shall be selected for office inspection randomly and not based on any suspicion of wrongdoing.
(2) The Board shall provide at least 30 days' advance written notice to a physician whose office is to be inspected. Notice shall include a copy of the checklist to be used by the inspector.
(3) Pursuant to G.S. 93B-8.2, the inspector shall not practice chiropractic in the same geographic market as the physician whose office is to be inspected.
(4) The inspector shall use a standardized checklist provided by the Board to assess whether the physician's office complies with statutory standards governing cleanliness and sanitation, condition of equipment, patient records,

readability of X-rays, signage, and display of licenses and certificates. The inspector shall record a grade of "Pass" or "Fail" for each item on the checklist, leave a copy of the graded checklist with the physician, and file the original with the Secretary of the Board.

(5) The inspector shall examine individual patient records only to assess legibility and completeness. For purposes of this Rule, a "complete" patient record includes a medical history, examination findings, diagnosis, and notes for each office visit. The inspector shall not draw any conclusions as to the quality of care or reasonableness of charges based on his or her examination of patient records.

(6) If the inspector issues a failing grade on any checklist item, the physician shall have 15 days from the date of inspection to submit to the Board staff a plan for making corrections. Thereafter, the physician shall have an additional 30 days to submit proof that corrections have been made.

(b) Appeal of Failing Grade. A physician whose office receives a failing grade on any checklist item may appeal to the Secretary of the Board. The Secretary shall review the inspector's findings and reverse any failing grade that, in the Secretary's opinion, was improvidently issued. If the Secretary is not a chiropractic physician, the Secretary shall consult with a physician member of the Board before ruling on the appeal. If the Secretary concludes that a failing grade was deserved, the Secretary shall have authority to grant additional time to make corrections upon the physician's showing that corrections cannot be completed within the time provided under Subparagraph (a)(6) of this Rule. No physician shall be subject to disciplinary action by the Board as the result of a random office inspection unless the physician willfully or through inaction fails to correct a deficiency cited by the inspector and affirmed by the Secretary.

(c) Exemptions. A physician whose office has been inspected pursuant to this Rule shall not be subject to further random office inspections for a period of three years following the inspection. In addition, the following categories of licensee shall not be subject to this Rule:

- (1) Physicians who do not treat any patients. This category includes chiropractic radiologists who only interpret X-rays supplied by other physicians, professional reviewers who only scrutinize treatment records supplied by other physicians, and instructors who only teach;
(2) Physicians who practice only in hospitals;
(3) Physicians who practice only in jurisdictions outside North Carolina; and
(4) Physicians whose practices are exclusively locum tenens.

(d) Inspections for Cause. This Rule shall not apply to office inspections ordered by the Secretary of the Board for cause as part of the investigation and prosecution of suspected disciplinary violations.

History Note: Authority G.S. 90-142; 90-154; 90-154.2; 90-154.3; Eff. March 1, 2016.

CHAPTER 45 – BOARD OF FEE-BASED PRACTICING PASTORAL COUNSELORS

21 NCAC 45 .0401 CERTIFICATION RENEWAL FORM

The Board shall mail each licensee the renewal form in the spring of each year. The licensee shall return the form on or before January 1 of the following year. The form shall ask for current home and business addresses and telephone numbers. Pastoral Counseling Associates shall submit an additional form documenting required supervision as stated in Rule .0801 of this Chapter.

History Note: Authority G.S. 90-385(f); 90-389; Eff. March 1, 1996; Amended Eff. March 1, 2016.

CHAPTER 52 – BOARD OF PODIATRY EXAMINERS

21 NCAC 52 .0208 CONTINUING EDUCATION

(a) An additional requirement for issuance of the annual renewal certificate shall be certification to the Board of proof of compliance with the continuing education provisions of the General Statutes. The Board shall notify all podiatrists that 25 hours are required annually, including one hour of controlled substances prescribing practices and controlled substance prescribing for chronic pain management.

(b) General CME policy - 25 hours per year as follows:

- (1) Completion of 25 hours of Continuing Medical Education (CME) is required per year (July 1- June 30) for renewal of licensure. CME credits shall not be carried over from the previous licensure year.
(2) It shall be the responsibility of the individual podiatrist to ascertain in advance that the courses he or she attends have received proper approval of the certifying organizations, and comply with the Standards, Requirements, and Guidelines for Approval of Sponsors of Continuing Education in Podiatric Medicine of the Council on Podiatric Medical Education...

decision and may be appealed as set out in G.S. 150B-23.

- (3) Certificates of completion of courses other than those sponsored by the NC Foot and Ankle Society (NCF&AS) shall be submitted to the Board on a form provided by the Board with the podiatrist's annual license renewal documents. Completion certificates shall be typed and contain the following information: (A) Podiatrist's name; (B) Course name, location, and date; (C) Number of hours CME completed; (D) Signature of seminar chairperson; and (E) Name of certifying or sponsoring agency.
(4) A licensed podiatrist participating in the second or third year of a medical residency or fellowship may submit a letter signed by the podiatric residency or fellowship director stating the podiatrist's name and dates of residency. This shall substitute for the 25-credit hour requirement and CME certificate required by this Rule.
(5) A podiatrist may submit his or her CME certificate(s) to the Board in facsimile, electronic, or hard copy format at any time during the renewal year.
(6) The Board shall retain CME documentation with the individual podiatrist's license renewal information.
(c) Category 1: Minimum requirement 20 hours per year, as follows:
(1) CME credit shall be granted for attendance at educational seminars offered by the NCF&AS. The number of qualifying hours of continuing education shall be determined and approved by the Board in advance based on the standards in 90-202.11. NCF&AS shall submit to the Board a listing of individuals attending its CME events and credits earned.
(2) CME credit shall be granted for attendance at educational seminars offered by other national, state, and podiatric education providers, as certified by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association (APMA). The number of qualifying hours of continuing education shall be determined and approved by the Board.
(3) Lecturers shall be granted one hour of credit for each hour of CPME- or APMA- approved lectures given, but such credit shall be limited to one hour for each discrete topic. A brief summary of the content of each lecture shall be submitted to the Board for approval.
(4) Category 1 is limited to live educational seminars either offered by NCF&AS or by sponsors pre-approved by CPME: http://www.cpme.org (CPME 700: "Approved Sponsors of Continuing Education in

Podiatry"). (APMA or CPME-approved online or journal courses are considered Category 2.)

- (5) Since CPME evaluates only CME conducted in the United States, North Carolina-licensed podiatrists practicing outside the United States or participating in a foreign fellowship or other short-term residency abroad may apply to the Board to have their continuing medical education credits from their country of practice considered and evaluated by the Board on an individual basis.

(d) Category 2: A maximum of only 5 of the total 25 CME hours per year shall be allowed as follows:

- (1) CME credit shall be allowed for educational programs approved for Category 1 credit by the American Medical Association (AMA) and the American Osteopathic Association (AOA) or their affiliated organizations.
(2) CME credit shall be allowed for courses approved by North Carolina Area Health Education Centers (AHEC).
(3) Online or medical journal courses approved by CPME are permitted.
(4) For courses not pre-approved by AHEC, AOA, or AMA, all requests for CME approval must contain a timeline and course description and be submitted to the Board for approval.

(e) Waiver for Certified Illness, Medical Condition, Natural Disaster, or Undue Hardship. The Board may waive the continuing education requirement for license renewal in the following cases that preclude a licensed podiatrist from completing his or her CME requirement within the 18-month timeframe from July 1 of the year of the last license or renewal issuance through December 31 of the following year:

- (1) An unexpected illness or medical condition certified by a letter from a licensed physician, nurse practitioner (NP), or physician assistant (PA) regarding the licensee or the licensee's parents, spouse, children and other persons dependent upon the podiatrist for daily living supports; or
(2) An undue hardship (such as active military service or natural disaster).

In such cases, the Board shall issue a conditional license predicated on the licensee acquiring all of the required continuing education credits in a mutually-agreeable timeframe, but no later than 24 months after December 31 of the year following the latest year of license or renewal issuance. Requests for CME waiver shall be received by the Board before the end of the grace period deadline for license renewal. The Board may require additional information when necessary to confirm the need for exemption to support the licensee's claim. The Board shall notify the licensee of its decision in writing within 45 days of receipt by the Board of all needed documentation.

History Note: Authority G.S. 90-202.4(g); 90-202.11; S.L. 2015-241, s. 12F.16(b) and (c); Eff. February 1, 1976;

Amended Eff. June 1, 2013; October 1, 2012; February 1, 2012; November 1, 2011; June 1, 2011; December 1, 1988; Readopted Eff. March 1, 2016.

CHAPTER 65 – BOARD OF RECREATIONAL THERAPY LICENSURE

21 NCAC 65 .0203 LICENSED RECREATIONAL THERAPIST STANDARDS OF PRACTICE

A Licensed Recreational Therapist shall practice recreational therapy, also known as therapeutic recreation, in accordance with the most recent version of the American Therapeutic Recreation Association, Standards for the Practice (the ATRA SOP), including any subsequent amendments or editions. A copy may be purchased from ATRA at: 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.

History Note: Authority G.S. 90C-22(2); 90C-24(a)(3); 90C-24(a)(10); 90C-24(a)(13); Eff. December 1, 2006; Amended Eff: March 1, 2016.

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

Under the supervision of a Licensed Recreational Therapist, a Licensed Recreational Therapy Assistant shall practice recreational therapy in accordance with ATRA SOP, as incorporated by reference in Rule .0203 of this Section.

History Note: Authority G.S. 90C-22(3); 90C-24(a)(3); 90C-24(a)(10); 90C-24(a)(13); Eff. December 1, 2006; Amended Eff: March 1, 2016.

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

(a) The Licensed Recreational Therapy Assistant (LRTA) 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 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 of this Section.

(b) Clinical supervision shall be performed in accordance with the ATRA SOP, including the following elements:

- (1) The Licensed Recreational Therapist shall:
(A) Determine the recreational therapy treatment plan and the elements of that plan appropriate for delegation to a LRTA;
(B) Determine whether the LRTAs 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 SOP;
 - (D) Review chart documentation, re-examine, and reassess the patient or client and revise the recreational therapy treatment 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 available in-person or by telecommunication to the LRTA while the LRTA is in practice; and
 - (H) Be limited to clinically supervising only the number of LRTAs that provides safe and effective patient or client intervention at all times.
- (2) A Licensed Recreational Therapy Assistant 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 as set forth in the ATRA SOP and employer policy;
 - (C) Make modifications to 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 patient or client care provided in accordance with written employer policy.
- (3) Prohibited Practice:
- (A) A LRTA shall not engage in practices of a LRT; and
 - (B) A LRTA shall not engage in acts beyond the scope of practice delegated by the supervising LRT.

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

(a) For the purposes of G.S. 90C-27(a), a candidate for licensure as a recreational therapist 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. The academic major or specialization shall 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 or by the Committee on Accreditation of Recreational Therapy Education (CARTE) under the Commission of Accreditation of Allied Health Education (CAAHEP).

(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 shall reflect five courses, three hours per course in which the title, course description, and course outline reflects recreational therapy or therapeutic recreation content related to the "APIE Process" including Assessment/Evaluation, Planning and Implementation, and Advancement of the Profession. For candidates for licensure who have passed the NCTRC examination and were certified by the National Council for Therapeutic Recreation Certification, 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, that provide knowledge necessary to develop the ability to practice recreational therapy or therapeutic recreation and are required for the major or specialization in recreational therapy or therapeutic recreation. Supportive courses provide knowledge about human development, human functioning, health, health care and human services, illness and disabling conditions. Supportive courses for a degree or

History Note: Authority G.S. 90C-22(3); 90C-24(a)(1); 90C-24(a)(3); 90C-24(a)(6); 90C-24(a)(13); Temporary Adoption Eff. December 1, 2005; Eff. January 1, 2007; Amended Eff. March 1, 2016.

specialization in recreational therapy or therapeutic recreation 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 courses related to the practice of recreational therapy.

(3) In addition to the coursework required in Subparagraphs (c)(1) and (2) of this Rule, a field placement course 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 shall meet the criteria for a field placement set forth by the NCTRC in the NCTRC Standards publication herein incorporated by reference including any subsequent amendments and editions. 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" 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" 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 shall be licensed by the North Carolina Board of Recreational Therapy Licensure (NCBRTL).

(D) "Successful performance" in a field placement course is defined as a grade of D or Pass awarded by the university supervisor. "Successful performance from the agency supervisor" is defined by an overall rating of "Achieves

Expectations" documented on the Clinical Performance Appraisal and Summary Reference Form, (CPASRF) that may be accessed at the Board's website, www.ncbrtl.org or by contacting the Board. The CPASRF includes the content and performance criteria from the ATRA SOP, as set forth in Rule .0203 of this Chapter. The CPASRF is provided by the Board or at the Board's website www.ncbrtl.org

(d) Candidates for licensure who have been 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 performance as a recreational therapist or therapeutic recreation specialist during which time they were a "CTRS™" by the NCTRC. Successful work performance shall be verified to the NCBRTL on a CPASRF provided by NCBRTL. "Successful performance" is defined as an overall rating completed by the agency supervisor of "Achieves Expectations" on the CPASRF provided by the NCBRTL.

(e) Successful passage of the NCTRC examination 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.

History Note: Authority 90C-22(2)(i); 90C-22(7); 90C-24(13); 90C-27(a);

Temporary Adoption Eff. December 1, 2005;

Eff. June 1, 2006;

Amended Eff. March 1, 2016; October 1, 2007.

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), 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) Coursework for an Associate degree shall reflect the following:

- (1) Nine semester hours in therapeutic recreation or recreational therapy content courses;
- (2) Ten semester hours in therapeutic recreation or recreational therapy intervention courses;
- (3) Fifteen semester hours of supportive coursework, including:
 - (A) A minimum of five semester hours of anatomy and physiology;

- (B) Three semester hours of abnormal psychology;
 - (C) Three semester hours of growth and development across life span; and
 - (D) The remaining four semester hours in any combination of supportive coursework shall be in the areas of psychology, sociology, physical and biological science, human services or physical education;
- (4) A course with a 380 hour field placement experience in a clinical, residential, or community-based agency under the supervision of a Licensed Recreational Therapist or Licensed Recreational Therapy Assistant approved by the university supervisor. The field placement shall be 12 consecutive weeks with each week including 20 hours. Supervisors of field placements in North Carolina shall be licensed by NCBRTL. Successful performance in a field placement course shall be demonstrated to the NCBRTL. "Successful performance" in a field placement course is defined as a grade of D or pass awarded by the university field placement supervisor and an Overall Rating of "Achieves Performance Expectations" awarded by the agency supervisor on the performance appraisal form (CPASRF) provided by the NCBRTL, available on the Board's website, www.ncbrtl.org or by contacting the Board.

History Note: Authority G.S. 90C-22(2)(i); 90C-22(7); 90C-22(8); 90C-24(a)(3); 90C-27(b); Temporary Adoption Eff. December 1, 2005; Eff. December 1, 2006; Amended Eff. March 1, 2016; October 1, 2007.

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, an application package from the North Carolina Board of Recreational Therapy Licensure.
- (b) Applicants may submit an application form through the postal service or online at the Board website. All additional items required by this Rule shall be postmarked by the application deadline, the 15th of each month. Applicants making the deadline will be contacted for any missing items. Those received after the 15th shall be held for the next month's Board review.
- (c) All items shall be provided to constitute a full application package, including:
 - (1) A head and shoulders color photograph of the applicant;
 - (2) The initial application for licensure fee as stated in Rule .0501 of this Chapter;
 - (3) Official transcripts from each college or university attended;

- (4) Clinical Performance Appraisal and Summary Reference Form rating the applicant's internship signed by the agency supervisor as defined in Rule .0301 of this Chapter;
- (5) A completed NCBRTL application including applicant contact information, and educational requirements as set forth in Rule .0301 and .0302 of this Chapter; and
- (6) Proof of successful exam passage as defined in Rule.0301 of this Chapter.

- (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.
- (e) The Board shall issue all licensees a licensure card and certificate bearing the current name of the licensee, and licensee number.
- (f) The Board shall send any notices to a licensee to the last known contact information.

History Note: Authority G.S. 90C-24(a)(3); 90C-27(a)(2), 90C-27(b)(2); 90C-32; Temporary Adoption Eff. December 1, 2005; Eff. January 1, 2007; Amended Eff. March 1, 2016.

21 NCAC 65 .0501 LICENSURE FEES

- (a) A cashier's check, money order, certified check, an employer's 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 checks, or online payment shall be accepted for payment of renewal fee and record maintenance fee. The 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
 - (B) Licensed Recreational Therapy Assistant \$50.00
 - (2) Licensure renewal fees (due every two years)
 - (A) Licensed Recreational Therapist \$75.00
 - (B) Licensed Recreational Therapy Assistant \$35.00
 - (3) Inactive status \$35.00
 - (4) Record Maintenance fee (due non-renewal year)
 - (A) Licensed Recreational Therapist \$75.00
 - (B) Licensed Recreational Therapy Assistant \$35.00

History Note: Authority G.S. 90C-24(a)(3); 90C-24(a)(10); 90C-28; Temporary Adoption Eff. December 6, 2005;

*Eff. December 1, 2006;
Amended Eff. March 1, 2016; September 1, 2009.*

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

- (a) Board staff shall send a renewal and fee notice to a licensee 60 days prior to the expiration date at the licensees' last known contact address listed on licensee's online profile unless a person has advised the Board that he or she does not intend to renew the license. Pursuant to Rule .0603 of this Section, it is the responsibility of the licensee to keep his or her address current on the his or her online profile on Board website, www.ncbrtl.org.
- (b) Licenses issued shall be subject to renewal every two years and shall include documentation as referenced in Rule .0601 in this Section to support completion of continuing education requirements.
- (c) Each licensee shall complete and submit a renewal application, continuing education documentation and color photo of the licensee. All materials shall be postmarked or submitted on his or her online profile on the Board website by the 15th of the licensee's birth month. If the renewal application and fee is not received or postmarked by the 30th of the licensee's birth month, the license shall expire.

*History Note: Authority G.S. 90C-24(a)(3); 90-29;
Eff. January 1, 2007;
Amended Eff. March 1, 2016; May 1, 2013; October 1, 2009.*

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

- (a) Each licensee shall notify the Board and make changes to his or her online profile within 30 days of a change of name, work, or home address. The Board shall issue each licensee a username 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 government issued identification, or a copy of a marriage certificate, marriage license, divorce decree, or evidence of legal change of name.

*History Note: Authority G.S. 90C-24(a)(3); 90C-29;
Eff. January 1, 2007;
Amended Eff. March 1, 2016.*

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 the renewal application every two years. This form documents the duties and functions set forth in Rule .0205 of this Chapter. This form may be obtained through NCBRTL office or Board website, www.ncbrtl.org.

*History Note: Authority G.S. 90C-22(3); 90C-29;
Eff. March 1, 2016.*

21 NCAC 65 .0801 INACTIVE STATUS

- (a) A licensee shall request inactive status by completing the Inactive Status Request Form, that includes the licensee's contact information and the reason for request and paying the fee set forth in Rule .0501 of this Chapter. The form is available through the Board or Board's website, www.ncbrtl.org.
- (b) While on inactive status, an individual shall not practice recreational therapy in North Carolina.
- (c) A Licensed Recreational Therapist or Licensed Recreational Therapy Assistant who has been on inactive status for a period of one year or less may convert to active status by:
 - (1) Submission of a reinstatement application as set forth in Rule .0701 in this Chapter to the Board;
 - (2) Completion of 10 continuing education hours, or the amount of hours as set forth in Rule .0601 in this Chapter for license renewal for a Licensed Recreational Therapist or Licensed Recreational Therapy Assistant; and
 - (3) Payment of the license renewal fee.
- (d) A Licensed Recreational Therapist or Licensed Recreational Therapy Assistant who has been on inactive status for a period greater than one year may convert to active status by:
 - (1) Submission of a reinstatement application as set forth in Rule .0701 in this Chapter to the Board;
 - (2) Completion of of 10 continuing education hours per year of inactive status, or the amount of hours, as set forth in Rule .0601 in this Chapter for license renewal; and
 - (3) Payment of the current license renewal fee.
- (e) A Licensed Recreational Therapist who has been on inactive status for a period greater than five years may convert to active status by:
 - (1) Submission of a reinstatement application as set forth in Rule .0701 in this Chapter to the Board; and
 - (2) Submission of proof of passage of the examination as set forth in Rule .0301 in this Chapter.

*History Note: Authority G.S. 90C-24(a)(3); 90C-31;
Temporary Adoption Eff. December 1, 2005;
Eff. December 1, 2006;
Amended Eff. March 1, 2016.*

21 NCAC 65 .0902 MILITARY ENDORSEMENT

- (a) The military trained applicant for licensure by endorsement shall make application to the Board by showing his or her credentials are substantially equivalent or exceed the requirements for licensure, as set forth in Section .0300 of this Chapter.
- (b) The application in Paragraph (a) of this Rule shall be accompanied by:
 - (1) A color photograph;
 - (2) Official college transcripts from all colleges attended;
 - (3) Verification of passage of the Exam given by National Council for Therapeutic Recreation Certification;

- (4) The licensure fee 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) Applicants pursuant to G.S. 93B-15.1(a2) shall pass the Military Exemption MOS Recreational Therapy Examination given by the North Carolina Board of Recreational Therapy Licensure.

(d) A military spouse applicant for licensure by endorsement, who possesses a current license whose licensure requirements are substantially equivalent or exceed the 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.

(e) The application in Paragraph d) 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 Exam given by National Council for Therapeutic Recreation Certification;
- (5) The licensure fee as set forth in Rule .0501 of this Chapter; and
- (6) 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.

History Note: Authority G.S. 90C-27; 90C-33; 93B-15.1; Eff. March 1, 2016.

document compatible with the most recent version of Microsoft Word. Faxed documents shall be sent to: (919) 431-3100. Electronic mail with attached file shall be sent by electronic transmission to: oah.clerks@oah.nc.gov. The faxed documents or electronic mail with attached file shall be deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed filing and the appropriate filing fee (if a fee is required by G.S. 150B-23.2) are received by OAH within seven business days following the transmission of the faxed documents or electronic mail with attached file. Electronic mail without an attached file as specified in this Paragraph shall not constitute a valid filing with the Office of Administrative Hearings.

(c) Every pleading and other documents filed with OAH shall be signed by the attorney, mediator, or other party who prepared the document, and shall contain the preparer's name, mailing address, electronic mail address, and telephone number. Documents prepared by an attorney shall have the attorney's North Carolina State Bar number.

(d) Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

History Note: Authority G.S. 7A-750; 7A-751(a); 150B-23.2; 150B-23.3; 150B-40(c); Eff. August 1, 1986; Amended Eff. May 1, 2009; January 1, 2006; April 1, 2004; April 1, 2001; August 1, 2000; February 1, 1994; July 1, 1992; May 1, 1989; January 1, 1989; Emergency Amendment Eff. October 1, 2009; Temporary Amendment Eff. December 1, 2009; Amended Eff. October 1, 2010; Temporary Amendment Eff. January 1, 2012; Amended Eff. March 1, 2016; November 1, 2012.

26 NCAC 03 .0102 DEFINITIONS AND CONSTRUCTION

(a) The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition, the following definitions apply:

- (1) "Chief Administrative Law Judge" means the person appointed according to G.S. 7A-752.
- (2) "File" or "Filing" means:
 - (A) to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Office of Administrative Hearings, and acceptance thereof by the clerk, except that when a party submits a document for filing to the administrative law judge during the course of a contested case hearing and the filing is accepted by the administrative law judge, the judge shall note thereon the filing date. All documents filed with the Office of Administrative Hearings, except exhibits, shall be in letter size 8 1/2" by 11"; or

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

26 NCAC 03 .0101 GENERAL

(a) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.

(b) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings in the OAH electronic filing system (e-OAH), by facsimile (fax), or by electronic mail with an attached file either in PDF format or a

- (B) electronic filing as defined in 26 NCAC 03 .0501(1) .
- (3) "Service" or "Serve" means:
 - (A) delivery by electronic mail with an attached file in a format that is readily accessible to the recipient;
 - (B) delivery by facsimile (fax);
 - (C) personal delivery;
 - (D) delivery by first class United States Postal Service mail;
 - (E) delivery by overnight express mail service; or
 - (F) electronic service as defined in 26 NCAC 03 .0501(4) .

(b) A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules.

(c) Service by mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service.

(d) Service by overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in the custody of an overnight express mail service.

(e) Service by electronic mail or fax shall be deemed to occur one hour after it is sent, provided that:

- (1) documents sent after 5 pm are deemed sent at 8 am the following business day; and
- (2) documents sent by electronic mail or fax that are not readable by the recipient are not deemed served. Within five business days of receipt of an unreadable document, the receiving party shall notify the sending party of the unreadability of the document.

Service by electronic mail or fax is treated the same as service by mail for the purpose of adding three days to the prescribed period to respond under Rule 6(e) of the Rules of Civil Procedure as contained in G.S. 1A-1.

(f) The rules of statutory construction contained in Chapter 12 of the General Statutes shall be applied in the construction of these Rules.

History Note: Authority G.S. 7A-752; 150B-23; 150B-23.3; Eff. August 1, 1986; Amended Eff. October 1, 1991; January 1, 1989; November 1, 1987; September 1, 1986; Temporary Amendment Eff. January 1, 2012; Amended Eff. March 1, 2016; November 1, 2012.

26 NCAC 03 .0501 DEFINITIONS

In addition to the definitions contained in G.S. 150B-23.3, the following terms shall mean:

- (1) "Electronic filing" or "filed electronically" means the electronic transmission of the petition, notice of hearing, pleadings, or any other documents filed in a contested case with the Office of Administrative Hearings by uploading to the case docket using the OAH

electronic filing system (e-OAH) accessed through a link on the OAH website at www.ncoah.com.

- (2) "Electronic Filing Service Provider (EFSP)" means the service provided by the Office of Administrative Hearings for electronic filing and electronic service of documents by way of the Internet accessed through a link on the OAH website at www.ncoah.com.
- (3) "Electronic signature" or "signed electronically" means a graphic version of the e-OAH user's signature or "s/" followed by the e-OAH user's typewritten name. This shall be the legal equivalent of the e-OAH user's handwritten signature.
- (4) "Electronic service" or "served electronically" means the electronic transmission of the petition, notice of hearing, pleadings, or any other documents to an attorney, mediator, or party utilizing the attorney's, mediator's, or party's electronic mail address registered with the Office of Administrative Hearings in e-OAH.
- (5) "Filed" means received by the chief hearings clerk of the Office of Administrative Hearings in e-OAH.

History Note: Authority G.S. 7A-750; 150B-23; 150B-23.3; Eff. March 1, 2016.

26 NCAC 03 .0502 GENERAL

(a) The Office of Administrative Hearings shall permit documents filed and served in a contested case to be filed and served electronically by means of the Electronic Filing Service Provider. All attorneys, mediators, and other parties using e-OAH shall register to use the system through a link on the OAH website at www.ncoah.com. All e-OAH users shall keep current their electronic mail address in e-OAH.

(b) In contested cases filed in e-OAH, registration as an e-OAH user constitutes waiver of the right to receive notice or service by first class mail, certified mail, or personal delivery, and consent to electronic service and receipt of contested case documents at the e-OAH user's electronic mail address registered in e-OAH.

(c) An e-OAH user shall be responsible for the readability of any document filed or served electronically by that user. Within five business days of receipt of an unreadable document filed or served electronically, the receiving party shall notify the sending party of the unreadability of the document.

(d) Pleadings and other documents filed or served electronically shall contain the electronic signature of the attorney, mediator, or party who prepared the document and the preparer's name, mailing address, electronic mail address, and telephone number. Documents prepared by an attorney shall have the attorney's North Carolina State Bar number.

(e) Documents filed in e-OAH are filed when received by the chief hearings clerk of the Office of Administrative Hearings. Upon completion of filing, the clerk shall send the e-OAH user a confirmation receipt that includes the date and time of filing which shall be proof of filing.

(f) Documents filed electronically after 5 pm shall be deemed filed at 8 am the following business day.

(g) An e-OAH filing in a contested case shall be served electronically on all other attorneys or other parties in that contested case and shall include a certificate of service.

(h) Electronic service shall be treated as the same as service by mail for the purpose of adding three days to the prescribed period to respond under Rule 6(e) of the Rules of Civil Procedure as contained in G.S. 1A-1.

(i) A subpoena issued in a contested case by the chief hearings clerk of the Office of Administrative Hearings shall be signed electronically by the clerk.

(j) In contested cases filed electronically, the applicable filing fee shall be:

- (1) forwarded by first class mail or overnight express mail contemporaneously with the electronic filing;
- (2) paid personally to the chief hearings clerk of the Office of Administrative Hearings within five business days of the filing; or
- (3) paid by electronic funds transfer.

History Note: Authority G.S. 7A-750; 150B-23; 150B-23.2; 150B-23.3;

Eff. March 1, 2016.

26 NCAC 03 .0503 REGISTRANTS

Only attorneys, mediators, and other parties associated with a contested case docket shall be permitted to register with e-OAH.

History Note: Authority G.S. 7A-750; 150B-23; 150B-23.3;

Eff. March 1, 2016.

26 NCAC 03 .0504 INTEGRATION WITH OTHER RULES

The rules in this Section are intended to supplement the other rules in this Chapter. In the event of a conflict, the rules in this Section shall control with respect to contested cases filed in e-OAH.

History Note: Authority G.S. 7A-750; 150B-23.3;

Eff. March 1, 2016.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission March 17, 2016 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)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House
Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Anna Baird Choi
Jeanette Doran
Danny Earl Britt, Jr.

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

April 21, 2016	May 19, 2016
June 16, 2016	July 21, 2016

AGENDA

**RULES REVIEW COMMISSION
THURSDAY, APRIL 21, 2016 10:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. 911 Board – 09 NCAC 06C .0111, .0112, .0113, .0114, .0205, .0216 (Reeder)
 - B. Social Services Commission – 10A NCAC 71P .0101, .0102, .0103, .0201, .0202, .0301, .0302, .0303, .0304, .0306, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0502, .0504, .0505, .0506, .0507, .0508, .0601, .0602, .0603, .0604, .0608, .0701, .0702, .0704, .0705, .0801, .0802, .0803, .0804, .0805, .0902, .0903, .0904, .0905, .0906 (Thomas)
 - C. Department of Insurance - 11 NCAC 18 .0103; 20 .0202, .0203, .0204, .0301, .0302, .0404, .0410, .0601; 21 .0106 (Reeder)
 - D. Property Tax Commission – 17 NCAC 11 .0216, .0217 (Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed February 23, 2016 through March 21, 2016
 - Pesticide Board (Reeder)
 - Child Care Commission (Reeder)
 - Radiation Protection Commission (Reeder)
 - Criminal Justice Education and Training Standards Commission (Reeder)
 - Department of Revenue (Hammond)
 - Board of Dental Examiners (Thomas)
 - Board of Examiners of Electrical Contractors (Thomas)
 - Medical Board (Thomas)
 - Midwifery Joint Committee (Thomas)
 - Board of Pharmacy (Thomas)
 - Real Estate Commission (Thomas)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting

- VI. Existing Rules Review
- Review of Reports
 1. 10A NCAC 13J – DHHS/Medical Care Commission (Thomas)
 2. 10A NCAC 27A - DHHS/Commission for Mental Health (Thomas)
 3. 10A NCAC 27B - DHHS/Commission for Mental Health (Thomas)
 4. 10A NCAC 27D - DHHS/Commission for Mental Health (Thomas)
 5. 11 NCAC 06 - Department of Insurance (Thomas)
 6. 11 NCAC 13 - Department of Insurance (Thomas)
 7. 16 NCAC 01 - Department of Public Instruction (Reeder)
 8. 16 NCAC 02 - Department of Public Instruction (Reeder)
 9. 16 NCAC 03 - Department of Public Instruction (Reeder)
 10. 25 NCAC 01F - State Human Resources Commission (Reeder)
- VII. Commission Business
- Next meeting: Thursday, May 19, 2016

**Commission Review
Log of Permanent Rule Filings
February 23, 2016 through March 21, 2016**

PESTICIDE BOARD

The rules in Chapter 9 are from the Food and Drug Protection Division of the Department of Agriculture and Consumer Services.

The rules in Subchapter 9L are from the N.C. Pesticide Board and include organizational rules (.0100); registration (.0300); samples and submissions (.0400); pesticide licenses (.0500); pesticide and pesticide container disposal (.0600); declaration of pests and restrictions on their control (.0700); bulk distribution of pesticides (.0800); aerial application of pesticides (.1000); private pesticide applicator certification (.1100); arsenic trioxide (.1200); availability of restricted use pesticides (.1300); ground application of pesticides (.1400); worker protection standards for agricultural pesticides (.1800); pesticide storage (.1900); chemigation (any process whereby pesticides are applied to land, crops, or plants using an irrigation system) (.2000); hearing rules of the North Carolina pesticide board (.2100); and interim protection measures for the Carolina heelsplitter mussel (.2200).

<u>Definitions</u>	02	NCAC	09L	.0504
Amend/*				
<u>Classifications</u>	02	NCAC	09L	.0505
Amend/*				
<u>Categories of Consultants</u>	02	NCAC	09L	.0507
Amend/*				
<u>Recertification Options</u>	02	NCAC	09L	.0522
Amend/*				
<u>Definitions</u>	02	NCAC	09L	.1102
Amend/*				
<u>Single Purchase Emergency Certification Permit</u>	02	NCAC	09L	.1104
Amend/*				
<u>Term of Certification; Recertification</u>	02	NCAC	09L	.1108
Amend/*				

CHILD CARE COMMISSION

The rules in Chapter 9 are child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age and developmentally appropriate environments for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children (.0800); nutrition standards (.0900);

transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); voluntary rated licenses (.2800); developmental day services (.2900); and NC pre-kindergarten services (.3000).

Requirements for Daily Operations 10A NCAC 09 .1718
Amend/*

RADIATION PROTECTION COMMISSION

The rules in Chapter 15 are from the Radiation Protection Commission and include general provisions (.0100); registration of radiation machines, facilities and services (.0200); licensing of radioactive material (.0300); safety requirements for industrial radiography operations (.0500); x-rays in the healing arts (.0600); use of radioactive sources in the healing arts (.0700); requirements for analytical x-ray equipment (.0800); requirements for particle accelerators (.0900); notices, instructions, reports and inspections (.1000); fees (.1100); land disposal of radioactive waste (.1200); requirements for wire-line service operators and subsurface-tracer studies (.1300); tanning facilities (.1400); licenses for disposal site access (.1500); and standards for protections against radiation (.1600).

Definitions 10A NCAC 15 .1403
Amend/*

Warning Signs Required 10A NCAC 15 .1414
Amend/*

Equipment 10A NCAC 15 .1415
Amend/*

Records: Reports and Operating Requirements 10A NCAC 15 .1418
Amend/*

Communication with the Agency: Agency Address 10A NCAC 15 .1419
Amend/*

Fees and Payment 10A NCAC 15 .1423
Amend/*

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Subchapter 9F cover concealed handgun training.

Sanctions 12 NCAC 09F .0106
Amend/*

REVENUE, DEPARTMENT OF

The rules in Chapter 1 are the departmental rules of the Department of Revenue.

Subchapter 1C rules deal with general administration and contain definitions (.0100); hearing procedures (.0200); forms (.0300); interest requirements (.0400); form of payment (.0500); substitution of forms (.0600); and electronic filing forms (.0700).

Forms and Required Account Identification Information 17 NCAC 01C .0322
Amend/*

The rules in Chapter 6 deal with individual income taxes.

The rules in Subchapter 6B concern individual income tax including filing rules (.0100); personal exemptions (.0300); annuities and pensions (.0400); general (.0500); other tax credits (.0600); active and reserve duty military pay (.0700); installment sales (.0800); sale of principal residence (.0900); private annuity transactions (.1000); involuntary conversation (.1100); cost basis of property (.1200); tenancy by the entirety (.1300); income and deductions of decedents (.1400); stock dividends and stock rights (.1500); basis of divested stock (.1600); exempt income (.1700); scholarship and fellowship grants (.1800); employee death benefits (.1900); depreciation and depletion (.2000); conservation and land clearing (.2100); travel expenses (.2200); education expenses (.2300); moving expenses (.2400); retirement plans (.2500); carry-over loss (.2600); interest deduction (.2700); taxes paid (.2800); casualty and theft losses (.2900); contributions (.3000); medical expenses (.3100); penalties individual income tax (.3200); accounting periods and methods (.3300); statute of limitations and federal changes (.3400); partnerships (.3500); life estate and remainder interest (.3600); estates and trusts (.3700); miscellaneous rules (.3800); non-residents and part-year residents (.3900) and S corporation (.4000).

<u>Completing a Return</u>	17	NCAC	06B	.0104
Readopt with Changes/*				
<u>Federal Forms</u>	17	NCAC	06B	.0106
Readopt with Changes/*				
<u>Extensions</u>	17	NCAC	06B	.0107
Readopt with Changes/*				
<u>Filing Requirements - General Statement</u>	17	NCAC	06B	.0109
Readopt with Changes/*				
<u>Joint Federal but Separate State Return</u>	17	NCAC	06B	.0112
Readopt with Changes/*				
<u>Taxpayers Domiciled in Community Property States</u>	17	NCAC	06B	.0113
Readopt with Changes/*				
<u>Computation of Taxable Income - General</u>	17	NCAC	06B	.0114
Readopt with Changes/*				
<u>Additions to Adjusted Gross Income</u>	17	NCAC	06B	.0115
Readopt with Changes/*				
<u>Deductions From Adjusted Gross Income</u>	17	NCAC	06B	.0116
Readopt with Changes/*				
<u>Reporting Income from Conveyance of Real Property Held in...</u>	17	NCAC	06B	.0119
Adopt/*				
<u>Penalties for Failure to File and Pay</u>	17	NCAC	06B	.3203
Readopt with Changes/*				
<u>Negligence Penalties</u>	17	NCAC	06B	.3204
Readopt with Changes/*				
<u>Service Members Civil Relief Act</u>	17	NCAC	06B	.3407
Readopt with Changes/*				
<u>General</u>	17	NCAC	06B	.3501
Readopt with Changes/*				
<u>Partnership Returns</u>	17	NCAC	06B	.3503
Readopt with Changes/*				
<u>NonResident Partners</u>	17	NCAC	06B	.3513
Readopt with Changes/*				
<u>Interest Income Passed Through to Partners</u>	17	NCAC	06B	.3529
Readopt with Changes/*				
<u>Payment of Tax</u>	17	NCAC	06B	.3718
Readopt with Changes/*				
<u>Allocation of Adjustments</u>	17	NCAC	06B	.3723
Readopt with Changes/*				

<u>Deposit of Payment</u>	17	NCAC	06B	.3804
Readopt with Changes/*				
<u>Taxable Income of Nonresidents and Part-Year Residents</u>	17	NCAC	06B	.3904
Readopt with Changes/*				
<u>NonResident Members of Professional Athletic Teams</u>	17	NCAC	06B	.3905
Readopt with Changes/*				
<u>Purchase of Real Property Located in North Carolina from ...</u>	17	NCAC	06B	.3906
Adopt/*				
<u>Nonresident Shareholders</u>	17	NCAC	06B	.4003
Readopt with Changes/*				
<u>Basis In Stock</u>	17	NCAC	06B	.4005
Readopt with Changes/*				
<u>General</u>	17	NCAC	06B	.4101
Readopt with Changes/*				
<u>Exempt Interest Dividends</u>	17	NCAC	06B	.4102
Readopt with Changes/*				
<u>Ordinary Dividends</u>	17	NCAC	06B	.4103
Readopt with Changes/*				

The rules in Subchapter 6C concern the withholding of individual income taxes including withholding requirements (.0100), and the regulation of reporting and paying of income tax withheld (.0200).

<u>Common Carriers</u>	17	NCAC	06C	.0110
Readopt with Changes/*				
<u>Supplemental Wage Payments</u>	17	NCAC	06C	.0117
Readopt with Changes/*				
<u>Employee's Withholding Allowance Certificate</u>	17	NCAC	06C	.0123
Readopt with Changes/*				
<u>Additional Withholding Allowances</u>	17	NCAC	06C	.0124
Readopt with Changes/*				
<u>Submission of Certain Withholding Allowance Certificates</u>	17	NCAC	06C	.0126
Readopt with Changes/*				
<u>Annual Reports</u>	17	NCAC	06C	.0203
Readopt with Changes/*				
<u>Amounts Withheld are Held in Trust for Secretary of Revenue</u>	17	NCAC	06C	.0204
Readopt with Changes/*				

The rules in Subchapter 6D concern estimated tax including filing estimated income tax payments (.0100) and penalties for underpayment of estimated income tax (.0200).

<u>Requirements for Filing</u>	17	NCAC	06D	.0102
Readopt with Changes/*				

DENTAL EXAMINERS, BOARD OF

The rules in Subchapter 16T concern patient records.

<u>Record Content</u>	21	NCAC	16T	.0101
Amend/*				

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF

The rules in Chapter 18 are from the State Board of Examiners of Electrical Contractors.

The rules in Chapter 18B are from the Board of Electrical Contractors including general provisions (.0100); examinations and qualifications (.0200); terms and definitions applicable to licensing (.0300); licensing requirements (.0400); reciprocal licensing agreements with other states (.0700); special restricted licenses (.0800); violations and contested case hearings (.0900); forms, certificates, and publications of the board (.1000); and continuing education courses and requirements (.1100).

<u>Fees</u> Amend/*	21	NCAC	18B	.0209
<u>Waiting Period Between Examinations</u> Amend/*	21	NCAC	18B	.0211
<u>Renewal After Expiration of Annual License</u> Amend/*	21	NCAC	18B	.0406
<u>Listed Qualified Individual Changing from One License to ...</u> Amend/*	21	NCAC	18B	.0502

MEDICAL BOARD

The rules in Subchapter 32T concern clinical pharmacist practitioner including clinical pharmacist practitioner (.0100).

<u>Clinical Pharmacist Practitioner</u> Amend/*	21	NCAC	32T	.0101
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MIDWIFERY JOINT COMMITTEE

The rules in Chapter 33 are from the Midwifery Joint Committee.

<u>Reporting Criteria</u> Adopt/*	21	NCAC	33	.0110
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PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Clinical Pharmacist Practitioner</u> Amend/*	21	NCAC	46	.3101
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REAL ESTATE COMMISSION

The rules in Chapter 58 are from the North Carolina Real Estate Commission. The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate education and recovery fund (.1400); discriminatory practices prohibited (.1600); mandatory continuing education (.1700); limited nonresident commercial licensing (.1800); post-licensure education (.1900); annual reports (.2000); brokers in military service (.2100); and broker price opinions and comparative market analyses (.2200).

RULES REVIEW COMMISSION

<u>Broker Name and Address</u> Amend/*	21	NCAC	58A	.0103
<u>Retention of Records</u> Amend/*	21	NCAC	58A	.0108
<u>Reporting Criminal Convictions and Disciplinary Actions</u> Amend/*	21	NCAC	58A	.0113
<u>Postponement of Postlicensing Education</u> Amend/*	21	NCAC	58A	.2104
<u>Proof of Eligibility</u> Amend/*	21	NCAC	58A	.2105

The rules in Subchapter 58B deal with time shares including time share project registration (.0100); public offering statement (.0200); cancellation (.0300); time share sales operation (.0400); handling and accounting of funds (.0500); project broker (.0600); and time share forms (.0700)

<u>Registration Fee</u> Amend/*	21	NCAC	58B	.0102
<u>Renewal of Time Share Project Registration</u> Amend/*	21	NCAC	58B	.0103

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	David Sutton

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Chief's Inc. v. Alcoholic Beverage Control Commission	13 ABC 18939	02/19/15	
NC Alcoholic Beverage Control Commission v. Partnership T/A Poor Boys	14 ABC 07103	08/21/15	30:08 NCR 918
American Legion, T/A Linton J Sutton Post 223-1 v. Alcoholic Beverage Control Commission	14 ABC 03686	12/23/14	
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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	
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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	
Alcoholic Beverage Control Commission v. Ash and Z Inc T/A 5 th Ave Speedmart	15 ABC 00355	04/22/15	
Alcoholic Beverage Control Commission v. Monterrey Mexican Restaurant Inc T/A Monterrey Mexican Restaurant	15 ABC00393	04/07/15	
NC Alcoholic Beverage Control Commission v. Greenbox, LLC, T/A Big Shots Sports Bar and Grill	15 ABC 04354	10/29/15	
Alcoholic Beverage Control Commission v. Woodlawn Restaurant and Lounge, LLC T/A O'Hara's Restaurant and Lounge	15 ABC 04355	09/03/15	
Alcoholic Beverage Control Commission v. Ortez Corp. Inc, T/A Pollo Royal Restaurant	15 ABC 04362	09/03/15	
NC Alcoholic Beverage Control Commission v. Rodeo Restaurant Group Corp, T/A Brasilla Churrasco Steakhouse	15 ABC 05010	10/06/15	
NC Alcoholic Beverage Control Commission v. Double K Sports Bar Inc, T/A Double K Sports Bar	15 ABC 05753	12/07/15	
NC Alcoholic Beverage Control Commission v. S and J Tobacco and Food Mart T/A S and J Tobacco and Food Mart	15 ABC 06629	12/14/15	
NC Alcoholic Beverage Control Commission v. 2Ak Enterprises LLC, T/A Tilt on Trade	15 ABC 06634	12/02/15	
NC Alcoholic Beverage Control Commission v. CCS Charlotte Enterprise LLC, T/A Caldwell Corner Store	15 ABC 06636	12/02/15	
<u>BOARD OF ARCHITECTURE</u>			
Board of Architecture v. Anthony Hunt	14 BOA 04954	03/03/15	30:01 NCR 77

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BOARD OF BARBER EXAMINERS

Arthur Donald Darby Jr v. Board of Barber Examiners - Staff 14 BBE 04565 12/05/14

BOARD OF FUNERAL SERVICES

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

BOARD OF SOCIAL WORK

NC Social Work Certification and Licensure Board v. Stephanie Helbeck Cornfield 15 BSW 04491 10/09/15 30:14 NCR 1573

BOARD FOR THE LICENSING OF GEOLOGISTS

Robert Payne, P.G. v. NC Board for the Licensing of Geologists 14 BOG 03255 06/11/15 30:07 NCR 780

DEPARTMENT OF COMMERCE

Hog Slat, Inc v. Department of Commerce 13 COM 20122 12/05/14

BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Belinda Johnson v. Board of Certified Public Accountant Examiners 15 CPA 00798 03/09/15
NC State Board of Certified Public Accountant Examiners v. Linda R. Sharp 15 CPA 04488 01/29/16 30:19 NCR 2112

DEPARTMENT OF PUBLIC SAFETY

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
Anne Marie Brandt v. NC Department of Public Safety 14 CPS 05077 08/18/15 30:08 NCR 924
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
Edward Andrew Carder v. NC Division of Victim Compensation Services 14 CPS 08579 08/25/15 30:14 NCR 1561
Bonnie Hall v. Crime Victims Compensation Commission 14 CPS 08618 01/23/15

Antwon B. Logan v. Victims Compensation Commission 15 CPS 00093 03/11/15
Dalton James v. Victims Compensation Commission 15 CPS 00463 04/24/15
Dwight Earl Evans Jr. v. Victims Compensation Commission 15 CPS 03563 08/20/15
Shawn J. McKay v. NC Department of Public Safety 15 CPS 04164 10/28/15
Timothy Ryan Revels v. Department of Public Safety, Office of Victim Services 15 CPS 05756 09/22/15
Kish D. Anderson v. NC Victims Compensation Commission 15 CPS 06451 12/16/15
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Michelle Starnes v. Patricia Norris, DVM, Director of Animal Welfare Division, North Carolina Department of Agriculture and Consumer Services 15 DAG 03112 06/25/15

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
Genesis Project 1, Inc v. DHHS, Division of Medical Assistance, and Mecklink Behavioral Healthcare 14 DHR 02198 06/17/15 30:07 NCR 794
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Regina Joyner v. Division of Child Development and Early Education, DHHS 14 DHR 04463 12/10/14

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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
A United Community LLC v. Alliance Behavioral Healthcare as legally authorized contractor of and agent for NC Department of Health and Human Services	14 DHR 06837	07/20/15	30:08 NCR 930
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Tiffany Leary v. NCDHHS, Division of Health Services, Health Care Personnel Registry	14 DHR 08785	01/06/15	
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Mr. Imad Sider, EMSS Inc d/b/a New Bern Minimart v. NC Department of Health and Human Services, Division of Public Health	14 DHR 09906	07/28/15	30:08 NCR 950
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	
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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	
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Shawn Williams v. Rutherford-Polk-McDowell District Health Department, Environmental Health Division	14 DHR 10277	08/21/15	
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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	
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STATE OF NORTH CAROLINA
DARE COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 CPA 04488

<p>N.C. STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS Petitioner</p> <p>v.</p> <p>LINDA R. SHARP, Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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Having presided over a hearing in the above-captioned contested case on November 20, 2015, the undersigned Administrative Law Judge issues the following Proposal for Decision against Linda R. Sharp ("Sharp" or "Respondent"), pursuant to N.C. Gen. Stat. § 150B-40.

APPEARANCES

For Petitioner: Anna Baird Choi, Esq.
Allen, Pinnix & Nichols, P.A.
510 Glenwood Ave., Suite 301
Raleigh, NC 27602

For Respondent: Linda R. Sharp, *pro se*
3003 N. Croatan Hwy
Kill Devil Hills, NC 27948

**ISSUES AND
APPLICABLE STATUTES AND RULES**

Whether Respondent Sharp violated any of the provisions of N.C. Gen. Stat. § 93-1 *et seq.* or any of the rules and regulations of the N.C. State Board of Certified Public Accountant Examiners ("Board" or "Petitioner"), as set forth in 21 N.C.A.C. 08, subchapters A through N. Specifically, whether Respondent Sharp:

1. Failed to disclose litigation on renewal applications in violation of:
 - 21 N.C.A.C. 08J .0101; and
 - 21 N.C.A.C. 08J .0108.

2. Failed to cooperate with and/or respond to the Board regarding matters related to a

Board investigation in violation of:

- 21 N.C.A.C. 08N .0206

Further, if Respondent Sharp is found to have committed the acts or omissions described above, the ALJ shall determine whether her conduct constitutes a violation of:

- 21 N.C.A.C. 08N .0201 regarding integrity;
- 21 N.C.A.C. 08N .0202 regarding deceptive conduct; and
- 21 N.C.A.C. 08N .0203 regarding discreditable conduct.

If Respondent Sharp is found to be in violation of the above-referenced statutes and rules, the ALJ shall determine:

- What disciplinary action should be imposed under N.C. Gen. Stat. § 93-12(9); and
- What amount of civil penalty should be imposed under N.C. Gen. Stat. § 93-12(9)

Finally, if the Board has a conflict of interest in this matter.

PRELIMINARY MATTERS

Respondent Sharp produced a written Motion to Dismiss which she submitted to the Court for consideration after the call of the case. After careful consideration and open discussion by the respective parties, the Respondent's Motion to Dismiss was DENIED.

FINDINGS OF FACT

1. Petitioner Board is established pursuant to N.C. Gen. Stat. § 93-1 *et seq.* and is charged with protecting the health, welfare and safety of the public by overseeing the licensing of certified public accountants in North Carolina.
2. Respondent Linda Rouse Sharp is the holder of a certificate of qualification admitting Respondent Sharp to practice as a Certified Public Accountant in North Carolina. Respondent Sharp was issued a certificate of qualification, number 11285, on January 3, 1979. Respondent Sharp's certificate is currently active. Respondent Sharp also holds a CPA firm registration, number 534401. The firm registration is currently active.

Prior Complaint History

3. On or about June 30, 2008, the Board received a complaint against Respondent Sharp (case C20085846). The complaint alleged failure to timely refund a tax preparation fee of \$80.00. Respondent had correctly prepared the income tax return. The complaint was closed with a Letter of Warning issued by the Board on December 19, 2008. This was more than 7 years ago.

Complaint C2011283

4. On or about November 17, 2011, the Board received a consumer complaint against Respondent. In that complaint, it was disclosed that the consumers had previously sued Respondent Sharp in District Court in Dare County, North Carolina in matters related to tax preparation and purported negligence. The Board subsequently conducted an investigation. The Board issued no disciplinary sanctions at that time.
5. In May 2008, Respondent Sharp was sued in small claims court in Dare County, North Carolina (08 CVM 285). The Complaint for Money Owed alleged "incorrect tax preparation." At the hearing in this matter, the Magistrate ruled in Respondent's favor. On July 7, 2008, the plaintiff in the above-referenced matter appealed the Magistrate's decision to District Court in Dare County (08 CVD 575). Upon Respondent Sharp's motion, the case was dismissed on September 21, 2009.
6. On or about August 13, 2009, the same Plaintiffs as in the suit described above filed another lawsuit in District Court in Dare County, North Carolina (09 CVD

677). The complaint alleged that the plaintiffs had been damaged as a result of Respondent Sharp's purported negligence. The case was dismissed on June 27, 2011.

7. On her 2009 firm renewal, which she submitted to the Board on December 22, 2008, Respondent Sharp failed to affirmatively answer the following question: "Has your firm or any firm owner/Have you or your firm been party to a civil suit, bankruptcy action, administrative proceeding, or binding arbitration the basis of which is an allegation of negligence, dishonesty, fraud, misrepresentation, or incompetence, since filing your firm's last renewal?"
8. On her 2009 firm renewal, Respondent Sharp failed to notify the Board of 08 CVM 285 and 08 CVD 575.
9. On her 2009-2010 individual certificate renewal, which she submitted to the Board on June 8, 2009, Respondent Sharp responded "No" to the following question: "Have you been party to a civil suit, bankruptcy action, administrative proceeding, or binding arbitration the basis of which is an allegation of negligence, dishonesty, fraud, misrepresentation, or incompetence, since filing your last renewal?"
10. On her 2009-2010 individual certificate renewal, Respondent Sharp failed to notify the Board of 08 CVM 285 and 08 CVD 575.
11. On her 2010 and 2011 firm renewals, which she submitted to the Board on December 22, 2009 and December 29, 2010 respectively, Respondent Sharp failed to affirmatively answer the following question: "Has your firm or any firm owner/Have you or your firm been party to a civil suit, bankruptcy action,

administrative proceeding, or binding arbitration the basis of which is an allegation of negligence, dishonesty, fraud, misrepresentation, or incompetence, since filing your firm's last renewal?"

12. On her 2010 and 2011 firm renewals, Respondent Sharp failed to notify the Board of 08 CVM 285, 08 CVD 575, and 09 CVD 677. Respondent's contention that all of these cases were dismissed in favor of Respondent is factually correct; however, that does not address the issues raised in this contested case.

13. On her 2010-2011 and her 2011-2012 individual certificate renewals, which she submitted to the Board on June 2, 2010 and June 17, 2011 respectively, Respondent Sharp responded "No" to the following question: "Have you been party to a civil suit, bankruptcy action, administrative proceeding, or binding arbitration the basis of which is an allegation of negligence, dishonesty, fraud, misrepresentation, or incompetence, since filing your last renewal?"

14. On her 2010-2011 and 2011-2012 individual certificate renewals, Respondent Sharp failed to notify the Board of 09 CVD 677. Respondent's contention that this case was dismissed in favor of Respondent is factually correct; however, again, that does not address the issues raised in this contested case.

Complaint C2014057

15. On or about March 6, 2014, the Board received a complaint from a consumer, alleging that Sharp failed to return tax-related documents that had been requested by the client. The Board subsequently commenced an investigation.

16. During the course of the investigation, the Board contacted Respondent Sharp via telephone, letter, and email on multiple occasions. Specifically, the

Board sent Respondent Sharp letters dated March 7, 2014, and April 4, 2014, both letters giving Respondent approximately three weeks to respond.

17. Respondent failed to respond to the letters, and the Board's followed up with emails on June 9, 2014, and June 16, 2014. Additional requests were made to Respondent Sharp and/or her staff via phone calls. Sharp requested extensions of time to respond and the extensions were granted. She ultimately did respond, but not by the time allowed in the extension.

18. On June 19, 2015, the Board filed a Petition for a Contested Case Hearing with the N.C. Office of Administrative Hearings ("OAH"). By Notice of Rescheduled Hearing dated November 20, 2015, the parties were notified of the hearing to be conducted in Elizabeth City, North Carolina on November 20, 2015. Both parties appeared at the hearing.

19. Respondent contends that the delay by the Board in filing with OAH was because of an on-going conflict of interest. That is not correct. Petitioner had lodged complaints against a member of the Board, and, therefore, the Board decided to wait until that Board member was no longer on the Board in order to avoid even the appearance of a conflict of interest. The Board member at issue was due to leave the Board relatively soon.

20. Petitioner Board presented evidence that Respondent Sharp failed to submit complete individual and firm renewals to the Board for the applicable renewal periods described above when Respondent Sharp failed to notify the Board of the aforementioned small claims and district court complaints.

21. Respondent Sharp did not deny that she failed to notify the Board in multiple renewal applications of the small claims and district court complaints described above. She testified that the reason she chose not to notify the Board was because an attorney had instructed her that she did not need to do so. Respondent provided no written documentation of this attorney's opinion, nor did the attorney testify at hearing on Respondent Sharp's behalf.
22. Respondent Sharp also acknowledged that while she did not notify the Board of the consumer Hanson Complaint for Money Owed on her 1989-1990 renewal application, she had previously notified the Board of a Complaint for Money Owed that had been filed by Mr. Shane against her in Dare County Small Claims Court in 1989. This action also had been dismissed.
23. Respondent Sharp testified that she never received letters and emails sent to her by Board staff regarding the Frank complaint. However, the Board presented evidence that its letters and emails were sent to Respondent Sharp's email and address of record maintained by the Board. Additionally, the Board's letters and emails were sent to the same physical and email addresses that were printed on Respondent Sharp's professional letterhead. Further Respondent Sharp provided the same physical and email addresses in her Prehearing Statement filed with OAH on July 8, 2015, as well as at the conclusion of this contested case hearing. Respondent has a duty and responsibility to keep the Board informed of its current address and contact information. There is no indication that the Respondent did not get the mail. Despite her contentions concerning the emails, she actually answered one of them by calling the Board.
24. The excuses and justifications offered by Respondent Sharp, including but not limited to the emails, the letters, and the tardiness in response, lack credibility.

CONCLUSIONS OF LAW

1. This matter is properly before the Office of Administrative Hearings (“OAH”), which has both personal and subject matter jurisdiction. This matter is before OAH due to a conflict of interest of the N.C. State Board of Certified Public Accountant Examiners, caused by their Professional Standards Chairman, Barton Baldwin. The parties were properly noticed for hearing. 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. N.C. Gen. Stat. § 93-12(9) provides that:

The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants in this State and persons exercising the practice privilege authorized by this Chapter. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this Chapter to a certified public accountant or any practice privilege authorized by the provisions of this Chapter or to censure the holder of any such certificate or person exercising the practice privilege authorized by this Chapter. The Board also shall have the power to assess a civil penalty not to exceed one thousand dollars (\$1,000) for any one or combination of the following causes:

- a. Conviction of a felony under the laws of the United States or of any state of the United States.
- b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.
- c. Fraud or deceit in obtaining a certificate as a certified public accountant.
- d. Dishonesty, fraud or gross negligence in the public practice of accountancy.
- e. Violation of any rule of professional ethics and professional conduct adopted by the Board.

3. Thus, in N.C. Gen. Stat. § 93-12(9) the only sanctions available to the Board are revocation and censure. Reprimand is not an allowable sanction.

4. 21 N.C.A.C. 08I .0101(a) provides that “[a]ny person may petition the Board for appropriate disciplinary action against a CPA.” Paragraph (d) provides that “[t]he Board may publish or

announce the disciplinary action against a CPA in such manner and for such period as it deems appropriate.”

5. 21 N.C.A.C. 08J .0101(b) provides that “[t]o renew a certificate a CPA shall submit to the Board . . . a completed certificate renewal application form; . . .”
6. 21 N.C.A.C. 08J .0108(i) provides that all CPA firms file a complete registration with the Board.
7. 21 N.C.A.C. 08N .0101 identifies that subchapter 8N of the Board’s rules constitute the rules of professional ethics and conduct referenced in N.C. Gen. Stat. §93B-12(9)(e).
8. 21 N.C.A.C. 08N .0102 provides that the Board rules in section .0200 subchapter 08N are generally applicable to all certificate holders. No exemption applies to Respondent Sharp.
9. 21 N.C.A.C. 08N .0201 provides that a CPA “shall at all times maintain independence of thought and action, hold the affairs of clients in strict confidence, strive continuously to improve professional skills, observe generally accepted accounting principles and standards, promote sound and informative financial reporting, uphold the dignity and honor of the accounting profession, and maintain high standards of personal conduct.”
10. 21 N.C.A.C. 08N .0202 provides that a CPA shall not engage in deceptive conduct.
11. 21 N.C.A.C. 08N .0203 provides that a CPA shall not engage in discreditable conduct.
12. 21 N.C.A.C. 08N .0206 provides that “[a] CPA shall fully cooperate with the Board in connection with any inquiry it shall make.” Further, “full cooperation” is defined as responding “within 21 days to all inquiries of the Board or representatives of the Board or representative of the Board . . .”
13. Respondent Sharp failed to disclose litigation on multiple renewal applications in violation of:
 - 21 N.C.A.C. 08J .0101; and
 - 21 N.C.A.C. 08J .0108.

14. Respondent Sharp failed to cooperate with and/or respond to the Board regarding matters related to a Board investigation in violation of 21 N.C.A.C. 08N .0206.

15. Respondent Sharp's conduct constitutes a violation of:

- 21 N.C.A.C. 08N .0201 regarding integrity;
- 21 N.C.A.C. 08N .0202 regarding deceptive conduct; and
- 21 N.C.A.C. 08N .0203 regarding discreditable conduct.

16. Respondent Sharp was reluctant to accept that the issue in this contested case was merely whether or not she had been named as a party in a law suit—not whether she won or lost. She was extremely reluctant to accept that whether or not she had prevailed at each of the civil suits against her was not the issue. She tried, without merit, to assert that she did not have to report because of an extremely literal translation of the factors involved in those suits. While she contends that much of this may have been due to the bad advice she received from an attorney, that too is without merit because ultimately it is her license on the line and the reporting is her responsibility. If the lawyer gave her bad advice, then that is between Ms. Sharp and the lawyer.

17. At the conclusion of this hearing, the undersigned did articulate that a reprimand would be appropriate; however, the law does not allow that sanction. This Tribunal is without any authority to re-write the Administrative Code or General Statutes. This contested case hearing is conducted pursuant to Article 3A of N.C.G.S. 150B, and, therefore, the Administrative Law Judge only has the authority vested in the Board itself. For conduct of this hearing, the ALJ stands in the shoes of the Board.

18. Respondent Sharp's contention that the sanction provided in this recommended decision should not be published is without merit and is not what the undersigned articulated at the conclusion of this hearing.

4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Mecklenburg County, North Carolina for a felony embezzlement.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and, based upon the letter of character from his employers, including Landmark Security, has rebutted the presumption.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

PROPOSAL FOR DECISION

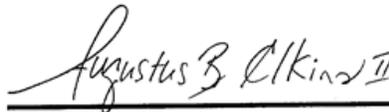
The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby proposes that Petitioner be granted an unarmed guard registration.

NOTICE

The agency making the final decision in this contested case 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). The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board. A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This the 26th day of January, 2016.



Augustus B Elkins II
Administrative Law Judge

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01/27/2016 9:46 AM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 OSP 06084

JOHN GOMES PETITIONER, V. WINSTON-SALEM STATE UNIVERSITY RESPONDENT. RESPONDENT.	FINAL DECISION
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This contested case was heard before the Honorable J. Randall May, Administrative Law Judge, on 16 November 2015 in High Point, North Carolina.

APPEARANCES

FOR RESPONDENT: Matthew Tulchin
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602

FOR PETITIONER: John Gomes
4 Capen Street, Apt. 201
Stoughton, MA 02072
Petitioner Pro Se

EXHIBITS

Admitted for Respondent:

EXHIBIT	DESCRIPTION
1	Winston-Salem State University Drug Policy
2	WSSU Police Department Witness/Victim Statement of Mr. Tracy Warren dated January 14, 2015
4	WSSU Police Department Witness/Victim Statement of Mr. Brad Collins dated January 14, 2015
5	Incident/Investigation Report
6	Police Photos – Incident Images

7	Police Photos – Incident Images
8	Notice of Placement on Investigatory Status with Pay
9	Notice to Attend Pre-Disciplinary Conference
10	Disciplinary Decision of Dismissal

Admitted for Petitioner:

None

WITNESSES

Called by Respondent:

Campus Police Officer Greg Foreman
Corporal Dana Hamilton
Mr. Tracy Warren
Ms. Dianne Walker
Mr. Calvin Holloway

Called by Petitioner:

None

ISSUES

1. Whether Respondent had just cause to dismiss Petitioner.

ON THE BASIS of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. In making these findings, the undersigned has weighed all the evidence, or the lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

The undersigned has also reviewed the entire file, including but not limited to the proposal for final decision of the Respondent and the filings of the Petitioner.

FINDINGS OF FACT

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.

2. Petitioner John Gomes was a permanent State employee subject to Chapter 126 of the North Carolina General Statutes.
 3. Respondent Winston-Salem State University (“WSSU” or “the University”) is subject to Chapter 126 and was Petitioner’s employer.
 4. Petitioner was employed with WSSU as a Painter in the Department of Facilities Operation and Maintenance (the “Department”) for approximately eight (8) years. The Department provides routine and corrective maintenance; preventative maintenance; and non-routine maintenance to ensure operations of University buildings and campus lighting. The Department is organized into 6 different areas of operations, referred to as “Zones.” Petition; Resp. Exs. 2, 9-10.
 5. Each Zone has a supervisor and a team leader. At all times during the relevant time period, Petitioner was assigned to Zone 2. Mr. Tracy Warren was the supervisor for Zone 2 and Mr. Brad Collins was the team leader for Zone 2. Resp. Exs. 2, 9-10. Both Mr. Warren and Mr. Collins were responsible for assigning work to Petitioner.
 6. At all times during the relevant period, Ms. Diane Walker was the Director of the Department. She joined the University in 2012. As the head of the Department, Ms. Walker supervised more than 25 employees. All the Zone supervisors, including Mr. Warren, reported directly to Ms. Walker. Prior to joining WSSU, Ms. Walker served as Director of Operations and Maintenance at Prairie View A&M University. Ms. Walker is an experienced supervisor.
 7. Petitioner was one of two painters employed in the Department. As a painter, Petitioner worked primarily in the residential halls and administrative buildings on campus. He was expected to follow reasonable instructions from his supervisors; fulfill work orders in an efficient and expedited manner; and adhere to all University policies and known work rules, including the University’s Drug Policy.
-
8. The University has a “zero tolerance” Drug Policy and does not condone the possession, use, or sale of illegal drugs among its students, staff, or faculty. Employees are responsible for knowing about and complying with the provisions of the Drug Policy and North Carolina law as it pertains to controlled substances. The University Drug Policy provides that employees found to be in possession of a controlled substance, including marijuana, will be disciplined. The penalties that may be imposed range from a written warning with probationary status to termination from employment. Resp. Ex. 1.
 9. Petitioner was provided with a State vehicle to use – a motorized cart equipped with an enclosed storage space in the back for carrying equipment. Resp. Exs.6, 7.
 10. Civitan Park is a city park located just south of campus, near Bowman Gray Stadium, the University’s football stadium. It is not part of the University campus and no Department employees were assigned to work in the park. Petitioner did not have any work

assignments in or near Civitan Park and had no work-related reason to be in or near the Park.

11. Some employees would park near Civitan Park and walk to campus. Petitioner sometimes would give other employees rides in his State vehicle to and from Civitan Park during work hours. This was not part of his job duties.
12. University employees were known to congregate in Civitan Park during work hours and there had been prior complaints of people drinking alcohol and using illegal drugs, including marijuana, in the Park. As a result, Mr. Warren and Ms. Walker explicitly instructed Petitioner and the other employees in the Department to refrain from going to Civitan Park during normal work hours. The University's Campus Police Department was aware of these complaints and the reported drug use in the Park. Resp. Exs. 2, 4-5, 10.
13. In the afternoon of January 14, 2015, Mr. Warren and Mr. Collins were doing rounds on campus and checking on the status of work orders when they observed Petitioner and another Department employee, Mr. Michael Brown, driving in Petitioner's cart across campus heading in the direction of Civitan Park. Petitioner had been assigned to work in a different part of campus and was not where he was supposed to be. Resp. Exs. 2, 4-5.
14. Mr. Warren and Mr. Collins decided to follow Petitioner. They observed Petitioner and Mr. Brown drive into Civitan Park and park. They watched as the two men went to the back of the cart where they opened and closed the doors of the storage area several times. It appeared that the men were taking things out of the back of the cart. Petitioner's actions aroused the suspicions of Mr. Warren and Mr. Collins. There had been prior thefts of equipment from the Department and the men thought they were witnessing a crime being committed. The Petitioner and Mr. Brown also appeared to be smoking. Resp. Exs. 2, 4-5.
15. Mr. Warren called Campus Police to report the suspicious activity and provided Campus Police with the names and descriptions of the employees involved. Resp. Exs. 2, 4-5.
16. Corporal Dana Hamilton, who was on patrol in her marked police cruiser with a trainee, responded to the call. Corporal Hamilton has been a member of the Campus Police Department for six years and a corporal for two years. She previously was employed by the Davidson County Sheriff's Office. She is an experienced police officer who has successfully completed Basic Law Enforcement Training and received specialized training in criminal interdiction, including training on illegal drugs such as marijuana. She has participated in numerous arrests involving marijuana in her career. Resp. Ex. 5.
17. Corporal Hamilton was in route to Civitan Park when she observed Petitioner driving his painter cart away from the Park. Petitioner was the only person in the cart. Corporal Hamilton noticed that Petitioner was swerving and driving erratically. Corporal Hamilton was familiar with Petitioner and he matched the description provided to Campus Police by Mr. Warren. Resp. Exs. 5, 10.

18. Corporal Hamilton activated the lights and siren on her police car and attempted to stop Petitioner. However, Petitioner ignored Corporal Hamilton and continued driving. He attempted to evade Campus Police and drove onto a grassy area on campus. Petitioner drove for more than a quarter of a mile before stopping, all the while pursued by Corporal Hamilton in her police car with the sirens and lights flashing. Resp. Exs. 5, 10.
 19. Corporal Hamilton approached Petitioner's cart and immediately smelled a strong odor of burnt marijuana coming from Petitioner and the cart. She also noticed that Petitioner's eyes were red and watery. Resp. Exs. 5, 10.
 20. Corporal Hamilton explained to Petitioner the reason he was being stopped and asked him to exit the golf cart. She conducted a cursory plain view search of the driver's compartment, but did not find anything. Because the cart was University property, Corporal Hamilton drove the cart to the facilities building in order to obtain Ms. Walker's permission to search the vehicle. With Ms. Walker's consent, Corporal Hamilton and Officer Greg Foreman conducted a thorough search of the cart. Resp. Exs. 5, 10.
 21. Campus Police found a rolled up painter's drop cloth in the storage area in the back of the cart. Campus Police unrolled the painter's drop cloth and found a gold and purple owl cigarillo pack inside the cloth. The cigarillo pack contained a clear plastic bag, inside of which was a green leafy substance. Based on her experience and training, Corporal Hamilton identified the green leafy substance as marijuana. Corporal Hamilton photographed the evidence and obtained written statements from Mr. Warren, Mr. Collins, and Mr. Brown. Resp. Exs. 2, 4-7.
 22. The cart Petitioner was driving the day of his arrest had been assigned to him for that day. Although it was not his regular cart (the one he regularly used was being repaired), Petitioner was the only one to use it that day and it had been completely emptied prior to him using it. Resp. Exs. 5, 10.
-
23. Petitioner was placed under arrest and charged with possession of marijuana and possession of drug paraphernalia. Petitioner later received 40 days of community service and required to undergo mandatory drug screening. Resp. Ex. 5.
 24. Petitioner's possession of marijuana constituted violations of the University Drug Policy and North Carolina law. Petitioner's visiting Civitan Park during work hours was also directly contrary to Mr. Warren's and Ms. Walker's instructions. Resp. Exs. 1, 5, 10.
 25. As a result of Petitioner's insubordination and his possession of marijuana, Ms. Walker decided to place Petitioner on investigatory leave status with pay. Ms. Walker made the decision after consulting with Human Resources. Petitioner was informed that he could be dismissed as a result of the incident. Ms. Walker conducted her own investigation of the incident, during which she spoke to Campus Police and several University employees. Resp. Exs. 8-10.

26. On February 23, 2015, Ms. Walker issued Petitioner a Notice to Attend a Pre-Disciplinary Conference due to his unacceptable personal conduct. In the Notice, Ms. Walker explained the reasons for the conference; namely, Petitioner's insubordination and violations of University policy and State law. Petitioner was again told that he could be dismissed as a result of his conduct. Resp. Ex. 9.
27. On or about February 27, 2015, Petitioner attended a Pre-Disciplinary Conference conducted by Ms. Walker and a representative from Human Resources, Mr. Calvin Holloway. Petitioner was again informed of the purpose of the conference and the allegations against him. Petitioner was provided with an opportunity to respond, but did not provide sufficient explanation for his unacceptable personal conduct. Instead, he acknowledged that he had smoked marijuana in the past and had violated his supervisors' directions not to go to Civitan Park during work hours. Although Petitioner claimed that he was set up by Mr. Warren and Mr. Collins and that Campus Police had planted the marijuana in his cart, he did not provide Ms. Walker or Mr. Holloway with any evidence or information to support his claims. Resp. Ex. 10.
28. Following the Pre-Disciplinary Conference, Ms. Walker consulted with Mr. Holloway and made the decision to dismiss Petitioner for his insubordination and his violation of the University's Drug Policy and North Carolina law. On March 18, 2015, Ms. Walker sent Petitioner a dismissal letter detailing the reasons for Petitioner's dismissal; specifically, unacceptable personal conduct for possession of and use of marijuana on campus and insubordination. Resp. Ex. 10.
29. Corporal Hamilton, Mr. Warren, Ms. Walker, Officer Foreman, and Mr. Holloway were credible witnesses. Furthermore, crucial parts of their testimony were supported by documentation.
30. Petitioner did not present any evidence or call any witnesses to testify on his behalf.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal jurisdiction over the issue in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.
2. The parties are properly before the Office of Administrative Hearings and there is no issue of improper procedure.
3. Respondent Winston-Salem State University is subject to Chapter 126 of the North Carolina General Statutes and is the former employer of Petitioner.
4. A "career state employee" is defined as a state employee who is in a permanent position appointment and continuously has been employed by the State of North Carolina in a non-exempt position for the immediate 24 preceding months. N.C. Gen. Stat. § 126-1.1

5. At the time of his discharge, Petitioner was a career State employee subject to the provisions of the State Personnel Act, N.C. Gen. Stat. § 126-1, *et seq.*
6. A career State employee may be dismissed only for just cause. N.C. Gen. Stat. § 126-35(a). The State employer has the burden of showing by a preponderance of the evidence that there was just cause for dismissal. N.C. Gen. Stat. § 126-34.02(d); see also Teague v. N.C. Dep't of Transp., 177 N.C. App. 215, 628 S.E.2d 395, disc rev. denied, 360 N.C. 581 (2006).
7. Pursuant to regulations promulgated by the Office of State Personnel, there are two bases for the dismissal of an employee for just cause: (1) unsatisfactory job performance; and (2) unacceptable personal conduct. 25 N.C.A.C. 01J .0604(b). However, "the categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case." 25 N.C.A.C. 01J .0604(c). Furthermore, "[n]o disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly." Id.
8. An employee must receive at least two prior disciplinary actions before being dismissed for a current incident of unsatisfactory job performance. 25 N.C.A.C.01J .0605(b). In addition, the employee must be given a pre-disciplinary conference and written notice of the reasons for dismissal. 25 N.C.A.C. 1J.0605. However, an employee may be dismissed without any prior warning or disciplinary action when the basis for dismissal is unacceptable personal conduct. 25 N.C.A.C. 01J 0608(a). One instance of unacceptable conduct constitutes just cause for dismissal. Hilliard v. North Carolina Dep't of Corr., 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).
9. Unacceptable personal conduct, as defined by the Office of State Personnel, includes insubordination; "conduct for which no reasonable person should expect to receive prior warning;" "job-related conduct which constitutes a violation of state or federal law;" "the willful violation of known or written work rules;" and "conduct unbecoming a state employee that is detrimental to state service." 25 N.C.A.C. 01J .0614(8). Insubordination is defined as the "willful failure or refusal to carry out a reasonable order from an authorized supervisor." 25 N.C.A.C. 01J .0614(7)
10. In the case of "conduct unbecoming a state employee that is detrimental to state service," the State employer is not required to make a showing of actual harm, "only a potential detrimental impact (whether conduct like the employee's could potentially adversely affect the mission or legitimate interests of the State employer)." Hilliard, 173 N.C. App at 597, 620 S.E.2d at 17.
11. In the case of "willful violation of known or written work rules," the State employer's "work rules may be written or 'known' and a willful violation occurs when the employee willfully takes action which violates the rule and does not require that the employee intend his conduct to violate the work rule." Id.

12. Determining whether a public employer had just cause to discipline its employee requires two separate inquiries: first, whether the employee engaged in the conduct the employer alleges; and second, whether the conduct constitutes just cause for the disciplinary action taken. N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888 (2004).
13. In Carroll, the Supreme Court explained that the fundamental question is whether “the disciplinary action taken was ‘just’”. Further, the Supreme Court held that, “Determining whether a public employee had ‘just cause’ to discipline its employee requires two separate inquiries: First, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes ‘just cause’ for the disciplinary action taken.” Id. at 665, 599 S.E.2d at 898.
14. In Carroll, a personal conduct case, the Court went on to say that “not every violation of law gives rise to ‘just cause’ for employee discipline.” In other words, not every instance of unacceptable personal conduct as defined by the Administrative Code provides just cause for discipline. Id. at 670, 599 S.E.2d at 901.
15. The flexible and equitable standard described in Carroll was recently affirmed by the Supreme Court’s decision of Weatherington v. North Carolina Department of Public Safety, N. C. S.Ct. (No. 22PA14), filed 18 December 2015.
15. The two-prong test of the Carroll case was expanded in Warren v. N. Carolina Dep't of Crime Control & Pub. Safety, 726 S.E.2d 920, 924-925 (N.C. Ct. App. 2012) review denied, 735 S.E.2d 175 (2012), which sets forth what this tribunal must consider as to the degree of discipline. It states:

We conclude that the best way to accommodate the Supreme Court's flexibility and fairness requirements for just cause is to balance the equities after the unacceptable personal conduct analysis. This avoids contorting the language of the Administrative Code defining unacceptable personal conduct. The proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish “just cause” for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to “just cause” for the disciplinary action taken. (Internal cites omitted)

Id. Having found the two prongs of Carroll have been met, the next inquiry is whether the punishment is appropriate as established in Warren.

16. Determining “just cause” rests on an examination of the facts and circumstances of each individual case. The facts of a given case might amount to just cause for discipline but not dismissal.
17. The final inquiry in the Warren analysis is determining whether the discipline imposed for that conduct was “just”. Just cause must be determined based “upon an examination of the facts and circumstances of each individual case.” The Warren Court refers to this process as “balancing the equities.”
18. In “balancing the equities” and trying to determine what is just, or the “right” thing to do, one must look at the totality of the facts and circumstances as opposed to just looking coldly and blindly at whether or not Petitioner violated rules or policy. Mitigating factors in the employee’s conduct should be considered in this third prong. See Warren (citing Roger Abrams and Dennis Nolan, TOWARD A THEORY OF “JUST CAUSE” IN EMPLOYEE DISCIPLINE CASES, 1985 Duke L.J. 594 (September 1985)).
19. Based on the preponderance of the evidence, Respondent met its burden of proof that it had “just cause” to dismiss Petitioner for unacceptable personal conduct. Because of the particular facts of this case, the punishment of termination was appropriate.
20. Petitioner’s insubordination alone would have been sufficient for termination. Mr. Warren’s and Ms. Walker’s requests that Petitioner stay away from Civitan Park during work hours were reasonable orders from authorized supervisors. Petitioner willfully failed or refused to comply with Mr. Warren’s and Ms. Walker’s requests. Petitioner’s conduct in disobeying his supervisors’ reasonable orders constituted unacceptable personal conduct which justified his dismissal.
21. Petitioner’s possession of marijuana constituted unacceptable personal conduct. Specifically, Petitioner engaged in conduct for which no reasonable person should expect to receive prior warning; willfully violated known or written work rules; willfully violated State law; and engaged in conduct that was unbecoming a state employee that is detrimental to state service.
22. The University has a zero tolerance drug policy and possessing marijuana violates North Carolina law. Petitioner’s possessing marijuana on campus constituted unacceptable personal conduct.
23. On the sole issue to be heard, Respondent met its burden to show that it had just cause to dismiss Petitioner. Respondent has met its’ burden of proof by showing that the employee engaged in the conduct the employer alleges; and, secondly, that conduct constitutes ‘just cause’ for the disciplinary action taken.
24. Respondent met its burden of proof that it did not substantially prejudice Petitioner’s rights; exceed its authority or jurisdiction; act erroneously; fail to use proper procedure; act in violation of Constitutional provisions; fail to act as required by law; act arbitrarily

or capriciously; and/or abuse its discretion when Respondent dismissed Petitioner for “just cause.”

25. Respondent followed the procedures required before dismissing Petitioner for unacceptable personal conduct.

On the basis of the above Conclusions of Law, the undersigned issues the following:

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent has sufficiently proved that it had just cause to dismiss Petitioner and Petitioner’s dismissal is therefore UPHELD.

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 appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 27th day of January, 2016.



J Randall May
Administrative Law Judge