

NORTH CAROLINA REGISTER

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May 1, 2014

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules	molly.masich@oah.nc.gov	(919) 431-3071
Dana Vojtko, Publications Coordinator	dana.vojtko@oah.nc.gov	(919) 431-3075
Tammara Chalmers, Editorial Assistant	tammara.chalmers@oah.nc.gov	(919) 431-3083
Lindsay Woy, Editorial Assistant	lindsay.woy@oah.nc.gov	(919) 431-3078

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel	joe.deluca@oah.nc.gov	(919) 431-3081
Amanda Reeder, Commission Counsel	amanda.reeder@oah.nc.gov	(919) 431-3079
Abigail Hammond, Commission Counsel	abigail.hammond@oah.nc.gov	(919) 431-3076
Amber Cronk May, Commission Counsel	amber.cronk@oah.nc.gov	(919) 431-3074
Julie Brincefield, Administrative Assistant	julie.brincefield@oah.nc.gov	(919) 431-3073

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov (919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Erin L. Wynia

ewynia@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney	Karen.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney	Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
 Publication Schedule for January 2014 – December 2014

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
28:13	01/02/14	12/06/13	01/17/14	03/03/14	03/20/14	05/01/14	05/2014	09/29/14
28:14	01/15/14	12/19/13	01/30/14	03/17/14	03/20/14	05/01/14	05/2014	10/12/14
28:15	02/03/14	01/10/14	02/18/14	04/04/14	04/21/14	06/01/14	01/2015	10/31/14
28:16	02/17/14	01/27/14	03/04/14	04/21/14	05/20/14	07/01/14	01/2015	11/14/14
28:17	03/03/14	02/10/14	03/18/14	05/02/14	05/20/14	07/01/14	01/2015	11/28/14
28:18	03/17/14	02/24/14	04/01/14	05/16/14	05/20/14	07/01/14	01/2015	12/12/14
28:19	04/01/14	03/11/14	04/16/14	06/02/14	06/20/14	08/01/14	01/2015	12/27/14
28:20	04/15/14	03/25/14	04/30/14	06/16/14	06/20/14	08/01/14	01/2015	01/10/15
28:21	05/01/14	04/09/14	05/16/14	06/30/14	07/21/14	09/01/14	01/2015	01/26/15
28:22	05/15/14	04/24/14	05/30/14	07/14/14	07/21/14	09/01/14	01/2015	02/09/15
28:23	06/02/14	05/09/14	06/17/14	08/01/14	08/20/14	10/01/14	01/2015	02/27/15
28:24	06/16/14	05/23/14	07/01/14	08/15/14	08/20/14	10/01/14	01/2015	03/13/15
29:01	07/01/14	06/10/14	07/16/14	09/02/14	09/22/14	11/01/14	01/2015	03/28/15
29:02	07/15/14	06/23/14	07/30/14	09/15/14	09/22/14	11/01/14	01/2015	04/11/15
29:03	08/01/14	07/11/14	08/16/14	09/30/14	10/20/14	12/01/14	01/2015	04/28/15
29:04	08/15/14	07/25/14	08/30/14	10/14/14	10/20/14	12/01/14	01/2015	05/12/15
29:05	09/02/14	08/11/14	09/17/14	11/03/14	11/20/14	01/01/15	01/2015	05/30/15
29:06	09/15/14	08/22/14	09/30/14	11/14/14	11/20/14	01/01/15	01/2015	06/12/15
29:07	10/01/14	09/10/14	10/16/14	12/01/14	12/22/14	02/01/15	05/2016	06/28/15
29:08	10/15/14	09/24/14	10/30/14	12/15/14	12/22/14	02/01/15	05/2016	07/12/15
29:09	11/03/14	10/13/14	11/18/14	01/02/15	01/20/15	03/01/15	05/2016	07/31/15
29:10	11/17/14	10/24/14	12/02/14	01/16/15	01/20/15	03/01/15	05/2016	08/14/15
29:11	12/01/14	11/05/14	12/16/14	01/30/15	02/20/15	04/01/15	05/2016	08/28/15
29:12	12/15/14	11/20/14	12/30/14	02/13/15	02/20/15	04/01/15	05/2016	09/11/15

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

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

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

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Office of the Commissioner of Banks intends to adopt the rule cited as 04 NCAC 03C .0905, amend the rules cited as 04 NCAC 03C .0901-.0904, .1001-.1002, .1402, .1601, .1702, .1801 and repeal the rules cited as 04 NCAC 03C .0101-.0104, .0107, .0111-.0112, .0201, .0403-.0405, .0407, .1802.

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

- OSBM certified on:** March 26, 2014; Rule 04 NCAC 03C .0905 April 9, 2014
- RRC certified on:**
- Not Required**

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

<http://www.nccob.org/Public/FinancialInstitutions/Banks/BankingRules.aspx>

Proposed Effective Date: September 1, 2014

Public Hearing:

Date: May 16, 2014

Time: 9:00 a.m.

Location: 316 W. Edenton St, Raleigh, NC 27603

Reason for Proposed Action: Session Law 2012-56 repealed Articles 1 through 10, 12, and 13 of Chapter 53 and created a new Chapter 53C entitled "Regulation of Banks." Rule 04 NCAC 03C .0905 is being adopted to meet the requirements of N.C. Gen. Stat. 53C-5-2(a)(6) to give state-chartered banks authority to invest in mutual funds to the same extent as national banks. The rule amendments seek to clarify the language of the rules to conform with the newly created Chapter 53C, remove fees that are no longer authorized by state law, establish new fees as required by state law and authorized by Chapter 53C, and make technical changes for consistency in our own rules. The Office of the Commissioner of Banks is repealing a number of rules to remove rules that are no longer necessary and rules that are just restating what is contained in the statutes in the newly created Chapter 53C.

Comments may be submitted to: Lonnie Christopher, Rules Coordinator, 4309 Mail Service Center, Raleigh, NC 27699-4309, phone (919) 715-7438, fax (919) 733-6918, email lchristopher@nccob.gov

Comment period ends: June 30, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

CHAPTER 03 – BANKING COMMISSION

SUBCHAPTER 03C – BANKS

SECTION .0100 – ORGANIZATION AND CHARTERING

04 NCAC 03C .0101 APPLICATION

~~A new bank, industrial bank or trust company shall be incorporated and chartered in the manner prescribed in G.S. 53C 3-1 through G.S. 53C 3-7, 53-137, and 53-333 and in no other way. A charter application, on a form provided by the Office of the Commissioner of Banks, together with a copy of the proposed Articles of Incorporation and payment of the prescribed fee, must be filed with:~~

Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.

Authority G.S. 53C-2-5; 53C-3-1(a); 53-137; 53-333.

04 NCAC 03C .0102 EXAMINATION BY COMMISSIONER

~~Upon receipt of a copy of the application and articles of incorporation, the Commissioner of Banks will make an~~

examination into all the facts connected with the formation of the proposed bank or trust company. The examination will take into account all statutory requirements and criteria.

Authority G.S. 53C-3-1(b); 53-333.

04 NCAC 03C .0103 REPORT TO BANKING COMMISSION

Following the completion of that examination the Commissioner of Banks shall prepare an order covering the results of that examination along with his decision for approval or disapproval of the application.

Authority G.S. 53C-2-5; 53C-3-4.

04 NCAC 03C .0104 REVIEW BY BANKING COMMISSION

The order of the Commissioner of Banks shall be submitted to the Banking Commission at a regular or called meeting. Following a public hearing the Banking Commission will issue its final agency decision approving or disapproving the application.

Authority G.S. 53C-2-5; 53C-3-5; 53C-3-6.

04 NCAC 03C .0107 BANK CERTIFICATE

Upon final action approving an application for a new bank the Commissioner of Banks shall issue to the bank a Bank Certificate, which contains a certification that all statutory requirements have been satisfied and is an authorization to begin business.

Authority G.S. 53C-2-5; 53C-3-7.

04 NCAC 03C .0111 NATIONAL BANK CONVERSION

(a) A national bank may apply for authority to convert to a state bank. An application for conversion must be made on a form provided by the Office of the Commissioner of Banks. The application for conversion, together with a copy of the proposed articles of incorporation and payment of the prescribed fee, must be filed with:

Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699 4309.

(b) Upon receipt of a copy of the articles of incorporation and the completed application for conversion, the Commissioner shall make an examination into all the facts connected with the conversion. Following the completion of that examination, the Commissioner shall issue a written decision approving or disapproving the application pursuant to G.S. 53C 7 301.

(c) Upon approval by the Commissioner of Banks, he shall forward to the Secretary of State for appropriate filing the articles of incorporation along with the certification of approval. The Commissioner shall issue to the bank a Bank Certificate and any Branch Certificate(s) as needed.

Authority G.S. 53C-2-5; 53C-7-301.

04 NCAC 03C .0112 ELIMINATION OF DIRECTOR LIABILITY

(a) Bank charter amendments limiting director liability pursuant to G.S. 55 2 02(b)(3) must provide that director liability is not eliminated or limited with regards to acts or omissions where the elimination of personal liability of directors would be contrary to the provisions of G.S. 53C.

(b) A new bank, industrial bank, or trust company may submit proposed bank charter amendments to the Commissioner for review prior to an approval and giving the required notice to shareholders.

Authority G.S. 53C-2-5; 53C-4-6; 55-2-02(b)(3); 55-8-30.

SECTION .0200 - BRANCHES

04 NCAC 03C .0201 ESTABLISHMENT OF BRANCHES

Banks may establish branches upon written approval of the Commissioner of Banks pursuant to G.S. 53C 6 15 and as set out in this Rule.

- (1) Application. An application to establish a branch bank must be submitted in writing on a form provided by the Office of the Commissioner of Banks. The application, together with the fee prescribed in 04 NCAC 03C .1601, must be filed with:
Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699 4309.
- (2) Notice of filing of an application. Upon acceptance of an application for filing, the applicant shall publish a notice of the filing of the application in a newspaper published in the city, town or county where the branch is proposed to be located. The required public notice must be approved by the Commissioner of Banks as prescribed in this Rule prior to publication. The Commissioner of Banks shall mail a notice of the filing of the application to each state chartered bank operating a banking office in the community to be served by the proposed branch. A copy of the notice shall be mailed to the Regional Administrator of National Banks for the National Bank Region for North Carolina. The publication shall include:
 - (a) the name and location of the main office of the bank making the application;
 - (b) the name and location of the branch being opened;
 - (c) a statement that the public may submit written comments on the application to the Commissioner of Banks;

- (d) ~~a statement that the comment period shall end 14 days from the date of publication.~~
- (3) ~~Written comments. Any interested person may submit to the Commissioner of Banks written comments and information on an application within 14 days after the notice has been published as provided in Item (2) of this Rule. All written comments received during the comment period shall become part of the official record compiled with respect to the application.~~
- (4) ~~Examination by Commissioner. Upon receipt of a completed application, the Commissioner of Banks shall conduct an examination into all the facts connected with the establishment of a branch.~~
- (5) ~~Action by Commissioner. No final decision may be made by the Commissioner of Banks until the comment period has expired. The final decision of the Commissioner of Banks on an application shall be in writing and include findings of fact and conclusions of law.~~
- (6) ~~Notification of Commissioner's action. The applicant and all persons who have made written requests for such notice shall be given notice of the Commissioner of Banks' final decision on each application.~~
- (7) ~~Request for review by Banking Commission. The applicant or any interested person may request the State Banking Commission to review the decision of the Commissioner of Banks with respect to an application to establish a branch within 14 days from the time the Commissioner of Banks issues his written decision. The request for review must be in writing and must be sent to the address shown in Item (1) of this Rule.~~
- (8) ~~Review by Banking Commission. When requested by the applicant or any interested person, the decision of the Commissioner of Banks shall be reviewed at a public hearing by the State Banking Commission at its next regular or called meeting. Following the public hearing, the State Banking Commission shall issue its final order approving, modifying or disapproving the decision of the Commissioner of Banks. Notice of the public hearing shall be published in a newspaper published in the city, town or county where the proposed branch is to be located at least 10 days prior to the scheduled hearing.~~
- (9) ~~Decision by Commissioner final. If there has been no written request for review within the 14 day period as provided in Item (7) of this Rule, the decision issued by the Commissioner of Banks shall become final with respect to the application.~~

Authority G.S. 53C-2-5; 53C-6-15.

SECTION .0400 - CONSOLIDATION OF BANKS

04 NCAC 03C .0403 INVESTIGATION

~~Upon receipt of a completed application for combination the Commissioner of Banks shall make an investigation into all the facts connected with the proposed combination. The investigation will take into account all statutory requirements and criteria.~~

Authority G.S. 53C-2-5; 53C-7-202.

04 NCAC 03C .0404 ORDER

~~Following the completion of the investigation, the Commissioner of Banks shall issue a written order including his decision for approval or disapproval of the application.~~

Authority G.S. 53C-2-5; 53C-7-203.

04 NCAC 03C .0405 REVIEW BY THE BANKING COMMISSION

~~The Commissioner's order shall be submitted to the Banking Commission at a regular or called meeting. Following a public hearing, the Banking Commission will issue its final agency decision approving or disapproving the application.~~

Authority G.S. 53C-2-5; 53C-7-203; 53C-7-209.

04 NCAC 03C .0407 WAIVER BY COMMISSIONER

~~When the Commissioner of Banks finds that he must act immediately to approve a merger, combination or transfer of assets and liabilities due to an insolvent, unsafe or unsound condition in any bank, the requirements in this Section .0400 pertaining to publication, notice and public hearing may be waived by the Commissioner of Banks, who shall take into account all relevant facts and circumstances, including, without limitation, the effect of approval upon the safety and soundness of the institution. When exercising waiver under this Rule, the Commissioner of Banks shall advise the members of the State Banking Commission of his actions with respect to the merger, combination or transfer of assets and liabilities.~~

Authority G.S. 53C-2-5; 53C-2-1; 53C-9-101.

SECTION .0900 - OPERATIONS

04 NCAC 03C .0901 BOOKS AND RECORDS

~~(a) Each bank, or its each affiliate of the bank, and the bank's parent holding company, shall keep in permanent form, and make available for examination by the representatives of the Commissioner of Banks, books and records which reflect all the transactions of the bank in its true financial condition. Such records shall be so kept so as to permit and facilitate a speedy examination, which will, in turn, reflect such financial condition to by the representatives of the Commissioner of Banks. Without implying that these are the only books and records to be kept, but, on the contrary, that these are necessary books and~~

records, as well as other books and records usually kept, the following books and records are required to be kept at the bank, or at its parent holding company, unless another storage site is approved by the Commissioner of Banks:

- (1) Alphabetical direct and indirect liability ledgers. Each commercial bank or branch thereof in which notes or other forms of similar obligations are retained must ~~shall~~ keep an alphabetical direct and indirect liability ledger. ~~The direct liability ledger must be kept in balance with the general ledger control. In a commercial bank whose automated record system is not able to produce an alphabetical liability ledger the bank shall be able to produce an alphabetical listing of borrowers showing all of a customer's loan or customer account numbers and the amount outstanding under each number when called upon by the Commissioner of Banks or his duly authorized agent. In addition to the direct liability ledger, each commercial bank or branch thereof in which notes or other forms of similar obligations are retained must keep an alphabetical indirect liability ledger showing a customer's indirect obligations by loan name or account number and the balance outstanding under each account. Where the total of the direct and indirect lines do not exceed twenty thousand dollars (\$20,000), the indirect line may be omitted from the indirect liability ledger. The indirect liability ledger must be updated at least monthly. Each commercial bank shall have the ability to produce both the direct and indirect liability ledgers in hard copy form upon call by the Commissioner of Banks or his duly authorized agent. The alphabetical direct liability ledger shall show a customer's direct obligations owed to the bank by loan name or account number and the balance outstanding under each account, and the alphabetical indirect liability ledger shall show a customer's indirect obligations owed to the bank by loan name or account number and the balance outstanding under each account. The direct liability ledger shall be kept in balance with the general ledger control. The indirect liability ledger shall be updated at least monthly. Where the aggregate total of a customer's direct and indirect obligations to the bank do not exceed twenty thousand dollars (\$20,000), the indirect obligations of that customer may be omitted from the indirect liability ledger. In a bank whose automated record system is not able to produce an alphabetical liability ledger, the bank shall produce an alphabetical listing of borrowers showing all of a customer's loan or account numbers and the amount outstanding under each number when called upon by the~~

Commissioner of Banks or his duly authorized agent. Each bank shall have the ability to produce both the direct and indirect liability ledgers in hard copy form upon request by the Commissioner of Banks or his duly authorized agent.

- (2) Monthly reconciliation of accounts with correspondent banks. Records ~~must shall~~ be kept, showing the monthly reconciliation of each account with correspondent banks. A signed review of such reconciliations ~~must shall~~ be made by ~~some~~ an officer or employee of the bank other than the person ~~composing same.~~ responsible for preparing the reconciliation.
- (3) Purchases and sales of securities. A ~~permanent record must shall~~ be kept of all stocks and bonds bought or sold. Also, there ~~must be retained for review by examiners all original invoices of purchases and sales of securities.~~ The record ~~must shall~~ show dates of purchases and sales, interest rates, maturities, par value, cost value, all write-ups or write-downs, a full description of the security, from whom purchased, to whom sold, purchase price, selling price, and when, where and why pledged or deposited. This record ~~must shall~~ be maintained in balance with the general ledger control.
- (4) ~~A permanent record must be kept of all articles deposited for safekeeping. Receipts must be given and taken for all articles deposited or delivered. An inventory of parcels is not required.~~
- (5)(4) Charge-offs. A permanent record ~~must shall~~ be kept of all items charged off. ~~off and of all recoveries.~~ All ~~chargeoffs must charge-offs shall~~ be authorized or approved by the executive committee or by the board of directors and such action recorded in their minutes. ~~This The charge-off record, among other things, must record shall~~ show the date of the ~~chargeoff, charge-off,~~ a description of the asset and the ~~amount.~~ amount of the charge-off. The record ~~must shall~~ be supported by the actual charged off items, or the final disposition of any charged-off item. ~~In this record must also be recorded all recoveries, giving dates and amounts. The record of recoveries shall show the date and amount of each recovery.~~
- (6)(5) Records of real estate. A ~~real estate record must shall~~ be kept on all parcels owned, including the banking house. ~~This The record must shall~~ show ~~when, from whom, and how~~ when the property was acquired; ~~date, cost price, book value, detailed income and detailed expenses.~~ acquired, how the property was acquired, the cost of the property, the book

value of the property, and detailed income and expense reports relating to the property. This record shall be supported by appraisals, title certificates showing assessed value, tax receipts, and hazard insurance policies, policies relating to the property.

(7)(6) Meeting minutes and consent to action. ~~Proper minutes, Minutes of all meetings (and each consent to action without a meeting) of the board of directors (or board of managers), each committee of the board and stockholders meetings, showing clearly its action, must shall be kept for each committee, board of directors, board of managers, and stockholders' meetings. kept.~~ All minutes ~~must shall~~ be signed by the chairman and the secretary of this such meeting.

(8)(7) Cash items held over. A ~~permanent~~ daily record ~~must shall~~ be kept of all cash items held over from the day's business, including all checks that would cause an overdraft if handled in the regular way. This record ~~must show the name of shall be kept in balance with the general ledger control and shall identify the account on whom which the item is drawn or is obligated for payment, the reason the item is being held, the date the item was placed in the cash items account, and the amount of the item. This record must be a daily record showing only those items held over at the end of each day's business and be kept in balance with the general ledger or control figure.~~

(9)(8) Record of income and expenses. A detailed record of income and expenses ~~must shall~~ be kept, kept and balanced ~~monthly, and a monthly.~~ A report ~~thereof of this record shall be~~ made to the executive committee or board of directors, and the receipt of same noted in their minutes.

(10) ~~In the discretion of the Commissioner of Banks, he may require the preparation or maintenance of further books or records by specific banks or branches thereof.~~

(11)(9) Industrial bank reports of condition. Each industrial bank, when preparing a report of condition and income, ~~must shall~~ include and make a part of ~~this its~~ report a list of those whose aggregate direct and indirect obligations to the bank, whether the obligations are direct or indirect, and including paper purchased by the bank, are in excess of ten percent of the industrial bank's capital, surplus and undivided profits. In lieu of this list, the industrial bank must may maintain a direct and indirect liability ledger in accordance with Item (1) of this Rule. ~~Any commercial bank making installment loans may, with reference to such installment loans,~~

~~make the report specified in this section in lieu of the liability ledger required under Item (1) of this Rule.~~

(b) Unless another storage site is approved by the Commissioner of Banks, a bank's books and records and the books and records of the bank's parent holding company are required to be kept at the bank or at the bank's parent holding company, and the books and records of an affiliate of the bank are required to be kept at the affiliate, the bank, or the bank's parent holding company.

(c) Based upon the condition of a bank as determined by examination or otherwise, the Commissioner of Banks may require a bank to prepare or maintain different or additional books, records, and reports.

Authority G.S. 53C-8-6.

04 NCAC 03C .0902 REQUIRED ACCOUNTS

In order that the books and records of the bank may properly reflect all of its liabilities, the following reserve accounts ~~must~~ shall be set up and be properly maintained by all banks:

(1) Reserve for Interest Due Depositors. This reserve ~~must~~ shall be set up and proper entries made thereto at least once each month. As interest is paid to depositors, payments ~~must~~ shall be charged to this account. Each month, as credits are made to this reserve, the amount ~~should shall~~ be charged to interest paid to depositors' accounts.

(2) Reserve for Unearned Interest on Loans. All interest collected on notes ~~must~~ shall be credited to this account on the day it is collected. At least once each month earned interest ~~must~~ shall be computed, be charged to this account, and be credited to earned interest account. Provided however, this Subparagraph does not apply to loans where interest is accounted for through an income earned not collected account.

(3) ~~Reserve for Taxes, Insurance, Etc.~~ Based upon available information, including past experience, the approximate sum to be required for taxes of all kinds and for insurance, including surety bond premiums, for all purposes for the year, must be estimated and this account must be credited at least once each month, and debits made to expense accounts, for one twelfth of the total. All payments for taxes and insurance, when made, must be charged to this reserve account. Provided, however, in lieu of using a reserve account, a prepayment account may be established for insurance, and monthly charges made to the account to expense the appropriate amount.

(4) ~~Reserve for Depreciation.~~ In order that the values carried on the books of the bank representing fixed assets may be as nearly correct as possible, each bank must set up and

PROPOSED RULES

~~properly maintain a reserve for depreciation. Credits must be made to this account at least once each month for one twelfth of the annual rate permitted for that particular asset by the United States Internal Revenue Service.~~

during the month shall be charged to this account and credited to the bond income account. As coupons are collected, they shall be credited to this account.

(5)(4) Bond Income Earned; Not Collected. At least once each month, the income on bonds earned

Authority G.S. 53C-8-1; 53C-8-6.

04 NCAC 03C .0903 RETENTION: REPRODUCTION AND DISPOSITION OF BANK RECORDS

Each bank or branch thereof shall keep and retain in some safe and secure place the books, ledgers, records, and documents hereinafter set forth for the periods specified.

<u>Bank Records to be Retained</u>	<u>Minimum Retention Period</u>
<u>ACCOUNTING</u>	
1. Daily Reserve Calculation and Averages	3 years
2. Difference Records (Over/Short)	2 years
3. Paid Bills and Invoices	3 years
4. Quarterly Report of Condition and Income and Supporting Work Papers	5 years
<u>ADMINISTRATIVE</u>	
1. Documentation of Charged-off Assets	10 years
2. Escheat Reports and Records	10 years
3. Minute Books <u>Minutes</u> of Meetings of Stockholders, Directors, and Executive Committee <u>Board Committees</u>	Permanent
<u>AUDIT</u>	
1. Audit Reports (Internal and External)	3 years
2. Audit Work Papers (Internal)	3 years
<u>BANK PROPERTIES</u>	
1. Fixed Assets-Evidence of Ownership (After Acquisition)	5 years
2. Fixed Assets-Leases (After Termination)	5 years
3. Real Estate-Construction Records	5 years
4. Real Estate-Deeds	Until conveyed
5. Real Estate-Leases (After Termination)	5 years
<u>CAPITAL</u>	
1. Capital Stock Certificate Books, Stubs, or Interleaves	Permanent
2. Capital Stock Ledger	Permanent
3. Capital Stock Transfer Register	Permanent
4. Proxies	3 years
<u>COLLECTIONS</u>	
1. Collection Registers (Incoming and Outgoing)	3 years after item paid or returned
2. Receipts and Advices (After Closed)	1 year
<u>CREDIT CARDS</u>	
1. Borrowing Authority Resolutions (After Closed)	3 years
2. Customer Application (After Closed)	1 year
3. Disclosure and Compliance Documents	25 months

PROPOSED RULES

4.	Merchants' Agreement (After Closed)	2 years
5.	Posting or Transaction Journal	2 years
6.	Sales Tickets or Drafts	3 years
7.	Statement of Account	5 years

DEMAND DEPOSIT AND TRANSACTION ACCOUNTS

1.	Checks and Debits	5 years
2.	Daily Report on Overdrafts	2 years
3.	Deposit Resolutions (After Closed)	3 years
4.	Deposit Tickets and Credits	5 years
5.	Ledgers, Statements, or Stubs	5 years
6.	Letters of Administration	5 years
7.	Posting or Transaction Journals	2 1/2 years
8.	Powers of Attorney	5 years <u>after closing</u>
9.	Return Item Records	1 year
10.	Signature Cards (After Closed)	5 years
11.	Stop Payment Orders	1 year
12.	Tax Waivers	1 year
12.	Undelivered Statements	1 year
13.	Unidentified or Unclaimed Deposit Records	Until escheated

DUE FROM BANKS

1.	Advise of Entry (After Cleared)	3 months
2.	Drafts (After Paid)	5 years
3.	Draft Register or Carbon Copy	Until paid
4.	Reconcilements	5 years
5.	Statements	3 years

GENERAL LEDGER

1.	Daily Statement of Condition	5 years
2.	General Journal (If Book of Original Entries, with Descriptions)	15 years
3.	General Ledgers	15 years
4.	General Ledger Tickets	5 years

INSURANCE

1.	Bankers Blanket Bond and Excess	5 years
2.	General Casualty Liability Policies Expired	5 years

INTERNATIONAL

1.	Bankers Acceptances	3 years
2.	Collection Records	3 years after item paid or returned
3.	Letters of Credit and Documents	3 years after expiration
4.	Transfer Orders (Wire or Written)	1 year

INVESTMENTS

1.	Accrual and Bond Amortization or Accretion Records (After Period Ends)	3 years
2.	Brokers' Confirmations, Invoices, Statements	3 years
3.	Ledgers	3 years
4.	<u>Records of Purchases and Sales of Securities</u>	<u>5 years</u>

LEASE RECEIVABLES (OTHER THAN REAL ESTATE)

1.	Lease Agreements and Documents (After Termination)	5 years
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PROPOSED RULES

2. Rental Payment Records 5 years
3. Record of Disposition of Property 5 years

LEGAL JUDICIAL AUTHORIZATION

1. Attachments and/or Garnishments 10 years
2. Court Case Records (After Final Disposition) 10 years
3. Probate Court Appointment (After Closed) 10 years

LOANS (COMMERCIAL, CONSUMER, MORTGAGE)

1. Appraisals, Financing Statements, and Title Opinions Pertaining to Collateral Until paid
2. Borrowing Resolutions 3 years after payment of debt
3. Credit Files (Financial Statements, Applications, Correspondence) (After Paid) 2 years
4. Collateral Records (After Released) 5 years
5. Interest Rebate Records 1 year
6. Liability Cards and/or Ledgers (After Closed) 3 years
7. Loan Ledger Cards or History Sheets (After Paid) 3 years
8. Loan Proceeds Disbursement Records Until paid
9. Loans Paid Record 3 years
10. Mortgage Files and Supporting Documents (After Paid) 2 years
11. Note and/or Loan Register (After Paid) 3 years
12. Posting or Transaction Journal 2 years

MAIL

1. Insurance Records of Registered and Certified 1 year
2. Registered and Certified Records (In and Out) 1 year
3. Return Receipt Record 1 year

MISCELLANEOUS

1. Cash and Security Vault Records-Opening, Closing 6 months
2. Taxes>Returns and Supporting Papers 3 years or until cleared by IRS and Dept. of Revenue
3. Travelers Checks-Applications 1 year

MONEY TRANSFER

1. Copy of Incoming and Outgoing Transfers 1 year
2. General Correspondence 1 year
3. Receipts and Advices (After Closed) 1 year
4. Transfer Request Records 1 year

NIGHT DEPOSITORY

1. Customer Agreement (After Closed) 1 year
2. Customer Receipt 1 year
3. Daily Inventory 1 year

OFFICIAL CHECKS

1. Official Checks (Dividend, Cashiers, Expense, Loan) and Money Orders (After Paid) 5 years
2. Official Check Register or Carbon Copy Until paid or escheated
3. Certified Checks or Receipts (After Paid) 5 years
4. Certified Check Register or File Copy Until paid or escheated
5. Affidavits and Indemnity pertaining to Issuance of Duplicate Checks Permanent

PROOF AND TRANSIT

- | | | |
|----|--|----------|
| 1. | Advice of Correction | 6 months |
| 2. | Cash Tickets | 6 months |
| 3. | Outgoing Cash Letters and Accompanying Items (Microfilm) | 2 years |
| 4. | Proof Sheets, Tapes, and Listings | 2 years |

SAFE DEPOSIT

- | | | |
|----|---|-----------|
| 1. | Access Records (After Closed) | 3 years |
| 2. | Box History Card | Permanent |
| 3. | Contracts and Agreements (After Closed) | 3 years |
| 4. | Forced Entry Records | 10 years |

SAFEKEEPING AND CUSTOMER SECURITIES

- | | | |
|----|--|---------|
| 1. | Broker Confirmations, Invoices, Statements | 3 years |
| 2. | Buy and Sell Orders | 3 years |
| 3. | Customer Contracts and Agreements (After Closed) | 3 years |
| 4. | In and Out Records (Movement of Securities) | 3 years |
| 5. | Safekeeping Receipts (After Closed) | 3 years |

SAVINGS AND TIME DEPOSITS

- | | | |
|-----|---|-------------------------|
| 1. | Certificates of Deposit Paid | 5 years |
| 2. | Certificates of Deposit Records (Register, Ledger, Copy) | Until paid or escheated |
| 3. | Daily Report of Overdrafts | 2 years |
| 4. | Debits and Withdrawals | 5 years |
| 5. | Deposit and Credit Tickets | 5 years |
| 6. | Deposit Resolution (After Closed) | 3 years |
| 7. | Ledgers or Statements | 5 years |
| 8. | Posting or Transaction Journal | 1 year |
| 9. | Signature Cards, Contracts, and Agreements (After Closed) | 5 years |
| 10. | Undelivered Statements | 1 year |
| 11. | Unidentified or Unclaimed Deposit Records | Until escheated |

TELLERS

- | | | |
|----|--|---------------|
| 1. | Balance Sheets, Recaps, or Records | 1 year |
| 2. | Cash Item Report | 1 year |
| 3. | Machine Tapes, Cash Ticket Copies, Posting or Transaction Journals | 6 months |
| 4. | <u>Daily Record of Cash Items Held Over</u> | <u>1 year</u> |

TRUST (Corporate)

- | | | |
|----|--|--|
| 1. | Account Ledger or Record | 7 years after account closed |
| 2. | Posting or Transaction Journal | 7 years |
| 3. | Bonds of Indemnity | Permanent |
| 4. | Stock Certificates (Cancelled) | until returned to corporation |
| 5. | Dividend Checks – Paid | 5 years |
| 6. | Dividend Check Register or Carbon Copy | Until paid |
| 7. | Bonds and Coupons – | 7 years after Cancelled or Cremation Certificates
paid or until returned to corporation |
| 8. | Resolutions and Authorizations | 7 years after account closed |

TRUST (Employee Benefit)

- | | | |
|----|--|------------------------------|
| 1. | Accountings | 6 years after account closed |
| 2. | Agreements, Authorizations and Resolutions | 6 years after account closed |
| 3. | Account Ledger or Record | 6 years after account closed |

- | | | |
|----|-------------------------------|------------|
| 4. | Disbursement Checks | 6 years |
| 5. | Check Register or Carbon Copy | Until Paid |
| 6. | Bonds of Indemnity | Permanent |

TRUST (Personal)

- | | | |
|----|-------------------------------|------------------------------|
| 1. | Accountings | 3 years after account closed |
| 2. | Agreements and Authorizations | 5 years after account closed |
| 3. | Account Ledger or Record | 7 years after account closed |
| 4. | Minutes of Committee Meetings | Permanent |
| 5. | Receipts for Assets Delivered | 3 years after account closed |
| 6. | Tax Return | 10 years or until IRS clears |
| 7. | Disbursement Checks | 5 years |
| 8. | Check Register or Carbon Copy | Until paid |
| 9. | Bonds of Indemnity | Permanent |

Authority G.S. 53C-5-2.

SECTION .1001 – LOAN ADMINISTRATION AND LEASING

04 NCAC 03C .1001 LOAN DOCUMENTATION

Unless otherwise provided, each ~~bank, or any branch thereof, where notes are held must~~ bank shall maintain on file the ~~appropriate supporting documents as follows:~~ following loan documentation:

- (1) Financial Statements. Financial statements shall be required from any ~~borrower~~ person who is a maker, co-maker, guarantor, endorser or surety on any unsecured loans or other unsecured extensions of credit in an amount of fifty thousand dollars (\$50,000) or more in the aggregate. Financial statements required by this Item shall:
 - (a) be signed or otherwise properly executed;
 - (b) be dated within 18 months preceding the origination date of the credit obligation;
 - (c) be renewed within 18 months after the date of the last financial statement on file;
 - (d) be addressed to, or made specifically for, the lending bank; and
 - (e) include such information as will adequately reflect the assets, liabilities, net worth and income of the borrower.
- (2) Financial Statement Exceptions. A bank may waive the financial statement required by Item (1) of this Rule for credit granted under a credit card. ~~Additionally, a bank may elect to substitute in the place of a current financial statement a current credit bureau report for consumer loans scheduled to be repaid in at least quarterly installments. For an individual whose unsecured obligations consist of consumer loans scheduled to be repaid in at least quarterly installments, a bank may substitute a current credit bureau report for the~~

(b) Records not specifically identified in Paragraph (a) of this Rule shall be kept for a commercially reasonable period of time.

~~(b)(c)~~ Nothing in these Rules shall prohibit any bank or branch thereof from keeping and maintaining any and all of its records for a longer period of time than the minimum time set forth as the minimum retention period.

~~(c)(d)~~ Paragraph (a) and (b) of this Rule sets forth state minimum records retention requirements and does not necessarily include nor cover records required to be kept by federal agencies such as federal bank supervisory agencies, wage hour, and other federal agencies. Banks shall also observe the requirements of such federal agencies in retention of records required by such agencies.

~~(d)(e)~~ Nothing in these Rules shall prohibit any bank or branch thereof from causing any or all of its records, whether permanent records or records designated to be retained for a minimum period of time, to be maintained pursuant to G.S. 53C-6-14.

Authority G.S. 53C-2-5; 53C-6-14; 53C-8-1.

04 NCAC 03C .0904 LETTERS OF CREDIT

~~In order~~ So that the books and records of the bank ~~may properly~~ reflect its contingent liabilities, the bank shall ~~properly~~ maintain ~~subsidiary~~ supporting records on all letters of credit, except for letters of credit sold for cash, issued and outstanding showing the following information:

- (1) the name of the account party for whom the letter of credit is established,
- (2) the name of the beneficiary,
- (3) the amount,
- (4) the expiration date,
- (5) the terms under which payment is authorized.

Authority G.S. 53C-8-1.

04 NCAC 03C .0905 INVESTMENT AUTHORITY

A bank may invest in mutual funds to the same extent and within the same limitation as permitted for national banks by statute, regulation, or interpretation of the applicable federal regulator, unless otherwise determined by the Commissioner of Banks based on safety and soundness.

financial statement required by Item (1) of this Rule. A credit bureau report shall be current if not more than 18 months have passed from its date of issue.

(3) Personal Property Appraisals. Appraisals on personal property used as collateral for a loan shall be obtained and shall be completed as follows:

(a) ~~Generally.~~ Except as otherwise provided below, a written appraisal of personal property used to collateralize any loan ~~must~~ shall be made ~~or approved~~ by the executive committee or loan committee of the bank, or any branch thereof, or other reliable persons familiar with the value of the property. Except as provided, all appraisals ~~must~~ shall be renewed every 24 months.

(b) Requirements. The appraisal required by this Item ~~must~~ shall include:

- (i) the name of the borrower;
- (ii) the date the appraisal was made;
- (iii) the value of the collateral;
- (iv) the signatures of at least two persons making the appraisal;
- (v) a brief description of the property;
- (vi) the amount of any prior lien and holder of the lien, if any; and
- (vii) the original amount or outstanding balance of the loan which the property is used to secure.

(c) Appraisal Exceptions. No appraisal shall be required under the following circumstances:

- (i) on collateral to notes of less than fifty thousand dollars (\$50,000);
- (ii) on loans fully secured by obligations of the United States or the State of North Carolina;
- (iii) on loans fully secured by deposits in the bank maintaining the loan account;
- (iv) on loans fully secured by the cash surrender or loan value of life insurance policies;
- (v) on loans fully secured by bonded warehouse receipts;
- (vi) on floor plan loans to dealers fully secured by ~~new automobiles, stationwagons,~~

~~vans, and trucks;~~ motor vehicles;

(vii) on discounted notes for a dealer where the note is given as the purchase price of ~~an automobile~~ a motor vehicle or other consumer goods; or

(viii) on loans fully secured by listed securities, unless such loans are within the provisions of the Securities Exchange Act of 1934 as defined by Regulation "U," as amended from time to time by the Board of Governors of the Federal Reserve System. On loans secured by such collateral, the appraisal must shall be made and kept on file until the loan is fully paid.

(d) Renewal Exceptions. Appraisals need not be renewed annually where ~~an automobile, stationwagon, a motor vehicle or mobile home, or a truck or van not exceeding 8,000 pounds empty weight,~~ home is the sole or partial collateral for a loan.

(e) Single Signature Exception. An appraisal may be performed and signed by only one person where ~~an~~ a motor vehicle or ~~automobile, stationwagon, mobile home, or a truck or van not exceeding 8,000 pounds empty weight,~~ home is the sole collateral for a loan.

(4) Real Estate Appraisals. Unless otherwise provided, all real estate taken as security for loans shall be appraised in the form and manner set forth in Sub-item (4)(a) through (4)(c) of this Rule. In addition, the appraisal ~~must shall~~ be independent in that the appraiser is may not be involved in the loan transaction secured by the property being appraised and ~~has may have~~ no interest, financial or otherwise, in the property;

(a) The bank may elect to waive the requirement for an appraisal of real estate given as security for loans of fifty thousand dollars (\$50,000) or less. ~~Appraisals of real estate given as security for loans over fifty thousand dollars (\$50,000), but not exceeding two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged shall be prepared by any one of the following methods:~~

(b) Appraisals of real estate given as security for loans over fifty thousand dollars (\$50,000), but not exceeding two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged as collateral shall be prepared by any one of the following methods:

- (i) Two members of the executive or loan committee who are familiar with real estate values in the community where the property is located;
- (ii) Two bank employees who are familiar with real estate values in the community where the property is located, provided that one of the two employees ~~must~~ shall not be involved in the loan transaction secured by the property being appraised;
- (iii) A state-licensed real estate appraiser or state-certified real estate appraiser or a person certified as a real estate appraiser by an appraisal trade organization approved by the bank to perform the appraisal; or
- (iv) In lieu of an appraisal as provided by Sub-items (4)(a)(i) through (iii) of this Rule, for loans less than two hundred fifty thousand dollars (\$250,000), a bank may elect to accept a copy of the most recent real property tax notice from the tax administrator's office in the county in which the property is located provided that such notice states the assessed ad valorem tax value of the real estate, and any improvements thereon, separate from the personal property; and provided further, the loan officer shall include with the tax notice a memorandum to file that he or she has obtained the notice from the county tax administrator and is of the opinion that such notice accurately reflects the real property values.

~~(b)(c)~~ Except as noted, appraisals required by Sub-items (4)(a)(i), (ii), and (iii) of this Rule shall be in writing, and signed and dated by the person or persons making the appraisal. Additionally, the appraisal ~~must~~ shall identify the loan transaction for which it was made; identify the current balance of any prior lien and the identity of the holder of the lien, if any, disclosed by the attorney's title certificate; any; segregate values of improvements from values of the land; and describe the property so as to make it easily identifiable. If a professional appraisal form is used which does not include this information, the bank ~~must~~ shall complete and attach to such appraisal its own appraisal summary form disclosing the required information. The appraisal ~~must~~ shall state the basis or approach used to determine the value of the property. Acceptable approaches to determining the value of real property are:

- (i) The current cost of replacing a property, less depreciation relating to deterioration from functional or economic obsolescence;
- (ii) The value indicated by recent sales of comparable properties in the market and other market factors such as listings and offers to sell; or
- (iii) The value that the property's net earning power will support, based on a capitalization of net income.

~~(e)(d)~~ All real estate given as security ~~to~~ for loans in an amount over two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged as collateral shall be appraised and such appraisal shall be subject to the provisions of 12 C.F.R. 323.1 through 12 C.F.R. 323.7, which are herein incorporated by reference. Pursuant to G.S. 150B-21.6, any reference to 12 C.F.R. 323.1 through 12 C.F.R. 323.7 shall automatically include any later amendments or additions to those rules.

(5) Certificate of Title. ~~For loans secured primarily by real property and only secondarily by the borrower's general credit worthiness and projected income, a certificate of title furnished by an attorney at law, or title~~

~~insurance issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides to the bank substantially similar protection against loss from title defects or errors/omissions at closing or other loan related risks, must accompany each deed of trust or mortgage given as security on loans of~~ A title opinion furnished by an attorney at law, a title report or title insurance policy issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides the bank substantially similar protection against loss from title defects, errors/omissions at closing, and/or other loan-related risks, shall be obtained in connection with each deed of trust or mortgage given as security on each real estate-secured loan when:

- (a) ~~the loan is primarily secured by real property and only secondarily by the borrower's general credit-worthiness, and~~
- (b) ~~the amount of the loan secured by the real property is fifty thousand dollars (\$50,000) or more.~~
- (6) Stock Certificate/Powers. Where stock certificates, or similar negotiable securities, are accepted as collateral ~~to loans, for a loan,~~ each certificate ~~must shall~~ be endorsed and witnessed in ink, or accompanied by a stock power signed and witnessed in ink. Where such collateral is in the name of ~~another,~~ someone other than the maker or endorser of the note, there ~~must shall~~ be on file in the bank written authority from the collateral owner permitting the hypothecation of the collateral.
- (7) Corporate Resolutions. ~~Loans A loan~~ made directly to ~~corporations must a corporation~~ shall be supported by ~~a certified copies copy of resolutions a resolution~~ of the board of directors of the corporation, authorizing the ~~making of such loans. loan transaction.~~
- (8) Partnership Declaration. ~~Loans A loan~~ made directly to ~~partnerships must a partnership~~ shall be supported by a declaration ~~by of~~ of the general partners showing the composition of the partnership and unless all partners sign the note, the authority of the partner(s) executing the note to bind the partnership.
- (9) Limited Liability Company Certification. ~~Loans A loan~~ made directly to ~~a limited liability companies must company shall~~ be supported by a certification of a manager thereof that the loan ~~is has been duly authorized and is obtained for the carrying on in the usual way the business of the limited liability company. by the limited liability company.~~ is has been duly authorized and is obtained for the carrying on in the usual way the business of the limited liability company.

- (10) Unlisted Securities. Full credit information on all unlisted securities, now owned or hereafter purchased or acquired, ~~must shall~~ shall be secured ~~and~~ kept on file in the bank.

Authority G.S. 53C-6-1; 53C-8-1.

04 NCAC 03C .1002 LEASING OF PERSONAL PROPERTY

Each bank ~~or branch thereof~~ acquiring and leasing personal property or acquiring personal property that is subject to an existing lease together with the lessor's interest therein and incurring such additional obligations as may be incident to becoming an owner and lessor of such property may do so only when subject to the following restrictions:

- (1) Before the acquisition thereof upon the specific request and for the use of the customer the prospective lessee shall execute an agreement to lease such property;
- (2) During the minimum period of the lease, the terms of the lease shall require payment to the bank by the lessee of rentals which which, in the aggregate will exceed the total expenditures by the bank for or in connection with the ownership, maintenance, and protection of the property. In determining the total expenditures under this Rule, a bank may deduct a realistic residual value in determining the rentals to be charged during the term of a lease agreement. Any unguaranteed portion of the estimated residual value relied upon by the bank to calculate total expenditures under this ~~Regulation Rule~~ Rule may not exceed 25 percent of the original cost of the property to the lessor. The amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party, which is not an affiliate of the bank, may exceed 25 percent of the original cost of the property where the bank has determined, and can provide full, supporting documentation, that the guarantor has the resources to meet the guarantee;
- (3) The total leasing obligations or rentals to any bank of any person, partnership, association, ~~corporation;~~ corporation, or limited liability company shall at no time exceed the legal limit permitted by G.S. 53C-6-1;
- (4) The overall investment of the bank in such property leased to all lessees shall at no time exceed 200 percent of its capital;
- (5) The bank shall at all times maintain adequate protection by way of insurance or indemnity provided by the lessee;
- (6) No such lease or other agreement shall obligate the bank to maintain, repair, or service personal property in connection with any lease held by it;
- (7) No personal property acquired pursuant to the ownership or lease of personal property shall

be included in the computable investment in fixed assets under G.S. 53C-5-2;

- (8) Rental payments collected by the bank under lease arrangements shall be rent and shall not be deemed to be interest or compensation for the use of money loaned;
- (9) Upon expiration of any lease whether by virtue of the lease agreement or by virtue of the retaking of possession by the bank, such personal property shall be re-let, sold, or otherwise disposed of, or charged off within one year from the time of expiration of such lease; and
- (10) Upon written request the Commissioner of Banks may waive or modify any of the foregoing restrictions. In evaluating such a request, the Commissioner of Banks shall consider such factors as:
 - (a) the bank's size, profitability, capital sufficiency, risk profile, market, and operational capabilities, especially with a view towards the bank's involvement in lease financing;
 - (b) current best practices of financial institutions engaged in lease financing;
 - (c) the nature, size, duration, aggregate amount, and other risks attendant to the bank's lease financing transactions;
 - (d) the risk of significant loss to the bank if the Commissioner of Banks does not grant the request.

Authority G.S. 53C-2-5; 53C-5-2; 53C-8-1.

SECTION .1400 – LEGAL RESERVE

04 NCAC 03C .1402 BASIS FOR COMPUTATION AND MAINTENANCE

Required reserves shall be computed on the basis of the daily average deposit balance during a 14-day period ending every second Monday (the "computation period"). The method for determining the amount of reserve required is set forth in Rule .1401 of this Section. The reserves that are required to be maintained shall be maintained during a corresponding 14-day period (the "maintenance period") which begins on the second Thursday following the end of a given computation period and ends on the second Wednesday thereafter. For non-business days deposit figures of the prior banking day ~~will~~ shall be used.

Authority G.S. 53C-4-11.

SECTION .1600 – FEES

04 NCAC 03C .1601 FEES, COPIES AND PUBLICATION COSTS

(a) For applications, petitions, and other proceedings which must be filed with the Commissioner of Banks the following fees shall be paid to the Commissioner of Banks at the time of filing:

- (1) Application for the Formation of a New Bank or State Trust Institution \$8,000.00
- (2) Application to Merge or Consolidate ~~Banks or Banks, State Trust Institutions~~ Institutions, or Bank Holding Companies \$3,000.00
(fee is per institution) \$5,000.00
- (3) Application for Reorganization Into a Bank Holding Company Through an Interim Bank (fee is per bank) \$3,000.00
- ~~(4) Application for Reorganization \$3,000.00~~
- ~~(4) Application for Bank or Bank Holding Company Change in Control \$5,000.00~~
- (5) Application for Conversion of a National Bank to State Charter \$2,500.00
- (6) Application for Voluntary Liquidation \$3,000.00
- ~~(7) Application for Authority to Invest in a Subsidiary \$750.00~~
- ~~(8)(7) Application for Conversion of a Savings and Loan Association or a Savings Bank to a State Bank \$2,500.00~~

(b) The fees set forth in Paragraph (a) of this Rule are for standard applications, petitions, and other proceedings filed and considered in the ordinary course of business. Any application, petition or other proceeding which in the opinion of the Commissioner of Banks requires extraordinary review, investigation or special examination shall be subject to the actual costs of additional expenses and the hourly rate for the staff's time to be determined annually by the Banking Commission. The Commissioner of Banks shall advise an applicant or petitioner in advance of any additional work required and the hourly rate for the same. The hourly rate shall be:

- (1) For Senior Administrative staff \$75.00
- (2) For an ~~Examiner II~~ Senior Examination Staff \$50.00
- (3) For an ~~Examiner I~~ Financial Program Manager \$35.00
- (4) For an ~~Examiner Trainee~~ Financial Examiner \$25.00

(c) Unless otherwise stated, publications externally printed may be obtained at a cost equal to the actual cost of printing plus shipping and handling. All other publications or public record copies may be purchased at a price of two dollars (\$2.00) for the first page and twenty-five cents (\$0.25) for each additional page.

Authority G.S. 53C-3-1; 53C-5-2; 53C-7-101; 53C-7-201; 53C-7-207; 53C-7-301; 53C-10-102; 53C-10-103; 53C-10-201; 54B-34.2; 54C-47.

SECTION .1700 – NONRESIDENT BANKS

04 NCAC 03C .1702 ESTABLISHMENT OF A NON-BRANCH BANK BUSINESS OFFICE (NBBO)

(a) A ~~nonresident~~ bank may establish or relocate a LPO NBBO in North Carolina ~~under~~ upon giving written ~~agreement~~ with notice to the ~~Commissioner~~ which ~~provides that~~: Commissioner of Banks. Such notice shall acknowledge:

- (1) The ~~LPO~~ NBBO may be used to solicit loans, assemble credit information, make property inspections and appraisals, complete loan applications, ~~and~~ perform ~~other~~ preliminary paper work in preparation for the making of ~~loans~~; loans, and provide banking related services and products, other than the taking of deposits;
- (2) Loans may not be approved ~~nor~~ and loan proceeds may not be disbursed through the ~~LPO; NBBO;~~
- (3) The ~~LPO~~ NBBO may not be used to ~~solicit or~~ accept deposits;
- (4) The ~~LPO~~ NBBO may be inspected by the Commissioner of Banks for compliance with the written ~~agreement~~, notice, the cost of which inspection shall be borne by the ~~nonresident~~ bank; and
- (5) ~~The nonresident bank will complete and keep current a Loan Production Office Registration with the Commissioner of Banks; and~~
- (6) ~~If required by the Secretary of State, the LPO will obtain a certificate of authority to do business in North Carolina.~~

(b) The bank shall provide written notice to the Commissioner of Banks when relocating, or closing any NBBO.

(c) If required by the Secretary of State, the NBBO will obtain a certificate of authority to do business in North Carolina.

Authority G.S. 53C-1-4(46); 53C-6-18.

SECTION .1800 – COURIER SERVICE

04 NCAC 03C .1801 ESTABLISHMENT OF COURIER SERVICES

~~(a) Generally:~~ A state bank may provide a courier or messenger service to its customers ~~provided that~~ only if:

- (1) the bank complies with the requirements imposed by the Private Protective Services Act G.S. 74C-1. Et. Seq., and
- (2) a written agreement between the bank and the customers contains the ~~items in Paragraph (b) of this Rule.~~ following items:

~~(b) The written agreement referred to in Paragraph (a) of this Rule must contain the following:~~

- ~~(1)(a)~~ A statement that the courier is the agent of the customer and not the agent of the ~~bank.~~ bank;
- ~~(2)(b)~~ A statement that deposits collected by the courier or messenger are received by the bank when the deposits have

actually been delivered to a teller at the bank's ~~premises.~~ premises or a location that is eligible and designated by the bank to receive deposits;

- ~~(3)(c)~~ A statement which indicates that negotiable instruments collected by the courier or messenger are paid at the bank when delivered to the courier or ~~messenger.~~ messenger; and
- ~~(d)~~ An acknowledgment by the customer that transactions conducted by a courier service are not insured by the FDIC.

Authority G.S. 53C-5-1; 53C-8-1.

04 NCAC 03C .1802 COMPLIANCE AND DISCLOSURE REQUIREMENTS

~~(a) A state bank shall disclose to its customers that transactions conducted by a courier service are in no way insured by the FDIC.~~

~~(b) A state bank must also comply with requirements imposed by the Private Protective Services Act, G.S. 74C-1 et. seq.~~

Authority G.S. 53C-5-1; 53C-8-1.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend the rule cited as 19A NCAC 02E .0219.

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

- OSBM certified on: *December 20, 2013*
- RRC certified on:
- Not Required

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

Proposed Effective Date: *September 1, 2014*

Public Hearing:

Date: *May 20, 2014*

Time: *5:00 – 6:30 p.m.*

Location: *Chavis Park Community Center, 505 Martin Luther King Jr. Blvd, Raleigh, NC*

Reason for Proposed Action: *The Logo Program provides eligible businesses with the opportunity to list their business identifications on official highway signs within the right-of-way of fully controlled access highways. The various service types are gas, food, lodging, camping, and attraction. As of today, NC has 14,733 installed logo sign panels, of which, 284 panels are for attraction services. More attraction facilities, particularly in rural areas, could participate in the program but do not meet the hours and days of operations requirement. The proposed*

changes to 19A NCAC 02E .0219 will allow facilities that have the primary purpose of providing amusement, historical, cultural, or leisure attractions that would not fully meet the qualifying hours and days of operation or distance to have a provisional contract. This provisional contract shall be written with the understanding that if a fully qualifying attraction business or facility applies, and there is no room on the sign for the new business or facility, then the last provisional contract shall be cancelled. The proposed change will allow attraction facilities that do not meet the hours and days of operations, and opportunity to participate in the program only where there is room on a sign.

Comments may be submitted to: Brian LiVecchi, 1501 Mail Service Center, Raleigh, NC 27699-1501

Comment period ends: June 30, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02E – MISCELLANEOUS OPERATIONS

SECTION .0200 – OUTDOOR ADVERTISING

19A NCAC 02E .0219 ELIGIBILITY FOR PROGRAM

Businesses may participate in the program provided said businesses comply with the following criteria:

- (1) The individual business installation whose name, symbol or trademark appears on a business panel shall give written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race,

religion, color, sex, age, disability, or national origin.

- (2) An individual business, under construction, may apply to participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within 60 days of the date of application. No business panel shall be displayed for a business which is not open for business and in full compliance with the standards required by the program. A business under construction shall not be allowed to apply for participation in the program if its participation would prevent an existing open business from participating, unless the existing business qualifies for or has a provisional contract.
- (3) Businesses may apply for participation in the program on a first-come, first-served basis until the maximum number of panels on the logo sign for that service is reached. If a business's panel is removed and space is available on the sign, or one or more of the existing businesses have provisional contracts, the first fully qualifying business to contact the Department shall be allowed priority for the vacant space or the space occupied by a business with a provisional contract.
- (4) The maximum distance that a "GAS", "FOOD", or "LODGING" service may be located from the fully controlled access highway shall not exceed three miles at rural interchange approaches and one mile at urban interchange approaches in either direction via an all-weather road. Where no qualifying services exist within three miles (rural) or one mile (urban), provisional contracts are permitted where the maximum distance may be increased to six miles at rural interchange approaches and three miles at urban interchange approaches, provided the total travel distance to the business and return to the interchange does not exceed twelve miles. A rural interchange is defined as an interchange along a freeway (interstate or other fully-controlled access arterial highway) that is located either in a rural unincorporated area or within the corporate limits of a city or town with a population of less than 40,000. An urban interchange is defined as an interchange along a freeway (interstate or other fully-controlled access arterial highway) that is located either in or within one mile of the corporate limits of a city or town with a population equal to or greater than 40,000. Provisional contracts shall be written with the understanding that if a closer business applies, qualifies, and is within the three miles (rural)

- or one mile (urban) distance as applicable, and there is not otherwise room on the sign for the new business, then the provisional contract of the furthest business from the intersection shall be cancelled and the business panels shall be removed at the annual contract renewal date. The maximum distance for a "CAMPING" or "ATTRACTION" service shall not exceed 15 miles in either direction via an all-weather road.
- (5) "GAS" and associated services. Criteria for erection of a business panel on a sign shall include:
- (a) licensing as required by law;
 - (b) vehicle services for fuel (gas, diesel, or alternative fuels), motor oil, and water;
 - (c) on premise public restroom facilities;
 - (d) an on premise attendant to collect monies, make change, and make or arrange for tire repairs;
 - (e) year-round operation at least 16 continuous hours per day, seven days a week; and
 - (f) on premise telephone available for emergency use by the public.
- (6) "FOOD" service. Criteria for erection of a business panel on a sign shall include:
- (a) licensing as required by law, and a permit to operate by the health department;
 - (b) businesses shall operate year-round at least eight continuous hours per day six days per week;
 - (c) indoor seating for at least 20 persons;
 - (d) on premise public restroom facilities; and
 - (e) on premise telephone available for emergency use by the public.
- (7) "LODGING" service. Criteria for erection of a business panel on a sign shall include:
- (a) licensing as required by law, and a permit to operate by the health department;
 - (b) overnight sleeping accommodations consisting of a minimum of 10 units each, including bathroom and sleeping room, except a Lodging business operating as a "Bed and Breakfast" establishment with less than 10 units may participate. "Bed and Breakfast" businesses shall be identified on the Logo signs by a standard message specified by the Department. "Bed and Breakfast" businesses shall only be allowed to participate in the program if the maximum number of qualified Lodging businesses do not request participation in the program and occupy spaces on the Logo signs. All "Bed and Breakfast" businesses shall have provisional contracts;
- (c) adequate parking accommodations;
 - (d) year-round operation; and
 - (e) on premise telephone available for emergency use by the public.
- (8) "CAMPING" service. Criteria for erection of a business panel on a sign shall include:
- (a) licensing as required by law, including meeting all state and county health and sanitation codes and having water and sewer systems which have been duly inspected and approved by the local health authority (the operator shall present evidence of such inspection and approval);
 - (b) at least 10 campsites with accommodations (including on premise public restroom facilities in a permanent structure) for all types of travel-trailers, tents and camping vehicles;
 - (c) adequate parking accommodations;
 - (d) continuous operation, seven days a week during business season;
 - (e) removal or masking of said business panel by the department during off seasons, if operated on a seasonal basis; and
 - (f) on premise telephone available for emergency use by the public.
- (9) "ATTRACTION" service. Criteria for erection of a business panel on a sign for any business or establishment shall include:
- (a) licensing as required by law;
 - (b) on premise public restroom facilities in a permanent structure;
 - (c) continuously open to the motoring public without appointment at least eight hours per day, five days per week during its normal operating season or the normal operating season for the type of business; where room is available on the sign and a business exists that does not meet the qualifying hours and days of operations or distance, a provisional contract is permitted. Provisional contracts shall be written with the understanding that if a fully qualifying business applies and there is not otherwise room on the sign for the new business, then the provisional contract of the business last on the sign shall be cancelled and the business panel shall be removed at the annual contract renewal date. It is

the responsibility of the businesses with provisional contracts to update their contracts to non-provisional contracts (if they meet all qualifications) prior to receiving notice of cancellation. The contract in place on the date NCDOT receives a completed application from a fully qualified business will be the contract used for the decision making purpose.

- (d) adequate parking accommodations;
- (e) on premise telephone available for emergency use by the public; and
- (f) only facilities whose primary purpose is providing amusement, historical, cultural, or leisure activities to the public and are categorized as follows shall be allowed signing:
 - (i) Amusement Parks: Permanent areas open to the general public including at least three of the following activities: roller coasters, entertainment rides, games, swimming, concerts, and exhibitions;
 - (ii) Cultural Centers or Facilities: Locations for cultural events including museums, outdoor theaters, or a facility that exhibits or sells antiques or items painted or crafted by local artists;
 - (iii) Historic Sites: Buildings, structures, or areas listed on the national or state historic register and recognized by the Department as historic attractions or locations;
 - (iv) Leisure or Recreation Activity Areas: Attractions that provide tourists with opportunities such as golfing (excluding miniature golf, driving ranges, chip and putt areas, and indoor golf), horseback riding, wind surfing, skiing, bicycling, boating, fishing, picnicking, hiking, and rafting;
 - (v) Manufacturing Facilities: Locations that manufacture or produce products of interest to tourists and offer tours at least four times daily on a regularly scheduled year-round basis such as candy, ice cream, cookie, or

pickle manufacturing facilities. Facilities shall produce or manufacture and exhibit or sell their products at the facilities.

- (vi) Agricultural Facilities: Locations that provide tours and exhibit or sell their agricultural products or provide on site samples of their products, such as vineyards and regional farmers markets;
 - (vii) Zoological or Botanical Parks and Farms: Facilities that keep living animals or plants and exhibit them to the public;
 - (viii) Natural Phenomena: Naturally occurring areas that are of outstanding interest to the public, such as waterfalls or caverns; and
 - (ix) Motor Sports Facilities: Locations including museums, race tracks, and race team headquarters that exhibit or sell items related to automobile or truck racing.
- (10) Any other "ATTRACTION" not listed in Item (f) of this Rule shall be approved by the State Traffic Engineer.
- (11) Ineligible Attractions include, but are not limited to, shopping malls, furniture stores, drug stores, movie theaters; community business, historic, antique, or other districts; appliance stores, automobile or truck dealerships or garages, houses of worship, colleges, schools, real estate offices, sand and gravel facilities, produce stands, nurseries, grocery stores, restaurants, bars, lounges, adult establishments, and adult video, book, and novelty stores. An attraction is not eligible for both Travel Services (Logo) Signing and supplemental guide signing, such as Agriculture Tourism signing, at the same interchange.

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to adopt the rule cited as 19A NCAC 02E .0703 and amend the rule cited as 19A NCAC 02E .0702.

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

- OSBM certified on: February 3, 2014
- RRC certified on:
- Not Required

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

Proposed Effective Date: September 1, 2014

Public Hearing:

Date: May 20, 2014

Time: 6:30-8:30pm

Location: Chavis Park Community Center located at 505 Martin Luther King Jr. Blvd, Raleigh, NC

Reason for Proposed Action: *The proposed rule revisions are necessary to comply with state requirements, clarify existing rule requirements, reorganize existing rules to improve usability, and codify existing policies. New administration code is being developed to codify an existing NCDOT program. The professional or specialized services have been expanded and amended to meet the requirements and to improve the usability of the rules. The proposed rule revisions will enable Department staff to ensure contractors are properly qualified to perform the work and save project time and resources. Based on the current policy, the Department prequalifies Professional Services firms on an annual basis. Every year after the first approval, firms must renew their status by undergoing a shortened review process to verify that the key personnel of their firms have not changed. If the key personnel have not changed, the firm is renewed for one additional year, barring and professional or performance issues. Every three years after the first approval, the firm must go through a full review of their qualifications to determine whether the key personnel are still qualified to perform the services the firm wishes to perform on Department contracts. The prequalification policy that the Department proposes to adopt through Rule .0703 results in additional savings during the selection process of professional services contracts. The Department currently receives approximately 600 Letters of Interest (LOI) from teams of Professional Services firms for advertised contacts each year. The prequalification process for Professional Services firms allows the Department to verify whether a firm is qualified when these LOI's are received. The savings come by only reviewing a firm's qualifications every three years while verifying key staff of the firm annually versus reviewing a firm's qualifications every time the firm submits a LOI or responds to Request for Proposals (RFP). This also results in cost savings for Professional Services firms in time and materials. Without the prequalification process, the Department would have to review every firm's qualifications for every LOI or response to RFP submitted. Many Professional Services Firms submit multiple LOI's in a year for different items of work (referred to as disciplines). This would result in greater number of man-hours spent by both the Department reviewing the qualifications for every contract advertised, and for the Professional Services Firms preparing their qualifications on each contract advertised, increasing the labor cost for both. Furthermore,*

review and preparation of documents for each LOI or response to RFP would suspend each contract until the qualification reviews are completed that could in turn cause delays to the project schedule and ultimately delays to the traveling public.

Comments may be submitted to: Brian LiVecchi, 1501 Mail Service Center, Raleigh, NC 27699-1501.

Comment period ends: June 30, 2014

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02E – MISCELLANEOUS OPERATIONS

SECTION .0700 – PROFESSIONAL OR SPECIALIZED SERVICES

19A NCAC 02E .0702 SOLICITATION AND AWARD OF CONTRACT

(a) The department shall establish and maintain a "~~Register of Firms~~" "Directory of Transportation Firms" which have the necessary expertise and experience and have expressed a desire to perform ~~for the department in~~ professional engineering or other kinds of professional or specialized services ~~for the department~~ in connection with highway transportation construction or repair. Prequalification pursuant to ~~19A NCAC 02D-0801~~ Rule .0703 of this Section is ~~not~~ required for inclusion on the "~~Register~~" Directory or award of a contract under this Section.

(b) Upon authorization by the ~~Board~~ Secretary of Transportation for the DOT staff to use a professional/specialized firm, a Selection Committee shall be established by the branch manager consisting of at least three members from the DOT staff who are experienced in the type of services to be contracted. For

contracts anticipated to exceed ~~ten~~ fifty thousand dollars ~~(\$10,000)~~ (\$50,000) solicitation for proposals shall be by published advertisement. In addition, solicitation for interest may also be by direct mail to ~~several~~ all firms prequalified for the type of services to be contracted and selected from the register. Directory. North Carolina firms qualified to do the required work shall be given priority consideration. Priority consideration is defined as when one or more proposals are equal in all other aspects, additional consideration for award shall be given to a North Carolina firm. A North Carolina firm is a firm which maintains an office in North Carolina which is permanently staffed and capable of performing a majority of the work required.

(c) The firm(s) to be employed shall be selected for each project by the Selection Committee.

(d) For contracts having a total cost over ~~ten~~ fifty thousand dollars ~~(\$10,000)~~ (\$50,000) and for ~~amendments~~ supplemental agreements thereto, award shall be made by the Secretary of Transportation. ~~Board of Transportation after consultation with the Advisory Budget Commission.~~

(e) ~~Contract amendments that increase a contract cost to ten thousand dollars (\$10,000) or more require approvals as specified in Paragraph (d).~~ Supplemental agreements which increase a cost of a project to more than fifty thousand dollars (\$50,000) require approval by the Secretary.

(f) In an emergency situation, these Rules may be waived by the Secretary of Transportation or the Secretary's designee pursuant to G.S. 136-28.1(e). A qualified firm may be selected, negotiations conducted and a contract executed by the Secretary of Transportation or the Secretary's designee as required to resolve the emergency conditions.

(g) ~~A noncollusion certification shall be executed by prime contractors and lower tier participants in each transaction involving public funds. Transactions which require certifications from lower tier participants are:~~

- ~~(1) Transactions between a prime contractor and a person other than for a procurement contract, for goods or services, regardless of type.~~
- ~~(2) Procurement contracts for goods and services, between a prime contractor and a person, regardless of type, expected to equal or exceed the Federal small purchase threshold fixed at 10 U.S.C. 2304(g) and U.S.C. 253(g) [currently twenty five thousand dollars (\$25,000)] under a prime contract; and~~
- ~~(3) Procurement contracts for goods or services between a prime contractor and a person, regardless of the amount under which that person will have a substantive control over the transaction. Such include, but are not limited to, bid estimators and contract managers.~~

~~The certifications for both the prime contractor and the lower tier participants shall be on a form furnished by the Department of Transportation to comply with Federal Highway Administration requirements, as published in 49 C.F.R. Part 29. The prime contractor is responsible for obtaining the certifications from the lower tier participants and is responsible for keeping them as part of the contract records.~~

Authority G.S. 136-28.1(e) and (f); 143B-350(f) and (g).

19A NCAC 02E .0703 PREQUALIFYING TO AWARD – PROFESSIONAL SERVICES FIRMS

(a) In order to ensure that contracts awarded pursuant to G.S. 136-28.1(f) and G.S. 143-64.31 are awarded to responsible firms, prospective professional services firms shall comply with the rules set forth in this Section except as otherwise provided by law. For professional services contracts other than those specified in G.S. 136-28.1(f) and G.S. 143-64.31, specific project prequalification requirements to satisfy Paragraph (c) of this Rule shall be specified in the documents for specific project contracts.

(b) In order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-64.31, all prospective professional services firms shall be prequalified with the Department to ensure that they are responsible and reputable firms capable of effectively and efficiently performing the work awarded to them.

(c) The requirements of prequalification are as follows:

- (1) Applicants shall demonstrate the necessary experience, knowledge, and expertise to perform and timely complete professional services contracts in which they submit or subcontract;
- (2) Applicants shall demonstrate that they have sufficient financial resources, including available equipment and qualified personnel, to adequately perform and timely complete professional services contracts in which they submit or subcontract;
- (3) Applicants shall demonstrate that they have the necessary knowledge and expertise to comply with all state and federal laws relating to professional services contracts.

(d) Prospective professional services firms shall update their prequalification status annually and shall re-qualify every three years.

(e) A prequalified professional services firm must maintain compliance with the rules in this section at all times in order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-64.31. If at any time a professional services firm fails to comply with these Rules, the Department shall disqualify the professional services firm from any further contracts until he is able to demonstrate compliance with these requirements by re-qualifying.

Authority G.S. 136-28.1(e) and (f); 143-64.31; 143B-350(f) and (g).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to amend the rule cited as 21 NCAC 32U .0101.

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

- OSBM certified on:
RRC certified on:
Not Required

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

Proposed Effective Date: September 1, 2014

Public Hearing:

Date: July 14, 2014

Time: 5:00 p.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: Revisions required by changes in pharmacist immunization authority in Session Law 2013-246.

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

Comment period ends: July 14, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

SUBCHAPTER 32U – ADMINISTRATION OF VACCINES BY PHARMACISTS

SECTION .0100 – PHARMACISTS VACCINES

21 NCAC 32U .0101 ADMINISTRATION OF VACCINES BY PHARMACISTS

(a) An Immunizing Pharmacist shall administer only those vaccines or immunizations permitted by G.S. 90-85.15B and shall do so subject to all requirements of that statute and this Rule. Purpose. The purpose of this Rule is to provide standards for pharmacists engaged in the administration of influenza, pneumococcal and zoster vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Rule, have the following meanings, unless the context indicates otherwise.

- "ACPE" means Accreditation Council for Pharmacy Education.
"Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
(A) an Immunizing Pharmacist or a pharmacy intern who is under the direct, in-person supervision of an Immunizing Pharmacist; a pharmacist, an authorized agent under the pharmacist's supervision, or other person authorized by law; or
(B) the patient at the direction of either an Immunizing Pharmacist or a health care provider authorized by North Carolina law to prescribe the vaccine. a physician or pharmacist.
(2) "Immunizing Pharmacist" shall have the meaning provided in G.S. 90-85.3(i1).
(3) "Pharmacy intern" shall have the meaning provided in 21 NCAC 46 .1317(28). "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
(4) "Physician" means a currently licensed M.D. or D.O. with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the Immunizing Pharmacist pursuant to the Written Protocol between the Immunizing Pharmacist and the physician. "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
(5) "Board" means the North Carolina Board of Pharmacy.
(6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
(7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.

- (8) ~~"Medical Practice Act" means G.S. 90-1, et seq.~~
- (9) ~~"Physician" means a currently licensed M.D. or D.O. with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.~~
- (10) ~~"Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.~~
- (11) ~~"Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.~~
- (5) RESERVED
- (6) RESERVED
- (7) RESERVED
- (8) RESERVED
- (9) RESERVED
- (10) RESERVED
- (11) RESERVED
- (12) "Written Protocol" is a document means a physician's written order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the Physician and Immunizing Pharmacist that shall pharmacist and contain the following:
- (A) the name of the Physician individual physician authorized to prescribe drugs and responsible for authorizing the Written Protocol; written protocol;
- (B) the name of the Immunizing Pharmacist individual pharmacist authorized to administer vaccines;
- (C) the immunizations or vaccinations that may be administered by the Immunizing Pharmacist; pharmacist;
- (D) the screening questionnaires and safety procedures that shall at least include the then-current minimum standard screening questionnaire and safety procedures adopted by the Medical Board, the Board of Nursing and the Board of Pharmacy pursuant to S.L. 2013-246, s. 6.
- (~~D~~)(E) the procedures to follow, including any drugs required by the Immunizing Pharmacist pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
- (~~E~~)(F) the reporting requirements by the Immunizing Pharmacist pharmacist to the Physician, physician issuing the
- ~~written protocol, including content and time frame; and~~
- (~~F~~)(G) the locations at which the Immunizing Pharmacist pharmacist may administer immunizations or vaccinations, vaccinations; and
- (~~G~~) the requirement for annual review of the protocols by the physician and pharmacist.
- The Physician and the Immunizing Pharmacist must review the Written Protocol at least annually and revise it if necessary.
- (e) Policies and Procedures:
- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza, pneumococcal and zoster vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate, most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to him or her, the information provided and has had his or her questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer vaccines to patients under 18 years of age.
- (6) The pharmacist shall not administer the pneumococcal or zoster vaccines to a patient unless the pharmacist first consults with the patient's primary care provider. The pharmacist shall document in the patient's profile the primary care provider's order to administer the pneumococcal or zoster vaccines. If the patient does not have a primary care provider, the pharmacist shall not administer the pneumococcal or zoster vaccines to the patient.
- (7) The pharmacist shall report all vaccines administered to the patient's primary care provider and report all vaccines administered to all entities as required by law, including any State registries which may be implemented in the future.
- (d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:

- (1) ~~hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or an equivalent certification organization;~~
- (2) ~~successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a health authority or professional body approved by the Board as having a certificate program similar to the programs accredited by either the Centers for Disease Control or the ACPE;~~
- (3) ~~maintain documentation of:~~
 - (A) ~~completion of the initial course specified in Subparagraph (2) of this Paragraph;~~
 - (B) ~~three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;~~
 - (C) ~~current certification specified in Subparagraph (1) of this Paragraph;~~
 - (D) ~~original written physician protocol;~~
 - (E) ~~annual review and revision of original written protocol with physician;~~
 - (F) ~~any problems or complications reported; and~~
 - (G) ~~items specified in Paragraph (g) of this Rule.~~

(c) ~~A pharmacist~~ An Immunizing Pharmacist who, because of physical disability, is unable to obtain a current provider level CPR certification may administer vaccines in the presence of a pharmacy technician or pharmacist who holds a current provider level CPR certification.

(d) With each dose of vaccine, either the Immunizing Pharmacist or a pharmacy intern must give the appropriate, most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative. The Immunizing Pharmacist or pharmacy intern must ensure that the patient or legal representative has the opportunity to read, or to have read to him or her, the information provided and to have any questions answered prior to administration of the vaccine.

(e) ~~Supervising Physician responsibilities. Pharmacists who administer vaccines shall enter into a written protocol with a supervising physician who agrees. The Physician must agree to meet the following requirements:~~

- (1) be responsible for the formulation or approval and periodic review of the Written Protocol ~~physician's order, standing medical order, standing delegation order, or other order or written protocol~~ and periodically review the Written Protocol ~~order or protocol~~ and the services provided to patients ~~a patient~~ under the Written Protocol; ~~order or protocol~~;
- (2) be accessible to the Immunizing Pharmacist ~~pharmacist administering the vaccines~~ or be

available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage; and

- ~~(3) review written protocol with pharmacist at least annually and revise if necessary; and~~
- ~~(4)~~(3) receive a periodic status reports from the Immunizing Pharmacist, ~~report on the patient~~, including any problems ~~problem~~ or complications ~~complication~~ encountered.

(f) Drugs. The following requirements pertain to drugs administered by an Immunizing Pharmacist; ~~a pharmacist~~:

- (1) Drugs administered by an Immunizing Pharmacist ~~a pharmacist~~ under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) ~~Pharmacists, Immunizing Pharmacists,~~ while engaged in the administration of vaccines under the Written Protocol, ~~written protocol~~, shall have in their custody and control the vaccines identified in the Written Protocol ~~written protocol~~ to treat adverse reactions; and
- (4) After administering vaccines at a location other than a pharmacy, the Immunizing Pharmacist ~~pharmacist~~ shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(g) Record Keeping and Reporting.

- (1) ~~A pharmacist who administers any vaccine~~ An Immunizing Pharmacist shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) Route of administration of the vaccine;
 - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) Dose administered;

PROPOSED RULES

- (G) The name and address of the patient's primary health care provider, as identified by the patient; and
- (H) The name or identifiable initials of the Immunizing Pharmacist administering pharmacist.
- (2) ~~A pharmacist who administers vaccines~~ An Immunizing Pharmacist shall document the annual review with the Physician ~~physician~~ of the Written Protocol as required in this Rule. ~~written protocol in the records of the pharmacy that is in possession of the vaccines administered.~~
- (3) An Immunizing Pharmacist must report adverse events associated with administration of a vaccine to either the prescriber, when administering a vaccine pursuant to G.S. 90-85.15B(a), or the patient's primary care provider, if the patient identifies one, when administering a vaccine pursuant to G.S. 90-85.15B(b).
- ~~(h) The Immunizing Pharmacist must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.~~
- ~~(h) Confidentiality:~~
- ~~(1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.~~
- ~~(2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.~~
- Authority G.S. 90-85.3(r); 90-85.15B.*

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 March 20, 2014.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

INDUSTRIAL COMMISSION

<u>Official Forms</u>	04	NCAC	10A	.0102*	n/a S.L. 2013-294
<u>Reinstatement of Compensation</u>	04	NCAC	10A	.0405*	n/a S.L. 2013-294
<u>Safety Rules</u>	04	NCAC	10A	.0411*	n/a S.L. 2013-294
<u>Responding to a Party's Request for Hearing</u>	04	NCAC	10A	.0603*	n/a S.L. 2013-294
<u>Statement of Incident Leading to Claim</u>	04	NCAC	10A	.0608*	n/a S.L. 2013-294
<u>Depositions</u>	04	NCAC	10A	.0612*	n/a S.L. 2013-294
<u>Expert Witnesses and Fees</u>	04	NCAC	10A	.0613*	n/a S.L. 2013-294
<u>Remand from the Appellate Courts</u>	04	NCAC	10A	.0704*	n/a S.L. 2013-294
<u>Waiver of Rules</u>	04	NCAC	10A	.0801*	n/a S.L. 2013-294
<u>Waiver of Rules</u>	04	NCAC	10B	.0501*	n/a S.L. 2013-294
<u>Definitions</u>	04	NCAC	10C	.0103*	n/a S.L. 2013-294
<u>Interaction with Physicians</u>	04	NCAC	10C	.0108*	n/a S.L. 2013-294
<u>Waiver of Rules</u>	04	NCAC	10C	.0201*	n/a S.L. 2013-294
<u>Waiver of Rules</u>	04	NCAC	10D	.0110*	n/a S.L. 2013-294
<u>Document and Record Fees</u>	04	NCAC	10E	.0201*	n/a S.L. 2013-294
<u>Hearing Costs or Fees</u>	04	NCAC	10E	.0202*	n/a S.L. 2013-294
<u>Waiver of Rules</u>	04	NCAC	10E	.0301*	n/a S.L. 2013-294
<u>Foreign Language Interpreters</u>	04	NCAC	10G	.0104A*	n/a S.L. 2013-294
<u>Compensation of the Mediator</u>	04	NCAC	10G	.0107*	n/a S.L. 2013-294
<u>Waiver of Rules</u>	04	NCAC	10G	.0110*	n/a S.L. 2013-294
<u>Waiver of Rules</u>	04	NCAC	10H	.0206*	n/a S.L. 2013-294
<u>Waiver of Rules</u>	04	NCAC	10I	.0204*	n/a S.L. 2013-294
<u>Fees for Medical Compensation</u>	04	NCAC	10J	.0101*	n/a S.L. 2013-294
<u>Subpoena</u>	04	NCAC	10L	.0104*	n/a S.L. 2013-294

PUBLIC HEALTH, COMMISSION FOR

<u>Definitions</u>	15A	NCAC	18C	.0102*	n/a G.S. 150B-21.5(a)(2),(4)&(5)
<u>Surface Supplies for Public Water Systems</u>	15A	NCAC	18C	.0201*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Removal of Dissolved Matter and Suspended Matter</u>	15A	NCAC	18C	.0202*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Submittals</u>	15A	NCAC	18C	.0302*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Minimum Requirements</u>	15A	NCAC	18C	.0401*	n/a G.S. 150B-21.5(a)(2)
<u>Water Supply Wells</u>	15A	NCAC	18C	.0402*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Storage of Finished Water</u>	15A	NCAC	18C	.0405*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Distribution Systems</u>	15A	NCAC	18C	.0406*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Sedimentation Basin</u>	15A	NCAC	18C	.0706*	n/a G.S. 150B-21.5(a)(2)
<u>Other Design Standards</u>	15A	NCAC	18C	.0715*	n/a G.S. 150B-21.5(a)(2)&(4)

APPROVED RULES

<u>Capacities: Determining Peak Demand</u>	15A	NCAC	18C	.0802*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Capacities: Elevated Storage</u>	15A	NCAC	18C	.0805*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Valves</u>	15A	NCAC	18C	.0907*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Fishing</u>	15A	NCAC	18C	.1204*	n/a G.S. 150B-21.5(a)(2)
<u>Control of Treatment Process</u>	15A	NCAC	18C	.1406*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Turbidity Sampling and Analysis</u>	15A	NCAC	18C	.1505*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Maximum Contaminant Levels for Turbidity</u>	15A	NCAC	18C	.1506*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Corrosion Control and Lead and Copper Monitoring</u>	15A	NCAC	18C	.1507*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Inorganic Chemical Sampling and Analysis</u>	15A	NCAC	18C	.1508*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Special Monitoring for Sodium</u>	15A	NCAC	18C	.1509*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Maximum Contaminant Levels for Inorganic Chemicals</u>	15A	NCAC	18C	.1510*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Organic Chemicals Other than TTHM, Sampling and Analysis</u>	15A	NCAC	18C	.1515*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Special Monitoring for Inorganic and Organic Chemicals</u>	15A	NCAC	18C	.1516*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Maximum Contaminant Levels for Organic Chemicals</u>	15A	NCAC	18C	.1517*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Maximum Contaminant Levels for Organic Contaminants</u>	15A	NCAC	18C	.1518*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Monitoring Frequency for Radioactivity</u>	15A	NCAC	18C	.1519*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Maximum Contaminant Levels for Radionuclides</u>	15A	NCAC	18C	.1520*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Maximum Contaminant Level Goals for Radionuclids</u>	15A	NCAC	18C	.1521*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Analytical Methods for Radioactivity</u>	15A	NCAC	18C	.1522*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Public Notification Requirements</u>	15A	NCAC	18C	.1523*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Reporting Requirements</u>	15A	NCAC	18C	.1525*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Record Maintenance</u>	15A	NCAC	18C	.1526*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Coliform Sampling</u>	15A	NCAC	18C	.1534*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Treatment Techniques</u>	15A	NCAC	18C	.1536*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Drinking Water Additives</u>	15A	NCAC	18C	.1537*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Consumer Confidence Report</u>	15A	NCAC	18C	.1538*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Public Hearings on Variances and Schedules</u>	15A	NCAC	18C	.1605*	n/a G.S. 150B-21.5(a)(2)
<u>Variances and Exemptions for Chemicals, Lead and Copper, ...</u>	15A	NCAC	18C	.1607*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Public Hearings on Exemption Schedules</u>	15A	NCAC	18C	.1612*	n/a G.S. 150B-21.5(a)(2)
<u>Bottled Water and Point-of-Use Devices</u>	15A	NCAC	18C	.1614*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Purpose</u>	15A	NCAC	18C	.1701*	n/a G.S. 150B-21.5(b)(1)
<u>Grant Commitments from Current Allocation</u>	15A	NCAC	18C	.1702*	n/a G.S. 150B-21.5(b)(1)
<u>County Allocations Committed Before Statewide Allocation</u>	15A	NCAC	18C	.1703*	n/a G.S. 150B-21.5(b)(1)
<u>Reference Rule</u>	15A	NCAC	18C	.1704*	n/a G.S. 150B-21.5(b)(1)
<u>Application for Certification</u>	15A	NCAC	18C	.1802*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Administrative Penalties</u>	15A	NCAC	18C	.1902*	n/a G.S. 150B-21.5(a)(2)
<u>Considerations in Assessing Administrative Penalties</u>	15A	NCAC	18C	.1906*	n/a G.S. 150B-21.5(a)(2)
<u>Disinfection</u>	15A	NCAC	18C	.2002*	n/a G.S. 150B-21.5(a)(2)&(4)

APPROVED RULES

<u>Filter Backwash Recycling Rule</u>	15A	NCAC	18C	.2003*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Analytical and Monitoring Requirements</u>	15A	NCAC	18C	.2004*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Reporting and Record Keeping Requirements</u>	15A	NCAC	18C	.2006*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Enhanced Filtration and Disinfection</u>	15A	NCAC	18C	.2007*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Disinfectants and Disinfection Byproducts</u>	15A	NCAC	18C	.2008*	n/a G.S. 150B-21.5(a)(2)&(4)
<u>Application for Permit</u>	15A	NCAC	18C	.2102*	n/a G.S. 150B-21.5(a)(2)
<u>Ground Water Rule</u>	15A	NCAC	18C	.2202*	n/a G.S. 150B-21.5(a)(2)&(4)

EDUCATION, STATE BOARD OF

<u>NC General Assembly's Read to Achieve Program</u>	16	NCAC	06D	.0508*	28:06 NCR
<u>High School Accreditation Framework</u>	16	NCAC	06G	.0203*	28:06 NCR

GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>Structure of the Board</u>	21	NCAC	12	.0103*	28:06 NCR
<u>Classification</u>	21	NCAC	12	.0202*	28:06 NCR
<u>Eligibility</u>	21	NCAC	12	.0204*	28:06 NCR
<u>Filing Deadline/App Seeking Qual/Emp/Another</u>	21	NCAC	12	.0205*	28:06 NCR
<u>Application</u>	21	NCAC	12	.0209*	28:06 NCR
<u>Licensure for Military-Trained Applicant; Licensure for M...</u>	21	NCAC	12	.0309*	28:06 NCR
<u>Renewal of License</u>	21	NCAC	12	.0503*	28:06 NCR
<u>Improper Practice</u>	21	NCAC	12	.0701*	28:06 NCR
<u>Unlawful Practice</u>	21	NCAC	12	.0702*	28:06 NCR
<u>Fee for Submittal of Bad Check</u>	21	NCAC	12	.0703*	28:06 NCR
<u>Definitions</u>	21	NCAC	12	.0901*	28:06 NCR
<u>Processing of Application</u>	21	NCAC	12	.0906*	28:06 NCR

DENTAL EXAMINERS, BOARD OF

<u>Request to Participate</u>	21	NCAC	16N	.0301	28:08 NCR
<u>Content of Request: General Time Limitations</u>	21	NCAC	16N	.0302	28:08 NCR
<u>Receipt of Request: Specific Time Limits</u>	21	NCAC	16N	.0303	28:08 NCR
<u>Transfer of Records Upon Request</u>	21	NCAC	16T	.0102	28:08 NCR

HEARING AID DEALERS AND FITTERS BOARD

<u>Qualifications to Register for Exam</u>	21	NCAC	22F	.0104*	28:12 NCR
<u>Passing Examination</u>	21	NCAC	22F	.0105*	28:12 NCR
<u>Apprenticeship Requirements</u>	21	NCAC	22F	.0113	28:12 NCR
<u>Training and Supervision</u>	21	NCAC	22F	.0114	28:12 NCR
<u>Sponsors' Duties</u>	21	NCAC	22F	.0115	28:12 NCR
<u>Separation of Apprentice and Sponsor</u>	21	NCAC	22F	.0116	28:12 NCR
<u>Apprenticeship Requirements</u>	21	NCAC	22F	.0301*	28:12 NCR
<u>Sponsors' Duties</u>	21	NCAC	22F	.0302*	28:12 NCR
<u>Certificate Expiration</u>	21	NCAC	22F	.0303*	28:12 NCR
<u>Separation of Apprentice and Sponsor</u>	21	NCAC	22F	.0304*	28:12 NCR
<u>Report of Apprenticeship Experience</u>	21	NCAC	22F	.0305*	28:12 NCR

APPROVED RULES

Apprentice Discipline 21 NCAC 22F .0306* 28:12 NCR

ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

Licensure for Military-Trained Applicant;
Licensure for M... 21 NCAC 39 .0405* 28:10 NCR

Minimum On-Site Wastewater System
Inspection 21 NCAC 39 .1006* 28:10 NCR

PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS OF

Qualifications Determined by Examination 21 NCAC 50 .0301* 28:10 NCR

ADMINISTRATIVE HEARINGS, OFFICE OF

Medicaid Hearing Procedures Rules 26 NCAC 03 .0401* n/a G.S. 150B-21.5(a)(3)

The following rules are subject to the next Legislative Session. (See G.S. 150B-21.3)

INDUSTRIAL COMMISSION

Discovery 04 NCAC 10A .0605* n/a S.L. 2013-294

Review by the Full Commission 04 NCAC 10A .0701* n/a S.L. 2013-294

Vocational Rehabilitation Services and Return to
Work 04 NCAC 10C .0109* n/a S.L. 2013-294

Fees Set by the Commission 04 NCAC 10E .0203* n/a S.L. 2013-294

Form 21 - Agreement for Compensation for
Disability 04 NCAC 10L .0101* n/a S.L. 2013-294

Form 26 - Supplemental Agreement as to
Payment of Compens... 04 NCAC 10L .0102* n/a S.L. 2013-294

Form 26A - Employer's Admission of Employee's
Rights to P... 04 NCAC 10L .0103* n/a S.L. 2013-294

TITLE 04 – DEPARTMENT OF COMMERCE

Amended Eff. June 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0102 OFFICIAL FORMS

(a) Copies of the Commission's rules and forms may be obtained by contacting the Commission in person at the address in Rule .0101 of this Subchapter, by written request mailed to 4340 Mail Service Center, Raleigh, NC 27699-4340, Attn.: Administrator, or from the Commission's website at <http://www.ic.nc.gov/forms.html>.

(b) Insurance carriers, self-insured employers, attorneys and other parties may reproduce Commission forms for their own use, provided:

- (1) no statement, question, or information blank contained on the Commission form is omitted from the substituted form; and
- (2) the substituted form is identical in size and format with the Commission form.

History Note: Authority G.S. 97-80(a); 97-81(a);
Eff. January 1, 1990;

04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION

(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 *Application to Reinstate Payment of Disability Compensation*, or by the filing of a Form 33 *Request that Claim be Assigned for Hearing*.

(b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstate Payment of Disability Compensation*, the original Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The

employee shall specify the grounds and the alleged facts supporting the application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23 *Application to Reinstate Payment of Disability Compensation* by

inserting a date 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any. The Form 23 *Application to Reinstate Payment of Disability Compensation* shall specify the number of pages of documents attached that are to be considered by the Commission. Within 17 days from the date the employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any, the employer, carrier, or administrator shall complete Section B of the Form 23 *Application to Reinstate Payment of Disability Compensation* and send it to the Commission and to the employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent to the Commission.

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

(d) If the employer, carrier, or administrator timely objects to the Form 23 *Application to Reinstate Payment of Disability Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 23 *Application to Reinstate Payment of Disability Compensation* unless the time is extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the foregoing, the employee may waive the right to an informal hearing and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*. Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0703 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing *de novo*. The hearing shall be preemptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employee has the burden of producing evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses an

order previously granting a Form 23 *Application to Reinstate Payment of Disability Compensation* motion, the employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

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

History Note: Authority G.S. 97-18(k); 97-80(a); Eff. January 1, 1990; Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0411 SAFETY RULES

The process for the Commission to approve safety rules or regulations adopted by an employer as set forth in G.S. 97-12 is as follows:

- (1) The rules shall comply with the general provisions of the safety rules outlined by the American National Standards Institute and the Occupational Safety and Health Act. These standards can be purchased at <http://ansi.org/> and accessed free of charge at <https://www.osha.gov/law-regs.html>, respectively.
- (2) The rules shall be filed by the employer in writing with the Commission's Safety Education Director by mailing them to 4339 Mail Service Center, Raleigh, NC 27699-4339 or e-mailing them to safety@ic.nc.gov.
- (3) The rules shall be reviewed by the Safety Education Director of the Commission and approved if they are found to be in compliance with Item (1) of this Rule. The Commission shall return to the employer a copy of the rules bearing a certificate of approval from the Commission indicating that the rules have been approved by the Commission pursuant to G.S. 97-12. An employer may revise and resubmit the rules if not approved by the Safety Education Director of the Commission.

History Note: Authority G.S. 97-12; 97-80(a); Eff. Pending Delayed Eff. Date.

**04 NCAC 10A .0603 RESPONDING TO A PARTY'S
REQUEST FOR HEARING**

(a) No later than 45 days from receipt of a request for hearing from a party, the opposing party or parties shall file with the Commission a response to the request for hearing.

(b) The response shall contain the following:

- (1) the basis of the disagreement between the parties, including a statement of the issues raised by the moving party that are conceded and the issues raised by the moving party that are denied;
- (2) the date of the injury, if it is contended to be different than that alleged by the moving party;
- (3) the part of the body injured, if it is contended to be different than that alleged by the moving party;
- (4) the city and county where the injury occurred, if they are contended to be different than that alleged by the moving party;
- (5) an estimate of the time required for the hearing of the case; and
- (6) the telephone number(s), email address(es), and mailing address(es) of the party or parties responding to the request for hearing and their legal counsel.

(c) A Form 33R *Response to Request that Claim be Assigned for Hearing*, completed in full and filed with the Docket Section of the Commission, shall constitute compliance with this Rule. A copy of the Form 33R *Response to Request that Claim be Assigned for Hearing* shall be forwarded to the attorneys for all opposing parties or the opposing parties themselves, if unrepresented.

History Note: Authority G.S. 97-80(a); 97-83; Eff. January 1, 1990; Amended Eff. June 1, 2000; Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0605 DISCOVERY

In addition to depositions provided for in G.S. 97-80, parties may obtain discovery by the use of interrogatories and requests for production of documents as follows:

- (1) Any party may serve upon any other parties written interrogatories, up to 30 in number, including subparts thereof, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available from the party interrogated.
- (2) Interrogatories may, without leave of the Commission, be served upon any party after the filing of a Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent*, Form 18B *Claim by Employee, Representative, or Dependent for Benefits for Lung Disease*, or

Form 33 *Request that Claim be Assigned for Hearing*, or after the acceptance of liability for a claim by the employer.

- (3) Each interrogatory shall be answered separately and in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them and the objections shall be signed by the party making them. The party on whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within 30 days after service of the interrogatories. The parties may stipulate to an extension of time to respond to the interrogatories. A motion to extend the time to respond shall state that an attempt to reach agreement with the opposing party to informally extend the time for response has been unsuccessful and the opposing party's position or that there has been an attempt to contact the opposing party to ascertain its position.
- (4) If there is an objection to or other failure to answer an interrogatory, the party submitting the interrogatories may move the Commission for an order compelling answer. If the Commission orders answer to an interrogatory within a time certain and no answer is made or the objection is still lodged, the Commission may issue an order with sanctions.
- (5) Interrogatories and requests for production of documents shall relate to matters that are not privileged, that are relevant to an issue in dispute, or that the requesting party reasonably believes may later be disputed. The signature of a party or attorney serving interrogatories or requests for production of documents constitutes a certificate by such person that he or she has personally read each of the interrogatories and requests for production of documents, that no such interrogatory or request for production of documents will oppress a party or cause any unnecessary expense or delay, that the information requested is not known or equally available to the requesting party, and that the interrogatory or requested document relates to an issue presently in dispute or that the requesting party reasonably believes may later be in dispute. A party may serve an interrogatory, however, to obtain verification of facts relevant to an issue presently in dispute. Answers to interrogatories may be used to the extent permitted by Chapter 08C of the North Carolina General Statutes.
- (6) Until a matter is calendared for a hearing, parties may serve requests for production of documents without leave of the Commission.

- (7) Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may be used only upon motion and approval by the Industrial Commission or by agreement of the parties. The Commission shall approve the motion if it is shown to be in the interests of justice or to promote judicial economy.
- (8) Discovery requests and responses, including interrogatories and requests for production of documents, shall not be filed with the Commission, except for the following:
- (a) notices of depositions;
 - (b) discovery requests and responses deemed by filing party to be pertinent to a pending motion;
 - (c) responses to discovery following a motion or order to compel; and
 - (d) post-hearing discovery requests and responses.
- The above-listed documents shall be filed with the Commission, as well as served on the opposing party.
- (9) Sanctions shall be imposed under this Rule for failure to comply with a Commission order compelling discovery. A motion by a party or its attorney to compel discovery under this Rule and Rule .0607 of this Subchapter shall represent that informal means of resolving the discovery dispute have been attempted in good faith and state the opposing parties' position or that there has been a reasonable attempt to contact the opposing party and ascertain its position.

History Note: Authority G.S. 97-80(a); 97-80(f); Eff. January 1, 1990; Amended Eff. January 1, 2011; June 1, 2000; Amended Eff. Pending Legislative Review.

04 NCAC 10A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM

- (a) Upon the request of the employer or his or her agent to take a written or a recorded statement, the employer or his agent shall advise the employee that the statement may be used to determine whether the claim will be paid or denied. Any plaintiff who gives his or her employer, its carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding his or her injury shall be furnished a copy of the statement within 45 days after request. Further, any plaintiff who shall give a written or recorded statement of the facts and circumstances surrounding his or her injury shall, without request, be furnished a copy no less than 45 days from the filing of a Form 33 *Request that Claim be Assigned for Hearing*. The copy shall be furnished at the expense of the person, firm or corporation at whose direction the statement was taken.
- (b) If any person, firm or corporation unreasonably fails to comply with this Rule, then an order may be entered by a Commissioner or Deputy Commissioner prohibiting that person,

firm or corporation, or its representative, from introducing the statement into evidence or using any part of the statement.

History Note: Authority G.S. 97-80(a); Eff. January 1, 1990; Amended Eff. June 1, 2000; Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0612 DEPOSITIONS

- (a) Prior to a hearing before a Deputy Commissioner, the parties shall confer to determine the methods by which medical evidence will be submitted. The parties shall stipulate in a Pre-Trial Agreement to the admission of all relevant medical records, reports, and forms, as well as opinion letters from the employee's health care providers with the goal of minimizing the use of post-hearing depositions. The parties shall state all experts to be deposed post-hearing. The parties shall certify that the parties have conferred to determine the methods by which medical evidence will be submitted. If there is a disagreement about the stipulation of medical evidence, the parties shall state the nature and basis of the disagreement.
- (b) When medical or other expert testimony is requested by the parties for the disposition of a case, a Deputy Commissioner or Commissioner may order expert depositions to be taken on or before a day certain not to exceed 60 days from the date of the hearing; provided, however, the time allowed may be enlarged or shortened in the interests of justice or to promote judicial economy, or where required by the Act.
- (c) The employer shall pay for the costs of up to two post-hearing depositions requested by the employee of health care providers who evaluated or treated the employee. The employer shall also bear the costs of a deposition of a second opinion doctor selected jointly by the parties or ordered by the Commission pursuant to G.S. 97-25.
- (d) The parties may notice depositions of additional experts, and the costs thereof shall be borne by the party noticing the depositions; provided, however, if a ruling favorable to the employee is rendered and is not timely appealed by the employer, or the employer's appeal is dismissed or withdrawn, then the employer shall reimburse the employee the costs of such additional expert depositions.
- (e) In claims pursuant to G.S. 97-29(d) or cases involving exceptional, unique, or complex injuries or diseases, the Commission may allow additional depositions of experts to be taken at the employer's expense, when requested by the employee and when necessary to address the issues in dispute, in which case the employee shall state, and the Commission shall consider when determining whether or not the employer shall bear the costs of such depositions such factors as:
- (1) the name and profession of the proposed deponent;
 - (2) if the proposed deponent is a health care provider, whether the health care provider evaluated, diagnosed or treated the employee;
 - (3) the issue to which the testimony is material, relevant and necessary;
 - (4) the availability of alternate methods for submitting the evidence and the efforts made to utilize alternate methods;

- (5) the severity or complexity of the employee's condition;
- (6) the number and complexity of the issues in dispute;
- (7) whether the testimony is likely to be duplicative of other evidence; and
- (8) the opposing party's position on the request.

(f) The term "costs" as used in this Rule shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for the deposition, if applicable. The term shall include fees associated with the production and delivery of a transcript of the deposition to the Commission, including the court reporter's appearance fee. The term shall not include costs for a party to obtain his or her own copy of the deposition transcript, or attorney's fees associated with the deposition, unless so ordered by the Commission pursuant to G.S. 97-88.1.

(g) Notwithstanding Paragraphs (c) and (d) of this Rule, the parties may come to a separate agreement regarding reimbursement of deposition costs, which shall be submitted to the Commission for approval.

(h) If the claimant is unrepresented at the time of a full evidentiary hearing before a Deputy Commissioner, the Commission shall confer with the parties and determine the best method for presenting medical evidence, if necessary, and the party responsible for bearing associated costs.

(i) If a party refuses to stipulate to relevant medical evidence, and as a result, the case is reset or depositions are ordered for testimony of medical or expert witnesses, a Deputy Commissioner or Commissioner may assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the stipulation, pursuant to G.S. 97-88.1.

(j) All evidence and witnesses other than those tendered as an expert witness shall be offered at the hearing before the Deputy Commissioner. Non-expert evidence may be offered after the hearing before the Deputy Commissioner by order of a Deputy Commissioner or Commissioner. The costs of obtaining non-expert testimony by deposition shall be borne by the party making the request unless otherwise ordered by the Commission in the interests of justice or to promote judicial economy.

History Note: Authority G.S. 97-26.1; 97-80(a); 97-88; 97-88.1;

Eff. June 1, 1990;

Amended Eff. June 1, 2000;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

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

(b) After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the expert's fee invoice, submit to the Deputy Commissioner or Commissioner, via email, a request to approve the costs related to the expert deposition. In these requests, the party shall provide to the

Deputy Commissioner or Commissioner, in a cover letter along with the invoice (if available), the following:

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

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

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

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

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

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

History Note: Authority G.S. 97-26.1; 97-80(a); 97-80(d);
Eff. January 1, 1990;

Amended Eff. January 1, 2011; June 1, 2000;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION

(a) Application for review shall be made to the Commission within 15 days from the date when notice of the Deputy Commissioner's Opinion and Award shall have been given. A letter expressing a request for review is considered an application for review to the Full Commission within the

meaning of G.S. 97-85, provided that the letter specifies the Order or Opinion and Award from which appeal is taken.

(b) After receipt of a request for review, the Commission shall acknowledge the request for review by letter. The Commission shall prepare the official transcript and exhibits and provide them along with a Form 44 *Application for Review* to the parties involved in the appeal at no charge within 30 days of the acknowledgement letter. The official transcript and exhibits and a Form 44 *Application for Review* shall be provided to the parties electronically, where possible. In such cases, the Commission shall send an e-mail to the parties containing a link to the secure File Transfer Protocol (FTP) site where the official transcript and exhibits can be downloaded. The e-mail shall also provide instructions for the submission of the parties' acknowledgement of receipt of the Form 44 *Application for Review* and the official transcript and exhibits to the Commission. The Commission shall save a copy of the parties' acknowledgements in the file for the claim to serve as record of the parties' electronic receipt of the Form 44 *Application for Review* and the official transcript and exhibits. In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the Commission shall provide the official transcript and exhibits and a Form 44 *Application for Review* via certified U.S. Mail, with return receipt requested. The Commission shall save a copy of the return receipt to serve as record of the party's receipt of the official transcript and exhibits and Form 44 *Application for Review*.

(c) A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed with the Deputy Commissioner within 15 days of receipt of notice of the award with a copy to the Docket Director. The time for filing a request for review from the decision of a Deputy Commissioner under the rules in this Subchapter shall be tolled until a motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. However, if either party files a letter expressing a request for review as set forth in Paragraph (a) of this Rule, jurisdiction shall be transferred to the Full Commission, and the Docket Director shall notify the Deputy Commissioner. Upon transfer of jurisdiction to the Full Commission, any party who had a pending motion to reconsider or amend the decision of the Deputy Commissioner may file a motion with the Chairman of the Commission requesting remand to the Deputy Commissioner with whom the motion was pending. Within the Full Commission's discretion, the matter may be so remanded. Upon the Deputy Commissioner's ruling on the motion to reconsider or amend the decision, either party may thereafter file a letter expressing a request for review of the Deputy Commissioner's decision as set forth in Paragraph (a) of this Rule.

(d) The appellant shall submit a Form 44 *Application for Review* upon which appellant shall state the grounds for the review. The grounds shall be stated with particularity, including the errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded. Grounds for review not set forth in the Form 44 *Application for Review* are deemed abandoned, and argument thereon shall not be heard before the Full Commission.

(e) The appellant shall file the Form 44 *Application for Review* and brief in support of the grounds for review with the

Commission with a certificate of service on the appellee within 25 days after receipt of the transcript or receipt of notice that there will be no transcript. The appellee shall have 25 days from service of the Form 44 *Application for Review* and appellant's brief to file a responsive brief with the Commission. The appellee's brief shall include a certificate of service on the appellant. When an appellant fails to file a brief, an appellee shall file its brief within 25 days after the appellant's time for filing the Form 44 *Application for Review* and appellant's brief has expired. A party who fails to file a brief shall not participate in oral argument before the Full Commission. If multiple parties request review, each party shall file an appellant's brief and appellee's brief on the schedule set forth in this Paragraph. If the matter has not been calendared for hearing, any party may file with the Docket Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time exceed 30 days.

(f) After a request for review has been submitted to the Full Commission, any motions related to the issues for review shall be filed with the Full Commission, with service on the other parties. Motions related to the issues for review including motions for new trial, to supplement the record, including, but not limited to, documents from offers of proof, or to take additional evidence, filed during the pendency of a request for review to the Full Commission, shall be argued before the Full Commission at the time of the hearing of the request for review, except motions related to the official transcript and exhibits. The Full Commission, for good cause shown, may rule on such motions prior to oral argument.

(g) Case citations shall be to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and when possible, to the South Eastern Reporter. If no reporter citation is available at the time a brief is filed or if an unpublished decision is referenced in the brief, the party citing to the case shall attach a copy of the case to its brief. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing counsel or members of the Commission.

(h) Upon the request of a party or on its own motion, the Commission may waive oral argument in the interests of justice or to promote judicial economy. In the event of such waiver, the Full Commission shall file an award, based on the record and briefs.

(i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom of the page. When a party quotes or paraphrases testimony or other evidence from the appellate record in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetical entry that designates the source of the quoted or paraphrased material and the page number within the applicable source. The party shall use "T" to refer to the transcript of hearing testimony, "Ex" for exhibit, and "p" for page number. For example, if a party quotes or paraphrases material located in the hearing transcript on page 11, the party shall use the following format "(T p 11)," and if a party quotes or paraphrases

material located in an exhibit on page 12, the party shall use the following format "(Ex p 12)." When a party quotes or paraphrases testimony in the transcript of a deposition in the party's brief, the party shall include the last name of the deponent and the page on which such testimony is located. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of such deposition, the party shall use the following format "(Smith p 11)."

(j) An employee appealing the amount of a disfigurement award shall personally appear before the Full Commission to permit the Full Commission to view the disfigurement.

History Note: Authority G.S. 97-80(a); 97-85; Eff. January 1, 1990; Amended Eff. January 1, 2011; August 1, 2006; June 1, 2000; Amended Eff. Pending Legislative Review.

04 NCAC 10A .0704 REMAND FROM THE APPELLATE COURTS

When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or without a brief, to the Full Commission setting forth its position on the actions or proceedings, including evidentiary hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored the decision is no longer a member of the Industrial Commission. The deadline to submit the statement to the Commission shall be stayed automatically upon a party filing a petition for discretionary review or rehearing to the appellate courts. The stay shall be automatically lifted if the petition for discretionary review or rehearing is denied by the appellate courts.

History Note: Authority G.S. 97-80(a); 97-86; Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0801 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-80(a);

Eff. January 1, 1990; Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0501 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 143-291; 143-300; Eff. January 1, 1989; Amended Eff. July 1, 2014; May 1, 2000.

04 NCAC 10C .0103 DEFINITIONS

As used in this Subchapter:

- (1) "Rehabilitation professional" means a medical case manager, a coordinator of medical rehabilitation services, or a vocational rehabilitation professional providing vocational rehabilitation services, including state, private, or carrier based, whether on site, telephonic, or in or out of state. Physical therapists, occupational therapists, speech therapists, and other direct care providers are not rehabilitation professionals under the Rules in this Subchapter.
- (2) "Medical rehabilitation" means the planning and coordination of health care services by a medical case manager or coordinator, with the goal of assisting an injured worker to be restored as nearly as possible to the worker's pre-injury level of physical function. Medical case management includes:
 - (a) case assessment;
 - (b) development, implementation and coordination of a care plan with health care providers, the worker, and his or her family;
 - (c) evaluation of treatment results;
 - (d) planning for community re-entry and return to work; and
 - (e) referral for further vocational rehabilitation services.
- (3) "Vocational rehabilitation" means the delivery and coordination of services under an individualized written plan, with the goal of

assisting the injured worker to return to suitable employment or participate in education or retraining, as defined by Item (5) of this Rule or applicable statute.

- (4) "Return to work" means placement of the injured worker into suitable employment, as defined by Item (5) of this Rule or applicable statute.
- (5) For claims arising before June 24, 2011, "suitable employment" means employment in the labor market or self-employment that is reasonably attainable and that offers an opportunity to restore the worker as soon as possible and as nearly as practicable to pre-injury wage, while giving due consideration to the worker's qualifications (age, education, work experience, physical and mental capacities), impairment, vocational interests, and aptitudes. No one factor shall be considered solely in determining suitable employment. For claims arising on or after June 24, 2011, the statutory definition of "suitable employment," G.S. 97-2(22), applies.
- (6) "Conditional rehabilitation professional" means a rehabilitation professional who has not met the requirements for qualified rehabilitation professionals under of Rule .0105(d) of this Subchapter and who desires to provide services as a rehabilitation professional in cases subject to the rules in this Subchapter.

History Note: Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80; Eff. January 1, 1996; Recodified from 04 NCAC 10C .0101 Eff. April 17, 2000; Amended Eff. June 1, 2000; Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10C .0108 INTERACTION WITH PHYSICIANS

- (a) At the initial visit with a physician the rehabilitation professional shall provide identification in the form of a company identification or business card and explain the rehabilitation professional's role in the case.
- (b) In all cases, the rehabilitation professional shall advise the worker that the worker has the right to a private examination by the health care provider outside of the presence of the rehabilitation professional. If the worker prefers, he or she may request that the rehabilitation professional accompany him or her during the examination. However, if the worker or the worker's attorney notifies the rehabilitation professional in writing that the worker desires a private examination, no subsequent waiver of that right shall be effective unless the waiver is made in writing by the worker or, if represented, by the worker's attorney.
- (c) If the rehabilitation professional needs to have an in-person conference with the physician following an examination, the rehabilitation professional shall reserve with the physician

sufficient appointment time for the conference. The worker shall be offered the opportunity to attend the conference with the physician. If the worker or the physician does not consent to a joint conference, or if in the physician's opinion it is medically contraindicated for the worker to participate in the conference, the rehabilitation professional shall note this in his or her report, may communicate directly with the physician, and shall report the substance of the communication.

(d) When the rehabilitation professional determines that it is necessary to communicate with a physician other than at a joint meeting, the rehabilitation professional shall first notify the injured worker, or his or her attorney if represented, of the rehabilitation professional's intent to communicate and the reasons therefore. The rehabilitation professional is not required to obtain the injured worker's or his or her attorney's prior consent if:

- (1) The communication is limited to scheduling issues or requests for time-sensitive medical records;
- (2) A medical emergency is involved;
- (3) The injured worker's health or medical treatment would either be adversely affected by a delay or benefited by immediate action;
- (4) The communication is limited to advising the physician of the employer or carrier approval for recommended testing or treatment;
- (5) The injured worker or attorney has consented to the communications;
- (6) The communication is initiated by the physician; or
- (7) The injured worker failed to show up for a scheduled appointment or arrived at a time other than the scheduled appointment time.

When a rehabilitation professional communicates with a physician without the prior consent or presence of the injured worker, the rehabilitation professional must document the reasons for and the substance of the communication and report the reasons and substance to the injured worker or his or her attorney, if represented, pursuant to Rule .0106 of this Subchapter.

(e) The following requirements apply to interactions regarding impairment ratings, independent medical examinations, second opinions or consults:

- (1) When a party or health care provider requests a consult, second opinion, or independent medical examination that is authorized or ordered, the rehabilitation professional may, if requested, assemble and forward medical records and information, schedule and coordinate an appointment, and, if the worker consents, have a joint meeting with the health care provider and the worker after a private exam.
- (2) When any such exam is requested by the carrier, the worker shall receive at least 10 calendar days' notice of the appointment unless the parties agree otherwise or unless otherwise required by statute.

(f) The rehabilitation professional shall simultaneously send to the parties copies of all written communications with health care providers and shall accurately and completely record and report all oral communications.

History Note: Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; Eff. January 1, 1996; Amended Eff. June 1, 2000; Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK

(a) When performing the vocational assessment and formulating and drafting the individualized written rehabilitation plan for the employee required by G.S. 97-32.2(c), the vocational rehabilitation professional shall follow G.S. 97-32.2.

(b) Job placement activities may not be commenced until after a vocational assessment and an individualized written rehabilitation plan for vocational rehabilitation services specifying the goals and the priority for return-to-work options have been completed in the case in accordance with G.S. 97-32.2. Job placement activities shall be directed only toward prospective employers offering the opportunity for suitable employment, as defined by Rule .0103(5) of this Subchapter or by applicable statute.

(c) Return-to-work options shall be considered in the following order of priority:

- (1) current job, current employer;
- (2) new job, current employer;
- (3) on-the-job training, current employer;
- (4) new job, new employer;
- (5) on-the-job training, new employer;
- (6) formal education or vocational training to prepare the worker for a job with current or new employer; and
- (7) self-employment, only when its feasibility is documented with reference to the employee's aptitudes and training, adequate capitalization, and market conditions.

(d) When an employee requests retraining or education as permitted in G.S. 97-32.2(a), the vocational rehabilitation professional shall provide a written assessment of the employee's request that includes an evaluation of:

- (1) the retraining or education requested;
- (2) the availability, location, cost, and identity of providers of the requested retraining or education;
- (3) the likely duration until completion of the requested retraining or education and the likely class schedules, class attendance requirements, and out-of-class time required for homework and study;
- (4) the current or projected availability of employment upon completion; and
- (5) the anticipated pay range for employment upon completion.

(e) The rehabilitation professional shall obtain work restrictions from the health care provider that address the demands of any proposed employment. If ordered by a physician, the rehabilitation professional shall schedule an appointment with a third party provider to evaluate an injured worker's functional capacity, physical capacity, or impairments to work.

(f) The rehabilitation professional shall refer the worker only to opportunities for suitable employment, as defined by Rule .0103(5) of this Subchapter or by applicable statute.

(g) If the rehabilitation professional intends to utilize written or videotaped job descriptions in the return-to-work process, the rehabilitation professional shall provide a copy of the description to all parties for review before the job description is provided to the doctor. The worker or the worker's attorney shall have seven business days from the mailing of the description to notify the rehabilitation professional, all parties, and the physician of any objections or amendments thereto. The job description and the objections or amendments, if any, shall be submitted to the physician simultaneously. This process shall be expedited when job availability is critical. This waiting period does not apply if the worker or the worker's attorney has given prior approval to the job description.

(h) In preparing written job descriptions, the rehabilitation professional shall utilize standards including, but not limited to, the Dictionary of Occupational Titles and the Handbook for Analyzing Jobs published by the United States Department of Labor. These standards can be accessed at no cost at <http://www.oalj.dol.gov/LIBDOT.HTM> and www.wopsr.net/etc/dot/RHAJ.pdf, respectively. The Handbook for Analyzing Jobs may also be purchased from major online booksellers for approximately eighty-five dollars (\$85.00).

(i) The rehabilitation professional may conduct follow-up after job placement to verify the appropriateness of the job placement.

(j) The rehabilitation professional shall not initiate or continue placement activities that do not appear reasonably likely to result in placement of the injured worker in suitable employment. The rehabilitation professional shall report to the parties when efforts to place the worker in suitable employment do not appear reasonably likely to result in placement of the injured worker in suitable employment.

History Note: Authority G.S. 97-2(22); 97-25.5; 97-32.2; Eff. January 1, 1996; Amended Eff. June 1, 2000; Amended Eff. Pending Legislative Review.

04 NCAC 10C .0201 WAIVER OF RULES

In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;

- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-25.4; 97-80; Eff. Pending Delayed Eff. Date.

04 NCAC 10D .0110 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-25.2; 97-80(a); Eff. January 1, 1996; Amended Eff. July 1, 2014.

04 NCAC 10E .0201 DOCUMENT AND RECORD FEES

- (a) The fees in this Rule apply to all subject areas within the authority of the Commission.
- (b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter 132 of the North Carolina General Statutes, copies of documents and audio recordings of Commission hearings are available at the "actual cost" as defined by G.S. 132-6.2(b). The Commission shall provide the "actual cost" on the Commission's website. Certification of documents in the Commission's claim files is available upon request at a cost of one dollar (\$1.00) per certification in addition to the "actual cost" for the copies of the documents. Electronic copy certification is not available.
- (c) Documents shall be sent via certified mail upon request at the actual cost established by the United States Postal Service.

History Note: Authority G.S. 97-73; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300; Eff. Pending Delayed Eff. Date.

04 NCAC 10E .0202 HEARING COSTS OR FEES

- (a) The following hearing costs or fees apply to all subject areas within the authority of the Commission:
 - (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged after the hearing has been held;

- (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a specific hearing date, to be paid by the requesting party or parties;
- (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case is calendared for a specific hearing date;
- (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged after the hearing has been held; and
- (5) one hundred twenty dollars (\$120.00) if one of the following occurs after an appeal or request for review is scheduled for a specific hearing date before the Full Commission:
 - (A) the appeal or request for review is withdrawn; or
 - (B) the appeal or request for review is dismissed for failure to prosecute or perfect the appeal or request for review.

In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise, except as specified in Subparagraph (a)(2) of this Rule.

(b) The Commission may waive fees set forth in Paragraph (a) of this Rule, or assess such fees against a party or parties pursuant to G.S. 97-88.1 if the Commission determines that the hearing has been brought, prosecuted, or defended without reasonable ground.

History Note: Authority G.S. 97-73; 97-80; 97-88.1; 143-291.1; 143-291.2; 143-300; Eff. Pending Delayed Eff. Date.

04 NCAC 10E .0203 FEES SET BY THE COMMISSION

- (a) In workers' compensation cases, the Commission sets the following fees:
 - (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). Unless the parties agree otherwise, the employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission, and shall then be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;
 - (2) three hundred dollars (\$300.00) for the processing of a Form 21 Agreement for Compensation for Disability, Form 26 Supplemental Agreement as to Payment of Compensation, or Form 26A Employer's Admission of Employee's Right to Permanent Partial Disability to be paid by the employee and the employer or the employer's carrier in equal shares. The employer or the employer's carrier shall pay such fee in full when submitting the agreement to the Commission.

Unless the parties agree otherwise or the award totals three thousand dollars (\$3,000) or less, the employer and the employer's carrier shall be entitled to a credit for the employee's 50 percent share of such fee against the award;

(3) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and

(4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*, to be paid by the intervenor.

(b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the Superior Court division of the General Court of Justice.

History Note: Authority G.S. 7A-305; 97-17; 97-26(i); 97-73; 97-80; 143-291.2; 143-300;
Eff. Pending Legislative Review.

04 NCAC 10E .0301 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-25.2; 97-25.4; 97-73; 97-80; 130A-425(d); 143-166.4; 143-296; 143-300;
Eff. July 1, 2014.

04 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS

(a) Any party who is unable to speak or understand English shall so notify the Commission, the mediator, and the opposing party or parties in writing, not less than 21 days prior to the date of the mediated settlement conference. The notice shall contain the party's primary language and how the party plans to communicate in English during the mediation.

(b) The party requesting the assistance of a qualified foreign language interpreter shall bear the costs.

(c) If the certified mediator, in his or her discretion, notifies the parties of the need for a qualified foreign language interpreter, the parties shall retain a disinterested interpreter who possesses the qualifications listed in Paragraph (d) of this Rule to assist at the mediated settlement conference. The fee of the foreign language interpreter and any postponement fees necessitated by the need for a qualified foreign language interpreter shall be shared by the parties unless the parties agree otherwise.

(d) A qualified foreign language interpreter shall possess sufficient experience and education, or a combination of experience and education, in speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702.

(e) Qualified foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of *Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System* and promulgated by the North Carolina Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the offices of the Commission, as set forth in Rule 04 NCAC 10A .0101.

History Note: Authority G.S. 97-80(a); 97-80(c); 143-296; 143-300;
Eff. January 1, 2011;
Amended Eff. July 1, 2014.

04 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR

(a) By Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.

(b) By Commission Order. When the mediator is appointed by the Commission, the mediator's compensation shall be as follows:

- (1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty dollars (\$150.00) per hour for mediation services provided at the mediated settlement conference.

(2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee of one hundred fifty dollars (\$150.00). The mediator's administrative fee shall be paid in full unless, within 10 days after the mediator has been appointed, written notice is given to the mediator and to the Dispute Resolution Coordinator that the issues for which a request for hearing was filed have been fully resolved or that the hearing request has been withdrawn.

(3) Postponement Fees. As used in this Subchapter, the term "postpone" means to reschedule or otherwise not proceed with a scheduled mediated settlement conference after the conference has been scheduled to convene on a specific date. After a conference is scheduled to convene on a specific date, the conference may not be postponed unless the requesting party notifies all other parties of the grounds for the requested postponement and obtains the consent and approval of the mediator or the Dispute Resolution Coordinator. If the conference is postponed without good cause, the mediator shall be paid a postponement fee. The postponement fee shall be three hundred dollars (\$300.00) if the conference is postponed within seven calendar days of the scheduled date, and one hundred fifty dollars (\$150.00) if the conference is postponed more than seven calendar days prior to the scheduled date. Unless otherwise ordered by the Commission in the interests of justice, postponement fees shall be allocated in equal shares to the party or parties requesting the postponement. As used in this Rule, "good cause" shall mean that the reason for the postponement involves a situation over which the party seeking the postponement has no control, including a party or attorney's illness, a death in a party or attorney's family, a demand by a judge that a party or attorney for a party appear in court, or inclement weather such that travel is prohibitive.

(4) The settlement of a case prior to the scheduled date of the mediated settlement conference shall be good cause to cancel the mediation without the approval of the mediator or the Dispute Resolution Coordinator. The parties shall notify the mediator of any cancellation due to settlement. The mediator may charge a cancellation fee of one hundred fifty dollars (\$150.00) if notified of the cancellation within 14 days of the scheduled date, or three hundred dollars (\$300.00) if notified within seven days of the scheduled date.

(c) Payment by Parties. Payment is due upon completion of the mediated settlement conference; provided, that the State shall be billed at the conference and shall pay within 30 days of receipt

of the bill, and insurance companies or carriers whose written procedures do not provide for payment of the mediator at the conference shall pay within 15 days of the conference. Unless otherwise agreed to by the parties or ordered by the Dispute Resolution Coordinator due to a party or parties violating a rule in this Subchapter, the costs of the conference shall be allocated to the parties, as follows:

- (1) one share by plaintiff(s);
- (2) one share by the workers' compensation defendant-employer or its insurer, or if more than one employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share by each separately represented entity;
- (3) one share by participating third-party tort defendants or their carrier, or if there are conflicting interests among them, one share from each defendant or group of defendants having shared interests; and
- (4) if applicable, one share by the defendant State agency in a Tort Claims Act case.

Parties obligated to pay a share of the costs are responsible for equal shares; provided, however, that in workers' compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and substitution fees, as well as defendant's own share. If plaintiff requests postponement of the mediated settlement conference, defendants shall be entitled to a credit for the postponement fee.

(d) Unless the Dispute Resolution Coordinator enters an order allocating such fees to a particular party due to the party violating a Rule in this Subchapter, the fees may be taxed as other costs by the Commission in an Order or Opinion and Award. After the case is concluded, the defendant shall be reimbursed for the plaintiff's share of such fees from any compensation determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.

History Note: Authority G.S. 97-80(a); 97-80(c); 143-296; 143-300; Rule 7 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 04 NCAC 10A .0616; Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000.

04 NCAC 10G .0110 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;

- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-80(a); 97-80(c); 143-296; 143-300;
 Eff. January 16, 1996;
 Amended Eff. October 1, 1998;
 Recodified from 04 NCAC 10A .0616;
 Amended Eff. July 1, 2014; June 1, 2000.

04 NCAC 10H .0206 WAIVER OF RULES

In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-80(a); 143-166.4;
 Eff. July 1, 2014.

04 NCAC 10I .0204 WAIVER OF RULES

In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-80(a); 130A-425(d);
 Eff. July 1, 2014.

04 NCAC 10J .0101 FEES FOR MEDICAL COMPENSATION

(a) The Commission adopted and published a Medical Fee Schedule, pursuant to the provisions of G.S. 97-26(a), setting maximum amounts, except for hospital fees pursuant to G.S. 97-26(b), that may be paid for medical, surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances. The amounts prescribed in the applicable published Fee Schedule shall govern and apply according to G.S. 97-26(c).

(b) The Commission's Medical Fee Schedule contains maximum allowed amounts for medical services provided pursuant to Chapter 97 of the General Statutes. The Medical Fee Schedule utilizes 1995 through the present, Current Procedural Terminology (CPT) codes adopted by the American Medical Association, Healthcare Common Procedure Coding Systems (HCPCS) codes, and jurisdiction-specific codes. A listing of the maximum allowable amount for each code is available on the Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and in hardcopy at the offices of the Commission as set forth in 04 NCAC 10A .0101.

(c) The following methodology provides the basis for the Commission's Medical Fee Schedule:

- (1) CPT codes for General Medicine are based on 1995 North Carolina Medicare values multiplied by 1.58, except for CPT codes 99201-99205 and 99211-99215, which are based on 1995 Medicare values multiplied by 2.05.
- (2) CPT codes for Physical Medicine are based on 1995 North Carolina Medicare values multiplied by 1.36.
- (3) CPT codes for Radiology are based on 1995 North Carolina Medicare values multiplied by 1.96.
- (4) CPT codes for Surgery are based on 1995 North Carolina Medicare values multiplied by 2.06.

(d) The Commission's Hospital Fee Schedule, adopted pursuant to G.S. 97-26(b), provides for payment as follows:

- (1) Inpatient hospital fees: Inpatient services are reimbursed based on a Diagnostic Related Groupings (DRG) methodology. The Hospital Fee Schedule utilizes the 2001 Diagnostic Related Groupings adopted by the State Health Plan. Each DRG amount is based on the amount that the State Health Plan had in effect for the same DRG on June 30, 2001.

DRG amounts are further subject to the following payment band that establishes maximum and minimum payment amounts:

- (A) The maximum payment is 100 percent of the hospital's itemized charges.

- (B) For hospitals other than critical access hospitals, the minimum payment is 75 percent of the hospital's itemized charges. Effective February 1, 2013, the minimum payment rate is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (C) For critical access hospitals, the minimum payment is 77.07 percent of the hospital's itemized charges. Effective February 1, 2013, the minimum payment rate is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (2) Outpatient hospital fees: Outpatient services are reimbursed based on the hospital's actual charges as billed on the UB-04 claim form, subject to the following percentage discounts:
 - (A) For hospitals other than critical access hospitals, the payment shall be 79 percent of the hospital's billed charges. Effective February 1, 2013, the payment is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
 - (B) For critical access hospitals, the payment shall be 87 percent of the hospital's billed charges. For purposes of the hospital fee schedule, critical access hospitals are those hospitals designated as such pursuant to federal law (42 CFR 485.601 et seq.). Effective February 1, 2013, the critical access hospital's payment is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (3) Ambulatory surgery fees: Ambulatory surgery center services are reimbursed at 79 percent of billed charges. Effective February 1, 2013, the ambulatory surgery center services are reimbursed at the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (4) Other rates: If a provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology, that amount or methodology establishes the applicable fee.
- (5) Payment levels frozen and reduced pending study of new fee schedule: Effective February 1, 2013, inpatient and outpatient payments for each hospital and the payments for each ambulatory surgery center shall be set at the
 - payment rates in effect for those facilities as of June 30, 2012. Effective April 1, 2013, those rates shall then be reduced as follows:
 - (A) Hospital outpatient and ambulatory surgery: The rate in effect as of that date shall be reduced by 15 percent.
 - (B) Hospital inpatient: The minimum payment rate in effect as of that date shall be reduced by 10 percent.
 - (6) Effective April 1, 2013, implants shall be paid at no greater than invoice cost plus 28 percent.
 - (e) Insurers and managed care organizations, or administrators on their behalf, may review and reimburse charges for all medical compensation, including medical, hospital, and dental fees, without submitting the charges to the Commission for review and approval.
 - (f) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of the service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments were provided. However, in cases where liability is initially denied but subsequently admitted or determined by the Commission, the time for submission of medical bills shall run from the time the health care provider received notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer, carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the Commission for approval or send the provider written objections to the statement. If an employer, carrier, administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier, administrator, or managed care organization, shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges through its contractual arrangement or through the Commission.
 - (g) Pursuant to G.S. 97-18(i), when the 10 percent addition to the bill is uncontested, payment shall be made to the provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.
 - (h) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the payee hospital, upon request, shall provide reasonable access and copies of appropriate records, without charge or fee, to the person(s) chosen by the payor to review and audit the records.
 - (i) The responsible employer, carrier, managed care organization, or administrator shall pay the statements of medical compensation providers to whom the employee has been referred by the treating physician authorized by the insurance carrier for the compensable injury or body part, unless the physician has been requested to obtain authorization for referrals or tests; provided that compliance with the request shall not unreasonably delay the treatment or service to be rendered to the employee.
 - (j) Employees are entitled to reimbursement for sick travel when the travel is medically necessary and the mileage is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual

cost of tolls paid. Employees are entitled to lodging and meal expenses, at a rate to be established for state employees by the North Carolina Director of Budget, when it is medically necessary that the employee stay overnight at a location away from the employee's usual place of residence. Employees are entitled to reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual costs of the expenses.

(k) Any employer, carrier or administrator denying a claim in which medical care has previously been authorized is

responsible for all costs incurred prior to the date notice of denial is provided to each health care provider to whom authorization has been previously given.

History Note: Authority G.S. 97-18(i); 97-25; 97-25.6; 97-26; 97-80(a); 138-6; Eff. January 1, 1990; Amended Eff. July 1, 2014; January 1, 2013; June 1, 2000.

04 NCAC 10L .0101 FORM 21 – AGREEMENT FOR COMPENSATION FOR DISABILITY

(a) The parties to a workers' compensation claim shall use the following Form 21, Agreement for Compensation for Disability, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where applicable. The Form 21, Agreement for Compensation for Disability, shall read as follows:

North Carolina Industrial Commission
Agreement for Compensation for Disability
(G.S. 97-82)

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name
Address
City State Zip
Home Telephone Work Telephone
Social Security Number: _____ Sex: [] M [] F Date of Birth: _____
Employer's Name Telephone Number
Employer's Address City State Zip
Insurance Carrier
Carrier's Address City State Zip
Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

- 1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and _____ is the carrier/administrator for the employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on or by _____.
3. The injury by accident or occupational disease resulted in the following injuries: _____

APPROVED RULES

4. The employee was / was not paid for the entire day when the injury occurred.
5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$ _____, subject to verification unless otherwise agreed upon in Item 9 below.
6. Disability resulting from the injury or occupational disease began on _____.
7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$ _____ per week beginning _____, and continuing for _____ weeks.
8. The employee has / has not returned to work for _____ on _____, at an average weekly wage of \$ _____.
9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial disability:

10. If applicable, the Second Injury Fund Assessment is \$ _____. Check is is not attached.
11. The date of this agreement is _____. Date of first payment: _____ Amount: _____
12. **IMPORTANT NOTICE TO EMPLOYEE:** The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.
- Check one of the boxes below if the award is more than \$3,000.00:
- The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.
- The employee and employer have agreed that the employer will pay the entire fee.

Name of Employer	Signature	Title
Name of Carrier / Administrator	Signature	Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on the Pages 1 and 2 of this form.

Signature of Employee	Address
Signature of Employee's Attorney	Address

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date
-----------------	------

Attorney's Fee Approved

- Check Box If No Attorney Retained.
- Check Box If Employee Is In Managed Care.

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS
Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS
If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS
If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M, available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after last payment pursuant to this agreement may subject the employer or carrier/administrator to a penalty. Pursuant to 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 21
4/2014

Self-Insured Employer or Carrier, Mail to:
NCIC - Claims Section
4335 Mail Service Center
Raleigh, NC 27699-4335
Telephone: (919) 807-2502
Helpline: (800) 688-8349
Website: <http://www.ic.nc.gov/>

(b) The copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/forms/form21.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/form21.pdf> and may not be altered or amended in any way.

History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82;
Eff. Pending Legislative Review.

04 NCAC 10L .0102 FORM 26 – SUPPLEMENTAL AGREEMENT AS TO PAYMENT OF COMPENSATION

(a) If the parties to a workers' compensation claim have previously entered into an approved agreement on a Form 21, *Agreement for Compensation for Disability*, or a Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, they shall use the following Form 26, *Supplemental Agreement as to Payment of Compensation*, for agreements regarding subsequent, additional disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where applicable. The Form 26, *Supplemental Agreement as to Payment of Compensation*, shall read as follows:

North Carolina Industrial Commission
Supplemental Agreement as to Payment
of Compensation (G.S. §97-82)

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name

Address

City State Zip

Home Telephone Work Telephone

APPROVED RULES

Social Security Number: _____ Sex: M F Date of Birth: _____

Employer's Name Telephone Number

Employer's Address City State Zip

Insurance Carrier

Carrier's Address City State Zip

Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

1. Date of injury: _____
2. The employee returned to work / was rated on _____ (date), at a weekly wage of \$ _____.
3. The employee became totally disabled on _____.
4. Employee's average weekly wage was reduced / was increased on _____, from \$ _____ per week to \$ _____ per week.
5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$ _____ per week beginning _____, and continuing for _____ weeks. The type of disability compensation is _____

6. State any further matters agreed upon, including disfigurement or temporary partial disability: _____

7. **IMPORTANT NOTICE TO EMPLOYEE:** The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.

Check one of the boxes below if the award is more than \$3,000.00:

- The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.
- The employee and employer have agreed that the employer will pay the entire fee.

8. The date of this agreement is _____.

Name of Employer Signature Title

Name of Carrier/Administrator Signature Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Pages 1 and 2 of this form.

Signature of Employee Address

Signature of Employee's Attorney Address

Check box if no attorney retained.

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner Date

Attorney's fee approved

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS
Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE 5 JULY 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before 5 July 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER 5 JULY 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after 5 July 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M, available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

This form is to be used only to supplement Form 21, *Agreement for Compensation for Disability* (G.S. 97-82), or an award in cases in which subsequent conditions require a modification of a former agreement or award. The employee must be provided a copy of the form when the agreement is signed by the employee. Failure to file Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after last payment pursuant to this agreement may subject the employer or carrier/administrator to a penalty. Pursuant to 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26
4/2014

Self-Insured Employer or Carrier Mail to:
NCIC - Claims Administration
4335 Mail Service Center
Raleigh, North Carolina 27699-4335
Main Telephone: (919) 807-2500
Helpline: (800) 688-8349
Website: <http://www.ic.nc.gov/>

(b) The copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/forms/form26.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/form26.pdf> and may not be altered or amended in any way.

History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82;
Eff. Pending Legislative Review.

04 NCAC 10L .0103 FORM 26A – EMPLOYER'S ADMISSION OF EMPLOYEE'S RIGHT TO PERMANENT PARTIAL DISABILITY

(a) The parties to a workers' compensation claim shall use the following Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, for agreements regarding the employee's entitlement to and the employer's payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues agreed upon by the parties, including, but not limited to, election of payment of temporary partial disability pursuant to G.S. 97-30 may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where applicable. The Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, shall read as follows:

North Carolina Industrial Commission
Employer's Admission of Employee's Right to Permanent Partial Disability
(G.S. §97-31)

IC File # _____
Emp. Code # _____

APPROVED RULES

Carrier Code # _____
Carrier File # _____
Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name

Address

City State Zip

Home Telephone Work Telephone
Social Security Number: _____ Sex: M F Date of Birth: _____

Employer's Name Telephone Number

Employer's Address City State Zip

Insurance Carrier

Carrier's Address City State Zip

Carrier's Telephone Number Carrier's Fax Number

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and _____ is the Carrier/Administrator for the Employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on _____.
3. The injury by accident or occupational disease resulted in the following injuries:

4. The employee was was not paid for the 7 day waiting period.
If not, was salary continued? yes no. Was employee paid for the date of injury? yes no
5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$ _____. This results in a weekly compensation rate of \$ _____.
6. The employee has has not returned full time to work for _____ on _____, at an average weekly wage of \$ _____.
7. Claimant was released with permanent restrictions without permanent restrictions.
8. Permanent partial disability compensation will be paid to the injured worker as follows:
____ weeks of compensation at rate of \$ _____ per week for ____% rating to _____ (body part)
____ weeks of compensation at rate of \$ _____ per week for ____% rating to _____ (body part)
____ weeks of compensation at rate of \$ _____ per week for ____% rating to _____ (body part)
Total amount of permanent partial disability compensation is \$ _____. Date of first payment: _____.
9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other: _____.
10. An overpayment is claimed in the amount of \$ _____. Overpayment was calculated as follows: _____.
If overpayment claimed, a Form 28B is attached. yes no
11. If applicable, the Second Injury Fund Assessment is \$ _____. A check is is not included.
12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.
Check one of the boxes below if the award is more than \$3,000.00:
 The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

APPROVED RULES

The employee and employer have agreed that the employer will pay the entire fee.

The undersigned hereby certify that the material medical and vocational reports related to the injury have been provided to the employee or his attorney and have been filed with the Industrial Commission for consideration pursuant to G.S. 97-82(a) and Industrial Commission Rule 501(3).

Name Of Employer	Signature	Title	Date
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Name Of Carrier/Administrator	Signature	Direct Phone Number	Title	Date
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By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on pages 2 and 3 of this form.

Signature of Employee	Address	Date
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Signature of Employee's Attorney	Address	Date
----------------------------------	---------	------

Check box if no attorney retained.

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date
-----------------	------

Attorney's fee approved

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after last payment pursuant to this agreement may subject the employer or carrier/administrator to a penalty. Pursuant to 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26A
1/2014

Self-Insured Employer or Carrier Mail to:

NCIC - Claims Administration
4335 Mail Service Center
Raleigh, North Carolina 27699-4335
Main Telephone: (919) 807-2500
Helpline: (800) 688-8349
Website: http://www.ic.nc.gov/

(b) A copy of the form described in Paragraph (a) of this Rule can be accessed at http://www.ic.nc.gov/forms/form26a.pdf. The form may be reproduced only in the format available at http://www.ic.nc.gov/forms/form26a.pdf and may not be altered or amended in any way.

History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-81(a); 97-82; Eff. Pending Legislative Review.

04 NCAC 10L .0104 FORM 36 - SUBPOENA

(a) The parties to a claim shall use the following Form 36, Subpoena, to subpoena a person(s) to appear and testify and/or produce documents for inspection before the Commission. The Form 36, Subpoena, shall read as follows:

STATE OF NORTH CAROLINA File No. _____
_____ County North Carolina Industrial Commission

VERSUS

SUBPOENA

G.S. 1A-1, Rule 45; G.S. 8-59; G.S. 97-80(e)

Party Requesting Subpoena

___ NCIC/State/Plaintiff ___ Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by a Commissioner, Deputy Commissioner, or the Executive Secretary.

TO: Name and Address of Person Subpoenaed _____
Alternate Address _____
Telephone No. _____
Alternate Telephone No. _____

YOU ARE COMMANDED TO: (check all that apply):

- ___ appear and testify, in the above entitled action, before the Industrial Commission at the place, date and time indicated below.
___ appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
___ produce and permit inspection and copying of the following items, at the place, date and time indicated below. (A party shall not issue a subpoena duces tecum less than 30 days prior to the hearing date except upon prior approval of the Commission. G.S. 97-80(e).)
___ See attached list. (List here if space sufficient)

Location of Hearing/Place of Deposition/Place to Produce _____
Date to Appear/Produce _____
Time to Appear/Produce ___:___ __ AM __ PM
Name and Address of Applicant or Applicant's Attorney _____
Date _____
Signature of Official or Attorney _____
___ Deputy Commissioner ___ Commissioner ___ Executive Secretary ___ Attorney
Telephone No. of Applicant or Applicant's Attorney _____

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

By
___ personal delivery.
___ registered or certified mail, receipt requested and attached.

___ service by Sheriff.

___ I was unable to serve this subpoena. Reason unable to serve: _____

Service Fee \$ _____

___ Paid

___ Due

Date Served _____

Name of Authorized Server (Type Or Print) _____

Signature of Authorized Server _____

Title _____

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party.

NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d). (With respect to the provisions of Rule 45 cited below as they apply to this subpoena, the North Carolina Industrial Commission is the "court" and the "court in the county." All motions regarding this subpoena shall be filed with the North Carolina Industrial Commission pursuant to 04 NCAC 10A .0609.)

(c) Protection of Persons Subject to Subpoena

(1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11 of the North Carolina Rules of Civil Procedure. Each of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden or expense.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

(4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically

stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this

subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel; expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.

(7) Trade secrets; confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoena

(1) Form of response. - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(2) Form of producing electronically stored information not specified. - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.

(3) Electronically stored information in only one form. - The person responding need not produce the same electronically stored information in more than one form.

(4) Inaccessible electronically stored information. - The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(1a) of the North Carolina Rules of Civil Procedure. The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.

(5) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding Deputy Commissioner or Commissioner, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the presiding Deputy Commissioner or Commissioner.

Form 36 (Rev. 4/14)

(b) The copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/forms/form36.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/form36.pdf> and may not be altered or amended in any way.

History Note: Authority G.S. 1A-1, Rule 45; 8-59; 97-80(a); 97-80(e); 97-81(a); S.L. 2013-294, s. 8.(12); Eff. July 1, 2014.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 18C .0102 DEFINITIONS

(a) The definitions contained in G.S. 130A-2, G.S. 130A-290, and G.S. 130A-313 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection at the principal address of the Division of Water Resources at 512 North Salisbury Street, Raleigh NC 27604-1170; 1634 Mail Service Center, Raleigh NC 27699-1634; or at the website of the Division at www.ncwater.org.

(b) The definitions contained in 40 C.F.R. 141.2 are hereby incorporated by reference including any subsequent amendments and editions except the following definitions are not adopted:

- (1) "Disinfection;"
- (2) "Maximum containment level;"
- (3) "Person;"
- (4) "Public Water System;" and
- (5) "Supplier of water."

Copies are available for public inspection as set forth in Rule 18C .0102 of this Section. In addition, copies of governing federal regulations may be obtained from the Environmental Protection Agency's (USEPA) homepage at <http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm> or from the USEPA's Drinking Water Hotline at 1-800-426-4791.

(c) In addition to the definitions incorporated by reference as set forth in Paragraph (a), the following definitions shall apply to this Subchapter:

- (1) "Act" means the North Carolina Drinking Water Act.
- (2) "Class I reservoir" means a reservoir from which water flows by gravity or is pumped directly to a treatment plant or to a small intervening storage basin and thence to a treatment plant.
- (3) "Class II reservoir" means a reservoir from which the water flows by gravity or is pumped to a Class I reservoir prior to final entrance to a water treatment plant.
- (4) "Class III reservoir" means an impoundment used for electric power generation, flood control, and similar purposes, and that serves as a source of raw water for a community water system.
- (5) "Cross-connection" means:
 - (A) any physical connection between a potable water supply system and any

other piping system, sewer fixture, container, or device, whereby water or other liquids, mixtures, or substances may flow into or enter the potable water supply system;

(B) any potable water supply outlet which is submerged or is designed or intended to be submerged in non-potable water or in any source of contamination; or

(C) an air gap, providing a space between the potable water pipe outlet and the flood level rim of a receiving vessel of less than twice the diameter of the potable water pipe.

(6) "Community Water System intake" means the structure at the head of a conduit into which water is diverted from a stream or reservoir for transmission to water treatment facilities.

(7) "Disinfection" means a process that inactivates pathogenic organisms in water.

(8) "Fecal Coliform" means bacteria found in the intestine of humans and other warm blooded animals that are not normally disease producing but serve as indicators of recent fecal contamination. They are members of the Family Enterobacteriaceae, Genus Escherichia, Species Coli.

(9) "Mobile Home Park" means a site or tract of land where spaces are provided for lease or rental only to mobile home occupants.

(10) "Mobile home subdivision" means a subdivided site or tract of land in which lots are sold for use by mobile home occupants.

(11) "Non-potable water supply" means waters not approved for drinking or other household uses.

(12) "Potable water supply" means water approved for drinking or other household uses.

(13) "Raw water" means surface water or groundwater that because of bacteriological quality, chemical quality, turbidity, color, or mineral content makes it unsatisfactory as a source for a community water system without treatment.

(14) "Raw water reservoir" means a natural or artificial impoundment used for the primary purpose of storing raw water to be subsequently treated for use as a source for a community water system.

(15) "Service connection" means a piped connection from a water main for the purpose of conveying water to a building or onto a premise for human use.

- (16) "Water supply product" means any chemical or substance added to a public water system in conjunction with a treatment technique or material used in construction of a public water system. The term includes any material used in the manufacture of public water system components, appurtenances, any pipe, storage tank or valve that comes in contact with water intended for use in a public water system.

History Note: Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.2; Eff. January 1, 1977; Readopted Eff. December 5, 1977; Amended Eff. April 1, 2014; July 1, 1994; August 1, 1991; January 1, 1991; September 1, 1990.

15A NCAC 18C .0201 SURFACE SUPPLIES FOR PUBLIC WATER SYSTEMS

- (a) A surface supply may be used for a community or a non-transient, non-community water system with disinfection and without filtration if it complies with the provisions of this Section and Rule .2005 of this Subchapter.
- (b) Such water supply shall be derived from uninhabited wooded areas.
- (c) The entire watershed shall be either owned or controlled by the person supplying the water or be under the control of the federal or state government; however, no such new water supply shall be created except where the water system owner shall own in its entirety the watershed from which the water will be obtained.
- (d) The water after disinfection shall be of potable quality as determined by bacteriological and chemical tests performed by a certified laboratory. The presence of contaminants shall not exceed the limits set forth in Section .1500 of this Subchapter.
- (e) The water source shall have a WS-I classification as established by the Environmental Management Commission and shall meet the quality standards for that classification, codified in 15A NCAC 02B. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; 130A-318; P.L. 93-523; Eff. January 1, 1977; Readopted Eff. December 5, 1977; Amended Eff. April 1, 2014; July 1, 1994; February 1, 1987; September 1, 1979.

15A NCAC 18C .0202 REMOVAL OF DISSOLVED MATTER AND SUSPENDED MATTER

Any surface water that is to receive treatment for removal of dissolved matter or suspended matter in order to be used for a public water system shall be obtained from a source that meets the WS-I, WS-II, WS-III, WS-IV or WS-V stream classification standards established by the Environmental Management Commission codified in 15A NCAC 02B. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. The source shall be protected from potential sources of pollution as determined by a sanitary survey of the

watershed made by an authorized representative of the Department. The source supply shall be sufficient in capacity to satisfy the anticipated needs of the users for the period of design.

History Note: Authority G.S. 130A-315; 130A-318; P.L. 93-523; Eff. January 1, 1977; Readopted Eff. December 5, 1977; Amended Eff. April 1, 2014; July 1, 1994; September 1, 1990; February 1, 1987; September 1, 1979.

15A NCAC 18C .0302 SUBMITTALS

- (a) All plans, specifications, reports, or other data shall be submitted in triplicate for review by the Public Water Supply Section, Division of Water Resources at 512 N Salisbury Street, Room 1304A, Raleigh NC 27604-1170, or 1634 Mail Service Center, Raleigh NC 27699-1634.
- (b) Engineering plans shall consist of legible prints having black, blue, or brown lines on a white background suitable for microfilming. The engineering plans shall not be more than 36 inches wide and 48 inches long and not be less than 11 inches wide and 17 inches long.
- (c) An applicant subject to G.S. 143-355(l) shall submit three copies of the adopted Local Water Supply Plan. If information required in the Engineer's Report or the Water System Management Plan is included in an adopted Local Water Supply Plan, a submittal to the Department may incorporate this information by referencing the location in the adopted Local Water Supply Plan.
- (d) Existing systems that have previously submitted an Engineer's Report and a Water System Management Plan in accordance with Rule .0307 of this Section shall document any changes either as revised reports and plans or addendums.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523; Eff. January 1, 1977; Readopted Eff. December 5, 1977; Amended Eff. July 1, 1994; December 1, 1991; September 1, 1990; June 30, 1980; September 1, 1979; Temporary Amendment Eff. October 1, 1999; Amended Eff. April 1, 2014; August 1, 2000.

15A NCAC 18C .0401 MINIMUM REQUIREMENTS

The design criteria given in this Section are the minimum requirements for approval of plans and specifications by the Department. The Department provides supplemental criteria for design of water systems in Sections .0500-.1000 of this Subchapter.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523; Eff. January 1, 1977; Readopted Eff. December 5, 1977; Amended Eff. April 1, 2014; July 1, 1994; September 1, 1979.

15A NCAC 18C .0402 WATER SUPPLY WELLS

- (a) Well Construction. The construction of water supply wells shall conform to well construction regulations and standards of

the Division of Water Resources, Department of Environment and Natural Resources, codified in 15A NCAC 02C. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(b) Upper Terminal of Well. The well casing shall neither terminate below ground nor in a pit. The pump pedestal for above ground pumps of every water supply well shall project not less than six inches above the concrete floor of the well house, or the concrete slab surrounding the well. The well casing shall project at least one inch above the pump pedestal. For submersible pumps the casing shall project at least six inches above the concrete floor or slab surrounding the well head.

(c) Sanitary Seal. The upper terminal of the well casing shall be sealed watertight with the exception of a vent pipe or vent tube having a downward-directed, screened opening.

(d) Concrete Slab or Well House Floor. Every water supply well shall have a continuous bond concrete slab or well house concrete floor extending at least three feet horizontally around the outside of the well casing. Minimum thickness for the concrete slab or floor shall be four inches.

(e) Sample Tap and Waste Discharge Pipe. Faucets or spigots shall be provided for sampling both raw water prior to treatment and treated water prior to delivery to the first customer. Sample spigots shall not be threaded for hose connection. Threaded hose bibs shall be equipped with anti-siphon devices. A water sample tap and piping arrangement for discharge of water to waste shall be provided.

(f) Physical Security and Well Protection. A water supply well shall be secured against unauthorized access and protected from the weather. One of the following structures shall be provided:

(1) Well house. A well house shall be constructed as follows:

- (A) structures shall comply with applicable provisions of state and local building codes;
- (B) drainage shall be provided by floor drain, wall drain, or slope to door;
- (C) access into the structure shall be a doorway with minimum dimensions of 36 inches wide and 80 inches high;
- (D) the structure shall have adequate space for the use and maintenance of the piping and appurtenances. If treatment is provided at the well, the provisions of Rule .0404(a) of this Section shall apply; and
- (E) the structure shall be secured with lock and key.

(2) Prefabricated structures. A prefabricated structure shall be constructed as follows:

- (A) a well-head cover shall be hinged and constructed so that it can be lifted by one person;
- (B) a locking mechanism shall be provided; and
- (C) permanent fastening to the slab (such as with bolts) shall not be permitted.

(3) Fencing and temperature protection. Fencing and temperature protection shall be constructed as follows:

- (A) the fence height shall be a minimum of six feet;
- (B) the fence shall be constructed of chain link with locked access;
- (C) the fence shall enclose the well, hydropneumatic tank, and associated equipment;
- (D) access shall be provided for maintenance and operation; and
- (E) the well, piping, treatment equipment, and electrical controls shall be protected against freezing. Wrapping with insulation is acceptable for appurtenances such as the air vent, meter, valves, and sample taps provided they are visible and accessible. Insulation shall be jacketed.

(g) Yield:

- (1) Wells shall be tested for yield and drawdown. A report or log of at least a 24-hour drawdown test to determine yield shall be submitted to the Division of Water Resources for each well.
- (2) Wells shall be located so that the drawdown of any well shall not interfere with the required yield of another well.
- (3) The combined yield of all wells of a water system shall provide in 12 hours pumping time the average daily demand as determined in Rule .0409 of this Section.
- (4) The capacity of the permanent pump to be installed in each well shall not exceed the yield of the well as determined by the drawdown test.
- (5) A residential community water system using well water as its source of supply and designed to serve 50 or more connections shall provide at least two wells. A travel trailer park or campground designed to serve 100 or more connections shall provide at least two wells. In lieu of a second well, another approved water supply source may be accepted.
- (6) A totalizing meter shall be installed in the piping system from each well.

(h) Initial Disinfection of Water Supply Well. All new wells, and wells that have been repaired or reconditioned shall be cleaned of foreign substances such as soil, grease, and oil, and then shall be disinfected. A representative sample or samples of the water (free of chlorine) shall be collected and submitted to a certified laboratory for bacteriological analyses. The water supply shall not be placed into service after disinfection until bacteriological test results of representative water samples analyzed in a certified laboratory are found to be free of bacteriological contamination.

(i) Initial Chemical Analyses. A representative sample of water from every new water supply well shall be collected and

submitted for chemical analyses to the Division of Laboratory Services or to a certified laboratory. The results of the analysis shall demonstrate the water is treatable to meet water quality standards in Section .1500 of this Subchapter and needed treatment shall be provided before the well is placed into service.

(j) Continuous Disinfection. Continuous application of chlorine, hypochlorite solution, or some other approved and equally efficient disinfectant shall be provided for all well water supplies introduced on or after January 1, 1972. Equipment for determining residual chlorine concentration in the water shall be included in the plans and specifications.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523;

Eff. January 1, 1977;

Readopted Eff. December 5, 1977;

Amended Eff. April 1, 2014; July 1, 1994; September 1, 1990; January 1, 1986; March 31, 1980.

15A NCAC 18C .0405 STORAGE OF FINISHED WATER

(a) Ground Level Storage

- (1) Finished Water Ground Storage Tank. Finished water ground storage tanks shall be provided with a light-proof and insect-proof cover of concrete, steel, or equivalent material approved by the Division. The construction joints between side walls and the covers of concrete tanks or reservoirs shall be above ground level and above flood level; except that clearwells constructed below filters may be excepted from this requirement when total design, including waterproof joints, gives equal protection from flooding.
- (2) Access Manholes. The access manholes for finished water ground storage tanks or reservoirs shall be framed at least four inches above the tank or reservoir covers at the opening and shall be fitted with solid covers of materials that overlap the framed openings and extend down around the frames at least two inches. The covers for the openings shall be hinged at one side and fitted with a locking device.
- (3) Venting. Finished water ground storage tanks or reservoirs shall have vents with screened, downward directed openings. The vent and screen shall be of corrosion resistant material.
- (4) Overflow. The overflow pipes for finished water ground storage tanks or reservoirs shall not be connected directly to sewers or storm drains. Screens or other devices to prevent access by rodents, insects, etc. shall be provided in the overflow pipe.
- (5) Inlets and Outlets. Water supply inlets and outlets of finished water ground storage tanks and reservoirs shall be located and designed to provide circulation of the water and to meet the CT requirements in Section .2000 of this

Subchapter. Baffles shall be constructed where necessary to provide thorough circulation of the water.

(6) Drain Valves. All finished water ground storage tanks and reservoirs shall be equipped with drain valves.

(b) Elevated Storage Tanks:

(1) Standards. The specifications for elevated tanks, stand-pipes, towers, paints, coatings, and other appurtenances shall meet the appropriate ANSI/AWWA Standards D 100 84 and D 101-53(R86) of the American Water Works Association, Inc. that are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(2) Elevation of Storage Tanks. The elevation of storage tanks shall be sufficient to produce a designed minimum distribution system pressure of 20 pounds per square inch at peak demand (fire flow) and 30 pounds per square inch during peak flow.

(3) Drain. Elevated storage tanks shall be equipped with drain valves.

(c) Hydropneumatic Storage Tanks (Pressure Tanks)

(1) Use of Pressure Tanks. Where well yields and pumping capacities are sufficient, hydropneumatic (pressure) tanks may be used to control pumps, stabilize pressures, and provide a minimum of storage. Pressure tanks shall have the capacity to maintain a minimum pressure of 30 pounds per square inch throughout periods of peak flow. Pressure tanks shall not be considered acceptable for meeting total storage requirements for water systems of over 300 connections, except as provided in Paragraph (d) of this Rule.

(2) Corrosion Control. Pressure tanks shall be galvanized after fabrication, provided with an ANSI/NSF approved liner or coating in accordance with Rule .1537 of this Subchapter.

(3) Required Parts. Pressure tanks shall have access manholes, bottom drains, pressure gauges, and properly sized safety and vacuum relief valves.

(4) Controls. Automatic pressure and start-stop controls for operation of pumps shall be provided.

(5) Hydropneumatic Storage Tanks. Hydropneumatic storage tanks shall conform to the construction requirements for pressure vessels adopted by the North Carolina Department of Labor and codified in 13 NCAC 13 that is hereby incorporated by reference including any subsequent amendments and editions. Copies are available

for public inspection as set forth in Rule .0102 of this Subchapter.

- (6) Appurtenances to hydropneumatic storage tanks such as valves, drains, gauges, sight tubes, safety devices, air-water volume controls, and chemical feed lines shall be protected against freezing.

(d) High Yield Aquifers:

- (1) Equipment. In lieu of providing elevated storage for systems over 300 connections in areas where aquifers are known to produce high yields, e.g., 400-500 gpm from an eight-inch well, a system of extra well pumping capacity, auxiliary power generating equipment, hydropneumatic tanks, controls, alarms, and monitoring systems may be provided. The design and installation of such system shall assure that reliable, continuous service is provided.
- (2) Auxiliary Power. Such a system shall have an adequate number of wells equipped with sufficient pumping capacity so that the required flow rate may be maintained with the single largest capacity well and pump out of operation. Auxiliary power generating equipment shall be provided for each well sufficient to operate the pump, lights, controls, chemical feeders, alarms, and other electrical equipment as may be necessary.
- (3) Pump Control. Hydropneumatic tanks designed in accordance with Paragraph (c) of this Rule and Section .0800 of this Subchapter shall be provided to maintain pressure and control the pump operation.
- (4) Alarm System. An alarm system shall be provided that will send a visual or audible signal to a constantly monitored location so that the water system operator will be advised of a primary power failure.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523; Eff. January 1, 1977; Readopted Eff. December 5, 1977; Amended Eff. April 1, 2014; July 1, 1994; September 1, 1990; October 1, 1986; June 30, 1980.

15A NCAC 18C .0406 DISTRIBUTION SYSTEMS

(a) Water Pipe Materials. Distribution mains shall be cast iron, ductile iron, asbestos-cement, reinforced concrete, plastic, or other material designed for potable water system service and shall be the appropriate AWWA standards, section C, or NSF Standards No. 14 and No. 15 that is hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. The pressure rating class of the pipe shall be in excess of the maximum design pressure within that section of the water distribution system. The quality of pipe to be used shall be stated in the project specifications.

(b) Cross-Connections

- (1) No potable water supply shall be connected by any means to another source of water supply or to a storage facility unless such connection has been previously approved by the Department. No connection shall be made to any plumbing system that does not comply with the North Carolina State Building Code, volume II, or any applicable local plumbing code.
- (2) No person shall introduce any water into the distribution system of a public water supply through any means other than from a source of supply duly approved by the Department or its representatives, or make a physical connection between an approved supply and unapproved supply unless authorized in an emergency by the Department or its representative.
- (3) In cases where storage capacity is used only for non-potable purposes and there is installed either an elevated or ground tank or a ground reservoir, the following precautions shall be taken:
 - (A) When the reservoir or tank is filled from a supply other than a public water supply and the public water supply is used as a supplemental supply, the pipeline from the public water supply shall be installed in such a manner that the water will be discharged over the top or rim of the reservoir or tank. There shall be a complete physical break between the outlet end of the fill pipe and the top or overflow rim of the tank of at least twice the inside diameter of the inlet pipe.
 - (B) When the reservoir or tank is filled entirely by water from a public water supply:
 - (i) If a covered ground reservoir or covered elevated tank is used, an approved reduced pressure back-flow preventor or an approved double check valve assembly may be used. The back-flow prevention device shall be installed in such a manner as to afford adequate protection, be easily accessible, and include all necessary pressure gauges and drains for testing. Gate valves shall be installed in the line at both ends of the back-flow prevention device.
 - (ii) If an uncovered ground reservoir or uncovered

elevated tank is used, a complete physical break shall be provided between the reservoir or elevated tank and the public supply. The physical break between the inlet pipe and the top or overflow rim of the reservoir shall be at least twice the diameter of the inlet pipe.

- (4) All cross-connections between potable water supplies and non-potable or unprotected supplies that are not specifically covered in the categories in this Paragraph will be considered special problems and the protective devices required shall be determined by the Department on the basis of the degree of health hazard involved.
- (5) Persons desiring to install non-potable water supplies in conjunction with a public water supply shall submit detailed plans and specifications in triplicate showing the non-potable water supply and its relation to the potable water supply to the Department in accordance with Rule .0302(a) of this Subchapter.
- (6) Any such interconnection to a potable water system is subject to the approval of the water supplier and shall not be made until authorized by the water supplier in addition to the Department.
- (7) No person shall fill special use tanks or tankers containing pesticides, fertilizers, other toxic chemicals, or their residues from a public water system except at a location equipped with an over-the-rim free discharge of water or a reduced pressure backflow preventer properly installed on the public water supply that has been approved by the Department. No supplier of water shall permit the filling of such special use tanks or tankers except at locations so equipped.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523;

Eff. January 1, 1977;
Readopted Eff. December 5, 1977;
Amended Eff. April 1, 2014; September 1, 1990; December 1, 1988; June 30, 1980.

15A NCAC 18C .0706 SEDIMENTATION BASIN

- (a) Inlets. Inlets to sedimentation basins shall be designed to dissipate inlet velocities before the diffusion walls or before other entrance arrangements designed to provide uniform flow across the basins.
- (b) Detention Period. A theoretical detention period of four hours shall be considered to be a minimum standard unless evidence, acceptable to the Division of Water Resources, is presented to support approval of a lower period of detention.
- (c) Bottom of Basin. The bottom of the basin shall be sloped and provided with drain valve or valves for ready removal of sludge.
- (d) Outlet. Sedimentation basin outlets shall consist of submerged weirs or orifices. The equivalent rate of flow over or through the outlet device should not exceed 20,000 gallons per day per foot of equivalent weir length.
- (e) Overflow. Sedimentation basins shall be equipped with an overflow pipe or pipes to limit the maximum water level over the filters and to prevent flooding above the walls of filters and basins.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523;
Eff. January 1, 1977;
Readopted Eff. December 5, 1977;
Amended Eff. April 1, 2014.

15A NCAC 18C .0715 OTHER DESIGN STANDARDS

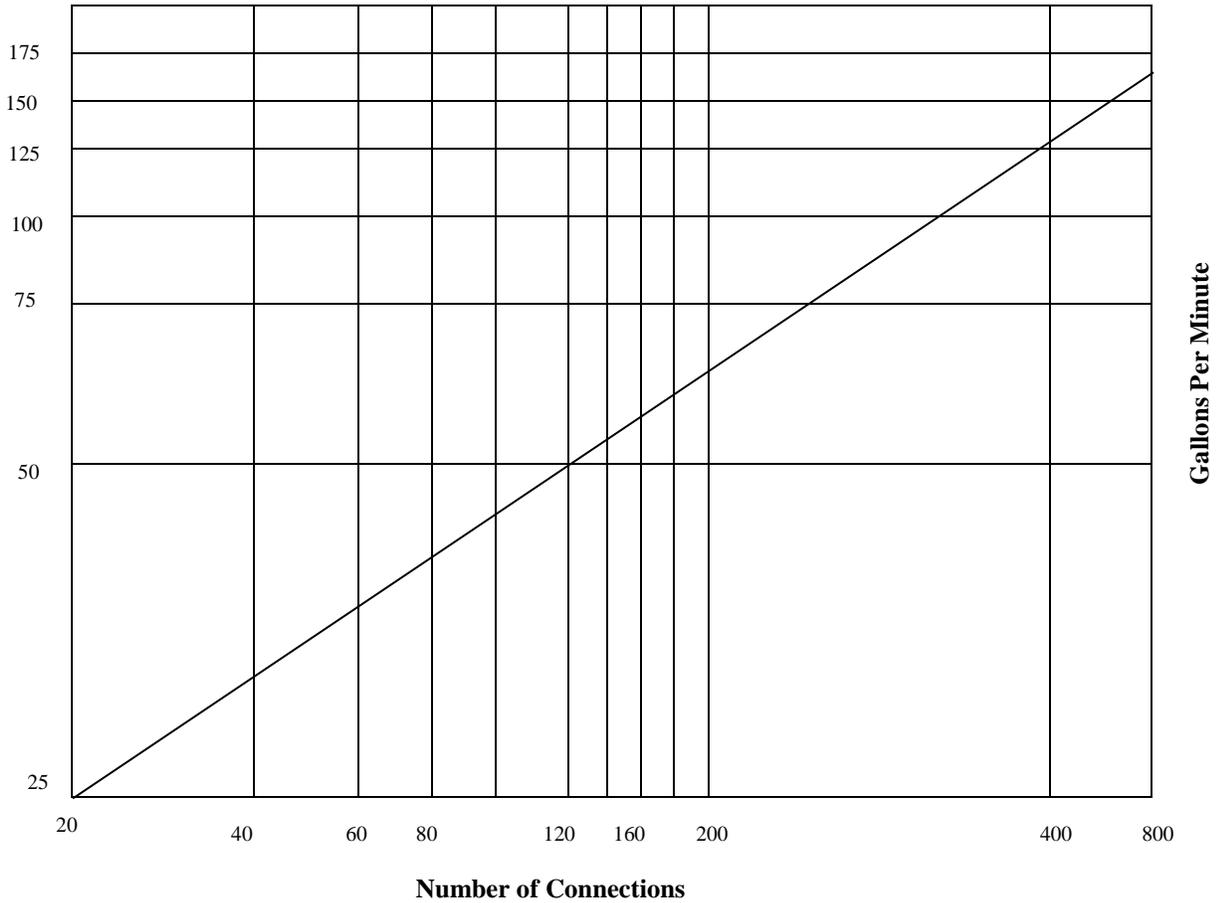
In evaluation of water systems or water system design features not addressed in this Section, the Department shall consider standards from the American Water Works Association or Recommended Standards for Water Works of 10 states and Ontario, that is hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523;
Eff. July 1, 1994;
Amended Eff. April 1, 2014.

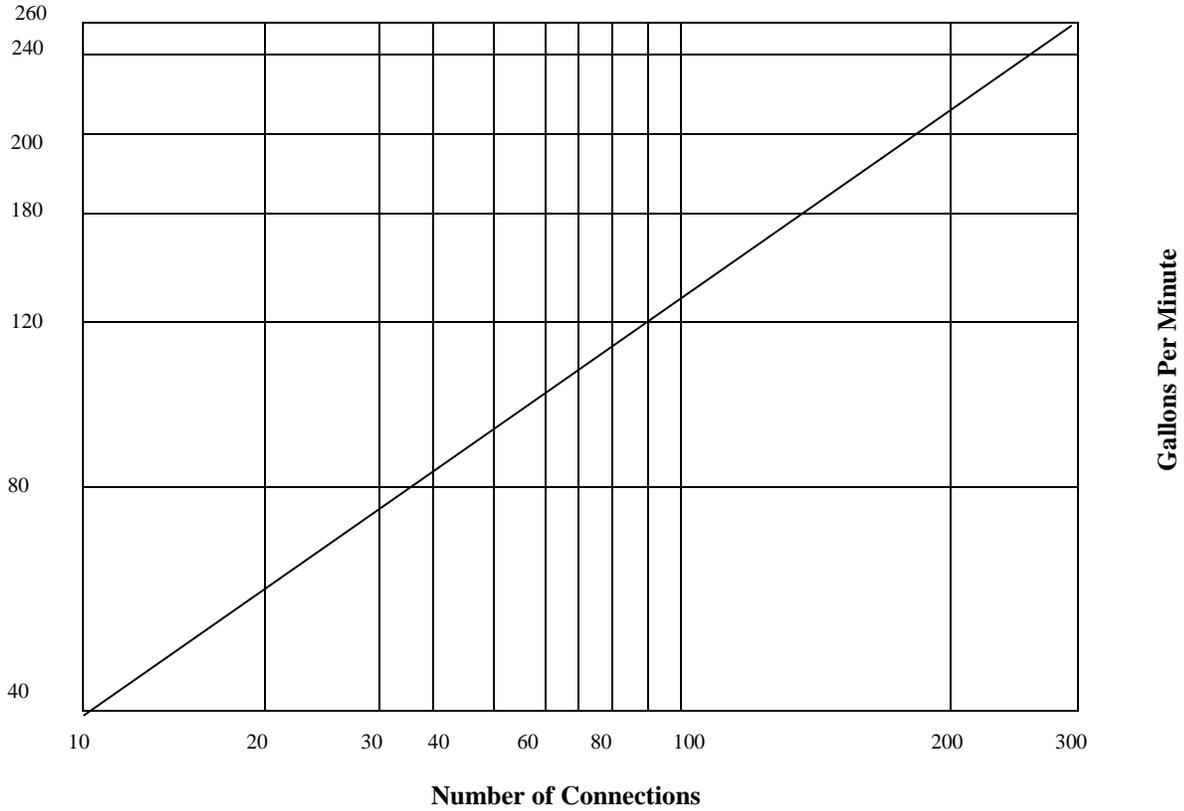
15A NCAC 18C .0802 CAPACITIES: DETERMINING PEAK DEMAND

(a) The following charts shall be used to determine the peak demand for campground, residential community, and mobile home park water systems:

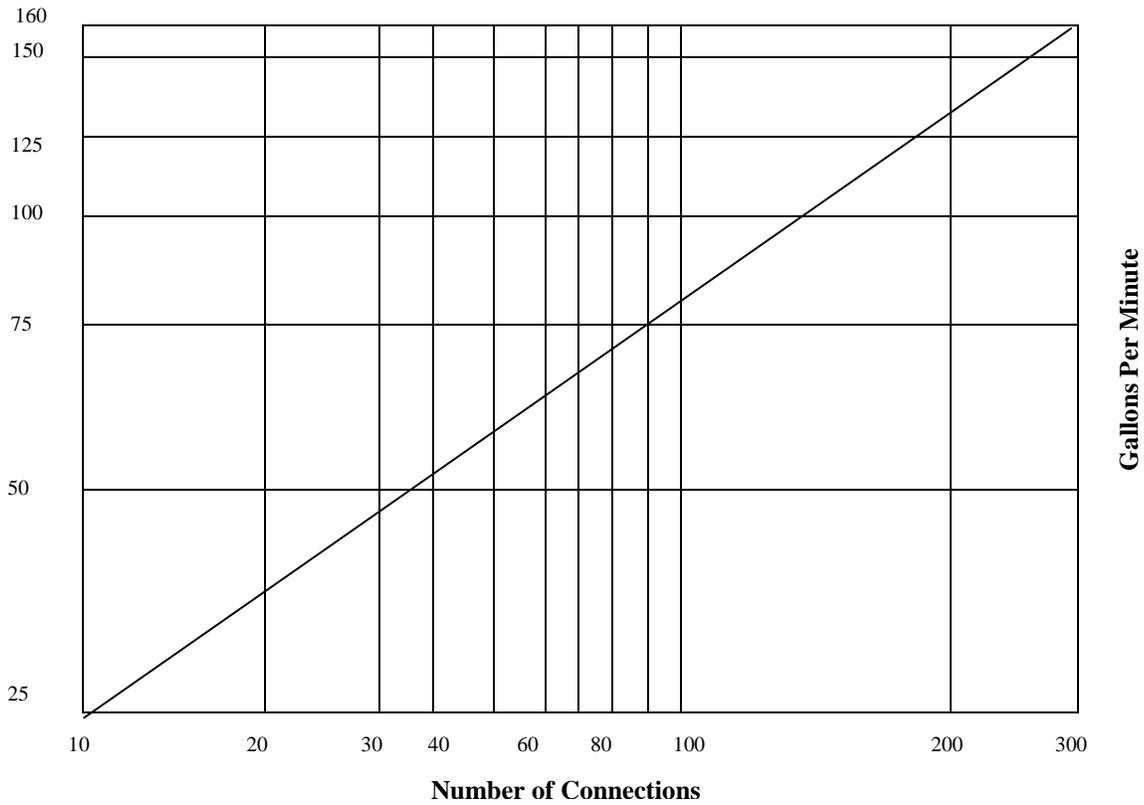
PEAK DEMAND FOR CAMPGROUND WATER SYSTEMS
(Number of Connections vs Gallons per Minute)



PEAK DEMAND FOR RESIDENTIAL COMMUNITY WATER SYSTEMS
(Number of Connections vs Gallons per Minute)



PEAK DEMAND FOR MOBILE HOME PARK WATER SYSTEMS
(Number of Connections vs Gallons per Minute)



(b) The peak demand for non-transient, non-community water systems shall be determined based on the total demand weight of fixtures in accordance with the procedures of the North Carolina State Building Code, Volume II, Plumbing Section that are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523;
 Eff. January 1, 1977;
 Readopted Eff. December 5, 1977;
 Amended Eff. April 1, 2014; July 1, 1994; June 30, 1980.

15A NCAC 18C .0805 CAPACITIES: ELEVATED STORAGE

(a) Where feasible, elevated storage capacity shall meet the requirements of the ISO Commercial Risk Services, Inc. Fire Suppression Rating Schedule that are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(b) The elevated storage capacity for a municipality shall be sufficient to minimize the effect of fluctuating demand and provide a reserve for fire protection, but not be less than 75,000 gallons in capacity.

(c) The combined elevated and ground storage capacity of the finished water for community and non-transient, non-community water systems shall be a minimum of one-half day's supply of the average annual daily demand.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523;
 Eff. January 1, 1978;
 Amended Eff. April 1, 2014; July 1, 1994.

15A NCAC 18C .0907 VALVES

(a) Valves should be installed on all branches from feeder mains, and between mains and hydrants according to the following schedule:

- (1) three valves at x (crosses),
- (2) two valves at T's (tees), and
- (3) one valve on single hydrant branch.

(b) All valves installed in water distribution systems shall meet the appropriate AWWA Standards C 500-71 (adopted in 1971), C 504-74 (adopted in 1974), and C 507-73 (adopted in 1973) of the American Water Works Association, Inc., that are incorporated by reference including any subsequent amendments or editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. All valves must be installed in such a manner as to be readily accessible, preferably, the use of an appropriate valve box and cover.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523;
 Eff. January 1, 1977;
 Readopted Eff. December 5, 1977;
 Amended Eff. April 1, 2014; March 31, 1980.

15A NCAC 18C .1204 FISHING

(a) Fishing shall not be permitted on any Class I or Class II public water supply reservoir without a resolution granting permission by the Commission for Public Health. In order to obtain permission, a written application shall be submitted by the owner of the water supply to the Commission for Public Health. Permission shall not be issued until an investigation has been made by an authorized representative of the Division of Water Resources and a determination made that fishing in the reservoir shall not adversely affect the water quality.

(b) The application requesting permission to fish in any reservoir shall be accompanied by sufficient evidence (such as ordinances adopted by the applicant) to insure that the following requirements shall be enforced by the applicant:

- (1) Fishing shall be permitted only from boats owned or controlled by the applicant. Boats will at all times be under the supervision and jurisdiction of a responsible representative of the applicant. Bank fishing may be permitted in restricted supervised areas with proper sanitation facilities when included as a specific, listed activity and approved by the Commission for Public Health.
- (2) A sufficient number of wardens and watershed inspectors shall be employed at all times to insure that no acts of urination, defecation, or other acts which would defile the water supply are committed by any person while fishing in the public water supply reservoir.
- (3) A dock shall be provided or controlled by the applicant for the purpose of docking fishing boats. No boat shall enter or leave the reservoir except from a ramp owned or controlled by the applicant.

History Note: Authority G.S. 130A-315; 130A-320; P.L. 93-523;
 Eff. January 1, 1977;
 Readopted Eff. December 5, 1977;
 Amended Eff. September 1, 1979;
 Transferred and Recodified from 10 NCAC 10D .1303 Eff. April 4, 1990;
 Amended Eff. April 1, 2014; September 1, 1990.

15A NCAC 18C .1406 CONTROL OF TREATMENT PROCESS

(a) The treatment process shall result in the adjustment of fluoride ion (F-) in the treated water to 1.0 mg/liter.

(b) A water treatment plant operator certified under 15A NCAC 18D shall conduct the necessary chemical analyses and supervise application of the fluoride.

(c) Samples shall be collected and analyzed from points before and after fluoridation and from one or more points in the distribution system. The minimum number of control tests required and the number of check samples to be collected and submitted to the North Carolina State Laboratory of Public Health for analysis shall be determined by the Department in conjunction with the State Health Director, based on guidance

from the Center for Disease Control, and considering recommendations from the local health department and the supplier of water.

(d) The fluoride content of the water shall be determined in accordance with methods in Rule .1508 of this Subchapter.

(e) Accurate records of the amount of fluoride applied to the water and the results of all fluoride analyses shall be recorded on forms approved by the Department and submitted to the Department weekly.

(f) Any fluoridation product used by a water system shall meet the requirements of Rule .1537 of this Subchapter.

History Note: Authority G.S. 90A-29; 130A-316; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. April 1, 2014; July 1, 1994; September 1, 1990; December 17, 1979.

15A NCAC 18C .1505 TURBIDITY SAMPLING AND ANALYSIS

The requirements of this Rule shall apply only to public water systems that use water obtained in whole or in part from surface sources. The provisions of 40 C.F.R. 141.22 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. Any dates set forth in the federal rule shall be applicable.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Amended Eff. March 31, 1981; December 19, 1979; Transferred and Recodified from 10 NCAC 10D .1623 Eff. April 4, 1990; Amended Eff. April 1, 2014; August 1, 2002; January 1, 1991; September 1, 1990.

15A NCAC 18C .1506 MAXIMUM CONTAMINANT LEVELS FOR TURBIDITY

The requirements of this Rule shall apply to public water systems that use water obtained in whole or in part from surface water sources. The provisions of 40 C.F.R. 141.13 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. Any dates set forth in the federal rule shall be applicable.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Transferred and Recodified from 10 NCAC 10D .1614 Eff. April 4, 1990; Amended Eff. April 1, 2014; August 1, 2002; January 1, 1991; September 1, 1990.

15A NCAC 18C .1507 CORROSION CONTROL AND LEAD AND COPPER MONITORING

(a) Control and adjustment of pH shall be provided for community water systems having water with a pH below 6.5;

such control and adjustment to be approved by the Department. Most waters are corrosive in varying degrees at pH 6.5 and slightly above, and such waters may have pH adjustment.

(b) The provisions of 40 C.F.R. 141.42 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(c) The provisions of 40 C.F.R. 141, Subpart I - Control of Lead and Copper are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(d) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year, shall be exempt from the provisions of this Rule.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Amended Eff. October 1, 1982; February 27, 1982; Transferred and Recodified from 10 NCAC 10D .1621 Eff. April 4, 1990; Amended Eff. April 1, 2014; July 1, 1994; October 1, 1992; December 1, 1991.

15A NCAC 18C .1508 INORGANIC CHEMICAL SAMPLING AND ANALYSIS

The provisions of 40 C.F.R. 141.23 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. In addition, two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons shall conform to the following sampling schedule:

- (a) a water supplier shall submit samples every three years from each section of the water system supplied from a separate source, and
- (b) travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same people more than six months per year shall monitor as specified for transient non-community water systems.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Amended Eff. March 1, 1989; February 1, 1987; October 1, 1986; April 1, 1983; Transferred and Recodified from 10 NCAC 10D .1625 Eff. April 4, 1990; Amended Eff. April 1, 2014; July 1, 1994; April 1, 1992; December 1, 1991.

15A NCAC 18C .1509 SPECIAL MONITORING FOR SODIUM

(a) Suppliers of water for community water systems shall collect and analyze one sample per plant at the entry point of the distribution system for the determination of sodium concentration levels. Samples must be collected and analyzed annually for systems utilizing surface water sources in whole or in part, and at least every three years for systems utilizing solely ground water sources. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with Department approval, be considered one treatment plant for determining the minimum number of samples. The supplier of water may be required by the Department to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(b) Suppliers of water for community water systems shall report to the Department the results of the analyses for sodium within the first 10 days of the month following the month in which the sample results were received or within the first 10 days following the end of the required monitoring period as stipulated by the Department, whichever is first. If more than annual sampling is required, the supplier shall report the average sodium concentration within 10 days of the month following the month in which the analytical results of the last sample used for the annual average was received.

(c) The Department shall notify appropriate local health officials of the sodium levels found in community water systems.

(d) Analyses conducted to determine compliance with this Rule shall be made in accordance with methods adopted by the United States Environmental Protection Agency and codified as 40 C.F.R. 141.41(d) that are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(e) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be exempt from the provisions of this Rule.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. February 27, 1982; Transferred and Recodified from 10 NCAC 10D .1636 Eff. April 4, 1990; Amended Eff. April 1, 2014; July 1, 1994; September 1, 1990.

15A NCAC 18C .1510 MAXIMUM CONTAMINANT LEVELS FOR INORGANIC CHEMICALS

(a) The provisions of 40 C.F.R. 141.11 are hereby incorporated by reference including any subsequent amendments and editions, except the maximum contaminant level for arsenic shall be regulated as set forth in Paragraph (c) of this Rule. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(b) The provisions of 40 C.F.R. 141.62 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(c) Effective January 1, 2002, the maximum contaminant level for arsenic applies to community and non-transient non-community water systems are as follows:

- (1) The maximum contaminant level for arsenic is 0.010 milligrams per liter, until such time as the USEPA revises the standard to a level lower than 0.010 milligrams per liter at which time the more stringent level shall apply.
- (2) Sampling, analytical requirements, and compliance calculations for arsenic shall be conducted as specified for contaminants in Rule .1508 of this Subchapter.
- (3) Certified laboratories must report quantifiable results down to at least 0.005 milligrams per liter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Amended Eff. October 1, 1986; October 1, 1982; April 1, 1982; March 31, 1981; Transferred and Recodified from 10 NCAC 10D .1616 Eff. April 4, 1990; Amended Eff. April 1, 1992; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2014; April 1, 2003.

15A NCAC 18C .1515 ORGANIC CHEMICALS OTHER THAN TTHM, SAMPLING AND ANALYSIS

(a) The requirements of this Rule shall apply to community and non-transient non-community water systems. The provisions of 40 C.F.R. 141.24 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. Any dates set forth in the federal rule shall be applicable.

(b) If the result of an analysis made pursuant to Paragraph (a) of this Rule indicates that the level of any contaminant listed in Rule .1517 of this Subchapter exceeds the maximum contaminant level, the supplier of water shall report to the Department within 48 hours and initiate three additional analyses within one month.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Amended Eff. November 1, 1989; December 1, 1988; June 1, 1988; October 1, 1982; Transferred and Recodified from 10 NCAC 10D .1624 Eff. April 4, 1990; Amended Eff. April 1, 2014; August 1, 2002; April 1, 1992; December 1, 1991; September 1, 1990.

15A NCAC 18C .1516 SPECIAL MONITORING FOR INORGANIC AND ORGANIC CHEMICALS

(a) The provisions of 40 C.F.R. 141.40 are hereby incorporated by reference including any subsequent amendments and editions, except that 40 C.F.R. 141.40(n)(10) is not adopted. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(b) To comply with the monitoring requirements of this Rule, a community water system or non-transient, non-community water system serving fewer than 150 service connections shall take a single water sample to be analyzed for inorganic and organic chemicals.

(c) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be exempt from the provisions of this Rule.

History Note: Authority G.S. 130A-313; 130A-315; P.L. 93-523; 40 C.F.R. 141;

Eff. June 1, 1988;

Amended Eff. November 1, 1989;

Transferred and Recodified from 10 NCAC 10D .1638 Eff. April 4, 1990;

Amended Eff. April 1, 2014; July 1, 1994; April 1, 1992; December 1, 1991; August 1, 1990.

15A NCAC 18C .1517 MAXIMUM CONTAMINANT LEVELS FOR ORGANIC CHEMICALS

The provisions of 40 C.F.R. 141.12 are hereby incorporated by reference including any subsequent amendments and editions. However, the maximum contaminant level for total trihalomethanes shall apply to all community water systems and non-transient, non-community water systems, regardless of population, that add a disinfectant (oxidant) to the water in any part of the drinking water treatment process. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141;

Eff. September 1, 1979;

Amended Eff. September 30, 1980;

Transferred and Recodified from 10 NCAC 10D .1615 Eff. April 4, 1990;

Amended Eff. April 1, 2014; April 1, 1992; August 1, 1990.

15A NCAC 18C .1518 MAXIMUM CONTAMINANT LEVELS FOR ORGANIC CONTAMINANTS

The provisions of 40 C.F.R. 141.61 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141;

Eff. June 1, 1988;

Transferred and Recodified from 10 NCAC 10D .1639 Eff. April 4, 1990;

Amended Eff. April 1, 2014; April 1, 1992.

15A NCAC 18C .1519 MONITORING FREQUENCY FOR RADIOACTIVITY

(a) The requirements of this Rule shall apply to community water systems. The provisions of 40 C.F.R. 141.26 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. Any dates set forth in the federal rule shall be applicable.

(b) An adjacent water system as defined in G.S. 130A-315(b2) shall conform to the sampling schedule as set in Paragraph (c) of this rule rather than the schedule set forth in 40 C.F.R. 141.26(a) and (b).

(c) When the Secretary determines that the system is in an area subject to radiological contamination, a water supplier shall take samples for the following contaminants:

- (1) gross alpha particle activity;
- (2) radium-226;
- (3) radium-228;
- (4) uranium; and
- (5) man-made radioactivity from the water system.

When the sampling is required, a water supplier shall submit samples every four years from each section of the water system supplied from a separate source.

(d) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall monitor the same as required by adjacent systems in Paragraph (b) of this Rule.

History Note: Authority G.S. 130A-313; 130A-315; P.L. 93-523; 40 C.F.R. 141;

Eff. September 1, 1979;

Amended Eff. March 1, 1989; September 9, 1980; December 19, 1979;

Transferred and Recodified from 10 NCAC 10D .1627 Eff. April 4, 1990;

Amended Eff. April 1, 2014; August 1, 2002; July 1, 1994.

15A NCAC 18C .1520 MAXIMUM CONTAMINANT LEVELS FOR RADIONUCLIDES

The provisions of 40 C.F.R. 141.66 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141;

Eff. September 1, 1979;

Transferred and Recodified from 10 NCAC 10D .1617 Eff. April 4, 1990;

Amended Eff. April 1, 2014; August 1, 2002; July 1, 1994.

15A NCAC 18C .1521 MAXIMUM CONTAMINANT LEVEL GOALS FOR RADIONUCLIDES

The provisions of 40 C.F.R. 141.55 are hereby incorporated by reference including any subsequent amendments and editions.

Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Transferred and Recodified from 10 NCAC 10D .1618 Eff. April 4, 1990; Amended Eff. April 1, 2014; August 1, 2002; July 1, 1994.

15A NCAC 18C .1522 ANALYTICAL METHODS FOR RADIOACTIVITY

The provisions of 40 C.F.R. 141.25 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Amended Eff. March 31, 1981; March 31, 1980; Transferred and Recodified from 10 NCAC 10D .1626 Eff. April 4, 1990; Amended Eff. April 1, 2014; August 1, 2002; September 1, 1990.

15A NCAC 18C .1523 PUBLIC NOTIFICATION REQUIREMENTS

(a) The provisions of 40 C.F.R. 141.32 are hereby incorporated by reference including any subsequent amendments and editions, except that multi-lingual notice shall be given if 30 percent or more of the consumers served by the system are non-English speaking. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(b) The provisions of 40 C.F.R. 141, Subpart Q – Public Notification of Drinking Water Violations are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(c) Special notification for distribution system samples. The requirements of this Paragraph shall be additional to the public notice requirements in Paragraphs (a) and (b) of this Rule and to the reporting requirements contained in Rule .1525 of this Subchapter. When a distribution sample is taken on property not owned or controlled by the supplier of water, the supplier of water shall notify the person authorizing the sample if any individual water sample exceeds an action level, maximum contaminant level, or maximum residual disinfectant level established in this Subchapter, or if any individual sample is positive for coliform bacteria. The supplier of water shall give notice to the person authorizing the sample in a format provided by the Department, as follows:

- (1) For a contaminant listed as Tier 1 in Appendix A to 40 C.F.R. 141, Subpart Q, notice shall be provided by telephone within 24 hours of receipt of analytical results and shall be followed by written notice by mail or direct delivery within 48 hours of receipt. The written notice shall include the analytical results and appropriate health effects language.

- (2) For a contaminant listed as Tier 2 or Tier 3 in Appendix A to 40 C.F.R. 141, Subpart Q, notice shall be provided within 48 hours of receipt of analytical results. Written notice shall be provided by mail or direct delivery to the person authorizing the sample and shall include the analytical results and appropriate health effects language.

- (3) The supplier of water shall submit a copy of the written notice and certification of delivery to the Department within 10 days of completing notification.

The person authorizing the sample may waive the notification required by this Paragraph. The waiver shall be documented in writing and signed by the authorizing person. The waiver is valid for five years and is renewable.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. January 1, 1990; Transferred and Recodified from 10 NCAC 10D .1642 Eff. April 4, 1990; Amended Eff. April 1, 2014; October 1, 2006; August 1, 2002; April 1, 1992; December 1, 1991; January 1, 1991; October 1, 1990.

15A NCAC 18C .1525 REPORTING REQUIREMENTS

(a) The requirements of this Rule shall apply to all public water systems. The provisions of 40 C.F.R. 141.31 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. Any dates set forth in the federal rule shall be applicable.

(b) When a certified laboratory analyzes a compliance sample for a supplier of water, the certified laboratory shall report the results to both the Department and to the supplier of water or his designated representative within the required periods as set forth in 40 C.F.R. 141.31. The laboratory reporting to the Department shall include analytical results for any maximum contaminant level exceedence within the timeframes applicable to the system owner. Reporting shall be in a format, to include electronic reporting, provided by the Department and shall be filled out completely. Should a certified laboratory fail to properly report a compliance sample result, it shall be the responsibility of the supplier of water to report results to the Department as required by this Rule.

History Note: Authority G.S. 130A-315; 40 C.F.R. 141; Eff. September 1, 1979; Amended Eff. February 1, 1987; October 1, 1984; March 31, 1981; March 31, 1980; Transferred and Recodified from 10 NCAC 10D .1631 Eff. April 4, 1990; Amended Eff. April 1, 2014; August 1, 2002; January 1, 1991.

15A NCAC 18C .1526 RECORD MAINTENANCE

The provisions of 40 C.F.R. 141.33 are hereby incorporated by reference including any subsequent amendments and editions.

Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Transferred and Recodified from 10 NCAC 10D .1632 Eff. April 4, 1990; Amended Eff. April 1, 2014; August 1, 2002.

15A NCAC 18C .1534 COLIFORM SAMPLING

(a) The provisions of 40 C.F.R. 141.21 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. The provisions are incorporated with the following exceptions:

- (1) the provision of 40 C.F.R. 141.21(a)(2) concerning the reduction of monitoring frequency for community water systems serving 25 to 1,000 persons is not adopted;
- (2) the provision of 40 C.F.R. 141.21(b)(3) concerning collection of large volume repeat samples in containers of any size is not adopted; and
- (3) the provision of 40 C.F.R. 141.21(c)(2) concerning waiver of the 24-hour limit for re-sampling is not adopted.

(b) An adjacent water system shall submit samples monthly from each section of the water system supplied from a separate source. The minimum number of samples each month per section is based on the population served by the section and shall be determined by the table in 40 C.F.R. 141.21(a)(2).

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.21; Eff. January 1, 1991; Amended Eff. April 1, 2014; February 1, 1992.

15A NCAC 18C .1536 TREATMENT TECHNIQUES

The provisions of 40 C.F.R. 141. Subpart K are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. April 1, 1992; Amended Eff. April 1, 2014.

15A NCAC 18C .1537 DRINKING WATER ADDITIVES

(a) The standards set forth in American National Standards Institute/NSF International, codified at ANSI/NSF Standard 60 and ANSI/NSF Standard 61, are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(b) A water supply product used in a public water system shall meet the standards incorporated by reference in Paragraph (a) of this Rule. A product certified by an organization having a third-

party certification program accredited by the American National Standards Institute to test and certify such products is acceptable for use in a public water system.

(c) A supplier of water shall maintain a list of all water supply products used in a public water system for inspection by the Department. Prior to using a product not previously listed, a supplier of water shall either determine the product is certified as required by Paragraph (b) of this Rule or notify the Department of the type, name and manufacturer of a product.

(d) A supplier of water shall not introduce or permit the introduction of a water supply product into a public water system which does not meet the requirements of this Rule.

History Note: Authority G.S. 130A-315; P.L. 93-523; Eff. July 1, 1994; Amended Eff. April 1, 2014.

15A NCAC 18C .1538 CONSUMER CONFIDENCE REPORT

(a) The provisions of 40 C.F.R. 141, Subpart O - Consumer Confidence Reports are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(b) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be exempt from the provisions of this Rule.

History Note: Authority G.S. 130A-313; 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. August 1, 2000; Amended Eff. April 1, 2014.

15A NCAC 18C .1605 PUBLIC HEARINGS ON VARIANCES AND SCHEDULES

(a) Before a variance or a schedule proposed by the Secretary pursuant to Rule.1604 of this Section may take effect, the Secretary shall provide notice and opportunity for public hearing on the variance or schedule. Such notice may cover the granting of more than one variance, and a hearing held pursuant to such notice shall include each of the variances covered by that notice.

(b) Public notice of an opportunity for hearing on a variance or schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed variance or schedule and shall include the following minimum requirements:

- (1) posting of a notice in the principal post office of each municipality or area served by the public water system, and publishing of a notice in a newspaper or newspapers of general circulation in the area served by the public water system;
- (2) mailing of a notice to the Public Water Supply Section, Division of Water Resources and to other appropriate state or local agencies at the Department's discretion; and

- (3) such notice shall include a summary of the proposed variance or schedule and shall inform interested persons that they may request a public hearing on the proposed variance or schedule.

(c) Requests for hearing may be submitted by any interested person. Frivolous or insubstantial requests for hearing may be denied by the Secretary. Requests shall be submitted to the Secretary within 30 days after issuance of the public notice provided for in Paragraph (b) of this Rule. Such requests shall include the following information:

- (1) the name, address and telephone number of the individual, organization or other entity requesting a hearing;
- (2) a brief statement of the interest of the individual, organization or other entity making the request in the proposed variance or schedule and of information that the requestor intends to submit at such hearing; and
- (3) the signature of the individual making the request or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

(d) Any hearing held pursuant to a request submitted by an individual, organization or other entity or on the Secretary's own motion shall be conducted in the manner set forth in G.S. 150B-22 through 150B-37.

History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142; Eff. September 1, 1979; Transferred and Recodified from 10 NCAC 10D .2505 Eff. April 4, 1990; Amended Eff. April 1, 2014; September 1, 1991.

15A NCAC 18C .1607 VARIANCES AND EXEMPTIONS FOR CHEMICALS, LEAD AND COPPER, AND RADIONUCLIDES

(a) The provisions of 40 C.F.R. 142.62 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(b) The provisions of 40 C.F.R. 142.65 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 142; Eff. June 1, 1988; Transferred and Recodified from 10 NCAC 10D .2514 Eff. April 4, 1990; Amended Eff. April 1, 2014; August 1, 2002; October 1, 1992.

15A NCAC 18C .1612 PUBLIC HEARINGS ON EXEMPTION SCHEDULES

(a) Before a schedule proposed by the Secretary pursuant to Rule .1611 of this Section may take effect, the Secretary shall

provide notice and opportunity for public hearing on the schedule. Such notice may cover the proposal of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(b) Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall include the following minimum requirements:

- (1) posting of a notice in the principal post office of each municipality or area served by the public water system, and publishing a notice in the newspaper or newspapers of general circulation in the area served by the public water system;
- (2) mailing of a notice to the Public Water Supply Section, Division of Water Resources and to other appropriate state or local agencies at the Secretary's discretion; and
- (3) such notices shall include a summary of the proposed schedule and shall inform interested persons that they may request a public hearing on the proposed schedule.

(c) Requests for hearing may be submitted by any interested person. Frivolous or insubstantial requests for hearing may be denied by the Secretary. Requests shall be submitted to the Secretary within 30 days after issuance of the public notices provided for in Paragraph (b) of this Rule. Such requests shall include the following information:

- (1) the name, address and telephone number of the individual, organization or other entity requesting a hearing;
- (2) a brief statement of the interest of the individual, organization or other entity making the request in the proposed schedule and of information that the requestor intends to submit at such hearing; and
- (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

(d) Any hearing held pursuant to a request submitted by an individual, organization or other entity or on the Secretary's own motion shall be conducted in the manner set forth in G.S. 150B-22 through 150B-37.

History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142; Eff. September 1, 1979; Transferred and Recodified from 10 NCAC 10D .2510 Eff. April 4, 1990; Amended Eff. April 1, 2014; December 1, 1991.

15A NCAC 18C .1614 BOTTLED WATER AND POINT-OF-USE DEVICES

The provisions of 40 C.F.R. 142.57 are hereby incorporated by reference including any subsequent amendments and editions.

Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 142; Eff. June 1, 1988; Transferred and Recodified from 10 NCAC 10D .2513 Eff. April 4, 1990; Amended Eff. April 1, 2014; October 1, 1992; December 1, 1988.

15A NCAC 18C .1701 PURPOSE
15A NCAC 18C .1702 GRANT COMMITMENTS FROM CURRENT ALLOCATION
15A NCAC 18C .1703 COUNTY ALLOCATIONS COMMITTED BEFORE STATEWIDE ALLOCATION
15A NCAC 18C .1704 REFERENCE RULE

History Note: Authority S.L. 1971, Ch. 909, as amended by S.L. 1973, Ch. 232; S.L. 1977, Ch. 677; Eff. June 30, 1978; Repealed Eff. April 1, 2014.

15A NCAC 18C .1802 APPLICATION FOR CERTIFICATION

Application for certification shall be made to the Public Water Supply Section, Division of Water Resources, 1634 Mail Service Center, Raleigh North Carolina 27699-1634. Application shall be submitted in triplicate and shall designate the office or agency which will administer the program.

History Note: Authority G.S. 130A-317; S.L. 1985-697, s. 3; Eff. January 1, 1986; Amended Eff. April 1, 2014; December 1, 1991.

15A NCAC 18C .1902 ADMINISTRATIVE PENALTIES

The following rules provide the procedures and standards governing the assessment, remission, mitigation and appeal of administrative penalties imposed by the Department or its delegates under G.S. 130A-22(b) for violations of the North Carolina Drinking Water Act, Article 10 of Chapter 130A and 15A NCAC 18C.

History Note: Authority G.S. 130A-22(f); Eff. September 1, 1979; Amended Eff. April 1, 2014; October 1, 1984.

15A NCAC 18C .1906 CONSIDERATIONS IN ASSESSING ADMINISTRATIVE PENALTIES

In determining the amount of the assessment, the Department or its delegates shall consider the following criteria and shall cite the provisions that are applicable:

- (1) nature of the violation and the degree and extent of the harm, including the following:
(a) for a violation of the North Carolina Drinking Water Act, Article 10 of Chapter 130A, and the rules in this Subchapter:
(i) type of violation,

- (ii) type of contaminant involved,
(iii) duration,
(iv) cause (whether resulting from a negligent, reckless or intentional act, or omission),
(v) potential effect on public health and the environment,
(vi) effectiveness of responsive measures taken by the violator,
(vii) damage to private property, and
(viii) size of the water system and population exposed;

(b) for a violation of an order issued under the North Carolina Drinking Water Act, Article 10 of Chapter 130A:

- (i) subject matter of order,
(ii) duration,
(iii) cause (whether resulting from a negligent, reckless or intentional act, or omission),
(iv) type of violation, if any,
(v) potential effect on public health and the environment, and
(vi) effectiveness of responsive measures taken by violator;

(c) for refusing to allow an authorized representative of the Commission for Public Health, any local board of health, or the Department a right of entry as provided for in G.S. 130A-17:

- (i) type of other violation, if any,
(ii) duration of refusal, and
(iii) potential effect on public health and the environment;

(d) for failure to give adequate public notice as required by G.S. 130A-324:

- (i) inadequacy of type of notice,
(ii) misleading in nature,
(iii) delay in providing notice, and
(iv) potential effect on public health from failure to give adequate notice;

- (2) cost of rectifying any damage; and
(3) the violator's previous record in complying or not complying with the North Carolina Drinking Water Act, Article 10 of Chapter 130A and the rules in this Subchapter.

History Note: Authority G.S. 130A-22(f); 130A-17; 130A-324; Eff. September 1, 1979;

Amended Eff. April 1, 2014; October 1, 1984.

15A NCAC 18C .2002 DISINFECTION

The provisions of 40 C.F.R. 141.72 are hereby adopted by reference in accordance with G.S. 150B-21.6 including subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. These provisions are adopted with the following exceptions:

- (1) Water entering the distribution system. In 40 C.F.R. 141.72 (a)(2), (a)(3), and (b)(2), "0.2 mg/l" of residual disinfectant concentration shall be replaced with "0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants."
- (2) Water in the distribution system at coliform sampling sites. In 40 C.F.R. 141.72(a)(4) and (b)(3), "undetectable" shall be replaced with "less than 0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and less than 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants."
- (3) Water in the distribution system at maximum residence time sites. For samples collected at maximum residence time sites or at other locations with high water age as required by Rule .1302(a)(2) of this Subchapter, residual disinfectant concentrations shall be at detectable levels as set forth and calculated in 40 C.F.R. 141.72(a)(4) and (b)(3).

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.72; Eff. January 1, 1991; Amended Eff. April 1, 2014; October 1, 2009.

15A NCAC 18C .2003 FILTER BACKWASH RECYCLING RULE

(a) The requirements of this Rule shall apply to a public water system that uses a surface water source or a groundwater source under the direct influence of surface water. The provisions of 40 C.F.R. 141.73 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. Any dates set forth in the federal rule shall be applicable.

(b) The requirements of this Rule shall apply to a public water system that uses a surface water source or a groundwater source under the direct influence of surface water; uses direct or conventional filtration processes; and recycles spent filter backwash water, sludge thickener supernatant, or liquids from dewatering processes. The provisions of 40 C.F.R. 141.76 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. Any dates set forth in the federal rule shall be applicable.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.73; 40 C.F.R. 141.76; Eff. January 1, 1991; Amended Eff. April 1, 2014; August 1, 2002.

15A NCAC 18C .2004 ANALYTICAL AND MONITORING REQUIREMENTS

The provisions of 40 C.F.R. 141.74 are hereby adopted by reference in accordance with G.S. 150B-21.6 including subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. These provisions are adopted with the following exceptions:

- (1) The residual disinfectant concentration of the water entering the distribution system shall be monitored continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuously monitoring, but for no more than five working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequency of every four hours that water is being treated.
- (2) In 40 C.F.R. 141.74, "0.2 mg/l" of residual disinfectant concentration shall be replaced with "0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants."

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.74; Eff. January 1, 1991; Amended Eff. April 1, 2014; October 1, 2009.

15A NCAC 18C .2006 REPORTING AND RECORD KEEPING REQUIREMENTS

The provisions of 40 C.F.R. 141.75 are hereby adopted by reference in accordance with G.S. 150B-21.6 including subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. These provisions are adopted with the following exception: In 40 C.F.R. 141.75, "0.2 mg/l" of residual disinfectant concentration shall be replaced with "0.2 mg/l measured as free chlorine when chlorine is the singular applied disinfectant and 1.0 mg/l measured as total chlorine when ammonia and chlorine are applied disinfectants."

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.75; Eff. January 1, 1991; Amended Eff. April 1, 2014; October 1, 2009.

15A NCAC 18C .2007 ENHANCED FILTRATION AND DISINFECTION

- (a) Public water systems shall respond to the Department in writing to significant deficiencies outlined in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.
- (b) Public water systems shall take necessary steps to address significant deficiencies identified in sanitary survey reports if such deficiencies are within the control of the public water system and its governing body.
- (c) Sanitary survey means an onsite review by the Department of the water source (identifying sources of contamination using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.
- (d) Significant deficiency means a defect in a system's design, operation, or maintenance, as well as any failures or malfunctions of its treatment, storage, or distribution system, that is causing or has the potential to cause the introduction of contamination into water delivered to customers.
- (e) When a public water system is required to conduct a comprehensive performance evaluation (CPE) pursuant to this Subchapter, the CPE shall include:
 - (1) assessment of water treatment plant performance;
 - (2) evaluation of major unit processes;
 - (3) identification and prioritization of performance limiting factors;
 - (4) assessment of the applicability of comprehensive technical assistance; and
 - (5) a written CPE report.

The public water system shall participate in a comprehensive technical assistance (CTA) activity when the Department determines, based on the CPE results, there is a potential for improved water treatment performance and the public water system is able to receive and implement technical assistance. During the CTA phase, the public water system shall use the CPE results to identify and systematically address factors limiting performance of its water treatment plant; further, the public water system shall implement process control priority-setting techniques, and maintain long-term involvement in training staff and administrators.

(f) The provisions of 40 C.F.R. 141, Subpart P - Enhanced Filtration and Disinfection - (Systems Serving 10,000 or More People), and Subpart T - Enhanced Filtration and Disinfection - (Systems Serving Fewer than 10,000 People) and the provisions of 40 C.F.R. 141, Subpart W- Enhanced Treatment for Cryptosporidium are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141 Eff. August 1, 2000;

Amended Eff. April 1, 2014; October 1, 2009; November 1, 2005.

15A NCAC 18C .2008 DISINFECTANTS AND DISINFECTION BYPRODUCTS

- (a) The provisions of 40 C.F.R. 141.53 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.
- (b) The provisions of 40 C.F.R. 141.54 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.
- (c) The provisions of 40 C.F.R. 141.64 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.
- (d) The provisions of 40 C.F.R. 141.65 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.
- (e) The provisions of 40 C.F.R. 141, Subpart L- Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors, and the provisions of 40 C.F.R. 141, Subparts U- Initial Distribution System Evaluations and Subpart V - Stage 2 Disinfection Byproducts Requirements are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.
- (f) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall be regulated as transient non-community water systems for the purpose of this Rule.

History Note: Authority G.S. 130A-313; 130A-315; P.L. 93-525; 40 C.F.R. 141; Eff. August 1, 2000; Amended Eff. April 1, 2014; October 1, 2009; August 1, 2002.

15A NCAC 18C .2102 APPLICATION FOR PERMIT

- (a) An application for the issuance or renewal of an operating permit for a community water system shall be made on forms provided by the Department. An application shall include the following information:
 - (1) name and identification number of the community water system;
 - (2) name, address, and social security number or tax identification number of the supplier of water;
 - (3) name, address, and certification number of the certified operator in responsible charge of the community water system;
 - (4) name of each certified laboratory which provides analyses of water samples; and
 - (5) population served by the community water system.
- (b) The fee for issuance or renewal of an operating permit is set forth in G.S. 130A-328.

- (c) Payment shall be made by check, payable to the Department of Environment and Natural Resources and shall accompany the application.
- (d) Applications for operating permits shall not be processed prior to the receipt of the required fees.
- (e) An operating permit shall be renewed annually.
- (f) The supplier of water who holds a current operating permit shall inform the Department of any change of address or transfer of ownership within 30 days of the change.

History Note: Authority G.S. 130A-328; Temporary Adoption Eff. January 22, 1992 for a Period of 180 Days to Expire on July 19, 1992; Eff. April 1, 1992; Amended Eff. April 1, 2014; July 1, 1993.

15A NCAC 18C .2202 GROUND WATER RULE

The provisions of 40 C.F.R. 141, Subpart S – Ground Water Rule are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter. The provisions are incorporated with the following exceptions:

- (1) Fecal indicator for source water monitoring. When systems are required to conduct triggered source water monitoring or assessment source water monitoring under 40 C.F.R. 141.402 (a) and (b) respectively, any of the following three fecal indicators can be used: E. coli, enterococci, or coliphage.
- (2) Corrective Action Alternatives. Ground water systems that are required to implement corrective action in accordance with 40 C.F.R. 141.403(a)(6) must determine that alternatives (a)(6)(i), (a)(6)(ii), and (a)(6)(iii) are not feasible before implementing alternative (a)(6)(iv). The rationale for selection of alternative (a)(6)(iv) must be documented in accordance with Rule .0307(b)(10) of this Subchapter.
- (3) Assessment Source Water Monitoring. The Department shall use information from the Public Water Supply Section's database and from its Source Water Assessment Program to identify sources subject to assessment source water monitoring. Systems notified by the Department must commence assessment source water monitoring for the sources identified. The system shall conduct assessment source water monitoring for any source that receives physical or chemical treatment and possesses any one of the following characteristics:
 - (a) Any source subject to the requirements of G.S. 130A-317(b) and rules in this Subchapter for which the public water system did not receive approval from the Department for construction or alteration.

- (b) Source is deemed by the Source Water Assessment Program to have a Higher Inherent Vulnerability Rating and the system has historical total or fecal coliform MCL violations during the compliance periods between January 1, 2005 and December 31, 2008.
- (c) Source is deemed by the Source Water Assessment Program to have a Higher Inherent Vulnerability Rating and the system has total or fecal coliform monitoring violations cited for more than 25 percent of the compliance periods between January 1, 2005 and December 31, 2008.
- (4) Any system shall perform assessment source water monitoring as directed by the Department in response to deficiencies identified by a sanitary survey that are related to source or treatment. Assessment source water monitoring shall be conducted in accordance with the requirements specified in 40 C.F.R. 141.402(b)(1) through (6) using any of the following three fecal indicators: E. coli, enterococci, or coliphage.

History Note: Authority G.S. 130A-315; 130A-317; P.L. 93-523; 40 C.F.R. 141 Subpart S; Eff. October 1, 2009; Amended Eff. April 1, 2014.

TITLE 16 – STATE BOARD OF EDUCATION

16 NCAC 06D .0508 NC GENERAL ASSEMBLY'S READ TO ACHIEVE PROGRAM

- (a) Local education agencies (LEAs) shall enact third grade retention and promotion policies consistent with G.S. 115C-83.1, 83.3, and 83.7.
- (b) Pursuant to G.S. 115C-83.3(2), LEAs shall use the Read to Achieve test as the alternative assessment in connection with G.S. 115C-83.7 and 83.8.

History Note: Authority G.S. 115C-83.1; 115C-83.3; 115C-83.7; 115C-83.8; Eff. July 1, 2014.

16 NCAC 06G .0203 HIGH SCHOOL ACCREDITATION FRAMEWORK

- (a) The High School Accreditation Framework is the process whereby public schools or school districts undergo a quality assurance process that includes outside review by the North Carolina Department of Public Instruction (NCDPI).
- (b) The process to request an accreditation review and determine high school accreditation is as follows:

- (1) The district superintendent shall make the request in writing and submit it to the SBE;
 - (2) The NCDPI shall conduct the review using three years of data;
 - (3) The NCDPI shall provide findings to the SBE, and the SBE shall make a decision regarding accreditation; and
 - (4) The LEA shall be notified of the SBE decision.
- (c) The NCDPI shall use the following indicators to conduct its accreditation review:
- (1) The school's performance composite;
 - (2) The cohort graduation rate, which is the percentage of ninth graders who graduate high school within the same four-year period; and
 - (3) Factors of post-secondary readiness measures, including:
 - (A) successful completion of Mathematics III;
 - (B) ACT, a college readiness assessment; and
 - (C) WorkKeys, a career readiness assessment.
- (d) Accreditation shall be valid for five years.

History Note: Authority G.S. 115C-12(39); N.C. Const. Art. IX, Sect. 2 and 5; Eff. April 1, 2014.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0103 STRUCTURE OF BOARD

- (a) Officers. Annually, during the April meeting, the Board shall elect from its members a Chairman and Vice-Chairman. The Chairman shall preside over all meetings of the Board and perform such other duties as he may be directed to do by the Board. The Vice-Chairman shall function as Chairman if the Chairman is unavailable.
- (b) Secretary-Treasurer. In addition to those duties and responsibilities required of him by the G.S. 87-8, the Secretary-Treasurer, as the Board's Chief Administrative Officer, has the responsibility and power to:
- (1) employ the clerical and legal services necessary to assist the Board in carrying out the requirements of the North Carolina General Statutes;
 - (2) purchase or rent whatever office equipment, stationery, or other miscellaneous articles as are necessary to keep the records of the Board;
 - (3) make expenditures from the funds of the Board by signing checks, or authorizing the designee of the Secretary-Treasurer to sign checks, for expenditures after the checks are

- (4) signed by the Chairman or Vice-Chairman; and
 - (4) do such other acts as may be required of him by the Board.
- (c) Meetings of the Board.
- (1) Regular meetings shall be held during January, April, July and October of each year at the Board's office or at any other place so designated by the Board.
 - (2) Special Meetings. Special meetings shall be held as set out in the bylaws of the Board.
 - (3) Notice of Meetings. Regular meetings of the Board shall be held after each Board member is duly notified by the Secretary-Treasurer of the date of the meeting. However, any person or persons requesting a special meeting of the Board shall, at least two days before the meeting, give notice to the other members of the Board of that meeting by electronic mail or notification on the Board's website. Such notice must specify the purpose for which the meeting is called.

History Note: Authority G.S. 87-2; 87-4; 87-6; 87-7; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2014; August 1, 2002; January 1, 1992; May 1, 1989; January 1, 1983.

21 NCAC 12 .0202 CLASSIFICATION

- (a) A general contractor must be certified in one of five classifications. These classifications are as follows:
- (1) Building Contractor. This classification covers all building construction activity including: commercial, industrial, institutional, and all residential building construction. It includes parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, and gutters; storm drainage, retaining or screen walls, and hardware and accessory structures; and indoor and outdoor recreational facilities including natural and artificial surface athletic fields, running tracks, bleachers, and seating. It also covers work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Marine Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), S(Swimming Pools), and S(Asbestos).
 - (2) Residential Contractor. This classification covers all construction activity pertaining to the construction of residential units which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; all site work, driveways, sidewalks, and water and wastewater systems ancillary to the aforementioned structures and improvements;

- and the work done as part of such residential units under the specialty classifications of S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Swimming Pools), and S(Asbestos).
- (3) Highway Contractor. This classification covers all highway construction activity including: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, culvert construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. It also includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of fencing, signage, runway lighting and marking; and work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction), S(Railroad Construction), and H(Grading and Excavating).
- (4) Public Utilities Contractor. This classification includes operations that are the performance of construction work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(b)(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(b)(3) for which the contractor qualifies. A public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), PU(Water Lines and Sewer Lines), PU(Water Purification and Sewage Disposal), and S(Swimming Pools).
- (5) Specialty Contractor. This classification covers all construction operation and performance of contract work outlined as follows:
- (A) H(Grading and Excavating). This classification covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving, and material placing. It covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. It also includes clearing and grubbing, and erosion control activities.
- (B) S(Boring and Tunneling). This classification covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface, including the bracing and compacting of such passageways to make them safe for the purpose intended. It includes preparation of the ground surfaces at points of ingress and egress.
- (C) PU (Communications). This classification covers the installation of the following:
- (i) all types of pole lines, and aerial and underground distribution cable for telephone systems;
 - (ii) aerial and underground distribution cable for cable TV and master antenna TV systems capable of transmitting R.F. signals;
 - (iii) underground conduit and communication cable including fiber optic cable; and
 - (iv) microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.
- (D) S(Concrete Construction). This classification covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots, and highways.
- (E) PU(Electrical-Ahead of Point of Delivery). This classification covers the construction, installation, alteration, maintenance, or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a

- public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.
- (F) PU(Fuel Distribution). This classification covers the construction, installation, alteration, maintenance, or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals, and slurries through pipeline from one station to another. It includes all excavating, trenching, and backfilling in connection therewith. It covers the installation, replacement and removal of above ground and below ground fuel storage tanks.
- (G) PU(Water Lines and Sewer Lines). This classification covers construction work on water and sewer mains, water service lines, and house and building sewer lines, as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. It includes pavement patching, backfill, and erosion control as part of such construction.
- (H) PU(Water Purification and Sewage Disposal). This classification covers the performance of construction work on water and wastewater systems; water and wastewater treatment facilities; and all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. It covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of such work on water and wastewater treatment facilities.
- (I) S(Insulation). This classification covers the installation, alteration, or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. It does not include the insulation of mechanical equipment, and ancillary lines and piping.
- (J) S(Interior Construction). This classification covers the installation of acoustical ceiling systems and panels, drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. It includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine Construction). This classification covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; it covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. It does not include structures required on docks, slips and piers.
- (L) S(Masonry Construction). This classification covers the installation, with or without the use of mortar or adhesives, of the following:
- (i) brick, concrete block, gypsum partition tile, pumice block, or other lightweight and facsimile units and products common to the masonry industry;
 - (ii) installation of fire clay products and refractory construction; and
 - (iii) installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). This classification covers the building, construction, and repair of railroad lines including:
- (i) the clearing and filling of rights-of-way;
 - (ii) shaping, compacting, setting, and stabilizing of road beds;
 - (iii) setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal

- (iv) markers, retaining walls, dikes, fences, and gates; and Construction and repair of tool sheds and platforms.
 - (N) S(Roofing). This classification covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" for purposes of this Subparagraph includes cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
 - (O) S(Metal Erection). This classification covers:
 - (i) the field fabrication, erection, repair, and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment, and structure; and
 - (ii) the layout, assembly and erection by welding, bolting or riveting such metal products as curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.
 - (P) S(Swimming Pools). This classification covers the construction, service, and repair of all swimming pools. It includes:
 - (i) excavation and grading;
 - (ii) construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
 - (iii) installation of all equipment including pumps, filters and chemical feeders. It does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.
 - (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities.
 - (R) S(Wind Turbine). This classification covers the construction, installation, and repair of wind turbines, wind generators, and wind power units. It includes assembly of blades, generator, turbine structures, and towers. It also includes ancillary foundation work, field fabrication of metal equipment, and structural support components.
- (b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, that include passing the examinations for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications set forth in this Rule will carry with it a designation of "unclassified."

History Note: Authority G.S. 87-1; 87-4; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. June 1, 1994; June 1, 1992; May 1, 1989; January 1, 1983; Temporary Amendment Eff. February 18, 1997; Amended Eff. April 1, 2014; June 1, 2011; September 1, 2009; April 1, 2004; April 1, 2003; August 1, 2002; April 1, 2001; August 1, 2000; August 1, 1998.

21 NCAC 12 .0204 ELIGIBILITY

- (a) Limited License. The applicant for a limited license must:
 - (1) Be entitled to be admitted to the examination given by the Board and must meet the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;

- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000) or the total net worth of the applicant or firm is at least eighty thousand dollars (\$80,000);
 - (3) Pass the examination given by the Board for the specific contracting classification chosen by the applicant with a score of 70 percent or higher; and
 - (4) Provide to the Board an audited financial statement with a classified balance sheet as part of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within seven years prior to the filing of the application. This requirement does not apply to shareholders of an applicant that is a publicly traded corporation.
- (b) Intermediate License. The applicant for an intermediate license must:
- (1) Be entitled to be admitted to the examination given by the Board and must meet the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and
 - (3) Pass the examination given by the Board for the specific contracting classification chosen by the applicant with a score of 70 percent or higher.
- (c) Unlimited License. The applicant for an unlimited license must:
- (1) Be entitled to be admitted to the examination given by the Board and must meet the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;
 - (3) Pass the examination given by the Board for the specific contracting classification chosen by the applicant with a score of 70 percent or higher.
- (d) Surety Bonds. In lieu of demonstrating the required level of working capital required by this Rule or net worth under Subparagraph (a)(2) of this Rule, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of three hundred fifty thousand dollars (\$350,000) for a limited license, one million dollars (\$1,000,000) for an intermediate license, and two million dollars (\$2,000,000) for an unlimited license. The bond shall list State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board within 30 days in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license is suspended until written proof of compliance is provided.
- (e) Suspension. After a suspension of four years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule shall subject the applicant to additional disciplinary action by the Board.
- (f) Reciprocity. An applicant that requests reciprocity as set forth in G.S. 87-15.1 must comply with all other requirements of the rules in this Chapter to be eligible to be licensed in North Carolina as a general contractor.
- (g) Accounting and reporting standards. Financial statements submitted by applicants to the Board shall conform to United States "generally accepted accounting principles" (GAAP). The Board may require non-GAAP financial statements from applicants wherein the only exception to GAAP is that such presentation is necessary to ascertain the working capital or net worth of the particular applicant. Examples of such circumstances when non-GAAP presentation is necessary to ascertain the working capital or net worth of the applicant are when the only exception to GAAP is that assets and liabilities are classified as "current" and "noncurrent" on personal financial statements and when the only exception to GAAP is that the particular applicant is not combined with a related entity into one financial statement pursuant to AICPA Financial Interpretation 46R (ASC 810). The terminologies, working capital, balance sheet with current and fixed assets, current and long term liabilities, and any other accounting terminologies,

used herein shall be construed in accordance with GAAP Standards as promulgated by the Financial Accounting Standards Board (FASB). The terminologies, audited financial statement, unqualified opinion, and any other auditing terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" (GAAS) as promulgated by the American Institute of Certified Public Accountants (AICPA).

History Note: Authority G.S. 87-1; 87-4; 87-10; 87-15.1; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 1983; ARRC Objection March 19, 1987; Amended Eff. May 1, 1989; August 1, 1987; Temporary Amendment Eff. June 28, 1989 for a Period of 155 Days to Expire on December 1, 1989; Amended Eff. December 1, 1989; Temporary Amendment Eff. May 31, 1996; RRC Removed Objection Eff. October 17, 1996; Amended Eff. August 1, 1998; April 1, 1997; Temporary Amendment Eff. August 24, 1998; Amended Eff. April 1, 2014; April 1, 2013; August 1, 2008; April 1, 2006; March 1, 2005; August 1, 2002; April 1, 2001; August 1, 2000.

21 NCAC 12 .0205 FILING DEADLINE/APP SEEKING QUAL/EMP/ANOTHER

(a) Any application made pursuant to G.S. 87-10 for a new applicant seeking qualification by employment of a person who has already passed an examination shall be completed and filed at least 30 days before any regular or special meeting of the Board. At such meeting, the Board shall consider the application.

(b) The qualifier for the applicant shall be a responsible managing employee, officer or member of the personnel of the applicant, as described in G.S. 87-10 and Rule .0408(a) of this Chapter. A person may serve as a qualifier for no more than two licenses. A person may not serve as a qualifier under this Rule if such person has not served as a qualifier for a license of the appropriate classification for more than four years prior to the filing of the application currently under review. Subject to the provisions of G.S. 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as qualifier for a licensee that has been disciplined by the Board.

(c) The holder of a general contractors license shall notify the Board immediately in writing as to the termination date in the event the qualifying individual or individuals cease to be connected with the licensee. After such notice is filed with the Board, or the Board determines that the qualifying individual or individuals are no longer connected with the licensee, the license shall remain in full force and effect for a period of 90 days from the termination date, and then is cancelled, as provided by G.S. 87-10(c). Holders of a general contractors license are entitled to reexamination or replacement of the qualifying individual's credentials in accordance with G.S. 87-10, but may not engage in the practice of general contracting for any project whose cost

exceeds the monetary threshold set forth in G.S. 87-1 after the license has been cancelled, until another qualifying individual has passed an examination.

History Note: Authority G.S. 87-1; 87-4; 87-10; 87-11(a); Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2014; July 1, 2008; April 1, 2006; August 1, 2000; June 1, 1994; June 1, 1992; May 1, 1989; July 1, 1987.

21 NCAC 12 .0209 APPLICATION

(a) Any application made pursuant to G.S. 87-10, shall be accompanied by a Certificate of Assumed Name when filing is required with the Register of Deeds office in the county in which the applicant is to conduct its business, pursuant to G.S. 66-68. A copy of such certification must be provided with the application to the Board. Applications submitted to the Board on behalf of corporations, limited liability companies and partnerships must be accompanied by a copy of any documents (Articles of Incorporation, Certificate of Authority, etc.) required to be filed with the North Carolina Secretary of State's office.

(b) All licensees must comply with the requirements of G.S. 66-68 and must notify the Board within 30 days of any change in the name in which the licensee is conducting business in the State of North Carolina.

(c) Applicants for license and licensees may use only one assumed name.

(d) No applicant or licensee shall use or adopt an assumed name used by any other licensee, or any name so similar to an assumed name used by another licensee that could confuse or mislead the public.

History Note: Authority G.S. 87-1; 87-4; 87-10; Eff. August 1, 2000; Amended Eff. April 1, 2014.

21 NCAC 12 .0309 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR MILITARY SPOUSE

(a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete Application for License to Practice General Contracting;
- (2) submission of a license fee in accordance with G.S. 87-10;
- (3) providing documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2); and
- (4) providing documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

(b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete Application for License to Practice General Contracting;
- (2) submission of a license fee in accordance with G.S. 87-10;
- (3) submission of written documentation demonstrating that the applicant is married to an active member of the U.S. military;
- (4) providing documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1) and (2);
- (5) providing documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed; and
- (6) is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

History Note: Authority G.S. 87-4; 93B-15.1; Eff. April 1, 2014.

21 NCAC 12 .0503 RENEWAL OF LICENSE

(a) Form. The Board's renewal form shall require the applicant to include the following information:

- (1) whether there were any changes made in the status of the licensee's business during the preceding year; and
- (2) a financial statement for the licensee's business. The financial statement need not be prepared by a certified public accountant or by a qualified independent accountant, but may be completed by the licensee on the form itself.

(b) The Board shall require a licensee to submit an audited financial statement if there is any evidence indicating that the licensee may be unable to meet its financial obligations. A licensee shall be required to provide evidence of continued financial responsibility satisfactory to the Board, pursuant to Rule .0204 of this Chapter, if there are indications that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities. Except as provided herein, evidence of financial responsibility shall be subject to approval by the Board in accordance with the requirements of Rule .0204 of this Chapter.

(c) A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing. A licensee in bankruptcy shall provide to the Board an audited financial statement with a classified balance sheet as part of any application for renewal. A corporate licensee shall notify the Board of its dissolution, suspension of its corporate charter, or withdrawal of its Certificate of Authority within 30 days of such dissolution, suspension, or withdrawal.

(d) Upon receipt of a written request by or on behalf of a licensee who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return, the Board shall grant that same extension of time for complying with renewal application deadlines, for paying renewal fees, and

for meeting any other requirement or conditions related to the maintenance or renewal of the license issued by the Board. The applicant shall furnish to the Board a copy of the military orders or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue.

History Note: Authority G.S. 87-1; 87-4; 87-10; 87-12; 87-13; 93B-15; Eff. February 1, 1976; Readopted Eff. September 26, 1977; ARRC Objection March 19, 1987; Amended Eff. May 1, 1989; August 1, 1987; Temporary Amendment Eff. June 28, 1989 for a period of 155 Days to Expire on December 1, 1989; Amended Eff. December 1, 1989; RRC Removed Objection of March 19, 1987 Eff. August 20, 1992 based on subsequent amendment; Amended Eff. September 1, 1992; Temporary Amendment Eff. May 31, 1996; Amended Eff. April 1, 2014; June 1, 2011; June 1, 2003; April 1, 2003; August 1, 2002; April 1, 1997.

21 NCAC 12 .0701 IMPROPER PRACTICE

(a) Complaint. Any person who believes that any licensed general contractor is in violation of the provisions of G.S. 87-11 may prefer charges against that person or corporation by setting forth in writing those charges and swearing to their authenticity. The charges shall be filed with the Secretary-Treasurer of the Board at the Board's address in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination:

- (1) A complaint filed in accordance with G.S. 87-11(a1) shall be forwarded to a staff investigator for investigation. Simultaneously, the Board shall forward a written notice of and explanation of the charge to the person or corporation against whom the charge is made. The notice shall request a response from the person or corporation so charged to show compliance with all lawful requirements for retention of the license. The Board shall send notice of the charge and of the alleged facts or alleged conduct by first class mail to the last known address of the person or corporation.
- (2) After the investigation is complete, the charge shall be referred to the review committee. The review committee shall consist of the following individuals:
 - (A) one member of the Board;
 - (B) the Secretary-Treasurer or his designee; and
 - (C) either a staff person or Board member agreed upon by the individuals listed above.
- (3) The review committee shall recommend to the Board that:
 - (A) The charge be dismissed as unfounded or trivial;
 - (B) When the charge is admitted as true by the respondent, the Board accept

the respondent's admission of guilt and order the respondent not to commit in the future the act or acts admitted by him to have been violated and not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or

- (C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11. Prior to the charge's being heard and determined by the Board, it may be resolved by consent order.

- (4) The review committee shall not be required to notify the parties of the reasons for its recommendation.

(c) Board Determination. After a hearing, in accordance with the hearing requirements of Section .0800 of this Chapter, the Board shall make a determination of the charge based upon the requirements of G.S. 87-11.

History Note: Authority G.S. 87-4; 87-11; 150B-3; 150B-38; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2014; June 1, 2011; April 1, 2006; April 1, 2003; May 1, 1989.

21 NCAC 12 .0702 UNLAWFUL PRACTICE

(a) Complaint. Any person who believes that any person, firm or corporation is in violation of the acts specified in G.S. 87-13 may bring charges against that person, firm, or corporation. The charges shall be filed with the Secretary-Treasurer of the Board at the Board's mailing address in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination:

- (1) A complaint filed in accordance with G.S. 87-13 shall be forwarded to a staff investigator for investigation. Board staff shall investigate the charge to determine whether there is probable cause to believe that a party against whom a charge has been brought violated the provisions of G.S. 87-13.
- (2) After the investigation is complete, the charge shall be referred to the review committee. The review committee shall consist of the following individuals:
 - (A) one member of the Board;
 - (B) the Secretary-Treasurer or his designee; and
 - (C) either a staff person or Board member agreed upon by the individuals listed above.
- (3) If the review committee finds probable cause, it shall forward the decision along with the reasons for the decision and any evidence

accumulated by it to Board counsel for appropriate action. If the review committee does not find probable cause, it shall notify the complainant.

History Note: Authority G.S. 87-1; 87-4; 87-13; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2014; June 1, 2011; May 1, 1989.

21 NCAC 12 .0703 FEE FOR SUBMITTAL OF BAD CHECK

(a) The Board shall charge any fee allowed by law if a check submitted to the Board is subsequently returned due to insufficient funds at or no account in a financial institution.

(b) Until such time as the drawer of the bad check has paid the prescribed fee, the drawer will not be eligible to take an examination, review an examination, obtain a license, or have the license renewed. For the purpose of this Rule, "prescribed fee" shall mean the sum of:

- (1) the fee described in Paragraph (a) of this Rule;
- (2) the renewal or application fee, whichever is applicable; and
- (3) the late payment fee described in G.S. 87-10(e).

(c) Any license which has been issued or renewed based on a check which is subsequently returned to the Board for reasons stated in Paragraph (a) of this Rule is invalid until such time as the drawer has paid the prescribed fee. The invalidity of the license or renewal shall be deemed to have commenced on the date of the issuance of the license or renewal.

(d) Payment of the prescribed fee to the Board shall be made in the form of a cashier's check or money order.

(e) In the event the drawer of the bad check fails to pay the prescribed fee, during which time the license or renewal lapses for four years, no renewal shall be effected and the drawer shall fulfill all requirements of a new applicant set forth in G.S. 87-10.

History Note: Authority G.S. 25-3-506; 87-4; 87-10; Eff. January 1, 1983; Amended Eff. April 1, 2014; April 1, 2003; May 1, 1989.

21 NCAC 12 .0901 DEFINITIONS

The following definitions apply to the Board's administration of the Homeowners Recovery Fund established pursuant to Article 1A, Chapter 87 of the General Statutes:

- (1) "Constructing or altering" means contracting for the construction or alteration of a single-family residential dwelling unit.
- (2) "Dishonest conduct" means conduct described in G.S. 87-15.5(3).
- (3) "Incompetent conduct" means conduct which demonstrates a lack of ability or fitness to discharge a duty associated with undertaking to construct or alter a single-family residential dwelling or the supervision of such construction or alteration.
- (4) "Owner or former owner" means a person who contracted with a general contractor for the

construction or purchase of a single-family residential dwelling unit. "Owner or former owner" does not include a person who is a spouse, child, parent, grandparent, sibling, partner, associate, officer, or employee of a general contractor whose conduct caused a reimbursable loss. In addition, the term does not include general contractors or any financial or lending institution, or any owner or former owner of a single-family residential dwelling unit that has been the subject of an award from the Homeowners Recovery Fund resulting from the same dishonest or incompetent conduct. "Owner or former owner" does not include the owner or former owner of real property who purchased, owned, constructed, altered, or contracted for construction or alteration of a single-family residential dwelling unit without intending to occupy the single-family residential dwelling unit as a residence.

- (5) "Substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof whereupon the owner can use the same for its intended use.
(6) "Separately owned residence" means a building whose construction is governed by the residential building code adopted by the Building Code Council pursuant to G.S. 143-138.

History Note: Authority G.S. 87-4; 87-15.6; Eff. January 4, 1993; Amended Eff. April 1, 2014; July 1, 2008; April 1, 2007; April 1, 2001; August 1, 2000; August 1, 1998.

21 NCAC 12 .0906 PROCESSING OF CLAIM APPLICATION

(a) Staff shall refer a filed application for a claim to the Recovery Fund Review Committee. The Recovery Fund Review Committee is a committee made up of the following individuals:

- (1) one member of the Board;
(2) the legal counsel of the Board; and
(3) the Secretary-Treasurer.

(b) Within 30 days after service of a copy of the application upon the general contractor, the general contractor may file a response to the application setting forth answers and defenses. Responses shall be filed with the Board and copies shall be served on the applicant.

(c) The Committee shall dismiss a claim if an applicant fails to respond to an inquiry from the Committee or its representative within six months of receipt of the inquiry.

(d) After all preliminary evidence has been received, the Committee shall make a recommendation regarding the disposition of the application. From the evidence, it shall recommend to the Board that:

- (1) the application be dismissed as meritless; or

- (2) the application and charges contained therein be presented to the Board for a hearing and determination by the Board on the merits of the application.

(e) The Committee shall give notice of the recommendation to the applicant and the general contractor within 10 days of the Committee's decision. The Committee is not required to notify the parties of the reasons for its recommendation. The decision of the Board is final.

History Note: Authority G.S. 87-4; 87-15.6; 87-15.7; 87-15.8; Eff. January 4, 1993; Amended Eff. April 1, 2014; April 1, 2007.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16N .0301 REQUEST TO PARTICIPATE

History Note: Authority G.S. 90-48; 150B-12(a); Eff. August 25, 1977; Amended Eff. May 1, 1989; Repealed Eff. April 1, 2014.

21 NCAC 16N .0302 CONTENT OF REQUEST: GENERAL TIME LIMITATIONS

Presentations at Board rule making hearings shall be limited to 15 minutes unless the Board prescribes some other time limit.

History Note: Authority G.S. 90-48; 90-223(b); 150B-12(a); Eff. August 25, 1977; Amended Eff. April 1, 2014; May 1, 1989.

21 NCAC 16N .0303 RECEIPT OF REQUEST: SPECIFIC TIME LIMITS

History Note: Authority G.S. 90-48; 90-223(b); 150B-12(a); Eff. August 25, 1977; Amended Eff. May 1, 1989. Repealed Eff. April 1, 2014.

21 NCAC 16T .0102 TRANSFER OF RECORDS UPON REQUEST

A dentist shall, upon request by the patient of record, provide all information required by the Health Information Portability and Accountability Act (HIPAA) and other applicable law, including original or copies of radiographs and a summary of the treatment record to the patient or to a licensed dentist identified by the patient. A fee may be charged for duplication of radiographs and diagnostic materials. The treatment summary and radiographs shall be provided within 30 days of the request and shall not be contingent upon current, past or future dental treatment or payment of services.

History Note: Authority G.S. 90-28; 90-48; Eff. October 1, 1996; Amended Eff. April 1, 2014; November 1, 2008.

CHAPTER 22 – HEARING AID DEALERS AND FITTERS BOARD

21 NCAC 22F .0104 QUALIFICATIONS TO REGISTER FOR EXAM

- (a) The Board may require supplemental information for applications to determine the qualifications of each licensee, registered applicant, and registered apprentice, as set forth in these Rules and in Chapter 93D of the General Statutes of North Carolina. Supplemental information may include letters of recommendation, affidavits, photographs, official transcripts, and personal appearances before the Board.
(b) An apprentice may elect to take Part A, Part B, or Part C of the licensing exam at any time during the apprenticeship by submitting an application for license and exam registration prior to the registration deadline.
(c) An apprentice shall complete 365 days of apprenticeship prior to taking Part D of the licensing exam.
(d) The Board shall waive the application for license fee and the exam registration fee for an applicant's initial registration to take Part D of the exam only if the applicant took and passed Part A, Part B, and Part C prior to completing 365 days of apprenticeship.
(e) Except as provided in Paragraph (d) of this Rule, an applicant shall submit a new application for license and exam registration and pay the fees set forth in 21 NCAC 22A .0501 each time the applicant registers for any parts of the licensing exam.
(f) The Board shall not prorate the application for license fee or the exam registration fee for retesting an applicant who failed any part of the licensing exam.

History Note: Authority G.S. 93D-3(c); 93D-5; 93D-6; 93D-9; Eff. April 23, 1976; Amended Eff. February 1, 1996; April 1, 1989; May 1, 1988; Paragraph (d) recodified to 21 NCAC 22F .0122 Eff. May 1, 2013; Temporary Amendment Eff. February 10, 2014; Amended Eff. April 1, 2014.

21 NCAC 22F .0105 PASSING EXAMINATION

- (a) The exam consists of four parts:
(1) Part A shall assess applicant's knowledge of hearing testing through a computer simulation program;
(2) Part B shall assess applicant's practical knowledge and ability to make an ear impression;
(3) Part C shall assess the applicant's knowledge of relevant laws and regulations governing hearing aid specialists; and
(4) Part D shall assess the applicant's knowledge of the following:
(A) audiometry;

- (B) anatomy and physiology pertaining to the dispensing of hearing aids;
(C) hearing aids;
(D) hearing aid technologies; and
(E) the scope of practice for hearing aid specialists.

- (b) The Board shall annually review the contents and outcome of the previous qualifying examinations and shall determine the minimum performance criteria required for passing the examination. In accordance with G.S. 93B-8(a), each registered applicant shall be informed in writing of the requirements for passing the examination prior to the applicant taking the examination.
(c) An applicant shall pass all parts of the exam within 31 months of the initial issuance of the apprentice registration certificate in order to receive a license.

History Note: Authority G.S. 93B-8; 93D-3(c); 93D-8; Eff. April 23, 1976; Amended Eff. May 1, 1988; Temporary Amendment Eff. February 10, 2014; Amended Eff. April 1, 2014.

21 NCAC 22F .0113 APPRENTICESHIP REQUIREMENTS
21 NCAC 22F .0114 TRAINING AND SUPERVISION
21 NCAC 22F .0115 SPONSORS' DUTIES
21 NCAC 22F .0116 SEPARATION OF APPRENTICE AND SPONSOR

History Note: Authority G.S. 93D-3(c); 93D-5; 93D-9; 93D-9(e); Eff. April 23, 1976; Amended Eff. August 1, 2012; February 1, 1996; January 1, 1992; April 1, 1989; May 1, 1988; November 4, 1980; Repealed Eff. April 1, 2014.

21 NCAC 22F .0301 APPRENTICESHIP REQUIREMENTS

- (a) An individual who seeks a license under G.S. 93D shall complete "one full year of apprenticeship" as defined in 21 NCAC 22A .0401, unless the individual is eligible for waiver of the apprenticeship requirement under G.S. 93D-5(c).
(b) Under the supervision of the proposed sponsor, an individual shall complete the apprentice registration application and pay the fee as set forth in 21 NCAC 22A .0501.
(c) An apprentice may perform duties within the scope of practice for a Hearing Aid Specialist under the registered sponsor's supervision only after the apprentice certificate is approved and posted on the Board's website.
(d) For an apprenticeship issued prior to the effective date of this Rule, the registered sponsor shall provide general supervision to the apprentice until the expiration date of the apprentice certificate. For any renewal of an apprenticeship or issuance of an apprenticeship after the effective date of this Rule, the registered sponsor shall provide supervision in accordance with 21 NCAC 22F .0302.

History Note: Authority G.S. 93D-1.1; 93D-3(c); 93D-5; 93D-9; Eff. April 1, 2014.

21 NCAC 22F .0302 SPONSOR'S DUTIES

(a) The registered sponsor shall assist the apprentice in submitting all required applications and reports of the apprenticeship experience and shall act as a liaison between the Board and the apprentice.

(b) In accepting an apprentice, the registered sponsor shall be responsible for the conduct of the apprentice in his performance of his duties as an apprentice.

(c) The registered sponsor shall provide an apprentice personal supervision until receiving an Official Notice of Examination Results confirming that the apprentice successfully passed Part A, Part B, and Part C of the licensing exam, and then the registered sponsor shall provide an apprentice general supervision for the remainder of the apprenticeship. A registered sponsor providing general supervision may incorporate direct or personal supervision at the discretion of the registered sponsor. General, direct, and personal supervision are specifically defined in 21 NCAC 22A .0401.

(d) The registered sponsor shall provide apprentice training and supervision in the following areas:

- (1) anatomy, physiology, and pathology of the auditory mechanism;
- (2) measurement techniques and test interpretation for assessment of hearing impairment and hearing handicap;
- (3) hearing aid technology including instrument circuitry and acoustic performance data;
- (4) design, selection, and modification of earmold or shell coupling systems;
- (5) hearing aid selection procedures and fitting, verification, and adjustment techniques;
- (6) post-delivery care including hearing aid orientation and counseling techniques and hearing aid servicing;
- (7) ethical conduct and regulatory issues concerning the fitting and selling of hearing aids; and
- (8) all areas within the scope of practice as defined in G.S. 93D-1.1.

(e) Failure by a registered sponsor to properly train or supervise an apprentice shall be grounds for disciplinary action after proper notice and hearing as set forth in Subchapter 22L.

History Note: Authority G.S. 93D-1.1; 93D-3(c); 93D-9; 93D-13; Eff. April 1, 2014.

21 NCAC 22F .0303 CERTIFICATE EXPIRATION

(a) The initial apprentice registration certificate, and any subsequently issued replacement certificates issued within the first year of apprenticeship, shall expire after the apprentice has held a valid certificate for a total of 365 days.

(b) When an apprentice registers for the licensing examination in accordance with 21 NCAC 22A .0503(d), the Board shall extend the apprentice registration certificate, at no additional

charge to the apprentice. The extended certificate shall expire 30 days after the date on the Official Notice of Examination Results for the apprentice.

(c) An apprentice registration certificate obtained by renewal in accordance with 21 NCAC 22A .0501(2) shall expire 30 days after the date on the Official Notice of Examination Results of the next available exam.

History Note: Authority G.S. 93D-3(c); 93D-5; 93D-9; Eff. April 1, 2014.

21 NCAC 22F .0304 EARLY TERMINATION OF APPRENTICESHIP

(a) If the apprentice or registered sponsor terminates the apprenticeship for any reason, the apprentice certificate shall be invalid and the apprentice shall cease to perform duties within the scope of practice for a Hearing Aid Specialist until a valid certificate is issued by the Board.

(b) If the apprentice fails to work at least 27 hours per week for two consecutive weeks during the apprenticeship period, the registered sponsor shall terminate the apprenticeship and notify the Board as provided in Paragraph (c) of this Rule.

(c) No later than 14 days after termination of the apprenticeship the following shall occur:

- (1) the apprentice and registered sponsor shall return all copies of the apprentice certificate to the office of the Board;
- (2) the registered sponsor shall notify the Board in writing of the termination of the apprenticeship; and
- (3) the registered sponsor and apprentice shall submit a Report of Apprenticeship Experience in accordance with Rule .0305 of this Subchapter.

History Note: Authority G.S. 93D-1.1; 93D-3(c); 93D-5; 93D-9; Eff. April 1, 2014.

21 NCAC 22F .0305 REPORT OF APPRENTICESHIP EXPERIENCE

(a) The Report of Apprenticeship Experience form shall be available on the Board's website (www.nchalb.org) to report supervised training and one full year of apprenticeship as defined in 21 NCAC 22A .0401 including:

- (1) contact information for apprentice and registered sponsor;
- (2) verification of training;
- (3) verification of at least 27 hours of work per week; and
- (4) a sworn statement of both the apprentice and sponsor that information submitted to the Board is true and accurate.

(b) The registered sponsor and the apprentice shall jointly submit a Report of Apprenticeship Experience no later than 14 days following the date that any of the following conditions exist:

- (1) the apprentice held a valid apprentice registration certificate for 365 days;

- (2) the apprentice or registered sponsor terminates the apprenticeship for any reason; or
- (3) the Board issues a written request for the submission of a Report of Apprenticeship Experience to the registered sponsor or apprentice.

(c) If an apprentice or sponsor is not cooperative in completing the joint report, the other party shall submit a report with an explanation by the submission deadline.

(d) Failure to submit a Report of Apprenticeship Experience as required in this Rule shall be grounds for disciplinary action after proper notice and hearing.

History Note: Authority G.S. 93D-1.1; 93D-3; 93D-9; 93D-13; Eff. April 1, 2014.

21 NCAC 22F .0306 APPRENTICE DISCIPLINE

(a) Apprentices shall comply with the Rules set forth in this Chapter, including the code of ethics as set forth in Subchapter 22J, and with the provisions set forth in Chapter 93D of the General Statutes of North Carolina.

(b) The Board shall refer all matters on noncompliance to the Committee on Investigations as set forth in Subchapter 22L. The Committee on Investigations shall determine whether sufficient grounds exist to:

- (1) invalidate an apprentice registration certificate;
- (2) deny future applications for issuance or renewal of an apprentice registration certificate; or
- (3) deny, suspend or revoke a license or registration of the Registered Sponsor after proper notice and hearing.

History Note: Authority G.S. 93D-1.1; 93D-3; 93D-9; 93D-13; Eff. April 1, 2014.

CHAPTER 39 – ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

21 NCAC 39 .0405 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR MILITARY SPOUSE

(a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license upon the applicant's satisfying the following conditions:

- (1) Submit a complete Application for Certification;
- (2) Submit a license fee in accordance with G.S. 90A-27;
- (3) Provide documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2); and
- (4) Provide documentation that the applicant has not committed any act in any jurisdiction that

would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed,

(b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license upon the applicant's satisfying the following conditions:

- (1) Submit a complete Application for Certification;
- (2) Submit a license fee in accordance with G.S. 90A-27;
- (3) Submit documentation demonstrating that the applicant is married to an active member of the U.S. military;
- (4) Provide documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1) and (2); and
- (5) Provide documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

History Note: Authority: G.S. 90A-74; 93B-15.1; Eff. April 1, 2014.

21 NCAC 39 .1006 MINIMUM ON-SITE WASTEWATER SYSTEM INSPECTION

(a) The inspector shall attempt to obtain, evaluate, describe, or determine the following during the inspection:

- (1) Advertised number of bedrooms as stated in the realtor Multiple Listing Service information or by a sworn statement of owner or owner's representative;
- (2) Designed system size (gallons per day or number of bedrooms) as stated in available local health department information, such as the current operation permit or the current repair permit;
- (3) Requirement for a certified subsurface water pollution control system operator pursuant to G.S. 90A-44, current certified operator's name, and most recent performance, operation and maintenance reports (if applicable and available);
- (4) Type of water supply, such as well, spring, public water, or community water;
- (5) Location of septic tank and septic tank details:
 - (A) Distance from house or other structure;
 - (B) Distance from well, if applicable;
 - (C) Distance from water line, if applicable and readily visible;
 - (D) Distance from property line, if said property lines are known;
 - (E) Distance from finished grade to top of tank or access riser;
 - (F) Presence and type of access risers;
 - (G) Condition of tank lids;
 - (H) Condition of tank baffle wall;

- (I) Water level in tank relative to tank outlet;
- (J) Condition of outlet tee;
- (K) Presence and condition of outlet filter, if applicable;
- (L) Presence and extent of roots in the tank;
- (M) Evidence of tank leakage;
- (N) Evidence of inflow non-permitted connections, such as from downspouts or sump pumps;
- (O) Connection present from house to tank;
- (P) Connection present from tank to next component;
- (Q) Date tank was last pumped, if known; and
- (R) Percentage of solids (sludge and scum) in tank;
- (6) Location of pump tank and pump tank details:
 - (A) Distance from house or other structure;
 - (B) Distance from well or spring, if applicable;
 - (C) Distance from water line, if applicable;
 - (D) Distance from property line, if said property lines are known;
 - (E) Distance from finished grade to top of tank or access riser;
 - (F) Distance from septic tank;
 - (G) Presence and type of access risers;
 - (H) Condition of tank lids;
 - (I) Location of control panel;
 - (J) Condition of control panel;
 - (K) Audible and visible alarms (as applicable) work;
 - (L) Pump turns on, and effluent is delivered to next component; and
 - (M) Lack of electricity at time of inspection prevented complete evaluation;
- (7) Location of dispersal field and dispersal field details:
 - (A) Type of dispersal field;
 - (B) Distance from property line, if said property lines are known;
 - (C) Distance from septic tank and also pump tank if a pump tank exists;
 - (D) Number of lines;
 - (E) Length of lines;
 - (F) Evidence of past or current surfacing at time of inspection;
 - (G) Evidence of traffic over the dispersal field;
 - (H) Vegetation, grading, and drainage with respect only to their effect on the condition of the system or system components; and

- (I) Confirmation that system effluent is reaching the drainfield; and
- (8) Conditions that prevented or hindered the inspection.
- (b) The inspector is not required to:
 - (1) Insert any tool, probe, or testing device inside control panels; or
 - (2) Dismantle any electrical device or control other than to remove the covers of the main and auxiliary control panels.

History Note: Authority G.S. 90A-72; 90A-74; Eff. October 1, 2011; Amended Eff. April 1, 2014.

CHAPTER 50 – BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

21 NCAC 50 .0301 QUALIFICATIONS DETERMINED BY EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide a written or computer-based examination in the following categories:

- (1) Plumbing Contracting, Class I
- (2) Plumbing Contracting, Class II
- (3) Heating, Group No. 1 - Contracting, Class I
- (4) Heating, Group No. 1 - Contracting, Class II
- (5) Heating, Group No. 2 - Contracting, Class I
- (6) Heating, Group No. 3 - Contracting, Class I
- (7) Heating, Group No. 3 - Contracting, Class II
- (8) Fuel Piping Contractor
- (9) Fire Sprinkler Installation Contractor
- (10) Fire Sprinkler Inspection Contractor
- (11) Residential Fire Sprinkler Installation Contractor
- (12) Restricted Limited Plumbing Contractor
- (13) Fire Sprinkler Maintenance Technician
- (14) Limited Fire Sprinkler Maintenance Technician
- (15) Plumbing Technician
- (16) Heating Group No. 1 Technician
- (17) Heating Group No. 2 Technician
- (18) Heating Group No. 3 Technician
- (19) Fuel Piping Technician

(b) Each person being examined by the Board for a contractor license other than a Fire Sprinkler Installation or Inspection Contractor license shall be required to pass both the business and law part and the technical part of the examination required by G.S. 87-21(b).

(c) Applicants for licensure as a Fire Sprinkler Installation Contractor must submit evidence of current certification by the National Institute for Certification of Engineering Technologies (NICET) for Automated Sprinkler System Layout as the prerequisite for licensure. Applicants for licensure as a Fire Sprinkler Installation Contractor must pass the business and law part of the exam administered by the Board. Persons licensed

based upon NICET certification must maintain such certification as a condition of license renewal.

(d) Applicants for licensure in the Fire Sprinkler Inspection Technician classification must pass the technical examination offered by the Board. The Board shall accept the results of NICET examination resulting in Level II Certification in "Inspection and Testing of Water-based Systems" by NICET. Persons who obtain license as a Fire Sprinkler Inspection Technician based on NICET certification must maintain such certification as a condition of license renewal.

(e) Applicants for licensure as a Fire Sprinkler Inspection Contractor must submit evidence of Level III certification in "Inspection and Testing of Water-based Fire Systems" by NICET in lieu of the technical part of the Board-administered examination. Applicants for licensure as a Fire Sprinkler Inspection Contractor must also pass the business and law part of the examination administered by the Board. Contractors who obtain license by NICET certification must maintain such certification thereafter as a condition of license renewal.

(f) Applicants for a license in the Limited Fire Sprinkler Maintenance Technician classification shall obtain a license based on maintenance experience, education and job classification set forth in Rule .0306 and pass a test administered by the Board.

(g) Applicants for a license as a Residential Fire Sprinkler Installation Contractor must obtain a license based on experience set forth in Rule .0306 and must pass the technical part of the Residential Fire Sprinkler Installation Contractor examination.

(h) Applicants for a license as a Plumbing, Heating or Fuel Piping Technician must obtain a license based on experience set forth in Rule .0306 and must pass the Class I technical and Board laws and rules parts of the Board-administered examination related to the category for which a technician license is sought.

(i) Applicants who hold an active Plumbing, Heating or Fuel Piping Technician license obtained by examination may obtain the Plumbing, Heating or Fuel Piping Contractor license in the same category by meeting the experience requirement listed in Rule .0306 of this Section for the specific contractor license sought and passage of only the business portion of the examination.

(j) Applicants for a license as a Restricted Limited Plumbing Contractor shall obtain a license based on experience set forth in Rule .0306 and shall be required to pass both the business and law part and the technical part of the Restricted Limited Plumbing Contractor examination.

(k) If application is made on or before 120 days from the effective date of this Rule, applicants for Restricted Limited Plumbing Contractor license who present a current active License from the North Carolina Irrigation Contractor Licensing Board are not required to take the Board administered examination, provided the applicant:

- (1) Presents evidence of passage of a locally administered examination covering the same topics as the Board examination, resulting in

certification as a Backflow Inspector by one of the municipalities in North Carolina, or evidence to establish 1000 hours of experience in the maintenance, service or repair of components of plumbing systems, and

- (2) Completes a plumbing code course offered by the Board and passes the Laws and Rules part of the examination administered by the board.

History Note: Authority G.S. 87-18; 87-21(a); 87-21(b); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 1991; May 1, 1989; August 1, 1982; Temporary Amendment Eff. September 15, 1997; Amended Eff. March 1, 2005; January 1, 2004; July 1, 2003; August 1, 2002; July 1, 1998; Emergency Amendment Eff. December 5, 2005; Emergency Amendment Expired February 13, 2006; Amended Eff. April 1, 2014; July 3, 2012; January 1, 2010; May 1, 2006.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

26 NCAC 03 .0401 MEDICAID HEARING PROCEDURES RULES

(a) The rules in 26 NCAC 03 .0100 apply to contested Medicaid cases commenced by Medicaid applicants or recipients under S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13 except:

- (1) 26 NCAC 03 .0101(b);
- (2) 26 NCAC 03 .0102(a)(3), (b) – (e);
- (3) 26 NCAC 03 .0103(a);
- (4) 26 NCAC 03 .0104;
- (5) 26 NCAC 03 .0107;
- (6) 26 NCAC 03 .0108;
- (7) 26 NCAC 03 .0109;
- (8) 26 NCAC 03 .0112(b), (c), (e), (f), (g);
- (9) 26 NCAC 03 .0115;
- (10) 26 NCAC 03 .0117;
- (11) 26 NCAC 03 .0118;
- (12) 26 NCAC 03 .0120(e);
- (13) 26 NCAC 03 .0123;
- (14) 26 NCAC 03 .0124;
- (15) 26 NCAC 03 .0125; and
- (16) 26 NCAC 03 .0127(a).

(b) Nothing in this Section affects discretionary powers granted to an administrative law judge as set out in G.S. 150B-33(b).

History Note: Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13; Temporary Adoption Eff. December 2, 2008; Eff. August 1, 2009; Amended Eff. April 1, 2014; November 1, 2012.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on May 15, 2014 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Margaret Currin (Chair)
Jeff Hyde
Jay Hemphill
Faylene Whitaker

Appointed by House

Garth Dunklin (1st Vice Chair)
Stefanie Simpson (2nd Vice Chair)
Jeanette Doran
Ralph A. Walker
Anna Baird Choi

COMMISSION COUNSEL

Joe Deluca	(919)431-3081
Amanda Reeder	(919)431-3079
Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074

RULES REVIEW COMMISSION MEETING DATES

May 15, 2014	June 19, 2014
July 17, 2014	August 21, 2014

AGENDA

RULES REVIEW COMMISSION

Thursday, May 15, 2014 10:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters:
 - A. NC Rural Electrification Authority – 04 NCAC 08 .0313 (Reeder)
 - B. Department of Justice, Division of Criminal Information – 12 NCAC 04H .0101, .0102, .0103, .0201, .0202, .0203, .0301, .0302, .0303, .0304, .0401, .0402, .0403; 04I .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0501, .0601, .0602, .0603, .0701, .0801; 04J .0101, .0102, .0103, .0201, .0301 (DeLuca)
 - C. Wildlife Resources Commission – 15A NCAC 10K .0101 (Hammond)
 - D. State Board of Education – 16 NCAC 06C .0701 (Hammond)
 - E. Cemetery Commission – 21 NCAC 07A .0101, .0103, .0104, .0106, .0201, .0202, .0203, .0204, .0205; 07B .0103, .0104, .0105; 07C .0103, .0104, .0105; 07D .0101, .0102, .0104, .0105, .0201, .0202, .0203 (Reeder)
 - F. Board of Examiners in Optometry – 21 NCAC 42B .0107, .0114 (Reeder)
 - G. State Human Resources Commission – 25 NCAC 01B .0350, .0413, .0414, .0429, .0430; 01C .0311, .0403, .0404, .0411, .0412; 01D .0201; 01E .0901; 01H .0901, .0902, .0904, .0905,

.1001, .1003, .1004, .1005; 01I .2002; 01J .0603, .0610, .0615, .0616, .1101, .1201, .1202, .1203, .1204, .1205, .1206, .1207, .1208, .1301, .1302, .1304, .1305, .1306, .1307, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1321, .1322, .1401, .1402, .1403, .1404, .1405, .1406, .1407, .1408, .1409, .1410, .1411, .1412 (DeLuca)

- H. State Human Resources Commission – 25 NCAC 01J .1310 (DeLuca)
- I. Office of Administrative Hearings – 26 NCAC 03 .0103, .0132
- J. Building Code Council – 2015 NC Existing Building Code (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between March 21, 2014 and April 21, 2014
 - Board of Agriculture (Hammond)
 - Historical Commission (Reeder)
 - Commission for Mental Health (Hammond)
 - Home Inspector Licensure Board (Hammond)
 - Alarm Systems Licensing Board (Hammond)
 - Veterinary Medical Board (May)
 - Building Code Council (May)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. G.S. 150B-19.1 Certification
 - Commissioner of Insurance 11 NCAC 06A .0809 (Hammond)
- VII. Commission Business
 - Next meeting: Wednesday, June 18, 2014

**Commission Review
Log of Permanent Rule Filings
March 21, 2014 through April 21, 2014**

AGRICULTURE, BOARD OF

The rules in Chapter 20 concern the North Carolina State Fair.

The rules in Subchapter 20B concern regulations of the state fair including general provisions (.0100); space rental: commercial exhibit and concession regulations (.0200); competitive exhibit regulations (.0300); and operation of state fair facilities (.0400).

Admission Rules
Amend/*

02 NCAC 20B .0104

The rules in Chapter 37 concern agronomic services.

Plant Analysis Service
Amend/*

02 NCAC 37 .0202

HISTORICAL COMMISSION

The rules in Chapter 4 are concern the Office of Archives and History.

The rules in Subchapter 4M concern the division of archives and record including use and services of the state archives (.0100); listing of professional researchers (.0200); accessioning procedures of other than public records (.0300);

deaccessioning of records (.0400); and state records center (.0500).

<u>Statement of Purpose of Archives and Records Section</u> Repeal/*	07	NCAC	04M	.0101
<u>Archives Search Room Hours</u> Repeal/*	07	NCAC	04M	.0102
<u>Archives Reference Services</u> Repeal/*	07	NCAC	04M	.0103
<u>Archives Stacks</u> Amend/*	07	NCAC	04M	.0104
<u>Public Research Facilities Regulations</u> Amend/*	07	NCAC	04M	.0105
<u>Duplication Services</u> Amend/*	07	NCAC	04M	.0106
<u>Outer Banks History Center Gallery Regulations</u> Adopt/*	07	NCAC	04M	.0107
<u>Procedures for Listing</u> Amend/*	07	NCAC	04M	.0202
<u>Approval of Requests</u> Amend/*	07	NCAC	04M	.0203
<u>Removal of Names from the List</u> Amend/*	07	NCAC	04M	.0204
<u>Definition of Good Cause</u> Repeal/*	07	NCAC	04M	.0205
<u>Acceptance of Non-Government Papers</u> Amend/*	07	NCAC	04M	.0301
<u>Valuation</u> Repeal/*	07	NCAC	04M	.0302
<u>Organizational Records</u> Repeal/*	07	NCAC	04M	.0303
<u>Bible Records</u> Repeal/*	07	NCAC	04M	.0304
<u>Review</u> Amend/*	07	NCAC	04M	.0401
<u>Preparation of Lists</u> Amend/*	07	NCAC	04M	.0402
<u>Approval by Historical Commission</u> Amend/*	07	NCAC	04M	.0403
<u>Transfer of Records to State Records Center</u> Amend/*	07	NCAC	04M	.0501
<u>Legal Custody of Records</u> Amend/*	07	NCAC	04M	.0502
<u>Procedures for Transfer of Records</u> Amend/*	07	NCAC	04M	.0503
<u>Records Center Reference Service</u> Repeal/*	07	NCAC	04M	.0505
<u>Personnel Records</u> Amend/*	07	NCAC	04M	.0507
<u>Certification by Agency with Custody</u> Amend/*	07	NCAC	04M	.0508
<u>Destruction of Records in State Records Center</u> Amend/*	07	NCAC	04M	.0509

<u>Methods of Destruction</u> Amend/*	07	NCAC	04M	.0510
<u>Destruction of Certain Records Scheduled for Archives</u> Amend/*	07	NCAC	04M	.0511
<u>Restricted Areas in State Records Facilities</u> Amend/*	07	NCAC	04M	.0512

The rules in Subchapter 4V concern the outer bank history center including use and services (.0100); and public history gallery use (.0200).

<u>Statement of Purpose</u> Repeal/*	07	NCAC	04V	.0101
<u>Outer Banks History Center Search Room Hours</u> Repeal/*	07	NCAC	04V	.0102
<u>Outer Banks History Center Reference and Technical Services</u> Repeal/*	07	NCAC	04V	.0103
<u>Admission to Outer Banks History Center Stacks</u> Repeal/*	07	NCAC	04V	.0104
<u>Outer Banks History Center Search Room Regulations</u> Repeal/*	07	NCAC	04V	.0105
<u>Public History Gallery Hours</u> Repeal/*	07	NCAC	04V	.0201
<u>Public History Gallery Regulations</u> Repeal/*	07	NCAC	04V	.0202

MENTAL HEALTH, COMMISSION FOR

The rules in Chapter 28 concern state operated mental health facilities and services.

The rules in Subchapter 28C concern dignity and respect including safe environment (.0100); esthetic and humane environment (.0200); and privacy and personal freedom (.0300).

<u>State Facility Environment</u> Amend/*	10A	NCAC	28C	.0201
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HOME INSPECTOR LICENSURE BOARD

The rules in Chapter 8 are the engineering and building codes including the approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); home inspector continuing education (.1300); Manufactured Housing Board continuing education (.1400); and alternate designs and construction appeals (.1500).

<u>Fee Schedule</u> Amend/*	11	NCAC	08	.1011
<u>Definitions</u> Amend/*	11	NCAC	08	.1020
<u>Purpose and Scope</u> Amend/*	11	NCAC	08	.1103
<u>Definitions</u> Amend/*	11	NCAC	08	.1201
<u>Definitions</u> Amend/*	11	NCAC	08	.1301

<u>Continuing Education Required for Renewal of Active License</u> Amend/*	11 NCAC 08 .1302
<u>Elective Course Component</u> Amend/*	11 NCAC 08 .1318

ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 11 are from the N.C. Alarm Systems Licensing Board and cover the organization and general provisions (.0100); license applications and requirements (.0200); registration of employees of licensees (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

<u>Prohibited Acts</u> Amend/*	12 NCAC 11 .0105
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VETERINARY MEDICAL BOARD

The rules in Chapter 66 are from the Veterinary Medical Board including statutory and administrative provisions (.0100); practice of veterinary medicine (.0200); examination and licensing procedures (.0300); rules petitions hearings (.0400); declaratory rulings (.0500); administrative hearings procedures (.0600); administrative hearings decisions related rights (.0700) and judicial review (.0800).

<u>Authority: Name and Location of Board</u> Amend/*	21 NCAC 66 .0101
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BUILDING CODE COUNCIL

<u>2012 NC Building Code/Maximum Floor Area per Occupant</u> Amend/*	Table 1004.1.1
<u>2012 NC Building Code/Wood Tables SP</u> Amend/*	Chapter 23
<u>2012 NC Fire Code/Carbon Monoxide Alarms</u> Amend/*	908.7
<u>2012 NC Fire Code/Above-ground tanks located outside, abo...</u> Amend/*	2206.2.3
<u>2012 NC Plumbing Code/General Definitions</u> Amend/*	202
<u>2012 NC Plumbing Code/Lead content of water supply pipe a...</u> Amend/*	605.2
<u>2012 NC Residential Code/Wood Tables SP</u> Amend/*	Chapter 5, Chapter 8
<u>2012 NC Residential Code/Scope. Accessory Buildings and S...</u> Amend/*	R101.2
<u>2012 NC Residential Code/Definitions</u> Amend/*	R202
<u>2012 NC Residential Code/Exterior Walls</u> Amend/*	Table R302.1
<u>2012 NC Residential Code/Minimum opening area</u> Amend/*	R310.1.1

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Craig Croom
J. Randolph Ward	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
ABC Commission v. Dos Perros Restaurant LLC T/A Dos Perros Restaurant	12 ABC 05312	09/25/12	
ABC Commission v. Bobby Warren Joyner T/A Hillsdale Club	12 ABC 06153	11/06/12	
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	12 ABC 07260	12/11/12	
ABC Commission v. Fat Cats Grill and Oyster Bar Inc, T/A Fat Cats Grill and Oyster Bar	12 ABC 08988	12/19/12	
ABC Commission v. Wachdi Khamis Awad T/A Brothers in the Hood	12 ABC 09188	03/06/13	
ABC Commission v. Double Zero, LLC, T/A Bad Dog	12 ABC 11398	04/08/13	
ABC Commission v. Soledad Lopez de Avilez T/A Tienda Avilez	13 ABC 00002	06/06/13	
ABC Commission v. Two Brothers Food Market, Inc., T/A Circle Mart	13 ABC 10356	07/11/13	
Rio Sports Restaurant and Lounge Inc. v. ABC Commission	13 ABC 11233	08/02/13	28:13 NCR 1573
ABC Commission v. Grandmas Pizza LLC T/A Grandmas Pizza	13 ABC 11401	08/13/13	
Hector Diaz v. ABC Commission	13 ABC 13071	11/08/13	
ABC Commission v. Ola Celestine Morris T/A Nitty Gritty Soul Cafe	13 ABC 14197	10/09/13	
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Don Hillebrand v. County of Watauga County Health Dept	10 EHR 00933	05/10/12	
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House of Raeford Farms, Inc., v. DENR	10 EHR 05508	05/31/12	27:01 NCR 99
Lacy H Caple DDS v. Division of Radiation Protection Bennifer Pate	11 EHR 11454	05/09/12	
Friends of the Green Swamp and Blue Ridge Environmental Defense League, Inc v. DENR Division of Waste Management and Waste Management of the Carolinas, Inc., d/b/a Waste Management of Wilmington	11 EHR 12185	08/08/12	27:12 NCR 1224
Holmes Development & Realty, LLC, and H.L. Homes v. DENR – Land Quality Section (Re: LQS 11-018)	11 EHR 13208	06/29/12	27:07 NCR 774
Ik Kim IT and K Enterprise v. DENR	11 EHR 13910	11/06/12	
Edward Dale Parker v. DENR	11 EHR 14390	02/22/13	

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Save Mart of Duplin LLC v. DENR	12 EHR 02328	07/25/12	
NC Coastal Federation, Cape Fear River Watch, PenderWatch, and Conservancy Sierra Club v. DENR, Division of Air Quality and Carolina Cement Company, LLC	12 EHR 02850	09/23/13	

James D. Halsey v. DENR, Division of Environmental Health	13 EHR 10216	06/05/13	
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Reza M. Salami v. Employment Security Commission	13 ESC 13908	02/28/14	
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Jan Fjelsted v. NC State Health Plan	12 INS 04763	01/16/13	28:07 NCR 706
Susan E. Montgomery Lee v. State Health Plan; Blue Cross Blue Shield	12 INS 10145	03/25/13	
Lori Matney v. Blue Cross Blue Shield of NC, State Health Plan	12 INS 10790	08/20/13	
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BOARD OF LICENSED PROFESSIONAL COUNSELORS

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Thomas Franklin Cross, Jr. v. NC Innocence Inquiry Commission	13 MIS 12642	06/19/13	28:10 NCR 1160
Moses Leon Faison v. NC Parole Commission, Paul G. Butler, Jr.	13 MIS 13004	09/05/13	
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Paul Michael Simmons v. Luis Hernandez, Forest City Police Department	13 MIS 14274	11/13/13	

Beth Ford v. Pat Bazemore, Chief of Cary PD	14 MIS 01134	04/08/14	
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Jacob W. Scott v. Department of Crime Control and Public Safety Alcohol Law Enforcement	10 OSP 04582	07/19/13	28:12 NCR 1419
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Phyllis S. Nobles v. Elizabeth City State University	13 OSP 20154	02/24/14

Ethel Albertina McGirt v. NC Agricultural & Technical State University	14 OSP 00274	03/04/14
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Ronnie Lee Nixon v. Department of Revenue	12 REV 01881	10/03/12	
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William S. Hall v. Department of Revenue	12 REV 04115	08/27/12	
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Sybil Hyman Bunn v. Department of Revenue	12 REV 08973	05/06/13	

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Mary G. Tillery v. Department of Revenue	13 REV 19688	03/03/14	

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Jennifer Lynn Pierce-Founder Share Our Shoes v. Secretary of State's Office	12 SOS 01653	07/11/12
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Holley Shumate Knapp v. Ann Wall, General Counsel Department of the Secretary	13 SOS 09039	05/23/13
Trvuun B. Alston v. Department of the Secretary of State	13 SOS 10113	07/08/13
John Claude Barden v. Department of the Secretary of State	13 SOS 12528	10/03/13
Connie Huntsman v. Department of the Secretary of State	13 SOS 16505	12/13/13
Dianne Michele Carter v. Department of the Secretary of State, Ozie Stalworth, and John Lynch	13 SOS 18498	12/18/13

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Fredia R Wall v. UNC Physicians & Associates	12 UNC 02256	10/04/12
Carolyn A. Green v. UNC Hospitals	12 UNC 02259	09/19/12
Annie E. Jarrett v. UNC Hospitals	12 UNC 03716	10/09/12
Vikki J Goings v. UNC Hospital	12 UNC 04109	09/18/12
Elonnie Alston v. UNC Hospitals	12 UNC 04551	09/11/12
Diara Z Andrews v. UNC Hospitals	12 UNC 04827	08/15/12
David Ryan Pierce v. UNC Hospitals, Patient Account Services, SODCA	12 UNC 05306	03/20/13
Shonte Hayes v. UNC P&A	12 UNC 05746	09/10/12
Tracy A. Spaine (Currier) v. UNC Hospitals	12 UNC 06822	11/06/12

Candis Miller v. UNC Hospitals	13 UNC 10374	08/19/13
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Jason Paylor v. UNC Hospitals Patient Accounts	13 UNC 12636	07/26/13
Robbyn L. Labelle v. UNC Hospitals	13 UNC 13685	11/18/13
Joseph B. Millikan v. UNC Hospitals	13 UNC 13905	01/07/14
Pamela Klute v. UNC Hospitals	13 UNC 15828	11/25/13
Barney Kohout v. UNC Hospitals	13 UNC 18549	01/23/14
Cilenia Mendez v. UNC Hospitals	13 UNC 18560	02/11/14

WILDLIFE RESOURCES COMMISSION

People for the Ethical Treatment of Animals, Inc., v. NC Wildlife Resources Commission	12 WRC 07077	11/13/12	27:22 NCR 2165
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FILED
OFFICE OF ADMINISTRATIVE HEARINGS
11/7/2013 9:25 AM

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DST12408

<p>KAREN L STEWART EXECUTOR OF THURMAN A STEWART ESTATE PETITIONER,</p> <p>V.</p> <p>NC DEPARTMENT OF STATE TREASURER, RETIREMENT SYSTEMS DIVISION RESPONDENT,</p> <p>AND</p> <p>BETTY J. STEWART RESPONDENT.</p>	<p>FINAL DECISION</p>
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On September 26, 2013, Administrative Law Judge J. Randall May heard this contested case in High Point, North Carolina.

APPEARANCES

For Petitioner: Karen Stewart, Pro Se
195 Conrad Circle
Lewisville, NC 27023

For Respondent: Robert M. Curran
Special Deputy Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699

For Third Party Respondent: Betty Stewart, Pro Se
2987 Frank Dillard Road
West Jefferson, NC 28694

ISSUE

Whether the Retirement System is properly paying a monthly survivorship benefit to the Third-Party Respondent pursuant to the benefit option selected by the member/retiree at the time of retirement and on file with the Retirement System at the time of the member's death.

APPLICABLE STATUTES AND RULES

N.C.G.S. § 128-27(g).

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None

For Respondent: Ex. 1: Retirement Systems Form 6, Application for Retirement of Thurman A. Stewart, Jr.
Ex. 2: Retirement Systems Form 6E, Election of Benefits
Ex. 3: Retirement Systems Division Journal Report (6 pgs)
Ex. 4: General Power of Attorney with Register of Deeds Certification (3 pgs)

For Third-Party Respondent: None

WITNESSES

For Petitioner: None

For Respondent: Garry Austin, Special Assistant to the Director of the Retirement System

For Third Party Respondent: None

FINDINGS OF FACT

1. Thurman A. Stewart, Jr. was a member of the Local Governmental Employees' Retirement System ("LGERS"), prior to the effective date of his retirement on December 1, 1994. At the time of Mr. Stewart's retirement, he chose Option Six-Two, 100% Joint and Survivorship, and named his then wife, Betty J. Stewart, as the beneficiary of the monthly survivorship benefit.
2. On his benefit election form, Mr. Stewart was informed that if he chose a joint and survivorship benefit and designated his spouse as the beneficiary, and if he later became divorced from that spouse, he could revoke his election and make a new benefit election.
3. Thurman Stewart and Betty J. Stewart subsequently divorced sometime in 2010.

4. According to Respondent's records, Petitioner called the Retirement System on September 20, 2012 to inquire about Thurman Stewart's benefits. Petitioner was advised that the Retirement System would need a power of attorney to be able to provide information to anyone other than the member, and that any such power of attorney should be accompanied by a letter specifying the information needed.

5. According to Respondent's records, it did receive a copy of a power of attorney, faxed to its offices on September 20, 2012, executed by Thurman A. Stewart, and naming Petitioner as his attorney-in-fact. No letter or other request accompanied the power of attorney, and the Retirement System's records show no further correspondence regarding Thurman Stewart prior to the report of his death.

6. Mr. Stewart died on or about November 14, 2012, without having changed his election. Respondent has been paying the Third-Party Respondent, Betty J. Stewart, the monthly survivorship benefit pursuant to the election that the member selected at the time of his retirement.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the hearing in this matter. 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.G.S. § 128-27(g) provides that, under the Option 6-2 elected by the member at retirement, "[u]pon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement. . . ."

3. While the member was entitled to change his benefit option and to designate a new beneficiary under the provisions of N.C.G.S. § 128-27(g), no such change was made or sought to be made prior to his death. Petitioner has presented no evidence that the member or herself, as attorney-in-fact for the member, sought to change the benefit option or beneficiary designation prior to the member's death.

4. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent must continue paying the Third-Party Respondent the monthly survivorship benefit pursuant to the benefit option selected by the member/retiree at the time of retirement.

DECISION

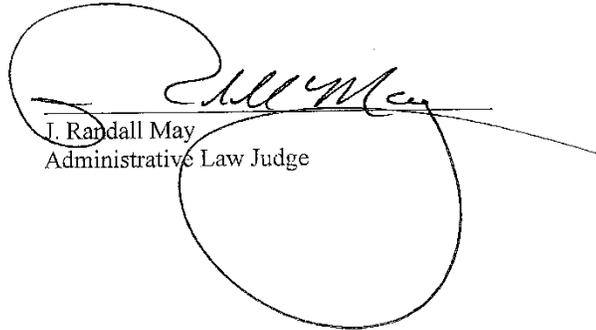
Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby ORDERS that Respondent Retirement Systems Division pay to Betty J. Stewart the monthly survivorship benefit pursuant to the benefit option and beneficiary designation selected by Thurman A. Stewart, Jr. at the time of his retirement.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 7th day of November, 2013.


J. Randall May
Administrative Law Judge

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3/10/2014 10:34 AM

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

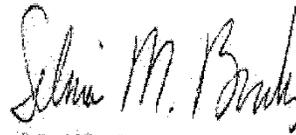
IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
08OSP01724

Patrice A Bernard vs N.C. A&T	ORDER AMENDING CAPTION FROM PROPOSED DECISION TO DECISION
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Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the above-captioned Decision, issued from this Office on March 3, 2014 is amended as follows:

Amending caption from proposed decision to decision.

This the 10th day of March, 2014.



Selina M Brooks
Administrative Law Judge

3	7/25/07	Letter from Vanessa Lawson, Interim Director of Human Resources, to Patrice Bernard
4	8/6/08	E-mail chain between Pamela Basheer and Patrice Bernard re: Interim Evaluation
5	4/21/08	E-mail from Joyce Edwards to Loleta Chavis re: Please Review
6	4/22/08	E-mail from Loleta Chavis to Joyce Edwards re: FW: Please Review
7	4/22/08	E-mail from Joyce Edwards to Laurie Charest re: Please review and respond
8	4/22/08	Letter from Joyce Edwards to Patrice Bernard
9	5/20/08	E-mail from Patrice Bernard to Pamela Basheer re: Offer Letter
10	5/19/08	E-mail from Drake Maynard to Patrice Bernard re: Position Posted Incorrectly
11	6/4/08	NC A&T State University SPA Employee Grievance Form
12	6/6/08	E-mail from Sheila Benton to Sullivan Welborn, Linda McAbee, Joyce Edwards, and Pamela Basheer re: Letter received on June 6, 2008
13	6/11/08	E-mail from Erskine Bowles to Patrice Bernard, Laura Luger, Harold Martin, and Stanley Battle re: Position Posting Error
14	7/11/08	Department of Human Resources Termination Record
15	6/23/08	E-mail from Patrice Bernard to Linda McAbee re: Questions – RIF
16	7/9/08	E-mail from Linda McAbee to Patrice Bernard re: Urgent Status – Dr. Welbourne, Please Reply
17	7/25/08	E-mail from Elizabeth Leak to Patrice Bernard re: Location of Career Banding Dispute Form
18	8/20/08	Memorandum From Linda McAbee to Patrice Bernard regarding Career-Banded Position Crosswalk and Legislative Increase
19	6/20/08	E-mail from Ann Lemmon to Patrice Bernard re: A&T/Personnel Issue
20	2/24/09	E-mail from Anne Lemmon to Patrice Bernard re: response to our emails

21	3/9/09	E-mail from Patrice Bernard to Erskine Bowles
22	3/10/09	Letter from Linc Butler, Assistant Vice Chancellor for Human Resources at NC A&T State University, to Patrice Bernard
24	5/7/09	Grievance Committee Recommendation Report
25	5/11/09	Letter from Stanley F. Battle, Chancellor of NC A&T State University, to Patrice Bernard
26	5/20/09	E-mail from Patrice Bernard to Kitty McCollum, Vice President for Human Resources, UNC General Administration, re: E-mail Response
27	2/11/09	E-mail from Patrice Bernard to Linc Butler
29	8/1/95	State Personnel Manual, Types of Appointments
30	7/1/98	State Personnel Manual, Severance Salary Continuation
31	9/19/07	Letter from Nanita Cole, Benefits Manager for NC A&T State University, to Patrice Bernard
32	6/11/08	Letter from Joyce Edwards, Executive Director for Career Services and Experiential Learning for NC A&T State University, to Patrice Bernard Re: Reduction-in-Force

Admitted for Respondent:

<u>Exhibit No.</u>	<u>Date</u>	<u>Document</u>
15	4/22/08	Letter from Joyce Edwards, Executive Director for Career Services and Experiential Learning for NC A&T State University, to Patrice Bernard
22	6/6/08	Letter from Sheila Benton, Special Assistant to the Vice Chancellor for Human Resources, to Patrice Bernard
34	7/13/06	Application for State Employment
35	9/5/06	Application for State Employment
36	6/12/08	Application for Employment
37	9/9/13	Petitioner's Responses to Respondent's First Set of Interrogatories and Requests for Production of Documents

WITNESSES

Called by Petitioner:
Patrice Bernard

Called by Respondent:
None

ISSUE

Whether the selection of Petitioner's position for elimination pursuant to a reduction in force ("RIF") was due to discrimination based on race or sex and/or retaliation.

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 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.

FINDINGS OF FACT

1. Petitioner Patrice Bernard was a permanent State employee subject to Chapter 126 of the North Carolina General Statutes.
2. Respondent North Carolina Agricultural and Technical State University ("NC A&T" or "the University") is subject to Chapter 126 and was Petitioner's employer.
3. Petitioner is an African American woman.
4. Petitioner began her employment at North Carolina A&T State University on a temporary basis in 2003 as a computing consultant. **T pp. 37, 157**
5. From 2004 to 2006, Petitioner worked as an Administrative Assistant at the University's College of Arts and Science before joining the Human Resources department as Benefits Receptionist. **T p. 159** Petitioner was dismissed from the Human Resources position during the probationary period, but did not disclose the fact that she was dismissed on subsequent job applications. **T pp. 160-64, 167-68; Resp. Exs. 34, 35, 36**
7. In September 2006, the University posted a vacancy announcement for position #9017 of Technology Support Analyst in the Office of Career Services. **Pet. Ex. 1** The position was a time-limited position. **T pp. 83, 175-79; Pet. Exs. 2, 3, 8, 14, 32; Resp. Ex. 15** The posting did not indicate that the position was time-limited. **T p. 38; Pet. Ex. 1**

8. Petitioner testified that she would never have applied for the position if she had known that it was a time-limited position because she “was already in a position with the university” and “was happy where [she] was.” **T p. 41** Petitioner later admitted, however, that she had been dismissed from her previous position and was currently unemployed when she applied for the Technology Support Analyst position. **T pp. 172**
9. Petitioner applied for the Technology Support Analyst position and was hired in November 2006. **T pp. 37-38, 162-63; 174-75; Pet. Ex. 2** Petitioner’s offer letter and the Recommendation for Employment both indicated that the position was time-limited. **T pp. 174-75; Pet. Ex. 2**
10. As Technology Support Analyst for the Office of Career Services, Petitioner was responsible for managing the office’s website, providing training to students on the use of Career Services software, and maintaining office technology. **T pp. 38-39**
11. Petitioner received generally favorable performance evaluations from her supervisors regarding her performance of her job duties. **T pp. 45-46; 199-206**
12. Petitioner’s immediate supervisor in the Office of Career Services was Ms. Pamela Basheer. **T pp. 40, 199, 201; Pet. Exs. 2, 8.** Ms. Basheer reported to Ms. Joyce Edwards, the Director of Career Services. **T pp. 40, 199, 201; Pet. Exs. 2, 8**
13. On July 25, 2007, Ms. Vanessa Lawson, Interim Director of Human Resources provided Petitioner with an update regarding her appointment as a time-limited employee and informed Petitioner that funds had been approved to continue to support her position for the period of July 1, 2007 through June 30, 2008. **T pp. 42-43, 176-80; Pet. Ex. 3**
14. Petitioner stated that Ms. Lawson’s letter regarding Petitioner’s position being continued represented the first time she became aware that her position was time-limited. **T pp. 42, 177**
15. Petitioner was displeased to learn that her position was not permanent and asked her supervisor for an explanation. **T pp. 43, 179** When Petitioner did not receive a satisfactory answer, she contacted the Director of Career Services, Joyce Edwards. **T p. 43** Petitioner testified that she did not receive a satisfactory explanation from Ms. Edwards so she contacted Human Resources and the Vice Chancellor of Student Affairs. **T pp. 42-43** Petitioner said she never received a response to her inquiries. **T p. 43**
16. In September 2007, Petitioner was approved for Family Medical Leave because of the serious health condition of her father. **T pp. 43-44, 180-81; Pet. Ex. 31** Petitioner had requested intermittent leave for an indefinite period of time. **Pet. Ex. 31** Petitioner also applied for Shared Leave, because she was concerned that she would not have enough leave time to cover her time out of work. **Pet. Ex. 31** Petitioner was required to exhaust all of her leave before using shared leave. **Pet. Ex. 31**
17. Petitioner testified that the Director of Career Services “exploded and cursed at [Petitioner]”

during a staff meeting when the Director learned that Petitioner had requested Family Medical Leave. **T pp. 44, 216** Petitioner believed that she was treated differently after she took Family Medical Leave. **T pp. 44-45, 68, 181-83, 216-19**

18. Petitioner also claimed that she was discriminated against by Ms. Edwards because she took Family Medical Leave. **T pp. 183-85, 216-20** Petitioner testified that she did not file a grievance regarding Ms. Edwards' behavior, nor could she recall telling anyone else at the University about Ms. Edwards' discriminating against her. **T pp. 184-85, 228-29**
19. In April 2008, Ms. Edwards was forced to reassess the function of the Office of Career Services because of budget constraints. **T. 51-54, Pet. Exs. 5-8** After consulting with Human Resources and her supervisor, Vice Chancellor Dr. Sullivan Welborne, Ms. Edwards decided to eliminate Petitioner's time-limited, receipt funded position. **Pet. Exs. 5-7**
20. On April 22, 2008, Ms. Edwards informed Petitioner in a letter and in person that her time-limited position was being eliminated. **T pp. 48, 52-54, 195-98; Pet. Ex. 8** The letter did not contain any information regarding Petitioner's appeal rights or her RIF rights. **Pet. Ex. 8**
21. Petitioner believes that Ms. Edwards' decision to eliminate Petitioner's position was based on racial discrimination, gender discrimination, and/or retaliation. **T pp. 216-20, 222** In support of this belief, Petitioner claimed that Ms. Edwards started to treat her differently after Petitioner took Family Medical Leave. **T pp. 216, 218** Petitioner stated that Ms. Edwards "was less than friendly" and "made it very difficult" for Petitioner to take Family Medical Leave. **Id.**
22. Petitioner also stated that Ms. Edwards eliminated her position "without consideration that there were temporary employees" working in the office. **T pp. 216-17, 222** Petitioner believes that these employees, which she describes as "younger females, one African-American, once Caucasian," should have been dismissed before her. **T pp. 216-17, 222-24** However, these employees held different positions than Petitioner, one was a receptionist and the other was a temporary employee who performed odd jobs in the office. **T pp. 222-23**
23. Petitioner stated that Ms. Edwards discriminated against her by ignoring Petitioner's requests for information regarding the status of her position and the RIF. **T pp. 217-18**
24. Petitioner filed a grievance after being told that her job was being eliminated. **T pp. 54, 69-72; Pet. Ex. 11** She also contacted the Office of State Personnel complaining about the University's decision to eliminate her position. **T pp. 58-59; Pet. Ex. 10.** Petitioner did not mention anything about discrimination in her grievance or in her communication with the Office of State Personnel. **Pet. Exs. 10-11**
25. On June 6, 2008, the University rescinded the letter dated April 22, 2008 that Petitioner received from Ms. Edwards. **T pp. 206-07; Pet. Ex. 12; Resp. Ex. 22.**

26. The University determined that because the position was advertised as a permanent full-time position, the University would treat the position as such and award Petitioner all the rights of a permanent full-time employee. **T pp. 73-76; Pet. Ex. 12**
27. In a letter dated June 11, 2008, the University informed Petitioner that due to budget reasons, specifically the elimination of funding, her position as Technology Support Analyst was being eliminated through a Reduction-in-Force Personnel Action effective July 11, 2008. **T pp. 86, Pet. Ex. 32**
28. The University explained to Petitioner that it was treating her position “as a permanent classification,” and therefore she was entitled to full RIF rights. **Pet. Ex. 32** These RIF rights included the right “to receive leave, total service credit, retirement, and health benefits, and severance pay as well as primary re-employment consideration.” **Pet. Ex. 32**
29. Petitioner was provided with a copy of the University’s RIF policy along with a copy of the University’s Mediation and Grievance Policy and Procedures. **Pet. Ex. 15, 32**
30. Petitioner contacted administrators at the University of North Carolina – General Administration, including Chancellor of the University of North Carolina, Erskine Bowles, to complain about the University’s action. **T pp. 77-83, 103-14; Pet. Exs. 13, 19-21** Petitioner alleged that the University did not follow proper guidelines when it conducted the RIF and violated her rights as a State employee. **T pp. 77-83, 103-14; Pet. Exs. 13, 19-21** Petitioner did not mention anything about discrimination in her complaints to General Administration. **T pp. 241-42; Pet. Exs. 13, 19-21**
31. Petitioner also requested more information from the University administrators about the decision to eliminate her position. **T pp. 85-90, 103; Pet. Exs. 15-16**
32. Petitioner’s position of Technology Support Analyst was eliminated on July 11, 2008. **Pet. Ex. 14** Petitioner’s former supervisors both recommended Petitioner for rehire. **T. pp. 83-84, Pet. Ex. 14**
33. In accordance with her RIF rights, Petitioner received, among other things, severance, extension of health benefits, and primary re-employment consideration. **T pp. 143, 212-13**
34. As part of her right to priority reemployment, Petitioner was able to get another job with the State. **T pp. 213-14** She was hired by the University of North Carolina at Greensboro as a Technology Support Analyst and received a salary that was higher than the one she was paid at NC A&T. **T pp. 213-14**
35. Following receipt of the June 11, 2008 RIF letter, Petitioner filed a grievance challenging the RIF. **T pp. 210-11** Petitioner also continued to seek a response from the University to her inquiries regarding the process used to RIF her position. **Pet. Exs. 19-21** Petitioner had a conversation with Ms. Linda McAbee, Vice Chancellor for Human Resources for the University, but was not satisfied with the responses provided by Ms. McAbee. **T pp. 238-40**

36. In a letter dated March 10, 2009, Mr. Linc Butler, Assistant Vice Chancellor for Human Resources for NC A&T, attempted to address Petitioner's outstanding concerns and questions regarding the University's decision to RIF her position. **T pp. 119-20, 245-46; Pet. Ex. 22** Mr. Butler also provided Petitioner with an update regarding the next steps in her grievance. **T pp. 119-20, Pet. Ex. 22**
37. Petitioner's grievance of her RIF was heard by the University on April 27, 2009. **T pp. 129, 134; Pet. Ex. 24**
38. In a letter dated May 11, 2009 the Chancellor of NC A&T, Stanley F. Battle, issued a Final Agency Decision regarding Petitioner's grievance. **T pp. 138-39; Pet. Ex. 25** The Chancellor upheld the recommendation of the Grievance Committee that Petitioner was not "treated improperly through the RIF policy" at NC A&T and was "afforded all of the rights and privileges under the RIF policy." **Pet. Ex. 25** The Chancellor also upheld the recommendation of the Committee that Petitioner was "not retaliated against by the Office of Career Services (OCS) or the Division of Human Resources." **Pet. Ex. 25**
39. Petitioner filed a Petition for a Contested Case Hearing with the Office of Administrative Hearing immediately following the University's issuance of the Final Agency Decision. **T p. 139** In her Petition, Petitioner alleged she was discriminated against on the basis of race.
40. In Petitioner's verified Responses to Respondent's First Set of Interrogatories and Requests for Production of Documents that were provided during discovery in this case, Petitioner stated that she "does not wish to proceed with a claim of racial discrimination at this time." **Resp. Ex. 37; T pp. 224-26**

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has subject matter jurisdiction over the issue of whether Respondent discriminated against Petitioner in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.
2. Petitioner challenges her RIF on the basis that the University failed to follow proper State and University guidelines. Failure to follow proper substantive and procedural requirements with regard to a RIF is not a basis for a contested hearing under N.C. Gen. Stat. § 126-34.1. See N.C. Gen. Stat § 126-34.1 The Office of Administrative Hearings does not have subject matter jurisdiction over the issue of whether a RIF complied with substantive and procedural requirements and, therefore, that claim must be dismissed. N.C. Gen. Stat. § 126-34.1; University of N.C. v. Feinstein, 161 N.C. App. 700, 590 S.E.2d 401 (2003).
3. Petitioner also challenges her RIF on the grounds that the University discriminated against her on the basis of her race, gender, and/or retaliation.
4. The Office of Administrative Hearings has jurisdiction over the issue of whether a RIF constitutes unlawful discrimination on the basis of gender, race, and/or retaliation. N.C.

Gen. Stat. § 126-34.1(a)(2); Feinstein, 161 N.C. App. at 703, 590 S.E.2d at 403.

5. Petitioner has the burden of proving that Respondent unlawfully discriminated against her because of her race and her gender and/or retaliated against her.
6. With regard to Petitioner's discrimination claim, the North Carolina Supreme Court has adopted the burden-shifting scheme used by federal courts, which was articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See North Carolina Dep't of Corr. v. Gibson, 308 N.C. 131, 301 S.E.2d 78 (1983).
7. Under the McDonnell Douglas burden-shifting scheme, a petitioner must first establish a prima facie case of discrimination. If a petitioner establishes her prima facie case, the burden then shifts to the respondent to articulate a legitimate, non-discriminatory reason for its decision. If the respondent articulates a legitimate, non-discriminatory reason for the decision, then the burden shifts back to the petitioner to prove that the reason given by the respondent was a pretext for discrimination. Hoyle v. Freightliner, LLC, 650 F.3d 321, 337 (4th Cir. 2011).
8. Petitioner failed to prove her claim that Respondent discriminated against her on the basis of gender when it eliminated her position pursuant to a RIF.
9. Petitioner did not meet her burden of proof that Respondent's reasons for the RIF were a pretext for discrimination. In particular, she presented no evidence of a discriminatory animus on the part of the decision makers involved.
10. As to Petitioner's claim for retaliation for her engaging in protected activity, "[t]o establish a *prima facie* case of retaliation, it must be shown that (1) the plaintiff engaged in a protected activity, (2) the employer took adverse action, and (3) there existed a causal connection between the protected activity and the adverse action." Salter v. E & J Healthcare Inc., 155 N.C. App. 685, 693, 575 S.E.2d 46, 51 (2003) (quoting Brewer v. Cabarrus Plastics, Inc., 130 N.C. App. 681, 690, 504 S.E.2d 580, 586 (1998), *disc. rev. denied*, 350 N.C. 91, 527 S.E.2d 662 (1999)). Federal courts use the same burden-shifting schemes for retaliation claims. See, e.g., Hoyle v. Freightliner, LLC, 650 F.3d 321, 337 (4th Cir. 2011).
11. Petitioner failed to establish a prima facie case of retaliation, because she failed to establish that she engaged in any protected activity. Moreover, even if she had demonstrated she engaged in any protected activity, she failed to establish a causal connection between the protected activity and the adverse action. Petitioner presented no evidence of any animus by the University about her grievance. Petitioner presented no evidence that Petitioner's complaints in any way caused the University to eliminate her position in a reduction in force.
12. Petitioner's evidence shows a legitimate non-retaliatory reason for Respondent's action and Petitioner failed to establish any evidence of retaliatory intent by any supervisor. Petitioner failed to present any evidence that Respondent's legitimate non-retaliatory reason for the

RIF was pretextual, or that retaliation was the real reason for the action.

13. At the close of Petitioner's case in chief, Respondent made oral Motions to Dismiss and for Directed Verdict pursuant to N.C. Gen. Stat. §1A-1, Rules 12 and 50.
14. Petitioner's allegation that Respondent violated RIF policies and procedures was dismissed for lack of subject matter jurisdiction. **T. pp. 266-70**
15. Petitioner's allegation of retaliation on the basis of race discrimination was deemed abandoned and dismissed. **T. pp. 270-79**
16. The Motion for Directed Verdict was granted in favor of Respondent on the issue of retaliation based on age discrimination. **T pp. 2779-84**

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

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Petitioner's RIF was not the result of discrimination on the basis of gender, race and/or retaliation. Respondent's action is therefore **AFFIRMED**.

ORDER

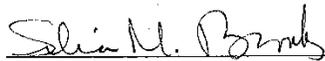
It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Services Center, Raleigh, N.C. 27699-6714, in accordance with N.C.G.S. § 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to Decision and to present written arguments to those in the agency who will consider this Decision. N.C.G.S. § 150B-36(a).

The agency is required by N.C.G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This, the 28th day of February, 2014.


Selina M. Brooks
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10OSP00085

<p>BETTY M JONES, Petitioner,</p> <p>v.</p> <p>NC DEPARTMENT OF HEALTH AND HUMAN SERVICES, DMA, Respondent.</p>	<p>DECISION</p>
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PROCEDURAL BACKGROUND

On December 10, 2009, Respondent notified Petitioner that the position for which she had applied, Human Services Planner/evaluator IV, a.k.a. Director of the Money Follows the People Program, had been filled by another applicant.

On January 8, 2010, Petitioner filed a petition for a contested case hearing with the Office of Administrative Hearings appealing Respondent's decision to another applicant for the above-referenced job for which Petitioner had applied. In her petition, Petitioner alleged that Respondent denied her a promotion: (1) by failing to give Petitioner, a state employee, priority consideration over the non-state employee who was selected for the position, (2) due to discrimination against Petitioner based on her age (56 years old) and race (black), and (3) in retaliation for Petitioner filing a charge of discrimination against Respondent in 2003.

On May 11, 2010, the undersigned issued an Order, pursuant to N.C. Gen. Stat. § 7A-759, staying this contested case until the Civil Rights Division of the Office of Administrative Hearings completed its investigation into Petitioner's charges of discrimination and retaliation.

On September 12, 2013, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina. On September 25, 2013, the undersigned issued a decision ruling for Respondent, and ordered Respondent file a proposed Decision. On November 12, 2013, Respondent filed its proposed Recommended Decision with the Office of Administrative Hearings.

APPEARANCES

For Petitioner: Michael J. Jones, Esq.
PO Box 21247
Greensboro, NC 27420

For Respondent: Joseph E. Elder
Assistant Attorney General
North Carolina Department of Justice
P. O. Box 629
Raleigh, NC 27602-0629

ISSUE

Whether Respondent failed to give Petitioner priority consideration when filling a vacant position with a non-State employee candidate?

The parties, by stipulation, agreed that this was the only issue for hearing; therefore, the other issues raised in the Petition for contested case hearing are deemed abandoned.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 126-7.1
25 N.C.A.C. 1H. 0701 & 0801

EXHIBITS ADMITTED INTO EVIDENCE

The parties stipulated as to the authenticity and admission of the following exhibits:

For Petitioner: 1 - 19

For Respondent: 1, 2

WITNESSES

For Petitioner: Betty M. Jones, Business Officer with Respondent's Division of Medical Assistance.

For Respondent:

1. Ellen Pittman, Human Resources Manager with the NC Department of Health and Human Services, Division of Medical Assistance.
2. Vivian Leon, Money Follows The Person Program point person with Respondent's Division of Medical Assistance.
3. Lorie Williams, former Chief of Policy Development and Special Projects of Respondent's Division of Medical Assistance.
4. Judy Walton, former Chief of the Labor Development Unit of Respondent's Division of Medical Assistance.
5. Tara Larson, former Chief Clinical Operations Officer with Respondent's

Division of Medical Assistance.

FINDINGS OF FACT

Adjudicated Facts

1. The North Carolina Department of Health and Human Services, Division of Medical Assistance (DMA) is an agency of the State of North Carolina subject to the provisions of the State Personnel Act. DMA works to provide access to health care services and products for eligible North Carolina Residents.

2. One of the programs operated by the Division of Medical Assistance is the Money Follows the Person (MFP) federal grant program. This program is one hundred percent (100%) federally funded. The purpose of the program is to provide transition for individuals living in an institutional or group home setting to living in their own homes, and to coordinate the necessary care and services to make the transition possible. The program seeks to identify individuals who could benefit from the program, and who would be good candidates for transitioning from an institutional to a community living setting.

3. North Carolina's solicitation of the demonstration grant was fueled by legislative directive, advocacy groups, and the need to restructure the service delivery for long term care. Status of the program's accomplishments and challenges were reported to the Legislative Oversight Committee on mental health, developmentally disabled and substance abuse (MH/DD/SA) services, and also through various steering committees and external stakeholder groups.

4. The program and its activities are coordinated by the MFP Project Director. This position is located within the Division of Medical Assistance, Program Development Section, and reports to the head of the Program Development Program. The MFP Project Director position involves working directly with the intellectually and developmentally disabled (IDD) population and those who provide services to the IDD population. The primary purpose of the position is to identify and assist in the transition of individuals in the IDD population to living in their own homes and communities.

5. On May 31, 2010, the MFP Project Director position became vacant. Respondent posted the position vacancy on June 9, 2009. The time to submit applications remained open until June 22, 2009. The position posting stated the following training and experience requirements:

A Master's Degree in public or human service administration or human services programmatic field, preferably with course work in human services planning and three years of human service experience with two years in human services program planning; or graduation from a four-year college or university and five years progressive administrative or consultative experience in a human service program, two of which must have been in human service program planning....

(Petitioner's Exhibit 2)

6. On June 16, 2009, Petitioner submitted her application for the MFP Project Director position. The selected candidate, Patricia Farnham, submitted her application on June 17, 2009.

7. Petitioner is a career state employee who has worked with the North Carolina Department of Health and Human Services since 1998. She currently works for the DMA as a Contract Specialist for Clinical Policy. Petitioner's current duties include working closely with the DMA budget department by setting the budget for the contracts that she oversees. Petitioner also serves as a Financial Analyst, and prepares legislative reports on a quarterly basis.

8. Petitioner obtained her Master's Degree in Business Administration with a concentration in Business Accounting from Strayer University in March 2012. She received a Bachelor of Science degree in business from St. Augustinc College in May 2000.

9. Petitioner worked with the prior MFP Project Director Linda Hicks when Ms. Hicks was hired in 2008. Prior to that time, Petitioner worked on preparing the materials related to initially obtaining the MFP grant in 2007.

10. Lori Williams, then the supervisor of the MFP Program, asked Judy Walton and Vivian Leon to serve with Williams as members of the interview panel. Ms. Williams selected Judy Walton to participate on the interview panel for the MFP Project Director position, because Walton would supervise the MFP Project Director position once an internal reorganization occurred within the DMA. Ms. Williams requested Ms. Leon's participation on the interview panel for the MFP project director position based on her experience with the MFP program, and her work with State development centers.

11. Ms. Judy Walton worked in the DMA for approximately twenty years before retiring in January 2013. Her last position in the DMA was Chief of the Labor Development Unit, and Waiver Program Development Unit in the Clinical Policy Section. She was responsible for new waiver programs for home and community based services programs that provide long-term care to aged individuals or individuals with developmental disabilities.

12. Since 2007, Ms. Vivian Leon has worked in the Division of State Operated Health Facilities of the Department of Health and Human Services. She works on the developmental center team with the three state-operated developmental centers in North Carolina. As part of her duties, Ms. Leon works directly with the MFP program, and provides assistance to developmental center staff on transitioning individuals into the community through the MFP program. She has worked with the program since its beginning in North Carolina.

13. Ms. Lorie Williams worked for the DMA as Chief of Policy Development and Special Projects at the time the MFP project director position was being filled. At that time, the MFP Project Director position reported directly to her. MFP was a special project that her section worked with once the federal grant for the program was applied for and approved. Ms. Jones directly reported to her as a business officer in clinical policy. Ms. Williams placed Ms. Jones in the acting role for the MFP project director position based on her availability, and due to Petitioner's basic knowledge of the MFP program. One of the requirements of the MFP federal grant was that the project director position be filled.

14. An interview panel conducted interviews of the highly qualified candidates for the MFP Project Director position, and interviewed Ms. Farnham and Petitioner. The panel took notes of the interviews using the same set of questions for each candidate. (Petitioner's Exhibits 11-16)

15. Collectively, the interview panel concluded that Ms. Farnham was the overall best candidate for the MFP project director position. It was essential to find someone who would require little time becoming familiar with the MFP program, and who understood transitioning individuals from institutional settings to the community and the complexities involved. Ms. Farnham had worked directly with operating the MFP program, and had experience in human services and transitioning individuals. Ms. Farnham exhibited an understanding of the goals of MFP, and had worked directly with consumers and advocates in the provision of services to the IDD population. Ms. Farnham met the highest educational requirements for the position including holding a Masters in Public Administration. Ms. Farnham had greater human services experience directly with the IDD population than Ms. Jones.

16. The interview panel found Petitioner did not have the necessary experience in human services program management required to serve as the MFP project director. Petitioner had a financial background and a business degree with a focus on cost reporting, financial analysis, rate setting and budgetary concerns. While Petitioner was the acting MFP Project Director position for a very brief period before applying for the MFP Project Director position, she had significantly less experience in working directly with consumers and advocates related to the provision of services to the IDD population. Petitioner had a degree in business, and was working on an advanced degree in business administration. While Petitioner was better suited to the financial and reporting requirements of the MFP project director position, the position and program was foremost a human services program requiring extensive experience in program planning and working with the population to be served.

17. Ms. Tara Larson was the Chief Clinical Operations Officer, and served as the DMA's Deputy Director. Larson conducted a second round of interviews with Petitioner and Ms. Farnham. Ms. Larson used the same set of questions for each candidate interview.

18. Ms. Larson concluded that Ms. Farnham's direct experience with the IDD population and previous work with the MFP program made her an exceptional candidate who would not need training on the programmatic side of the project director position. She displayed a philosophical understanding of the program. Ms. Farnham had extensive experience in the delivery of services for people with intellectual and developmental disabilities at the community level, programmatic expertise in the models of care and supports used with people with IDD, extensive experience with establishing networks and building collaboration among stakeholders, providers and payers; extensive experience in program development including budget development, grant solicitation and creativity in individual personal budget development. In addition, she had established successful relationships with essential leaders in the IDD community and service continuum and had begun networking with the aging community.

19. Although Ms. Jones had served in the acting MFP Project Director position briefly, she did not possess the same level of experience and expertise in program management, service delivery, budget management and public presentations as Ms. Farnham.

20. Ms. Larson conferred with Ms. Williams, and they agreed that Ms. Farnham was the superior candidate for the MFP project director position.

21. A preponderance of the evidence showed that Petitioner lacked any direct experience working with the IDD population, and had no prior experience managing programs related to the IDD population. While she had worked in some manner with the MFP program since 2007, she did not have any other consultative or administrative experience in human services program planning. Petitioner's experience primarily related to business officer functions including financial reporting, cost analysis, rate setting and budget-related tasks. She worked in a primarily supportive role related to the financial and reporting functions of the MFP program before being assigned the acting director role beginning June 1, 2009.

22. Ms. Farnham holds a Master's Degree in Public Administration, and a Juris Doctorate degree with an emphasis on Health Law. She obtained these degrees in May 2001. She holds a Bachelor of Arts from Miami (Ohio) University, which she completed in May 1996. She was not a state employee when she applied for the MFP project director position.

23. Ms. Farnham has over 10 years of experience in human services program coordinating and planning. Her prior experience includes working directly with the IDD population and coordinating the provision of community and living services for that population. Her experience includes serving as the Executive Director of Georgia Options for four years, a nonprofit organization providing support to individuals with disabilities to live in their own homes.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following Conclusions of Law:

1. The North Carolina Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case under N.C. Gen. Stat. 150B-23. There is no question as to misjoinder or nonjoinder, and the parties received proper notice of the hearing in this matter.

2. Petitioner has the burden of proving that Respondent failed to give Petitioner, a career state employee, priority consideration over a non-state employee in filling the MFP project director position.

3. Priority consideration is required to be given when a state employee has substantially equal qualifications as the non-state employee. Qualifications include education, years of experience, and "[o]ther skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for." N.C. Gen. Stat. § 126-7.1.

4. As a career state employee, Petitioner would have been entitled to receive the MFP project director position only if her qualifications were substantially equal to those of a non-state employee candidate.

5. "Substantially equal qualifications" occur when the employer cannot make a reasonable determination that the job-related qualifications held by one applicant are significantly better suited for the position than the job-related qualifications held by another applicant. 25 N.C.A.C. 1H.0801.

6. Petitioner failed to prove by a preponderance of the evidence that she had substantially equal qualifications that were significantly better suited for the MRP project director position than Ms. Farnham's qualifications.

7. Based on years of experience, education, and other skills, it was reasonable for Respondent to determine that Ms. Farnham possessed qualifications that were significantly better suited for the MFP Project Director position than Petitioner.

8. Respondent did not fail to give priority consideration to Petitioner, a state employee. Since the selected candidate for the MFP Project Director position possessed significantly better qualifications than Petitioner, Respondent was not required to give Petitioner priority consideration.

DECISION

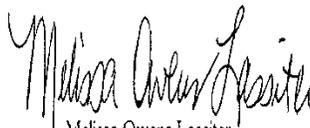
NOW THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends that Respondent's decision to hire someone other than Petitioner for the MFT project director position should be **UPHELD**.

ORDER AND NOTICE

The North Carolina State Personnel Commission will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this Decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 22nd day of November, 2013.


Melissa Owens Lassiter
Administrative Law Judge

The record proper in 2010 had been reviewed in 2010 including the Respondent's Motion and Petitioner's Response, and all other items submitted by the Respondent and the Petitioner, including all Affidavits; and upon considering the Memorandums of Law; and hearing argument from the Respondent's counsel and the Petitioner's counsel at the time; the Undersigned found that Summary Judgment was warranted in this matter. The present record assembled does not include any prior exhibits or affidavits or the like, however the findings of fact have been established and adopted.

Hearing on this present matter was held on November 1, 2013 with Petitioner represented by attorney Michael Byrne and Respondent represented by Assistant Attorney General Joseph E. Elder. As previously stated, the State Personnel Commission adopted the entirety of the Findings of Fact of the Administrative Law Judge and further adopted the entirety of the Conclusions of Law with the exception of Conclusion of Law 9. The parties presented argument with focus on Conclusion 9 given the prior adoption of all findings of fact and all other conclusions of law.

On November 1, 2013, Petitioner testified and as did Dr. Margaret Dorfman with Triangle Psychiatric Services, PA. Petitioner further presented four exhibits including his resume, a January 11, 2010 letter signed by Dr. Dorfman and Stephen Chandler, a DVD of Dr. Dorfman's deposition, and a transcript of the video deposition of Dr. Dorfman. Respondent presented one exhibit which included the 2010 Petition for a Contested Case Hearing as well as documents constituting the agency's action in the matter. The Petitioner is presently working in a non-governmental position and seeks monetary damages as the remedy in this case.

The Parties submitted a law brief and/or Memorandum of Law, the latter which was filed by Respondent on December 4, 2013 and received by the Undersigned on December 9, 2013, which have been considered along with all other matters received.

FINDINGS OF FACT

1. Petitioner was employed with North Carolina State government beginning in June 1999. The Petitioner's last day at work was February 15, 2008. At that time he was a Staff Development Coordinator in the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

2. On February 20, 2008, Petitioner provided a physician's note to HR Manager Terry Penny along with a Short-Term Disability claim request. After a sixty day waiting period, Petitioner began his Short-Term Disability on April 15, 2008. Several errors in Petitioner's medical leave status, processing Petitioner's FMLA, and processing Petitioner's Short Term Disability claim and approved benefits left Petitioner without income for approximately eight months in 2008.

Petitioner's Short-Term Disability was extended to April 15, 2010.

3. By letter dated January 12, 2010, Petitioner stated that he and his providers believed it was in his best interest that he return to an alternative position and as such was "requesting accommodation for a position that would not regenerate the same stressors which have already proven damaging to my physical and mental health." Included with his request were three letters of support from Petitioner's treating physicians.

4. By letter dated January 29, 2010 Respondent replied to Petitioner stating that Respondent was "unable to grant your request for placement in another position." Respondent's letter went on to say that Petitioner's position of Staff Development Coordinator was still available to him should he "become able to return to work before or at the end of the extended short-term disability period." The Respondent included an application for Long-Term Disability with their response.

5. On February 10, 2010, Petitioner wrote a letter to Michelle Edelen, his supervisor, stating that he was "not seeking another job in another Department or State Agency," but that he was (as stated later in the letter) requesting that he "no longer be supervised by you and Steve Hairston because it adversely affected my mental and physical health."

6. On February 18, 2010, Michelle Edelen responded by letter stating that Respondent was "unable to grant your request for placement in another position or under other supervision." He was directed to report to work on April 16, 2010 and told that "a return-to-work notice from your treating health care provider will be required." The letter states that the notice "should specifically address your ability to perform the essential functions of the job." A job description that was enclosed in the February 18, 2010 correspondence was approximately four years old and had been signed by Petitioner's former supervisor.

7. On March 8, 2010, Petitioner filed a Petition for a Contested Case Hearing alleging discrimination based upon disability.

8. Petitioner filed a claim for Long-Term Disability benefits under the Disability Income Plan of North Carolina with the Department of State Treasurer, Retirement Systems Division. On April 20, 2010, the Plan's Medical Board approved Petitioner's application with an effective date of April 6, 2010. On April 30, 2010, Petitioner submitted his resignation effective April 16, 2010.

9. In the Medical Report for Petitioner's disability review submitted to the Retirement Systems Division, Petitioner's doctor stated that he was totally disabled and unable to work. Based upon that report and Petitioner's own statements, he was approved for Long-Term Disability benefits. The Undersigned finds it unnecessary to repeat the specific medical diagnosis but such led Petitioner's treating physician to state Petitioner showed no improvement and was unable to work at his professional level.

BASED ON the foregoing findings of fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. A party moving for summary judgment satisfies its burden of proof (1) by showing an essential element of the opposing party's claim is nonexistent or cannot be proven, or (2) by showing that the opposing party cannot (or did not) produce evidence to support an essential element of his or her claim or (3) the opposing party cannot surmount an affirmative defense which would bar the claim. See *Bernick v. Jurden*, 306 N.C. 435, 293 S.E.2d 405 (1982). When ruling on summary judgment, the evidence is viewed in the light most favorable to the non-moving party, according that party the benefit of all reasonable inferences. See *Bailey v. Blue Cross & Blue Shield of Virginia*, 67 F.3d 53 (4th Cir. 1995) cert. denied, 516 U.S. 1159, 116 S.Ct. 1043, 134 L.Ed.2d 190 (1996).

2. In applying North Carolina discrimination law, the Undersigned is guided not only by North Carolina law and cases but also by federal employment discrimination decisions which are applicable and authoritative.

3. North Carolina law and the federal Americans with Disabilities Act (ADA) prohibit discrimination against a "qualified individual with a disability ... in regard to the hiring, advancement, or discharge of employees ...and other terms, conditions, and privileges of employment." 42 U.S.C. Sec. 12112(a). In order to prove a prima facie case of discrimination, a Petitioner must establish: (1) he has a disability; (2) he is a qualified individual, and; (3) the employer discriminated against him because of his disability. See *Martinson v. Kenney Shoe Corp.*, 104 F.3d 683 (4th Cir. 1997); *Doe V. University of Maryland Med. Sys. Corp.*, 50 F3d. 1261 (4th Cir. 1995)

4. The facts presented by Petitioner show that he has a disability, that is, he has a physical and/or mental impairment that substantially limits one or more major activities. The analysis now turns to whether Petitioner is a qualified individual with a disability "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. Sec. 12111(8).

5. To determine whether a disabled individual is qualified, courts consider whether the individual can perform the essential functions of the job at issue and if not, whether any reasonable accommodation by the employer would enable the individual to perform these functions. *Tyndall v. National Educ. Ctrs.*, 31 F3d 209 (4th Cir. 1994)

6. Essential functions are defined as the "fundamental job duties of the employment position

the individual with a disability holds or desires.” 29 C.F.R. Sec. 1630.2(n) Evidence of whether a particular function is essential includes the employer’s judgment as to which functions are essential, written job descriptions, amount of time spent on the job performing the function, and the consequences of not requiring the incumbent to perform the function(s). 29 C.F.R. Sec. 1630.2(n).

7. Among the materials in Petitioner’s application for Long-Term Disability is his physician’s statement that he is totally disabled and unable to return to his position with the State. Further, Petitioner himself in his application, has certified that he is unable to perform the essential functions of his job. (To avoid confusion that Petitioner’s receipt of disability benefits was at all determinative, which it was not, the phrase “and by his receiving Long-Term Disability” has now been stricken from this Conclusion of Law).

8. Even if Petitioner cannot perform the essential functions of the job without accommodation, he could still be a qualified individual with a disability if he could perform the essential functions of the job with a reasonable accommodation. Reasonable accommodation is defined as “modifications or adjustments to the work environment, or to the manner or circumstances under which the position is held or desired, is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position.” 29 C.F.R. Sec. 1630.2(o) The reasonableness of an accommodation is assessed objectively, and is not viewed subjectively from the concerns of either party. See *Williams v. Channel Master Satellite Sys. Inc.*, 101 F.3d 346 (4th Cir. 1996)

9. Petitioner sought the same job with the same responsibilities which by repeated declarations, he is unable to perform, but desired different supervisors as a reasonable accommodation. The preponderance or greater weight of the evidence leaves the Undersigned to conclude that even an accommodation of a change of supervisors would not change Petitioner’s status to a qualified individual as Petitioner is unable to perform the essential functions of the job regardless of who his supervisors may be. (This Conclusion has been rewritten)

BASED ON the above Findings of Fact and Conclusions of Law, the Undersigned issues the following:

DECISION

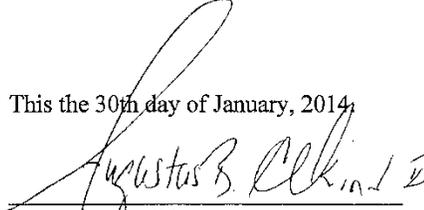
Based on the forgoing Findings of Fact and Conclusions of Law and for the reasons set forth above, summary judgment is **ALLOWED**. The Undersigned hereby finds that Petitioner did not meet his burden of proof on his prima facie case of discrimination.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the final decision. In this matter the agency has previously adopted each and all findings of fact contained in the Administrative Law Judge's decision. The agency that will make the final decision in this matter is the North Carolina State Personnel Commission now titled the North Carolina State Human Resources Commission.

IT IS SO ORDERED.

This the 30th day of January, 2014,


Augustus B. Elkins II
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA

IN THE OFFICE OF

ADMINISTRATIVE HEARINGS

COUNTY OF

12DHR01393

<p>Triumph LLC, Petitioner, v. North Carolina Department of Health and Human Services, Division of Medical Assistance, Respondent.</p>	<p>FINAL DECISION</p>
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This contested case was heard before Beecher Gray, Administrative Law Judge, on November 7, 2012, in Raleigh, North Carolina. Petitioner filed a proposed decision on January 7, 2014.

APPEARANCES

For Petitioner: Curtis B. Venable, Attorney at Law
OTT CONE & REDPATH, P.A.
P.O. Box 3016
Asheville, NC 28802

For Respondent: Jennifer Hillman, Assistant Attorney General
Iain Stauffer, Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

ISSUE

Whether the Department of Health & Human Services (“DHHS”) Hearing Officer correctly decided to uphold the decision of the Division of Medical Assistance (“DMA”) to review behavioral health services provided to Medicaid recipients by Petitioner, and that Petitioner Triumph, LLC received an overpayment of \$123,178 as a result of allegedly improperly documenting claims for behavioral health services delivered to Medicaid recipients.

JURISDICTION

As stipulated by the parties: This matter is in the appropriate form and venue. The matter was filed in a timely and appropriate fashion. All necessary parties are joined.

BURDEN OF PROOF

Respondent bears the burden of proof in this matter, under N.C. Gen. Stat. §108C-12(d).

DOCUMENTARY EVIDENCE

As stipulated by the parties as to authenticity and admissibility:

For Respondent:

1. Notice of Decision dated February 16, 2012, PI Case #2009-3867
2. Excerpt of Claims Data
3. Screenshot of Procedure Codes
4. Strata Assignment Table
5. RAT-STATS Sample Size Determination Output dated 5/26/10
6. Records Request Letter dated 6/3/10
7. Tentative Notice of Overpayment dated 12/8/11
8. Revised Provider Summary Report dated 2/15/12
9. Audit Findings Table
10. RAT-STATS Stratified Variable Appraisal Output dated 2/15/12
11. RAT-STATS Stratified Variable Appraisal Output dated 10/9/012, post Notice of Decision
12. Resume of Dennis D. Boos, Ph.D.
13. Excerpt of RAT-STATS 2007 User Guide
14. Report dated 7/23/12 prepared by Barraclough NY, LLC
15. Comparison of Means and Standard Deviations of the Universe of Paid Values to Sample Values
16. Audit Tool for A.C., date of service 6/26/09
17. Complete Person-Centered Plan for A.C.
18. Wake County MH/DD/SAS Emergency Services Evaluations Form for A.C. dated 2/25/08
19. Response by Triumph, LLC to audit findings for A.C., date of service 6/26/09
20. Crisis Plan for K.G.
21. Person-Centered Planning Instruction Manual
22. Excerpt of Medicaid Clinical Coverage Policy 8A, effective 3/1/08
23. Medicaid Participation Agreement dated 1/8/07

For Petitioner:

1. Sample Size Table #1
2. Sample Size Table #2
3. RAT-STATS screen shot
4. Standard Deviation for strata

5. Probability notation
6. Precision scale
7. Report dated 7/23/12 prepared by Barraclough NY, LLC

WITNESSES

Witnesses for Petitioner:

Stephanie Beck, Clinical Director
Professor Jeffrey A. Witmer

Witnesses for Respondent:

Ashley Odom, Business Analyst, Public Consulting Group
Professor Dennis D. Boos, Ph.D.
Carolyn Wisner, Nurse Consultant, CorVel

Expert Witnesses:

The parties stipulate that Professor Jeffrey A. Witmer and Professor Dennis D. Boos possess the scientific, technical or other specialized knowledge to assist the trier of fact to understand the evidence or to determine a fact in issue and by virtue of the knowledge, skill, experience, training or education of each, Professors Witmer and Boos each qualify as experts in the area of statistics, pursuant to Rule 702 of the North Carolina Rules of Evidence.

Based upon the preponderance of the admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner does not dispute the following findings from the Hearing Officer's decision:
 - That Petitioner received an overpayment in the amount of \$73.00 for the claim billed for I. Albarran for services rendered on 5/21/09
 - That Petitioner received an overpayment in the amount of \$54.75 for the claim billed for A. Bonillamejia for services rendered on 5/5/09
 - That Petitioner received an overpayment in the amount of \$36.50 for the claim billed for A. Bonillamejia for services rendered on 5/20/09
 - That Petitioner received an overpayment in the amount of \$374.68 for the claim billed for K. Gakumo for services rendered on 6/16/09
 - That Petitioner received an overpayment in the amount of \$72.03 for the claim billed for F. Griffin for services rendered on 4/17/09

- That Petitioner received an overpayment in the amount of \$82.32 for the claim billed for A. Harrismarble for services rendered on 6/22/09
 - That Petitioner received an overpayment in the amount of \$41.16 for the claim billed for F. Martinez for services rendered on 4/24/09
 - That Petitioner received an overpayment in the amount of \$18.25 for the claim billed for A. McClean for services rendered on 8/6/09
 - That Petitioner received an overpayment in the amount of \$292.00 for the claim billed for M. Pafford for services rendered on 6/12/09
 - That Petitioner received an overpayment in the amount of \$146.00 for the claim billed for T. Romero for services rendered on 7/20/09
 - That Petitioner received an overpayment in the amount of \$292.00 for the claim billed for A. Turrentine for services rendered on 6/26/09.
2. The total value of claims conceded by Petitioner is \$4,913.26 (R. Ex. 11, p. 1).
 3. Respondent audited Community Support claims of Medicaid services provided by Petitioner for dates between March 1, 2009 and August 31, 2009.
 4. During this period, Petitioner submitted 8,751 Community Support claims.
 5. For the audit of these 8,751 claims, Respondent reviewed 44 claims.
 6. Respondent's Reconsideration Review decision of February 16, 2012, contained a calculation of Petitioner's total extrapolated overpayment of \$169,918 arising from twelve claims in error, with the total value of these claims in error being \$6,505.45 (R. Ex. 1, p. 9).
 7. Respondent's Exhibit 11, entitled "RAT-STATS Stratified Variable Appraisal Output, dated 10/9/012, post Decision" contained a calculation of Petitioner's total extrapolated overpayment of \$123,178 arising from the same twelve claims in error from the Reconsideration Review decision, with the total value of these claims in error being \$4,913.26 (pp. 1 and 9).
 8. In extrapolating the results, Respondent utilized a series of statistical calculations.
 9. In these extrapolation calculations, Respondent divided the 44 sampled claims into 5 different groups or strata.

Data Assessed

10. Respondent calculated the strata based upon the Community Support claims paid to Petitioner.
11. Respondent's calculations resulted in Standard Deviations for each strata as:
 - Strata 1: \$14.26
 - Strata 2: \$18.96
 - Strata 3: \$19.25
 - Strata 4: \$26.53
 - Strata 5: \$58.05
12. These calculations assess the variability of amounts paid to Petitioner.
13. Petitioner's statistical expert performed calculations based upon the amounts overpaid to Petitioner.
14. These calculations resulted in standard deviations for each strata as:
 - Strata 1: \$20.72
 - Strata 2: \$50.27
 - Strata 3: \$46.17
 - Strata 4: \$128.76
 - Strata 5: \$336.73
15. Respondent's calculations treated all payments as the same as all overpayments.

Sample Size

16. Respondent sampled or evaluated 44 claims.
17. Calculations performed by Petitioner's statistical expert treated Respondent's sample of 44 as a probe sample. A probe sample is a preliminary evaluation of claims.
18. The probe sample determined the variability of Petitioner's overpayments.
19. Calculations performed by Petitioner's statistical expert determined that the required sample size to appropriately assess Petitioner's errors was 2,291 claims, an amount 52 times larger than Respondent's sample of 44 claims.

Confidence Interval

20. Respondent's sample size of 44 results in a precision of 43% with a Confidence Interval of 90%.

21. Respondent's sample size of 44 results in a precision of 51.74% with a Confidence Interval of 95%.
22. Both statistical expert witnesses, Dr. Boos and Dr. Witmer were accepted as experts concerning statistics. Dr. Boos testified as to his knowledge concerning Respondent's statistical calculations and procedures. This decision has considered Dr. Boos testimony and knowledge and accorded appropriate weight to his opinions.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 131E and 150B of the North Carolina General Statutes.
2. Respondent bears the burden of proof in this matter pursuant to N.C. Gen. Stat. §108C-11(d).
3. There has been no assertion or allegation in this proceeding that Petitioner was in any way responsible for fraud as defined in N.C.G.S. §108A-63, i.e., there is no allegation or assertion of the Petitioner "knowingly and willfully making or causing to be made any false statement or representation of material fact" or other type of fraud as defined therein.
4. Respondent's determination of Petitioner's overpayment must arise from correct calculations.
5. Just as Respondent could not prevail upon a calculation that two plus two equals five, Respondent cannot prevail when it fails to properly engage in more complex statistical procedures such as extrapolation.
6. Petitioner's statistical expert demonstrated to the satisfaction of the undersigned that Respondent's extrapolation calculations were flawed.
7. Respondent's own recalculation of Petitioner's alleged overpayment between the original Reconsideration Review decision (R. Ex. 1) and this hearing (R. Ex. 11), which resulted in a change in Petitioner's alleged overpayment of more than \$60,000, demonstrated errors in Respondent's processes.
8. The testimony of Petitioner's statistical expert demonstrated how Respondent's calculation flowed from its initial assessment of the variability of Petitioner's paid claims rather than Petitioner's overpaid claims.
9. The assessment of paid claims versus overpaid claims results in significant difference in data. For instance, in Respondent's calculation of Standard Deviation of Strata 4 using paid claims equals 26.53 within a total of 1,355 claims. The calculation of Standard

Deviation of Strata 4 using overpaid claims equals 128.76 within the same total of 1,355 claims.

10. The failure to properly evaluate overpaid claims rather than paid claims meant that Respondent inserted the wrong numbers into the correct formulae.
11. This initial error, in turn, flowed into a determination of the proper number of Petitioner's claims to assess.
12. Petitioner's statistical expert calculated, using the same statistical software as Respondent, RAT-STAT, the appropriate numbers of claims for sampling, considering the variability of the overpayments, the number of total claims and Respondent's desired level of accuracy (95% Confidence Interval and 5% precision), should have been 2,291 claims. Calculated at a slightly lower level of accuracy (90% Confidence Interval and 15% precision) resulted in a need to sample 297 claims. Respondent's sampled amount was 44 claims.
13. Respondent's small sample size resulted in a large level of imprecision in its extrapolation calculation. Petitioner's statistical expert demonstrated that with a sample size of 44 claims and a desired 90% Confidence Interval, the precision is reduced to 43%. This is in contrast to the desired precision levels ranging from 5 to 15%.
14. Respondent failed to demonstrate that it properly and accurately extrapolated Petitioner's overpayments. As such, Respondent acted erroneously, failed to use proper procedure and/or failed to act as required by law and/or rule.
15. As Respondent has failed to demonstrate the validity of any overpayment on the part of Petitioner (other than those conceded by Petitioner), it has failed to carry its burden to prove that the Department of Health and Human Services (DHHS) Hearing Officer correctly decided to uphold the decision of the Division of Medical Assistance (DMA) to review behavioral health services provided to Medicaid recipients by Petitioner and that Triumph, LLC received an overpayment of \$123,178.00 as a result of improperly documenting claims for behavioral health services delivered to Medicaid recipients.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

FINAL DECISION

Petitioner received overpayments in the amount of \$4,913.26 for the twelve claims conceded by Petitioner. Respondent was in error in concluding any further amounts were overpaid to Petitioner arising from claims evaluated in Respondent's PI#2009-3867. Based upon the evidence in this contested case hearing, I find that Respondent's action to collect overpayments to Petitioner should be, and the same hereby is, reduced to \$4,913.26, consistent with and supported by the greater weight of the evidence.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 08 day of January, 2014.



Beecher R. Gray
Administrative Law Judge