

# NORTH CAROLINA



## REGISTER

Volume 15, Issue 16  
Pages 1446 – 1551

February 15, 2001

This issue contains documents officially filed through January 25, 2001.

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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
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**Note:** Title 21 contains the chapters of the various occupational licensing boards.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 <sup>th</sup> day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	01/17/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	01/31/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	02/16/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/02/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	03/16/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	03/30/01	03/30/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	04/17/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/01/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/16/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	05/30/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	06/18/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/02/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02
16:01	07/02/01	06/11/01	09/04/01	07/17/01	07/17/01	08/20/01	05/00/02	08/31/01	09/20/01	05/00/02	03/29/02
16:02	07/16/01	06/22/01	09/17/01	07/31/01	07/31/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
16:03	08/01/01	07/11/01	10/01/01	08/16/01	08/16/01	09/20/01	05/00/02	10/01/01	10/22/01	05/00/02	04/28/02
16:04	08/15/01	07/25/01	10/15/01	08/30/01	08/30/01	09/20/01	05/00/02	10/15/01	10/22/01	05/00/02	05/12/02
16:05	09/04/01	08/13/01	11/15/01	09/19/01	09/19/01	10/22/01	05/00/02	11/05/01	11/20/01	05/00/02	06/01/02
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16:07	10/01/01	09/10/01	12/03/01	10/16/01	10/16/01	11/20/01	05/00/02	11/30/01	12/20/01	05/00/02	06/28/02
16:08	10/15/01	09/24/01	12/17/01	10/30/01	10/30/01	11/20/01	05/00/02	12/14/01	12/20/01	05/00/02	07/12/02
16:09	11/01/01	10/11/01	01/02/02	11/16/01	11/16/01	12/20/01	05/00/02	12/31/01	01/21/02	05/00/02	07/29/02
16:10	11/15/01	10/24/01	01/15/02	11/30/01	11/30/01	12/20/01	05/00/02	01/14/02	01/21/02	05/00/02	08/12/02
16:11	12/03/01	11/07/01	02/01/02	12/18/01	12/18/01	01/22/02	05/00/02	02/01/02	02/20/02	05/00/02	08/30/02
16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/02/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

## 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) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) 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;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) 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 fifteenth 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 RULE-MAKING PROCEEDINGS

**END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:** This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

**EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:** The date of the next issue following the end of the comment period.

### 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**  
**(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the 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.

JAMES B. HUNT, JR  
Governor

Done in the Capital City of Raleigh, North Carolina, this  
22<sup>nd</sup> day of December, 2000.

**EXECUTIVE ORDER NO. 176**  
**SUSPENSION OF RULES AND REGULATIONS**  
**LIMITING THE HOURS OPERATORS**  
**OF COMMERCIAL VEHICLES MAY DRIVE**

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him, with due consideration of the policies of the federal government;

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law; and

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes the Governor, with the concurrence of the Council of State, to procure, transport, store, maintain or distribute materials for emergency management without regard to the limitation of any existing law; and

WHEREAS, the uninterrupted supply of Liquefied Petroleum Gas (propane) as to residential and commercial establishments is an essential need of the public during the winter and any interruption threatens the public welfare; and

WHEREAS, the continued period of cold weather has increased the demand for Liquefied Petroleum Gas and threatened the uninterrupted delivery of Liquefied Petroleum Gas to residential and commercial customers; and

WHEREAS, the Federal Motor Carrier Safety regulations, 49 CFR 390 through 399, limit the hours of operators of commercial vehicles may drive, and

WHEREAS, 49 CFR 390.23 allows the Governor to suspend rules and regulations limiting the hours operators of commercial vehicles may drive for the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or thirty (30) days from the date of the initial declaration of the emergency, whichever is less, if the Governor declares a state of emergency.

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

Section 1. The state of emergency and threatened disaster justifies an exemption from Parts 390 through 399 of Title 49 of the Code of Federal Regulations as authorized by federal law.

Section 2. The emergency shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or thirty (30) days from the date of the initial declaration of the emergency, whichever is less.

Section 3. This executive order is effective immediately, and shall remain in effect until it is rescinded.

James B. Hunt, Jr.  
Governor

ATTEST:

Elaine F. Marshall  
Secretary of State

**EXECUTIVE ORDER NO. 177**  
**EMERGENCY RELIEF FOR THE STATE OF ARKANSAS**

WHEREAS, the Governor of the State of Arkansas has declared a state of disaster as a result of a winter storm, and

WHEREAS, under the provision of N.C.G.S. 166A-40 et seq., the Emergency Management Assistance Compact authorizes the Governor to provide for mutual assistance between the party states in managing any emergency or disaster that is duly declared by the Governor of the affected state, and

WHEREAS, I have found that if vehicles transporting equipment and supplies to restore utilities in the State of Arkansas must adhere to the weight restrictions of N.C.G.S. 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. 105-449.47, and the size and weight requirements of N.C.G.S. 20-116 and N.C.G.S. 20-118, citizens in Arkansas likely will suffer losses.

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

Section 1. The Division of Motor Vehicles shall waive size and weight restrictions and penalties therefore arising under N.C.G.S. 20-88 and N.C.G.S. 20-118, and certain registration requirements and penalties therefore arising under N.C.G.S. 20.86.1, 20-382, 105-449.47, 105-449.49 for vehicles transporting equipment and supplies along our highways to the State of Arkansas.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties shall not be waived under the following conditions:

When the vehicle weight exceeds the maximum gross vehicle weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross vehicle weight, whichever is less.

When tandem axle weights exceed 42,000 pounds and single axle weights exceed 22,000 pounds.

When vehicle/vehicle combination exceeds 12 feet in width and a total overall combination vehicle length of 65 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

The \$50.00 fee listed in N.C.G.S. 105-449-49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. 105-449.45(a)(1) applies.

The registration requirement under N.C.G.S. 20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance.

Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the spirit of the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. 136.72.

Section 5. The waiver of regulations under 49 C.F.R. 390-397 (Federal Motor Carrier Safety Regulations) do not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or for the duration of the emergency, whichever is less.

Section 6. The North Carolina Department of Transportation shall enforce the conditions set forth in Section 1, 2 and 3 in a manner which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts in the State of Arkansas.

This Executive Order shall be effective immediately and shall remain in effect for 30 days.

Done in the Capital City of Raleigh, North Carolina this 28<sup>th</sup> day of December, 2000.

James B. Hunt, Jr.  
Governor

ATTEST:

Elaine F. Marshall  
Secretary of State

**EXECUTIVE ORDER NO. 178  
SUSPENSION OF RULES AND REGULATIONS  
LIMITING THE HOURS OPERATORS  
OF COMMERCIAL VEHICLES MAY DRIVE**

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him, with due consideration of the policies of the federal government and authorizes and empowers the Governor to deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law; and

WHEREAS, the uninterrupted supply of kerosene and fuel oil as to residential and commercial establishments is an

essential need of the public during the winter and any interruption threatens the public welfare; and

WHEREAS, the continued period of cold weather had increased the demand for kerosene and fuel oil and threatens the uninterrupted delivery of kerosene and fuel oil to residential and commercial customers; and

WHEREAS, certain federal regulations limit the hours operators of commercial vehicles may drive; and

WHEREAS, 49 CFR 390.23 allows the Governor to suspend the rules and regulations limiting the hours operators of commercial vehicles may drive for the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or thirty (30) days from the date of the initial declaration of the emergency, whichever is less, if the Governor declares a state of emergency; and

WHEREAS, the Governor declared a state of emergency on December 22, 2000, because of the extraordinarily cold weather that has persisted in the state.

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

Section 1. Carriers transporting kerosene and fuel and fuel oil hereby are exempted from the provisions of Part 395 of Title 49 of the Code of Federal Regulations as authorized by law.

Section 2. This exemption does not apply to carriers transporting gasoline or diesel fuel for highway use.

Section 3. This exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief for thirty (30) days from the date of the initial declaration of the emergency, whichever is less.

Section 4. This executive order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 29<sup>th</sup> day of December, 2000.

James B. Hunt, Jr.  
Governor

ATTEST:

Elaine F. Marshall  
Secretary of State

**EXECUTIVE ORDER NO. 179  
EXTENDING EXECUTIVE ORDER NO. 88**

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order No. 88 regarding the Statewide Flexible Benefits Program, as previously amended, hereby is extended for two more years from the effective date provided below.

This order is effective immediately.

*EXECUTIVE ORDERS*

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Done in Raleigh, North Carolina, this the 29<sup>th</sup> day of  
December, 2000.

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James B. Hunt, Jr.  
Governor

ATTEST:

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Elaine F. Marshall  
Secretary of State



This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Corporate Franchise )  
and Income Tax Assessments for the Tax )  
Years ending December 31, 1990 through )  
December 31, 1995 by the Secretary of )  
Revenue of North Carolina )  
vs. )  
Educational Resources, Inc., )  
Taxpayer )

ADMINISTRATIVE DECISION  
Number: 364

This matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on Thursday, September 28, 2000, upon Taxpayer's petition for administrative review of the Final Decision of the Secretary of Revenue entered on September 28, 1999 sustaining the proposed corporate franchise and income tax assessments against Educational Resources, Inc. (hereinafter "Taxpayer") for the tax years ending December 31, 1990 through December 31, 1995.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law participating.

Attorney David W. Bertoni represented the Taxpayer at the hearing. Kay Linn Miller Hobart, Assistant Attorney General appeared at the hearing on behalf of the Secretary of Revenue.

FACTS

The Taxpayer produces workplace safety video tapes at its headquarters in South Carolina, and then sells and rents those tapes to customers located throughout the United States, including North Carolina. The Taxpayer sent catalogs to its customers by U.S. mail and orders for the tapes were received using U.S. mail or telecommunication. The sold or rented tapes were delivered to customers solely by U.S. mail or by common carrier. The rented tapes were returned to the Taxpayer after the expiration of the rental period in the same manner. The rental periods varied from one week to one month. The Taxpayer did not lease or own any facilities, or have any employees or agents in North Carolina at any time during the audit period. The Taxpayer engaged in 906 rental transactions and 719 sales transactions during the audit period. The Taxpayer failed to file North Carolina corporate income and franchise tax returns.

ISSUE

The issue considered by the Board on review of this matter is stated as follows:

Is the Taxpayer "doing business" in North Carolina so as to be subject to the North Carolina corporate franchise and income tax imposed under G.S. 105-122 and G.S. 105-130.3?

EVIDENCE

The evidence considered by the Board on review of this matter is stated as follows:

- D-1 Copy of letter dated December 1, 1995 from Revenue Field Auditor, Ms. Elaine Greene.
- D-2 Copy of letter dated December 11, 1995 from Taxpayer, Mr. W. D. Robinson, Jr.
- D-3 Copy of letter dated December 20, 1995 from Taxpayer, Mr. W. D. Robinson, Jr.
- D-4 Copy of letter dated February 6, 1996 from Revenue Field Auditor, Mr. Ernest Tippens.

**IN ADDITION**

- D-5 Copy of letter dated February 6, 1996 from Taxpayer, Mr. W. D. Robinson, Jr.
- D-6 Copy of North Carolina Department of Revenue Field Auditor's Report - Corporation Income Tax dated June 13, 1996.
- D-7 Copy of North Carolina Department of Revenue Field Auditor's Report - Corporation Franchise Tax dated June 7, 1996.
- D-8 Copy of letter of protest dated July 16, 1996 from Taxpayer's attorney, Mr. David W. Bertoni.
- D-9 Copy of letter dated July 30, 1996 from Revenue Field Auditor, Mr. Ernest Tippens.
- D-10 Copy of letter dated August 21, 1996 from Taxpayer's attorney, Mr. David W. Bertoni.
- D-11 Copy of letter dated September 5, 1996 from Mr. Bobby L. Weaver, Jr.
- D-12 Copy of Application of Hearing signed on September 23, 1996.
- D-13 Copy of letter dated April 1, 1997 from Taxpayer's attorney, Mr. David W. Bertoni.
- D-14 Copy of letter dated December 10, 1997 from Mr. Bobby L. Weaver, Jr.
- D-15 Copy of letter dated February 6, 1998 from Taxpayer's attorney, Mr. David W. Bertoni.
- D-16 Copy of North Carolina corporate income and franchise tax return for the fiscal year ending June 30, 1991.
- D-17 Copy of North Carolina corporate income and franchise tax return for the fiscal year ending June 30, 1992.
- D-18 Copy of North Carolina corporate income and franchise tax return for the fiscal year ending June 30, 1993.
- D-19 Copy of North Carolina corporate income and franchise tax return for the fiscal year ending June 30, 1994.
- D-20 Copy of North Carolina corporate income and franchise tax return for the fiscal year ending June 30, 1995.
- D-21 Copy of letter dated February 19, 1998 from Mr. Bobby L. Weaver, Jr.
- D-22 Copy of letter dated February 25, 1998 from Taxpayer's attorney, Mr. David W. Bertoni.
- D-23 Copy of letter dated June 17, 1998 from Mr. Bobby L. Weaver, Jr.
- D-24 Copy of letter dated September 16, 1998 from Mr. Michael A. Hannah.
- D-25 Copy of letter dated September 25, 1998 from Taxpayer's attorney, Mr. David W. Bertoni.
- D-26 Copy of letter dated September 29, 1998 from Mr. Michael A. Hannah.
- D-27 Copy of Schedule of Additional Taxable Sales - E-2 of Sales and Use Tax Audit.
- D-28 Copy of Department of Revenue's Hearing Brief dated December 3, 1998.
- D-29 Copy of Taxpayer's Hearing Brief dated February 11, 1999 from Taxpayer's attorney, Mr. David W. Bertoni.
- D-30 Copy of Department's Post-Hearing Brief dated April 1, 1999.
- D-31 Copy of Response to Post-Hearing Brief dated June 29, 1999 from Taxpayer's attorney, Mr. David W. Bertoni.

**FINDINGS OF FACT**

The Board reviewed and considered the following findings of fact in the Assistant Secretary's final decision:

1. The Taxpayer is a South Carolina corporation engaged in business as a distributor of training and safety videotapes for industrial customers.
2. The Taxpayer's headquarters and operations are located in Lexington, South Carolina.
3. The Taxpayer sells and rents videotapes to customers located in and outside the State of North Carolina for periods ranging from a week to one month for a charge of \$150 to \$200 per rental.
4. The Taxpayer engaged in 906 rental transactions in the State of North Carolina between the years 1990 and 1995 and generated rental income of \$99,521.00.
5. The Taxpayer engaged in 719 sales transactions in the State of North Carolina between the years 1990 and 1995 and generated sales income of \$201,304.40.
6. In December 1995, the Taxpayer was contacted by Ms. Elaine Greene, Revenue Field Auditor in the Charlotte Field Office, regarding the company's business activity in this State.
7. Following correspondence between the Charlotte Field Office and the Taxpayer, an on-site audit was conducted for corporate tax and sales and use tax purposes in February 1996.
8. The Taxpayer did not file corporate franchise and income tax returns with the State of North Carolina prior to the audit.
9. The auditors determined that the Taxpayer was subject to corporate income and franchise taxation in this State and subsequently requested copies of the corporate tax returns filed by the Taxpayer with the state of South Carolina.
10. The Taxpayer refused to provide the auditors with the information necessary to compute the Taxpayer's North Carolina corporate tax liability.
11. Jeopardy assessments of corporate income and franchise taxes were issued for the tax years 1990 through 1995 under the authority of G.S. 105-241.1(g) on June 19, 1996. The assessments of tax, penalties and interest totaled \$42,999.33 for the audit period.
12. The jeopardy assessments were based on the gross receipts reflected on sales and rental invoices to the Taxpayer's North Carolina customers as provided by the Taxpayer for sales tax purposes, which was the best information available to the auditors.
13. The Taxpayer timely protested the proposed corporate income and franchise tax assessments and requested a hearing before the Secretary of Revenue in its letters dated July 16, 1996. The application for a hearing was filed on September 23, 1996.
14. In February 1998, the Taxpayer filed tax returns for the fiscal years ending June 30, 1991 through June 30, 1995 reporting cumulative corporate income and franchise tax liabilities of \$165 and \$787.82 respectively.

**CONCLUSIONS OF LAW**

The Board reviewed the following conclusions of law made by the Assistant Secretary in his final decision:

1. The Taxpayer is subject to income taxation in this State in accordance with G.S. 105-130 *et. seq.*
2. The Taxpayer is subject to the general business franchise tax in accordance with G.S. 105-114 and G.S. 105-122.
3. G.S. 105-262(a) provides that: "the Secretary of Revenue may adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary."
4. Under G.S. 105-264, "it is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules. An interpretation by the Secretary is prima facie correct."
5. The Department's rule, N.C. ADMIN. CODE tit. 17, r. 5C.0102(a) (February 1976; January 1994; November 1992), defines "doing business", in pertinent part, as: "the operation of any business enterprise or activity in North Carolina for economic gain, including, but not limited to... the owning, renting, or operating of business or income-producing property in North Carolina including, but not limited to...tangible personal property."
6. The Taxpayer is operating a business enterprise or activity in North Carolina for economic gain.
7. The Taxpayer is "doing business" in this State by virtue of its ownership and renting of videotapes in North Carolina.
8. Under G.S. 105-130.3, the income tax imposed on the State net income of every C corporation doing business in this State during the audit period is seven and seventy-five one-hundredths percent (7.75%) of the corporation's State net income.
9. Under G.S. 105-130.4(i), all business income of corporations other than public utilities and excluded corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four.
10. G.S. 105-241.1(g) provides that: "the Secretary may at any time within the applicable period of limitations immediately assess any tax the Secretary finds is due from a taxpayer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State."
11. The proposed assessment of corporate income and franchise tax were proper under the laws and the facts.

**DECISION**

The scope of administrative review for petitions filed with the Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing, this statute provides in pertinent part: "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary." This Board has no authority or jurisdiction to rule on the constitutionality of a statute. Great Am. Ins. Co. v. Gold, 254 N.C. 168, 118 S.E.2d 792 (1961). Thus, the Board is not empowered to rule upon the constitutional argument presented by the Taxpayer in its petition. Tax assessments are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. The Board having conducted an administrative hearing, and having considered Taxpayer's petition and the record in this matter, concludes that the findings of fact contained in the Assistant Secretary's decision were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and the Assistant Secretary's decision was fully supported by the conclusions of law. WHEREFORE, the Board Orders that the Assistant Secretary's final decision sustaining the proposed assessments of corporate income and franchise tax, as modified in the decision, be confirmed in every respect.

Made and entered into the 28<sup>th</sup> day of November 2000.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Jo Anne Sanford, Chair  
Utilities Commission

\_\_\_\_\_  
Noel L. Allen

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The proposed Assessment of Additional Sales )  
and Use Tax for the period June 1, 1990 through )  
December 31, 1995 by the Secretary of Revenue )  
)  
)  
vs. )  
)  
Educational Resources, Inc. )  
Taxpayer )

ADMINISTRATIVE DECISION  
Number: 365

This matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on September 28, 2000, upon a petition filed by Educational Resources, Inc. (hereafter "Taxpayer") for administrative review of the Final Decision of the Secretary of Revenue entered on 28 September 1999 sustaining the proposed assessment of additional sales and use tax for the period of June 1, 1990, through December 31, 1995.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law participating.

Attorney David W. Bertoni, appeared at the hearing on behalf of the Taxpayer. George W. Boylan, Special Deputy Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

Pursuant to G.S. 105-241.1, the Department mailed Taxpayer a Notice of Sales and Use Tax Assessment dated June 19, 1996 assessing tax, penalty and interest for the period of June 1, 1990 through December 31, 1995. Taxpayer's attorney filed a timely request for hearing. After conducting a hearing, the Secretary of Revenue entered a Final Decision of September 28, 1999 sustaining the proposed assessment of additional sales and use tax for the period of June 1, 1990 through December 31, 1995. Pursuant to G.S. 105-241.2, Taxpayer's attorney timely filed a notice of intent and petition for administrative review of the Secretary's Final Decision with the Tax Review Board.

**FACTS**

Taxpayer is a corporation located in Lexington, SC engaged in the business of leasing and selling training videos. On June 13, 1996, auditors for the Department completed an examination of Taxpayer's records and proposed to assess additional tax, penalty and interest for the period of June 1, 1990 through December 31, 1995. The proposed assessment was the result of Taxpayer failing to register, collect and remit tax on the leases and/or sales of the training videos. Taxpayer's attorney objected to the assessment and requested a hearing on the basis the Taxpayer does not have nexus in North Carolina and is, therefore, not liable for collecting and remitting the tax on the sales and leases in this State. On September 28, 1999, the Assistant Secretary entered his decision sustaining the proposed assessment of additional sales and use tax for the period of June 1, 1990 through December 31, 1995. Pursuant to G.S. 105-241.2, Taxpayer timely filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

**ISSUE**

The issue to be considered by the Board on review of this matter is stated as follows:

Is Taxpayer engaged in business in North Carolina and liable for collecting and remitting sales or use tax on the receipts derived from the lease and/or sale of the workplace safety training videos.

**EVIDENCE**

The following items were presented as evidence by the parties:

- (1) Letter dated December 19, 1995 from Taxpayer's attorney, designated Exhibit E-1.
- (2) Letter dated January 4, 1996 from Sales and Use Tax Division, designated Exhibit E-2.
- (3) Letter dated January 11, 1996 from Taxpayer's attorney, designated Exhibit E-3.
- (4) Face Sheet and Explanation of Changes from audit report dated June 13, 1996, designated Exhibit E-4.
- (5) Notice of Tax Assessment dated June 19, 1996, designated Exhibit E-5.
- (6) Letter dated July 16, 1996 from Taxpayer's attorney, designated Exhibit E-6.
- (7) Letter dated August 21, 1996 from Taxpayer's attorney, designated Exhibit E-7.
- (8) Letter dated August 22, 1996 from Sales and Use Tax Division, designated Exhibit E-8.
- (9) Handwritten note dated March 30, 1998 from Sales and Use Tax Division file, designated Exhibit E-9.
- (10) Letter dated April 1, 1998 from Sales and Use Tax Division, designated Exhibit E-10.
- (11) Letter dated June 19, 1998 from Sales and Use Tax Division, designated Exhibit E-11.
- (12) Handwritten note dated July 31, 1998 from Sales and Use Tax Division file, designated Exhibit E-12.
- (13) Facsimile transmission dated July 31, 1998 from Sales and Use Tax Division, designated Exhibit E-13.
- (14) Handwritten note dated August 5, 1998 from Sales and Use Tax Division file, designated Exhibit E-14.
- (15) Letter dated September 17, 1998 from Assistant Secretary of Revenue, designated Exhibit E-15.
- (16) Letter dated September 29, 1998 from Assistant Secretary of Revenue, designated Exhibit E-16.
- (17) Memorandum dated April 18, 1996 from Secretary of Revenue to Assistant Secretary for Legal and Administrative Services, designated Exhibit E-17.
- (18) Sales and Use Tax Division's Brief for Tax Hearing, designated Exhibit E-18.
- (19) Memorandum dated April 30, 1999 from Sales and Use Tax Division, designated Exhibit E-19.
- (20) Letter dated May 18, 1999 from Assistant Secretary of Revenue, designated Exhibit S-1.
- (21) Taxpayer's Brief for Tax Hearing and Affidavit, designated as Exhibit T-1.
- (22) Taxpayer's Reply Brief for Tax Hearing, designated as Exhibit T-2.

#### **FINDINGS OF FACTS**

The Board reviewed and considered the following findings of fact made by the Assistant Secretary in his decision regarding this matter:

- (1) Taxpayer is a company domiciled in South Carolina that produces workplace safety video tapes.
- (2) Taxpayer mails catalogs to customers located inside and outside of North Carolina.
- (3) Taxpayer sells and rents the workplace safety videotapes to customers located throughout the United States, including North Carolina, and ships the tapes by U.S. mail or common carrier.
- (4) Taxpayer's contacts with North Carolina are more than occasional and insignificant. Taxpayer entered into a total of 1,625 sales and rental transactions with customers in North Carolina during the audit period.
- (5) As a lessor, Taxpayer retains ultimate control over the tapes by virtue of its ownership of the tapes.
- (6) Taxpayer failed to file sales and use tax returns during the entire audit period.
- (7) Taxpayer failed to charge and collect the general State and any applicable county rates of tax on its sales and leases of workplace safety videos.
- (8) Notice of Sales and Use-Audit Tax Assessment was mailed on June 19, 1996.
- (9) Taxpayer objected to the assessment and made a timely request for hearing.

#### **CONCLUSIONS OF LAW**

The Board reviewed and considered the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

- (1) Taxpayer maintains tangible personal property for the purpose of lease or rental in North Carolina within the meaning of N.C.G.S. 105-164.3(7a).
- (2) Taxpayer makes retail sales in North Carolina within the meaning of N.C.G.S. 105-164.3(13) and (15).
- (3) Taxpayer is engaged in business in North Carolina within the meaning of N.C.G.S. 105-164.3(5) and is liable for collecting and remitting the general State and applicable county rates of tax on its receipts from the sale and rental of workplace safety videos to customers located in North Carolina.
- (4) Taxpayer is a retailer within the meaning of N.C.G.S. 105-164.3(14).
- (5) Notice of Sales and Use-Audit Tax Assessment dated June 19, 1996 was properly issued pursuant to N.C.G.S. 105-241.1 and is correct under the facts and the law.

#### **DECISION**

The scope of administrative review for petitions filed with the Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing, this statute provides in pertinent part: "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary." The Board has no authority or jurisdiction to rule on the constitutionality of a statute. Great Am. Ins. Co. v. Gold, 254 N.C. 168, 118 S.E.2d 792 (1961). Thus, the Board is not empowered to rule upon the constitutional argument presented by the Taxpayer in its petition.

The issue on administrative review to this Board is whether the Taxpayer is "engaged in business" in North Carolina by virtue of its activities here and is therefore responsible for collecting and remitting the state sales tax on its sales and rentals of video tapes to customers in this state. G.S. 105-164.3(5) defines "engaged in business" in part as maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental... The Board having conducted an administrative hearing, and having considered Taxpayer's petition, arguments of counsel and the record in this matter, determines that there is sufficient evidence to conclude that the Taxpayer is engaged in business in North Carolina as defined in N.C.G.S. 105-164.3(5) and that it is maintaining tangible personal property for the purpose of lease or rental in this state. Thus the Board concludes that the findings of fact contained in the Assistant Secretary's decision were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and the Assistant Secretary's final decision sustaining the proposed assessment of additional sales and use tax was fully supported by the conclusions of law.

WHEREFORE, the Board Orders that the Assistant Secretary's final decision sustaining the proposed assessment of additional sales and use tax, as modified in the decision, be confirmed in every respect.

Made and entered into the 28<sup>th</sup> day of November 2000.

TAX REVIEW BOARD

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Harlan E. Boyles, Chairman  
State Treasurer

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Jo Anne Sanford, Chair  
Utilities Commission

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Noel L. Allen

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of )  
 Unauthorized Substance Tax )  
 dated December 8, 1998 by )  
 the Secretary of Revenue of )  
 of North Carolina )  
 )  
 vs. )  
 )  
 Torrey James Hill )  
 Taxpayer )

**ADMINISTRATIVE DECISION**  
Number: 366

This matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina on November 8, 2000, upon Torrey James Hill's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on September 29, 1999, sustaining the assessment of unauthorized substance tax for the period of December 8, 1998.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

A. Jackson Warmack, Jr., attorney at law represented the Taxpayer at the hearing. George W. Boylan, Special Deputy Attorney General and David J. Adinolfi, Assistant Attorney General, represented the Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111 and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer. The assessment was based upon information contained in Form BD-4, "Report of Arrest and/or Seizure involving Nontaxpaid (Unstamped) Controlled Substances and Counterfeit Controlled Substances," which was prepared by the Williamston, North Carolina Police Department on December 1, 1998. Taxpayer appeals from the Final Decision of the Assistant Secretary of Revenue entered on September 29, 1999, which sustained the proposed assessment of unauthorized substance tax for the period of December 8, 1998. Taxpayer timely filed notice and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

**ISSUE**

The issues considered by the Board upon petition for review are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of an unauthorized substance?
2. Is the Taxpayer subject to the unauthorized substance tax assessment, plus applicable penalty and interest?

**EVIDENCE**

The following evidence was presented at the hearing before the Secretary and was part of the record submitted to the Board on review of this matter:

1. Letter to the Taxpayer's attorney, dated March 24, 1999, regarding the administrative hearing scheduled for April 8, 1999, designated as Exhibit CS-1.
2. Letter Taxpayer's attorney dated December 9, 1998, requesting a hearing designated as Exhibit CS-2.
3. Form BD-4, "Report of Arrest and/or Seizure involving Nontaxpaid (Unstamped) Controlled Substances and Counterfeit Controlled Substances," dated December 1, 1998, designated as Exhibit CS-3.
4. Form BD-10, Notice of Unauthorized Substance Tax Assessment, dated December 8, 1998, designated as Exhibit CS-4.
5. Williamston Police Department's arrest narrative dated November 30, 1998, designated Exhibit CS-5.
6. Memorandum from Muriel K. Offerman, Secretary of Revenue, dated April 18, 1996, delegating to Michael A. Hannah, Assistant Secretary for Legal and Administrative Services, the authority to hold any hearing required or allowed under Chapter 105 of the North Carolina General Statutes, designated as Exhibit CS-6.

7. Taxpayer's brief submitted by A. Jackson Warmack, Jr., dated July 30, 1999.

**FINDINGS OF FACT**

The Board considered the following findings of fact made by the Assistant Secretary in determining its decision:

1. Assessment of Unauthorized Substance Tax was made against the Taxpayer on December 8, 1998, in the sum of \$4,763.50 tax, \$476.35 penalty, and \$35.73 interest for a total proposed liability of \$5,275.58 based on the possession of 1360.8 grams of marijuana.
2. The Taxpayer made a timely objection and application for hearing.
3. On November 30, 1998, the Taxpayer was in possession of 1315.44 grams of marijuana. The marijuana was in the Taxpayer's vehicle, which he was driving. Statements by a codefendant further support a finding that the Taxpayer possessed the marijuana.
4. There were no tax stamps affixed to the marijuana as required by law.

**CONCLUSIONS OF LAW**

The Board considered the following conclusions of law made by the Assistant Secretary in the final decision:

1. The Taxpayer had unauthorized possession of 1315.44 grams of marijuana on November 30, 1998.
2. The Taxpayer was a dealer as that term is defined in G.S. 105-113.106(3).
3. "Beyond a reasonable doubt" is the incorrect standard of proof for a civil tax case.
4. The Taxpayer is liable for tax in the sum of \$4,606.00, penalty in the sum of \$460.60, and interest to date.

**DECISION**

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The Board having conducted a hearing in this matter and having considered the petition, the briefs, the record and the final decision of Assistant Secretary, concludes that the findings of fact contained in the Assistant Secretary's decision were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and the Assistant Secretary's decision was fully supported by the conclusions of law. Thus, there is a reasonable basis to conclude that the Taxpayer was in possession of an unauthorized substance. Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on to the Taxpayer to rebut that presumption. The Taxpayer failed to provide evidence to overcome the presumption and so the assessment is correct.

At the hearing before the Board, Taxpayer's attorney referenced the trial that occurred in February 2000 regarding the criminal charges pending against the Taxpayer. Although any evidence pertaining to this criminal trial would not be a part of the record transmitted to the Board, a subsequent criminal trial that results in a dismissal, assuming arguendo that such evidence would be properly before the Board, resolves only the criminal proceeding and not the civil tax action which is the subject of Taxpayer's petition.

**IT IS THEREFORE ORDERED**, by the Board that the Assistant Secretary's final decision, entered on September 29, 1999, sustaining the assessment of unauthorized substance tax for the period of December 8, 1998 be **confirmed** in every respect.

Made and entered into this 22nd day of December, 2000.

Signature \_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

Signature \_\_\_\_\_  
Jo Anne Sanford, Member  
Chair, Utilities Commission

Signature \_\_\_\_\_  
Noel L. Allen, Appointed Member



STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

WAKE COUNTY

**In the Matter of:**

The Proposed Assessment of Additional Sales )  
 and Use Tax for the period August 1, 1993 )  
 through April 30, 1996 by the Secretary )  
 of Revenue of North Carolina )  
 )  
 vs. )  
 )  
 Pascale & Associates Advertising Design, Inc. )  
 )

**ADMINISTRATIVE DECISION**

**Number: 367**

This matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, on September 28, 2000, upon a petition filed by Pascale & Associates Advertising Design, Inc. (hereinafter "Taxpayer") for administrative review of the Final Decision of the Secretary of Revenue entered on 20 December 1999 sustaining the proposed assessment of additional sales and use tax for the period of August 1, 1993 through April 30, 1996.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Noel L. Allen, attorney at law participating.

Attorney William M. Wilcox, IV appeared at the hearing on behalf of the Taxpayer. George W. Boylan, Special Deputy Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

The Taxpayer petitions the Board for administrative review of the adverse decision of the Secretary of Revenue sustaining a proposed assessment of sales and use tax, penalties and interest for the period August 1, 1993 through April 30, 1996. The assessment was based upon Taxpayer's alleged failure to remit tax upon the total sales price of various printed matter such as color separations, and other types of personal property, including radio and television audio and videotapes, produced and sold to clients. Taxpayer issued invoices for such sales, reflecting an itemization of costs, including charges for various "creative services." Taxpayer alleges that the Secretary erred by subjecting its creative labor to sales taxes because it contends that such labor is not part of the production of tangible personal property. Taxpayer argues that such services represent development of concept and design, and are fundamentally intangible in nature.

**ISSUES**

The issues considered by the Assistant Secretary in his final decision are stated as follows:

Are the Taxpayer's charges for creative services and other services made in connection with sale of tangible personal property part of the "sales price" of the property and, therefore, subject to sales or use tax?

Did Taxpayer act in the capacity of a retailer or an agent for transactions made under the terms of its Client/Agency Letter of Agreement with two clients?

Is the Taxpayer entitled to a credit for sales taxes paid to its vendors when no sales tax has been proposed to be assessed on the subsequent sale of the property and when the transactions are beyond the statute of limitations?

**EVIDENCE**

The following items were presented as evidence by the parties at the hearing before the Secretary and were part of the record submitted to the Board on review of this matter:

1. Memorandum dated April 18, 1996, from the Secretary of Revenue to the Assistant Secretary for Legal and Administrative Services.
2. Face sheet of audit report and auditor's comments dated November 20, 1996.
3. Notice of Tax Assessment dated December 13, 1996.

**IN ADDITION**

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4. Letter dated January 8, 1997, from Taxpayer to the Sales and Use Tax Division.
5. Letter dated February 3, 1997, from the Division to Taxpayer.
6. Memo from Taxpayer to Greensboro, North Carolina Field Audit Supervisor.
7. Copy of various invoices rendered by Taxpayer from 1993, 1994, and 1995.
8. Letter dated June 30, 1998, from the Division to Taxpayer.
9. Letter dated July 16, 1998, from Taxpayer's attorney to the Division.
10. Letter dated July 27, 1998, from the Division to Taxpayer's attorney.
11. Letter dated August 18, 1998, from Taxpayer's attorney to the Division.
12. Letter dated August 20, 1998, from Taxpayer's attorney to the Division.
13. Letter dated November 3, 1998, from the Division to Taxpayer's attorney.
14. Letter dated November 24, 1998, from Taxpayer's attorney to the Division.
15. Letter dated December 1, 1998, from the Division to Taxpayer's attorney.
16. Redacted Final Decision concerning "sales price" issue.
17. Letter dated April 27, 1999, from Taxpayer's attorney to the Division.
18. Letter dated May 27, 1999, from the Division to Taxpayer's attorney.
19. Schedule of invoices dated June 9, 1999, on which tax was paid in error.
20. Face sheet of amended audit report and auditor's comments dated March 24, 1999.
21. Memorandum from Taxpayer's representative to Taxpayer dated August 16, 1999, and submitted as Exhibit T-1 in the administrative hearing.
22. Letter dated August 17, 1999, from Assistant Secretary of Revenue to Taxpayer.
23. Memorandum from examining auditor to the Sales and Use Tax Division dated August 20, 1999.
24. Memorandum from Sales and Use Tax Division to Assistant Secretary of Revenue dated August 24, 1999.
25. Letter dated August 24, 1999, from Assistant Secretary to Taxpayer's attorney.
26. Memorandum from Sales and Use Tax Division to Assistant Secretary dated August 26, 1999.
27. Letter dated August 27, 1999, from Assistant Secretary to Taxpayer's attorney.
28. Memorandum from Sales and Use Tax Division to Assistant Secretary dated September 17, 1999.
29. Letter dated September 17, 1999, from Taxpayer's attorney to Assistant Secretary.

**FINDINGS OF FACT**

No specific findings of fact were listed in the Assistant Secretary's final decision. The findings of fact were incorporated into the section designated as DECISION.

**CONCLUSIONS OF LAW**

The Board reviewed the following conclusions of law made by the Assistant Secretary in his final decision regarding this matter:

- (1) Taxpayer at all material times operated as an advertising agency, providing advertising services, and as a retailer making sales of tangible personal property.
- (2) Taxpayer's charges for creative labor and other services made in connection with the sale of tangible personal property constitute part of the sales price of the property sold and Taxpayer is liable for sales tax on these charges.
- (3) Taxpayer did not fully comply with the provisions of Sales and Use Tax Administrative Rule T17:07B .0901(f) and did not establish that it made acquisitions of tangible personal property on behalf of two clients under the terms of its Client/Agency Letter of Agreement. Taxpayer acted in the capacity of a retailer and made sales of tangible personal property to these purchasers.
- (4) The Department has allowed Taxpayer the proper amount of credit for sales or use tax erroneously paid on its purchases of tangible personal property that it purchased for resale.
- (5) Additional conclusions of law are set forth in the Decision section and are hereby incorporated by reference as fully set out herein.
- (6) Notice of proposed assessment for the period August 1, 1993 through April 30, 1996, was properly issued pursuant to G. S. 105-241.1.

**DECISION**

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing, which includes a review of the petition, briefs, the record and final decision, this statute provides in pertinent part:

- (b2). "The Board shall confirm, modify, reverse, reduce or

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increase the assessment or decision of the Secretary."

The Board finds that the issue on administrative review to this Board is whether the Taxpayer's charges for creative services are part of the "sales price" of tangible property sold to its clients, and, therefore, subject to sales tax.

From a review of the record, it is not disputed that the Taxpayer is engaged in the business of advertising and design. In particular, Taxpayer produces, or arranges for the production of, a variety of items for its clients including printed advertising materials, color separations, computer disk masters and VHS video and audiotapes. The Taxpayer also performs creative services for its clients that do not involve the sale of personal tangible property. Taxpayer contends that since it is in the business of design services its charges for creative services are not part of the sales price subject to the sales tax. Taxpayer further contends that section 07B.0901(a) of the Administrative Code provides that receipts derived by advertising agencies when furnishing professional services are not subject to sales or use tax. With respect to the taxation of its services, the Taxpayer does not dispute that services in the connection with the actual fabrication or production of tangible personal property are taxable. However, Taxpayer contends that creative services are not part of the fabrication or production process because creative services rendered in connection with developing an advertising concept or design are intangible. Thus, the creative services rendered prior to the actual production of the printed advertisement are not subject to tax.

G.S. 105-164.3(16), defines "sales price" in part to include "the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible person property." In the final decision, the Assistant Secretary concluded that the "sales price" of the items sold upon which sales tax should have been computed includes the charges for Taxpayer's creative services.

At the hearing a question arose regarding Taxpayer's practice when arriving at the price to be paid by the customer for the product. In response to this question, Taxpayer stated that charges incurred in developing the product were recouped through a markup to the end product. If that is the case, the Board finds it necessary to determine whether the price charged for the actual products fabricated by the Taxpayer for its customers, which includes a markup, constitutes the fair market value of the product. Since the Secretary makes no finding regarding the fair market value of the product, this matter is remanded for further proceeding. The Secretary is instructed to determine whether the price of the product, which includes the markup, constitutes its fair market value.

WHEREFORE, it is the decision of the Board to **Remand** this matter back to the Secretary for further proceeding.

Made and entered into the 22nd day of December 2000.

TAX REVIEW BOARD

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Harlan E. Boyles, Chairman  
State Treasurer

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Jo Anne Sanford, Chair  
Utilities Commission

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Noel L. Allen

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

**CHAPTER 41 – CHILDREN'S SERVICES**

**SUBCHAPTER 41S – MINIMUM LICENSING STANDARDS FOR RESIDENTIAL CHILD CARE**

**SUBCHAPTER 41T - MINIMUM LICENSING STANDARDS FOR SPECIALIZED RESIDENTIAL CHILD CARE PROGRAMS**

The Social Services Commission would like to publish notice of the continuance of the public hearing for Rules 10 NCAC 41S and 41T. The initial Notice of Text was published December 15, 2000, NCR Volume 15, Issue 12, stating that the public hearing would be held at 10:00 a.m., January 17, 2001 in room 832 of the Albemarle Building. This public hearing was continued to 10:00 a.m., March 7, 2001.

*A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.*

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

**CHAPTER 14 – MENTAL HEALTH: GENERAL**

*Notice of Rule-making Proceedings is hereby given by the Commission on Mental Health, Developmental Disabilities and Substance Abuse Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

**Citation to Existing Rule Affected by this Rule-making:** 10 NCAC 14G, H, I, J, P, Q, R, S - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 7A, Article 44; 90-21.1; 90-21.5; 90-21.13; 90-101; 108A, Article 6; 122C-3; 122C-4; 122C-51 through 59; 122C-62; 122C-64 through 67; 122C-111; 122C-211; 122C-221; 122C-231; 122C-241; 122C-242; 122C-266; 122C-285; 130A-383; 130A-389; 130A-398 through 400; 130A-415; 143B-10; 143B-147; 143B-403.1; 143B-403.2; 168-8

**Statement of the Subject Matter:** *The Division of Mental Health, Developmental Disabilities and Substance Abuse Services intends to combine rules contained in the above subchapters. Currently, rules contained in Subchapters 10 NCAC 14G, H, I and J govern Human Rights in State-Operated Facilities, and rules contained in Subchapters P, Q, R and S govern Client Rights in Community programs. Based on recommendations from advocacy groups and a review of these Rules by the Division of MHDDSAS and Department staff, it was determined that rules governing client rights for both community and State-operated facilities should be consistent.*

**Reason for Proposed Action:** *Based on recommendations from advocacy groups, and the review by the Division and the Department, of rules which protect the health, safety and welfare of clients in State-operated facilities and in communities, it was determined that rules governing Client Rights should be consistent for both.*

**Comment Procedures:** *Written comments should be submitted to Charlotte F. Hall, Rule-making Coordinator, Division of MHDDSAS, 3012 Mail Service Center, Raleigh, NC 27699-3012.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**CHAPTER 03 – MARINE FISHERIES**

*Notice of Rule-making Proceedings is hereby given by the NC Marine Fisheries Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

**Citation to Existing Rule Affected by this Rule-making:** 15A NCAC 03 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 113-134; 113-182; 113-221; 143B-289.52

**Statement of the Subject Matter:** *Amend times for restricted weekend trawling, amend times for restricted night time trawling off Brunswick County, require attendance of Recreational Commercial Gear License gill nets with a mesh length equal to or greater than 5 ½ inches south of the Beaufort Inlet (including Newport River).*

**Reason for Proposed Action:** *The Marine Fisheries Commission (MFC) received a petition from GoFISHNC requesting that attendance of large mesh gill nets by RCGL holders be required statewide. The MFC decided to reduce the area to the southern portion of the State and solicit public comments on the proposal. The Crustacean Committee of the MFC requested that the MFC amend trawl restricted times to state specific times rather than using sunrise and sunset. The MFC is also considering relaxing the restrictions for night time shrimping in the Ocean off Brunswick County.*

**Comment Procedures:** *Written comments are encouraged and may be submitted to MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.*

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .0305. Notice of Rule-making Proceedings was published in the Register on December 15, 2000.

Proposed Effective Date: April 1, 2002

Public Hearing:

Date: March 22, 2001

Time: 4:30 p.m.

Location: New Bern Riverfront Convention Center, 406 Craven St., New Bern, NC

Reason for Proposed Action: The intent of the proposed amendment is to provide an alternative vegetation line to communities faced with a situation where, because of recent storms, the vegetation line determined prior to the onset of construction of a beach nourishment project is significantly landward of its likely long-term stable location.

Comment Procedures: Please contact Steve Benton, NC Div. of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687. Comments will be received through March 22, 2001.

Fiscal Impact

- State
Local
Substantive (>\$5,000,000)
None

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H – STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 – OCEAN HAZARD AREAS

15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

- (1) the growth of vegetation occurs; or

(2) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(b) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(c) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(d) General Identification. For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

(e) "Vegetation Line" means the first line of stable natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. It is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. In areas where there is no stable natural vegetation present, this line shall be established by connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line. In areas within the boundaries of a large scale beach nourishment or spoil deposition project, the vegetation line that existed before commencement of the project shall be used as the vegetation line for determining oceanfront setbacks after the project is completed. completed except for those circumstances described under Paragraph (f) of this Rule for projects constructed after September 1, 2000. A project shall be considered large scale when:

- (1) it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline; or
(2) it is a Hurricane Protection project constructed by the U.S. Army Corps of Engineers.

**PROPOSED RULES**

(f) If within two years prior to the initiation of construction of a large scale project as defined in (e)(1) or (e)(2) of this Rule, a large storm or series of storms cause the vegetation line to be relocated landward of its normal position relative to other natural features of the beach such as the typical high water or mid-tide line, the affected local government may request that the CRC establish a storm effect mitigated pre-project vegetation line contained within the boundaries of a large scale beach nourishment or spoil deposition project. Once the CRC grants the local government's request to establish a storm effect mitigated pre-project vegetation line, the following activities will be conducted:

- (1) A primary pre-project vegetation line shall be established as described in Paragraph (e) of this rule; and
- (2) A storm effect mitigated pre-project vegetation line shall be determined based on a beach profile template developed by DCM staff from analysis of historic aerial photographs, a ground reconnaissance survey of the site and adjacent areas, and where available, other historic data such as beach profiles and site specific studies. The template will be based on normal, non-storm related beach conditions and is intended to show the location of the vegetation line relative to the existing shoreline as if no storm had affected the location of the vegetation line. The template will be applied to the existing shoreline immediately prior to the commencement of project construction; and
- (3) Once Division of Coastal Management personnel have determined that natural vegetation is reestablished on the large scale project such that:
  - (A) the dune grasses appear the same in terms of species composition and stem density as adjacent non-project dune areas;
  - (B) the majority of stems are from continuous rhizomes rather than planted individual rooted sets; and
  - (C) the vegetation is established and stable at least as far seaward as the storm effect mitigated pre-project vegetation line, then the storm effect mitigated vegetation line may be used to replace the primary pre-project vegetation line for setback determinations and other appropriate regulatory actions.

(f)(g) "Erosion Escarpment" means normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(g)(h) Measurement line means the line from which the ocean front setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:

- (1) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and
- (2) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

**TITLE 19A – DEPARTMENT OF TRANSPORTATION**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Highways intends to amend the rule cited as 19A NCAC 02D .0602. Notice of Rule-making Proceedings was published in the Register on September 1, 2000.*

**Proposed Effective Date:** August 1, 2002

**Public Hearing:**

**Date:** March 20, 2001

**Time:** 2:00 p.m.

**Location:** Transportation Building Auditorium, 1 South Wilmington St., Raleigh, NC

**Reason for Proposed Action:** *HB 1854 ratified in the 2000 Session of the General Assembly created civil penalties for non-compliance with DOT overheight-overweight permit rules. This Rule was amended in a temporary action effective October 1, 2000 to complement the changes in HB 1854 and implement changes adopted by the Board of Transportation. This amended rule sets conditions and fees for oversize/overweight loads to be moved on North Carolina highways.*

**Comment Procedures:** *Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by April 18, 2001.*

**Fiscal Impact**

- State
- Local
- Substantive (≥\$5,000,000)
- None

**CHAPTER 02 – DIVISION OF HIGHWAYS**

**SUBCHAPTER 02D – HIGHWAY OPERATIONS**

**SECTION .0600 – OVERSIZE-OVERWEIGHT PERMITS**

**19A NCAC 02D .0602 PERMITS-ISSUANCE AND FEES**

(a) Permits may be issued for movements of loads which cannot be reasonably divided, dismantled or disassembled, or so loaded to meet legal requirements. ~~Permits are issued on authorized forms with appropriate designation for qualifying moves on the most direct route of travel to the destination after consideration of vertical clearances, work zones, and other factors to ensure safe movement. To be valid, a permit must be signed by the permittee and carried in the towing unit while permitted load is in transit.~~ A permit issued by the Department is not valid for travel over municipal streets ~~Defined defined~~ as streets or highways not maintained by the State of North Carolina). ~~Permitted vehicles shall not travel in convoy.~~

Single trip permits may include a return trip to origin if requested at the time of original issuance and the return trip can be made within

the validation of such permit. No single trip permit request shall be issued for a time period to exceed 30 days. Annual permits (blanket) are valid 12 months from the ~~effective date of the permit issuance. City Passenger Buses which exceed the weight limits in G.S. 20-118(f) may be issued permits for operation on the highways of the state in the vicinity of the municipality and to qualify the vehicle for license.~~

(b) The Department of Transportation shall collect a fee as specified in G.S. 20-119(b). Only cash, certified check, money ~~order or order~~, company ~~check check, or credit card~~ will be accepted. No personal checks will be accepted. The Department shall bill permittees with established credit accounts monthly for permits issued for the previous month.

*Authority G.S. 20-119; 136-18(5).*



**APPROVED RULES**

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of December 21, 2000 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

*These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.*

<b>APPROVED RULE CITATION</b>				<b>REGISTER CITATION TO THE NOTICE OF TEXT</b>
02	NCAC	52B	.0207*	15:01 NCR
02	NCAC	52B	.0208-.0209*	14:23 NCR
02	NCAC	52B	.0406	15:05 NCR
07	NCAC	04M	.0102*	15:08 NCR
07	NCAC	04M	.0104*	15:08 NCR
07	NCAC	04M	.0105-.0106	15:08 NCR
07	NCAC	04M	.0201-.0203	15:08 NCR
07	NCAC	04M	.0205	15:08 NCR
07	NCAC	04M	.0302	15:08 NCR
07	NCAC	04M	.0304	15:08 NCR
07	NCAC	04M	.0401	15:08 NCR
07	NCAC	04M	.0503	15:08 NCR
07	NCAC	04M	.0510-.0512	15:08 NCR
07	NCNA	04R	.0801-.0805	15:08 NCR
07	NCAC	04R	.0806*	15:08 NCR
07	NCAC	04R	.1501-.1503	15:08 NCR
07	NCAC	04S	.0102	15:08 NCR
07	NCAC	04S	.0105-.0110	15:08 NCR
10	NCAC	03R	.6254*	15:02 NCR
10	NCAC	03U	.1604	15:03 NCR
10	NCAC	20D	.0201	15:08 NCR
10	NCAC	20D	.0207*	15:08 NCR
10	NCAC	29C	.0102-.0103	15:07 NCR
10	NCAC	30	.0401*	15:07 NCR
10	NCAC	30	.0402	15:07 NCR
10	NCAC	46H	.0206*	15:02 NCR
10	NCAC	46H	.0301*	15:02 NCR
12	NCAC	10B	.0304	15:05 NCR
12	NCAC	10B	.0708	15:05 NCR
12	NCAC	10B	.0709-.0711*	15:05 NCR
12	NCAC	10B	.0712	15:05 NCR
12	NCAC	10B	.0713*	15:05 NCR
12	NCAC	10B	.0804-.0805	15:05 NCR
12	NCAC	10B	.0913-.0916*	15:05 NCR
12	NCAC	10B	.0917-.0918	15:05 NCR
12	NCAC	10B	.0919-.0920*	15:05 NCR
12	NCAC	10B	.1101-.1102*	15:05 NCR
12	NCAC	10B	.1103-.1104	15:05 NCR
12	NCAC	10B	.1302*	15:05 NCR
12	NCAC	10B	.1305-.1307*	15:05 NCR
12	NCAC	10B	.1308	15:05 NCR

**APPROVED RULES**

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12	NCAC	10B	.1403*	15:05 NCR
12	NCAC	10B	.1501	15:05 NCR
12	NCAC	10B	.1502*	15:05 NCR
12	NCAC	10B	.1503-.1505	15:05 NCR
12	NCAC	10B	.1602-.1603*	15:05 NCR
12	NCAC	10B	.1604-.1606	15:05 NCR
13	NCAC	15	.0105	15:08 NCR
13	NCAC	15	.0420	15:08 NCR
13	NCAC	15	.0501-.0502	15:08 NCR
13	NCAC	15	.0601-.0613	15:08 NCR
14A	NCAC	09H	.0308*	15:05 NCR
14A	NCAC	09H	.0316*	15:05 NCR
14A	NCAC	09H	.0318*	15:05 NCR
14A	NCAC	09H	.0321*	15:05 NCR
14A	NCAC	09H	.0323*	15:05 NCR
15A	NCAC	01C	.0402	15:08 NCR
15A	NCAC	02B	.0257*	14:03 NCR
15A	NCAC	02B	.0313	14:24 NCR
15A	NCAC	02D	.0535*	14:22 NCR
15A	NCAC	02Q	.0401*	15:03 NCR
15A	NCAC	04C	.0107	15:06 NCR
15A	NCAC	07H	.0209*	15:02 NCR
15A	NCAC	07H	.2501*	15:05 NCR
15A	NCAC	07H	.2502	15:05 NCR
15A	NCAC	07H	.2503*	15:05 NCR
15A	NCAC	07H	.2504-.2505	15:05 NCR
15A	NCAC	12K	.0106*	15:06 NCR
15A	NCAC	13A	.0107	15:07 NCR
15A	NCAC	13A	.0109	15:07 NCR
15A	NCAC	13A	.0113	15:07 NCR
15A	NCAC	13A	.0119	15:07 NCR
15A	NCAC	16A	.1301-.1303	15:06 NCR
15A	NCAC	16A	.1304*	15:06 NCR
15A	NCAC	16A	.1305-.1307	15:06 NCR
15A	NCAC	21D	.0202*	15:07 NCR
15A	NCAC	21D	.0701-.0702*	15:07 NCR
15A	NCAC	21D	.0703	15:07 NCR
15A	NCAC	21D	.0704-.0706*	15:07 NCR
15A	NCAC	21D	.0802*	15:07 NCR
15A	NCAC	21D	.0803	15:07 NCR
17	NCAC	06B	.0116	not required G.S. 150B-1(d)(4), Eff. Dec. 21, 2000
17	NCAC	06C	.0124	not required G.S. 150B-1(d)(4), Eff. Dec. 21, 2000
17	NCAC	06C	.0126	not required G.S. 150B-1(d)(4), Eff. Dec. 21, 2000
17	NCAC	06C	.0201	not required G.S. 150B-1(d)(4), Eff. Dec. 21, 2000
17	NCAC	06C	.0203-.0204	not required G.S. 150B-1(d)(4), Eff. Dec. 21, 2000
17	NCAC	07B	.4701	not required G.S. 150B-1(d)(4), Eff. Dec. 21, 2000
17	NCAC	07B	.5301	not required G.S. 150B-1(d)(4), Eff. Dec. 21, 2000
20	NCAC	08	.0101	15:08 NCR
20	NCAC	08	.0102-.0103*	15:08 NCR
20	NCAC	08	.0104-.0105	15:08 NCR
20	NCAC	08	.0108	15:08 NCR
20	NCAC	08	.0109*	15:08 NCR
20	NCAC	08	.0110*	14:16 NCR & 15:08 NCR
20	NCAC	08	.0111-.0112	14:16 NCR & 15:08 NCR
20	NCAC	08	.0203-.0204*	15:08 NCR

**APPROVED RULES**

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20	NCAC	08	.0205	15:08 NCR
20	NCAC	08	.0206*	15:08 NCR
20	NCAC	08	.0301*	15:08 NCR
20	NCAC	08	.0302	15:08 NCR
20	NCAC	08	.0401-.0402*	15:08 NCR
20	NCAC	08	.0403	15:08 NCR
20	NCAC	08	.0501*	15:08 NCR
20	NCAC	08	.0502-.0503	15:08 NCR
21	NCAC	04B	.0202*	14:23 NCR
21	NCAC	04B	.0203	14:23 NCR
21	NCAC	04B	.0302*	14:23 NCR
21	NCAC	04B	.0404*	14:23 NCR
21	NCAC	04B	.0801-.0802*	14:23 NCR
21	NCAC	04B	.0805*	14:23 NCR
21	NCAC	04B	.0809-.0810*	14:23 NCR
21	NCAC	04B	.0815*	14:23 NCR
21	NCAC	04B	.0817*	14:23 NCR
21	NCAC	04B	.0819*	14:23 NCR
21	NCAC	16Q	.0201*	15:04 NCR
21	NCAC	16Q	.0301*	15:04 NCR
21	NCAC	16X	.0101*	15:04 NCR
21	NCAC	30	.0101-.0102*	14:22 NCR
21	NCAC	30	.0201*	14:22 NCR
21	NCAC	30	.0202	14:22 NCR
21	NCAC	30	.0203 - .0204*	14:22 NCR
21	NCAC	30	.0301*	14:22 NCR
21	NCAC	30	.0302	14:22 NCR
21	NCAC	30	.0303*	14:22 NCR
21	NCAC	30	.0304	14:22 NCR
21	NCAC	30	.0306	14:22 NCR
21	NCAC	30	.0401-.0402*	14:22 NCR
21	NCAC	30	.0403-.0404	14:22 NCR
21	NCAC	30	.0501-.0506*	14:22 NCR
21	NCAC	30	.0601*	14:22 NCR
21	NCAC	30	.0603-.0604	14:22 NCR
21	NCAC	30	.0701-.0702*	14:22 NCR
21	NCAC	30	.0801-.0803	14:22 NCR
21	NCAC	30	.0901-.0902	14:22 NCR
21	NCAC	30	.0903*	14:22 NCR
21	NCAC	30	.0904	14:22 NCR
21	NCAC	30	.0905*	14:22 NCR
21	NCAC	32T	.0101*	15:05 NCR
21	NCAC	33	.0107*	15:08 NCR
21	NCAC	46	.1604*	15:04 NCR
21	NCAC	46	.3101*	15:05 NCR
21	NCAC	46	.3205-.3207*	15:04 NCR
21	NCAC	46	.3209-.3210*	15:04 NCR
21	NCAC	50	.1401-.1405*	15:06 NCR
21	NCAC	50	.1407-.1409*	15:06 NCR
21	NCAC	58A	.0104*	15:08 NCR
21	NCAC	58A	.0106	15:08 NCR
21	NCAC	58A	.0110	15:08 NCR
21	NCAC	58A	.1708*	15:08 NCR
21	NCAC	58C	.0207	15:08 NCR
21	NCAC	58E	.0505*	15:08 NCR

**APPROVED RULES**

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21	NCAC	63	.0504*	15:07 NCR
21	NCAC	63	.0506-.0507*	15:07 NCR
21	NCAC	68	.0101*	15:08 NCR
21	NCAC	68	.0206*	15:08 NCR
21	NCAC	68	.0220*	15:08 NCR
21	NCAC	68	.0221-.0222	15:08 NCR
21	NCAC	68	.0223-.0224*	15:08 NCR
21	NCAC	68	.0503-.0505*	15:08 NCR
21	NCAC	68	.0507-.0509*	15:08 NCR
21	NCAC	68	.0510	15:08 NCR
21	NCAC	68	.0511*	15:08 NCR
21	NCAC	68	.0615*	15:08 NCR
23	NCAC	02E	.0205*	15:05 NCR
25	NCAC	01C	.0801-.0806*	14:20 NCR
25	NCAC	01E	.0705*	15:05 NCR
25	NCAC	01E	.0706	15:05 NCR
25	NCAC	01E	.0707-.0708*	15:05 NCR
25	NCAC	01E	.1003	15:08 NCR
25	NCAC	01E	.1201-.1205	15:08 NCR
25	NCAC	01E	.1501-.1506	15:08 NCR
25	NCAC	01E	.1601-.1602*	15:08 NCR
25	NCAC	01E	.1603-.1604	15:08 NCR
25	NCAC	01I	.2302-.2303*	15:08 NCR
25	NCAC	01I	.2304	15:08 NCR
25	NCAC	01I	.2306-.2308	15:08 NCR
26	NCAC	03	.0101	15:08 NCR
26	NCAC	03	.0105	15:08 NCR
26	NCAC	03	.0107*	15:08 NCR
26	NCAC	03	.0120	15:08 NCR
26	NCAC	03	.0127*	15:08 NCR
26	NCAC	03	.0129	15:08 NCR
26	NCAC	03	.0202*	15:08 NCR
26	NCAC	03	.0203-.0204	15:08 NCR
26	NCAC	03	.0205*	15:08 NCR
26	NCAC	03	.0206-.0207*	15:08 NCR
26	NCAC	03	.0208	15:08 NCR

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**TITLE 2 - DEPARTMENT OF AGRICULTURE**

**02 NCAC 52B .0207 IMPORTATION REQUIREMENTS: SWINE**

(a) All swine imported into the state, except by special permit or for immediate slaughter, shall be accompanied by a health certificate issued by a state, federal, or accredited veterinarian stating that they are free from any signs of an infectious or communicable disease and are not known to have been exposed to same. The health certificate shall contain the ear tag or tattoo number of each animal. The health certificate must show the pseudorabies status of both the herd and state or area of origin. Swine imported for feeding or breeding purposes shall be moved in clean and disinfected trucks or other conveyances. "Accredited veterinarian" means a veterinarian accredited pursuant to Title 9, Part 161 of the Code of Federal Regulations.

(b) Breeding swine and all other swine being shipped to a breeding swine premise shall originate from a "Validated Brucellosis -Free"

herd or a "Validated Brucellosis -Free" State and shall originate from a "Qualified Pseudorabies -Negative" herd, Qualified-Negative Gene-Altered Vaccinated Herd (QNV) or Pseudorabies Stage IV or V (Free) State. Breeding swine and all other swine being shipped to a breeding swine premise originating from Stage II, II/III or III areas or states must also be isolated and test negative to a statistical 95/5 sample test using a pseudorabies serological test approved pursuant to Title 9, Part 85.1 of the Code of Federal Regulations between 30 and 60 days after arrival and before being added to the herd.

(c) All feeder swine imported into the state from a Pseudorabies Stage II, II/III, or III state or area shall be accompanied by a permit for entry issued by the State Veterinarian within 30 days prior to entry. The permit number and the date of issuance shall be shown on the health certificate. The feeder swine in the shipment must have been vaccinated for pseudorabies using a USDA-licensed pseudorabies vaccine with gI deletion and must have tested negative on a statistical (95/2) test within 30 days prior to shipment,

and they shall be isolated and quarantined until slaughtered. In addition, the swine must be tested on statistical (95/2) test between 30 and 45 days after arrival. The swine must originate from a Qualified Negative herd or a pseudorabies monitored herd that has tested negative on a statistical (95/10) test within 30 days prior to shipment. Feeder swine from a pseudorabies-free state or area may be imported in accordance with Paragraph (a) of this Rule.

(d) Healthy swine for feeding purposes may move directly from a farm of origin in a contiguous state on which they have been located for not less than 30 days to a livestock market or stockyard in North Carolina that has been state-federal approved for handling feeder swine, without the health certificate required herein, provided such swine are accompanied by proof of the pseudorabies status of the herd of origin. Such swine shall be inspected by a state or federal inspector or approved accredited veterinarian prior to sale at the market.

(e) Healthy swine may be shipped into the state for immediate slaughter without a health certificate provided they go directly to a slaughtering establishment under State or Federal inspection, or to a state-federal approved livestock market or stockyard for sale to a slaughtering establishment under State or Federal inspection for immediate slaughter only.

(f) Swine from a pseudorabies-quarantined herd or swine which have been in contact with pseudorabies-quarantined swine may be imported into the state for immediate slaughter only under the following conditions:

- (1) the swine must be accompanied by a shipping permit (Veterinary Services Form 1-27) issued by a veterinarian accredited pursuant to 9 CFR 161, or a state or federal animal health employee, consigning the swine only to a slaughtering establishment under state or federal inspection;
- (2) the vehicle transporting the swine must be sealed after loading with an official USDA or state of origin seal. The seal number must be recorded on the VS Form 1-27. The seal can be broken or removed only by an NCDA&CS or a USDA employee or other individual authorized by the State Veterinarian; and
- (3) the vehicle used to transport the swine must be cleaned and disinfected immediately after unloading the swine and prior to using the vehicle to transport other livestock.

(g) Sporting swine:

(1) For purposes of this Rule:

- (A) "Sporting swine" means any domestic or feral swine intended for hunting purposes and includes the progeny of these swine whether or not the progeny are intended for hunting purposes; and
- (B) "Feral swine" means any swine that have lived any part of its life free roaming.

(2) No person shall import sporting swine into North Carolina unless:

- (A) The swine have not been fed garbage within their lifetime; and the herd of origin is validated brucellosis free and qualified pseudorabies negative; and
- (B) The swine have not been members of a herd of swine known to be infected with brucellosis or pseudorabies within the previous 12 months; and

(C) The individual animals six months of age or over have a negative brucellosis and pseudorabies test within 30 days of movement; and

(D) The swine have not been a part of a feral swine population or been exposed to swine captured from a feral swine population within the previous 12 months; and

(E) The swine are accompanied by a health certificate or certificate of veterinary inspection identifying each animal by ear tag, breed, age, sex, the state of origin, and certifying that the swine meet the import requirements of North Carolina.

Note: Violation of this Rule is a Class 2 misdemeanor under G.S. 106-307.6.

*History Note: Authority G.S. 106-307.5; 106-316.1; 106-317; 106-318;  
Eff. April 1, 1984;  
Amended Eff. February 1, 1996; May 1, 1992; June 1, 1989;  
January 1, 1989;  
Temporary Amendment Eff. April 30, 1999;  
Temporary Amendment Eff. February 21, 2000;  
Temporary Amendment Eff. April 3, 2000;  
Amended Eff. March 1, 2001; July 1, 2000.*

**02 NCAC 52B .0208      IMPORTATION REQUIREMENTS:  
GOATS**

All goats entering the state except those consigned to a federal or state-inspected slaughtering establishment shall be accompanied by a health certificate from the state of origin. The health certificate shall state that the goats were clinically free of any infectious or communicable disease. The health certificate shall include a description of each animal, the age, sex, breed and color or marking shall be given. Goats over six months of age and sexually intact imported from out-of-state shall have a negative brucellosis test within 30 days prior to import, and all imports over six months of age must have a negative tuberculosis test within 60 days prior to import unless they originate from a certified and accredited herd or unless they are consigned to a slaughtering establishment under state or federal inspection.

*History Note: Authority G.S. 106-307.5; 106-396;  
Eff. April 1, 1984;  
Amended Eff. March 1, 2001.*

**02 NCAC 52B .0209      IMPORTATION REQUIREMENTS:  
SHEEP**

(a) The health certificate covering the importation of sheep shall include a report of inspection by a veterinarian approved by the chief livestock sanitary official of the state of origin indicating the sheep are not under quarantine and are free from signs of any infectious or communicable disease. The health certificate shall contain a statement that the flock of origin has not had scrapie diagnosed within the past 42 months.

(b) Sheep which have not been handled in stockyards, stock pens or on premises in public use for livestock may be imported without

dipping, from a state or area designated as scabies-free by the United States Department of Agriculture.

(c) Unless waived by the State Veterinarian, sheep for purposes other than immediate slaughter that have not been dipped in accordance with the regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture may not be imported into the state. The requirements for dipping will be waived when it can be determined that the sheep will be isolated from other animals at the North Carolina destination until dipped. While in transit they shall be accompanied by a certificate of such dipping.

(d) Sheep consigned for the purpose of immediate slaughter to a recognized stockyard, or to a slaughtering establishment with state or federal inspection may be imported without a health certificate. A waybill or certificate marked for immediate slaughter must accompany such shipments.

(e) Sheep over six months of age and sexually intact imported from out-of-state shall have a negative brucellosis test within 30 days prior to import, and all imports must have a negative tuberculosis test within 60 days prior to import unless they originate from a certified and accredited herd or unless they are consigned to a slaughtering establishment under state or federal inspection.

*History Note: Authority G.S. 106-307.5;  
Eff. April 1, 1984;  
Amended Eff. March 1, 2001; May 1, 1992; December 1, 1989.*

**TITLE 7 - DEPARTMENT OF CULTURAL RESOURCES**

**07 NCAC 04M .0102 ARCHIVES SEARCH ROOM HOURS**

(a) The North Carolina State Archives Search Room is open from 8:00 a.m. to 5:30 p.m. Tuesday through Friday, and from 9:00 a.m. to 5:00 p.m. on Saturday.

(b) The Search Room is closed on Sundays and Mondays and on all state holidays. If a holiday occurs on either a Friday or a Saturday, the Search Room will be closed both Friday and Saturday.

If a holiday is observed on Monday, the Search Room will be closed on the preceding Saturday. The Search Room will be closed for three days during the month of January for inventory.

*History Note: Authority G. S. 121-4(3); 121-5(d); 143B-62(2)a;  
Eff. February 1, 1985;  
Amended Eff. April 1, 2001; June 1, 1989; May 3, 1986.*

**07 NCAC 04M .0104 ADMISSION TO ARCHIVES STACKS**

(a) Permission for limited access to the archives stacks area may be obtained by researchers providing that an application is submitted stating the records to be consulted, the purpose of the access, and the reason why the research cannot be conducted from the Search Room. Permission shall be granted only if necessary for the researcher to accomplish his purposes.

(b) An application for limited access may be approved by the Administrator, Archives and Records Section, the Assistant State Archivist, or the supervisor of the Reference Unit.

(c) Permission for extended access to the archives stacks area may be obtained by researchers on the same basis for limited access, except that permission shall be obtained from the Administrator,

Archives and Records Section, or his designated representative only.

*History Note: Authority G. S. 121-4(3); 121-5(d); 143B-62(2)a;  
Eff. February 1, 1985;  
Amended Eff. April 1, 2001; June 1, 1989.*

**07 NCAC 04R .0806 ARCHAEOLOGICAL SITE FILES**

(a) Access to archaeological site files and other information relating to the location or nature of archaeological resources shall be granted to persons in the following categories:

(1) qualified archaeologists who are conducting scientific research or compiling information for use in preservation and planning studies. Qualified archaeologist means a person with:

(A) a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history or another related field with a specialization in archaeology;

(B) a minimum of one year's experience in conducting basic archaeological field research; and

(C) demonstrable competence in theoretical and methodological design and in collecting, handling, analyzing, evaluating, and reporting archaeological data.

(2) authorized representatives of federal, state, or local agencies or institutions which make planning decisions regarding archaeological resources.

(b) Persons having access to the archaeological site files must give written assurance that the confidentiality of the information shall be maintained.

(c) Persons desiring to review site files shall give at least 24 hours advance notice to the State Archaeologist.

*History Note: Authority G.S. 70-18; 121-8(b),(d),(e),(f); 132-1(a); 132-2; 132-9;  
Eff. February 1, 1985;  
Amended Eff. April 1, 2001; June 1, 1989.*

**TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**10 NCA 03R .6254 SERVICE AREAS AND PLANNING AREAS**

(a) An acute care bed's service area is the acute care bed planning area in which the bed is located. The acute care bed planning areas are the hospital service systems which are defined as follows:

(1) hospitals that are in the same city or within 10 miles of one another are in the same hospital service system;

(2) hospitals that are under common ownership and within the same county are in the same hospital service system; or

(3) a 10-mile radius around a hospital that is not included in one of the groups of hospitals described in Subparagraphs (1) or (2) of this Rule is a hospital service system.

(b) A rehabilitation bed's service area is the rehabilitation bed planning area in which the bed is located. The rehabilitation bed

planning areas are the health service areas which are defined in 10 NCAC 03R .6253(a).

(c) An ambulatory surgical facility's service area is the ambulatory surgical facility planning area in which the facility is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10 NCAC 03R .6253(e).

(d) A radiation oncology treatment center's and linear accelerator's service area is the radiation oncology treatment center and linear accelerator planning area in which the facility is located. The radiation oncology treatment center and linear accelerator planning areas are the multi-county groupings as defined in 10 NCAC 03R .6253(d).

(e) A magnetic resonance imaging scanner's service area is the magnetic resonance imaging planning area in which the scanner is located. The magnetic resonance imaging planning areas are the multi-county groupings as defined in 10 NCAC 03R .6253(f).

(f) A nursing care bed's service area is the nursing care bed planning area in which the bed is located. Each of the 100 counties in the State is a separate nursing care bed planning area.

(g) A home health agency office's service area is the home health agency office planning area in which the office is located. Each of the 100 counties in the State is a separate home health agency office planning area.

(h) A dialysis station's service area is the dialysis station planning area in which the dialysis station is located. Each of the 100 counties in the State is a separate dialysis station planning area.

(i) A hospice's service area is the hospice planning area in which the hospice is located. Each of the 100 counties in the State is a separate hospice planning area.

(j) A hospice inpatient facility bed's service area is the hospice inpatient facility bed planning area in which the bed is located. Each of the 100 counties in the State is a separate hospice inpatient facility bed planning area.

(k) A psychiatric bed's service area is the psychiatric bed planning area in which the bed is located. The psychiatric bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6253(c).

(l) With the exception of chemical dependency (substance abuse) detoxification-only beds, a chemical dependency treatment bed's service area is the chemical dependency treatment bed planning area in which the bed is located. The chemical dependency (substance abuse) treatment bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6253(c).

(m) A chemical dependency detoxification-only bed's service area is the chemical dependency detoxification-only bed planning area in which the bed is located. The chemical dependency (substance abuse) detoxification-only bed planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6253(b).

(n) An intermediate care bed for the mentally retarded's service area is the intermediate care bed for the mentally retarded planning area in which the bed is located. The intermediate care bed for the mentally retarded planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6253(b).

*History Note: Authority G.S. 131E-176(25); 131E-177(I); 131E-183(I);*

*Temporary Adoption Eff. January 1, 2000;*

*Eff. April 1, 2001.*

**10 NCAC 20D .0207 STANDARDS FOR POSTSECONDARY TRAINING FACILITIES**

(a) Except for the facilities indicated in Paragraph (b) of this Rule, the Division shall utilize only those in-State postsecondary training facilities that are licensed by, or have their program approved by, one of the following:

- (1) Board of Governors of the University of North Carolina (G.S.116-15);
- (2) Office of Proprietary Schools, N.C. Department of Community Colleges (Article 8 of G.S. 115D);
- (3) NC Board of Barber Examiners (G.S. 86A-22);
- (4) NC Division of Motor Vehicles (G.S. Chapter 20, Article 14 Commercial Driver Training Schools);
- (5) NC Board of Cosmetic Art Examiners (G.S. 88B-16);
- (6) NC Division of Facility Services – Nurse's Aide I Programs (G.S. 131E-104);
- (7) NC Board of Nursing – Nurse's Aide II Programs (G.S. 90-171.55);
- (8) NC Appraisal Board [G.S. 93E-1-10];
- (9) NC Real Estate Commission [G.S. 93A-4(d)];
- (10) NC Board of Massage and Body Work Therapy, [G.S. 90-631]; or
- (11) Other licensure boards for which a training facility or program has written verification that the licensure board is the appropriate licensing body and from which the facility or program holds a current license.

(b) The Division may utilize the postsecondary training facilities or programs exempt from licensure under G.S. 115D-88(1) through (4c) or facilities or programs for which there is no licensing body in the State. However, these facilities or programs shall submit documentation of their approval by an accreditation body. The Division may cease to utilize these facilities or programs when the Division determines that a facility or program fails to meet the individualized rehabilitation needs of vocational rehabilitation clients.

(c) The Division shall use only those out-of-State postsecondary facilities and programs that meet the standards of the public vocational rehabilitation program in that State.

*History Note: Authority G.S. 143-545.1; 143-546.1; 34 C.F.R. 361.51;*

*Eff. April 1, 2001.*

**10 NCAC 30 .0401 ELECTRONIC BENEFIT TRANSFER (EBT) CARD REPLACEMENT FEE**

(a) Food Stamp households shall receive the first EBT card at no cost.

(b) Food Stamp households that request a replacement EBT card shall be assessed a two dollars fifty cent (\$2.50) fee.

(c) The fee shall be deducted from the account of the Food Stamp household.

(d) The fee shall be refunded if the EBT card:

- (1) was lost in the mail or damaged by the vendor prior to receipt by the Food Stamp household; or
- (2) is being replaced due to a name change on card; or

- (3) was lost due to a natural disaster such as a fire, flood, tornado or hurricane; or
- (4) was damaged by a retailer or vendor.

*History Note: Authority G.S. 108A-25; 143B-153; 7 U.S.C. 2016 (i)(8); 7 C.F.R. 274.12 (f)(5)(v); Temporary Adoption Eff. August 1, 2000; Eff. April 1, 2001.*

**10 NCAC 46H .0206 WITHOUT REGARD TO INCOME**

Child care services shall be provided without regard to income for:

- (1) children described in 10 NCAC 46H .0106(b) who need child care services as a support for Child Welfare Services;
- (2) children receiving foster care services who are in the custody of the county department of social services and are residing in licensed foster care homes or in the care of adults other than their parents; and
- (3) children described in 10 NCAC 46H .0106(a) who need child care in conjunction with protective services.

*History Note: Authority G.S. 143B-153(2a); Eff. July 1, 1983; Amended Eff. April 1, 2001; February 1, 1996; February 1, 1986.*

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**TITLE 12 - DEPARTMENT OF JUSTICE**

**12 NCAC 10B .0709 RESPONSIBILITIES: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE**

(a) In planning, developing, coordinating, and delivering each commission accredited Telecommunicator Certification Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the rules in this Chapter;
- (2) Select and schedule instructors who are properly certified by the Commission;
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities;
- (4) Review each instructor's lesson plans and other instructional materials for conformance to the rules in this Chapter and to minimize repetition and duplication of subject matter;
- (5) Permanently maintain records of all Telecommunicator Certification Courses sponsored or delivered by the school, reflecting:
  - (A) Course title;
  - (B) Delivery hours of course;
  - (C) Course delivery dates;
  - (D) Names and addresses of instructors utilized within designated subject-matter areas;
  - (E) A roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful

including individual test scores indicating each trainee's proficiency in each topic area and methods or instruments;

- (F) Copies of all rules, regulations and guidelines developed by the school director;
  - (G) Documentation of any changes in the initial course outline, including substitution of instructors; and
  - (H) Documentation of make-up work achieved by each individual trainee, including test scores and methods or instruments, if applicable.
- (6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas as required in the "Telecommunicator Certification Course Management Guide";
  - (7) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
    - (A) Effective course delivery;
    - (B) Instruction on the responsibilities and obligations of agencies or departments employing course trainees; and
    - (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A-T. A copy of such rules shall also be given to each trainee and to the sheriff or agency head of each trainee's employing agency at the time the trainee enrolls in the course;

- (8) If appropriate, recommend housing and dining facilities for trainees;
- (9) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A-T) along with the following attachments:
  - (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;
  - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for certification of instructors. The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission rules; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval will be withheld until all matters are in compliance with the Commissions' rules.
- (10) Administer the course delivery in accordance with the rules in this Chapter and ensure that the training offered is as effective as possible;



- (11) Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall recommend approval or denial of requests for Telecommunicator Instructor Certification or Professional Lecturer Certification;
- (12) Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. Instructor evaluations shall be prepared on commission-approved forms in accordance with the rules in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request;
- (13) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall, at a minimum, hold certification in the same instructional topic area as that being taught;
- (14) Administer or designate a person to administer appropriate tests as determined necessary at various intervals during course delivery;
- (15) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated;
- (16) During a delivery of the Telecommunicator Certification Course, make available to authorized representatives of the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work; and
- (17) Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the school director shall submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B-T).

(b) In addition to the requirements in 12 NCAC 10B .0708(a), the school director shall be readily available to students and Division staff at all times during course delivery by telephone, pager, or other means. The means, and applicable numbers, shall be filed with the accredited training delivery site and the Division prior to the beginning of a scheduled course delivery.

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001.*

**12 NCAC 10B .0710 CERTIFICATION: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE**

(a) Any person designated to act and who performs the duties of a school director in the delivery or presentation of a commission-accredited telecommunicator training course as of the

effective date of this rule shall remain certified by the Commission as a school director, so long as they maintain compliance with 12 NCAC 10B .0711 and .0712.

(b) To qualify for certification as school director of the Telecommunicator Certification Course, the applicant shall:

- (1) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs and for whom the applicant will be the designated school director;
- (2) Be currently certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission;
- (3) Have attended the most current offering of the school director's orientation as developed and presented by the Commission staff; and
- (4) Attend the most current offering of the school director's conference as presented by the Commission staff and staff of the North Carolina Criminal Justice Education and Training Standards Commission and Standards Division.

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001.*

**12 NCAC 10B .0711 TERMS AND CONDITIONS OF TELECOMMUNICATOR SCHOOL DIRECTOR CERTIFICATION**

(a) The term of certification as a school director is two years from the date the Commission issues the certification unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of Rule .0710(b) of this Section.

(b) To retain certification as a school director, the school director shall:

- (1) Adequately perform the duties and responsibilities of a school director as specifically required in Rule .0709; and
- (2) Maintain an updated copy of the "Telecommunicator Certification Training Manual" assigned to each accredited school.

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001.*

**12 NCAC 10B .0713 ADMISSION OF TRAINEES**

(a) The school may not admit any individual younger than 21 years of age as a trainee in any non-academic Commission-accredited basic training course without the prior written approval of the Director of the Standards Division for those individuals who will turn 21 years of age during the course, but prior to the ending date.

(b) The school shall give priority admission in Commission-accredited basic training courses to individuals holding full-time employment with criminal justice agencies.

(c) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Detention Officer Certification Course. The

specific type of test instrument shall be determined by the school director and shall be administered no later than by the end of the first two weeks of a presentation of the Detention Officer Certification Course. The grade level results on each trainee shall be submitted to the Commission on each trainee's Report of Student Course Completion (Form F-7d).

(d) The school shall not admit any individual as a trainee in a presentation of the Detention Officer Certification Course or the Telecommunicator Certification Course unless as a prerequisite the individual has provided to the certified school director a Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) in compliance with 12 NCAC 10B .0304, properly completed by a physician licensed to practice medicine in North Carolina. The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) required by the North Carolina Criminal Justice Education and Training Standards Commission shall be recognized by the Commission for the purpose of complying with this Rule.

*History Note: Authority G.S. 17E-7;  
Eff. April 1, 2001.*

**12 NCAC 10B .0913 CERT: INSTRUCTORS FOR TELECOMMUNICATOR CERTIFICATION COURSE**

(a) Any person participating in a commission-accredited Telecommunicator Certification Course as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor. A waiver may be granted by the Director upon receipt of a written application to teach in a designated school.

(b) As of the effective date of this Rule, the Commission shall certify Telecommunicator Certification Course instructors under the following categories:

- (1) Telecommunicator Instructor Certification; or
- (2) Professional Lecturer Certification.

(c) Individuals who have previously instructed in a commission-accredited Telecommunicator Certification Course as it existed prior to the effective date of this Rule are eligible to apply for a waiver of 12 NCAC 10B .0913(b), provided documentation is submitted showing the applicant taught a minimum of eight hours in the Telecommunicator Certification Course within the one-year period prior to the date of application.

(d) In addition to all other requirements of this Section, all instructors certified by the Commission to teach in a Commission-accredited Telecommunicator Certification Course shall remain knowledgeable and attend and complete any instructor training updates related to curriculum content and delivery as may be offered by the curriculum developer and within the time period as specified by the curriculum developer.

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001.*

**12 NCAC 10B .0914 TELECOMMUNICATOR INSTRUCTOR CERTIFICATION**

(a) An applicant for Telecommunicator Instructor Certification shall present documentary evidence demonstrating that the applicant:

- (1) has attended and successfully completed the North Carolina Sheriffs' Education and Training Standards Commission-approved Telecommunicator Training Course, or holds a valid general or grandfather certification as a telecommunicator; and
- (2) holds General Instructor certification issued by the North Carolina Criminal Justice Education and Standards Commission.

(b) Persons holding Telecommunicator Instructor Certification may teach any topical areas of instruction in the Commission-mandated course.

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001.*

**12 NCAC 10B .0915 TERMS AND CONDITIONS OF TELECOMMUNICATOR INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for certification as a Telecommunicator Instructor shall, for the first 12 months of certification, be in a probationary status. The Telecommunicator Instructor Certification probationary status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor shall be awarded full Telecommunicator Instructor Certification at the end of the probationary period if the instructor, through application, submits to the Division:

- (1) Either:
  - (A) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during his/her probationary year; or
  - (B) a favorable written evaluation by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-accredited Telecommunicator Certification Course. Such evaluation shall be certified on a commission-approved Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during his/her probationary year; and
- (2) documentation that certification required in 12 NCAC 10B .0914(a)(2) remains valid.

(c) Telecommunicator Instructor Certification is continuous so long as the instructor submits to the Division every two years:

- (1) Either:
  - (A) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during the previous two year period. The date full Instructor Certification is

originally issued is the anniversary date from which each two year period is figured; or

- (B) a favorable written evaluation by a commission member or staff member based on a minimum eight hours, on-site classroom observation of the instructor in a commission-accredited Telecommunicator Certification Course; and

- (2) a renewal application to include documentation that certification required in 12 NCAC 10B .0914(a)(2) remains valid.

(d) If an instructor does not teach a minimum of eight hours during each two year period following the awarding of his full Telecommunicator Instructor Certification, his/her certification automatically expires, and the instructor must then apply for probationary instructor certification status and must meet all applicable requirements.

*History Note: Authority G.S. 17E-4; Eff. April 1, 2001.*

**12 NCAC 10B .0916 PROFESSIONAL LECTURER CERTIFICATION: TELECOMMUNICATOR CERTIFICATION COURSE**

(a) The Commission may issue Professional Lecturer Certification to a licensed attorney-at-law or a person with a law degree to teach "Civil Liability for the Telecommunicator" in the Telecommunicator Certification Course.

(b) To be eligible for such certification an applicant shall present documentary evidence demonstrating that the applicant has:

- (1) graduated from an accredited law school; and
- (2) obtained the endorsement of a commission recognized school director who shall:
  - (A) recommend the applicant for certification as a professional lecturer; and
  - (B) describe the applicant's expected participation, topical areas, duties and responsibilities.

*History Note: Authority G.S. 17E-4; Eff. April 1, 2001.*

**12 NCAC 10B .0919 SUSPENSION: REVOCATION: DENIAL OF TELECOMMUNICATOR INSTRUCTOR CERTIFICATION**

(a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; or

- (5) revoking the individual's certification.
- (c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise by failing to attend and successfully complete any instructor training updates pursuant to 12 NCAC 10B .0913(d); or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
- (4) has failed to follow specific guidelines outlined in the "Telecommunicator Certification Course Management Guide" which shall be used and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation.

*History Note: Authority G.S. 17E-4; Eff. April 1, 2001.*

**12 NCAC 10B .0920 PERIOD/SUSPENSION: REVOCATION: OR DENIAL OF TELECOMMUNICATOR INSTRUCTOR CERTIFICATION**

The period of suspension, revocation or denial of the certification of an instructor pursuant to 12 NCAC 10B .0919 shall be:

- (1) no more than one year where the cause of sanction is:
  - (a) failure to deliver training in a manner consistent with the instructor lesson plans; or
  - (b) failure to follow specific guidelines outlined in the "Telecommunicator Certification Course Management Guide" which shall be used and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (c) unprofessional personal conduct or demonstration of instructional incompetence in the delivery of the Telecommunicator Certification Course.
- (2) no more than five years where the sanction is knowingly and willfully obtaining or attempting to obtain instructor certification by deceit, fraud, or misrepresentation.
- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (a) failure to meet and maintain any of the requirements for qualification; or
- (b) failure to remain currently knowledgeable in the person's areas of expertise.

*History Note: Authority 17E-4; Eff. April 1, 2001.*

**12 NCAC 10B .1101 PURPOSE**

In order to recognize Sheriffs=, deputy sheriffs=, detention officers=, and telecommunicators' loyal and competent service to a particular sheriff's office in North Carolina, and also to the State of North Carolina, the Commission establishes the Sheriffs' and Justice Officers= Service Award Program. This program is a method by which dedicated officers may receive local, state-wide and nation-wide recognition for their loyal and competent law enforcement service.

*History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. February 1, 1998; January 1, 1992; Temporary Amendment Eff. March 1, 1998; Amended Eff. April 1, 2001; August 1, 1998.*

**12 NCAC 10B .1102 GENERAL PROVISIONS**

(a) In order to be eligible for one or more of the service awards, a Deputy Sheriff, Detention Officer, Telecommunicator, or Sheriff shall first meet the following preliminary qualifications:

- (1) Be an elected or appointed sheriff or be a deputy sheriff, detention officer, or telecommunicator that holds a valid general or grandfather certification. An officer serving under a probationary certification is not eligible for consideration. Any justice officer subject to suspension or revocation proceedings by the Commission or the North Carolina Criminal Justice Education and Training Standards Commission shall not be eligible for a service award for the pendency of the proceedings;
- (2) Be familiar with and subscribe to the Law Enforcement Code of Ethics as promulgated by the International Association of Chiefs of Police and/or Telecommunicator Code of Ethics as published by APCO and NENA to include any subsequent editions or modifications thereto. A copy of either Code of Ethics may be obtained at no cost from the Sheriffs= Standards Division, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629; and
- (3) Also, employees of a North Carolina Sheriff's Office who have previously held certification, but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the service award program. Eligibility for this exception requires continuous employment with a sheriff's office from the date of promotion or transfer from a certified position to the date of application for a service award as certified in writing by the Sheriff.

(b) Only experience as a full-time justice officer gained while holding certification through the Commission or while certified as a law enforcement officer through the North Carolina Criminal Justice

Education and Training Standards Commission or experience as an elected or appointed Sheriff shall be acceptable for consideration.

*History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. February 1, 1998; January 1, 1990; Temporary Amendment Eff. March 1, 1998; Amended Eff. April 1, 2001; August 1, 1998.*

**12 NCAC 10B .1302 TELECOMMUNICATOR CERTIFICATION COURSE**

(a) The Commission hereby accredits as its telecommunicator certification training program, the 47-hour Telecommunicator Certification Course developed by the North Carolina Justice Academy.

(b) Each Telecommunicator Certification Course shall include the following identified topic areas and approximate minimum instructional hours for each area:

- |  |                 |
|--|-----------------|
| (1) Orientation  | 2 hours         |
| (2) Introductory Topics for the Telecommunicator           | 2 hours         |
| (3) Interpersonal Communication                            | 4 hours         |
| (4) Civil Liability for the Telecommunicator               | 4 hours         |
| (5) Telecommunications Systems and Equipment               | 2 hours         |
| (6) Overview of Emergency Services                         | 9 hours         |
| (7) Communications Resources                               | 2 hours         |
| (8) Call Reception, Prioritization, and Resource Allocatio | 6 hours         |
| (9) Broadcasting Techniques, Rules, and Procedures         | 6 hours         |
| (10) Telecommunicator Training Practicum                   | 8 hours         |
| (11) State Comprehensive Examination                       | 2 hours         |
| <b>TOTAL HOURS</b>   | <b>47 hours</b> |

(c) Consistent with the curriculum development policy of the Commission as published in the "Telecommunicator Certification Course Management Guide", the Commission shall designate the developer of the Telecommunicator Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Telecommunicator Certification Courses. Individuals who complete such a pilot Telecommunicator Certification Course offering shall be deemed to have complied with and satisfied the minimum training requirement.

(d) The "Telecommunicator Certification Training Manual" as published by the North Carolina Justice Academy shall be used and shall automatically include any later amendments and editions of the incorporated matter to apply as the basic curriculum for the Telecommunicator Certification Course. Copies of this manual may be obtained by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099.

(e) The "Telecommunicator Certification Course Management Guide" as published by the North Carolina Justice Academy shall be used and shall automatically include any later amendments, editions of the incorporated matter to be used by certified school directors in planning, implementing and delivering basic telecommunicator training. The standards and requirements established by the "Telecommunicator Certification Course

Management Guide" must be adhered to by the certified school director. Each certified school director shall be issued a copy of the guide at the time of certification at no cost to the accredited school.

(f) Institutions may offer to deliver the Telecommunicator Certification Course after the Commission has approved the institution's pre-delivery report documenting who will be teaching the blocks of instruction for each course offering.

*History Note: Authority G.S. 17E-4(a);  
Temporary Adoption Eff. March 1, 1998;  
Eff. August 1, 1998.  
Amended Eff. April 1, 2001.*

**12 NCAC 10B .1305 TRAINEE ATTENDANCE**

(a) Each trainee enrolled in an accredited "Telecommunicator Certification Course" shall attend all class sessions. The sheriff or agency head shall be responsible for the trainee's regular attendance at all sessions of the telecommunicator training course.

(b) The school director may recognize valid reasons for class absences and may excuse a trainee from attendance at specific class sessions. However, in no case may excused absences exceed ten percent of the total class hours for the course offering.

(c) If the school director grants an excused absence from a class session, he shall schedule appropriate make-up work and ensure the satisfactory completion of such work during the current course presentation or in a subsequent course delivery as is permissible under 12 NCAC 10B .1306.

(d) A trainee shall not be eligible for administration of the State Comprehensive Examination nor certification for successful course completion if the cumulative total of class absences, with accepted make-up work, exceeds 10 percent of the total class hours of the accredited course offering and shall be expediently terminated from further course participation by the school director at the time of such occurrence.

(e) The school director may terminate a trainee from course participation or may deny certification of successful course completion where the trainee is habitually tardy to, or regularly departs early from, class meetings or field exercises.

(f) Where a trainee is enrolled in a program as required in this Section, attendance shall be 100 percent in order to receive a successful course completion.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. April 1, 2001.*

**12 NCAC 10B .1306 COMPLETION OF TELECOMMUNICATOR CERTIFICATION COURSE**

(a) Each delivery of a commission-approved "Telecommunicator Certification Course" is considered to be a unit as set forth in this Section. Each trainee shall attend and satisfactorily complete a full course during a scheduled delivery. The school director may develop supplemental rules as set forth in 12 NCAC 10B .0709(a)(7), but may not add substantive courses, or change or expand the substance of the courses set forth in 12 NCAC 10B .1301. This Rule does not prevent the instruction on local agency rules or standards but such instruction shall not be considered or endorsed by the Commission for purposes of certification. The Director may issue prior written authorization for a specified trainee's limited enrollment

in a subsequent delivery of the same course where the school director provides evidence that:

- (1) the trainee attended and satisfactorily completed specified class hours and topics of the "Telecommunicator Certification Course" but through extended absence occasioned by illness, accident, or emergency was absent for more than 10 percent of the total class hours of the course offering; or
- (2) the trainee was granted excused absences by the school director that did not exceed 10 percent of the total class hours for the course offering and the school director could not schedule appropriate make-up work during the current course offering as specified in 12 NCAC 10B .1305(c) due to valid reasons; or
- (3) the trainee participated in an offering of the "Telecommunicator Certification Course" but had an identified deficiency in essential knowledge or skill in either one or two, but no more than two, of the specified topic areas incorporated in the course content as prescribed under 12 NCAC 10B .1302(b).

(b) An authorization of limited enrollment in a subsequent course delivery may not be used by the Director unless in addition to the evidence required by Paragraph (a) of this Rule:

- (1) the trainee submits a written request to the Director, justifying the limited enrollment and certifying that the trainee's participation shall be accomplished pursuant to Paragraph (c) of this Rule; and
- (2) the school director of the previous school offering submits to the director a certification of the particular topics and class hours attended and satisfactorily completed by the trainee during the original enrollment.

(c) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the "Telecommunicator Certification Course" commencing within 120 calendar days from the last date of trainee participation in prior course delivery, but only if the trainee's enrollment with active course participation can be accomplished within the period of the trainee's probationary certification:

- (1) the trainee need only attend and satisfactorily complete those portions of the course which were missed or identified by the school director as areas of trainee deficiency in the proper course participation;
- (2) following proper enrollment in the subsequent course offering, scheduled class attendance and active participation with satisfactory achievement in the course, the trainee would be eligible for administration of the State Comprehensive Examination by the Commission and possible certification of successful course completion; and
- (3) a trainee shall be enrolled as a limited enrollee in only one subsequent course offering within the 120 calendar days from the last date of trainee participation in prior course delivery. A trainee who fails to complete those limited portions of the course after one retest shall enroll in an entire delivery of the Telecommunicator Certification Course.

(d) A trainee who is deficient in three or more subject-matter or topical areas at the conclusion of the course delivery shall complete a subsequent program in its entirety.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. April 1, 2001.*

**12 NCAC 10B .1307      COMPREHENSIVE WRITTEN  
EXAM - TELECOMMUNICATOR CERTIFICATION  
COURSE**

(a) At the conclusion of a school's offering of the "Telecommunicator Certification Course", an authorized representative of the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the course work. A trainee cannot be administered the comprehensive written examination until such time as all course work is successfully completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas as described in 12 NCAC 10B .1302(b).

(c) The Commission's representative shall submit to the school director within 10 days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 70 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of a commission-approved training course and has demonstrated satisfactory competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on the Commission's comprehensive written examination may request the Director to authorize a re-examination of the trainee.

- (1) A trainee's Request for Re-examination shall be made in writing on the Commission's form within 30 days after the original examination and shall be received by the Division before the expiration of the trainee's probationary certification as a detention officer.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the trainee's "Telecommunicator Certification Course".
- (3) A trainee shall have only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety within 90 days after the original examination.
- (4) A trainee will be assigned in writing by the Division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score of 70 on the examination, the trainee may not be recommended for certification and must enroll and complete a subsequent course in its entirety before further examination may be permitted.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. April 1, 2001.*

**12 NCAC 10B .1403      BASIC RESERVE DEPUTY**

**SHERIFF PROFESSIONAL CERTIFICATE**

In addition to the qualifications set forth in Rule .1402, an applicant for the Basic Reserve Deputy Sheriff Certificate shall have no less than one year of reserve service and have either:

- (1) successfully completed a commission-accredited basic law enforcement training course and any remedial training as required by the Commission for general certification; or
- (2) completed a minimum of 160 hours of training in the field of law enforcement.

*History Note: Authority G.S. 17E;  
Eff. August 1, 2000;  
Amended Eff. April 1, 2001.*

**12 NCAC 10B .1502      GENERAL PROVISIONS**

(a) In order to qualify for one or more of the service awards, a Reserve Justice Officer shall first meet the following preliminary qualifications:

- (1) be an appointed reserve deputy sheriff, detention officer, or telecommunicator who holds a valid general or grandfather certification. A reserve officer serving under a probationary certification is not eligible for consideration; and
- (2) be familiar with and subscribe to the Law Enforcement Code of Ethics as promulgated by the International Association of Chiefs of Police or Telecommunicator Code of Ethics as published by APCO and NENA to include any subsequent editions or modifications thereto. A copy of either Code of Ethics may be obtained at no cost from the Sheriffs = Standards Division, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629.

(b) Service Awards are based on a formula which calculates reserve service by actual participation as a reserve deputy sheriff, detention officer, or telecommunicator in law enforcement, detention, or telecommunications functions respectively.

- (1) A minimum of 96 hours achieved over a one-year period of participation in law enforcement, detention or telecommunications functions by having been called into reserve duty by the appointing sheriff, shall equal one year of reserve service.
- (2) Service as a reserve deputy sheriff, detention officer, or telecommunicator shall be acceptable for consideration or, an officer who is otherwise ineligible to receive an equivalent service award through the Sheriffs = and Justice Officers = Service Award Program as set out in 12 NCAC 10B Section .1100 may receive a service award under this program, in which one year of full-time service may be substituted for one year of reserve service, provided that the officer in question is currently employed by a sheriff=s office in North Carolina in the capacity of a reserve officer.

(c) Only experience as a justice officer gained while holding certification through the Commission or while certified as a law enforcement officer through the North Carolina Criminal Justice Education and Training Standards Commission or experience as an elected or appointed Sheriff shall be acceptable for consideration.

*History Note: Authority G.S. 17-E;  
Eff. April 1, 2001.*

**12 NCAC 10B .1602 GENERAL PROVISIONS**

(a) In order to be eligible for one or more of the telecommunicator professional awards, a telecommunicator shall first meet the following preliminary qualifications:

- (1) be a full-time telecommunicator who holds valid general or grandfather certification under the North Carolina Sheriffs= Education and Training Standards Commission. A telecommunicator serving under a probationary certification is not eligible for consideration;
- (2) be familiar with and subscribe to the Telecommunicator Code of Ethics as published by APCO and NENA to include any subsequent editions or modifications thereto. A copy of the Code of Ethics may be obtained at no cost from the Sheriffs= Standards Division, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629; and
- (3) employees of a North Carolina Sheriff's Office or other agency who have previously held general or grandfather telecommunicator certification under the North Carolina Sheriffs= Education and Training Standards Commission but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the Professional Certificate Program. Eligibility for this exception requires continuous employment with the sheriff's office or agency from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(b) Only training and experience gained in a telecommunicator's area of expertise will be eligible for application to this program.

(c) Certificates shall be awarded based upon a formula which combines formal education, training, and actual experience as a telecommunicator. Points are computed in the following manner:

- (1) Each semester hour of college credit shall equal one point and each quarter hour shall equal two thirds of a point;
- (2) 20 classroom hours of commission-approved training shall equal one point;
- (3) Only experience as a full-time telecommunicator certified through the Commission shall be acceptable for consideration; and
- (4) Applicants holding degrees shall not be awarded additional points for those degrees and must instead meet the training point requirements of this Section through completion of training in the field of telecommunications.

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001.*

**12 NCAC 10B .1603 BASIC TELECOMMUNICATOR CERTIFICATE**

In addition to the qualifications set forth in Rule .1602, an applicant for the Basic Telecommunicator Certificate shall have no less than one year of service; and, either:

- (1) successfully completed the commission-accredited Telecommunicator Certification Course and any remedial training as required by the Commission; or

- (2) completed a minimum of 40 hours of training in the field of telecommunications.

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001.*

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**TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

**14A NCAC 09H .0308 DEFINITIONS**

The following definitions shall apply to the words and phrases found in this Chapter.

- (1) Applicant. A person or corporation owning a wrecker service and applying for inclusion on the Patrol Rotation Wrecker List.
- (2) Wrecker Service. A person or corporation engaged in the business of, or offering the services of, and owning a wrecker service or towing service whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle manufactured and designed for the primary purpose of removing and towing disabled motor vehicles.
- (3) Car Carrier or "Rollback". A vehicle transport designed to tow or carry vehicles damage-free. The truck chassis shall have a minimum gross vehicle weight rating (GVWR) of 14,500 pounds. Two lift cylinders, minimum two and one-half inch bore; Individual power winch pulling capacity of not less than 8,000 pounds; 50 feet of 5/16 inch cable on winch drum; and four tie down hook safety chains. The carrier bed shall be a minimum of 16 feet in length and a minimum of 84 inches in width inside side rails. A cab protector, constructed of aluminum or steel, must extend a minimum of 10 inches above the height of the bed. A "rollback" is not considered a small or large wrecker.
- (4) Computerized Rotation Wrecker List. The names of those Wrecker Services that have been approved by the District First Sergeant to be included on the Patrol Rotation Log and entered in the Computer Assisted Dispatch (CAD) System. There shall be separate rotation wrecker lists for large and small wreckers for each Rotation Wrecker Zone.
- (5) Large Wrecker. A truck chassis having a minimum gross vehicle weight (GVWR) of 26,001 pounds and a boom assembly having a minimum lifting capacity of 40,000 pounds as rated by the manufacturer; tandem axles or cab to axle length of no less than 102 inches; 150 feet or more of 5/8 inch or larger cable on each drum; airbrake so constructed as to lock wheels automatically upon failure; and additional safety equipment as specified by these Rules. Any wrecker service which was on the list as of June 9, 2000 be allowed to remain on the large list until the vehicle is replaced or until January 1, 2003, which ever occurs first.
- (6) Manual Rotation Wrecker List. A list of names of those wreckers that have been approved by the District First Sergeant to be included on the Patrol Rotation Wrecker List and entered into a Manual list that is to be used only when the CAD System is down. There shall be separate

manual lists for large and small wreckers for each Rotation Wrecker Zone. These lists shall be maintained by the Troop Communications Center.

- (7) Minor Violations. Violations of these regulations which do not require removal for a definitive time, may be readily corrected, and do not involve a criminal act or pose a threat to the safety and well being of the public.
- (8) Major Violations. All violations of the regulations not determined to be minor.
- (9) Rotation Wrecker List. A list of wrecker services that have met the rules of the Patrol and whose vehicles are properly registered with the Division of Motor Vehicles.
- (10) Removal. Being taken off the Patrol Rotation Wrecker List for a determinate or indeterminate period of time.
- (11) Storage Facility. A sufficiently lighted off street storage facility secured by a minimum 6 foot high chain link fence, or a fence of similar strength, or other barrier sufficient to deter trespassing or vandalism; and where all entrances and exits are secure from public access. Storage facilities located on the property of another business must be separated by a minimum six-foot chain link fence, or a fence of similar strength, or other barrier sufficient to deter trespassing or vandalism; have separate entrances and exits; and be utilized solely for the business. The lot shall be of sufficient size to accommodate all vehicles towed by the wrecker service for the Patrol. Storage facilities shared by two or more wrecker services may not be used to satisfy the facility requirement in Section :0321(a)(2).
- (12) Small Wrecker means a truck chassis having a minimum gross vehicle weight (GVWR) rating of 10,000 pounds and a maximum GVWR of 26,000 pounds; a boom assembly having a minimum lifting power of 8,000 pounds as rated by the manufacturer; an 8,000 pound rated winch with at least 100 feet of 3/8 inch cable; a belt-type tow plate or tow sling assembly; a wheel-lift with a retracted lifting capacity of no less than 3,500 pounds; dual rear wheels; and additional safety equipment as specified by the rules.
- (13) Rotation Wrecker Zone means a geographic area which may encompass all or part of a District of a Troop.
- (14) Member means all uniformed personnel who are charged with enforcement duties, including troopers and officers, noncommissioned and commissioned.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000; Eff. April 1, 2001.*

**14A NCAC 09H .0316 VEHICLE INVENTORY**

- (a) A member who authorizes the transportation and storage of a vehicle in the absence of Form HP-305 signed by the owner, operator, or legal possessor shall take precautions to protect all property in and on the vehicle.
- (b) An HP-305 signed by the owner, operator, or legal possessor is documentation that the vehicle was not removed from the possession of such person; therefore, the completion of a vehicle inventory is not required.
- (c) The storage and security of the vehicle and its contents become the responsibility of the towing company when the vehicle is towed

from the scene and stored at the wrecker service storage facility. If the vehicle is to be seized for subsequent forfeiture or stored at a Patrol facility, the arresting member may conduct an inventory, itemizing all property contained in the vehicle and the estimated value.

- (d) All vehicles which are inventoried under the above guidelines shall be inventoried at the time of storage unless an emergency situation dictates otherwise.
  - (1) The inventory must be thorough and complete, listing all items that are toxic, explosive, flammable, or of monetary value.
  - (2) Unless locked or security wrapped, all containers in the vehicle, whether open or closed, shall be opened to determine contents unless evidence is discovered to indicate that opening the container may subject the member to exposure of toxic, flammable, or explosive substances. Locked or securely wrapped luggage, packages, and containers shall not be opened except as otherwise authorized by law or by owner consent, but shall be indicated on the inventory list as locked or securely wrapped items.
    - (A) Any evidence found in plain view is admissible. Locked or securely wrapped containers (luggage, attache cases, etc.) are considered as units of inventory and cannot be searched without obtaining consent or a search warrant unless there is evident danger to the member or public.
    - (B) The member may consider obtaining a search warrant when there is probable cause for a thorough search of the vehicle or its contents when time and conditions permit.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000; Eff. April 1, 2001.*

**14A NCAC 09H .0318 FINANCIAL INTEREST**

No member of the Patrol or any of its civilian employees shall hold any financial interest or any form of ownership interest in any wrecker service. No member may be employed by a wrecker service, nor shall any member be assigned to a county where any relative of the member has any financial interest in or is employed by a wrecker service. For the purpose of this Rule a "relative" includes, spouse, father, mother, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included in the term "relative" are the step-, half-, and in-law relationship.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000; Eff. April 1, 2001.*

**14A NCAC 09H .0321 ROTATION WRECKER SERVICE REGULATIONS**

- (a) In order to assure that the needs of the Patrol are met, the Troop Commander shall include on the Patrol Rotation Wrecker List only those wrecker services which agree in writing to adhere to the following conditions:



- (1) Upon application for inclusion to the Patrol Rotation Wrecker List the owner of the wrecker service must complete a wrecker application form.
- (2) In order to be listed on a rotation wrecker list within a zone, a wrecker service must have a full-time office within that Rotation Wrecker Zone that is manned and open for business at least eight hours per day, five days per week, and a storage facility. Storage facilities may not be shared and vehicles towed at the request of the Patrol must be placed in the approved storage facility. A storage facility for a small wrecker shall be located within the assigned zone. For wrecker services with large wreckers the storage facility for vehicles towed with the large wrecker may be located anywhere within the county. To be listed on the large rotation wrecker list, a wrecker service must have in operation at least one large wrecker. To be listed on the small rotation wrecker list, a wrecker service must have in operation at least one small wrecker.
- (3) Each wrecker must be equipped with legally required lighting and other safety equipment to protect the public and such equipment must be in good working order.
- (4) Each wrecker on the Patrol Rotation Wrecker List must be equipped with the equipment required on the application list and such equipment must, at all times, be operating properly.
- (5) The wrecker service operator must remove all debris, other than hazardous materials, from the highway and the right-of-way prior to leaving the incident/collision scene.
- (6) The wrecker service must be available to the Patrol for rotation service on a 24 hour per day basis and accept collect calls (if applicable) from the Patrol. Calls for service must not go unanswered for any reason; failure to respond to calls for service may result in removal from the rotation wrecker list.
- (7) Consistently respond, under normal conditions, in a timely manner. Failure to respond in a timely manner may result in a second rotation wrecker being requested. If the second wrecker is requested before the arrival of the first rotation wrecker, the initial requested wrecker will forfeit the call and will immediately leave the collision/incident scene.
- (8) For Patrol-involved incidents, respond only upon request from proper Patrol authority or at the request of the person in apparent control of the vehicle to be towed.
- (9) Impose reasonable charges for work performed and present one bill to the owner or operator of any towed vehicle. Towing, storage and related fees charged may not be greater than fees charged for the same service for non-rotation calls. Wrecker services may secure assistance from another rotation wrecker service when necessary, but only one bill is to be presented to the owner or operator of the vehicle for the work performed. A price list for recovery, towing and storage shall be established and kept on file at the place of business. A price list is to be furnished, in writing, to the District First Sergeant and made available to customers upon request. The wrecker service shall notify the District First Sergeant in writing prior to any price change.
- (10) Ensure that all wrecker operators have a valid drivers license for the type of vehicles driven; a limited driving privilege shall not be allowed.
- (11) Wrecker owners/operators/employees shall not be abusive, disrespectful, or use profane language when dealing with the public or any member of the Patrol. They shall cooperate at all times with members of the Patrol.
- (12) Adhere to all Federal and State laws and local ordinances and regulations related to registration and operation of wrecker service vehicles and have insurance as required by G.S. 20-309(a).
- (13) Employ only wrecker operators who demonstrate an ability and desire to perform required services in a safe, timely, efficient and courteous manner.
- (14) The wrecker service must immediately notify the District First Sergeant of any insurance lapse or change.
- (15) Notify the Patrol without delay whenever the wrecker service is unable to respond to calls.
- (16) Notification of rotation wrecker calls will be made to the owner/operator or employee of the wrecker service. Notification will not be made to any answering service, pager or answering machine.
- (17) Mark each wrecker service vehicle on each side with the name in at least three inch letters, and the city and state. No magnetic or stick-on signs shall be used. Decals are permissible. The wrecker service operator shall provide a business card to the investigating officer or person in apparent control of the vehicle before leaving the scene.
- (18) Each wrecker service vehicle must be registered with the Division of Motor Vehicles in the name of the wrecker service and insured by the wrecker service.
- (19) Secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed.
- (20) Upon application to the Patrol Rotation Wrecker List, the owner shall ensure that the owner and each wrecker driver has not been convicted of, pled guilty to, or received a prayer for judgment continued (PJC):
  - (A) Within the last five years of:
    - (i) A first offense under G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-138.2B;
    - (ii) Any misdemeanor involving an assault, an affray, disorderly conduct, being drunk and disruptive, larceny or fraud;
    - (iii) Misdemeanor Speeding to Elude Arrest; and
    - (iv) A violation of G.S. 14-223, Resist, Obstruct, Delay.
  - (B) Within the last ten years of:
    - (i) Two or more offenses in violation of G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-138.2B;
    - (ii) Felony speeding to elude arrest; and
    - (iii) Any Class F, G, H or I felony involving sexual assault, an assault, affray, disorderly conduct, being drunk and disruptive, fraud, larceny, misappropriation of property or embezzlement.
  - (C) At any time of:
    - (i) Class A, B1, B2, C, D, or E felonies;

- (ii) Any violation of G.S. 14-34.2, Assault with deadly weapon on a government officer or employee, 14-34.5, Assault with firearm on a law enforcement officer; or G.S. 14-34.7, Assault on law enforcement officer inflicting injury; and
  - (iii) Any violation of G.S. 20-138.5, Habitual DWI. For convictions occurring in federal court, another state or country or for North Carolina convictions for felonies which were not assigned a class at the time of conviction, the North Carolina offense which is substantially similar to the federal or out of state conviction or the class of felony which is substantially similar to the North Carolina felony shall be used to determine whether the owner or driver is eligible. Any question concerning a criminal record should be discussed with the First Sergeant or his designee.
- (21) Immediately upon employment or upon the request of the District First Sergeant, the owner of the wrecker service agrees to supply the Patrol with the full name, current address, date of birth, social security number, and driver's license number and state of issuance for the owner and wrecker driver(s). This obligation is a continuing obligation. If the owner or a driver is convicted of, enters a plea of guilty or no contest to, or receives a prayer for judgment continued (PJC) for any of the above crimes after a wrecker service is placed on the rotation, it is the responsibility of the wrecker service to inform the Patrol immediately.
  - (22) Upon request or demand, the rotation wrecker shall return personal property stored in or with a vehicle, whether or not the towing, repair, and/or storage fee on the vehicle has been or will be paid.
  - (23) Tow disabled vehicles to any destination requested by the vehicle owner or other person with apparent authority, after financial obligations have been finalized.
  - (24) Being called by the Patrol, to tow a vehicle, does not create a contract with or obligation on the part of Patrol personnel to pay any fee or towing charge except when towing a vehicle owned by the Patrol, a vehicle that is later forfeited to the Patrol, or if a court determines that the Patrol wrongfully authorized the tow and orders the Patrol to pay transportation and storage fees.
  - (25) Being placed on the Patrol Rotation Wrecker List does not guarantee a particular number or quantity of calls, does not guarantee an equivalent number of calls to every wrecker service on the rotation wrecker list, and agree that they will not receive compensation when not called in accordance with the list or when removed from the rotation wrecker list.
  - (26) The failure to respond to a call by the Patrol will result in being placed at the bottom of any rotation wrecker list. A wrecker service must respond to at least 75 percent of the Patrol rotation wrecker calls within the previous 12-month period.
  - (27) Rotation wreckers and facilities are subject to inspection by the District First Sergeant or his designee at any time.
  - (28) A rotation wrecker service, upon accepting a call for service from the Patrol, must use their wrecker. Wrecker companies cannot refer a call to another wrecker company or substitute for each other.
  - (29) If a rotation wrecker service moves its business location or has a change of address, the owner of the wrecker service must notify the District First Sergeant of the new address or location. Notification shall be made by mail no later than ten days prior to the projected move.
  - (30) A wrecker service may not send a car carrier "rollback" in response to a Patrol rotation in any case where the wrecker service is notified that a "rollback" should not be dispatched.
  - (31) A rotation wrecker driver or employee shall not respond to a Patrol related incident with the odor of alcohol on his/her breath or while under the influence of alcohol, drugs or any impairing substance.
  - (32) Have in effect a valid hook or cargo insurance policy issued by a company authorized to do business in the State of North Carolina in the amount of fifty thousand dollars (\$50,000) for each small wrecker and one hundred fifty thousand dollars (\$150,000) for each large wrecker. In addition, each wrecker service shall have a garage keep insurance policy from an insurance company authorized to do business in the State of North Carolina covering towed vehicles in the amount of one hundred thousand dollars (\$100,000).
    - (b) The District First Sergeant shall conduct an investigation of each wrecker service desiring to be placed on the Patrol Rotation Wrecker List and determine if the wrecker service meets the requirements set forth herein. If the District First Sergeant determines that a wrecker service fails to satisfy one or more of the requirements set forth herein, the First Sergeant shall notify the wrecker service owner of the reason(s) for refusing to place it on the rotation wrecker list. Once placed on the rotation wrecker list, a wrecker service that fails to comply with the requirements of these rules shall be removed from the rotation wrecker list.
    - (c) The Troop Commander shall ensure that a wrecker service will only be included once on each rotation wrecker list. Exceptions to this requirement may be made for specialized or large capacity wreckers when none are available for a County or zone.
    - (d) If the Troop Commander chooses to use a contract, zone, or other system administered by a local agency, the local agency rules govern the system.
    - (e) If a wrecker service responds to a call it shall be placed at the bottom of the rotation wrecker list unless the wrecker service is not used or receives no compensation for the call. In that event, it will be placed back at the top of the rotation list.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000; Eff. April 1, 2001.*

**14A NCAC 09H .0323 SANCTIONS FOR VIOLATIONS**

- (a) If a District First Sergeant determines that a violation of these rules has occurred, the First Sergeant may:
  - (1) Issue a written warning and request for compliance;

- (2) Remove the wrecker service from the rotation wrecker list until proper corrective measures have been taken to bring the wrecker service into compliance with these rules and verification of such compliance has been demonstrated; or
- (3) If the violation is major, or in the case of repeat violations, in consultation with the Troop Commander, remove the wrecker service from the rotation wrecker list for a specific period of time not to exceed one year.
- (b) The severity of the sanction imposed shall be commensurate with the nature of the violation and prior record of the wrecker service.
- (c) If a wrecker service owner commits, is convicted of, pleads guilty to or receives a prayer for judgment continued for any of the offenses specified in 14A NCAC 9H .0321(20), the wrecker service shall be removed from the rotation wrecker list for the designated period of time as set out in that section.
- (d) A wrecker service shall not employ or continue to employ, as a driver, any person who commits, is convicted of, pleads guilty to or receives a prayer for judgment continued for any of the offenses specified in 14A NCAC 9H .0321(20). This prohibition is for the designated period of time as set out in that section. A wrecker service that willfully violates this provision shall be removed from the rotation wrecker list.
- (e) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her breath shall immediately be removed from the rotation wrecker list for one year. If the owner was not the driver and had no knowledge that the driver had been drinking, the wrecker service shall not be removed if the driver is prohibited from responding to Patrol calls for one year. This period of removal is in addition to any removal that may result from any violation of 14A NCAC 9H .0321(20).
- (f) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her breath, and who refuses to submit to any requested chemical analysis, shall immediately be removed from the rotation wrecker list for a period of five years. If the owner was not the driver and had no knowledge that the driver had been drinking, the wrecker service shall not be removed if the driver is prohibited from responding to Patrol calls for one year. This period of removal is in addition to any removal that may result from any violation of 14A NCAC 9H .0321(20).
- (g) A willful misrepresentation of any material fact shall be considered to be a major violation of these rules and may result in removal from the rotation wrecker list.
- (h) For any violation of these rules for which no specific period of removal or disqualification is established, a wrecker service shall be removed, at a minimum, until the violation is corrected.
- (i) A wrecker service that is removed from the rotation wrecker list does not become eligible for reinstatement merely because ownership has been transferred to a family member.
- (j) A wrecker service which is removed from the rotation list must demonstrate compliance with all rules in order to be reinstated.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000; Eff. April 1, 2001.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**15A NCAC 02B .0257 TAR-PAMLICO RIVER BASIN – NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT**

- (a) **PURPOSE.** The purposes of this Rule are as follows, and are to be achieved within five years from the effective date of this Rule.
  - (1) To contribute to a 30 percent reduction in nitrogen loading to the Pamlico estuary from nutrient application (both inorganic fertilizer and organic nutrients) in the Tar-Pamlico basin, based on 1991 levels.
  - (2) To contribute to a capping of phosphorus loading to the estuary at 1991 levels from nutrient application (both inorganic fertilizer and organic nutrients) in the basin.
- (b) **DEFINITIONS.** The following definitions shall apply to terms used in this Rule.
  - (1) **Applicator** means a person who applies fertilizer to the land or the immediate supervisor of such person.
  - (2) **Consultant** means a person who is hired to provide professional advice to another person.
- (c) **APPLICABILITY.** This Rule shall apply as follows.
  - (1) This Rule shall apply to the following persons:
    - (A) Persons who own or manage cropland areas in the Tar-Pamlico River Basin for commercial purposes who have not developed a nutrient management plan for their property pursuant to 15A NCAC 02B .0256.
    - (B) Persons who own or manage commercial ornamental and floriculture areas and greenhouse production areas in the Tar-Pamlico River Basin.
    - (C) Persons who own or manage golf courses, grassed public recreational lands, grassed road or utility rights-of-way, or other turfgrass areas in the Tar-Pamlico River Basin.
    - (D) Persons who own or manage lawn and garden areas in residential, commercial, or industrial developments in the Tar-Pamlico River Basin except for residential landowners who apply fertilizer to their own property.
  - (2) This Rule, particularly Subparagraphs (d)(1) and (d)(2) of this Rule, shall apply to applicators hired by the persons listed in Subparagraph (c)(1) of this Rule to apply fertilizer to lands in the Tar-Pamlico River Basin.
  - (3) This Rule, particularly Subparagraph (d)(1) of this Rule, shall apply to applicators hired by residential landowners in the Tar-Pamlico basin.
  - (4) This Rule, particularly Subparagraph (d)(1) of this Rule, shall apply to nutrient management consultants hired by persons listed in this Paragraph to provide nutrient management advice for lands in the Tar-Pamlico River Basin.
- (d) **REQUIREMENTS.** Subject persons shall meet the following requirements:
  - (1) Persons responsible for applying nutrients to their own land or land that they manage in the Tar-Pamlico basin, applicators hired by residential landowners in the Tar-Pamlico basin, and consultants who prepare nutrient

management plans for persons who own or manage land in the Tar-Pamlico basin shall either:

- (A) Attend and complete nutrient management training pursuant to Paragraph (e) of this Rule; or
- (B) Complete a nutrient management plan for all lands to which they apply or manage the application of nutrients, or for which they provide nutrient management advice, pursuant to Paragraph (f) of this Rule.

(2) Persons who hire an applicator to apply nutrients to the land that they own or manage shall either:

- (A) Ensure that the applicator they hire has attended and completed nutrient management training pursuant to Paragraph (e) of this Rule; or
- (B) Ensure that the applicator they hire has completed a nutrient management plan for the land that they own or manage pursuant to Paragraph (f) of this Rule; or
- (C) Complete a nutrient management plan for the land that they own or manage pursuant to Paragraph (f) of this Rule and ensure that the applicator they hire follows this plan.

(e) NUTRIENT MANAGEMENT TRAINING. Persons who choose to meet this Rule's requirements by completing nutrient management training shall meet the following requirements.

- (1) Persons subject to this Rule as of its effective date shall sign up with the Cooperative Extension Service or the Division within one year of the effective date to take the nutrient management training. Such persons shall obtain a certificate from Extension or the Division within five years from the effective date of this Rule verifying completion of training that addresses, at minimum, proper management of nitrogen and phosphorus.
- (2) Persons who become subject to this Rule after its effective date shall obtain a certificate from Extension or the Division within one year from the date that they become subject verifying completion of training that addresses, at minimum, proper management of nitrogen and phosphorus.
- (3) Persons who fail to sign up or to obtain the nutrient management certificate within the required timeframes or who are found by the Director to have knowingly failed to follow nutrient management requirements as referenced in Subparagraphs (f)(1)(A) – (f)(1)(C) of this Rule shall be required to develop and properly implement nutrient management plans pursuant to Paragraph (f) of this Rule.
- (4) Training certificates must be kept on-site or be produced within 24 hours of a request by the Division.

(f) NUTRIENT MANAGEMENT PLANS. Persons who choose to meet this Rule's requirements by completing a nutrient management plan shall meet the following requirements.

- (1) Persons who are subject to this Rule as of its effective date and persons who become subject to this Rule after its effective date shall develop a nutrient management plan that meets the following standards within five years of the effective date or within 6 months from the date that they become subject, whichever is later.

(A) Nutrient management plans for cropland shall meet the standards and specifications adopted by the NC Soil and Water Conservation Commission, including those found in 15A NCAC 06E .0104 and 15A NCAC 06F .0104, which are incorporated herein by reference, including any subsequent amendments and additions to such rules that are in place at the time that plans are approved by a technical specialist as required under Subparagraph (f)(2) of this Rule.

(B) Nutrient management plans for turfgrass shall follow the North Carolina Cooperative Extension Service guidelines in "Water Quality and Professional Lawn Care" (NCCES publication number WQMM-155), "Water Quality and Home Lawn Care" (NCCES publication number WQMM-151), or guidelines distributed by land-grant universities. Copies may be obtained from the Division of Water Quality, 512 North Salisbury Street, Raleigh, North Carolina 27626 at no cost.

(C) Nutrient management plans for nursery crops and greenhouse production shall follow the Southern Nurserymen's Association guidelines promulgated in "Best Management Practices Guide For Producing Container-Grown Plants" or guidelines distributed by land-grant universities. Copies may be obtained from the Southern Nurserymen's Association, 1000 Johnson Ferry Road, Suite E-130, Marietta, GA 30068-2100 at a cost of thirty-five dollars (\$35.00). The materials related to nutrient management plans for turfgrass, nursery crops and greenhouse production are hereby incorporated by reference including any subsequent amendments and editions and are available for inspection at the Department of Environment and Natural Resources Library, 512 North Salisbury Street, Raleigh, North Carolina.

(2) The person who writes the nutrient management plan shall have the plan approved in writing by a technical specialist. Appropriate technical specialists shall be as follows.

(A) Nutrient management plans for cropland using either inorganic fertilizer or organic nutrients shall be approved by a technical specialist designated pursuant to the process and criteria specified in Rules adopted by the Soil and Water Conservation Commission for nutrient management planning, including 15A NCAC 06F .0105, excepting Subparagraph (a)(2) of that Rule.

(B) Nutrient management plans for turfgrass and nursery crops and greenhouse production shall be approved by a technical specialist designated by the Soil and Water Conservation Commission pursuant to the process and criteria specified in 15A NCAC 06F .0105, excepting Subparagraph (a)(2) of that Rule. If the Soil and Water Conservation Commission does not designate such specialists, then the Environmental Management Commission shall do so using the same process and criteria.

- (3) Nutrient management plans and supporting documents must be kept on-site or be produced within 24 hours of a request by the Division.
- (4) The Division shall develop model nutrient management plans in consultation with the Cooperative Extension Service. The model plans shall address both nitrogen and phosphorus, and shall address the source of nutrients, the amount of nutrient applied, the placement of nutrients, and the timing of nutrient applications.

(g) **COMPLIANCE.** Persons who fail to comply with this Rule are subject to enforcement measures authorized in G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

(h) **BASINWIDE EDUCATION.** The Division shall be responsible for developing and implementing an education program that informs homeowners in the basin on proper residential nutrient management. The program shall be designed to reach as much of the residential population of the basin as practical on an ongoing basis. At a minimum, it shall emphasize fundamental nutrient management principles as well as measures for reducing stormwater runoff from residential properties. The Division shall begin implementation of the program within three years of the effective date of this Rule.

*History Note: Authority G. S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); Eff. April 1, 2001.*

**15A NCAC 02D .0535 EXCESS EMISSIONS REPORTING AND MALFUNCTIONS**

(a) For this Rule the following definitions apply:

- (1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any rule in Sections .0500, .0900, .1200, or .1400 of this Subchapter; or by a permit condition; or that exceeds an emission limit established in a permit issued under 15A NCAC 02Q .0700.
- (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment shall not be considered a malfunction. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source shall not be considered a malfunction.
- (3) "Start-up" means the commencement of operation of any source that has shut-down or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or a pollution control device imbalance that would result in excess emission.
- (4) "Shut-down" means the cessation of the operation of any source for any purpose.

(b) This Rule does not apply to sources to which Rules .0524, .1110, or .1111 of this Subchapter applies unless excess emissions exceed an emission limit established in a permit issued under 15A NCAC

02Q .0700 that is more stringent than the emission limit set by Rules .0524, .1110 or .1111 of this Subchapter.

(c) Any excess emissions that do not occur during start-up or shut-down shall be considered a violation of the appropriate rule unless the owner or operator of the source of excess emissions demonstrates to the Director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider, along with any other pertinent information, the following:

- (1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;
- (2) Repairs have been made expeditiously when the emission limits have been exceeded;
- (3) The amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;
- (4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;
- (5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (6) The requirements of Paragraph (f) of this Rule have been met; and
- (7) If the source is required to have a malfunction abatement plan, it has followed that plan. All malfunctions shall be repaired as expeditiously as practicable. However, the Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year. The Director may require the owner or operator of a facility to maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions.

(d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain as a minimum:

- (1) a complete preventive maintenance program including:
  - (A) the identification of individuals or positions responsible for inspecting, maintaining and repairing air cleaning devices;
  - (B) a description of the items or conditions that will be inspected and maintained;

- (C) the frequency of the inspection, maintenance services, and repairs; and
  - (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
  - (2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating personnel of any malfunctions, including alarm systems, lights or other indicators; and
  - (3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule will be established by the Director with the source. The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs shall be subject to inspection by the Director or his designee upon request during business hours.
- (e) The owner or operator of any electric utility boiler unit required to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days of the effective date of this Rule. The owner or operator of any other source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan carries out the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director shall disapprove the plan. The Director shall state his reasons for his disapproval. The person who submits the plan shall submit an amendment to the plan to satisfy the reasons for the Director's disapproval within 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.
- (f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment or any other abnormal conditions, shall:

- (1) notify the Director or his designee of any such occurrence by 9:00 a.m. Eastern time of the Division's next business day of becoming aware of the occurrence and describe:
  - (A) name and location of the facility,

- (B) the nature and cause of the malfunction or breakdown,
- (C) the time when the malfunction or breakdown is first observed,
- (D) the expected duration, and
- (E) an estimated rate of emissions;
- (2) notify the Director or his designee immediately when the corrective measures have been accomplished;
- (3) submit to the Director within 15 days after the request a written report that includes:
  - (A) name and location of the facility,
  - (B) identification or description of the processes and control devices involved in the malfunction or breakdown,
  - (C) the cause and nature of the event,
  - (D) time and duration of the violation or the expected duration of the excess emission if the malfunction or breakdown has not been fixed,
  - (E) estimated quantity of pollutant emitted,
  - (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken, and
  - (G) any other pertinent information requested by the Director. After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Rule .0501 of this Section to demonstrate compliance.

(g) Start-up and shut-down. Excess emissions during start-up and shut-down shall be considered a violation of the appropriate rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable. To determine if excess emissions are unavoidable during startup or shutdown the Director shall consider the items listed in Paragraphs (c)(1), (c)(3), (c)(4), (c)(5), and (c)(7) of this Rule along with any other pertinent information. The Director may specify for a particular source the amount, time, and duration of emissions allowed during start-up or shut-down. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5); Eff. March 1, 1983; Amended Eff. April 1, 2001; July 1, 1998; July 1, 1996; October 1, 1991; May 1, 1990; April 1, 1986.*

**15A NCAC 02Q .0401 PURPOSE AND APPLICABILITY**

- (a) The purpose of this Rule is to implement Phase II of the federal acid rain program pursuant to the requirements of Title IV of the Clean Air Act as provided in 40 C.F.R Parts 72 and 76.
- (b) This Section applies to the sources described in 40 C.F.R 72.6 with such exceptions as allowed under 40 C.F.R 72.6.
- (c) A certifying official of any unit may petition the Administrator for a determination of applicability under 40 C.F.R 72.6(c). The

Administrator's determination of applicability shall be binding upon the Division, except as allowed under 40 C.F.R 72.6(c).

*History Note: Filed as a Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;*

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108;*

*Eff. July 1, 1994;*

*Amended Eff. April 1, 2001; April 1, 1999; April 1, 1996.*

**15A NCAC 07H .0209 COASTAL SHORELINES**

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 7H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with both the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their

benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid, mitigate or reduce adverse impacts of development, to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

- (1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion, including, but not limited to, peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.
- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible.
- (3) Within the Coastal Shorelines category (estuarine and public trust shorelines AEC's, new development, with the exception of water dependent uses, shall be located a distance of 30 feet landward of the normal water level or the normal high water level.
- (4) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:
  - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
  - (B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.
  - (C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion

of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.

- (5) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts shall include but not be limited to development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
  - (6) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
  - (7) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" shall mean a project which is paid for in any part by public funds.
  - (8) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Cultural Resources.
  - (9) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
  - (10) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values.
- (e) Exceptions to the 30-foot buffer requirement set forth in 15A NCAC 07H .0209(d)(3). Development shall be exempted from the buffer requirement set out in Paragraph (d) of this Rule under the following circumstances:
- (1) Where strict application of the buffer requirement would preclude placement of a residential structure on lots, parcels and tracts platted prior to June 1, 1999, development shall comply with the buffer area requirement to the maximum extent feasible. Feasible means an alternative is available and capable of being done after taking into consideration costs, existing technology, proposed use, and overall project purposes. The footprint of the residential structure shall not exceed 1000 square feet. Land disturbance shall be limited to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer. At a minimum, non-water dependent development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot.
  - (2) Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in 15A NCAC 07J .0210 and 15A NCAC 07J .0211.
  - (f) The buffer requirements in 07H .0209(d)(3) of this Rule will not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.
  - (g) Specific Use Standards for ORW Coastal Shorelines.
    - (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
      - (A) have no stormwater collection system;
      - (B) provide a buffer zone of at least 30 feet from the normal high water line or normal water line;
      - (C) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.
    - (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if prior to June 1, 1989:
      - (A) the development has a CAMA permit application in process; or
      - (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement;
    - (3) Single-family residential lots that would not be buildable under the low-density standards defined in Paragraph (g)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.
    - (4) For ORW's nominated subsequent to June 1, 1989, the effective date in Paragraph (g)(2) of this Rule shall be the dates of nomination by the EMC.
  - (h) Urban Waterfronts.
    - (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:
      - (A) The area lies wholly within the corporate limits of a municipality; and
      - (B) the area is in a central business district where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets,



- solid waste management, roads, police and fire protection or an industrial zoned area adjacent to a central business district.
- (2) **Significance.** Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.
- (3) **Management Objectives.** To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
- (4) **Use Standards:**
- (A) The buffer requirement pursuant to this Rule 07H .0209(d)(3) is not required for development within designated Urban Waterfronts that meets the following standards:
- (i) The development must be consistent with the locally adopted land use plan;
  - (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible;
  - (iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission; and
  - (iv) Connect to a local stormwater collection system that has an existing stormwater management plan approved by the Division of Water Quality.
- (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within designated Urban Waterfronts as set out below:
- (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for non-water dependent purposes.
  - (ii) Existing enclosed structures may be expanded vertically provided that vertical expansion does not exceed the original footprint of the structure.
  - (iii) New structures built for non-water dependent purposes are limited to pile supported, single story, unenclosed decks and boardwalks, and must meet the following criteria:
    - (I) The proposed development must be consistent with a locally adopted waterfront access plan that provides for enhanced public access to the shoreline;
    - (II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind and shall be limited to a single story;
    - (III) Structures must be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;
    - (IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
    - (V) Structures must be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
    - (VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;
    - (VII) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
    - (VIII) Structures must be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;

- (IX) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts shall include but not be limited to the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;
- (X) Structures shall not degrade waters classified as SA or High Quality Waters Outstanding Resource Waters as defined by the NC Environmental Management Commission;
- (XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XII) Structures shall not pose a threat to navigation.

where the structure was in place and serving its intended function at the time of the impacting hurricane or storm, and shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

*History Note: Authority G.S. 113A-107; 113A-118.1; Eff. April 1, 2001.*

**15A NCAC 07H .2503 PERMIT FEE**

The standard permit fee of one hundred dollars (\$100.00) has been waived for this General Permit.

*History Note: Authority G.S. 113A-107; 113A-118.1; Eff. April 1, 2001.*

**15A NCAC 12K .0106 GRANT AGREEMENT**

- (a) Upon Authority approval, a written agreement shall be executed between the grant recipient(s) and the Authority on behalf of the Department.
- (b) The agreement shall define the Department's and grant recipient's responsibilities and obligations, the project period, project scope and the amount of grant assistance.
- (c) The approved application and support documentation shall become a part of the grant agreement.
- (d) State Clearinghouse environmental review comments made as a result of application review shall be addressed by the applicant prior to execution of the project agreement. Projects judged to have a significant environmental impact shall submit an environmental assessment.
- (e) The grant agreement may be amended upon mutual consent and approval by the Department on behalf of the Authority and the grant recipient(s). The grant recipient(s) shall submit in writing to the Department a formal amendment request for approval. The Department may approve the amendment based on local circumstances which justify the amendment request.
- (f) Projects may not begin until the Authority on behalf of the Department and grant recipient(s) sign the agreement unless a waiver has been requested by the applicant in writing and approved by the Authority or its executive committee. Waivers may only be granted for land acquisition projects requiring action prior to the anticipated signing of the agreement. A waiver shall be in effect for one year from the date of approval. A project receiving a waiver shall not receive preferential treatment in funding decisions.
- (g) Following execution of the grant agreement, a check in the amount of the approved grant shall be presented to the grant recipient(s).
- (h) Complete accounting records including a certified project data sheet and performance report verifying eligible costs shall be submitted by the grant recipient(s) to the Department for approval prior to or at the time of the close-out inspection. The Department shall approve the accounting when the records are consistent with the project agreement and budget.

*History Note: Temporary Amendment Eff. December 18, 1981; Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 9, 1977; Amended Eff. August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989; Temporary Amendment Eff. December 22, 2000; Amended Eff. April 1, 2001.*

**15A NCAC 07H .2501 PURPOSE**

Following damage to coastal North Carolina due to hurricanes or tropical storms, the Secretary may, based upon an examination of the extent and severity of the damage, implement any or all provisions of this Section. Factors the Secretary may consider in making this decision include, but are not limited to, severity and scale of property damage, designation of counties as disaster areas, reconnaissance of the impacted areas, or discussions with staff, state or federal emergency response agencies. This permit shall allow for:

- (1) the replacement of structures that were located within the estuarine system or public trust Areas of Environmental Concern and that were destroyed or damaged beyond 50 percent of the structures value as a result of any hurricane or tropical storm,
- (2) a one time per property fee waiver for the reconstruction or repair by beach bulldozing of hurricane or tropical storm damaged frontal or primary dune systems, and
- (3) a one time per property fee waiver for maintenance dredging activities within existing basins, canals, channels, and ditches. Structure replacement, dune reconstruction, and maintenance excavation activities authorized by this permit shall conform with all current use standards and regulations. The structural replacement component of this general permit shall only be applicable

*History Note: Filed as a Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Authority G.S. 113-44.15;*

*Eff. April 1, 1995;*

*Amended Eff. August 1, 1998;*

*Temporary Amendment Eff. April 4, 2000;*

*Amended Eff. April 1, 2001.*

**15A NCAC 16A .1304 LIMITATIONS**

Notwithstanding any other provision of the rules of this Section, enrollment in the program is subject to the following:

- (1) A waiting list of eligible persons may be established by the program. Admission to the list and subsequent enrollment in the Program shall be on a first-come first-served basis.
- (2) Enrollment of eligible persons and reimbursement to providers shall be subject to the availability of funds.

*History Note: Authority S.L. 1999, c. 237, s.11.1.(a);*

*Temporary Adoption Eff. February 10, 2000;*

*Eff. April 1, 2001.*

**15A NCAC 21D .0202 DEFINITIONS**

For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and additions, with the following additions and modifications:

- (1) An "administrative appeal" is a procedure to be followed when a local WIC agency, potential local WIC agency, or vendor wishes to appeal an action by the local WIC agency or the state agency which affects participation in the WIC program by the agency or vendor. An administrative appeal may also be called a fair hearing.
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food vendor or pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement DHHS Form 2768.
- (4) A "competent health professional" is a physician, registered nurse, nutritionist, registered dietitian, or nutrition trainee or home economist (who is under the supervision of a nutritionist), or other qualified individuals approved by the Nutrition Services Branch. These individuals must be on the staff of the local WIC agency or designated by the local WIC agency in order to certify and prescribe the food package.
- (5) A "fair hearing" is the procedure to be followed when a person or his -her parent or guardian wishes to appeal a decision made by a local WIC agency or the state agency which affects the individual's participation in the program.
- (6) A "food instrument" means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used to obtain supplemental foods.
- (7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

(8) The "local WIC agency" is the local agency which enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.

(9) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch in accordance with instructions issued by the Branch.

(10) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, Department of Health and Human Services.

(11) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 15A NCAC 21D .0501 and is included in the WIC Vendor Manual.

(12) "Support costs" are clinic costs, administrative costs, and nutrition education costs.

(13) "WIC program" means the special supplemental nutrition program for women, infants and children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 1330 St. Mary's Street, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;*

*Eff. July 1, 1981;*

*Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989;*

*Temporary Amendment Eff. May 17, 2000;*

*Amended Eff. April 1, 2001.*

**15A NCAC 21D .0701 THE NORTH CAROLINA AUTOMATED WIC SYSTEM**

The WIC program shall provide supplemental foods through a uniform retail distribution system, as described in the North Carolina State WIC Program Plan, the North Carolina WIC Program Manual, the North Carolina WIC ADP Manual and the North Carolina WIC Vendor Manual, in accordance with 7 C.F.R. 246.12. An automated data processing system called the "North Carolina Automated WIC System" shall be utilized to promote the provision of and accounting for food instruments issued for participants and to assist in fulfilling other program requirements.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;*

*Eff. July 1, 1981;*

*Amended Eff. April 1, 2001.*

**15A NCAC 21D .0702 ISSUANCE OF FOOD**

**INSTRUMENTS**

(a) Local WIC agencies shall issue WIC program food instruments to program participants in a manner which ensures that participants can receive the appropriate supplemental foods that have been prescribed for them.

(b) Local WIC agencies shall issue food instruments in a manner which ensures maintenance of adequate security and retention of adequate documentation of the disposition of the food instruments.

The documentation of issuance shall include the dated signature of the authorized individual receiving the food instruments unless the food instruments are mailed.

(c) The authorized individual receiving the food instrument shall sign it on the "signature" line. The person who so signs the food instrument is the only individual who can redeem it.

(d) Participants shall be given appointments to receive food instruments in a manner which promotes coordination with WIC program certification, nutrition education, other health services and the services being received by other family members without placing an undue burden on the participant.

(e) Food instruments shall be issued only to the participant, the participant's parent, the participant's guardian, an authorized proxy, or a compliance investigator.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;*

*Eff. July 1, 1981;*

*Amended Eff. April 1, 2001.*

**15A NCAC 21D .0704 VALIDITY OF WIC FOOD INSTRUMENTS**

(a) North Carolina WIC food instruments shall not be valid if:

- (1) the instrument has not been legibly imprinted with an authorized WIC vendor stamp;
- (2) the instrument has been counterfeited or the signature forged;
- (3) the instrument has been mutilated, defaced or otherwise tampered with or altered;
- (4) the instrument is not deposited in the vendor's bank within 60 days of the "date of issue" assigned to the instrument;
- (5) the "pay exactly" amount exceeds the "void if exceeds amount";
- (6) the signature and countersignature do not match or the countersignature is missing;
- (7) the "date redeemed" entered on the instrument is not on or between the "date of issue" and "participant must use by" dates assigned to the instrument;
- (8) the instrument is not completed in indelible ink.

(b) A local WIC agency may revalidate invalid food instruments when:

- (1) the "pay exactly" amount has been altered and the vendor provides a receipt or WIC Price List that confirms the altered amount is the correct "pay exactly" amount;
- (2) the "pay exactly" amount is greater than the "void if exceeds" amount and the vendor provides a receipt or WIC Price List that shows the prices used to determine the "pay exactly" amount were based on the vendor's actual prices;

- (3) the food instrument is not deposited in the vendor's bank within 60 days of the "date of issue" assigned to the instrument and the State WIC office gives approval to the local WIC agency to revalidate.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;*

*Eff. July 1, 1981;*

*Amended Eff. July 1, 1989; July 1, 1985;*

*Temporary Amendment Eff. May 17, 2000;*

*Amended Eff. April 1, 2001.*

**15A NCAC 21D .0705 PAYMENT OF WIC FOOD INSTRUMENTS**

The State of North Carolina shall:

- (1) accept North Carolina WIC food instruments through the Federal Reserve System;
- (2) ensure that WIC food instruments received are valid through procedures established by the Nutrition Services Branch;
- (3) provide payment to the Federal Reserve for all valid or revalidated WIC food instruments received. To the extent that sufficient funds are available in the WIC disbursing account, payment shall be provided according to established procedures for payment of state warrants;
- (4) ensure that every invalid WIC food instrument is stamped to indicate the reason for invalidity;
- (5) ensure that invalid WIC food instruments are returned through the Federal Reserve System to the banks from which they were received, according to established banking procedures.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;*

*Eff. July 1, 1981;*

*Amended Eff. July 1, 1989; July 1; 1985;*

*Temporary Amendment Eff. May 17, 2000;*

*Amended Eff. April 1, 2001.*

**15A NCAC 21D .0706 AUTHORIZED WIC VENDORS**

(a) An applicant to become authorized as a WIC vendor shall comply with the following:

- (1) Accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement;
- (2) Submit all completed forms to the local WIC program, except that a corporate WIC Vendor with 20 or more WIC stores shall submit one completed WIC Vendor Agreement and WIC Price List to the state agency and a separate WIC Vendor Application for each store to the local WIC agency;
- (3) Pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (b)(15) of this Rule; an applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days; if the applicant fails both reviews, the applicant shall wait 90 days from the

date of the second monitoring review before submitting a new application;

- (4) Attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that applicant's employees receive instruction in WIC program procedures and requirements;
- (5) The applicant's vendor site shall be located at a permanent and fixed location within the State of North Carolina. The vendor site shall be the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC participant, parent, guardian or proxy;
- (6) The applicant's vendor site shall be open throughout the year for business with the public at least five days a week for a minimum of four hours per day between 8:00 a.m. and 11:00 p.m.;
- (7) An applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local agency;
- (8) A vendor site for which the applicant is applying shall not have an owner with 25 percent or more financial interest who has committed a misdemeanor involving fraud, misuse or theft of state or federal funds or any felony.
- (9) An applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the applicant conducts business. An applicant shall not have an employee who handles, redeems, deposits, stores or processes WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the applicant conducts business. For purposes of this Subparagraph, the term "applicant" means a sole proprietorship, partnership, corporation, other legal entity, and any person who owns or controls more than a 10 percent interest in the partnership, corporation, or other legal entity.
- (10) An applicant shall not hold 25 percent or more financial interest in any of the following:
  - (A) any Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
  - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (j), or Paragraph (k) of this Rule as the result of violation of Paragraphs (f), (g)(1)(A), (g)(1)(B), (g)(1)(C) or (g)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing. The requirement of this provision shall not be met by the transfer or

conveyance of financial interest during the period of disqualification.

- (11) An applicant shall not become authorized as a WIC vendor if the vendor site for which the applicant is applying has been disqualified from participation in the WIC Program and the disqualification period has not expired.
  - (b) By signing the WIC Vendor Agreement, the applicant agrees to:
    - (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;
    - (2) Accept WIC program food instruments in consideration for the purchase of WIC supplemental food items. Supplemental food items are those food items which satisfy the requirements of 15A NCAC 21D .0501. The food items, specifications and product identification are described in the WIC Vendor Manual;
    - (3) Provide supplemental food items as specified on the food instrument, accurately determine the charges to the WIC program, and clearly complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature by the participant, parent, guardian, proxy or compliance investigator;
    - (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current prices, or less than the current prices, for the supplemental food items provided and shall not charge or collect sales taxes for the supplemental food items provided;
    - (5) Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;
    - (6) Prior to obtaining the countersignature, enter in the "Date Redeemed" box the month, day and year the WIC food instrument is accepted in consideration for the purchase of supplemental food items;
    - (7) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
    - (8) Not redeem food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;
    - (9) Clearly imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument;
    - (10) Clearly imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
    - (11) Promptly deposit WIC program food instruments in the vendor's bank. All North Carolina WIC program food instruments must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;
    - (12) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;
    - (13) Maintain secure storage for the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
    - (14) Notify the local agency of misuse (attempted or actual) of the WIC program food instrument(s);

**APPROVED RULES**

(15) Maintain a minimum inventory of supplemental food items in the store for purchase. The following items and sizes

constitute the minimum inventory of supplemental food items for stores classified 1 - 4:

<b>Food Item</b>	<b>Type of Inventory</b>	<b>Quantities Required</b>
Milk	Whole fluid: gallon and half gallon -and- Skim/lowfat fluid: gallon or half gallon Nonfat dry: quart package -or- Evaporated: 12 oz. can	Total of 6 gallons fluid milk      Total of 5 quarts when reconstituted  5 cans
Cheese	2 varieties in 8 or 16 oz. package	Total of 6 pounds
Cereals	4 types (minimum package size 12 oz.)	Total of 12 packages
Eggs	Grade A, large or extra-large: white or brown: one dozen size carton	6 dozen
Juices	Frozen: 11.5-12 oz. container Single strength: 46oz container Orange juice must be available in frozen and single strength. A second flavor must be available in frozen or single strength.	10 containers 10 containers
Dried Peas and Beans or Peanut Butter	2 varieties: one pound package  Plain (smooth, crunchy, or whipped; No reduced fat): 18 oz. container	3 packages  3 containers
Infant Cereal	Plain-no fruit added:  2 cereal grains (one must be rice); 8-oz. box; brand specified in Vendor Agreement	6 boxes
Infant Formula	milk and soy-based as specified in Vendor Agreement; 13 oz. concentrate	62 can combination
Tuna	Chunk light in water: 6-6.5 oz. can	4 cans
Carrots	Raw, canned or frozen 14.5-16 oz. size	2 packages/cans

All vendors (classifications 1 through 5) shall supply milk, soy based, or lactose-free infant formula in 32 oz. ready-to-feed or powder upon request of the state or local agency.

- (16) Ensure that all supplemental food items in the store for purchase are within the manufacturer's expiration date;
  - (17) Permit the purchase of supplemental food items without requiring other purchases;
  - (18) Attend, or cause a manager or other authorized store representative to attend, annual vendor training class upon notification of class by the local agency;
  - (19) Inform and train vendor's employees in WIC procedures and regulations;
  - (20) Be accountable for actions of vendor's employees in the processing of WIC food instruments and the provision of WIC supplemental food items;
  - (21) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with this agreement and state and federal WIC Program rules, regulations and policies. This includes, but shall not be limited to, allowance of access to all WIC food instruments at the store and vendor records pertinent to the purchase of WIC supplemental food items, vendor records of all deductions and exemptions allowed by law or claimed in filing sales and use tax returns, and vendor records of all WIC supplemental food items purchased by the vendor, including invoices and copies of purchase orders;
  - (22) Submit a current accurately completed WIC Price List to the local agency when signing this agreement, and by January 1 and July 1 of each year. The applicant also agrees to submit a WIC Price List within one week of any written request by the state or local agency;
  - (23) Reimburse the state agency within 30 days of written notification for amounts paid by the state agency on WIC Program food instruments processed by the vendor which did not satisfy the conditions set forth in the WIC Vendor Agreement and for amounts paid by the state agency on WIC food instruments as the result of the unauthorized use of the authorized WIC vendor stamp;
  - (24) Not seek restitution from the participant, parent, guardian or proxy for reimbursements paid to the state agency or for WIC food instruments not paid by the state agency;
  - (25) Not contact a participant, parent, guardian, or proxy outside the store regarding the redemption of WIC food instruments;
  - (26) Notify the local agency and return the authorized WIC vendor stamp to the local agency when the vendor ceases operations or the ownership changes. Change of ownership, ceasing vendor operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not terminate a disqualification period applicable to the vendor site;
  - (27) Return the authorized WIC vendor stamp to the local agency upon termination of this agreement or disqualification from the WIC Program;
  - (28) Offer WIC participants the same courtesies as offered to other customers; and
  - (29) Comply with all the requirements for applicants of Subparagraphs (a)(5) through (9) of this Rule throughout the term of authorization.
- (c) By signing the WIC Vendor Agreement, the local agency agrees to the following:
- (1) Provide at a minimum annual vendor training classes on WIC procedures and regulations;
  - (2) Monitor the vendor's performance under this agreement in a reasonable manner to ensure compliance with the agreement, state and federal WIC program rules, regulations and policies, and applicable law. A minimum of 50 percent of all authorized vendors shall be monitored within a state fiscal year (July 1 through June 30) and all vendors shall be monitored at least once within two consecutive state fiscal years. Any vendor shall be monitored within one week of written request by the state agency;
  - (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
  - (4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
  - (5) Keep records of the transactions between the parties under this agreement pursuant to 15A NCAC 21D .0206.
- (d) In order for a food retailer or pharmacy to participate in the WIC Program a current WIC Vendor Agreement must have been signed by the vendor, the local WIC agency, and the state agency.
- (e) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.
- (f) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions.
- (1) In accordance with 7 CFR 246.12(l)(1)(i), the State agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified.
  - (2) A pattern, as referenced in 7 C.F.R. 246.12(l)(1)(iii)(B) through (F) and (iv), shall be established as follows:
    - (A) two occurrences of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item within a 12-month period;
    - (B) two occurrences of charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price within a 12-month period;
    - (C) two occurrences of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an authorized vendor and/or an unauthorized person within a 12-month period;
    - (D) two occurrences of charging for supplemental food not received by the participant within a 12-month period;
    - (E) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or

- (F) three occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.

(g) Title 7 C.F.R. Section 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (h):

- (1) When a vendor commits any of the following violations, the state-established disqualification period shall be:

- (A) 90 days for each occurrence of failure to properly redeem a WIC food instrument by not completing the date and purchase price on the WIC food instrument before obtaining the countersignature or by accepting a WIC food instrument prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument;
- (B) 60 days for each occurrence of requiring a cash purchase to redeem a WIC food instrument;
- (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.

- (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows:

- (A) 2.5 points for stocking WIC supplemental foods outside of the manufacturer's expiration date;
- (B) 5 points for:
  - (i) failure to attend annual vendor training;
  - (ii) failure to submit a current and accurately completed WIC Price List by January 1 and July 1 of each year or within seven days of request by the state or local agency; and
  - (iii) failure to stock minimum inventory.
- (C) 7.5 points for:
  - (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.); and
  - (ii) contacting a WIC participant, parent, guardian, or proxy in an attempt to recoup funds for food instrument(s) or contacting a WIC participant, parent, guardian, or proxy outside the store regarding the redemption of WIC food instruments.
- (D) 15 points for:
  - (i) failure to allow monitoring of a store by WIC staff when required;
  - (ii) failure to provide WIC food instrument(s) for review when requested;
  - (iii) failure to provide store inventory records when requested by WIC staff;
  - (iv) nonpayment of a claim made by the State agency; and

- (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms).

- (3) For the violations listed in Subparagraph (g)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (g)(2), are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points of the worst offense multiplied by 18 days. 18 days shall be added to the disqualification period for each point over 15 points.

- (h) For investigations pursuant to this Section, a single investigation is:

- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:

- (A) buying or selling food instruments for cash (trafficking);
- (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
- (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;
- (D) charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price;
- (E) receiving, transacting, and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;
- (F) charging for supplemental food not received by the participant;
- (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
- (H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;
- (I) failure to properly redeem a WIC food instrument;
- (J) requiring a cash purchase to redeem a WIC food instrument; or
- (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available;

- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:

- (A) failure to stock minimum inventory;



- (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
  - (C) failure to allow monitoring of a store by WIC staff when required;
  - (D) failure to provide WIC food instrument(s) for review when requested;
  - (E) failure to provide store inventory records when requested by WIC staff;
  - (F) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time; or
- (3) Any other method used by the State or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
  - (B) failure to submit a current and accurately completed WIC Price List by January 1 and July 1 of each year or within seven days of request by the state or local agency;
  - (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
  - (D) contacting a WIC participant, parent, guardian, or proxy in an attempt to recoup funds or food instrument(s) or contacting a WIC participant, parent, guardian, or proxy outside the store regarding the redemption of WIC food instruments;
  - (E) nonpayment of a claim made by the State agency;
  - (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms).
- (i) The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.
- (j) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and (l)(8) are incorporated by reference with all subsequent amendments and editions.
- (k) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:
- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
  - (2) The State agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (g) of this Rule when the State agency determines that disqualification of a vendor would result in undue participant hardship in accordance with Subparagraph (k)(3) of this Rule.
  - (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (g) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of undue hardship, are found to exist:
    - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
    - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
    - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.
- (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.
- (l) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.
  - (m) The provision in 7 C.F.R. 246.12(l)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.
  - (n) The state agency reserves the right to set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (b)(23) of this Rule.
  - (o) In accordance with 7 C.F.R. 246.12(l)(7) and (u)(5), North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law. Neither the vendor nor the state is under any obligation to renew this contract. Nonrenewal of a vendor contract is not an appealable action. If a contract is not renewed, the person may reapply and if denied, may appeal the denial.
  - (p) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment for WIC food instruments accepted by a non-authorized WIC vendor, a current WIC vendor agreement need only be signed by the vendor and the state agency. The vendor may request such one-time payment directly from the state agency. The vendor shall sign a statement indicating that he has provided foods as prescribed on the food instrument, charged current shelf prices and verified the identity of the participant. For the purposes of effecting such a WIC vendor agreement, the vendor is exempt from the inventory requirement and the requirement for an on-site visit by the local WIC agency. Any WIC vendor agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question.
  - (q) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeals procedure shall be in accordance with 15A NCAC 21D .0800.
- History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.*

*Eff. July 1, 1981;*  
*Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991;*  
*December 1, 1990;*  
*Temporary Amendment Eff. May 17, 2000;*  
*Temporary Amendment Eff. June 23, 2000;*  
*Amended Eff. April 1, 2001.*

**15A NCAC 21D .0802 APPEALS**

- (a) The appeal provisions for vendors and local agencies found in 7 C.F.R. 246.18(a) and (b)(1) are incorporated by reference with all subsequent amendments and editions.
- (b) All administrative appeals under this Section shall be made in accordance with G.S. 150B and G.S. 130A-24.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 USC 1786;*  
*Eff. July 1, 1981;*  
*Amended Eff. July 1, 1987; July 1, 1986; July 1, 1983; July 1, 1982;*  
*Temporary Amendment Eff. May 17, 2000;*  
*Amended Eff. April 1, 2001.*

**TITLE 17 - DEPARTMENT OF REVENUE**

**17 NCAC 06B .0116 DEDUCTIONS FROM FEDERAL TAXABLE INCOME**

- (a) Interest. -- The deduction for interest on obligations of the United States or its possessions provided in G.S. 105-134.6(b)(1) applies to direct obligations such as United States Savings Bonds and United States Treasury Bills. Interest earned on obligations that are merely backed or guaranteed by the United States Government do not qualify for deduction from an individual's federal taxable income. The deduction from federal taxable income does not apply to any portion of a distribution from an individual retirement account.
- (b) State, Local, and Federal Retirement Plans. -- The deduction from federal taxable income provided in G.S. 105-134.6(b)(6)a applies to all of the following:
  - (1) Long-term disability benefits paid under the Disability Income Plan of North Carolina. No deduction from federal taxable income is allowed for short-term disability benefits paid under the Disability Income Plan of North Carolina;
  - (2) Benefits paid to federal civil service employees who become disabled prior to becoming age 60; and
  - (3) Benefits received by the survivors of a member of the armed forces paid under the Retired Serviceman's Family Protection Plan or the Survivor's Benefits Plan.

For purposes of the deduction allowed in G.S. 105-134.6(b)(6)b. and c., federal means the federal government of the United States. For purposes of the deduction allowed in G.S. 105-134.6(b)(6)b. and c., state and local includes the governments of territories and possessions of the United States. The deduction from federal taxable income provided in G.S. 105-134.6(b)(6)c includes amounts received from an individual retirement account or from an individual retirement annuity, both of which are described in Section 408 of the Internal Revenue Code. An individual is not required to have ceased employment to qualify for the deduction for distributions

from an individual retirement account or an individual retirement annuity. A change in the structure of a corporate employer that causes a distribution to be paid to the employee from the employer's retirement plan does not entitle the employee to claim the deduction for retirement benefits provided in G.S. 105-134.6(b)(6)c.

- (c) Indian Tribe. --The income earned by an enrolled member of the Eastern Band of Cherokee Indians or another federally recognized tribe is deductible from federal taxable income if it is included in federal gross income and it is derived from activities on the Cherokee reservation while the member resided on the reservation.
- (d) The deduction from federal taxable income provided in G.S. 105-134.6(b)(11) for severance wages does not include payments that represent compensation for past or future services. Compensation for past or future services includes payment for any of the following:

- (1) Accumulated sick leave, vacation time, or other unused benefits;
- (2) Bonuses based on job performance; and
- (3) Payments in consideration of any agreement not to compete with the employer or in consideration of a contractual or legal claim.

- (e) Other Adjustments. -- The deduction from federal taxable income provided in G.S. 105-134.6(d)(2) includes repayments of items of income included in gross income in a prior year under the claim-of-right doctrine for which the taxpayer reduces his or her tax under Section 1341 of the Internal Revenue Code in the year of repayment.

*History Note: Authority G.S.; 105-134.6; 105-262;*  
*Eastern Band of Cherokee Indians v. Lynch 632 F.2d 373*  
*(4th Cir. 1980);*  
*Eff. June 1, 1990;*  
*Amended Eff. April 1, 2001; November 1, 1994; June 1, 1993*  
*; October 1, 1992; October 1, 1991.*

**17 NCAC 06C .0124 ADDITIONAL WITHHOLDING ALLOWANCES**

- (a) Deductions. -- Additional withholding allowances may be claimed by taxpayers expecting to have allowable itemized deductions exceeding the standard deduction or allowable adjustments to income. For most taxpayers, one additional allowance may be claimed for each two thousand five hundred dollars (\$2,500) that the itemized deductions are expected to exceed the standard deduction and for each two thousand five hundred dollars (\$2,500) of adjustments reducing income. For taxpayers whose annual income equals or exceeds the applicable threshold for their filing status, an additional allowance may be claimed for each two thousand dollars (\$2,000) that their itemized deductions are expected to exceed the standard deduction and for each two thousand dollars (\$2,000) of adjustments reducing income. The thresholds are:

Filing Status	Applicable Threshold
Head of Household	\$80,000
Married	\$50,000
Single	\$60,000

- (b) Tax Credits. -- A taxpayer who will be entitled to a tax credit may claim one additional allowance for each one hundred seventy-five dollars (\$175.00) of tax credit, unless the taxpayer's annual income

equals or exceeds the applicable threshold set out in Paragraph (b) of this Rule for the taxpayer's filing status. In that circumstance, the taxpayer may claim an additional allowance of only one hundred forty dollars (\$140.00) for each tax credit.

*History Note: Authority G.S. 105-163.2A; 105-163.5; 105-262; Eff. June 1, 1990; Amended Eff. April 1, 2001; July 1, 1999.*

**17 NCAC 06C .0126 SUBMISSION OF CERTAIN WITHHOLDING ALLOWANCE CERTIFICATES**

- (a) An employer is required to submit copies of any withholding allowance certificates on which the employee claims more than ten withholding allowances or claims exemption from withholding and the employee's wages would normally exceed two hundred dollars (\$200.00) per week.
- (b) An employer filing quarterly withholding reports is required to submit copies of the certificates received during the quarter when filing the quarterly report. An employer filing monthly withholding reports is required to submit copies of the certificates received during the quarter when filing the monthly report for the third month of the calendar quarter. Copies may be submitted earlier and for shorter reporting periods.
- (c) Copies of the certificates, along with a letter showing the employer's name, address, withholding identification number, and the number of certificates submitted, are to be mailed to: North Carolina Department of Revenue, Withholding Section, P.O. Box 25000, Raleigh, North Carolina 27640.
- (d) The employer shall withhold on the basis of the certificate until written notice is received from the Department that the certificate is defective. As part of that written notice, the Department will advise the employer to ignore the allowance certificate filed and to withhold on a number specified.
- (e) The employer shall promptly furnish the employee a copy of the written notice.
- (f) If the employee files a new certificate, the employer shall honor that certificate only if the employee does not claim exempt and claims a number smaller than the number allowed in the Department's written notice. If the new certificate claims a number larger than the employee has been allowed and the employee specifies, in writing, any circumstances as justification to support the claims, the employer must forward a copy of the certificate and the employee's written statement to the Department for review. The employer shall continue to withhold as specified in the Department's written notice until written notice is received from the Department advising the employer to withhold on the basis of the new certificate.
- (g) To increase withholding an employee or a recipient of a pension payment may claim less than his or her allowable allowances or may enter into an agreement with his or her withholding agent and request that an additional amount be withheld by entering the desired amount on Form NC-4 or NC-4P.
- (h) An employee working for two or more employers or a recipient receiving pension payments from two or more pension payers must claim his or her allowable allowance with only one withholding agent and claim zero allowances with the other withholding agents.

- (i) If an employee claims total exemption from withholding, his wages will be exempt from withholding of North Carolina income tax for the remainder of the calendar year unless the employee withdraws the statement during the year. An employee claiming exemption from withholding must complete a new certificate by February 15. If the employee does not complete a new certificate, the employer must withhold on the basis of a single individual with zero withholding allowances.

*History Note: Authority G.S. 105-163.2A; 105-163.5; 105-262; Eff. June 1, 1990; Amended Eff. April 1, 2001; June 1, 1993.*

**17 NCAC 06C .0201 NEW WITHHOLDING AGENTS**

North Carolina does not use a deposit system for income tax withheld. Each new withholding agent who is required to withhold North Carolina income tax must complete and file with the Department an application for a withholding identification number, Form AS/RP1, which can be obtained from any office of the Department. A withholding identification number will be assigned. The number must be used on all reports and correspondence concerning withholding.

*History Note: Authority G.S. 105-262; Eff. February 1, 1976; Amended Eff. April 1, 2001; August 1, 1998; June 1, 1993; June 1, 1990.*

**17 NCAC 06C .0203 ANNUAL REPORTS**

- (a) At the end of each calendar year employers are required to furnish wage and tax statements, Form NC-2, to employees and Form NC-1099PS to contractors from whom tax was withheld. Two copies must be furnished to the employee or contractor and one copy must be furnished to the Department. Pension payers must report pension income and State tax withheld on federal Form 1099-R. The pension payer must give the Department a copy of a 1099-R given to a recipient of a pension payment if the 1099-R shows State tax withheld.
- (b) Reports of payments of income, interest, rents, premiums, dividends, annuities, remunerations, emoluments, fees, gains, profits, taxable meal reimbursements, and other determinable annual or periodic gains during a calendar year must be made on Information at the Source Reports, Form NC-1099, if the payments have not otherwise been reported. Form NC-1099 reports are not required to be filed if the payments have been reported to the Internal Revenue Service under the provisions of Section 6041 of the Code, the payments have otherwise been reported to the Department, or no North Carolina income tax was withheld from the payments. Notwithstanding the above, any person required to file Form NC-1099NRS under the provisions of 17 NCAC 06B .3804(c) must do so regardless of any requirement to report the sale to the Internal Revenue Service.

*History Note: Authority G.S. 105-154; 105-163.2A; 105-163.7; 105-163.18; 105-262; Eff. February 1, 1976; Amended Eff. April 1, 2001; August 1, 1998; June 1, 1993;*

*February 3, 1992; October 1, 1991; February 1, 1991.*

**17 NCAC 06C .0204 AMOUNTS WITHHELD ARE HELD IN TRUST FOR SECRETARY OF REVENUE**

(a) A withholding agent who fails to withhold or pay the amount required to be withheld is personally and individually liable for the tax. If a withholding agent has failed to withhold or to pay over income tax withheld or required to have been withheld, the unpaid tax may be asserted against the responsible officers of the withholding agent when the taxes cannot be immediately collected from the withholding agent. More than one person may be liable as a responsible officer; however, the amount of the income tax withheld or required to have been withheld will be collected only once, whether from the withholding agent or one or more responsible officers. The term "responsible officer" includes the president and the treasurer of a corporation, the manager of a limited liability company, and any officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay the tax. Responsibility is a matter of status, duty, and authority, not knowledge. It is not necessary that the failure to collect and pay the withholding amounts was willful; it is only necessary that the responsible officer failed to pay the tax withheld or required to have been withheld to the Secretary of Revenue regardless of the officer's reasons or knowledge of the failure.

(b) When the Department of Revenue determines that collection of the tax from an employer is in jeopardy, the employer may be required to report and pay the tax at any time after payment of the wages.

*History Note: Authority G.S. 105-163.8; 105-241.1(g); 105-253; 105-262; Eff. June 1, 1990; Amended Eff. April 1, 2001; June 1, 1993; February 1, 1991.*

**17 NCAC 07B .4701 COMMERCIAL PRINTERS AND PUBLISHERS**

(a) All retail sales of tangible personal property by commercial printers or publishers are subject to the four percent state tax and any applicable local sales or use tax unless such sales are subject to a lesser rate of tax under the provisions of G.S. 105-164.4(a) or are exempt under the provisions of G.S. 105-164.13. The following transactions are also exempt from sales or use tax:

- (1) charges for advertising space in newspapers, magazines and other publications;
- (2) charges made by printers for imprinting or binding books or forms or other similar items which are owned by their customers;
- (3) Printed material which is sold by a retailer to a purchaser within or without this state when the printed material is delivered by the printer directly to a mailing house or to a common carrier or to the United States Postal Service for delivery to a mailing house in this state which will preaddress and presort the material and deliver it to a common carrier or to the United States Postal Service for delivery to recipients outside this state designated by the purchaser.

(A) Sales of printed material by a retailer located within or without this state which is delivered directly

to the purchaser in this state for the original purpose of preparing and delivering the printed material to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state are exempt from sales and use tax provided such purpose is consummated. A purchaser of such printed material for preparation and delivery to prospective customers and other recipients outside this state must furnish the vendor a written statement certifying that the printed material is being purchased for use in a mailing program which is in place at the time of purchase; otherwise, the vendor must collect and remit the tax on such sales. Sales of printed materials to a user or consumer in this state to be placed in the purchaser's inventory for use as needed are subject to sales or use taxes notwithstanding that all or a portion of the printed material may be delivered to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state.

(B) A retailer who sells printed material delivered to a common carrier or the United States Postal Service for delivery to the purchaser at a point within this state who prepares the material to be mailed to prospective customers or other recipients without charge and transports the material outside this state to be delivered to the United States Postal Service or a common carrier or to a mailing house outside this state for delivery to designated recipients is liable for sales or use tax except as provided in this Rule.

(b) Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes and similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the four percent state tax and any applicable local sales or use tax unless such sales are exempt from tax under the provisions of G.S. 105-164.13. When publications, other than magazines, are sold by subscription, the tax accrues at the time the subscription is accepted.

(c) Sales to commercial printers and publishers of machinery and equipment and parts therefor and accessories thereto for use directly in the production of newspapers, magazines and other printed matter for sale are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article. Included herein are custom made plates and dies when title thereto does not pass to the printers' customers. Sales to commercial printers and publishers of tangible personal property such as wood and metal which is used to fabricate plates and dies for use in the production of printed matter for sale are likewise subject to the one percent rate of tax when title to the plates and dies does not pass to the printers' customers. Sales to commercial printers and publishers of machinery, equipment, film, and similar items of tangible personal property for use or consumption directly in the production of such plates and dies are also subject to the one percent rate of tax. It is a printing trade practice that title to lithographic and gravure plates and dies is retained by the printer or publisher. Unless it is otherwise agreed in writing, the secretary will consider such items

to be purchased by the printer or publisher for use or consumption and taxable at the one percent rate of tax on the cost price thereof.

(d) Sales to commercial printers of custom made plates and dies for resale are exempt from sales or use tax when supported by Certificates of Resale, Form E-590. Sales to commercial printers of tangible personal property such as wood and metal which becomes a component part of printing plates produced by such printers for sale to customers are likewise exempt from sales or use tax when supported by certificates of resale. However, sales to commercial printers of machinery, equipment, film, and similar items of tangible personal property which do not enter into or become a component part of such plates and dies but are used or consumed by the printer in the direct production of such plates and dies are subject to the one percent rate of tax. When, at the request of the customer, commercial printers purchase custom made printing plates and dies for use in the direct production of the printed matter or when they purchase wood and metal which becomes a component part of printing plates and dies fabricated by the printer for use in the direct production of printed matter and title to the plates and dies passes to the printers' customers, such items can be properly purchased for resale. The printer is liable for collecting and remitting the four percent state tax and any applicable local sales or use tax on the total retail sales price of such plates and dies including charges for tangible personal property and art work or any other services that go into the manufacture or delivery thereof. In such cases, the printer's sales invoices and records must show that the plates and dies are actually sold to the customer; otherwise, such items will be deemed to have been used by the printer, and the cost price of same will be subject to the one percent rate of tax.

(e) Sales to commercial printers and publishers of tangible personal property which is not resold as such or which does not become an ingredient or component part of the tangible personal property which they produce for sale or which is not production machinery or parts therefor and accessories thereto are subject to the four percent state tax and any applicable local sales or use tax without any maximum tax.

(f) The provisions of Paragraph (d) of this Rule have no application to sales of printing equipment and supplies to firms which operate print shops for the production of printed matter for their own use and not for sale. Purchases of printing equipment and supplies by such firms are subject to the four percent state tax and any applicable local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; 105-264; Eff. February 1, 1976; Amended Eff. April 1, 2001; October 1, 1993; June 1, 1992; October 1, 1991; February 1, 1988.*

**17 NCAC 07B .5301 CERTIFICATE OF AUTHORITY**

The direct pay certificate authorized by G.S. 105-164.27 replaces the certificate of authority. Form E-595A is an application for a direct pay certificate. The Secretary will issue a direct pay certificate to all taxpayers who have a certificate of authority as of December 31, 2000. A taxpayer with a certificate of authority as of that date does not need to apply for a direct pay certificate.

*History Note: Authority G.S. 105-164.4; 105-164.6;*

*105-164.27; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. April 1, 2001; October 1, 1993; February 1, 1987; January 1, 1982.*

**TITLE 20 - DEPARTMENT OF STATE TREASURER**

**20 NCAC 08 .0102 DEFINITIONS**

(a) The words defined in G.S. 116B-52 shall have the same meaning when used in this Chapter.

(b) The following words and phrases defined in this Rule shall have the meanings indicated when used in this Chapter, unless the context clearly requires another meaning:

- (1) "Escheats" includes all property, real and personal, tangible and intangible which is subject to Chapter 116B of the General Statutes.
- (2) "Interest-bearing property" means property that accrues interest to the owner at a predetermined rate from the onset of the contract as explicitly provided in the contract.
- (3) "Dividend-paying property" means shares of ownership issued by a corporation or an investment company registered under the Investment Company Act of 1941 or a master limited partnership which is treated as stock by a security market in which it is bought and sold.
- (4) "Checking account" means a non-interest-bearing account with a financial institution.
- (5) "Savings account" means an interest-bearing account with a financial institution.
- (6) "Date of claim" means the date on which a completed, signed, and notarized claim with all required documentation attached is received by the Department from the party claiming ownership.

*History Note: Authority G.S. 116B-80;*

*Eff. February 1, 1982;*

*Amended Eff. November 1, 1988;*

*Temporary Amendment Eff. February 22, 2000;*

*Amended Eff. April 1, 2001.*

**20 NCAC 08 .0103 RULE-MAKING PROCEDURES**

All correspondence shall be addressed to the Escheat Administrator at the mailing address of the fund.

*History Note: Authority G.S. 116B-80;*

*Eff. February 1, 1982;*

*Amended Eff. April 1, 2001, July 1, 1987.*

**20 NCAC 08 .0109 ANNUAL FILING WITH CLERKS OF SUPERIOR COURT**

On or before June 30 of each year, the State Treasurer shall deliver to each clerk of Superior Court a listing of the property escheated for each owner whose address of record is within the county for which the clerk serves; and which were reported during the calendar year next preceding the filing of the list.

*History Note: Authority G.S. 116B-62; 116B-80;*

*Eff. February 1, 1982;*

*Amended Eff. April 1, 2001.*

**20 NCAC 08 .0110 EARLY ESCHEATMENT**

(a) If remitted to the State Treasurer, property subject to the provisions of G.S. 116B but which has not been presumed abandoned under said statute shall be returned to the holder unless the holder has received in writing permission from the State Treasurer to remit the property prior to the date of presumed abandonment.

(b) To request permission to remit property to the State Treasurer before its presumed abandonment date, the holder must send a letter to the Escheat Officer requesting permission to remit the property prior to the date of presumed abandonment. The letter must clearly identify the nature and extent of the property to be remitted and the reasons for requesting permission to remit the property before its required payment date.

(c) The State Treasurer shall not grant permission unless its is clearly demonstrated that the early transfer of the property is for the benefit of the owner or of the State.

*History Note: Authority G.S. 116B-80; 116B-69(b);  
Temporary Adoption Eff. February 22, 2000;  
Eff. April 1, 2001.*

**20 NCAC 08 .0203 ESCHEAT REPORT**

Each holder shall report intangible personal property to the Escheat Fund on Form ASD-21 together with Form ASD-159 which together shall include as a minimum:

- (1) Holder's legal name and address;
- (2) Holder's federal tax identification number;
- (3) A contact person and his or her telephone number;
- (4) The date on which the property became payable, demandable or returnable;
- (5) Separately for each person with property in each property class in excess of the amount specified in G.S. 116B-60(b)(3):
  - (a) The name(s) of the owner(s);
  - (b) The last known address(es) of the owner(s);
  - (c) The social security or tax identification number(s) of the owner(s), if known;
  - (d) A description of the property, including the property classification code set out in Rule 20 NCAC 08 .0204;
  - (e) Serial number(s) or other identification number(s) of the property, if any;
  - (f) The money amount, if any, being transferred;
- (6) Aggregate by property classification code pursuant to 20 NCAC 08 .0204;
- (7) Verification pursuant to G.S. 116B-60(f); and
- (8) Verification that the Holder has complied with the requirements of G.S. 116B-69(b).

This Rule does not apply to property claimed by the Escheat Fund pursuant to an audit which shall be reported as provided in 20 NCAC 04. 0206.

*History Note: Authority G.S. 116B-60; 116B-80;  
Eff. February 1, 1982;  
Amended Eff. April 1, 2001, November 1, 1988.*

**20 NCAC 08 .0204 PROPERTY CLASSIFICATION CODE**

The following property classification codes shall be used:

Code	Description
(1) AC01	Checking Accounts;
(2) AC02	Savings Accounts;
(3) AC03	Matured CD or Sav Cert;
(4) AC04	Christmas Club Fund;
(5) AC05	Money on Dep to Secure Fund;
(6) AC06	Security Deposits;
(7) AC07	Unidentified Deposits;
(8) AC08	Suspense Accounts;
(9) AC09	Individual Retirement Accounts;
(10) AC99	Aggregate Account Balances Under fifty dollars (\$50.00);
(11) CK01	Cashier's Checks;
(12) CK02	Certified Checks;
(13) CK03	Registered Checks;
(14) CK04	Treasurer's Checks;
(15) CK05	Drafts;
(16) CK06	Warrants;
(17) CK07	Money Orders;
(18) CK08	Traveler's Checks;
(19) CK09	Foreign Exchange Checks;
(20) CK10	Expense Checks;
(21) CK11	Pension Checks;
(22) CK12	Credit Checks or Memos;
(23) CK13	Vendor Checks;
(24) CK14	Checks Written Off to Income;
(25) CK15	Other Outstanding Official Checks;
(26) CK16	CD Interest Checks;
(27) CK99	Aggregate Uncashed Checks Under fifty dollars (\$50.00)
(28) MI01	Net Revenue Interest;
(29) MI02	Royalties;
(30) MI03	Overriding Royalties;
(31) MI04	Production Payments;
(32) MI05	Working Interest;
(33) MI06	Bonuses;
(34) MI07	Delay Rentals;
(35) MI08	Shut-In Royalties;
(36) MI09	Minimum Royalties;
(37) MI99	Aggregate Mineral Interests Under fifty dollars (\$50.00)
(38) MS01	Wages, Payroll, Salary
(39) MS02	Commissions;
(40) MS03	Workers' Compensation Benefits;
(41) MS04	Payment for Goods & Services;
(42) MS05	Customer Overpayments;
(43) MS06	Unidentified Remittances;
(44) MS07	Unrefunded Overcharges;
(45) MS08	Accounts Payable;
(46) MS09	Credit Balances
(47) MS10	Discounts Due;
(48) MS11	Refunds Due;

- (49) MS12 Unredeemed Gift Certificates;
- (50) MS13 Unclaimed Loan Collateral;
- (51) MS14 Pension & Profit Sharing Plans (IRA, KEOGH);
- (52) MS15 Dissolution or Liquidation;
- (53) MS16 Misc Outstanding Checks;
- (54) MS17 Misc Intangible Prop;
- (55) MS18 Suspense Liabilities;
- (56) MS19 Layaway Deposits & Payments;
- (57) MS20 Rents;
- (58) MS99 Aggregate Misc Checks & Intangible Personal Property Under fifty dollars (\$50.00);
- (59) SD01 Safe Deposit Box Contents;
- (60) SD02 Other Safekeeping;
- (61) SD03 Other Tangible Property;
- (62) CT01 Escrow Funds;
- (63) CT02 Condemnation Awards;
- (64) CT03 Missing Heirs' Fund;
- (65) CT04 Suspense Accounts;
- (66) CT05 Other Court Deposits;
- (67) CT06 Real Property Proceeds;
- (68) CT07 Cash Bonds;
- (69) CT08 Partial Payments;
- (70) CT09 Judgments;
- (71) CT10 Trust Funds;
- (72) CT99 Aggregate Court Deposits Under fifty dollars (\$50.00);
- (73) IN01 Individual Policy Benefits or Claim Payments;
- (74) IN02 Group Policy Benefits or Claim Payments;
- (75) IN03 Proceeds Due Beneficiaries;
- (76) IN04 Proceeds From Matured Policies, Endowments or Annuities;
- (77) IN05 Premium Refunds;
- (78) IN06 Unidentified Remittances;
- (79) IN07 Other Amounts Due Under Policy Terms;
- (80) IN08 Agent Credit Balances;
- (81) IN99 Aggregate Insurance Policy Under fifty dollars (\$50.00)
- (82) SC01 Dividends;
- (83) SC02 Interest (Bond Coupons);
- (84) SC03 Principal Payments;
- (85) SC04 Equity Payments;
- (86) SC05 Profits;
- (87) SC06 Funds Paid to Purchase Shares;
- (88) SC07 Funds for Stocks and Bonds;
- (89) SC08 Shares of Stock (Returned by Post Office);
- (90) SC09 Cash for Fractional Shares;
- (91) SC10 Unexchanged Stock & Fractional Shares of Successor Corp;
- (92) SC11 Other Cert of Ownership;
- (93) SC12 Underlying Shares or Other Outstanding Certificates;
- (94) SC13 Funds for Liquidation Redemption;
- (95) SC14 Debentures;
- (96) SC15 US Gov't Securities;
- (97) SC16 Mutual Fund Shares;
- (98) SC17 Warrants (Rights);
- (99) SC18 Matured Bond Principal;
- (100) SC19 Dividend Reinvestment Plans;

- (101) SC20 Credit Balances;
- (102) SC99 Aggregate Security Related Cash Under fifty dollars (\$50.00);
- (103) TR01 Paying Agent Accounts;
- (104) TR02 Undelivered or Uncashed Dividends;
- (105) TR03 Funds Held In Fiduciary Capacity;
- (106) TR04 Escrow Accounts;
- (107) TR05 Trust Vouchers;
- (108) TR99 Aggregate Trust Property Under fifty dollars (\$50.00);
- (109) UT01 Utility Deposits;
- (110) UT02 Membership Fees;
- (111) UT03 Refunds or Rebates;
- (114) UT04 Capital Credit Distributions;
- (115) UT99 Aggregate Utility Property Under fifty dollars (\$50.00);
- (116) ZZZZ Properties Not Identified Above

With regard to transactions between business associations, the following types of property are covered by the statutory exclusion provide in G.S. 116B-54(e), and no reporting to the State of North Carolina on behalf of North Carolina owners would be required; (42) MS05--Customer Overpayments; (44) MS07—Unrefunded Overcharges; (46) MS09—Credit Balances; (47) MS10—Discounts Due; and (48) MS11—Refunds Due. As for (22) CK—Credit Checks or Memos, to the extent a credit memo reflects an overpayment, underpayment, discount, or refund, it is also excluded from the reporting requirements.

*History Note: Authority G.S. 116B-60; 116B-80; Eff. February 1, 1982; Amended Eff. April 1, 2001; November 1, 1988.*

**20 NCAC 08 .0206 REPORTING PROPERTY FOUND ON AUDIT**

- (a) Claims for abandoned property resulting from an audit shall be made on Form ASD-160.
- (b) The holder shall send the notice required by G.S. 116B-59 unless the Form ASD-160 shows that notice is not required.
- (c) The holder shall transfer any property to lawful owners that are identified.
- (d) The holder shall complete the form showing property no longer escheatable because of transfer to the lawful owner and property still subject to transfer to the custody of the State Treasurer for the Escheat fund.
- (e) Transfer by payment or delivery of non-cash property shall be made with the return of Form ASD-160. Penalties shall be calculated and remitted at the same time.
- (f) Copies of payment vouchers or other proof that the items are no longer escheatable shall be sent with the return of Form ASD-160.

*History Note Authority G.S. 116B-72; 116B-80; Eff. November 1, 1988; Amended Eff. April 1, 2001.*

**20 NCAC 08 .0301 NOTIFICATION BY HOLDER TO ESCHEAT FUND**

- (a) Each holder shall notify the Escheat Fund of the existence of tangible property when it becomes subject to the custody of the

State Treasurer and shall maintain the property in a manner which will prevent loss of value until directions for either disposition or transfer to the State Treasurer are received. The Escheat Fund shall hold the holder liable for any loss resulting from the breach of a fiduciary duty by the holder.

(b) The notification shall be made on Form ASD-127 or its equivalent and shall show as a minimum:

- (1) Holder's legal name and address;
- (2) A contact person and his or her telephone number;
- (3) The date of presumed abandonment,
- (4) Separately for each item of tangible property:
  - (A) A sequence number;
  - (B) The name of the owner(s);
  - (C) The last known address(es) of the owner(s);
  - (D) The social security or tax identification number(s) of the owner(s), if known;
  - (E) A description of the property, including the property classification code set out in 20 NCAC 08 .0204;
  - (F) Serial number(s) or other identification number(s), if any;
  - (G) The approximate value of the property;
- (5) Verification pursuant to G.S. 116B-60(f); and
- (6) Verification that the holder has complied with the requirements of G.S. 116B-69(b).

*History Note: Authority G.S. 116B-69; 116B-80; Eff. February 1, 1982;*

*Amended Eff. April 1, 2001, November 1, 1988.*

**20 NCAC 08 .0401 APPLICATION FOR REFUNDS**

(a) The following persons may apply for refunds on behalf of an owner of property transferred to the Escheat Fund:

- (1) the owner or a personal representative of an owner;
- (2) the holder or a successor to the holder; and
- (3) an attorney in fact under a written power of attorney from the owner.

(b) Claims will be approved only for specified property delivered to the Escheat Fund by named holders in named years.

(c) Every claimant shall agree to the indemnification provisions of G.S. 116B-67(e) before a claim will be approved.

(d) Whenever the holder of property rejects, or otherwise refuses to process within 60 days, a claim made by a person claiming ownership, the claimant may appeal, in writing, to the Escheat Administrator.

(e) Whenever the Escheat Administrator rejects, or otherwise refuses to process a claim within 60 days, a claim by a person claiming ownership, the claimant may appeal, in writing, to the State Treasurer.

*History Note: Authority G.S. 116B-67; 116B-80; Eff. February 1, 1982;*

*Amended Eff. April 1, 2001, November 1, 1988.*

**20 NCAC 08 .0402 REQUIRED DOCUMENTATION OF APPLICATION FOR REFUND**

(a) All applications for refunds shall be made on Form ASD-111, and shall identify:

- (1) the property claimed;
- (2) the owner as shown on the Escheat records;
- (3) the holder when transferred to the Escheat Fund; and
- (4) the current owner, which may be either (2) or (3).

(b) Personal representatives, and other fiduciaries, custodians, and attorneys in fact shall submit a certified true copy of their appointment and authority.

(c) Claims must include evidence that the person on behalf of whom the claim is made is the true and actual owner of the property claimed. There is a rebuttable presumption that property of a business association is not lost in the ordinary course of business.

(d) Any person who received or will receive a fee for the identification of the owner, the location of the missing property or the preparation of a claim form shall sign the form as indicated therein, and shall insert his or her license number, if licensed by the Private Protective Services Board.

*History Note: Authority G.S. 116B-67; 116B-78; 116B-80; Eff. February 1, 1982;*

*Amended Eff. April 1, 2001, November 1, 1988.*

**20 NCAC 08 .0501 PUBLIC ACCESS TO RECORDS**

(a) Owner records that are capable of clear identification are listed at the following websites:

- (1) <http://www.treasurer.state.nc.us>; and
- (2) <http://www.missingmoney.com>

(b) Because the statute excludes access to certain records at certain periods of time, any person desiring to be given access to the records must register and:

- (1) Provide his or her name and address;
- (2) Provide the names and address of all persons for whom a search is being requested;
- (3) Agree not to remove, deface or destroy any records;
- (4) Observe hours outlined by the State Treasurer, and act without disturbing the statutory duty of the State Treasurer to administer and protect the Escheat Fund and its records;
- (5) State whether he or she is in a business for which the file search is being requested; and
- (6) Proof of his identity may be requested.

(c) If the registrant is requesting access to the records for the benefit of a business other than the owner, the registrant must agree to the following in writing that:

- (1) He or she has read G.S. 116B-78 and is fully aware of its meaning;
- (2) He or she is aware that the Private Protective Services Board has ruled that G.S. 74C-3(a)(8)b is applicable to persons searching for owners of escheated property and a license is required by said board; and
- (3) He or she is or, is not, licensed by said board; and if licensed, he or she must furnish his or her license number.

(d) All searches will be conducted by a member of the staff of the section. Registrants shall be permitted to access all records permitted by the statutes at the time requested.

(e) No person other than the staff of the Escheat Office shall enter the records area. The registrant may be required to request records by name and he or she shall be allowed to view them only in a place designated by personnel of the Escheat Office.



(f) The person in charge of the records may restrict the use of brief cases, files, etc., in the area in which the registrants view the escheat records.

*History Note: Authority G.S. 116B-62(f); 116B-80; 116B-43; Eff. February 1, 1982; Amended Eff. April 1, 2001, November 1, 1988.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 4 - COMMISSION FOR AUCTIONEERS**

**21 NCAC 04B .0202 FILING AND FEES**

(a) Properly completed applications must be filed (received, not postmarked) in the Board office at least seven days prior to an established Board meeting date, or in the case of an application for auctioneer examination, at least 10 days prior to a scheduled examination and must be accompanied by all required documents.

(b) License fees are as follows:

- (1) New auctioneer license for an applicant who did not serve an apprenticeship \$250.00  
This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.
- (2) New auctioneer license for an apprentice auctioneer \$200.00  
This includes a \$150.00 annual license fee; & \$50 examination fee.
- (3) Renewal of auctioneer license \$150.00
- (4) New apprentice auctioneer license \$150.00  
This includes a \$100.00 license fee and a \$50.00 application fee.
- (5) Renewal of apprentice auctioneer license \$100.00
- (6) New auction firm license (no examination) \$200.00  
This includes a \$150.00 annual license fee; and \$50.00 application fee.
- (7) New auction firm license (exam) \$250.00  
This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.
- (8) Renewal of an auction firm license \$150.00
- (9) Application and processing fee for conversion of non-resident reciprocal license to in state license \$ 50.00
- (10) Reinstatement of lapsed license or late fee \$ 50.00

(c) The renewal fee for a non-resident reciprocal licensee under G.S. 85B-5 shall be calculated in the same manner as the initial application fee pursuant to G.S. 85B-6.

(d) Fees may be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Auctioneer Licensing Board. Checks drawn on escrow or trust accounts shall

not be accepted. Personal checks may be accepted for payment of renewal fees.

*History Note: Authority G.S. 85B-4.1; 85B-6; Eff. November 1, 1984; Temporary Amendment Eff. January 1, 2000; Amended Eff. April 1, 2001; April 1, 1996; January 1, 1995; April 1, 1989.*

**21 NCAC 04B .0302 RE-EXAMINATION/REFUND OF FEES**

If the applicant does not appear at the initial examination for which he has been scheduled or fails to pass such examination, he will be re-scheduled for the next scheduled examination. If the applicant again does not appear or fails to pass this examination, a refund of the annual auctioneer or apprentice license fee will be made. No refund of the application or examination fee is allowed. A complete new application and proper fees are required if the person wishes to reapply.

*History Note: Authority G.S. 85B-4; 85B-6; Eff. November 1, 1984; Temporary Amendment Eff. January 1, 2000; Amended Eff. April 1, 2001; June 1, 1991.*

**21 NCAC 04B .0404 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE**

(a) The Board may assess a civil penalty in accordance with G.S. 85B-3.1(b) or deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, upon any of the following grounds:

- (1) violation of any provision of G.S. 85B;
- (2) violation of any provision of the Rules under 21 NCAC, Subchapter 4B;
- (3) a check given to the Board in payment of required fees which is returned unpaid;
- (4) allowing an unlicensed person (auctioneer) to call a bid at a sale;
- (5) auctioneering at an unlicensed auction firm sale;
- (6) failure to properly, completely and fully complete an application or making any false statement or giving any false information in connection with an application for a license, renewal or reinstatement of a license including:
  - (A) failure to completely cooperate with any investigation; or
  - (B) making any false statement or giving any false information in connection with any investigation by the Board or the Board's designee;
- (7) being adjudicated mentally incompetent by a court;
- (8) committing a crime the circumstances of which substantially relate to the auctioneering profession;
- (9) violating any federal or state statute or rule which relates to the auctioneering profession;
- (10) practicing the profession for which the holder has a license while the holder's ability to practice was impaired by alcohol or other drugs or physical or mental disability or disease;
- (11) being incompetent in practice. A licensee has been incompetent in practice if the licensee engaged in conduct

which evidences a lack of ability, fitness or knowledge to apply principles or skills of the auctioneering profession;

- (12) engaging in unprofessional conduct. In this Paragraph "unprofessional conduct" means the violation of any standard of professional behavior which through professional experience has become established in the auctioneering profession;
- (13) obtaining or attempting to obtain compensation by fraud or deceit;
- (14) violating any order of the Auctioneer Licensing Board requiring a licensee to comply with any provision of the Board's law or administrative rules;
- (15) failure to possess truth, honesty and integrity sufficient to be entitled to the high regard and confidence of the public.  
In this paragraph a lack of truth, honesty and integrity shall be evidenced by proof that the applicant or licensee is in violation of other provisions of the Board's law and administrative rules which demonstrate that the applicant or licensee fails to meet this standard; or
- (16) failure to properly make the disclosures required by 21 NCAC 04B .0405.

(b) When applying the requirements of Rule .0404(a) to auction firms or their applications, the requirements shall apply to the firm, all the principals, and all of the designated persons of the firm.

*History Note: Authority G.S. 85B-3.1; 85B-8(a)(1); Eff. November 1, 1984; Amended Eff. January 1, 1995; Temporary Amendment Eff. January 1, 2000; Amended Eff. April 1, 2001.*

**21 NCAC 04B .0801 CONTINUING EDUCATION COURSE**

(a) To renew a license on active status, an auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall complete a Board approved course(s) consisting of the hours of instruction as established in Paragraph (d) of this Rule and shall provide documentation of completion of the above Board approved course(s) within one year preceding license expiration.

- (1) "Within one year preceding license expiration time period" shall be defined as from May 16 to the following May 15 in the year that the license expires.
- (2) An auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall provide documentation on required continuing education courses to the Board by the May 15 deadline of the current renewal period.
- (3) If the required documentation is not received by the Board by the established deadline as set forth in Subparagraph (2) of this Rule, the licensee shall automatically be assessed a late fee as set forth in Subparagraph .0202(b)(10) of this Subchapter.
- (4) The renewal shall not be processed until compliance is achieved and the required fees are received as set forth in Subparagraph .0402(b) of this Subchapter.

(b) The Board shall approve courses that shall be conducted by sponsors approved by the Board under this Section. The subject matter of this course shall be determined by the course sponsor subject to Paragraph (h) of this Rule. The course sponsor shall

produce or acquire instructor and student materials. The course must be conducted as prescribed by the rules in this Section. At the beginning of the course, sponsors must provide licensees participating in their classes a copy of the student materials developed by the sponsor.

- (c) The sponsor may conduct the course at any location as frequently as is desired during the approval period.
- (d) The minimum classroom hours of instruction for each year shall be six unless the Board establishes at its April monthly Board meeting fewer hours for the upcoming year pursuant to G.S. 85B-4(e1). In determining whether fewer hours may be established, the Board shall analyze the disciplinary actions and complaints against its licensees and base its decision on whether the analysis shows that a reduction in hours is justified.
- (e) An auctioneer, an apprentice auctioneer, or a designated person(s) in an auction firm shall complete the continuing education requirements for each renewal period that their license was lapsed or suspended.
- (f) Credit hours applied to the current renewal of a license shall not be used for future renewals.
- (g) Excess continuing education hours may be carried forward as credits for a maximum of one renewal year.
- (h) The Board may mandate the topic(s) for all or part of an approved course as a continuing education requirement pursuant to G.S. 85B-4(e1). In determining whether to mandate the topic for all or part on an approved course as a continuing education requirement, the Board shall analyze the disciplinary actions and complaints against its licensees and base its decision on whether the analysis shows that mandating the topic for all or part of a course is justified.
- (i) No part of any preclicensing course curriculum shall count as continuing education credit hours.
- (j) Continuing education shall not be required until the second renewal after initial licensing pursuant to G.S. 85B-4(e).

*History Note: Authority G.S. 85B-4.(e1); Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.*

**21 NCAC 04B .0802 APPLICATION FOR ORIGINAL APPROVAL**

(a) An entity seeking original approval to sponsor a course must make application on a form prescribed by the Board. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

(b) Approval to sponsor a course shall be granted to an applicant upon showing to the satisfaction of the Board that:

- (1) The applicant has submitted all information required by the Board;
- (2) The applicant satisfies all of the requirements of Rule .0805 of this Section relating to qualifications or eligibility of course sponsors; and
- (3) The applicant required by Rule .0805(e) must be truthful, honest and of high integrity as referenced in 21 NCAC 04B .0404(a)(15). In this regard, the Board may consider the reputation and character of any owner, officer or director of any corporation, association or organization applying for sponsor approval.

*History Note: Authority G.S. 85B-4(e1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**21 NCAC 04B .0805 SPONSOR REQUIREMENTS**

- (a) Any legal entity is eligible to seek approval as a sponsor of continuing education courses, provided that the entity seeking approval is either the owner of the proprietary rights to the course or has lawfully acquired from the course owner the right to seek course approval from the Board and to conduct such course.
- (b) The official name to be used by any course sponsor in connection with the offering of an approved continuing education course must clearly distinguish the sponsor from any other previously approved continuing education course sponsor. Unless the sponsor is an auction school approved pursuant to G.S. 85B-4(d) proposing to operate continuing education courses in its own name, the official name also must clearly distinguish the sponsor from any approved auction school. Sponsor applicants proposing to use a sponsor name which does not comply with this standard may be required to adopt a different name as a condition of approval.
- (c) Any advertisement or promotional material utilized by an approved course sponsor must include the course sponsor's official name and shall not include any other name for the sponsor.
- (d) Prospective sponsors of a course must obtain written approval from the Board to conduct such course prior to conducting the course and prior to advertising or otherwise representing that the course is or may be approved for continuing education credit in North Carolina. No retroactive approval to conduct a course shall be granted for any reason.
- (e) A sponsor of a course must designate one person to serve as the continuing education coordinator for all Board-approved continuing education courses offered by the sponsor. The designated coordinator shall serve as the official contact person for the sponsor and shall be responsible for the following:
  - (1) Supervising the conduct of all the sponsor's Board-approved continuing education courses;
  - (2) Signing the course completion certificates provided by the sponsor to licensees completing courses; and
  - (3) Submitting to the Board all required rosters, reports and other information.

*History Note: Authority G.S. 85B-4(e1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**21 NCAC 04B .0809 RENEWAL OF COURSE AND SPONSOR APPROVAL**

Board approval of all continuing education course sponsors expires on the next June 30 following the date of issuance. In order to assure continuous approval, a completed renewal application prescribed by the Board, must be submitted to the Board annually on or before April 30. Any continuing education course sponsor's renewal applications that are not received or that are not complete on or before April 30 shall not have met the guidelines for renewal and must meet the criteria for original approval as set forth in Rule .0802.

*History Note: Authority G.S. 85B-4(e1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**21 NCAC 04B .0810 DENIAL OR WITHDRAWAL OF APPROVAL**

- (a) The Board may deny or withdraw approval of any course or course sponsor upon finding that:
  - (1) The course sponsor has made any false statements or presented any false information in connection with an application for course or sponsor approval or renewal of such approval;
  - (2) The course sponsor or any official or instructor in the employ of the course sponsor has refused or failed to comply with any of the provisions of this Rule;
  - (3) The course sponsor or any official or instructor in the employ of the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the Board;
  - (4) An instructor in the employ of the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in Rule .0815 of this Section; or
  - (5) Any court of competent jurisdiction has found the course sponsor or any official or instructor in the employ of the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.
- (b) If a licensee who is an approved course sponsor or an instructor in the employ of an approved course sponsor engages in any dishonest, fraudulent or unlawful conduct in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 85B-8 and G.S. 85B-9.

*History Note: Authority G.S. 85B-4(e1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**21 NCAC 04B .0815 INSTRUCTOR CONDUCT AND PERFORMANCE**

- (a) Instructors must assure that class sessions are commenced in a timely manner and are conducted for the full amount of time that is scheduled. Instructors must also assure that each student is furnished student materials that directly support the topic matter being taught.
- (b) Instructors must conduct themselves in a professional and courteous manner when performing their instructional duties and must conduct classes in a manner that demonstrates a mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly using generally accepted grammar and vocabulary.
- (2) The ability to present an effective visual image to a class by appearance and physical mannerisms.
- (3) The ability to present instruction in a thorough, accurate, logical, orderly and understandable manner, to utilize illustrative examples and to respond to questions from students.
- (4) The ability to effectively utilize varied instructional techniques in addition to straight lecture, such as class discussion, role playing or other techniques.
- (5) The ability to effectively utilize instructional aids to enhance learning.
- (6) The ability to maintain a learning environment conducive to learning and effective control of a class.
- (7) The ability to interact with adult students in a positive manner that encourages students to learn, that demonstrates an understanding of varied student backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

*History Note: Authority G.S. 85B-4(e1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**21 NCAC 04B .0817      STUDENT PARTICIPATION STANDARDS**

- (a) In addition to requiring student compliance with the attendance requirement, sponsors and instructors shall require that students comply with the following student participation standards:
- (1) A student shall direct his attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
  - (2) A student shall refrain from engaging in any activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class.
  - (3) A student shall comply with all instructions provided by the sponsor or instructor related to providing information needed to properly report completion of a course by the student.
- (b) Instructors and sponsors may dismiss from a class session any student who fails to comply with the student participation standards prescribed in Paragraph (a) of this Rule.
- (c) Sponsors shall not issue a course completion certificate to any student who fails to comply with the student participation standards set forth in Paragraph (a) of this Rule, nor shall sponsors include the name of such student on their reports verifying completion of a continuing education course. Sponsors shall submit to the Board with their reports for the class session a written statement which includes the name and license number of the student for whom the sponsor does not report course credit, details concerning the student's failure to comply with the student participation standards, and names of other persons in attendance at the class who witnessed the student's conduct.

*History Note: Authority G.S. 85B-4(e1);*

*Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**21 NCAC 04B .0819      ALTERNATIVE COMPLIANCE**

- (a) An auctioneer, apprentice auctioneer, or designated person of an auction firm who is unable to attend a Board-approved course and obtain the requisite hours of instruction established by the Board may apply to the Board for alternative compliance.
- (b) An application for alternative compliance shall be on a form provided by the Board.
- (c) An application for alternative compliance shall be received by the Board by May 15 of the year in which the requisite hours of instruction are to be completed. If approved, the course of instruction shall be completed prior to license renewal and shall be exempt from the late fee.
- (d) Alternative compliance shall include, but shall not be limited to:
  - (1) Academic courses at a community college, junior college, or college or university located in this State and accredited by the Southern Association of Colleges and Schools in any of the following topics:
    - (A) Accounting;
    - (B) Finance;
    - (C) Business Management;
    - (D) Business Law;
    - (E) Economics;
    - (F) Marketing;
    - (G) Computer Science;
    - (H) Sales; or
    - (I) Enhancing Personal or Professional Skills.
  - (2) Completion of any non-real estate appraisal course with evidence of successful completion; and
  - (3) Publication of an article in a professional journal of general circulation among the membership of the profession.

*History Note: Authority G.S. 85B-4(e1);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**CHAPTER 16 - BOARD OF DENTAL EXAMINERS**

**21 NCAC 16Q .0201      CREDENTIALS AND PERMIT**

- (a) No dentist shall employ or use general anesthesia on an outpatient basis for dental patients unless the dentist possesses a permit issued by the Board. A dentist holding a permit shall be subject to review and shall only employ or use general anesthesia at a facility located in the State of North Carolina in accordance with 21 NCAC 16Q .0202. Such permit must be renewed annually.
- (b) Any dentist who wishes to administer general anesthesia to patients must apply to the Board for the required permit on a prescribed application form, submit an application fee of fifty dollars (\$50.00), and produce evidence showing that he:
  - (1) Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level; or
  - (2) Has graduated from a program certified by the American Dental Association in Oral and Maxillofacial Surgery; or

- (3) Is a Diplomate of or eligible for examination by the American Board of Oral and Maxillofacial Surgery; or
- (4) Is a Fellow of the American Dental Society of Anesthesiology; or
- (5) Is a dentist who has been administering general anesthetics in a competent manner for the five years preceding the effective date of this Rule.

(c) A dentist who is qualified to administer general anesthesia in accordance with this Section and holds a general anesthesia permit is also authorized to administer sedation without obtaining a separate sedation permit.

(d) The dentist involved with the administration of general anesthesia shall document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

*History Note: Authority G. S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. April 1, 2001; August 1, 2000.*

**21 NCAC 16Q .0301 SEDATION CREDENTIALS AND PERMIT**

(a) A dentist may administer or employ a certified registered nurse anesthetist to administer sedation to dental patients on an outpatient basis provided he obtains a permit from the Board by submitting the appropriate information on an application form provided by the Board and pays a fee of fifty dollars (\$50.00).

(b) A dentist applying for a permit to administer sedation must meet at least one of the following criteria:

- (1) Satisfactory completion of a minimum of 60 hours of didactic training and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
- (2) Satisfactory completion of an undergraduate or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (1) of this Rule; or
- (4) Authorization for the use of general anesthetics by holding a permit for the same issued by the Board; or
- (5) Utilization of a certified registered nurse anesthetist under his supervision to administer intravenous sedation to dental patients.

(c) To be eligible for a sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, staffed with supervised auxiliary personnel who shall document annual, successful completion of basic life support (BLS) training and be capable of assisting with procedures, problems and emergencies incident thereto.

(d) The dentist seeking a permit shall meet one of the following criteria:

- (1) document current, successful completion of advanced cardiac life support (ACLS) training or its age-specific equivalent, or other Board-approved equivalent course; or
- (2) document annual, successful completion of basic life support (BLS) training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:
  - (A) sedation;
  - (B) medical emergencies;
  - (C) monitoring IV sedation and the use of monitoring equipment;
  - (D) pharmacology of drugs and agents used in IV sedation;
  - (E) physical evaluation, risk assessment, or behavioral management; or
  - (F) audit ACLS/PALS courses.

(e) The Board may, based upon formal application, grant a permit authorizing the use of sedation to a dentist who has been utilizing sedation in a competent and effective manner for the past five years preceding the effective date of this Rule, but who has not had the benefit of formal training as outlined in Paragraph (b) of this Rule, provided that said dentist meets the requirements of Paragraphs (c) and (d) of this Rule.

*History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. April 1, 2001; August 1, 2000; January 1, 1994.*

**21 NCAC 16X .0101 MANAGEMENT ARRANGEMENTS**

(a) No dentist or professional entity shall enter into a management arrangement, contractual agreement, stipulation, or other legal binding instrument with a business entity, corporation, proprietorship, or other business entity, for the provision of defined business services, bundled business services, or other business services, the effect of which may provide control of business activities or clinical/professional services of that dentist or professional entity, unless such management arrangement meets the requirements of Paragraphs (b) and (c) of this Rule. This Rule shall not apply to agreements for the provision of legal, financial, or other services not related to the provision of management services for a fee or to employment arrangements between an employee and the dentist or professional entity.

(b) Any management arrangement, contractual agreement, stipulation, or other binding instrument shall:

- (1) be in a writing that:
  - (A) is signed by all parties to the agreement;
  - (B) sets forth all material terms of the arrangement between or among the parties thereto;
  - (C) describes all of the types of services to be provided by the management company and the time periods during which those services will be provided; and
  - (D) sets forth the aggregate compensation to be paid under the management arrangement, contractual agreement, stipulation, or other legal binding

instrument with a business entity or the precise methodology for calculating such compensation.

(2) be reviewed by the Board.

(c) No management arrangement shall provide for or permit any of the following:

- (1) direct or indirect ownership of, or control over clinical aspects of, the dental business of a dentist or professional entity by a management company or the grant to the management company or another non-professional entity control over the distribution of a revenue stream or control over a line of business of the professional entity except for the sale of fixed assets of a dentist or professional entity permitted under the laws of the State of North Carolina;
- (2) ownership or exclusive control of patient records by a management company;
- (3) direct or indirect control over, or input into, the clinical practices of the professional entity or its dentists or ancillary personnel by a management company;
- (4) direct or indirect control over the hiring and firing of clinical personnel or material terms of clinical personnel's relationship with the dentist or professional entity by a management company or a related person;
- (5) authority in the management company to enter into or approve any contract or other arrangement, or material terms of such contract or arrangement, between the professional entity and a dentist for the provision of dental services or the requirement that the management company or related person approve or give input into such contract or arrangement;
- (6) direct or indirect control over the transfer of ownership interests in the professional entity by a management company or other non-professional entity including, without limitation, any agreement or arrangement limiting or requiring in whole or in part the transfer of ownership interests in a professional entity;
- (7) payment to the management company of anything of value based on a formula that will foreseeably increase or decrease because of the increase or decrease in profitability, gross revenues or net revenues of the dentist or professional entity; or
- (8) payments to the management company that, at the time of execution of an agreement as required under Paragraph (b) of this Rule, are likely, foreseeably and purposely in excess of the likely profits of the professional entity not taking into account the compensation to be paid to the management company under the management arrangement.

(d) Notwithstanding Paragraphs (c)(7) and (c)(8) of this Rule, a management arrangement may provide for the following:

- (1) increased payments to the management company based upon the lowering of costs to the professional entity or dentist;
- (2) decreased payments to the management company based upon increases in costs to the professional entity or dentist; or
- (3) collection of monies, or payment of costs, of the professional entity or dentist by the management company so long as the amounts retained by the

management company following payment of any costs of the professional entity or dentist comply with the provisions of this Rule relating to compensation to the management company and all sums collected or retained by the management company in excess of costs paid by the management company plus its compensation are paid at least monthly and at regular intervals to the professional entity.

(e) No dentist or professional entity shall enter into an oral or written arrangement or scheme that the dentist or professional entity knows or should know has a material purpose of creating an indirect arrangement that, if entered into directly, would violate this Rule.

(f) For purposes of this Rule, the following terms shall have the following meanings:

- (1) "Ancillary personnel" shall mean any individual that regularly assists a dentist in the clinical aspects of the practice of dentistry;
- (2) "Clinical" shall mean of or relating to the activities of a dentist as described in G.S. 90-29(b)(1)-(10);
- (3) "Employment arrangement" shall mean an arrangement between a professional entity or dentist and an individual who is considered an employee of the professional entity or dentist under the common law test of an employer/employee relationship, or a leased employee working under a written employee leasing agreement which provides that:
  - (A) the individual, although employed by the leasing company, provides services as the leased employee of the dentist or professional entity; and
  - (B) the dentist or professional entity exercises control over all actions taken by the leased employee with regard to the rendering of services to the same extent as the dentist or professional entity would exercise such control if the leased employee were directly employed by the dentist or professional entity;
- (4) "Management arrangement" shall mean any one or more agreements, understandings or arrangements, alone or together, whether written or oral, between a management company and a dentist or professional entity whereby:
  - (A) a management company regularly provides services for the clinical-related business of a dentist or professional entity; or
  - (B) a management company exerts control over the management or clinical aspects of the business of a dentist or professional entity or its or their employees or contractors; or
  - (C) a management company receives a percentage of the net or gross revenues or profits of a dentist or professional entity.
- (5) "Management company" shall mean any individual, business corporation, nonprofit corporation, partnership, limited liability company, limited partnership or other legal entity that is not a professional entity or dentist;
- (6) "Professional entity" shall mean a professional corporation, nonprofit corporation, partnership, professional limited liability company, professional limited

partnership or other entity or aggregation of individuals that is licensed or certified or otherwise explicitly permitted to practice dentistry under North Carolina General Statutes; and

- (7) "Related person" shall mean any person or entity, other than a dentist or professional entity, that owns, is employed by, or regularly receives consideration from, a management company or another related person.

*History Note: Authority G.S. 90-29(b)(11); 90-48; Eff. April 1, 2001.*

**CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY**

**21 NCAC 30 .0101 PURPOSE**

The purpose of the Rules in this Chapter is to implement the provisions of the North Carolina Massage and Bodywork Therapy Practice Act, as set forth in G.S. 90, Article 36.

*History Note: Authority G.S. 90-621; 90-626; Temporary Adoption Eff. February 15, 2000; Eff. March 1, 2001.*

**21 NCAC 30 .0102 DEFINITIONS**

In addition to the definitions set forth in G.S. 90-622(1) through (5), the following definitions apply to the Rules in this Chapter:

- (1) Practice Act. – G.S. 90, Article 36: The North Carolina Massage and Bodywork Therapy Practice Act.
- (2) Licensee. - A person who holds a valid license issued by the Board to engage in the practice of massage and bodywork therapy.
- (3) Reciprocity. - Pursuant to G.S. 90-630, a provision which shall apply only to qualified practitioners of massage and bodywork therapy who reside outside the State; or qualified practitioners who have resided in the State for not more than 180 days.
- (4) Place of business. - The primary street location where the licensee provides massage and bodywork therapy. If the licensee provides massage and bodywork therapy only at the location of clients, then it shall be the residence street address of the licensee.
- (5) Malpractice. - Professional misconduct.
- (6) Gross negligence. - The intentional failure to perform a duty in reckless disregard of the consequences as affecting the life or property of another.
- (7) Incompetency. - Conduct which evidences a lack of ability, fitness or knowledge to apply principles or skills of the profession of massage and bodywork therapy.
- (8) Sexual activity. - Any direct or indirect physical contact, or verbal communication, by any person or between persons which is intended to erotically stimulate either person, or which is likely to cause such stimulation and includes sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse. As used herein, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. Sexual activity can involve the use of any

device or object and is not dependent on whether penetration, orgasm or ejaculation has occurred.

- (9) Therapeutic, educational, or relaxation purposes. - Pursuant to G.S. 90-622(3), that which is intended to positively affect the health and well-being of the client, and which does not include sexual activity, as defined in Subparagraph (8) of this Rule.

*History Note: Authority G.S. 90-622; 90-626(9); Temporary Adoption Eff. February 15, 2000; Eff. March 1, 2001.*

**21 NCAC 30 .0201 APPLICATION AND SCOPE**

Each applicant for a license as a massage and bodywork therapist shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) Recent original photograph(s) of the applicant of acceptable quality for identification. Such photograph shall be of the head and shoulders, passport type, two inches by two inches in size;
- (2) The proper fees, as required by Rule .0204 of this Section;
- (3) Documentation that the applicant has earned a high school diploma or equivalent;
- (4) Documentation that the applicant is 18 years of age or older;
- (5) Documentation that the applicant has successfully completed a course of study at a Board-approved school consisting of a minimum of 500 classroom hours of supervised instruction. If the applicant attended a school which is not Board-approved, the Board may elect to review that applicant's educational credentials for approval on a case-by-case basis. At a minimum, the documentation of such training must come from a school which is licensed by the educational licensing authority in the state, territory or country in which it operates, or is exempt by statute. The curriculum must meet or be substantially equivalent to the standards set forth in Rule .0602(a)(3) of this Chapter;
- (6) Documentation that the applicant has achieved a passing score on an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies, and documentation that the applicant is a certificant in good standing with such agency; and
- (7) A form provided by the Board containing signed statements from two licensed massage and bodywork therapists, or other licensed health care practitioners, attesting to the applicant's good moral character and adherence to ethical standards.

*History Note: Authority G.S. 90-626(2); 90-629; Temporary Adoption Eff. February 15, 2000; Eff. March 1, 2001.*

**21 NCAC 30 .0203 EXEMPTIONS FROM LICENSURE**

- (a) Persons may claim exemption from licensure pursuant to G.S. 90-624 (6) or (7) only by meeting one of the following criteria:

- (1) Such persons are solely practicing techniques which are defined by national organizations which meet the criteria for exemption set forth in either G.S. 90-624 (6) or (7);
  - (2) Such persons are solely practicing techniques which do not involve any contact with the body of the client; or
  - (3) Such persons are solely practicing techniques which involve resting the hands on the surface of the client's body without delivering pressure to or manipulation of the soft tissue.
- (b) Persons who are utilizing exempt techniques along with the practice of massage or bodywork therapy, as defined in G.S. 90-622(3), are not considered to be exempt and shall be licensed.
- (c) Pursuant to G.S. 90-623, exempted practitioners may not hold themselves out to be a massage and bodywork therapist; they may not utilize or promote themselves or their services using such terms as "massage, massage therapy, bodywork, bodywork therapy," or any other derivative term which implies a soft tissue technique or method.
- (d) Services such as herbal body wraps, skin exfoliating treatments or the topical application of products to the skin for beautification purposes are not considered to be the practice of massage and bodywork therapy, as long as such services do not involve direct manipulation of the soft tissues of the body. Those who are utilizing such techniques along with the practice of massage or body work therapy are not considered exempt and shall be licensed.

*History Note: Authority G.S. 90-624; 90-626;  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0204 FEES**

- (a) Fees are as follows:
- |     |                             |          |
|-----|-----------------------------|----------|
| (1) | Request for License App Pkg | \$ 20.00 |
| (2) | License fee                 | 150.00   |
| (3) | License renewal             | 100.00   |
| (4) | Late renewal penalty        | 75.00    |
| (5) | Duplicate license           | 25.00    |
| (6) | Provisional license         | 150.00   |

- (b) Fees shall be nonrefundable and may be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Board of Massage and Bodywork Therapy. Personal checks shall be accepted for payment of renewal fees.
- (c) A personal check returned for insufficient funds is grounds for a letter of reprimand.

*History Note: Authority G.S. 90-626(8); 90-628;  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0301 PROFESSIONAL DESIGNATIONS**

- (a) All licensees shall use the professional title, "Licensed Massage and Bodywork Therapist," or the letters "L.M.B.T." when they are holding themselves out to be a licensee in their professional communications.
- (b) Licensees shall not use any other letters or abbreviations after their name when they are holding themselves out to be a licensee in their professional communications, except those which are conveyed by a degree from a regionally accredited post-secondary

institution, a license from another occupational licensing board, or certification from an agency which is approved by the National Commission on Certifying Agencies.

- (c) Licensees may also use other words descriptive of their work, consistent with Rule .0501(1) of this Chapter, such as areas of clinical specialty, in addition to their primary identification as a Licensed Massage and Bodywork Therapist.

*History Note: Authority G.S. 90-623(c); 90-626(9);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0303 LICENSE RENEWAL**

- (a) Any licensee desiring the renewal of a license shall comply with all continuing education requirements, shall apply for renewal and shall submit the required fee.
- (b) A license which has not been renewed prior to its expiration date is considered lapsed.
- (c) Licenses lapsed in excess of 24 months are expired and shall not be renewable. Persons whose licenses have expired and who desire to be licensed shall not be entitled to renew their license but shall apply for a new license.
- (d) Any person whose license has lapsed or expired and who engages in any massage and bodywork therapy activities governed by the Practice Act will be subject to the penalties prescribed in Rule .0905 of this Chapter.

*History Note: Authority G.S. 90-626(3);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0401 ADDRESS OF RECORD**

Each licensee shall notify the Board in writing of the licensee's current residence street address and primary place of business. The licensee shall indicate to the Board his/her mailing address and telephone number for the purposes of receiving communication from the Board and for listing in the registry of licensees.

*History Note: Authority G.S. 90-626(9);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0402 TRADE NAMES**

The licensee shall notify the Board in writing of all assumed name certificates filed with any county register of deeds pursuant to the requirements of G.S. 66-68.

*History Note: Authority G.S. 90-626(9);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0501 CODE OF ETHICS**

This Code of Ethics establishes standards for the practice of massage and bodywork therapy which are intended to protect the public health, safety and welfare, to preserve the integrity of the profession, and to allow for the proper discharge of responsibilities to those served. Licensees shall have a commitment to provide the



highest quality of care to those who seek their professional services, and shall:

- (1) Represent their qualifications, credentials and professional affiliations accurately, and provide only those services which they are qualified to perform;
- (2) Inquire as to the health status of each client before treatment to determine whether there are contraindications for the application of massage and bodywork therapy;
- (3) Inform clients, other health care practitioners and the public of the scope and limitations of the practice of massage and bodywork therapy, and refer clients to appropriate health care practitioners whenever indicated;
- (4) Maintain the confidentiality of all client information, unless disclosure is consented to by the client, required by law or by court order;
- (5) Obtain and document the informed consent of the client before providing treatment. Informed consent may be given in written or verbal form;
- (6) Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client;
- (7) Respect the client's right to refuse, modify or terminate treatment regardless of prior consent given;
- (8) Refrain from initiating or engaging in any sexual activity involving a client, as defined in Rule .0102(8) of this Chapter;
- (9) Refuse any gifts or benefits which are intended to influence a referral, decision or treatment that are primarily for personal gain and not for the good of the client; and
- (10) Inform the Board of any violation of the Practice Act or Rules and Regulations.

*History Note: Authority G.S. 90-621; 90-626(9);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0502 FACILITY REQUIREMENTS**

(a) The practice of massage and bodywork therapy shall be conducted in facilities which are safe and sanitary. Licensees shall maintain their treatment facilities according to the following standards:

- (1) Comply with all local building code requirements;
- (2) Comply with all state fire safety codes;
- (3) Comply with all state health inspection codes;
- (4) Maintain all equipment used in the practice of massage and bodywork therapy in a safe and sanitary condition;
- (5) Launder or sanitize, before reuse, all materials furnished for the personal use of the client, including towels and linens;
- (6) Provide adequate toilet and lavatory facilities for the client;
- (7) If equipped with a whirlpool bath, sauna, steam cabinet, or steam room, maintain adequate and clean shower facilities on the premises;
- (8) Maintain a lavatory for hand cleansing, or have available a chemical germicidal product designed to disinfect and cleanse hands without the use of a lavatory.

(b) For treatments which are given at the location of a client, only Subparagraphs (a)(4), (a)(5) and (a)(8) of this Rule, apply. For

treatments which are given at a temporary location lasting not more than five days such as a trade show, sporting event or community festival, only Subparagraphs (a)(4) and (a)(8) of this Rule, apply.

*History Note: Authority G.S. 90-626(9);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0503 HYGIENE**

Licensees shall maintain a professional standard of hygiene in the practice of massage and bodywork therapy as follows:

- (1) Before and after each treatment, licensees shall cleanse and disinfect their hands, using a lavatory or a chemical germicidal product.
- (2) Licensees shall maintain a barrier of unbroken skin on their hands, forearms, and elbows at all times. In the case of broken skin, the licensee shall use a finger cot, glove or chemical barrier product to cover the affected area during treatment.

*History Note: Authority G.S. 90-626(9);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0504 DRAPING OF CLIENTS**

(a) Licensees shall maintain a sufficient supply of clean drapes, for the purpose of draping each client during treatment. As used herein, "drapes" mean towels, sheets, gowns or other equivalent coverings.

(b) Before proceeding with a treatment, licensees shall explain expected draping techniques to the client and provide the client with a clean drape for the purpose of ensuring their safety, comfort and privacy.

(c) The requirements of Paragraphs (a) and (b), of this Rule, do not apply in the case of treatments where the client does not disrobe.

*History Note: Authority G.S. 90-626(9);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0505 SEXUAL ACTIVITY PROHIBITED**

(a) Sexual activity with a client, as defined in Rule .0102(8) of this Chapter, is prohibited where the practice of massage and bodywork therapy is conducted.

(b) No licensee shall engage in or permit any person or persons to engage in sexual activity with a client in a location where the practice of massage and bodywork therapy is conducted, or use such location to make arrangements to engage in sexual activity in any other place.

(c) Licensees shall not use the therapist-client relationship to engage in sexual activity with any client or to make arrangements to engage in sexual activity with any client.

*History Note: Authority G.S. 90-626(9);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0506 CONTINUING DUTY TO**

**REPORT CERTAIN CRIMES AND CIVIL SUITS**

- (a) All licensees shall report to the Board any and all of the following by themselves or by other licensees:
- (1) Charges of, convictions of, or pleas of guilty or no contest to a felony;
  - (2) Charges of, convictions of, or pleas of guilty or no contest to any crime that involves moral turpitude; and
  - (3) Charges of, convictions of, or pleas of guilty or no contest to any alcohol or drug-related offense.
- (b) All licensees shall report to the Board if they are named as a defendant in a civil suit arising out of a licensee's practice of massage and bodywork therapy.
- (c) A licensee must report a charge, conviction, plea in a criminal case, or involvement as a defendant in a civil suit, as set forth in Paragraphs (a) and (b), of this Rule, within 30 days after it occurs.

*History Note: Authority G.S. 90-626(9);  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0601 BOARD APPROVAL**

- (a) Any school, whether in this State or another state, territory or country, that offers a certificate, diploma or degree program in massage and bodywork therapy may make application for Board approval on a form provided by the Board. Every school must submit an application to be considered for approval, whether or not such school has been licensed, approved or accredited by another agency, state board, accreditation commission or trade association. A school which operates more than one location shall submit a separate application for each location.
- (b) The Board shall grant approval to schools that meet the standards set forth in this section. The Board shall maintain a list of approved schools.
- (c) In order to maintain approval status, each school shall submit an annual report on a form provided by the Board, which may include documentation of continued state licensure, where such licenses are required, and any changes in curriculum, instructional staff or administrative staff.
- (d) An approved school shall notify the Board in writing within 30 days of any change in the school's location address, ownership, or controlling interest.
- (e) The Board may utilize disciplinary sanctions for schools set forth in Rule .0905(b) of this Chapter if the applicant for approval, or holder of such approval:
- (1) Fails to maintain, at any time, the minimum requirements for approval set forth in this Section;
  - (2) Fails to require its students to complete the minimum standards in order to graduate;
  - (3) Submits documents to the Board which contain false or misleading information;
  - (4) Fails to allow authorized representatives of the Board to conduct inspections of the school, or refuses to make available to them at any time full information pertaining to the requirements for approval set forth in this Section;
  - (5) Violates any statute or rule required for licensure or approval of that school by its educational licensing authority; or
  - (6) Violates any applicable rule of this Section.

*History Note: Authority G.S. 90-631;  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0701 CONTINUING EDUCATION REQUIREMENTS AND DEFINITIONS**

- (a) Pursuant to G.S. 90-632, a licensee, when renewing a license, shall document that they have completed a minimum of 25 hours of approved continuing education as defined herein, during the immediately preceding licensure period.
- (b) Distance learning, as defined herein, shall not comprise more than 12 hours of the required continuing education hours per licensure period.
- (c) Documented hours of continuing education in excess of the 25 hour requirement shall not be carried over to the following licensure period.
- (d) The Board may audit licensees at random to assure compliance with these requirements.
- (e) The following definitions apply to this section:
- (1) Continuing education. -- Learning experiences which enhance and expand the skills, knowledge, and attitudes of massage and bodywork therapists which enable them to render competent professional service to clients, the profession and the public.
  - (2) Distance learning. -- Courses taken by home study which are produced by an approved provider, whether delivered by videotape, audiotape, printed materials, or computer-based means. The licensee shall be required to demonstrate course completion and comprehension of learning to the provider before documentation is given.
  - (3) One "hour" of continuing education. -- At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of an instructor, or in a distance learning activity designed by an approved provider. One semester credit hour at an accredited post-secondary institution shall be equivalent to 25 clock hours.
  - (4) It shall be the licensee's responsibility to ensure that each course for which they claim credit is consistent with these definitions.

*History Note: Authority G.S. 90-626(9); 90-632;  
Temporary Adoption Eff. February 15, 2000;  
Eff. March 1, 2001.*

**21 NCAC 30 .0702 APPROVED CONTINUING EDUCATION PROVIDER**

- An approved continuing education provider is one which meets one of the following criteria:
- (1) The provider has been granted the designation of "Approved Provider of Category A Continuing Education Programming" by the National Certification Board for Therapeutic Massage and Bodywork. The provider shall maintain this status without interruption, and shall follow all regulations set forth by NCBTMB; or
  - (2) The provider is a regionally accredited post-secondary institution of higher learning, and offers courses which

meet the Board's definition of continuing education for massage and bodywork therapists.

*History Note: Authority G.S. 90-626(9); 90-632; Temporary Adoption Eff. February 15, 2000; Eff. March 1, 2001.*

**21 NCAC 30 .0903 ACTION ON A COMPLAINT**

Action on a complaint consists of the following:

- (1) The Board shall receive and acknowledge complaints, open a file and initiate complaint tracking.
  - (2) Complaints will be screened to determine jurisdiction and the type of response appropriate for the complaint.
  - (3) Investigation:
    - (a) If the facts do not clearly indicate a Practice Act violation, and the complaint can be handled without an investigation, the Board shall request that the licensee cease conduct that could result in a Practice Act violation.
    - (b) If the facts clearly indicate a Practice Act violation, the Board shall commence an investigation. The Board may utilize additional personnel such as licensees, law enforcement officials, or other technical personnel that may be required in a particular case. If a Board member is utilized in the investigation, care must be taken to observe due process by separating:
      - (i) investigation;
      - (ii) prosecution; and
      - (iii) hearings and final decision-making.

No Board member shall participate in more than one of these three steps in the enforcement process.
    - (c) A report of each investigation shall be prepared for the Board's review.
  - (4) Formal and Informal Hearings:
    - (a) The Board, after review of an investigative file, may schedule an informal meeting.
    - (b) If the matter cannot be resolved informally, then a formal hearing shall be held.
    - (c) Members of the Board shall not make ex parte communication with parties to a hearing.
  - (5) Final Orders: As soon as possible, but at least within 60 days, the Board will issue its final decision in writing specifying the date on which it will take effect. The Board will serve one copy of the decision on each party to the hearing.
  - (6) Compliance: The Board Chair will cause a follow-up inquiry to determine that the orders of the Board are being obeyed.
- (2) Letter of Reprimand: An expression of displeasure. The mildest form of administrative action. This formal expression of disapproval will be retained in the licensee's file but shall not be publicly announced. It is not published, but is released upon request;
  - (3) Probation: A period of time where certain restrictions or conditions are imposed on a license. Continued licensure is subject to fulfillment of specified conditions;
  - (4) Suspension of license: A condition of probation. Loss of license for a certain duration of time after which the individual may be required to reapply for licensure or remain on probation;
  - (5) Refusal of License Renewal: A refusal to reinstate or renew a license;
  - (6) Revocation of license: An involuntary termination of a license;
  - (7) Injunction: A court action prohibiting or compelling conduct by a licensee.
- (b) The following types of disciplinary sanctions regarding schools of massage and bodywork therapy may be utilized by the Board:
- (1) Denial of Application: Refusal to grant approval to the applicant school;
  - (2) Letter of Reprimand: An expression of displeasure. A formal expression of disapproval will be retained in the school's file but shall not be publicly announced. It is not published, but is released upon request;
  - (3) Probation: A period of time where certain restrictions or conditions are imposed on an approved school. Continued approval is subject to fulfillment of specified conditions;
  - (4) Suspension of approval: A condition of probation. Loss of approval status for a certain duration of time after which the school may be required to reapply for approval or remain on probation;
  - (5) Refusal of Approval: A refusal to reinstate or renew a school's approval status;
  - (6) Revocation of Approval: An involuntary termination of school's approval status;
  - (7) Injunction: A court action prohibiting or compelling conduct by a school.
- (c) The Board may request information from professional associations, professional review organizations (PROs), hospitals, clinics or other institutions in which a licensee performs professional services, on possible chemical abuse, or incompetent or unethical behavior.
- (d) The Board will provide notice of sanction taken by it to other public entities as necessary to ensure that other state boards, enforcement authorities, and accrediting agencies receive the names of licensees and schools disciplined.

*History Note: Authority G.S. 90-626(5),(6),(7),(13); Temporary Adoption Eff. February 15, 2000; Eff. March 1, 2001.*

**21 NCAC 30 .0905 DISCIPLINARY SANCTIONS**

- (a) The following types of disciplinary sanctions regarding massage and bodywork therapists may be utilized by the Board:
- (1) Denial of Application: Refusal to license the applicant;

**CHAPTER 32 - BOARD OF MEDICAL EXAMINERS**

**21 NCAC 32T .0101 CLINICAL PHARMACIST PRACTITIONER**

- (a) Definitions:

- (1) 'Medical Board' means the North Carolina Medical Board.
  - (2) 'Pharmacy Board' means the North Carolina Board of Pharmacy.
  - (3) 'Joint Subcommittee' means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.
  - (4) 'Clinical Pharmacist Practitioner or CPP' means a licensed pharmacist in good standing who is approved to provide drug therapy management under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.
  - (5) 'Supervising Physician' means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written agreement. Only a physician approved by the Medical Board may legally identify himself or herself as a supervising physician.
  - (6) 'Approval' means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.
  - (7) 'Continuing Education or CE' is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.
  - (8) 'Clinical Experience approved by the Boards' means work in a pharmacy practice setting which includes experience consistent with the following components as listed in Paragraphs (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Paragraph (b)(1)(B) of this Rule.
- (b) CPP application for approval.
- (1) The requirements for application for CPP approval include that the pharmacist:
    - (A) has an unrestricted and current license to practice as a pharmacist in North Carolina;
    - (B) meets one of the following qualifications:
      - (i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Practitioner, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards;
      - (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement; or
      - (iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement.
    - (C) submits the required application, a written endorsement from the Pharmacy Board and the fee to the Medical Board;
    - (D) submits any information deemed necessary by the Medical Board in order to evaluate the application; and
    - (E) has a signed supervising physician agreement.
- If for any reason a CPP discontinues working in the approved physician arrangement, both Boards shall be notified in writing within ten days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.
- (2) All certificate programs referred to in Paragraph (b)(1)(B)(i) of this Rule must contain a core curriculum including at a minimum the following components:
    - (A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
    - (B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
    - (C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;
    - (D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and /or laboratory tests in accordance with established standards of practice;
    - (E) referring patients to other health professionals as appropriate;
    - (F) administering medications;
    - (G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics of their medication and related therapy;
    - (H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
    - (I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;
    - (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;
    - (K) devices, and durable medical equipment;
    - (L) providing emergency first care;

- (M) retrieving, evaluating, utilizing, and managing data and professional resources;
  - (N) using clinical data to optimize therapeutic drug regimens;
  - (O) collaborating with other health professionals;
  - (P) documenting interventions and evaluating pharmaceutical care outcomes;
  - (Q) integrating pharmacy practice within healthcare environments;
  - (R) integrating national standards for the quality of healthcare; and
  - (S) conducting outcomes and other research.
- (3) The completed application for approval to practice as a CPP shall be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.
- (A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
  - (B) the application shall be denied; or
  - (C) the application shall be approved with restrictions.
- (c) Annual Renewal.
- (1) Each CPP shall register annually on the anniversary of his or her birth date by:
    - (A) verifying a current Pharmacist license;
    - (B) submitting the renewal fee as specified in Paragraph (j)(2) of this Rule;
    - (C) completing the Medical Board's renewal form; and
    - (D) reporting continuing education credits as specified by the Medical Board.
  - (2) If the CPP has not renewed within 30 days of the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.
- (d) Continuing Education.
- (1) Each CPP shall earn 35 hours of practice relevant CE each year approved by the Pharmacy Board.
  - (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.
- (e) The supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP; and shall review and countersign each order written by the CPP within seven days.
- (f) The written CPP agreement shall:
- (1) be approved and signed by both the supervising physician and the CPP and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
  - (2) be specific in regards to the physician, the pharmacist, the patient and the disease;
  - (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
  - (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
  - (5) include a pre-determined plan for emergency services;
  - (6) include a plan and schedule for weekly quality control, review and countersignature of all orders written by the CPP in a face-to-face conference between the physician and CPP;
  - (7) require that the patient be notified of the collaborative relationship; and
  - (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.
- (g) The supervising physician of the CPP shall:
- (1) be fully licensed, engaged in clinical practice, and in good standing with the Medical Board;
  - (2) not be serving in a postgraduate medical training program;
  - (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
  - (4) supervise no more than three pharmacists.
- (h) The CPP shall wear a nametag spelling out the words 'Clinical Pharmacist Practitioner'.
- (i) The approval of a CPP may be restricted, denied or terminated by the Medical Board and the pharmacist's license may be restricted, denied, or terminated by the Pharmacy Board, in accordance with provisions of G.S. 150B if the appropriate Board finds one or more of the following:
- (1) the CPP has held himself or herself out or permitted another to represent the CPP as a licensed physician;
  - (2) the CPP has engaged or attempted to engage in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
  - (3) the CPP has performed or attempted to provide medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
  - (4) the CPP is adjudicated mentally incompetent;
  - (5) the CPP's mental or physical condition renders the CPP unable to safely function as a CPP; or
  - (6) the CPP has failed to comply with any of the provisions of this Rule.
- Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.
- (j) Fees:
- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
  - (2) The fee for annual renewal of approval, due on the CPP's anniversary of birth date is fifty dollars (\$50.00).
  - (3) No portion of any fee in this Rule is refundable.

*History Note Authority G.S. 90-6(c); 90-18(c)3a; 90-18.4; Eff. April 1, 2001.*

**CHAPTER 33 - MIDWIFERY JOINT COMMITTEE**

**21 NCAC 33 .0107 NURSE MIDWIFE APPLICANT STATUS**

Graduate Nurse Midwife Applicant status may be granted by the Midwifery Joint Committee under the following circumstances:

- (1) a nurse licensed to practice as a registered nurse in North Carolina who meets all of the following criteria:
  - (a) has graduated from a nurse midwifery education program which meets the criteria of the American College of Nurse Midwives for graduates to seek certification;
  - (b) has applied to take or is waiting for results of the certification exam; and
  - (c) whose application for approval as a certified nurse midwife has been received by the Midwifery Joint Committee.
- (2) nurse midwife applicant status may not exceed a period of six months beyond date of completion of nurse midwifery education program or until notice of certification or failure of certification is received, whichever occurs first.
- (3) a nurse midwife applicant, described in Item (1) and (2) of this Rule, may function in accordance with 21 NCAC 33 .0104 and 21 NCAC 33 .0105 with the following limitations:
  - (a) wear identification as a "Graduate Nurse Midwife";
  - (b) have no prescribing privileges;
  - (c) practice only in situations where the supervising physician or a Certified Nurse Midwife approved to practice in the state of North Carolina is physically present in the practice site in which the applicant is working; and
  - (d) have supervising physician or a Certified Nurse Midwife approved to practice in the state of North Carolina countersign all medical notations in patient records on a daily basis.
- (4) In the event the individual leaves the job in which he/she has worked as a nurse midwife applicant before approval as a certified nurse midwife is granted, the individual must submit a written explanation to the Midwifery Joint Committee before he/she may apply to work in the nurse midwife applicant status in another job.

*History Note: Authority G.S. 90-178.2; 90-178.3; 90-178.5; 90-171.83; Eff. March 1, 1991; Amended Eff. April 1, 2001.*

**CHAPTER 46 - BOARD OF PHARMACY**

**21 NCAC 46 .1604 WHEN NEW PERMIT NOT REQUIRED**

- (a) A new pharmacy, device, or medical equipment permit is not required in the following situations:
  - (1) where the change of ownership does not involve the acquisition of more than 50 percent interest in the permit holder or any entity in the chain of ownership above the permit holder; or

- (2) the permit holder is a publicly-traded corporation which remains publicly-traded and continues to hold the permit; or
  - (3) the permit holder is a corporation which is a wholly-owned subsidiary, and any change in the ownership of any corporation in the chain of ownership above the permit holder is due to the stock of such corporation being publicly-traded.
- (b) A permit which is involved in a pending disciplinary proceeding may not be surrendered, terminated, or transferred.

*History Note: Authority G.S. 90-85.6; 90-85.21; 90-85.22; Eff. May 1, 1989; Amended Eff. April 1, 2001; August 1, 1998; May 1, 1997; September 1, 1995.*

**21 NCAC 46 .3101 CLINICAL PHARMACIST PRACTITIONER**

- (a) Definitions:
  - (1) 'Medical Board' means the North Carolina Medical Board.
  - (2) 'Pharmacy Board' means the North Carolina Board of Pharmacy.
  - (3) 'Joint Subcommittee' means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.
  - (4) 'Clinical Pharmacist Practitioner or CPP' means a licensed pharmacist in good standing who is approved to provide drug therapy management under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.
  - (5) 'Supervising Physician' means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written agreement. Only a physician approved by the Medical Board may legally identify himself or herself as a supervising physician.
  - (6) 'Approval' means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.
  - (7) 'Continuing Education or CE' is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.
  - (8) 'Clinical Experience approved by the Boards' means work in a clinical pharmacy practice setting which includes experience consistent with the following components as listed in paragraphs (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P). Clinical experience requirements must be met only through activities separate from the certificate programs referred to in (b)(1)(B).

(b) CPP application for approval.

(1) The requirements for application for CPP approval include that the pharmacist:

- (A) has an unrestricted and current license to practice as a pharmacist in North Carolina;
- (B) meets one of the following qualifications:
  - (i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Practitioner, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards; or
  - (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement; or
  - (iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP agreement;
- (C) submits the required application, a written endorsement from the Pharmacy Board and the fee to the Medical Board;
- (D) submits any information deemed necessary by the Medical Board in order to evaluate the application; and
- (E) has a signed supervising physician agreement.

If for any reason a CPP discontinues working in the approved physician arrangement, both Boards shall be notified in writing within 10 days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.

(2) All certificate programs referred to in Paragraph (2)(a)(ii) of the Rule must contain a core curriculum including at a minimum the following components:

- (A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
- (B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
- (C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;

- (D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and laboratory tests in accordance with established standards of practice;
- (E) referring patients to other health professionals as appropriate;
- (F) administering medications;
- (G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics of their medication and related therapy;
- (H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
- (I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;
- (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;
- (K) devices, and durable medical equipment;
- (L) providing emergency first care;
- (M) retrieving, evaluating, utilizing, and managing data and professional resources;
- (N) using clinical data to optimize therapeutic drug regimens;
- (O) collaborating with other health professionals;
- (P) documenting interventions and evaluating pharmaceutical care outcomes;
- (Q) integrating pharmacy practice within healthcare environments;
- (R) integrating national standards for the quality of healthcare; and
- (S) conducting outcomes and other research.

(3) The completed application for approval to practice as a CPP shall be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.

- (A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
- (B) The application shall be denied; or
- (C) The application shall be approved with restrictions.

(c) Annual Renewal.

- (1) Each CPP shall register annually on the anniversary of his or her birth date by:
  - (A) verifying a current Pharmacist license;
  - (B) submitting the renewal fee as specified in Paragraph (j)(2) of this Rule;
  - (C) completing the Medical Board's renewal form; and
  - (D) reporting continuing education credits as specified by the Medical Board.
- (2) If the CPP has not renewed within 30 days of the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.

(d) Continuing Education.

- (1) Each CPP shall earn 35 hours of practice relevant CE each year approved by the Pharmacy Board.
- (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.
- (e) The supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP and shall review and countersign each order written by the CPP within seven days.
- (f) The written CPP agreement shall:
  - (1) be approved and signed by both the supervising physician and the CPP and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
  - (2) be specific in regard to the physician, the pharmacist, the patient and the disease;
  - (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
  - (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
  - (5) include a pre-determined plan for emergency services;
  - (6) include a plan and schedule for weekly quality control, review and countersignature of all orders written by the CPP in a face-to-face conference between the physician and CPP;
  - (7) require that the patient be notified of the collaborative relationship; and
  - (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.
- (g) The supervising physician of the CPP shall:
  - (1) be fully licensed, engaged in clinical practice, and in good standing with the Medical Board;
  - (2) not be serving in a postgraduate medical training program;
  - (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
  - (4) supervise no more than three pharmacists.
- (h) The CPP shall wear a nametag spelling out the words 'Clinical Pharmacist Practitioner'.
- (i) The approval of a CPP may be restricted, denied or terminated by the Medical Board and the pharmacist's license may be restricted, denied, or terminated by the Pharmacy Board, in accordance with provisions of G.S. 150B if the appropriate Board finds one or more of the following:
  - (1) the CPP has held himself or herself out, or permitted another, to represent the CPP as a licensed physician;
  - (2) the CPP has engaged, or attempted to engage, in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's supervising physician;
  - (3) the CPP has performed, or attempted to provide, medical management outside the approved drug therapy

- agreement or for which the CPP is not qualified by education and training to perform;
- (4) the CPP is adjudicated mentally incompetent;
- (5) the CPP's mental or physical condition renders the CPP unable to safely function as a CPP; or
- (6) the CPP has failed to comply with any of the provisions of this Rule.

Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.

(j) Fees:

- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
- (2) The fee for annual renewal of approval, due on the CPP's anniversary of birth date is fifty dollars (\$50.00).
- (3) No portion of any fee in this Rule is refundable.

*History Note: Authority 90-6; 90-18; 90-18.4; 90-85.3; 90-85.26A; Eff. April 1, 2001.*

**21 NCAC 46 .3205 INTERVENTION AND REFERRAL**

- (a) When, following an investigation, impairment is confirmed, an intervention shall be conducted using techniques designed to assist the pharmacist in acknowledging responsibility for dealing with the impairment. The pharmacist shall be referred to a treatment source.
- (b) Methods and objectives of interventions shall be decided on a case-by case basis.
- (c) Interventions shall be arranged and conducted as soon as possible. In cases referred by the Board a representative of the Board may be present.
- (d) Treatment sources shall be evaluated before receiving case referrals from the Program.
- (e) Intervention outcomes, including treatment contracts that are elements of an intervention, shall be recorded by the Program.

*History Note: Authority G.S. 90-85.6; 90-85.41; Eff. April 1, 2001.*

**21 NCAC 46 .3206 MONITORING TREATMENT**

A treatment source receiving referrals from the Program shall be monitored as to its ability to provide:

- (1) medical and non-medical staffing;
- (2) treatment; and
- (3) post-treatment support.

*History Note: Authority G.S. 90-85.6; 90-85.41; Eff. April 1, 2001.*

**21 NCAC 46 .3207 MONITORING REHABILITATION AND PERFORMANCE**

- (a) Monitoring requirements for each pharmacist shall be designated by the Program. Pharmacists may be tested regularly or randomly, on Program demand.
- (b) Treatment sources may be required to submit reports regarding a pharmacist's rehabilitation and performance to the Program.



- (c) Impaired pharmacists may be required to submit to periodic personal interviews before any person authorized by the Program.
- (d) Case records shall be maintained by the Program.

*History Note: Authority G.S. 90-85.6; 90-85.41; Eff. April 1, 2001.*

**21 NCAC 46 .3209      REPORTS OF INDIVIDUAL CASES TO THE BOARD**

- (a) Upon investigation and review of a pharmacist licensed by the Board, the Program shall report immediately to the Board detailed information about any pharmacist as required under G.S. 90-85.41(d).
- (b) The Program shall submit quarterly a report to the Board on the status of all pharmacists then involved in the Program who have been previously reported by the Board. The Program shall submit monthly to the Board a report on the status of any pharmacist previously reported to the Board then in active treatment.

*History Note: Authority G.S. 90-85.6; 90-85.41; Eff. April 1, 2001.*

**21 NCAC 46 .3210      PERIODIC REPORTING OF STATISTICAL INFORMATION**

Statistical information concerning suspected impairments, impairments, self-referrals, post-treatment support and other demographic and substantive information collected through Program operations shall be included in comprehensive statistical reports compiled and annually reported to the Board by the Program.

*History Note: Authority G.S. 90-85.6; 90-85.41; Eff. April 1, 2001.*

**CHAPTER 50 - BOARD OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS**

**21 NCAC 50 .1401      CONTINUING EDUCATION REQUIREMENTS**

- (a) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Plumbing, Heating or Fuel Piping license, must have completed six hours of approved continuing education during the preceding calendar year as a condition of license renewal.
- (b) Courses must be in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of: the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. No more than two hours annually may be dedicated to ethics, taxation, payroll, cash management, contract preparation or similar subjects as related to plumbing or heating contracting.
- (c) At least once every three calendar years, each applicant for license renewal, other than fire sprinkler licensees, must complete a four hour block of instruction devoted entirely to N. C. and local building codes including recent changes or amendments to those

codes. This four hour block may be counted towards the required six hours for the calendar year in which the block is taken.

(d) Persons holding multiple qualifications from the Board must complete at least two hours in each qualification, totalling at least six hours annually, provided that the four hour block described in Paragraph (c) of this Rule shall take priority and no PH-12&3 contractor shall be required to complete more than 6 hours annually under this Rule.

(e) Licenses may not be renewed without documentation of course attendance, course name, course number, content and teacher in the form required by the Board. Falsification or misstatement of continuing education information shall be grounds for failure to renew licenses and disciplinary action, including revocation or suspension of licenses.

(f) Continuing Education shall not be required of holders of Fire Sprinkler Contractor's licenses, licensed pursuant to the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET), provided such persons remain in compliance with the continuing education requirements of NICET.

(g) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Fire Sprinkler Contractor's license not current on the continuing education requirements of NICET must complete six hours of approved continuing education in areas related to fire sprinkler contracting during the preceding calendar year as a condition of license renewal.

*History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001.*

**21 NCAC 50 .1402      EXEMPTIONS AND CREDITS**

(a) Continuing Education courses taken in 1999, 2000, 2001, or 2002 may be applied to the six (6) hour annual requirement for 2003 renewals. Thereafter, licensees may not carry over hours from one calendar year to the next.

(b) Newly licensed individuals will have no continuing education requirements for the calendar year in which they first become licensed.

(c) Licensees who are unable to fulfill the required number of hours as the result of illness as certified by an attending physician may petition the Board in writing for an exemption or request approval of an individualized plan tailored to their physical limitations. Such requests will be dealt with on a case by case basis by the Board without undue delay, consistent with the requirements applicable to all licensees.

(d) Licensees who are over the age of 65, and who will not be engaged in bidding supervising or other activities for which license is required during the coming year, except as an employee of another licensee, may apply to the Board and obtain an exemption. If exemption is granted and the licensee thereafter wishes to engage in activity requiring license, the continuing education must be completed and satisfactory proof provided to the Board before any activity requiring license is undertaken.

(e) Instructors shall be given credit for lecture hours spent educating other licensees in approved courses.

*History Note: Authority G.S. 87-21(b)(3); 87-22;*

*Eff. April 1, 2001.*

**21 NCAC 50 .1403 COMPUTATION OF CONTINUING EDUCATION HOURS**

- (a) To obtain one hour of continuing education credit a licensee and a course sponsor must certify the licensee's completion of one hour of actual instruction in a sponsored course. Except with prior approval by the Board, a licensee will receive no credit for a course for which the licensee has previously received credit in the current or two preceding calendar years. Approval will be granted only for courses on building code content and changes therein.
- (b) Actual instruction does not include introductory remarks, breaks, business meetings, marketing of equipment, advertisements or time spent on non-approved subjects. Each hour of actual instruction may include one break of 10 minutes duration.

*History Note: Authority G.S. 87-21(b)(3); 87-2; Eff. April 1, 2001.*

**21 NCAC 50 .1404 COURSE REQUIREMENTS AND LIMITATIONS**

- (a) In order for course credit to be obtained, the course must be approved and consist of instruction in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of: the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. Business ethics, taxation, payroll, cash management, contract preparation or similar subjects as related to plumbing or heating contracting will also be approved.
- (b) In order for course credit to be obtained, the course must be taught by the instructor listed when the course was approved by the Board.
- (c) Courses shall have a minimum of one hour of actual instruction and a maximum of six hours of actual instruction, per day.
- (d) Courses shall be held in facilities conducive to learning. Such facilities include community colleges, technical schools, or community centers.
- (e) Courses shall be open to all interested licensees that the host facility can reasonably accommodate and for audit by Board representatives; courses may not be restricted to employees, dealers or members of a particular firm or group.
- (f) Once listed on the six-month course roster, a course may not be cancelled during that six month period.
- (g) Though courses may have commercial sponsors, the courses shall not include promotion of products or services of a particular firm or manufacturer.
- (h) Correspondence, home study, license exam preparation (cram) courses shall not be approved.
- (i) For the information of all licenses, the Board shall maintain a calendar of all courses available during a six-month period.

*History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001.*

**21 NCAC 50 .1405 APPROVAL OF COURSES**

(a) To obtain approval of a course an applicant must submit a written application to the board at least 45 days before the proposed course date which application must include:

- (1) two substantially complete sets of written course materials and a detailed course outline; and
- (2) an application cover sheet on a form supplied by the Board identifying the applicant, the name, training and experience of all speakers, the proposed date(s) of the course, the host facility, the place where applications for enrollment should be sent, the cost, the total continuing education hours being offered, and any hours dedicated to the block course on code.

(b) Preliminary review of course applications shall be carried out by a committee appointed by the Board, which will include providers of approved courses.

(c) As a condition of course approval, providers shall agree to submit to the board, in the form provided by the Board, and within 30 days of the course date set out on the application, an alphabetical listing of all licensees who attended and completed the course and a copy of any course materials distributed to participants together with certification that the course was provided consistent with the application.

(d) Providers who fail to provide the information set forth in Paragraph (c) of this Rule shall not thereafter be approved to conduct a course.

(e) Licensees may select courses other than those offered by pre-approved providers. In order to obtain approval, the licensee must submit a written application for approval on a form obtained from the Board upon completion of each such course. In lieu of such form, an advertising brochure may be submitted, provided the brochure includes the topic, content of lecture material, date, time, location, name and qualifications of speaker and the number of contact hours received upon completion of the program. The licensee must also provide independent verification of attendance. Board evaluation of courses not pre-approved may result in disapproval.

*History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001.*

**21 NCAC 50 .1407 CERTIFICATION OF COURSE COMPLETION BY LICENSEES AND SPONSORS**

(a) Licensees shall submit, prior to license renewal, a certification of the number of continuing education hours completed in that calendar year.

(b) Upon request, applicants will provide evidence of the course title, number, teacher, location and date, hours in fact attended, and a copy of the certificate provided by the teacher at the conclusion of the course.

*History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001.*

**21 NCAC 50 .1408 ADVERTISEMENTS BY COURSE SPONSORS OR INSTRUCTORS**

Sponsors of approved courses shall include in brochures and course descriptions a statement substantially as follows:

This course has been approved by the North Carolina State Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors for continuing education credit in the amount of \_\_\_ hours, of which \_\_\_ hours will count towards the four hour block on state and local building codes. This course is not sponsored by the Board.

*History Note: Authority G.S 87-21(b)(3); 87-22; Eff. April 1, 2001.*

**21 NCAC 50 .1409      TERMINATION OF COURSE OR SPONSOR APPROVAL**

The Board may suspend or terminate approval of any course if the Board finds a failure to comply with the Board's rules, the course outline, or for misstatements as to content or participation, and may specify the conditions under which future applications would be favorably considered.

*History Note: Authority G.S 87-21(b)(3); 87-22; Eff. April 1, 2001.*

**CHAPTER 58 - REAL ESTATE COMMISSION**

**21 NCAC 58A .0104      AGENCY AGREEMENTS AND DISCLOSURE**

(a) Every agreement for brokerage services in a real estate sales transaction other than a buyer agency agreement shall be in writing from the time of its formation. Every buyer agency agreement which seeks to bind the buyer for a period of time or to restrict the buyer's right to work with other agents or without an agent shall be in writing from its formation. A broker or salesperson who undertakes to represent a buyer in a real estate sales transaction without a written buyer agency agreement shall clearly disclose his or her agency relationship to the buyer. In any event, a buyer agency agreement must be in writing not later than the time an offer to purchase is presented to a seller or the seller's agent. A broker or salesperson shall not continue to represent a buyer without a written agreement when such agreement is required by this rule. Every written agreement for brokerage services of any kind in a real estate sales transaction shall provide for its existence for a definite period of time and shall provide for its termination without prior notice at the expiration of that period.

(b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate sales transaction shall contain the following provision: The broker shall conduct all his brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any buyer, prospective buyer, seller or prospective seller. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker or salesperson shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," review it with him or her, and determine whether the agent will act as the agent of the

buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker or salesperson shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter.

(d) Except as provided in Subsection (a) of this Rule, a real estate broker or salesperson representing one party in a transaction shall not undertake to represent another party in the transaction without the express, written authority of each party. Such written authority must be obtained not later than the time one of the parties represented by the broker or salesperson makes an offer to purchase, sell, rent, lease, or exchange real estate to the other party.

(e) In every real estate sales transaction, a broker or salesperson working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker or salesperson represents the interests of the seller. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker or salesperson shall immediately disclose by similar means whom he represents and shall immediately, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the written disclosure to the buyer.

(f) In every real estate sales transaction, a broker or salesperson representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker or salesperson represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker or salesperson shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker or salesperson representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents both the buyer and the seller in the same real estate sales transaction is a dual agent and, through the brokers and salespersons associated with the firm, shall disclose its dual agency to the buyer and seller.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior written approval of its buyer and seller clients, designate one or more individual agents associated with the firm to represent only the interests of the seller and one or more other individual brokers and salespersons associated with the firm to represent only the interests of the buyer in the transaction. An individual broker or salesperson shall not be

so designated and shall not undertake to represent only the interests of one party if the broker or salesperson has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a salesperson under his or her supervision will act as a designated agent for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker or salesperson to represent the seller, the broker or salesperson so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker or salesperson designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker or salesperson to represent the buyer, the broker or salesperson so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker or salesperson designated to represent the seller:

- (1) that the buyer may agree to a price, terms, or any conditions of sale other than those offered by the buyer;
- (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the buyer which the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker or salesperson designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers and salespersons so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker or salesperson represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker or salesperson shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

*History Note: Authority G.S. 41A-3(1b); 93A-3(c); 41A-4(a); Eff. February 1, 1976; Readopted Eff. September 30, 1977;*

*Amended Eff. July 1, 2001; October 1, 2000; August 1, 1998; July 1, 1997; August 1, 1996; July 1, 1995.*

**21 NCAC 58A .1708 EQUIVALENT CREDIT**

(a) A licensee may request that the Commission award continuing education credit for a course taken by the licensee that is not approved by the Commission, or for some other real estate education activity, by making such request on a form prescribed by the Commission and submitting a nonrefundable evaluation fee of thirty dollars (\$30.00) for each request for evaluation of a course or real estate education activity. In order for requests for equivalent credit to be considered and credits to be entered into a licensee's continuing education record prior to the June 30 license expiration date, such requests and all supporting documents must be received by the Commission on or before June 10 preceding expiration of the licensee's current license, with the exception that requests from instructors desiring equivalent credit for teaching Commission-approved continuing education courses must be received by June 30. Any equivalent continuing education credit awarded under this Rule shall be applied first to make up any continuing education deficiency for the previous license period and then to satisfy the continuing education requirement for the current license period; however, credit for an unapproved course or educational activity, other than teaching an approved elective course, that was completed during a previous license period may not be applied to a subsequent license period.

(b) The Commission may award continuing education elective credit for completion of an unapproved course which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. Completion of an unapproved course may serve only to satisfy the elective requirement and cannot be substituted for completion of the mandatory update course.

(c) Real estate education activities, other than teaching a Commission-approved course, which may be eligible for credit include, but are not limited to: developing a Commission-approved elective continuing education course, authorship of a published real estate textbook; and authorship of a scholarly article, on a topic acceptable for continuing education purposes, which has been published in a professional journal such as a law journal or professional college or university journal or periodical. The Commission may award continuing education elective credit for activities which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. No activity other than teaching a Commission-developed mandatory update course shall be considered equivalent to completing the mandatory update course.

(d) The Commission may award credit for teaching the Commission-developed mandatory update course and for teaching an approved elective course. Credit for teaching an approved elective course shall be awarded only for teaching a course for the first time. Credit for teaching a Commission-developed mandatory update course may be awarded for each licensing period in which the instructor teaches the course. The amount of credit awarded to the instructor of an approved continuing education course shall be the same as the amount of credit earned by a licensee who completes the course. Licensees who are instructors of continuing education

courses approved by the Commission shall not be subject to the thirty dollars (\$30.00) evaluation fee when applying for continuing education credit for teaching an approved course. No credit toward the continuing education requirement shall be awarded for teaching a real estate prelicensing course.

(e) A licensee completing a real estate appraisal prelicensing, precertification or continuing education course approved by the North Carolina Appraisal Board may obtain real estate continuing education elective credit for such course by submitting to the Commission a written request for equivalent continuing education elective credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) and a copy of the certificate of course completion issued by the course sponsor for submission to the North Carolina Appraisal Board.

*History Note: Authority G.S. 93A-3(c); 93A-4A; Eff. July 1, 1994; Amended Eff. July 1, 2001; July 1, 2000; March 1, 1996; July 1, 1995.*

**21 NCAC 58E .0505 ADVERTISING; PROVIDING COURSE INFORMATION**

(a) Course sponsors shall not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Commission for an approved elective course is less than the number of scheduled hours for the course, any course advertisement or promotional materials which indicate that the course is approved for real estate continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Commission for the course.

(b) Any flyers, brochures or similar materials utilized to promote a continuing education course shall clearly describe the fee to be charged and the sponsor's cancellation and fee refund policies. Course sponsors must provide prospective students with a full description of the sponsor's cancellation and fee refund policies prior to accepting payment for any course(s).

(c) Course sponsors of any elective course shall, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.

*History Note: Authority G.S. 93A-3(c); 93A-4A; Eff. July 1, 1994; Amended Eff. July 1, 2001.*

**CHAPTER 63 - CERTIFICATION BOARD FOR SOCIAL WORK**

**21 NCAC 63 .0504 RESPONSIBILITIES IN PROFESSIONAL RELATIONSHIPS**

(a) Social workers shall not misuse their professional relationships sexually, financially or for any other personal advantage. They shall maintain this standard of conduct toward all who are professionally associated with them such as clients, colleagues, supervisees, employees, students and research participants.

(b) Social workers shall inform clients of the extent and nature of services available to them as well as the limits, rights, opportunities

and obligations associated with service which might affect the client's decision to enter into or continue the relationship.

(c) Social workers shall obtain consent (agreement to participate in social work intervention) from all clients or their legally authorized representative except when laws require intervention to insure client's and community's safety and protection.

(d) Social workers shall terminate a professional relationship with a client when, after careful evaluation and assessment, it is determined that the client is not likely to benefit from continued services or the services are no longer needed. The social worker who anticipates the termination or interruption of services shall give reasonable notice to the client. The social worker shall provide referrals as needed or upon the request of the client. A social worker shall not terminate a professional relationship for the purpose of beginning a personal or business relationship with a client.

(e) Social workers shall respect the integrity, protect the welfare, and maximize self-determination of clients they serve. They shall avoid entering treatment relationships in which their professional judgment will be compromised by the prior association with or knowledge of a client. Examples include treatment of one's family members; close friends; associates; employees; or others whose welfare could be jeopardized by such a dual relationship.

(f) Social workers shall not initiate, and shall avoid when possible, personal relationships or dual roles with current clients, or with any former clients whose feelings toward them may still be derived from or influenced by the former professional relationship. When a social worker may not avoid a personal relationship with a client, the social worker shall take appropriate precautions, such as documented discussion with the client about the relationship, consultation or supervision to ensure that the social worker's objectivity and professional judgment are not impaired. In instances when dual or multiple relationships are unavoidable, social workers shall set clear and culturally sensitive boundaries.

(g) Social workers shall not engage in sexual activities with clients or former clients.

(h) Social workers shall be solely responsible for acting in accordance with Chapter 90B of the General Statutes and these rules in regard to relationships with clients or former clients. A client's or former client's initiation of a personal, sexual or business relationship shall not be a defense by the social worker for failing to act in accordance with G.S. 90B and these Rules.

*History Note: Authority G.S. 90B-6; 90B-11; Eff. March 1, 1994; Amended Eff. April 1, 2001.*

**21 NCAC 63 .0506 REMUNERATION**

(a) Financial arrangements shall be explicitly established and agreed upon by the social worker and the client in the initial stage of intervention.

(b) Social workers shall not give or receive any fee or other consideration to or from a third party for referrals. Clinical social workers may, however, participate in contractual arrangements in which they agree to discount their fees.

(c) Social workers employed by an agency or clinic and also engaged in private practice shall conform to agency regulations regarding private practice.

(d) Legal measures to collect fees may be taken if a client does not pay for services as agreed, provided notice of such action is given beforehand.

*History Note: Authority G.S. 90B-6; 90B-11; Eff. March 1, 1994; Amended Eff. April 1, 2001.*

**21 NCAC 63 .0507            CONFIDENTIALITY AND RECORD KEEPING**

- (a) Social workers shall protect the client's right to confidentiality as established by law.
- (b) Social workers shall reveal confidential information to others only with the informed consent of the client, except in those circumstances in which not to do so would violate other laws or would result in clear and imminent danger to the client or others. Unless specifically contraindicated by such situations, clients shall be informed and written consent shall be obtained from clients, or their legally authorized representative, before confidential information is revealed.
- (c) When confidential information is used for the purpose of professional education, research, or consultation, the identity of the client shall be concealed. Presentations shall be limited to material necessary for the professional purpose.
- (d) Social workers shall maintain records adequate to provide proper diagnosis and treatment and to fulfill other professional responsibilities.
- (e) Social workers shall take precautions to protect the confidentiality of material stored or transmitted through computers, electronic mail, facsimile machines, telephones, telephone answering machines, and all other electronic or computer technology. When using these technologies, disclosure of identifying and confidential information regarding current client(s) or former client(s) shall be avoided whenever possible.

*History Note: Authority G.S. 90B-6; 90B-11; Eff. March 1, 1994; Temporary Amendment Eff. October 1, 1999; Temporary Amendment Expired April 13, 2000; Amended Eff. April 1, 2001.*

**CHAPTER 68 - CERTIFICATION BOARD FOR SUBSTANCE ABUSE PROFESSIONALS**

**21 NCAC 68 .0101            DEFINITIONS**

As used in the General Statutes or this Chapter, the following terms have the following meaning:

- (1) "Approved Supervisor" means a person who fulfills or is in the process of fulfilling the requirements for this Board designation pursuant to Rule .0211 of this Chapter by completing its academic, didactic and experiential requirements.
- (2) "Assessment" means identifying and evaluating an individual's strengths, weaknesses, problems and needs for the development of a treatment or service plan for alcohol, tobacco and drug abuse.
- (3) "Complainant" means a person who has filed a complaint pursuant to these Rules.

- (4) "Consultation" means a meeting for discussion, decision-making and planning with other service providers for the purpose of providing substance abuse services.
- (5) "Crisis" means a decisive, crucial event in the course of treatment that threatens, either directly or indirectly related to alcohol or drug use, to compromise or destroy the rehabilitation effort.
- (6) "Deemed Status Group" means those persons who are credentialed as a clinical addictions specialist because of their membership in a deemed status discipline.
- (7) "Education" means a service which is designed to inform and teach various groups; including clients, families, schools, businesses, churches, industries, civic and other community groups about the nature of substance abuse disorders and about available community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life's problems.
- (8) "Full Time" means 2,000 hours per year.
- (9) "Letter of Reference" means a letter that recommends a person for certification.
- (10) "Membership In Good Standing" means a member's certification is not in a state of revocation, lapse, or suspension. However, an individual whose certification is suspended and the suspension is stayed is a member in good standing during the period of the stay.
- (11) "Passing score" means the score set by the entity administering the exam.
- (12) "President" means the President of the Board.
- (13) "Prevention Consultation" means a service provided to other mental health, human service, and community planning/development organizations or to individual practitioners in other organizations to assist in the development of insights and skills of the practitioner necessary for prevention.
- (14) "Prevention domains" means program coordination, education and training, community organization, community based process, public policy, professional growth and responsibility, planning and evaluations.
- (15) "Referral" means identifying the needs of an individual that cannot be met by the counselor or agency and assisting the individual to utilize the support systems and community resources available.
- (16) "Reprimand" means a formal written warning from the Board to a person making application for certification by the Board or certified by the Board.
- (17) "Respondent" means a person who is making application for certification by the Board or is certified by the Board against whom a complaint has been filed.
- (18) "Sexual activity" means:
  - (a) Contact between the penis and the vulva or the penis and the anus;
  - (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or
  - (c) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with an intent to abuse, humiliate, harass,

degrade, or arouse or gratify the sexual desire of any person.

- (19) "Sexual Contact" means the intentional touching, either directly or indirectly, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (20) "Substance Abuse Counseling Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the 12 core functions (Rule .0205 of this Chapter) as documented by a job description and supervisors evaluation.
- (21) "Substance Abuse Prevention Consultant Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the prevention domains referenced by Rule .0206 of this Chapter and as documented by a job description and supervisor's evaluation.
- (22) "Supervised Practical Training" means supervision to teach the knowledge and skills related to substance abuse professionals at a ratio of one hour of supervision to every 10 hours of practice for 300 practice hours.
- (23) "Suspension" means a loss of certification or the privilege of making application for certification.

*History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.40; 90-113.41; 90-113.41A; Eff. August 1, 1996; Temporary Amendment Eff. November 15, 1997; Amended Eff. April 1, 2001; August 1, 2000; August 1, 1998.*

**21 NCAC 68 .0206 PROCESS FOR PREVENTION CONSULTANT CERTIFICATION**

- (a) Prevention consultant certification shall be offered to those persons whose primary responsibilities are to provide substance abuse information and education, environmental approaches, alternative activities, community organization, networking, and referral. Prevention consultants may be either based in human service agencies or other settings.
- (b) Requirements for certification shall be as follows:
  - (1) 10,000 hours (five years) without a baccalaureate degree or 4,000 hours (two years) with a baccalaureate degree in a human services field from a regionally accredited college or university;
  - (2) 270 hours of board approved academic and didactic training divided in the following manner:
    - (A) 170 hours primary and secondary prevention and in the prevention domains; and
    - (B) 100 hours in substance abuse specific studies, which includes 12 hours in HIV/AIDS/STDS/TB/Bloodborne pathogens training and six hours in professional ethics training;
  - (3) A minimum of 300 supervised practice hours documented by a Board approved or certified substance abuse professional;
  - (4) Evaluations from a Board approved supervisor on this practice as well as two evaluations from colleagues or co-workers;

- (5) Successful completion of an IC&RC/AODA, Inc. or its successor organization written examination;
- (6) A signed form attesting to the applicant's adherence to the Ethical Standards of the Board;
- (7) A registration and testing fee of two hundred twenty-five dollars (\$225.00), twenty-five dollars (\$25.00) of which is due when the request is made for the application packet and the remainder at the time of filing.

*History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.34; 90-113.40; 90-113.41; Eff. August 1, 1996; Amended Eff. April 1, 2001; August 1, 2000.*

**21 NCAC 68 .0220 NOTICE TO APPLICANT OF FAILURE TO SATISFY BOARD**

Whenever the Board has determined that a person who has duly made application to take an examination to be given by the Board showing the person's education, training and other qualifications required by the Board or that a person who has taken and passed an examination given by the Board has failed to satisfy the Board of the applicant's qualifications to be examined or to be issued a certificate of certification for any cause other than failure to pass an examination, the Board shall notify such person of its decision and indicate in what respect the applicant has failed to satisfy the Board. The applicant may inquire with the Board Administrator if more information is needed to clarify the nature of the deficiency.

*History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; Eff. April 1, 2001.*

**21 NCAC 68 .0223 STANDARDS COMMITTEE ACTION**

- The Standards Committee may take any of the following actions:
- (1) Approve the application;
  - (2) Remand the matter to the Ethics Chairperson for further inquiry in order to obtain additional information upon which to base a decision;
  - (3) Schedule a hearing by the Committee wherein the applicant may appear to answer questions or provide a statement to the Committee regarding the matter under inquiry;
  - (4) Request that the applicant undergo any psychological or physical testing or assessment which or by whom the Committee deems necessary, provide the results to the Committee for its review, and, in the discretion of the Committee, require that the applicant complete any prescribed intervention;
  - (5) Following notification to the applicant and the opportunity for the applicant to request a hearing by the Board, the Committee may make a recommendation to the Board that the applicant shall not be certified.

*History Note: G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; Eff. April 1, 2001.*

**21 NCAC 68 .0223 STANDARDS COMMITTEE ACTION**

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- (1) Approve the application;
- (2) Remand the matter to the Ethics Chairperson for further inquiry in order to obtain additional information upon which to base a decision;
- (3) Schedule a hearing by the Committee wherein the applicant may appear to answer questions or provide a statement to the Committee regarding the matter under inquiry;
- (4) Request that the applicant undergo any psychological or physical testing or assessment which or by whom the Committee deems necessary, provide the results to the Committee for its review, and, in the discretion of the Committee, require that the applicant complete any prescribed intervention;
- (5) Following notification to the applicant and the opportunity for the applicant to request a hearing by the Board, the Committee may make a recommendation to the Board that the applicant shall not be certified.

*History Note: G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; Eff. April 1, 2001.*

**21 NCAC 68 .0224 CERTIFICATION STATUS DENIED IF SERVING SENTENCE**

Individuals making application for certification who are serving any part of a court-ordered sentence; including community service, supervised or unsupervised probation, or making restitution, shall be removed from the certification process. If any person is serving or begins serving such sentence during the course of the certification process, this person shall notify the Board. Once the Board ascertains that the individual is serving a sentence, all fees shall be refunded.

*History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.44; Eff. April 1, 2001.*

**21 NCAC 68 .0503 COMPETENCE**

- (a) The substance abuse professional shall assist in eliminating prevention, intervention, and treatment practices by unqualified or unauthorized persons in the field.
- (b) The substance abuse professional who is aware of unethical conduct or of unprofessional modes of practice shall report such violations to the appropriate certifying authority.
- (c) The substance abuse professional shall recognize boundaries and limitations of his or her competencies and not offer services or use techniques outside of these professional competencies.
- (d) The substance abuse professional shall recognize the effect of impairment on professional performance and shall be willing to seek appropriate treatment for oneself or for a colleague. The substance abuse professional shall support peer assistance programs in this respect.
- (e) The application of this Rule is limited to actions by substance abuse professionals acting within the substance abuse professional field.

- (f) No person shall be certified as a substance abuse professional who is sentenced to an active or probationary term by the courts of this land and any part of the sentence is unserved.

*History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 90-113.30; 90-113.34; 90-113.36; 90-113.37; 90-113.39; 90-113.40; 90-113.41; 90-113.43; 90-113.44; Eff. February 1, 1996; Amended Eff. April 1, 2001; August 1, 2000.*

**21 NCAC 68 .0504 LEGAL STANDARDS AND ETHICAL STANDARDS**

- (a) The substance abuse professional shall uphold the legal and ethical codes which pertain to professional conduct.
- (b) The substance abuse professional shall not claim either directly or by implication, professional qualifications or affiliations that the substance abuse professional does not possess.
- (c) The substance abuse professional shall not use the affiliation with the North Carolina Substance Abuse Professional Certification Board for purposes that are not consistent with the stated purposes of the Board.
- (d) The substance abuse professional shall not associate with or permit the substance abuse professional's name to be used in connection with any services or products in a way that is misleading.
- (e) The substance abuse professional associated with the development or promotion of books or other products offered for commercial sale shall insure that such books or products are presented in a professional and factual way.

*History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 90-113.30; 90-113.33; 90-113.43; 90-113.44; 90-113.45; Eff. February 1, 1996; Amended Eff. April 1, 2001.*

**21 NCAC 68 .0505 PUBLIC STATEMENTS**

- (a) The substance abuse professional shall respect the limits of present understanding in public statements concerning alcoholism and other forms of drug addiction.
- (b) The substance abuse professional who represents the field of alcoholism and other drug abuse prevention, intervention, and treatment to clients, other professionals or to the general public shall report fairly and accurately the appropriate information.
- (c) The substance abuse professional shall acknowledge and document materials and techniques used.
- (d) The substance abuse professional who conducts training in alcohol or other drug abuse prevention, intervention, and treatment skills or techniques shall indicate to the audience the requisite training and qualifications required to properly perform these skills and techniques.



*History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes*

*effective, whichever is sooner;*

*Authority G.S. 90-113.30; 90-113.33; 90-113.44;*

*Eff. February 1, 1996;*

*Amended Eff. April 1, 2001.*

**21 NCAC 68 .0507 CLIENT WELFARE**

- (a) The substance abuse professional shall respect the integrity and protect the welfare of the person or group with whom he or she is working.
- (b) The substance abuse professional shall define for self and others the nature and direction of loyalties and responsibilities and keep all parties concerned informed of these commitments.
- (c) The substance abuse professional, in the presence of professional conflict, shall be concerned primarily with the welfare of the client.
- (d) The substance abuse professional shall end a counseling or consulting relationship when the professional knows or should know that the client is not benefiting from it.
- (e) The substance abuse professional shall withdraw services only after giving consideration to all factors in the situation and taking care to minimize adverse actual or possible effects.
- (f) The substance abuse professional who anticipates the cessation or interruption of service to a client shall notify the client promptly and seek the cessation, transfer, referral, or continuation of service in relation to the client's needs and preferences.
- (g) The substance abuse professional who asks a client to reveal personal information from or about other professionals or allows information to be divulged shall inform the client concerning the duties and responsibilities resulting from dissemination of the information. The information released or obtained with informed consent shall be used for expressed purposes only, unless the release is otherwise required by law.
- (h) The substance abuse professional shall not use a client in a demonstration role in a workshop setting where such participation would foreseeably seriously harm the client.
- (i) The substance abuse professional shall ensure the presence of an appropriate setting for pre-clinical or clinical work to protect the client from harm and the substance abuse professional and the profession from censure.
- (j) The substance abuse professional shall collaborate with other health care professionals in providing a supportive environment for the client who is receiving prescribed medications.

*History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes*

*effective, whichever is sooner;*

*Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40;*

*90-113.43; 90-113.44;*

*Eff. February 1, 1996;*

*Amended Eff. April 1, 2001; August 1, 2000.*

**21 NCAC 68 .0508 CONFIDENTIALITY**

- (a) The substance abuse professional shall protect the privacy of clients and shall not disclose confidential information acquired, in teaching, practice or investigation.
- (b) The substance abuse professional shall inform the client and obtain agreement in areas likely to affect the client's participation including the recording of an interview, the use of interview material for training purposes and observation of an interview by another person.
- (c) The substance abuse professional shall make provisions for the maintenance of confidentiality and the ultimate disposition of confidential records.
- (d) The substance abuse professional shall reveal information received in confidence only:
  - (1) when there is clear and imminent danger to the client or to other persons or a medical emergency and then only to the appropriate professional worker or public authorities;
  - (2) when compelled by law to provide such information; or
  - (3) with written consent.
- (e) The substance abuse professional shall discuss the information obtained in a clinical or consulting relationship only in a professional setting and only for a professional purpose clearly concerned with the case. Written and oral reports shall present only data germane to the purpose of the evaluation.
- (f) The substance abuse professional shall use material in classroom teaching and writing only when the identity of the person involved is disguised adequately to prevent disclosure or documented permission is given by the party or the information is in the public domain.

*History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes*

*effective, whichever is sooner;*

*Authority G.S. 90-113.30; 90-113.43; 90-113.44;*

*Eff. February 1, 1996;*

*Amended Eff. April 1, 2001.*

**21 NCAC 68 .0509 CLIENT RELATIONSHIPS**

- (a) The substance abuse professional shall inform the client and obtain the client's agreement in areas likely to affect the client's participation including the recording of an interview, the use of interview material for training purposes, or the observation of an interview by another person.
- (b) The substance abuse professional shall inform the designated guardian or responsible person of the circumstances that may influence the relationship, when the client is a minor or incompetent.
- (c) The substance abuse professional shall not enter into a professional relationship with members of one's immediate family, friends or close associates. For the purpose of this Rule "immediate family" means spouse, parent, sibling, child, grandparent, grandchild, stepchild, step parent, parent-in-law, and child-in-law. The professional shall avoid dual relationships that could impair professional judgement or increase the risk of client exploitation.
- (d) Sexual activity or contact of a substance abuse professional with a client shall be restricted as follows:
  - (1) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with a current client.

- (2) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with a former client for at least two years after the termination of the counseling or consulting relationship.
- (3) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with any person the professional knows to be a current client of his or her own agency or place of professional employment.
- (4) The substance abuse professional shall not engage in or solicit sexual activity or sexual contact with any person the professional knows to be a former client of his or her own agency or place of professional employment for at least two years after the termination of the counseling or consulting relationship if both the professional was employed at the agency and the former client was a client of the agency during the same time period.

*History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.44; Eff. February 1, 1996; Amended Eff. April 1, 2001; August 1, 2000.*

**21 NCAC 68 .0511 REMUNERATION**

- (a) The substance abuse professional shall establish financial arrangements in professional practice and in accord with the best interests of the client, of the individual professional and of the profession.
- (b) The substance abuse professional shall consider the ability of the client to meet the financial cost in establishing rates for professional services.
- (c) The substance abuse professional shall not send or receive any commission or rebate or any other form of remuneration for referral of clients for professional services. The substance abuse professional shall not engage in fee splitting.
- (d) The substance abuse professional shall not accept a private fee or any other gift or gratuity having a cumulative value of twenty-five dollars (\$25.00) or more for professional work with a person who is receiving such services through the professional's institution or agency. The policy of a particular agency may make written provisions for private work with its clients by members of its staff and in such instances the client must be fully apprised of all policies affecting the client.

*History Note: Filed as a Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 90-113.30; 90-113.33; 90-113.44; Eff. February 1, 1996; Amended Eff. April 1, 2001; August 1, 2000.*

**21 NCAC 68 .0615 INFORMAL PROCEEDINGS**

- (a) In addition to formal hearings pursuant to G.S. 90-113.33 and G.S. 90-113.34, the Board may conduct informal proceedings in order to settle on an informal basis certain matters of dispute. A

substance abuse professional practicing pursuant to a certification or other authority granted by the Board may be invited to attend a meeting with the Board or a committee of the Board on an informal basis to discuss matters as the Board may advise in its communication to the person inviting him or her to attend such meeting. No public record of such proceeding shall be made nor shall any individual be placed under oath to give testimony. Matters discussed by a person appearing informally before the Board may, however, be used against such person in a formal hearing if a formal hearing is subsequently initiated.

(b) As a result of such informal meeting, the Board may recommend that actions be taken by a person, may offer a person the opportunity to enter into a consent order, may institute a formal public hearing concerning a person, or may take other public or non-public action as the Board may deem appropriate in each case.

(c) Attendance at such an informal meeting is not required and is at the sole discretion of the person so invited. A person invited to attend an informal meeting shall be entitled to have counsel present at such meeting.

*History Note: Authority G.S. 150B-22; 150B-38(h); Eff. August 1, 2001.*

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**TITLE 23 - COMMUNITY COLLEGES**

**23 NCAC 02E .0205 PROGRAM REVIEW**

(a) Each college shall monitor the quality and viability of all its programs and services. Each curriculum program, each program area within continuing education, including Basic Skills, occupational extension, and community service, and each service area shall be reviewed at least every five years to determine program strengths and weaknesses and to identify areas for program improvement. The program review process shall be consistent with the requirements of the regional accrediting agency.

(b) The System Office shall collect data on the outcomes of the following performance measures:

- (1) Progress of basic skills students;
- (2) Passing rate for licensure and certification examinations;
- (3) Goal completion of program completers and noncompleters;
- (4) Employment status of graduates;
- (5) Performance of students who transfer to the university system;
- (6) Passing rates in developmental courses;
- (7) Success rates of developmental students in subsequent college-level courses;
- (8) The level of satisfaction of students who complete programs and those who do not complete programs;
- (9) Curriculum student retention and graduation;
- (10) Employer satisfaction with graduates;
- (11) Client satisfaction with customized training; and
- (12) Program enrollment.

Each college shall publish its data on all performance measures annually in its electronic catalog or on the internet and in its printed catalog each time the catalog is reprinted.

(c) The System Office shall report annually to the State Board of Community Colleges on each college's outcomes on these performance measures.

(d) The System Office shall monitor the colleges' performance on all measures to ensure that all measures are being used for the purpose of program improvement.

Note: Substance of former 23 NCAC 2C .0604 was incorporated into this Rule.

*History Note: Authority G.S. 115D-5; 115D-31.3; 1999 S.L., c. 237, s. 9.2; 1993 S.L., c. 321, s. 109; S.L. 1995, c. 625; Eff. February 1, 1990; Amended Eff. August 1, 1995; September 1, 1993; Temporary Amendment Eff. June 1, 1997; Amended Eff. July 1, 1998; Temporary Amendment Eff. December 6, 1999; Temporary Amendment Expired September 30, 2000; Amended Eff. August 1, 2001.*

**TITLE 25 - OFFICE OF STATE PERSONNEL**

**25 NCAC 01C .0801 PURPOSE**

Teleworking will permit agencies to designate employees to work at alternate work locations for all or part of the workweek in order to promote general work efficiencies. The Office of State Personnel has adopted these rules so that teleworking may be offered by State agencies as a work option to ensure competitive advantages with other employers and to meet the environmental and budgetary challenges of the future as directed by the legislature and governor.

Pursuant to the mandate contained in G.S. 126-1 to apply the best methods of personnel administration as evolved in business and industry, the Office of State Personnel has adopted the following rules to provide guidance to agencies in developing teleworking programs.

*History Note: Authority G.S. 126-4; S.L. 1999-328; Temporary Adoption Eff. January 19, 2000; Eff. April 1, 2001.*

**25 NCAC 01C .0802 COVERED EMPLOYEES**

Teleworking is available as a work option in every agency for full time and part time classified, and "time limited" employees. The decision whether to allow a position or an employee to telework is wholly within management discretion and is not appealable to the State Personnel Commission.

*History Note: Authority G.S. 126-4; S.L. 1999-328; Temporary Adoption Eff. January 19, 2000; Eff. April 1, 2001.*

**25 NCAC 01C .0803 DEFINITIONS OF TERMS**

For purposes of this Rule, the terms below mean the following :

- (1) **Alternate Work Location:** a work site other than a central workplace. It may include employees' homes and satellite offices where official state business is performed. An alternate work location does not include work a place

where work is performed for limited periods of time or only an infrequent basis; nor an assigned duty station that may be located away from the central workplace.

- (2) **Central Workplace:** An employee's assigned place of work or duty station owned or operated by the State or a site that is the primary workstation for field based employees. Typically a central workplace is a duty station from which an employer along with employees in the same work unit perform the functions of their job. However, an employee's home, in instances in which it is the primary workstation for field based employees, may be considered the central workplace.
- (3) **Telework/Teleworking:** a flexible work arrangement in which supervisors direct or permit employees to perform their job duties away from their central workplace, in accordance with their same performance expectations and other approved or agreed-upon terms. It does not include work performed at a temporary worksite for limited duration.
- (4) **Teleworker:** an employee engaged in teleworking.
- (5) **Teleworking Agreement:** a written agreement that details the terms and conditions by which an employee is allowed to engage in teleworking.
- (6) **Work Schedule:** the employee's hours of work in the central workplace or in alternate work locations.

*History Note: Authority G.S. 126-4; S.L. 1999-328; Temporary Adoption Eff. January 19, 2000; Eff. April 1, 2001.*

**25 NCAC 01C .0804 OFFICE OF STATE PERSONNEL RESPONSIBILITIES**

The Office of State Personnel will administer an office to provide guidance to State agencies developing teleworking programs and to monitor the savings provided by such programs. Agencies shall report teleworking activities to the Office of State Personnel.

*History Note: Authority G.S. 126-4; S.L. 1999-328; Temporary Adoption Eff. January 19, 2000; Eff. April 1, 2001.*

**25 NCAC 01C .0805 AGENCY DESIGNATES POSITION/EMPLOYER**

Agencies may allow employees to engage in teleworking in compliance with the Rules in this Section. Each agency that permits teleworking must establish internal policies and procedures that identify the jobs that are designated as telecommutable and shall identify the criteria for selecting employees who are eligible to engage in teleworking. The agency and employee shall mutually agree upon teleworking arrangements. However, if business necessity dictates, an agency may require an employee to telework.

*History Note: Authority G.S. 126-4; S.L. 1999-328; Temporary Adoption Eff. January 19, 2000; Eff. April 1, 2001.*

**25 NCAC 01C .0806 CONDITIONS OF EMPLOYMENT**

The policies and procedures that normally apply to the workplace shall remain the same as for non-teleworking employees. This shall include, but not be limited to, performance management. Teleworking assignments do not change the conditions of employment or required compliance with policies and rules.

*History Note: Authority G.S. 126-4; S.L. 1999-328; Temporary Adoption Eff. January 19, 2000; Eff. April 1, 2001.*

**25 NCAC 01E .0705 ADMINISTRATION**

- (a) Each State agency shall administer a workers' compensation program, which may include third party administration of claims. The agency shall ensure the employee of the benefits provided by the Workers' Compensation Act and control costs related to on-the-job injuries and illnesses.
- (b) The agency shall designate a Workers' Compensation Administrator to process and monitor workers' compensation claims.
- (c) The agency shall fund medical treatment and compensation for loss of wages.
- (d) The agency shall communicate Workers' Compensation policy and procedures to all employees.
- (e) The agency shall participate in compromise settlement agreements and North Carolina Industrial Commission Hearings or Mediations, where appropriate.
- (f) The Office of State Personnel shall measure and evaluate the effectiveness of the workers' compensation program at each agency and recommend changes to achieve optimum results and ensure consistent application of coverage and compensation. It shall maintain contract oversight, monitoring and evaluation of the effectiveness of third party administration of claims, and act as intermediary between the third party administrator and the State. It shall maintain a statistical database summarizing a statewide analysis of total expenditures and injuries, and develop training and educational materials for use in training programs for the agencies.

*History Note: Authority G.S. 126-4; Eff. November 1, 1987; Amended Eff. April 1, 2001; August 1, 1998; September 1, 1989.*

**25 NCAC 01E .0707 USE OF LEAVE**

- (a) When an employee is injured, he must go on workers' compensation leave and receive the workers' compensation weekly benefit after the required waiting period required by G.S. 97-28. One of the following options may be chosen:
  - (1) Option 1: Elect to take sick or vacation leave during the required waiting period and then go on workers' compensation leave and begin drawing workers' compensation weekly benefits.
  - (2) Option 2: Elect to go on workers' compensation leave with no pay for the required waiting period and then begin drawing workers' compensation weekly benefits.

If the injury results in disability of more than a specified number of days, as indicated in G.S. 97-28, the workers' compensation weekly benefit shall be allowed from the date of disability. If this occurs in the case of an employee who elected to use leave during the waiting

period, no adjustment shall be made in the leave used for these workdays.

- (b) Under options 1 and 2 in Paragraph (a) of this Rule, after the employee has gone on workers' compensation leave, the weekly benefit may be supplemented by the use of partial sick or vacation leave, earned prior to the injury, in accordance with a schedule published by the Office of State Personnel each year. Since the employee must receive the weekly benefit, this schedule shall provide an income approximately equal to the past practice of using 100 percent of sick or vacation leave.
- (c) Compensatory time may be substituted for sick or vacation leave if applied within the time frames provided under the Hours of Work and Overtime Compensation Policy. (reference: 25NCAC01D .1928).
- (d) If the employee has earned leave or compensatory time and chooses to use it while drawing the weekly benefit, it shall be paid on a temporary pay roll at the employee's hourly rate of pay. It shall be subject to State and Federal withholding taxes and Social Security, but not subject to retirement, just the same as other temporary pay. Once an election is made under Paragraphs (a) through (c), it may not be rescinded for the duration of the claim. Unused leave may be retained for future use.
- (f) Employees injured on the job in a compensable accident who, in order to reach maximum medical improvement, require medical or therapy visits during regularly scheduled working hours shall not be charged leave for time lost from work for required treatment.
- (g) Employee Refusal of Coverage: Under certain circumstances involving third party liability an employee may elect to refuse workers' compensation benefits. If an employee refuses workers' compensation benefits for injuries resulting from an on the job injury, a release statement, provided by the agency, must be signed by the employee. Unless there is a signed release statement an employee who loses time from work as a result of an on the job injury must be placed under the workers' compensation policy.

*History Note: Authority G.S. 97-28; 126-4; Eff. November 1, 1987; Amended Eff. April 1, 2001; August 1, 1998; December 1, 1993; September 1, 1989; December 1, 1988.*

**25 NCAC 01E .0708 CONTINUATION OF BENEFITS**

While on workers' compensation leave an employee is eligible for continuation of the following benefits:

- (1) Performance Increase: Upon reinstatement, an employee's salary shall be computed based on the last salary plus any legislative increase to which he is entitled. Any performance increase which would have been given had the employee been at work may also be included in the reinstatement salary, or it may be given on any payment date following reinstatement.
- (2) Vacation and Sick Leave: While on workers' compensation leave, the employee shall continue to accumulate vacation and sick leave to be credited to his/her account for use upon his/her return. If the employee does not return from workers' compensation leave, vacation and sick leave accumulated only during the first 12 months of workers compensation leave shall be exhausted by a lump sum payment along with other

unused vacation leave which was on hand at the time of the injury. Since the employee is on workers' compensation leave and is not able to schedule vacation time off, the accumulation may in some cases exceed the 240 hours and shall be handled as follows:

(a) The 240-hour maximum to be carried forward to the next calendar year may be exceeded by the amount of vacation accumulated during workers' compensation leave. The excess may be used after returning to work or carried on the leave account until the end of the calendar year at which time any excess vacation shall be converted to sick leave.

Note: This provision also applies to employees covered under salary continuation provisions of G.S. 143-166 and 115C-337,

(b) If the employee separates during the period that excess vacation is allowed, the excess leave to be paid in a lump sum may not exceed the amount accumulated during the first 12 months of workers' compensation leave.

(3) Hospitalization Insurance: While on workers' compensation, an employee is in pay status and shall continue to be covered under the state's health insurance program, in compliance with State Health Plan guidelines. Monthly premiums for the employee shall be paid by the state. Premiums for any dependent coverage must be paid directly by the employee.

(4) Retirement Service Credit: While on workers' compensation leave an employee does not receive retirement credit. As a member of the Retirement System, the employee may purchase credits for the period of time on an approved leave of absence. Upon request by the employee, the Retirement System provides a statement of the cost and a date by which purchase must be made. If purchase is not made by that date, the cost shall have to be recomputed.

(5) Longevity: While on workers' compensation leave an employee is in pay status and shall continue to receive longevity credit. Employees who are eligible for longevity pay shall receive their annual payments.

*History Note: Authority G.S. 126-4; Eff. November 1, 1987;*

*Amended Eff. April 1, 2001; December 1, 1993; December 1, 1988.*

**25 NCAC 01E .1601 PURPOSE**

In recognition of the State's diverse needs for volunteers to support schools, communities, citizens and non-profit organizations, and recognizing the commitment of State employees to engage in volunteer service, Community Service Leave, within the parameters outlined below, may be granted to:

- (1) parents for child involvement in the schools;
- (2) any employee for volunteer activity in the schools or in a Community Service Organization; or
- (3) any employee for tutoring and mentoring in the schools.

*History Note: Authority G.S. 126-4;*

*Eff. April 1, 2001.*

**25 NCAC 01E .1602 DEFINITIONS**

When used in this Section, these terms have the following meaning:

- (1) School - One that is authorized to operate under the laws of the State of North Carolina and is an elementary school, a middle school, a high school, or a child care program.
- (2) Child - A son or daughter who is a biological child, an adopted child, a foster child, a step-child, a legal ward, or a child of an employee standing in loco parentis.
- (3) Community Service Organization - A non-profit, non-partisan community organization which is designated as an IRS Code 501(c)(3) agency, or a human service organization licensed or accredited to serve citizens with special needs including children, youth, and the elderly.

*History Note: Authority G.S. 126-4; Eff. April 1, 2001.*

**25 NCAC 01I .2302 DISMISSAL FOR UNSATISFACTORY PERFORMANCE OF DUTIES**

(a) Unsatisfactory Job Performance is work related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan or as directed by the management of the work unit or agency.

(b) The intent of this Section is to assist and promote improved employee performance, rather than to punish. This Rule covers all types of performance-related inadequacies. This Section does not require that successive disciplinary actions all concern the same type of unsatisfactory performance. Disciplinary actions related to personal conduct may be included in the successive system for performance-related dismissal provided that the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal on the basis of inadequate performance. Disciplinary actions administered under this Section are intended to bring about a permanent improvement in job performance. Should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance with further disciplinary action.

(c) In order to be dismissed for a current incident of unsatisfactory job performance, an employee must first receive at least two prior disciplinary actions: First, one or more written warnings, followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal.

(d) Prior to the decision to dismiss an employee, the agency director or designated management representative must conduct a pre-dismissal conference with the employee in accordance with the procedural requirements of the Section.

(e) An employee who is dismissed must receive written notice of the specific reasons for the dismissal as well as notice of any applicable appeal rights.

(f) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a pre-dismissal conference constitute procedural violations with remedies as provided for in 25 NCAC 01B.0432. Time limits for

filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

*History Note: Authority G.S. 126-4; 126-35; Eff. August 3, 1992; Amended Eff. April 1, 2001; December 1, 1995; August 2, 1993.*

**25 NCAC 01I .2303           DISMISSAL FOR GROSSLY INEFFICIENT JOB PERFORMANCE**

(a) Gross Inefficiency (Grossly Inefficient Job Performance) occurs in instances in which the employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency and that failure results in:

- (1) the creation of the potential for death or serious harm to a client(s), an employee(s), members of the public or to a person(s) over whom the employee has responsibility; or
- (2) The loss of or damage to agency property or funds that result in a serious impact on the agency or work unit.

(b) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

(c) Prior to dismissal of an employee with permanent status on the basis of grossly inefficient job performance, there shall be a pre-dismissal conference between the employee and the agency director or designated management representative. This conference shall be held in accordance with the provisions of 25 NCAC 01I.2308.

(d) Dismissal for grossly inefficient job performance requires written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a pre-dismissal conference constitute procedural violations with remedies as provided for in 25 NCAC 01B.0432. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

*History Note: Authority G.S. 126-4(7a); Eff. August 3, 1992; Amended Eff. April 1, 2001; December 1, 1995.*

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**TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS**

**26 NCAC 03 .0107           SETTLEMENT CONFERENCE**

(a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

(b) A settlement conference shall be held at the request of any party, the administrative law judge, or the Chief Administrative Law Judge. Upon receipt of the request, the Chief Administrative Law Judge shall assign the case to another administrative law judge for the purpose of conducting a settlement conference. Unless both parties and the administrative law judge agree, a unilateral request for a settlement conference shall not constitute good cause for a

continuance. The conference shall be conducted at a time and place agreeable to all parties and the administrative law judge. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

(c) All parties shall attend or be represented at a settlement conference under the same requirements as provided for in a mediation settlement conference under Rule .0204(a) of this Chapter.

Parties or their representatives shall be prepared to participate in settlement discussions.

(d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

(e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in Rule .0104 of this Section.

(f) If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the administrative law judge presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the administrative law judge who is assigned to hear the case.

*History Note: Authority G.S. 7A-751(a); 150B-22; 150B-31(b); Eff. August 1, 1986; Amended Eff. April 1, 2001; February 1, 1994; November 1, 1987; September 1, 1986.*

**26 NCAC 03 .0127           ADMINISTRATIVE LAW JUDGE'S DECISION**

(a) An administrative law judge shall issue a decision or order in a contested case within 45 days after the later of the date the administrative law judge receives any proposed findings of fact and written arguments submitted by the parties and the date the contested case hearing ends. The administrative law judge shall serve a copy of the decision on each party. When an administrative law judge issues a decision, the Office of Administrative Hearings shall promptly serve a copy of the official record on the agency making the final decision by hand delivery or certified mail.

(b) An administrative law judge's decision shall be based exclusively on:

- (1) competent evidence and arguments presented during the hearing and made a part of the official record;
- (2) stipulations of fact;
- (3) matters officially noticed;
- (4) any proposed findings of fact and written arguments submitted by the parties under Paragraph (g) of Rule .0119 of this Section; and
- (5) other items in the official record that are not excluded by G.S. 150B-29(b).

(c) An administrative law judge's decision shall fully dispose of all issues required to resolve the case and shall contain:

- (1) a caption;
- (2) the appearances of the parties;

- (3) a statement of the issues;
  - (4) references to specific statutes or rules at issue;
  - (5) findings of fact;
  - (6) conclusions of law based on the findings of fact and applicable constitutional principles, statutes, rules, or federal regulations;
  - (7) in the discretion of the administrative law judge, a memorandum giving reasons for his findings of fact and conclusions of law;
  - (8) a statement identifying the agency that will make the final decision; and
  - (9) a statement that each party has the right to file exceptions to the administrative law judge's decision with the agency making the final decision and has the right to present written arguments on the decision to the agency making the final decision.
- (d) The chief administrative law judge may extend the 45-day time limit for issuing a decision. An administrative law judge who needs an extension must submit a request for extension to the chief administrative law judge before the 45-day period has expired.

*History Note: Filed as a Temporary Amendment Eff. December 24, 1987 For a Period of 8 Days to Expire on January 1, 1988;*  
*Filed as a Temporary Amendment Eff. August 26, 1987 For a Period of 120 Days to Expire on December 24, 1987;*  
*Authority G.S. 7A-751(a); 150B-34;*  
*Eff. August 1, 1986;*  
*Amended Eff. February 1, 1994; October 1, 1991; April 1, 1990;*  
*January 1, 1989;*  
*Recodified from Rule .0126 Eff. August 1, 2000;*  
*Amended Eff. April 1, 2001.*

**26 NCAC 03 .0202                    SELECTION OF MEDIATOR**

- (a) Selection of Certified Mediator by Agreement of Parties. The parties may select a certified mediator by agreement within 21 days of the Chief Administrative Law Judge's order. The petitioner's attorney shall file with the Office of Administrative Hearings a Notice of Selection of Mediator by Agreement within 21 days of the Chief Administrative Law Judge's order. Such notice shall include: the name, address and telephone number of the mediator selected; the rate of compensation of the mediator; the agreement of the parties as to the selection of the mediator and rate of compensation; and whether or not the mediator is certified.
- (b) Nomination and the Office of Administrative Hearings Approval of a Non-Certified Mediator. The parties may select a mediator who is not certified but who, in the opinion of the parties and the presiding Administrative Law Judge, is otherwise qualified by training or experience to mediate all or some of the issues in the action and who agrees to mediate indigent cases without pay. If the parties select a non-certified mediator, the petitioner's attorney shall file with the presiding Administrative Law Judge a Nomination of Non-Certified Mediator within 21 days of the Chief Administrative Law Judge's order. Such nomination shall include: the name, address and telephone number of the mediator; the training, experience or other qualifications of the mediator; the rate of compensation of the mediator; and the agreement of the parties as to the selection of the mediator and rate of compensation. The

presiding Administrative Law Judge shall rule on the nomination without a hearing, shall approve or disapprove of the parties' nomination and shall notify the parties of the presiding Administrative Law Judge's decision.

(c) Appointment of Mediator by the presiding Administrative Law Judge. If the parties cannot agree upon the selection of a mediator, the petitioner's attorney shall so notify the presiding Administrative Law Judge and request, on behalf of all parties, that the presiding Administrative Law Judge appoint a mediator. The motion must be filed within 21 days of the date of the Chief Administrative Law Judge's order and shall state that the attorneys for the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The motion shall state whether any party prefers a certified attorney mediator, and if so, the presiding Administrative Law Judge shall appoint a certified attorney mediator. The motion may state that all parties prefer a certified non-attorney mediator, and if so, the presiding Administrative Law Judge shall appoint a certified non-attorney mediator. If no preference is expressed, the presiding Administrative Law Judge may appoint a certified attorney mediator or a certified non-attorney mediator. Upon receipt of a motion to appoint a mediator, or in the event the petitioner's attorney has not filed a Notice of Selection or Nomination of Non-Certified Mediator with the presiding Administrative Law Judge within 21 days of the Chief Administrative Law Judge's order, the presiding Administrative Law Judge shall appoint a certified mediator. Only mediators who agree to mediate indigent cases without pay shall be appointed.

(d) Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the Office of Administrative Hearings shall prepare and keep current a list of certified mediators who wish to mediate contested cases. The list shall be kept in the Office of Administrative Hearings and made available to the parties upon request.

(e) Disqualification of Mediator. Any party may move for an order disqualifying the mediator. If the mediator is disqualified, a replacement mediator shall be selected by the parties or appointed by the presiding Administrative Law Judge pursuant to this Rule. Nothing in this Paragraph shall preclude mediators from disqualifying themselves.

*History Note: Authority G.S. 7A-751(a); 150B-23.1;*  
*Eff. February 1, 1994;*  
*Amended Eff. April 1, 2001.*

**26 NCAC 03 .0205                    SANCTIONS FOR FAILURE TO ATTEND**

If a party or other person required to attend a mediated settlement conference fails to attend, the presiding Administrative Law Judge may impose upon the party or person any appropriate monetary sanction including, but not limited to, the payment of fines, attorneys fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference as authorized by G.S. 150B-33(b)(8) or (10). A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and on any person against whom sanctions are being sought. If the presiding Administrative Law Judge imposes

sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

*History Note: Authority G.S. 7A-751(a); 150B-23.1; Eff. February 1, 1994; Amended Eff. April 1, 2001.*

**26 NCAC 03 .0206 AUTHORITY AND DUTIES OF MEDIATORS**

- (a) Authority of Mediator.
  - (1) Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
  - (2) Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
  - (3) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.
- (b) Duties of Mediator.
  - (1) The mediator shall define and describe the following at the beginning of the conference:
    - (A) The process of mediation;
    - (B) The differences between mediation and other forms of conflict resolution;
    - (C) The costs of the mediated settlement conference;
    - (D) The fact that the mediated settlement conference is not a hearing, the mediator is not a judge, and the parties retain their right to a hearing if they do not reach settlement;
    - (E) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
    - (F) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
    - (G) The inadmissibility of conduct and statements as provided by Rule 408 of the North Carolina Rules of Evidence;
    - (H) The duties and responsibilities of the mediator and the participants; and
    - (I) The fact that any agreement reached will be reached by mutual consent.
  - (2) Disclosure. The mediator shall be impartial and advise all participants of any circumstances bearing on possible bias, prejudice or partiality.
  - (3) Declaring Impasse. It is the duty of the mediator to determine that an impasse exists, and that the conference should end.
  - (4) Reporting Results of Conference. The mediator shall file a written report with the parties and presiding Administrative Law Judge within 10 days as to whether or

not agreement was reached by the parties. If an agreement was reached, the report shall state whether the action will be concluded by consent judgment, voluntary dismissal, or withdrawal of petition and shall identify the persons designated to file such pleadings. The mediator's report shall inform the presiding Administrative Law Judge of the absence of any party, attorney, or insurance representative known to the mediator to have been absent from the mediated settlement conference without permission. A copy of the Mediator's report shall also be provided to the Attorney General of North Carolina or his designee responsible for evaluating the mediation program pursuant to the 1993 N.C. Session Laws, c. 363, s. 2.

- (5) Scheduling and Holding the Conference. The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Chief Administrative Law Judge's order. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order of the presiding Administrative Law Judge.

*History Note: Authority G.S. 7A-751(a); 150B-23.1; Eff. February 1, 1994; Amended Eff. April 1, 2001.*

**26 NCAC 03 .0207 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 Order. When the mediator is appointed by the Office of Administrative Hearings, the mediator shall be compensated by the parties at the uniform hourly rate and a one-time, per contested case, administrative fee, due upon appointment, as set by the Chief Administrative Law Judge. The Chief Administrative Law Judge shall set the rate at the same rate set by Rule 7 of the Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions.
- (c) Change of Appointed Mediator. Pursuant to Rule .0202 of this Section, the parties have 21 days to select a mediator. Parties who fail to select a mediator within that time frame and then desire a substitution after the presiding Administrative Law Judge has appointed a mediator, shall obtain approval from the presiding Administrative Law Judge for the substitution. If the presiding Administrative Law Judge approves the substitution, the parties shall pay the presiding Administrative Law Judge's original appointee the one time, per case administrative fee provided for in Paragraph (b) of this Rule.
- (d) Indigent Cases. No party found to be indigent by the presiding Administrative Law Judge shall be required to pay a mediator fee. Any mediator conducting a settlement conference pursuant to these Rules shall waive the payment of fees from parties found by the presiding Administrative Law Judge to be indigent. Any party may move the presiding Administrative Law Judge for a finding of indigence and to be relieved of the obligation to pay that party's share of the mediator's fee. Such motion shall be heard subsequent to the completion of the conference or, if the parties do not settle their contested case, subsequent to the conclusion of the contested



case hearing but prior to the issuance of the Administrative Law Judge's decision. The presiding Administrative Law Judge may take into consideration the outcome of the contested case. The presiding Administrative Law Judge shall enter an order granting or denying a party's request.

(e) Postponement Fees. As used in this Paragraph, the term "postponement" shall mean reschedule or not proceed with a settlement conference once a date for the settlement conference has been agreed upon and scheduled by the parties and the mediator. After a settlement conference has been scheduled for a specific date, a party may not unilaterally postpone the conference. A conference may be postponed only after notice to all parties of the reason for the postponement, payment of a postponement fee to the mediator, and consent of the mediator and the opposing attorney. If a mediation is postponed within seven business days of the scheduled date, the fee shall be set at a rate established by the Chief Administrative Law Judge. Postponement fees shall be paid by the party requesting the postponement unless otherwise agreed to between the parties. Postponement fees are in addition to the

one time, per case administrative fee provided for in Paragraph (b) of this Rule. The Chief Administrative Law Judge will set the rate at the same rate set by Rule 7 of the Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions.

(f) Payment of Compensation by Parties. Unless otherwise agreed to by the parties or ordered by the presiding Administrative Law Judge, mediator's fee shall be paid in equal shares by the parties. For purposes of this Rule, multiple parties shall be considered one party when they are represented by the same counsel. Parties obligated to pay a share of the costs shall pay them equally. Payment shall be due upon completion of the conference unless there is a pending motion for determination of indigency. In such case, payment shall be due upon a ruling on the motion.

*History Note: Authority G.S. 7A-751(a); 150B-23.1;  
Eff. February 1, 1994;  
Amended Eff. April 1, 2001.*

## RULES REVIEW COMMISSION

*This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, February 15, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly 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 by Friday, February 3, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.*

### RULES REVIEW COMMISSION MEMBERS

#### Appointed by Senate

Paul Powell - Chairman  
Robert Saunders  
Laura Devan  
Jim Funderburke  
David Twiddy

#### Appointed by House

John Arrowood – 1<sup>st</sup> Vice Chairman  
Jennie J. Hayman 2<sup>nd</sup> Vice Chairman  
Walter Futch  
Jeffrey P. Gray  
George Robinson

### RULES REVIEW COMMISSION MEETING DATES

March 15, 2001	April 19, 2001
May 17, 2001	June 14, 2001
July 19, 2001	August 16, 2001

The Rules Review Commission meeting has been rescheduled from Thursday, February 15, 2001 to Tuesday, **February 28, 2001**.

The Rules Review Commission is likely to review rules filed by February 20, 2001, at the February 28, 2001, meeting. In other words, rules which would normally be reviewed on March 15, 2001, will likely be reviewed on February 28, 2001.

**The only reason that would not happen is if the volume of rules filed left inadequate time for review by staff and commission.**

### Log of Filings

#### December 21, 2000 through January 22, 2001

#### NC OFFICE OF INFORMATION TECHNOLOGY SERVICES

Benchmark	09 NCAC 06A .0103	Amend
Board of Awards	09 NCAC 06B .1008	Amend
Protest Procedures	09 NCAC 06B .1009	Amend
Right to Hearing	09 NCAC 06B .1010	Amend
Request for Hearing	09 NCAC 06B .1011	Amend
Definitions	09 NCAC 06B .1012	Amend
General Provisions	09 NCAC 06B .1013	Amend
Duties of the Hearing Officer	09 NCAC 06B .1015	Amend
Settlement Conference	09 NCAC 06B .1017	Amend
Official Record	09 NCAC 06B .1029	Amend
General Delegations	09 NCAC 06B .1104	Amend

#### DENR/ENVIRONMENTAL MANAGEMENT COMMISSION

Purpose	15 NCAC 02E .0102	Repeal
Scope	15 NCAC 02E .0103	Repeal
Definitions	15 NCAC 02E .0106	Amend
Delegation	15 NCAC 02E .0107	Amend
Declaration and Delineation of Capacity Use Area	15 NCAC 02E .0201	Repeal
Persons Withdrawing Groundwater in Capacity Use	15 NCAC 02E .0202	Repeal
Activities	15 NCAC 02E .0205	Repeal
Declaration and Delineation of Central Coastal	15 NCAC 02E .0501	Adopt
Withdrawal Permits	15 NCAC 02E .0502	Adopt
Prescribed Water Use Reductions in Cretaceous	15 NCAC 02E .0503	Adopt

**RULES REVIEW COMMISSION**

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Requirements for Entry and Inspection	15 NCAC 02E .0504	Adopt
Acceptable Withdrawal Methods	15 NCAC 02E .0505	Adopt
Central Coastal Plain Capacity Use Area Status	15 NCAC 02E .0506	Adopt
Definitions	15 NCAC 02E .0507	Adopt
Scientific Educational Or Official Collecting Permits	15 NCAC 03I .0106	Repeal
Permits for Aquaculture Operations	15 NCAC 03I .0111	Repeal
Pound Net Sets	15 NCAC 03J .0107	Amend
Pots	15 NCAC 03J .0301	Amend
Permits to use Mechanical Methods for Oysters	15 NCAC 03K .0206	Amend
Permits to use Mechanical Methods for Oysters or	15 NCAC 03K .0303	Amend
Horseshoe Crabs	15 NCAC 03L .0207	Adopt
Spanish and King Mackerel	15 NCAC 03M .0301	Amend
Authorized Gear	15 NCAC 3O .0302	Amend
Procedures and Requirements to Obtain Permits	15 NCAC 3O .0501	Amend
Permit Conditions	15 NCAC 3O .0503	Amend

**TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS**

Business Records	19 NCAC 02D .0219	Amend
Permits-Authority Application and Enforcement	19 NCAC 02D .0601	Amend
Permits-Issuance and Fees	19 NCAC 02D .0602	Amend
Permits-Weight Dimensions and Limitations	19 NCAC 02D .0607	Amend
Permits-House Moves	19 NCAC 02D .0612	Amend
Denial Revocation Refusal to Renew Appeal	19 NCAC 02D .0633	Amend

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**AGENDA  
RULES REVIEW COMMISSION  
February 15, 2001**

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
  - A. Department of Agriculture Structural Pest Control Committee - 02 NCAC 34 .0502; Objection on 12/21/00 (DeLuca).
  - B. Department of Agriculture - 02 NCAC 52B .0201; Objection on 12/21/00 (DeLuca).
  - C. Department of Cultural Resources - 07 NCAC 4 S .0104; Objected on 12/21/00 (DeLuca).
  - D. Department of Revenue - 17 NCAC 07B .1303; Extend Period of Review Objection on 12/21/00 (DeLuca)
  - E. State Board of Massage & Bodywork Therapy - 21 NCAC 30 .0602; Objection on 12/21/00 (Bryan)
  - F. State Personnel Commission - 25 NCAC 1E .1605; .1606; and .1607; Objection on 12/21/00 (Bryan)
  - G. State Personnel Commission: 25 NCAC 1I .2310; Failure to make technical change 12/21/00 (Bryan).
- IV. Review of rules (Log Report #172)
- V. Commission Business
- VI. Next meeting: Thursday, March 15, 2001.

## 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) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <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

*Sammie Chess Jr.  
Beecher R. Gray  
Melissa Owens Lassiter*

*James L. Conner, II  
Beryl E. Wade*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ALCOHOL BEVERAGE CONTROL COMMISSION</b>				
NC ABC Commission v Food Lion, Inc. T/A Food Lion Store 540	99 ABC 0366	Mann	05/30/00	
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
Daniel W. Shelton T/A Shelton Broers v.NC ABC Commission	99 ABC 1641	Conner	08/31/00	15:08 NCR 879
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
NC ABC Commission v. Headlights, Inc. T/A Headlights	00 ABC 0302	Gray	08/21/00	
Timothy Lee Hopper v. NC ABC Commission	00 ABC 0326	Lassiter	10/20/00	
Steven Wilson McCrae v. NC ABC Commission	00 ABC 0598	Wade	08/23/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
NC ABC Commission v. Kevin Scott Heath, Robinhood Grille, LLC t/a Robinhood Grille	00 ABC 1026	Gray	12/19/00	15:14 NCR 1390
<b>BOARD OF MORTUARY SCIENCE</b>				
NC Board of Mortuary Science v. John Charles McNeill, McNeill Funerals, Inc.	00 BMS 0564	Wade	10/13/00	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
Pearl J. Conner v. Victim & Justice Services, Dept of Crime Control & Public Safety	00 CPS 0903	Lassiter	11/09/00	
Kenneth E. Brooks v. NC Crime Victims Compensation Commission	00 CPS 1048	Lassiter	12/21/00	
Dowu Thomas v. NC Crime Victims Compensation Commission	00 CPS 1090	Mann	01/17/01	
<b>HEALTH AND HUMAN SERVICES</b>				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 <sup>1</sup>	Wade	06/30/00	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
Tyrone Banks v. Department of Health & Human Services	00 CRA 1759	Gray	01/16/01	
<b>Child Support Enforcement Section</b>				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
David R. North v. Department of Health & Human Services	99 CSE 0408	Chess	10/25/00	
Michael A. Cameron v. Department of Health & Human Services	99 CSE 0424	Mann	09/25/00	
Marcus James Ward v. Department of Health & Human Services	99 CSE 0784	Wade	09/29/00	
Omer D. & Marinda A. Potter v. Department of Health & Human Services	99 CSE 0798	Chess	10/25/00	
Anthony R. McRae Sr. v. Department of Health & Human Services	99 CSE 0812	Morrison	12/20/00	
Richard Cook v. Department of Health & Human Services	99 CSE 0873 <sup>4</sup>	Chess	10/27/00	
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00	
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00	
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00	
Craig D. McLeod v. Department of Health & Human Services	99 CSE 1369	Lassiter	08/29/00	

**CONTESTED CASE DECISIONS**

Jermaine L. Covington v. Department of Health & Human Services	99 CSE 1408	Lassiter	11/01/00
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00
Kenneth W. Freeman, Jr. v. Department of Health & Human Services	99 CSE 1455	Wade	10/31/00
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00
David R. McDonald v. Department of Health & Human Services	99 CSE 1486	Lassiter	10/02/00
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00
Tony R. Wood v. Department of Health & Human Services	99 CSE 1501	Gray	01/12/01
Samuel E. Massenber, Jr. v. Department of Health & Human Services	99 CSE 1513	Morrison	09/27/00
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00
Edward J. Lucero v. Department of Health & Human Services	99 CSE 1542	Mann	10/31/00
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00
Almiron J. Deis v. Department of Health & Human Services	99 CSE 1589	Mann	10/31/00
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00
Richard Cook v. Department of Health & Human Services	00 CSE 0053 <sup>4</sup>	Chess	10/27/00
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00
Matthew Gibson v. Department of Health & Human Services	00 CSE 0076	Mann	10/31/00
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00
Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00
John H. Jones v. Department of Health & Human Services	00 CSE 0181	Morrison	08/25/00
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00
Gregory L. Pinkett v. Department of Health & Human Services	00 CSE 0214	Wade	10/31/00
Joseph D. Turnage v. Department of Health & Human Services	00 CSE 0220	Morrison	11/16/00
Izell Anthony Twigg v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00
Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Timothy Holtzclaw v. Department of Health & Human Services	00 CSE 0245	Gray	09/14/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Darla Judkin v. Department of Health & Human Services	00 CSE 0254	Chess	08/23/00
Christopher Mark Boyette v. Department of Health & Human Services	00 CSE 0262	Lassiter	11/01/00
Ronald L. Long, Jr. v. Department of Health & Human Services	00 CSE 0265	Mann	08/31/00
David Lee Jones v. Department of Health & Human Services	00 CSE 0269	Conner	09/27/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Pierce Foster Williams, Jr., v. Department of Health & Human Services	00 CSE 0297	Conner	09/26/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Glennie Mae Jones v. Department of Health & Human Services	00 CSE 0349	Mann	10/30/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00
Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Ronald T. Palmer v. Department of Health & Human Services	00 CSE 0422	Mann	10/31/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00
Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Ronnie N. Morgan v. Department of Health & Human Services	00 CSE 0446	Gray	01/17/01
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00

**CONTESTED CASE DECISIONS**

Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Connor	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00
Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Connor	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 <sup>3</sup>	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 <sup>2</sup>	Conner	07/28/00
Rickey L. Gullede v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
William T. Hutto v. Department of Health & Human Services	00 CSE 0594	Conner	09/07/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
Tabitha Angley v. Department of Health & Human Services	00 CSE 0614	Conner	07/27/00
Douglas M. Coker v. Department of Health & Human Services	00 CSE 0622	Chess	07/11/00
Mark Christopher Smith v. Department of Health & Human Services	00 CSE 0627	Gray	08/21/00
Rhonda Styers v. Department of Health & Human Services	00 CSE 0639	Mann	10/30/00
Terrence L. Holder v. Department of Health & Human Services	00 CSE 0640	Morrison	08/18/00
Anthony L. Reid v. Department of Health & Human Services	00 CSE 0647	Lassiter	01/16/01
Mikal M. Mua'zzin v. Department of Health & Human Services	00 CSE 0651	Conner	08/28/00
Jose' D. Rivas v. Department of Health & Human Services	00 CSE 0658	Chess	08/07/00
Benny G. Bowen v. Department of Health & Human Services	00 CSE 0666	Mann	12/11/00
Valerie A. Simpson v. Department of Health & Human Services	00 CSE 0673	Morrison	07/07/00
James H. Hopper, Jr. v. Department of Health & Human Services	00 CSE 0677	Lassiter	08/29/00
Joseph I. Woodcock v. Department of Health & Human Services	00 CSE 0684	Lassiter	07/07/00
Kenneth R. Harker v. Department of Health & Human Services	00 CSE 0686	Wade	09/11/00
Justine Roberts v. Department of Health & Human Services	00 CSE 0694	Conner	08/28/00
Dana E. Grice v. Department of Health & Human Services	00 CSE 0709	Morrison	09/08/00
Alfred R. Swain v. Department of Health & Human Services	00 CSE 0718	Mann	06/28/00
Tyrone K. Anthony v. Department of Health & Human Services	00 CSE 0741	Wade	10/31/00
James C. Martin, Jr. v. Department of Health & Human Services	00 CSE 0751	Conner	08/30/00
Wade A. Burgess v. Department of Health & Human Services	00 CSE 0757	Gray	08/22/00
Donald Daniel Harmon v. Department of Health & Human Services	00 CSE 0758	Mann	10/24/00
Parnell Dougloss Sparks v. Department of Health & Human Services	00 CSE 0761	Morrison	06/06/00
Kevin S. Tate v. Department of Health & Human Services	00 CSE 0764	Lassiter	09/11/00
Jeffrey Otis Hair v. Department of Health & Human Services	00 CSE 0766	Mann	07/17/00
Ricky A. Phillips v. Department of Health & Human Services	00 CSE 0777	Morrison	08/01/00
Catherine A. Odom v. Department of Health & Human Services	00 CSE 0792	Mann	08/31/00
George Franklin Anderson v. Department of Health & Human Services	00 CSE 0793	Morrison	08/09/00
Raymond Thomas Carpenter, Jr. v. Department of Health & Human Svcs	00 CSE 0810	Mann	09/25/00
Darrell Johnson v. Department of Health & Human Services	00 CSE 0811	Wade	09/29/00
Ronald Owen Goodwin v. Department of Health & Human Services	00 CSE 0831	Chess	09/07/00
Jean M. Brown v. Department of Health & Human Services	00 CSE 0848	Wade	08/10/00
Richard B. Malloy v. Department of Health & Human Services	00 CSE 0849	Wade	10/02/00
Ronald R. Lemmons v. Department of Health & Human Services	00 CSE 0865	Gray	08/21/00
Gregory C. Tweed v. Department of Health & Human Services	00 CSE 0876	Conner	01/25/01
St. Clair Staley v. Department of Health & Human Services	00 CSE 0890 <sup>3</sup>	Conner	10/06/00
Kenneth Duncan v. Department of Health & Human Services	00 CSE 0896	Gray	09/27/00
Kelvin Hardesty v. Department of Health & Human Services	00 CSE 0901	Lassiter	10/02/00
Michael Anthony Wright v. Department of Health & Human Services	00 CSE 0922	Lassiter	10/17/00
Cyrus V. Perry v. Department of Health & Human Services	00 CSE 0924	Gray	09/29/00
Jamey Johnson v. Department of Health & Human Services	00 CSE 0925	Wade	10/10/00
Marvin A. Smith v. Department of Health & Human Services	00 CSE 0932	Conner	09/21/00
Chris Michael Moore v. Department of Health & Human Services	00 CSE 0945	Gray	10/17/00
James C. Boyce v. Department of Health & Human Services	00 CSE 0946	Wade	12/01/00
Matthew Russell Schmidt v. Department of Health & Human Services	00 CSE 0963	Morrison	10/04/00
Keith Stephenson v. Department of Health & Human Services	00 CSE 0979	Chess	10/25/00
Walter R. Spencer, Jr. v. Department of Health & Human Services	00 CSE 1010	Morrison	10/27/00
Keith D. Meredith v. Department of Health & Human Services	00 CSE 1011	Morrison	09/19/00
Billy Joe Davis v. Department of Health & Human Services	00 CSE 1012	Lassiter	09/08/00
Darwin Dean Graves v. Department of Health & Human Services	00 CSE 1014	Conner	11/28/00
Norman G. Mitchell v. Department of Health & Human Services	00 CSE 1036	Chess	12/18/00
Mary A. Hines v. Department of Health & Human Services	00 CSE 1047	Gray	10/20/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 1069 <sup>3</sup>	Conner	10/06/00
Nancy Moore v. Department of Health & Human Services	00 CSE 1081	Lassiter	11/16/00
Carl V. Greggs, Sr. v. Department of Health & Human Services	00 CSE 1082	Wade	11/16/00

**CONTESTED CASE DECISIONS**

Chester L. Jenkins v. Department of Health & Human Services	00 CSE 1089	Chess	12/13/00	
Tacha Hyatt-Crowder v. Department of Health & Human Services	00 CSE 1098	Gray	11/07/00	
Stan Valentine v. Department of Health & Human Services	00 CSE 1100	Morrison	11/16/00	
Carlos Eugene Jacobs v. Department of Health & Human Services	00 CSE 1259	Mann	11/30/00	
Norman Bell v. Department of Health & Human Services	00 CSE 1268	Morrison	11/28/00	
Victor Ferguson v. Department of Health & Human Services	00 CSE 1396	Mann	06/26/00	
Tony E. Plyler v. Department of Health & Human Services	00 CSE 1447	Wade	01/12/01	
Teresa A. Ingraham v. Department of Health & Human Services	00 CSE 1464	Chess	12/29/00	
Richard McCarson v. Department of Health & Human Services	00 CSE 1543	Mann	01/03/01	
Clyde Michael Trout v. Department of Health & Human Services	00 CSE 1596	Morrison	01/03/01	
Karen R. McLean v. Department of Health & Human Services	00 CSE 1707	Gray	01/12/01	
<b>Division of Social Services</b>				
Mary Laforet v. Department of Health & Human Services	99 DCS 0372	Lassiter	01/12/01	
Emma Burkes (Edwards) v. Department of Health & Human Services	00 DCS 1221	Morrison	08/17/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 DCS 0277 <sup>1</sup>	Wade	06/30/00	
Michael Clay Mitchell v. Department of Health & Human Services	00 DCS 0300	Wade	06/30/00	
Sherry Moorefield v. Department of Health & Human Services	00 DCS 0350	Gray	08/25/00	
Pamela Browning Frazier v. Department of Health & Human Services	00 DCS 0479	Lassiter	06/12/00	
Lisa Lawler v. Department of Health & Human Services	00 DCS 0529	Morrison	08/29/00	
May M. Timmons v. Department of Health & Human Services	00 DCS 0546	Gray	06/22/00	
Starice Jennifer Anderson v. Department of Health & Human Services	00 DCS 0556	Gray	08/10/00	
Beverly Hawking v. Department of Health & Human Services	00 DCS 0600	Mann	06/30/00	
Lisa Hardy v. Department of Health & Human Services	00 DCS 0678	Mann	07/17/00	
Chasity Pipkin v. Department of Health & Human Services	00 DCS 0838	Gray	09/11/00	
Joyce Staley v. Department of Health & Human Services	00 DCS 0842	Conner	09/12/00	
Bessie B. Hampton v. Department of Health & Human Services	00 DCS 0845	Morrison	08/29/00	
Beverly Singleton v. Department of Health & Human Services	00 DCS 0846	Lassiter	08/18/00	
Kerry Lynn Morgan v. Department of Health & Human Services	00 DCS 0850	Conner	09/12/00	
Bonnie D. Drew v. Department of Health & Human Services	00 DCS 0906	Morrison	08/28/00	
Amy W. Hill v. Department of Health & Human Services	00 DCS 0974	Lassiter	09/08/00	
Amelia B. Bradshaw v. Department of Health & Human Services	00 DCS 0996	Mann	09/13/00	
Deborah Gray v. Department of Health & Human Services	00 DCS 1068	Morrison	09/19/00	
Kimberly D. Mays v. Department of Health & Human Services	00 DCS 1099	Gray	10/27/00	
Jennifer C. Dillard v. Department of Health & Human Services	00 DCS 1119	Wade	09/29/00	
Johnny K. Moore v. Department of Health & Human Services	00 DCS 1179	Morrison	10/04/00	
Latisha Eason Parker v. Department of Health & Human Services	00 DCS 1195	Wade	10/31/00	
Jannai Neal v. Department of Health & Human Services	00 DCS 1227	Conner	10/24/00	
Sheila Foy v. Department of Health & Human Services	00 DCS 1238	Gray	10/27/00	
Reta M. Dixon v. Department of Health & Human Services	00 DCS 1381	Conner	12/04/00	
Benita Hopkins v. Department of Health & Human Services	00 DCS 1444	Lassiter	12/18/00	
Mary Springer v. Department of Health & Human Services	00 DCS 1459	Conner	12/20/00	
Tameca Grant v. Department of Health & Human Services	00 DCS 1533	Wade	01/12/01	
Albemarle Mental Health Center, Developmental Disabilities: Substance Abuse Services v. NC Dept. of Health & Human Services, Division of Medical Assistance and NC Council of Community Mental Health, Developmental Disabilities and Substance Abuse Programs, Inc.	98 DHR 1598	Reilly	12/15/00	15:15 NCR 1440
Estelle Roberta Allison Teague and Marlene Allison Creary v. Department of Health & Human Services	99 DHR 0120	Reilly	05/15/00	
Philistine Thompson v. Department of Health & Human Services	99 DHR 0741	Gray	08/22/00	
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00	
Lakecher McFadden v. Department of Health & Human Services	99 DHR 1631	Conner	09/18/00	
Mary Johnson McClure v. Department of Health & Human Services	00 DHR 0368	Lassiter	06/19/00	
Barry Arthur Kelly, Linda Snipes Kelley v. Department of Health and Human Services	00 DHR 0038	Gray	09/15/00	
Vonda Scales Shore v. Department of Health & Human Services	00 DHR 0500	Lassiter	10/06/00	
Ann Marie & Daniel Short v. Department of Health & Human Services	00 DHR 0574	Reilly	05/22/00	
Lynell Holley Walton v. DHHS, (Health Care Personnel Registry & Investigations)	00 DHR 0605	Chess	08/15/00	
Deborah A. Shands v. Butner Adolescent Treatment Center	00 DHR 0695	Mann	07/27/00	
Larry E. Cummins MD, PI Case #1999-1752 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0797	Lassiter	08/01/00	
Larry E. Cummins MD, PI Case #1999-1117 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0798	Lassiter	08/01/00	
Robert and Shirley Harmon on behalf of Gary Harmon v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 0955	Chess	09/07/00	
Walter W. Griswold for Kimberly Griswold v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 1025	Chess	09/07/00	
Carolyn W. Cooper and Happy Days Child Care v. DHHS, Div of Child Development	00 DHR 1031	Gray	08/31/00	
Larnetra D. Noel v. NC Department of Human Services	00 DHR 1327	Chess	10/06/00	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1371 <sup>6</sup>	Gray	01/09/01	
Tracy McLeod v. First Health Richmond Cty Home Health, DHR-DOFS	00 DHR 1382	Gray	11/21/00	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1383 <sup>6</sup>	Gray	01/09/01	
Penny Jean Leary for Hyailey Okanoto v. Div. of Medical Assistance	00 DHR 1400	Gray	01/11/01	

**CONTESTED CASE DECISIONS**

Reshea Devon Pierce v. Department of Health & Human Services	00 DHR 1516	Morrison	12/18/00		
James Crosland and wife, Carolyn Crosland v. Polk County Dept. of Social Services	00 DHR 2130	Gray	01/04/01		
<b>Division of Facility Services</b>					
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR	41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00		
Elyse Glover v. DHHS, Div of Facility Svcs., Personnel Registry Case	99 DHR 1036	Lassiter	06/29/00		
Sharon J. Saxe v. DHHS, Division of Facility Services	99 DHR 1169	Lassiter	11/16/00	15:14 NCR	1396
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00		
Rhonda Gail Andrew v. DHHS, Division of Facility Services	00 DHR 0282	Chess	09/21/00		
Camille Faustin v. DHHS, Division of Facility Services	00 DHR 0298	Smith	06/28/00		
David Jordan v. DHHS, Division of Facility Services	00 DHR 0311	Lassiter	06/19/00		
Nancy Yarbrough Allen v. DHHS, Division of Facility Services	00 DHR 0356	Gray	06/23/00		
Greensboro Heart Center, LLC v. NC DHHS, Division of Facility Services, Certificate of Need Section & The Moses H. Cone Memorial Hospital & The Moses H. Cone Memorial Hospital Operating Corporation	00 DHR 0375	Lassiter	12/19/00		
Lester Lee Huskins v. DHHS, Division of Facility Services	00 DHR 0391	Lassiter	08/29/00		
Charlene Jenkins v. DHHS, Div. of Facility Svcs., Health Care Personnel, Registry Section	00 DHR 0531	Wade	11/27/00		
Cynthia Renee Cajuste v. DHHS, Division of Facility Services	00 DHR 0606	Morrison	11/08/00		
Celestine L. Bristel v. DHHS, Division of Facility Services	00 DHR 0636	Lassiter	08/15/00		
Violet Anne Berliner v. DHHS, Division of Facility Services	00 DHR 0685	Gray	11/17/00		
MariaGoretti Aduago Obialor v. DHHS, Div. of Facility Services	00 DHR 0743	Morrison	08/31/00		
Huelva Dale Corbett v. DHHS, Div. of Facility Services	00 DHS 0780	Gray	09/27/00		
Phoebe Visconti Sanders v. DHHS, Div. of Facility Services	00 DHR 0802	Lassiter	09/27/00		
Iola Cook Jefferson v. DHHS, Division of Facility Services	00 DHR 0835	Lassiter	07/24/00		
Michelle E. Lee v. DHHS, Division of Facility Services	00 DHR 0869	Conner	10/10/00	15:10 NCR	1045
Betty Jean Ellis v. DHHS, Division of Facility Services	00 DHR 0880	Lassiter	09/08/00		
Hartis Stallings v. DHHS, Division of Facility Services	00 DHR 1037	Lassiter	08/29/00		
Desiree P. Garay v. DHHS, Division of Facility Services	00 DHR 1038	Conner	09/20/00		
Lauren Hoodenpyle v. DHHS Division of Facility Services	00 DHR 1045	Chess	09/12/00		
Jacqueline Alexander v. DHHS, Division of Facility Services	00 DHR 1126	Lassiter	09/07/00		
Debra Brown v. DHHS, Division of Facility Services	00 DHR 1136	Lassiter	09/07/00		
Tracy Smith v. DHHS, Division of Facility Services	00 DHR 1236	Lassiter	10/16/00		
Michele Carver v. DHHS, Div. of Facility Services, Health Care Personnel Registry	00 DHR 1289	Lassiter	10/05/00		
Sherie Moran Hinson Edwards v. DHHS, Division of Facility Services	00 DHR 1299	Morrison	12/18/00		
<b>ENVIRONMENT AND NATURAL RESOURCES</b>					
Ronnie L. Sturdivant v. Dept. of Environment & Natural Resources	98 EHR 1222	Lassiter	05/11/00	15:04 NCR	501
Dan M. Eichenbaum v. DENR & Harrison Construction Division of APAC-Tennessee, Inc.	99 EHR 0191	Lassiter	11/21/00		
Dixie Lumber Company of Cherryville, Inc. v. Department of Environment & Natural Resources	99 EHR 0395	Wade	05/04/00		
Thomas Tilley, Trustee v. Dept. of Environment & Natural Resources	99 EHR 1136 <sup>7</sup>	Lassiter	01/01/00		
Shuttle Cleaning Service, Inc., Phillip Allen (Owner) v. Dept. of Environment & Natural Resources	99 EHR 1167	Reilly	05/19/00	15:06 NCR	696
Murphy Family Farms v. Department of Environment & Natural Resources	99 EHR 1181	Gray	08/14/00		
William A. Weston, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1538	Conner	05/24/00	15:03 NCR	343
William F. McBrayer, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1566	Wade	08/21/00		
Howard L. Hardy, Kenneth & Vester Freeman v. Department of Environment & Natural Resources	99 EHR 1600	Gray	08/31/00		
Thomas Tilley, Trustee v. Dept. of Environment & Natural Resources	99 EHR 1627 <sup>7</sup>	Lassiter	01/01/00		
Gregory Marc Edwards v. Department of Environment & Natural Resources	99 EHR 1635	Wade	09/29/00		
Leonard F. Sutton v. Division of Forest Resources	00 EHR 0072	Morrison	12/18/00	15:15 NCR	1435
David Sinclair v. Dept. of Environment & Natural Resources	00 EHR 0126	Conner	08/15/00	15:06 NCR	693
Jerry D. Phillips v. Department of Environment & Natural Resources	00 EHR 0151	Chess	09/28/00		
Samuel A. Perrella v. Div. of Environmental Health, New Bern, NC	00 EHR 0219	Gray	11/16/01		
Amos Walter Jackson v. Dept. of Environment & Natural Resources	00 EHR 0568	Gray	09/22/00		
Archie D. Fellenzer, Jr. v. CAMA	00 EHR 0836	Morrison	11/03/00		
Carolina Mountain Construction, Inc. v. Dept. of Env. & Natural Resources	00 EHR 0902	Chess	09/07/00		
Peter Pallas v. New Hanover County Board of Health	00 EHR 1149	Chess	10/19/00		
Jerry J. Fowler v. Department of Environment & Natural Resources	00 EHR 1154	Chess	10/27/00		
William A. Sergeant Lot 9 v. Dept. of Environment & Natural Resources	00 EHR 1210	Gray	12/12/00		
Scotty's Mobile Village, Larry G. Scott v. Dept. of Env. & Natural Resources	00 EHR 1266	Morrison	12/12/00		
Randy Graham v. Environmental Health of Alamance County	00 EHR 1393	Gray	12/29/00		
Chris & Senja Shumater v. Dept. of Environment & Natural Resources	00 EHR 1584	Morrison	12/18/00		
Robert H. Bilbro v. DENR/Division of Coastal Management	00 EHR 1843	Chess	01/19/01		
<b>Coastal Resources Commission</b>					
Gregory A. Bohmert v. Coastal Resources Commission	99 EHR 1438	Reilly	05/24/00	15:03 NCR	342
<b>Division of Air Quality</b>					
Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00		
VXIII Airborne Corps & Fort Bragg, Dept. of the Army, USA v. State of North Carolina, Dept. of Environment and Natural Resources, Division of Air Quality	00 EHR 0227	Conner	08/31/00		



**CONTESTED CASE DECISIONS**

Billy V. Cain v. NC DENR, Division of Air Quality	00 EHR 1351	Lassiter	01/11/01	
<i>Division of Land Resources</i>				
James Carlis Reavis and Melinda D. Reavis v. NC DENR, Division of Land Resources	98 EHR 1292	Gray	10/16/00	
<i>Division of Water Quality</i>				
Fred J. McPherson v. DENR, Division of Water Quality	00 EHR 0160	Morrison	09/01/00	
Town of Wallace v. NCDENR, Division of Water Quality	00 EHR 0247	Lassiter	10/05/00	
Frederick Holland, Hervie S. Honeycut, and Mary Jane P. Osborne v. NCDENR, Division of Water Quality	00 EHR 0332	Conner	09/18/00	
<i>Division of Waste Management</i>				
A. J. Lancaster, Jr. v. NC DENR, Div. of Waste Management	99 EHR 0994	Mann	07/27/00	15:05 NCR 636
<b>JUSTICE</b>				
Pierre Deberry Debnam v. NC Criminal Justice Education and Training Standards Commission	00 DOJ 0719	Morrison	08/15/00	
<i>Alarm Systems Licensing Board</i>				
John Martin Canter v Alarm Systems Licensing Board	00 DOJ 0573	Gray	06/02/00	
Kenneth Waits Putnam v. Alarm Systems Licensing Board	00 DOJ 0574	Gray	06/07/00	
James Thomas Wagg v. Alarm Systems Licensing Board	00 DOJ 1124	Lassiter	11/02/00	
Edwin Moore Stevens v. Alarm Systems Licensing Board	00 DOJ 1413	Lassiter	11/02/00	
<i>Education and Training Standards Division</i>				
Peter A. Davis v. Sheriffs' Education & Training Standards Comm.	99 DOJ 0531	Reilly	09/14/00	
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00	
Juan Montez Jones v. N.C. Criminal Justice Education & Training Standards Commission	99 DOJ 1716	Conner	07/05/00	
Larry G. McClain v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1721	Morrison	06/28/00	
Ersal Overton, III v. Sheriffs' Education & Training Standards Comm.	99 DOJ 0791	Mann	08/23/00	15:08 NCR 883
Keith Allen Murchison v. Sheriffs' Education & Training Stds Comm.	00 DOJ 0006	Lassiter	06/26/00	
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0056	Gray	03/01/00	
William H. Norton, III v. NC Sheriffs' Educ. & Training Stds. Comm.	00 DOJ 0563	Gray	09/19/00	
Herbert Wilson Stubbs v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0907	Lassiter	11/02/00	
Charles L. Garner, Jr. v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0993	Morrison	01/05/01	
James Edward Ellerbe v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0948	Lassiter	07/31/00	
Dexter Dwayne Boyd v. Criminal Justice Education & Training Standards Commission	00 DOJ 1366	Lassiter	05/26/00	
Rosamel T. Gresham v. Sheriffs' Education & Training Standards Comm.	00 DOJ 1557	Lassiter	12/20/00	
<i>Private Protective Services Board</i>				
Charles A. Joyce and Carolina Security Patrol, Inc. v. Private Protective Services Board	00 DOJ 0004	Conner	08/14/00	
George Thomas Bond v. Private Protective Services	00 DOJ 0014	Conner	05/11/00	
Robert V. Croom and Robert V. Wooster v. Private Protective Services Board	00 DOJ 0058	Morrison	05/16/00	
Sharon Blackstock v. Private Protective Services Board	00 DOJ 0059	Morrison	05/16/00	
Samuel G. Slater v. Private Protective Services Board	00 DOJ 0090	Morrison	05/12/00	
Keith Lewis v. Private Protective Services Board	00 DOJ 0113	Connor	06/07/00	
John W. Fromm v. Private Protective Services Board	00 DOJ 0570	Conner	06/07/00	
Jason Stewart Duckett v. Private Protective Services Board	00 DOJ 0572	Gray	06/07/00	
Shannon Ray Nance v. Private Protective Services Board	00 DOJ 0609	Gray	06/07/00	
Franklin Delano Gann, Jr. v. Private Protective Services Board	00 DOJ 0670	Morrison	06/15/00	
William Junior Holmes v. Private Protective Services Board	00 DOJ 0671	Morrison	06/15/00	
Michael Burt v. Private Protective Services Board	00 DOJ 0672	Morrison	06/15/00	
Jason William Kane v. Private Protective Services Board	00 DOJ 0952	Wade	09/08/00	
Anthony Queen Williams v. Private Protective Services Board	00 DOJ 1005	Morrison	09/01/00	
Calvin Earl McRae v. Private Protective Services Board	00 DOJ 0736	Morrison	08/02/00	
<b>PUBLIC INSTRUCTION</b>				
Doris G. Branch v. NC Department of Public Instructions	98 EDC 0368	Gray	10/08/00	15:13 NCR 1233
Stacia R. Parker v. Charlotte-Mecklenburg Board of Education	99 EDC 0389	Gray	08/23/00	
Charlie Lee Richardson v. Department of Public Instruction	99 EDC 0788	Reilly	04/11/00	15:01 NCR 45
Dale Y. Farmer v. Department of Public Instruction	00 EDC 0373	Gray	05/26/00	
Cumberland County Board of Education v. Mr. and Mrs. Wesley Waters for Weston Harold Waters	00 EDC 0465	Wade	08/11/00	
Kings Mountain Board of Education, Larry Allen, Melony Bolin, Ronald Hawkins, Shearra Miller, Stella Putnam, Joanne Cole, Otis Cole, Charlie Smith, Frank Smith, and Angela Smith v. NC State Board of Education and Cleveland County Board of Commissioners	00 EDC 0800	Morrison	06/26/00	15:04 NCR 492
James William Stockstill v. Orange County Board of Education, Orange County Schools and Randy Bridges	00 EDC 1261	Conner	09/28/00	
Christopher Paul Thompson v. Polk County School System	00 EDC 1291	Conner	12/28/00	
<b>DEPARTMENT OF INSURANCE</b>				
Jacquelyn Hastings v. NC Teachers & State Employees'	98 INS 1662	Gray	05/25/00	

**CONTESTED CASE DECISIONS**

**Comprehensive Major Medical Plan**

**MISCELLANEOUS**

Nancy York Vorys v. Raleigh Police Department 00 MIS 1436 Gray 10/27/00

**STATE PERSONNEL**

Denise M. Ashe v. Northhampton County Board of Commissioners, Northhampton County Board of Social Services, Northhampton County Department of Social Services	95 OSP 1011	Gray	08/29/00	
Michele Smith v. Cumberland Co. Dept. of Social Services	97 OSP 1344	Morgan	07/11/00	
Marshe Morgan v. Black Mount Center, NC DHHS	98 OSP 1302	Gray	07/11/00	15:05 NCR 624
Pat Hovis v. Lincoln County Department of Social Services	98 OSP 1348	Conner	11/15/00	
Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR 47
Betty R. Holman v. Broughton Hospital	99 OSP 0580	Hunter	05/08/00	
Doris A. Archibald v. Dare County Health Department	99 OSP 0622	Gray	08/10/00	
Mack Reid Merrill v. NC Department of Correction	99 OSP 0627	Wade	08/23/00	15:07 NCR 772
Russell J. Suga v. Employment Security Commission of NC	99 OSP 0768	Gray	06/23/00	
Glenn Roger Forrest v. NC Department of Transportation	99 OSP 0853	Lassiter	08/24/00	15:07 NCR 781
Sarah C. Hauser v. Forsyth Co., Department of Public Health	99 OSP 0923	Lassiter	04/20/00	15:01 NCR 5
Larry Mayo v. Employment Security Commission of NC	99 OSP 1023	Wade	06/30/00	
Michael Duane Maxwell v. Dept. of Health & Human Services	99 OSP 1068	Reilly	08/03/00	15:09 NCR 924
Joel T. Lewis v. Department of Correction	99 OSP 1116	Reilly	05/31/00	
Christopher D. Lunsford v. NC Dept. of Administration, Motor Fleet	99 OSP 1142	Morrison	08/11/00	
Van Sutton v. Office of Juvenile Justice/Dobbs School	99 OSP 1204	Gray	07/13/00	
Benny Callihan v. Department of Correction	99 OSP 1381	Wade	09/06/00	
Russell J. Suga v. Employment Security Commission of NC	99 OSP 1649	Gray	06/09/00	15:04 NCR 508
Thelma T. Utley v. NC State University	99 OSP 1708	Conner	12/08/00	
Preston D. Stiles v. NC Dept of Health & Human Svcs., Caswell Center	99 OSP 1757	Anderson	08/28/00	
Lawrence E. Cooke v. Craven Correctional Facility, NC Dept of Correction	00 OSP 0013	Conner	07/05/00	
Brenda Parker v. NC Div. of Motor Vehicles	00 OSP 0021	Gray	01/19/01	15:16 NCR 1545
Fred J. Hargro, Jr. v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0029	Morrison	08/08/00	
Robert Boyd Choat v. Department of Correction		00 OSP 0102	Reilly	07/24/00
Larry Campbell v. Wildlife Resources Commission	00 OSP 0117 <sup>5</sup>	Reilly	09/28/00	
Larry Campbell v. Wildlife Resources Commission	00 OSP 0118 <sup>5</sup>	Reilly	09/28/00	
Vicky Ruffin-Jenkins v. Sparc Academy	00 OSP 0207	Connor	06/26/00	
Robert L. Swinney v. NC Department of Transportation	00 OSP 0281	Morrison	12/20/00	15:14 NCR 1392
Jesse C. Whitaker v. Facilities Operations (NCSU)	00 OSP 0342	Chess	07/11/00	
Gladys M. Sanders v. NC Department of Correction	00 OSP 0362	Gray	09/27/00	
Lillie B. Whitaker v. Center Point Human Resources, Ronald Morton	00 OSP 0443	Lassiter	07/24/00	
Starr M. Strickland v. Correction Enterprises, NC Dept. of Correction	00 OSP 0460	Chess	10/24/00	
George W. Baysden, Jr. v. NC Department of Corrections	00 OSP 0483	Chess	12/20/00	
Addie M. Williams v. Pender Correctional Inst., Dept. of Correction	00 OSP 0562	Conner	09/12/00	
Shelby Gorham-Teel v. NC Dept of Corrections, Div. of Prisons	00 OSP 0586	Chess	07/10/00	
Michael Jackson v. University Graphics, NC State University	00 OSP 0621	Lassiter	08/16/00	
Marvin Clark v. NC Department of Correction	00 OSP 0623	Gray	08/03/00	
Pathe S. Vivek v. NC Dept. of Environment & Natural Resources	00 OSP 0631	Smith	01/12/01	
James F. Pridgen, Jr. v. A&T State University, Millicent Hopkins	00 OSP 0652	Mann	07/27/00	
Mark Esposito v. NCDOT/Aviation, Bill Williams, Director	00 OSP 0791	Lassiter	07/24/00	
Marilyn R. Horton v. Gaston-Lincoln Mental Health	00 OSP 0912	Morrison	10/19/00	
Jeffrey L. Teague v. NC Department of Correction	00 OSP 0978	Chess	10/27/00	
Bernadine Johnson v. Department of Correction	00 OSP 1118	Morrison	11/20/00	
Robert C. Adams v. NC Department of Labor	00 OSP 1185	Conner	11/28/00	
Pamela DeVose v. Durham County DSS	00 OSP 1189	Conner	12/28/00	
Steven Allen Slocum v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol	00 OSP 1203	Conner	12/28/00	
Pamela R. Smith v. NC Department of Public Instruction	00 OSP 1229	Conner	11/09/00	
Wayne M. Wise v. NCCU-WNCU	00 OSP 1269	Gray	01/09/01	
Dora P. Pettiford v. NC Department of Health & Human Services	00 OSP 1279	Lassiter	09/25/00	
David A. Greats v. NC Department of Correction	00 OSP 1282	Conner	11/09/00	
Wayne Davis v. Shelby City Schools		00 OSP 1402	Lassiter	12/20/00
Larry Joel Williams v. Durham Co. Gov't, The Durham Center	00 OSP 1417	Gray	01/24/01	
Erthel Hines v. NC Agricultural & Technical State University	00 OSP 2139	Morrison	12/21/00	

**STATE TREASURER**

Jean C. Burkhardt v. NC Dept. of State Treasurer, Retirement  
Systems Division 99 DST 1475 Mann 05/30/00 15:05 NCR 633

**DEPARTMENT OF REVENUE**

Eddie B. Thomas v. NC Department of Revenue 00 REV 0530 Gray 08/24/00  
Samuel W. Hinshaw v. NC Department of Revenue 00 REV 1008 Gray 12/20/00

**UNIVERSITY OF NORTH CAROLINA**

Theresa T. Godfrey v. UNC Hosp. at Chapel Hill, Dept of Pharm. Billing 00 UNC 0763 Lassiter 09/08/00  
Betty S. Matheson v. UNC Hospitals, Patient Accounting Department,  
OR Services 00 UNC 1020 Gray 10/09/00  
Ande West v. UNC Hospitals 00 UNC 1267 Conner 12/14/00

**CONTESTED CASE DECISIONS**

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Lisa Morelli v. SODCA Representative, UNC Hospitals	00 UNC 1328	Gray	12/28/00
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**NC BOARD OF ETHICS**

H. Michael Poole, Ph.D v. Perry Newsome, Exec. Dir. NC Board of Ethics	00 EBD 0696	Lassiter	08/25/00
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CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
00 OSP 0021

COUNTY OF NASH

BRENDA PARKER )  
Petitioner, )  
 )  
v. )  
 )  
N.C. DIV. OF MOTOR VEHICLES )  
Respondent. )

RECOMMENDED DECISION

This contested case was heard before Beecher Gray, Administrative Law Judge, on 19, 20, 21, 27 and 28 July 2000 in Raleigh, North Carolina. Petitioner filed a Proposed Recommended Decision on December 12, 2000. Respondent filed written objections and exceptions in response on January 10, 2001.

APPEARANCES

**For Petitioner:** Alan McSurely  
McSurely & Osment  
157 1/2 East Franklin Street  
Chapel Hill, North Carolina 27514

**For Respondent:** Hal F. Askins  
Special Deputy Attorney General  
Kimberly P. Hunt  
Assistant Attorney General  
NC Dept. of Justice  
PO Box 629  
Raleigh, NC 27602

ISSUES

1. Did Respondent discriminate against Petitioner because of her race when it failed to promote her to the vacant District Supervisor position in the winter of 1999-2000?
2. Did Respondent retaliate against Petitioner for objecting to racial harassment when it failed to promote her to the vacant District Supervisor Position in the winter of 1999-2000?
3. Did Respondent discriminate against Petitioner because of her political affiliation when it failed to promote her?

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. 126-14.2  
N.C. Gen. Stat. 126-16  
N.C. Gen. Stat. 126-17  
N.C. Gen. Stat. 126-36  
25 NCAC 1H.0606

FINDINGS OF FACT

1. Petitioner is an African American.
2. Respondent employed Petitioner as a Driver License Examiner in September 1983.

3. Petitioner was placed in an acting capacity of Senior Driver License Examiner in November, 1989. (T.V. p.8) . Subsequently Petitioner applied for the permanent position and was promoted by Respondent to the position of Senior Driver License Examiner. As Senior Driver License Examiner Petitioner supervised five (5) white employees until the hire of Joaey Wright, an African American female. (t.v. pp. 8, 11, 15).
4. On January 4, 1994, Petitioner received an envelope postmarked December 23, 1993 which contained a cartoon with a headline that read "Head Niggah In Charge" (Petitioner's Exhibit 18). Petitioner along with each of the five (5) Driver License Examiners and a DMV Enforcement Officer received this cartoon through the mail. (T.V. pp. 20-12).
5. Petitioner suspected that Examiner Joaey Wright, an African American female, was the author of the cartoon. (T.V. p. 23). Petitioner requested an investigation. Terry Davis, Petitioner's District Supervisor, tried to persuade Petitioner to drop her grievance. DMV Enforcement investigated the matter and was unable to determine the origin or author of the cartoon. Petitioner was informed that her allegations could not be substantiated. (Petitioner's Exhibit 19-5).
6. Mr. Davis believed Petitioner "took it too far" and "spent too much time on it" "especially after they had done the handwriting check. They had an investigation. She just wouldn't leave it alone." (II 170) "But it was a continuing thing about the cartoon. It just continued on and on and on. She was -every person in that office got that cartoon. She wasn't the only black person that got one. Officer Hayes is black also. He didn't cause all this."
7. Mr. Davis tried to transfer Petitioner out of the seven person Rocky Mount office to a one person office in Wendell because "Ms. Parker had taken this cartoon or whatever you want to call it, a caricature of whatever it was, and had caused turmoil in the office as far as trying to determine who wrote this cartoon. Hours upon hours she spent trying to find out who did this on State time and every other thing, calling her lawyers, calling the retired SBI agent, That's why." (II-169). Larry Daniel, Assistant Director Driver License Certification, called Petitioner and requested that Petitioner transfer to Wendell on a temporary basis. (T.V. pp. 33-35).
8. Petitioner objected to the transfer and was not transferred to Wendell. (T.V. pp. 35, 38).
9. In 1997, while Petitioner was out of work for surgery, Mr. Davis invited all of her subordinates in the Rocky Mount office to put in writing all of their complaints about Petitioner. Mr. Davis did not inform Petitioner that he had made this invitation. Mr. Davis did not inform Petitioner he had collected 80 pages of negative comments about her from her subordinates. In Mr. Davis's 33 years at the DMV, he never has asked the employees in a driver's license office to write to him about their feelings about their supervisors. (I-156) Mr. Davis collected the letters and put them in a folder in his District Supervisor's office in the Henderson DMV office.
10. Later in 1997 Petitioner was transferred to a "temporary" assignment in Raleigh to assist in the statewide automation of driver license records. As of July 2000, she remained in this "temporary" assignment.
11. The position held by Terry Davis was upgraded to Chief Examiner in 1999. (. II. P. 127). In April 1999, Mr. Davis selected Driver License Examiner Sylvia Spain to be Acting District Supervisor.
12. At the time, Petitioner was a Senior Driver License Examiner assigned to the Henderson District who was working a special assignment in Raleigh. Petitioner had approximately eight years of supervisory experience and supervisory training. Petitioner also had experience setting up the new automated licensing procedures across the state which she gained while on "special assignment" at the Driver License Headquarters in Raleigh.
13. Mr. Davis considered all senior driver license examiners when deciding who would serve as Acting District Supervisor. (T.II. pp. 144-145). "Ms. Parker was on special assignment in Raleigh, and I could not get them to release her to come back. I did not ask at the time, but I had asked several times before." (T. II. P. 145). Further, Mr. Wayne Hurder testified that he needed Ms. Parker in Raleigh and if her name was put "on the table," he would have taken it off. (T. III. P. 89, 92).
14. Ms. Spain has had access to Mr. Davis' District Supervisor files in Henderson, including the folder containing 80 pages of complaints about Petitioner that Mr. Davis left in the Henderson office.
15. As an Acting District Supervisor, Ms. Spain attended two retreats in June and November 1999, and monthly District Supervisor meetings in May, August and September, 1999. Mr. Davis, Ms. Arnold and Mr. Blevins also attended these meetings.
16. After six months as Acting District Supervisor, Ms. Spain applied for the position when it was posted for six days from 12 October to 18 October 1999. (Pet Ex 14-6). Petitioner also applied for this position during the posting period. (Pet Ex I-1)

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17. On 15 October 1997, the DMV adopted a Merit-Based Recruitment plan and on 8 May 1998 written policies to implement this plan were issued. The procedure that was adopted was to set up three-person interview panels. The panelists were to score the interview responses of the applicants to a set of pre-determined questions. The job or promotion was to be awarded to the applicant with the highest score.
18. Ms. Mary Ann Martin, a Driver License Examiner in the Rocky Mount office, testified that sometime in early 1999, after the interview panel procedure had replaced the old system of District Supervisors hiring people directly, Mr. Davis had told her that “he knew who would be on the panel and if there was other district supervisors that he could contact them and tell them out of the applicants that were being interviewed who he wanted for his district.” (II-43) Mr. Davis testified he did not “believe” he told the Rocky Mount staff that supervisors tell each other who they want for the job, that’s the one that gets it, and that the interview scores could be manipulated, but he agreed it would not be too hard to “fudge the scores a little bit.” (II-157)
19. Department of Transportation-Division of Motor Vehicles Personnel Policy and Procedures Merit-Based Recruitment & Selection Plan, effective October 15, 1997, states as follows: Rule 6.2.3 Use of Panel/Individual for Evaluation Process – the hiring manager, in consultation with the DMV Personnel Officer, decides if a panel is to be used. (Petitioner’s Exhibit 12) In reference to the Interview Panel, DMV Selection Policy provides that the Section Director, or designee, appoints an interview panel. (Petitioner’s Exhibit 13).
20. Mr. Michael Bryant, Director of Driver License Administration Adjudication, appointed the panel to interview applicants for the position of district supervisor. Mr. Bryant has the responsibility for assigning the interview panels. (T. II. P. 94). The panel consisted of Ms. Judy Arnold, Chief Examiner; Mr. Terry Blevins, Chief Examiner and Ms. Tola Bailey, District Supervisor. Ms. Judy Arnold was Chairperson of this interview panel.
21. The interviews were scheduled just after Ms. Spain had attended the November retreat in Asheville with Ms. Arnold, Mr. Blevins, Mr. Davis, and Tola Bailey.
22. The offices of Terry Davis, Judy Arnold and Terry Blevins are on the same floor of the Division of Motor Vehicles Headquarters in Raleigh. They see each other every day they are there. Mr. Davis and Mr. Blevins sometimes have lunch together. They normally will talk about personnel issues. (T. II. P. 155).
23. Mr. Davis told Mr. Blevins about the information in the 80 pages of letters about Petitioner that he kept in his files in Henderson. (II-156) “Maybe talking—telling that there was—the letters were written but the contents, no.” (II-161-2) “I’m not sure if Blevins didn’t ask me about the letters,” Mr. Davis said. “I’m sure that I did [say they were uncomplimentary or negative] if we discussed that.” (II-165).
24. Mr. Davis also told Ms. Arnold about the letters, “Not specific what was in it. She knew that there was—I mean, just like I told them that I had letters—I mean that’s—I don’t think we specifically went through them.”
25. Mr. Davis said he probably told both Ms. Arnold and Mr. Blevins he had “gotten some letters from the staff in Rocky Mount,” he didn’t know whether he described them as being long, but he was sure that he told them the letters were negative, “if we discussed that.”
26. Ms. Arnold testified that she did not ask Mr. Davis or talk with Mr. Blevins about why Petitioner was working in Raleigh and not in Rocky Mount. (T. I. Pp. 90-91).
27. Ms. Bailey, however, testified “Judy” [Arnold] told her there was “a big, thick folder of information that I don’t know who had on her. . .and that they had disciplinary stuff.” (II-168) Ms. Bailey testified Ms. Arnold told her there was “documentation that was valid stuff that was against Brenda Parker, but nobody was allowed to discipline her” and Ms. Arnold told her “Larry Daniels would not allow anybody to discipline Brenda Parker.” (II-169)
28. Mr. Hurder, the Section Director, testified Ms. Bobbi Holloman, whose office adjoined Ms. Arnold’s, told him she had heard Ms. Arnold say if Mr. Hurder and Mr. Daniels had let Mr. Davis discipline Petitioner like he wanted to we would not have this discrimination complaint. (IV-33) Mr. Hurder testified Ms. Holloman told him she had heard Mr. Blevins, Ms. Arnold and Mr. Davis say “this never would have gotten here if Wayne and Larry had taken care of business or fired her.” (IV-37).
29. Ms. Holloman denied overhearing any statements about the promotion from Ms. Arnold, other than “general conversation.” (II-84) Ms. Holloman’s testimony on this point was not credible.
30. In Ms. Arnold’s hearing testimony on 19 July 2000, she denied saying anything regarding this promotion around her office. (I-99). After giving this testimony, Ms. Arnold returned to her office and asked Ms. Holloman, “Where in the world, why would somebody say that I

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said that Sylvia Spain deserved this thing?" Ms. Arnold asked Ms. Holloman if she was the source of this question. (IV- 19) Ms. Holloman's testimony was on the next day, 20 July 2000.

31. Ms. Holloman testified Ms. Arnold talked to her on 19 July 2000, just after Ms. Arnold's testimony and before Ms. Holloman's. According to Ms. Holloman, Ms. Arnold asked "if I had ever said to you that Sylvia deserved the job for what happened to her before, and I said, we didn't." (IV-4, 5)
32. The hearing witnesses had been sequestered. Those witnesses present on July 19, 2000 were instructed not to discuss with each other their testimony.
33. Ms. Arnold's testimony is found to be not credible.
34. The interview was conducted on 8 November 1999 and the two main contenders were Ms. Spain and Petitioner. The panel tallied its scores after the interviews. Ms. Spain received 145; Petitioner received 144.
35. Mr. Blevins and Ms. Arnold (both white) asked follow up questions of Ms. Spain (white) on seven out of twelve written interview questions. Mr. Blevins or Ms. Arnold asked at least one follow up question of Petitioner. (Petitioner's Exhibit 8). Ms. Bailey placed a question mark on her interview sheet where follow up questions were asked. (Petitioner's Exhibits I-2, 7).
36. Of the seven follow up questions asked of Sylvia Spain, Mr. Blevins' score for Ms. Spain was higher than Petitioner's score on five questions; Ms. Arnold's score for Ms. Spain was higher than Petitioner's score on two questions; Mr. Blevins scored Petitioner higher on one question and Ms. Bailey scored Petitioner higher on six questions. Petitioner and Ms. Spain received the same score by Mr. Blevins on one question; Ms. Arnold gave them both the same score on five questions and Ms. Bailey gave them both the same score on one question. (Petitioner's Exhibit 8).
37. After the interviews the panel members individually totaled their scores, Ms. Bailey asked if she had missed something in the interviews and stated that she thought Ms. Spain had been asked leading questions. (T. I. Pp. 186-187). Ms. Arnold told Ms. Bailey that she didn't like some of Petitioner's answers and that they could discuss it since she felt the way she did. Ms. Bailey responded that there was nothing to discuss. (T. I. P. 188).
38. On 13 December 1999, respondent notified Petitioner it had chosen Ms. Spain. On 4 January 2000, Petitioner filed this contested case.

#### CONCLUSIONS OF LAW

1. Petitioner is a career State employee and the Office of Administrative Hearings has jurisdiction over the subject matter herein, pursuant to N.C. Gen. Stat. § 126-34.1. The parties properly are before the Office of Administrative Hearings.

#### Race Discrimination Claim

2. North Carolina courts look to federal employment discrimination law for guidance in establishing evidentiary standards. *North Carolina v. Gibson*, 308 N.C. 130, 301 S.E. 2d 78 (1983).
3. Direct evidentiary standards guidance was given by U.S. Supreme Court in *Reeves v. Sanderson*, \_\_\_ U.S. \_\_\_, 147 L. Ed. 2d 105, 2000 U.S. Lexis 3966, 120 S. Ct. 2097, 12 June 2000. *Reeves* unanimously overturned a 4<sup>th</sup> Circuit case, *Theard v. Glaxo, Inc.* 47F.3d 676 (CA4 1995) that had misapprehended the U.S. Supreme Court holding in *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 125 L. Ed. 2d 407, 113 S. Ct. 2742 (1993).
4. *Reeves* reaffirmed *St. Mary's* holding that:

The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination.

(*Reeves* at 2108, reaffirming its holding in *St. Mary's Honor Center*, 509 U.S. at 511, overturning 4<sup>th</sup> Circuit holding *St. Mary's* required a showing of pretext plus a showing of discriminatory intent.)

5. *Reeves* gave detailed guidance to the trier of fact when it suspects mendacity:

In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider the party's dishonesty about a material fact as "affirmative evidence of guilt."

(*Reeves*, 2108, citing *Wright v. West*, 505 U.S. 277, *Wilson v. United States*, 162 U.S. 613, and 2 J. Wigmore, *Evidence* 278(2) p. 133)

Moreover, once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for the decision.

(*Reeves*, 2108-9)

6. Under G.S. 126-16 and 126-36, it is unlawful for the employer to deny a state employee a promotion because of her race.
7. Petitioner must first establish a prima facie case of discrimination by introducing evidence sufficient to support a finding that (1) Petitioner was a member of a protected class; (2) Petitioner suffered an adverse employment action; (3) Petitioner was qualified for the position; and (4) a person not of a protected class replaced or was selected over the Petitioner. Petitioner met her prima facie burden by proving: [1] she applied for and was qualified for an available position, [2] that she was rejected, and that [3] after she was rejected [the employer] filled the position with a white employee. *N.C. Department of Correction v. Hodge*, 99 N.C. App. 602, 611 394 S.E. 2d 285, 1990.
8. To rebut this inference, the burden of persuasion then shifted to respondent to present evidence that [Petitioner] was rejected, or the other applicant was chosen, for a legitimate, nondiscriminatory reason. *Id.* For example, a legitimate nondiscriminatory reason is an employer's promotion of a better qualified employee than the Petitioner. *Id.*
9. The selection of state employee applicants is governed by 25 NCAC 1H. 0606 which provides:
  - (a) *The selection of applicants for vacant positions will be based upon a relative consideration of their qualifications for the position to be filled. Advantage will be given to applicants determined to be most qualified and hiring authorities must reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection.*
  - (b) *Selection procedures and methods will be validly related to the duties and responsibilities of the vacancy to be filled. The Office of State Personnel will provide technical assistance, upon request, to agencies wishing to design or review selection procedures.*
10. Respondent presented no evidence other than that the interview panel's total score of 145 for the successful (white) applicant was a point higher than Petitioner's as its proffered reason for selecting Ms. Spain.
11. Respondent called no witnesses but presented evidence through cross-examination of witnesses. The evidence presented on behalf of Respondent was that Petitioner and the recommended applicant were qualified for the position. Petitioner was interviewed by an Interview Panel of three persons. Each panel member individually scored the answers given by the interviewee. The recommended applicant received a higher total score than the Petitioner. The Petitioner was within two points of being the successful applicant. Factors used to evaluate the applicants were answers given to the questions asked. Because Ms. Arnold is deemed not credible, whereas Ms. Bailey was found to be credible, there is more than a suspicion of mendacity arising from the reason proffered by Respondent.
12. To eliminate racial stereotypes, profiles and other preconceptions, employment selections should be predominantly based on objective factors, including applicants' comparative experience, credentials, training and other objective qualifications, as provided in 25 NCAC 1H. 0606. Respondent produced no evidence that such objective factors were the basis for the selection of the white applicant, who, in fact, had much less supervisory experience than Petitioner.
13. No "relative consideration of their qualifications for the position to be filled" was done with the applicants here.
14. In *Hodge, op. cit.*, three white interviewers gave the successful white applicant 71 points and the African American petitioner 60 points. "The State's use of the interview as the sole criteria for not promoting Hodge contravened its own system of promotion, in which the State used the interview as one item that carried more weight than all of the other items of evaluation combined." *Hodge* at 613, emphasis added. The Department of Corrections did not follow its own promotion process in *Hodge*. The agency was supposed to consider the interview scores as "one item that carried more weight than all the other items." Here, the agency's



selection was based solely on the subjective scores from a short interview, thus making the DMV's "system of promotion" even more prone to subjective, personal prejudice errors.

15. Respondent did not comply with the first part of 25 NCAC 1H. 0606, which provides that: *Advantage will be given to applicants determined to be most qualified and hiring authorities must reasonably document hiring decision to verify this reasonably document[ed] hiring decisions to verify this advantage was granted and explain their basis for selection.* Advantage here was given to one applicant with helpful questions in the interview. The hiring authorities presented no documents, reasonable or otherwise, that documented that the successful applicant was the "most qualified" or that explained the basis for the selection, other than that the panelists' total was one point higher for her.
16. Respondent did not comply with the second part of 25 NCAC 1H. 0606, which provides that: *Selection procedures and methods will be validly related to the duties and responsibilities of the vacancy to be filled. The Office of State Personnel will provide technical assistance, upon request, to agencies wishing to design or review selection procedures.* Respondent produced no evidence that the interview panel procedure it adopted in 1998 is "validly related" to the duties and responsibilities of the vacancy to be filled. There is no evidence Respondent requested the Office of State Personnel to help it design or review this procedure.
17. The interview panel procedure as applied in this case by Respondent is found to be in violation of 25 NCAC 1H. 0606 as a matter of law.
18. For evidence to be sufficient to infer discriminatory motive, decision-makers rely on any number of circumstantial factors. Some factors triggered by the facts here include: A hostile attitude of the decision maker. (*Jetstream AERO Services, Inc. v. New Hanover County*, No. 88-1748, 1989 WL 100644 (4<sup>th</sup> Cir. 15 August 1989); Disparate and unequal treatment among employees. (*Abasiokong v. City of Shelby*, 744 F.2d 1055 (4<sup>th</sup> Cir.1984); *Krieger v. Gold*, 863 F.2d 1091 (2<sup>nd</sup> Cir. 1988); *Ramsuer v. Chase*, 865 F. 2d 460 (2<sup>nd</sup> Cir. 1989); Inadequate or bad faith investigation of allegations regarding an adverse action. (*Martinez v. El Paso*, 710F2d 1102, 1104(5<sup>th</sup> Cir. 1983); Deviations from regular and routine procedures or failure to adhere to procedural guidelines and delayed articulation of alleged justification. (*Lindahl v. Air France*, 930 F. 2d 1434 (9<sup>th</sup> Cir. 1991).
19. Respondent did not present substantial evidence to show legitimate, nondiscriminatory reasons why Respondent hired the successful applicant over the Petitioner. It is concluded that the reasons proffered by the agency to select the white candidate over Petitioner are not supported by the evidence and that the employer is dissembling to cover up a discriminatory purpose.
20. It is concluded Petitioner's admissible evidence has proven by a preponderance of the evidence that the "145-144" score proffered as the reason for selecting the successful applicant was pretextual on its face.

Political Influence Claim

21. Petitioner also alleged that she was denied this promotion because of political influence. Petitioner has the burden of proof on this issue.
22. N.C. Gen. Stat. 126-14.2 provides protection for state employees who believe they were not hired because of political affiliation or political influence. Although the language of the statute does not expressly cover a promotion situation, construing the statute as a whole, it is concluded as a matter of law that it includes both hiring and promotion.
23. To meet the prima facie requirements of the statute, petitioner must show that (1) she applied for the position in question during the open application period; (2) she was not hired into the position in question, (3) she was among the pool of the most qualified applicants (4) the successful applicant was not among the pool of the most qualified applicants (Gen. Stat. 126-14.2)(5) The hiring decision was based upon political affiliation or political influence (N.C. Gen. Stat. §126-14.2(c)).
24. While the evidence suggests some political influence in some of the personnel decisions in the evidence, Petitioner failed to meet the prima facie burden in this statute because the successful applicant for the position was in the pool of the most qualified applicants.
25. Therefore, it is found as a conclusion of law that Petitioner must meet all four prima facie burdens in the law and, since the successful applicant was in the pool of the most qualified applicants, Petitioner failed to meet her burden. Petitioner failed to establish a prima facie case of political discrimination under N.C. Gen. Stat. §126-14.2 and her claim is denied.

Retaliation Claim

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26. Petitioner has alleged she was denied the promotion in question in retaliation for her objecting to racial harassment in 1994. Petitioner has the burden of proof on this issue.
27. The *Reeves* evidentiary standards apply to the analysis of a retaliation claim.
28. Petitioner alleged she was not selected for the position of District Supervisor because of retaliation for consistently requesting an investigation into the origin of a racial cartoon which was mailed to all Examiners and a DMV Enforcement Officer by another Examiner (a black female) in the Rocky Mount Office.
29. To establish a prima facie case of retaliation, Petitioner must show that (1) she engaged in protected activity, (2) the employer took adverse action; and (3) there existed a causal connection between the protected activity and the adverse action. *Brewer v. Cabarrus Plastics, Inc.*, 130 N.C. App. 681, 504 S.E.2d 580, 586 (1998).
30. Petitioner has failed to persuade the undersigned that retaliatory animus affected the promotion decision in question. Given the conclusion of law in the race discrimination claim, it is unnecessary to make a further analysis here.

**RECOMMENDED DECISION**

Respondent discriminated against Petitioner because of her race when it failed to select her for the District Supervisor position in November 1999. Respondent should (a) reinstate Petitioner to the position that she should have been promoted into in accordance with 25 NCAC 1B.0429, and (b) provide Petitioner back pay from the date she was not selected on 9 November 1999, including all raises and other benefits to which she would have been entitled and (c) award Petitioner reasonable attorney fees pursuant to 25 NCAC 1B.0414 upon submission by the Petitioner's counsel of a Petition for Attorney Fees with an accompanying itemized statement of the fees and costs incurred in representing the Petitioner. Petitioner's political influence and retaliation claims should be denied because Petitioner has not carried her burden of proof on either issue.

**ORDER**

It is hereby ordered that the agency making the final decision in this case serve a copy of the final decision on the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with N.C. Gen. Stat. 150B-36(b).

**NOTICE**

The agency making the final decision in this case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision, pursuant to N.C. Gen. Stat. 150B-36(a).

The agency making the final decision is required to serve a copy of the final decision on all parties and to furnish a copy of the final decision to the parties or their attorneys of record and to the Office of Administrative Hearings, pursuant to N.C. Gen. Stat. 150B-36(b).

The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 19<sup>th</sup> day of January, 2001.

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Beecher R. Gray  
Administrative Law Judge