

NORTH CAROLINA REGISTER

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DECEMBER 15, 2006

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Contact List for Rulemaking Questions or Concerns

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

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

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1307 Glenwood Ave., Suite 159 (919) 733-2721
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Office of State Budget and Management
116 West Jones Street (919) 733-7061
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Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street
Raleigh, North Carolina 27603

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Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603

contact: Jim Blackburn or Rebecca Troutman jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603

contact: Anita Watkins awatkins@nclm.org

NORTH CAROLINA REGISTER
 Publication Schedule for January 2006 – December 2006

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

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

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

NOTICE OF TEXT

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

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

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

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

Note from the Codifier: 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.

North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F.0101, 13 NCAC 07F .0201, and 13 NCAC 07F.0501 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1910, 1915, and 1926 promulgated as of August 24, 2006, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

- Assigned Protection Factors
(71 FR 50122 - 50192, August 24, 2006)

The *Federal Register* (FR), as cited above, contains both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

A. John Hoomani, General Counsel
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, NC 27699-1101

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

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

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Secretary for the Department of Administration intends to adopt the rules cited as 01 NCAC 41D .0101 - .0102, .0201 - .0203, .0301 - .0304, and .0401.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: January 8, 2007

Time: 10:00 a.m.

Location: N.C. Department of Administration, Administration Building, 5th Floor, Commission Conference Room in Room 5034, 116 West Jones Street, Raleigh, North Carolina 27603

Reason for Proposed Action: The Secretary of Administration is directed to adopt rules to implement N.C.G.S. 143-58.4 and 143-58.5 which allow State departments, institutions, and agencies to use monies generated by the sale of EAct credits to purchase alternative fuel, develop related refueling infrastructure and purchase alternative fuel vehicles.

Procedure by which a person can object to the agency on a proposed rule: Written objections may be submitted to Larry Shirley, Director, North Carolina Department of Administration, State Energy Office. Objections may be received by mail, delivery service, hand delivery or facsimile transmission. Objections may be directed to Larry Shirley, Director, 1340 Mail Service Center, Raleigh, NC 27699-1340. Fax: (919) 733-2953.

Comments may be submitted to: Larry Shirley, Director, NC Department of Administration, State Energy Office, 1340 Mail Service Center, Raleigh, NC 27699-1340, phone (919) 733-2230, fax (919) 733-2953, email Larry.Shirley@ncmail.net

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written

objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact: A copy of the fiscal note can be obtained from the agency.

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 41 – STATE ENERGY OFFICE

SUBCHAPTER 41D - ENERGY POLICY ACT CREDIT BANKING AND SELLING PROGRAM

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 41D .0101 PURPOSE AND ORGANIZATION

Pursuant to G.S. 143-58.4 the State Energy Office has established a credit banking and selling program to allow State departments, institutions, and agencies to use monies generated by the sale of EAct credits to purchase alternative fuel, develop related refueling infrastructure and purchase alternative fuel vehicles. Pursuant to G.S. 143-58.5, the State Energy Office has established an Alternative Fuel Revolving Fund generated from the sale of EAct credits. These funds may to be used to purchase alternative fuel, develop related refueling infrastructure and purchase alternative fuel vehicles for use by State departments, institutions, and agencies.

Authority G.S. 143-58.4; 143-58.5.

01 NCAC 41D .0102 DEFINITIONS

For the purposes of this Chapter, the following definitions apply:

- (1) "AFV" means an original equipment manufactured vehicle or U.S. EPA certified retrofit that operates on compressed natural gas, propane, or electricity. "AFV" also means a hybrid electric vehicle that derives its transportation energy from gasoline and electricity.
- (2) "Alternative fuel" means biodiesel, ethanol, compressed natural gas, propane, and electricity used as a transportation fuel in

blends or in a manner as defined by the Energy Policy Act.

- (3) "Biodiesel Fuel Use Credit" means an EPAAct credit given by the U.S. DOE for each 450 gallons of pure biodiesel purchased for use in blends of 20% or higher. No credit is granted for the petroleum portion of biodiesel fuel blends.
- (4) "B20" means a blend of 20% by volume biodiesel fuel and 80% by volume petroleum-based diesel fuel.
- (5) "Department" means the Department of Administration.
- (6) "Energy Policy Act" means the federal Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2782, 42 U.S.C. 13201, et seq.
- (7) "EPAAct credit" means a credit issued pursuant to the Energy Policy Act.
- (8) "EPC" means the Energy Policy Council, an appointed advisory group that provides direction to the State Energy Office.
- (9) "E85" means a blend of 85% by volume ethanol and 15% by volume gasoline. E85 content may be lowered to 70% ethanol in winter months to avoid cold start problems.
- (10) "FFV" means a flexible fuel vehicle that is capable of operating on E85 and/or gasoline.
- (11) "Incremental fuel cost" means the difference in cost between an alternative fuel and conventional petroleum fuel at the time the fuel is purchased.
- (12) "Incremental vehicle cost" means the difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model.
- (13) "LDV" means a light duty vehicle that has less than an 8,500 lb gross vehicle weight rating (GVWR).
- (14) "NC Alternative Fuel Consortium" means a voluntary group of state agencies, institutions and interested entities that meet at least quarterly and is hosted by the State Energy Office to coordinate alternative fuel and petroleum displacement activities in North Carolina.
- (15) "OEM" means original equipment manufacturer.
- (16) "U.S. DOE" means the United States Department of Energy.
- (17) "U.S. EPA" means the United States Environmental Protection Agency.

SECTION .0200 - CREDIT BANKING AND SELLING PROGRAM PROVISIONS

01 NCAC 41D .0201 PROGRAM

The State Energy Office shall establish and administer an energy credit banking and selling program in cooperation with State departments, institutions and agencies.

Authority G.S. 143-58.4; 143-58.5.

01 NCAC 41D .0202 BANKING

(a) EPAActs credits shall be accrued and banked according to the following:

- (1) The U.S. DOE Alternative Fuel Transportation Program (10 CFR Part 490) requires that 75% of LDVs acquired by state fleets shall be FFVs, compressed natural gas vehicles, propane vehicles or electric vehicles.
- (2) One credit is earned for each OEM or EPA certified retrofit FFV, compressed natural gas, propane and electric vehicle purchased.
- (3) Credits that exceed the annual minimum state AFV acquisition requirements may be banked through the U.S. DOE Office of Freedom Car and Vehicle Technologies Program to meet future year requirements or traded.
- (4) State fleets can earn Biodiesel Fuel Use Credits to meet 50% of their annual AFV acquisition requirements by purchasing and using biodiesel.
- (5) Biodiesel Fuel Use Credits cannot be traded or banked.

(b) Credits are determined by state agencies in cooperation with the State Energy Office in the following manner:

- (1) Each year by December 1st every State department, institution and agency subject to EPAAct requirements shall provide the State Energy Office with the types of vehicles purchased, the vehicle identification numbers and the dates of purchase to determine the number of EPAAct credits generated by the State.
- (2) The SEO shall submit annual EPAAct credit report to the U.S. DOE by December 31st.

(c) The following provisions shall be used in determining credits:

- (1) EPAAct credits eligible for sale include FFVs if the FFVs are operating on E85.
- (2) EPAAct credits generated through the use of B20 are not directly eligible for sale or transfer, however, they shall be used by the State to meet 50% of Energy Policy Act requirements, therefore supporting the State in generating EPAAct credits to sell.
- (3) State agencies and institutions that purchase FFVs shall record the use of E85 for the FFVs from which credits will be sold.

Authority G.S. 143-58.4; 143-58.5.

Authority G.S. 143-58.4; 143-58.5.

01 NCAC 41D .0203 SELLING

(a) The State Energy Office shall sell EAct credits in accordance with the provisions of the Energy Policy Act.

(b) The State Energy Office shall form a Credit Selling Work Group to determine the number of excess credits (if any) to be sold.

(1) The Credit Selling Work Group will determine the asking price for credits that are deemed in the best interest of the State to sell.

(2) The Credit Selling Work Group shall consist of:

(A) Department of Administration Motor Fleet Management designee;

(B) Department of Transportation Equipment Unit designee;

(C) State Energy Office designee (s); and

(D) Designees of other state agencies and institutions that generate EAct credits.

(c) The State Energy Office shall undertake the following when conducting the sale of credits: seek approval from the Secretary of Administration prior to selling credits:

(1) Credits shall be sold through direct sale or broker facilitated sale.

(2) The State Energy Office shall negotiate all credit sales and report credit transfer to the U.S. DOE.

(3) The EAct credit transfer/sale will be documented through the U.S. DOE Office of Energy Efficiency and Renewable Energy "Alternative Fuel Transportation Program Proof of Credit Transfer."

(4) Contributing agencies shall be notified within five days after credits are sold.

Authority 143-58.4; 143-58.5.

SECTION .0300 - PROCEEDS AND DISTRIBUTION

01 NCAC 41D .0301 PROCEEDS AND DISTRIBUTION

(a) Funds generated by the sale or transfer of EAct credits by the Department shall be deposited into the Alternative Fuel Revolving Fund.

(b) The following will be undertaken to determine the distribution of proceeds from the Alternative Fuel Revolving Fund:

(1) The State Energy Office shall annually inform the NC Alternative Fuel Consortium of the amount of revenue accrued to the Alternative Fuel Revolving Fund and the percentage of these funds that were generated by participating state agencies, institutions or entities.

(2) The State Energy Office shall organize meetings of the NC Alternative Fuel Consortium and the Credit Selling Work

Group to discuss and prioritize distribution of funds.

(3) Fund distribution shall be prioritized based on maximizing benefits to the State for the purchase of alternative fuel, related refueling infrastructure and AFV purchases.

(4) State Departments, institutions and agencies that plan to utilize Funds from the sale of EAct credits must submit a description of eligible project, estimate of cost to implement and projected timetable to complete before consideration and approval are granted by the State Energy Office and the Energy Policy Council.

Authority G.S. 143-58.4; 143-58.5.

01 NCAC 41D .0302 ALTERNATIVE FUEL REVOLVING FUND

(a) The Alternative Fuel Revolving Fund shall be set up to receive and disperse funds from EAct credit sales.

(b) The Fund shall be held by the State Energy Office and contain the following attributes:

(1) The Fund shall consist of monies received from the sale of EAct credits under G.S. 143-58.4, any monies appropriated to the Fund by the General Assembly, and any monies obtained or accepted by the Department.

(2) No portion of the Fund shall be transferred to the General Fund, and any appropriation made to the Fund shall not revert.

(3) The State Treasurer shall invest monies in the Fund in the same manner as other funds are invested. Interest and monies earned on such investments shall be credited to the Fund.

(4) Funds distributed through the Alternative Fuel Revolving Fund shall not exceed the amount of funds held by the Fund in any given year.

Authority G.S. 143-58.4; 143-58.5.

01 NCAC 41D .0303 THE ALTERNATIVE FUEL REVOLVING FUND CRITERIA

The Fund may be used for any of the following:

(1) To offset the incremental cost of B20 and/or E85;

(2) The incremental cost of purchasing AFVs;

(3) For the development of alternative fuel refueling infrastructure;

(4) For the costs of administering the Fund; and

(5) For projects approved by the Energy Policy Council.

Authority G.S. 143-58.4; 143-58.5.

01 NCAC 41D .0304 FUND DISBURSEMENTS

Revenue from the Alternative Fuel Revolving Fund shall be dispersed given the following considerations:

- (1) The Alternative Fuel Consortium and Credit Selling Work Group shall each meet annually to develop recommendations for the State Energy Office on dispersing revenue accrued to the Alternative Fuel Revolving Fund.
 - (a) Based on recommendations of the Alternative Fuel Consortium, the Credit Selling Work Group shall develop an annual plan to prioritize eligible projects.
 - (b) The Credit Selling Work Group shall undertake a consensus building process in making recommendations on the distribution of Funds.
 - (c) Final recommendations of the Alternative Fuel Consortium and Credit Selling Work Group shall be approved by the State Energy Office and the Energy Policy Council.
 - (d) The Energy Policy Council will resolve any disagreements that may arise over the designation of Funds.
- (2) The SEO shall instruct the Department's Controller on the dispersion of monies accrued to the Alternative Fuel Revolving Fund.
- (3) Benefits and control over the benefits from the sale of EAct credits shall be distributed to State departments, institutions and agencies in proportion to the number of EAct credits generated by each. A State department, institution or agency may designate the distribution of its percentage of benefits to another State department, institution or agency to maximize the overall benefits to the State.
- (4) Only state departments, institutions and agencies are eligible to utilize Alternative Fuel Revolving Funds.
- (5) An annual plan for the dispersion of Alternative Fuel Revolving Funds will be prepared by the State Energy Office based on recommendations from the Alternative Fuels Consortium and a vote by the Credit Selling Work Group.
- (6) The annual plan will be brought by the State Energy Office for review and approval by the Energy Policy Council.

Authority G.S. 143-58.4; 143-58.5.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Office of Commissioner of Banks intends to amend the rules cited as 04 NCAC 03C .1001 - .1002 and repeal the rules cited as 04 NCAC 03C .0701 - .0703, .1101 - .1102, and .1301.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: January 16, 2007

Time: 10:00 a.m.

Location: Office of the Commissioner of Banks, Hearing Room, 316 W. Edenton Street, Raleigh, NC

Reason for Proposed Action:

04 NCAC 03C .1001 - .1002 need to be amended to remove out-of-date and meaningless requirements and to modify money thresholds which are no longer correct.

04 NCAC 03C .0701 - .0703 and .1301 are no longer helpful because their purpose and function has largely been supplanted by the Uniform Bank Performance Report and by long-standing examination protocols.

04 NCAC 03C .1101 - .1102 are no longer helpful because the marketplace itself, supervised by the Securities Exchange Commission, dictates what a bank may prudently do in issuing capital notes and debentures, far more effectively than a state regulation.

Procedure by which a person can object to the agency on a proposed rule: *Comments in writing on the proposed rule changes are welcomed via letter, fax, or email to the Rule-making Coordinator at the address shown in this Notice. Also, written and in-person comments will be solicited at the public hearing, the time and location of which is set forth in this Notice. Comments received may be reproduced and made available, as submitted to interested persons.*

Comments may be submitted to: Daniel E. Garner, 316 W. Edenton Street, 4309 Mail Service Center, Raleigh, NC 27699-4309, phone (919) 733-3016, fax (919) 733-6918, email dgarner@nccob.org

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in*

Authority G.S. 143-58.4; 143-58.5.

SECTION .0400 - REPORTS

01 NCAC 41D .0401 REPORTS

Progress reports will be submitted biannually by State departments, agencies, and institutions that receive funds from the Alternative Fuel Revolving Fund. The progress report shall include a description of the current project, number of gallons of alternative fuel or vehicles purchased, challenges and successes, and forecast of expectation or deviation from the planned schedule.

G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 03 - BANKING COMMISSION

SUBCHAPTER 03C – BANKS

SECTION .0700 - REPORTS REQUIRED BY COMMISSIONER OF BANKS

04 NCAC 03C .0701 EXAMINING COMMITTEE REPORT

~~(a) The board of directors of each state bank, on a form provided by the Office of the Commissioner of Banks, shall submit the results of an annual examination by an examining committee appointed by the bank's board of directors pursuant to G.S. 53-83. The form contains a balance sheet and a questionnaire covering various statutory and regulatory requirements and is required to be filed annually and is due not later than June 30 for the preceding year. The form shall be obtained from and filed with:~~

~~Office of the Commissioner of Banks
316 West Edenton Street
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.~~

~~(b) In lieu of the examination by a committee of directors required in Paragraph (a) of this Rule, the Board may engage a certified public accounting firm to conduct an examination sufficiently broad in scope so as to allow the accounting firm to render an opinion on the bank's financial statement. The Board may attach this report to the examination form provided by the Office of the Commissioner of Banks and file the same, together with the accounting firm's management letter and management's response, to the Commissioner of Banks at the address in Paragraph (a) of this Rule, not later than June 30 for the preceding year.~~

Authority G.S. 53-83; 53-92; 53-99.

04 NCAC 03C .0702 REPORTS OF CONDITION AND INCOME

~~Every state bank shall submit a report of condition and income to the Commissioner of Banks no later than 30 days after the end of each calendar quarter. The report of condition and income form shall be obtained from and submitted to:~~

~~Office of the Commissioner of Banks
316 West Edenton Street
4309 Mail Service Center~~

Raleigh, North Carolina 27699-4309.

Authority G.S. 53-92; 53-105.

04 NCAC 03C .0703 PUBLISHER'S COPY, REPORT OF CONDITION AND INCOME

~~Every state bank shall submit along with each report of condition and income a summary of the report which has been published in a newspaper of general circulation where the bank is located. If there is no newspaper published or circulated in the place where the bank is located, then the report summary must be published in a newspaper of general circulation nearest the bank. Proof of publication shall be furnished the Commissioner of Banks in the form of a certificate or affidavit of publication. A form shall be obtained from and submitted to:~~

~~Office of the Commissioner of Banks
316 West Edenton Street
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.~~

Authority G.S. 53-92; 53-105.

SECTION .1000 - LOAN ADMINISTRATION AND LEASING

04 NCAC 03C .1001 LOAN DOCUMENTATION

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

- (1) Financial Statements. Financial statements shall be required from any borrower who is a maker, co-maker, guarantor, endorser or surety on any unsecured loans or other unsecured extensions of credit in an amount of ~~twenty fifty~~ fifty thousand dollars (~~\$20,000.00~~) (\$50,000) or more in the aggregate. Financial statements required by this Item shall:
 - (a) be signed or otherwise properly executed;
 - (b) be dated within 18 months preceding the origination date of the credit obligation;
 - (c) be renewed within 18 months after the date of the last financial statement on file;
 - (d) be addressed to, or made specifically for, the lending bank; and
 - (e) include such information as will adequately reflect the assets, liabilities, net worth and income of the borrower.
- (2) Financial Statement Exceptions. A bank may waive the financial statement required by Item (1) of this Rule for credit granted under a credit card. Additionally, a bank may elect to substitute in the place of a current financial statement a current credit bureau report for consumer loans scheduled to be repaid in at least quarterly installments.

- (3) Personal Property Appraisals. Appraisals on personal property used as collateral for a loan shall be obtained and shall be completed as follows:
- (a) Generally. Except as otherwise provided below, a written appraisal of personal property used to collateralize any loan must be made by the executive committee or loan committee of the bank, or any branch thereof, or other reliable persons familiar with the value of the property. Except as provided, all appraisals must be renewed every ~~42~~ 24 months.
 - (b) Requirements. The appraisal required by this Item must include:
 - (i) the name of the borrower;
 - (ii) the date the appraisal was made;
 - (iii) the value of the collateral;
 - (iv) the signatures of at least two persons making the appraisal;
 - (v) a brief description of the property;
 - (vi) the amount of any prior lien and holder of the lien, if any; and
 - (vii) the original amount or outstanding balance of the loan which the property is used to secure.
 - (c) Appraisal Exceptions. No appraisal shall be required under the following circumstances:
 - (i) on collateral to notes of less than ~~twenty-fifty~~ twenty thousand dollars ~~(\$20,000.00); (\$50,000);~~
 - (ii) on loans fully secured by obligations of the United States or the State of North Carolina;
 - (iii) on loans fully secured by deposits in the bank maintaining the loan account;
 - (iv) on loans fully secured by the cash surrender or loan value of life insurance policies;
 - (v) on loans fully secured by bonded warehouse receipts;
 - (vi) on floor plan loans to dealers fully secured by new automobiles, stationwagons, vans, and trucks;
 - (vii) on discounted notes for a dealer where the note is given as the purchase price of an automobile or other consumer goods; or
- (viii) on loans fully secured by listed securities, unless such loans are within the provisions of the Securities Exchange Act of 1934 as defined by Regulation "U," as amended from time to time by the Board of Governors of the Federal Reserve System. On loans secured by such collateral, appraisal must be made and kept on file until the loan is fully paid.
 - (d) Renewal Exceptions. Appraisals need not be renewed annually where an automobile, stationwagon, mobile home, or where a truck or van not exceeding 8,000 pounds empty weight, is the sole or partial collateral for a loan.
 - (e) Single Signature Exception. An appraisal may be signed by only one person where an automobile, stationwagon, mobile home, or where a truck or van not exceeding 8,000 pounds empty weight, is the sole collateral for a loan.
- (4) Real Estate Appraisals. Unless otherwise provided, all real estate taken as security for loans shall be appraised in the form and manner set forth in Sub-item (4)(a) through (4)(c) of this Rule. In addition, the appraisal must be independent in that the appraiser is not involved in the loan transaction secured by the property being appraised and has no interest, financial or otherwise, in the property.
- (a) The bank may elect to waive the requirement for an appraisal of real estate given as security for loans of ~~twenty~~ twenty five thousand dollars ~~(\$20,000.00); (\$50,000)~~ or less. Appraisals of real estate given as security for loans over ~~twenty-fifty~~ twenty five thousand dollars ~~(\$20,000.00); (\$50,000)~~, but not exceeding two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged shall be prepared by any one of the following methods:
 - (i) Two members of the executive or loan committee who are familiar with real estate values in the community where the property is located.

- (ii) Two bank employees who are familiar with real estate values in the community where the property is located, provided that one of the two employees must not be involved in the loan transaction secured by the property being appraised.
 - (iii) A state-licensed real estate appraiser or state-certified real estate appraiser or a person certified as a real estate appraiser by an appraisal trade organization approved by the bank to perform the appraisal.
 - (iv) In lieu of an appraisal as provided by Sub-items (4)(a)(i) through (iii) of this Rule, for loans less than two hundred fifty thousand dollars (\$250,000), a bank may elect to accept a bona fide copy of the most recent real property tax notice from the tax administrator's office in the county in which the property is located provided that such notice states the assessed ad valorem tax value of the real estate, and any improvements thereon, separate from the personal property; and provided further, the loan officer shall include with the tax notice a memorandum to file that he or she has obtained the notice from the county tax administrator and is of the opinion that such notice accurately reflects the real property values.
- (b) Except as noted, appraisals required by Sub-item (4)(a)(i), (ii), and (iii) of this Rule shall be in writing, and signed and dated by the person or persons making the appraisal. Additionally, the appraisal must identify the loan transaction for which it was made, the current balance of prior lien and holder of the lien, if any, disclosed by the attorney's title certificate, segregate values of improvements from values of the land, and describe the property so as to make it easily identifiable. If a professional appraisal form is used which does not include this information, the bank must complete and attach to such appraisal its own appraisal form disclosing the required information. The appraisal must state the basis or approach used to determine the value of the property. Acceptable approaches to determining the value of real property are:
- (i) The current cost of replacing a property, less depreciation relating to deterioration in functional and economic obsolescence.
 - (ii) The value indicated by recent sales of comparable properties in the market and other market factors such as listings and offers to sell.
 - (iii) The value that the property's net earning power will support, based on a capitalization of net income.
- (c) All real estate given as security to loans in an amount over two hundred fifty thousand dollars (\$250,000.00), whether directly or indirectly pledged shall be appraised and such appraisal shall be subject to the provisions of 12 C.F.R. 321.1 through 12 C.F.R. 323.7, which are herein incorporated by reference. Pursuant to G.S. 150B-21.6, any reference to 12 C.F.R. 323.1 through 12 C.F.R. 323.7 shall automatically include any later amendments or additions to those rules.
- (5) Certificate of Title. For loans secured primarily by real ~~property~~, property and only secondarily by the borrower's general credit worthiness and projected income, a certificate of title furnished by an attorney at law or, title insurance issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides to the bank substantially similar protection against loss from title defects or errors/omissions at closing or other loan-related risks, must accompany each deed of trust or mortgage given as security on loans of ~~twenty—fifty~~ thousand dollars ~~(\$20,000.00)(\$50,000)~~ or more. Provided that any loan which is based primarily on the borrower's general creditworthiness—and—projected

~~income, whether or not accompanied by a deed of trust or mortgage, is not considered a loan secured by real property, and the first sentence of this Item shall not apply to any such loan.~~

- (6) Stock Certificate/Powers. Where stock certificates, or similar securities, are accepted as collateral to loans, each certificate must be endorsed and witnessed in ink, or accompanied by a stock power signed and witnessed in ink. Where such collateral is in the name of another, other than the maker or endorser of the note, there must be on file in the bank written authority from the owner permitting the hypothecation of the collateral.
- (7) Corporate Resolutions. Loans made directly to corporations must be supported by certified copies of resolutions of the board of directors of the corporation, authorizing the making of such loans.
- (8) Partnership Declaration. Loans made directly to partnerships must be supported by a declaration by the partners showing the composition of the partnership and unless all partners sign the note, the authority of the partner(s) executing the note to bind the partnership.
- (9) Limited Liability Company Certification. Loans made directly to limited liability companies must be supported by a certification of a manager thereof that the loan is authorized and is obtained for the carrying on in the usual way the business of the limited liability company.
- ~~(9)~~(10) Unlisted Securities. Full credit information on all unlisted securities, now owned or hereafter purchased or acquired, must be secured and kept on file in the bank.

- (2) the prospective lessee shall execute an agreement to lease such property. During the minimum period of the lease, terms require payment to the bank rentals which in the aggregate will exceed the total expenditures by the bank for or in connection with the ownership, maintenance, and protection of the property. In determining the total expenditures under this Regulation, a bank may deduct a realistic residual value in determining the rentals to be charged during the term of a lease agreement. Any unguaranteed portion of the estimated residual value relied upon by the bank to calculate total expenditures under this Regulation may not exceed 25 percent of the original cost of the property to the lessor. The amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party, which is not an affiliate of the bank, may exceed 25 percent of the original cost of the property where the bank has determined, and can provide full, supporting documentation, that the guarantor has the resources to meet the guarantee.
- (3) The total leasing obligations or rentals to any bank of any person, partnership association, ~~or corporation~~ corporation; or limited liability company shall at no time exceed the legal limit permitted by G.S. 53-48.
- (4) The overall investment of the bank in such property leased to all lessees shall at no time exceed 200 percent of its unimpaired capital fund as defined in G.S. 53-1(9).
- (5) The bank shall at all times maintain adequate protection by way of insurance or indemnity provided by the lessee.
- (6) No such lease or other agreement shall obligate the bank to maintain, repair, or service personal property in connection with any lease held by it.
- (7) No personal property acquired pursuant to the ownership or lease of personal property shall be included in the computable investment in fixed assets under G.S. 53-43(3).
- (8) Rental payments collected by the bank under lease arrangements shall be rent and shall not be deemed to be interest or compensation for the use of money loaned.
- (9) Upon expiration of any lease whether by virtue of the lease agreement or by virtue of the retaking of possession by the bank, such personal property shall be re-let, sold, or otherwise disposed of, or charged off within one year from the time of expiration of such lease.
- (10) Upon written request and for good cause shown, the Commissioner may waive or modify any of the foregoing restrictions. In

Authority G.S. 53-92; 53-104; 53-110.

04 NCAC 03C .1002 LEASING OF PERSONAL PROPERTY

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

- (1) Before the acquisition thereof upon the specific request and for the use of the customer

evaluating such a request, the Commissioner shall consider such factors as:

- (a) the bank's size, profitability, capital sufficiency, risk profile, market, and operational capabilities, especially with a view towards the bank's involvement in lease financing;
- (b) current best practices of financial institutions engaged in lease financing;
- (c) the nature, size, duration, aggregate amount, and other risks attendant to the bank's lease financing transactions;
- (d) the risk of significant loss to the bank if the Commissioner does not grant the request.

Authority G.S. 53-92; 53-104.

SECTION .1100 - CAPITAL

04 NCAC 03C .1101 DEFINITIONS: ISSUANCE OF CAPITAL NOTES AND DEBENTURES

For the purposes of this Section, the following definitions shall apply:

- (1) ~~Capital Note.~~ Any unsecured note or debenture issued by a bank that qualifies as capital pursuant to the provisions of G.S. 53-1(9).
- (2) ~~Convertible Debentures.~~ A debenture which is convertible into the capital stock of the issuing bank.
- (3) ~~Debenture.~~ An unsecured promise to pay issued under the terms of a deed of trust or indenture.
- (4) ~~Long Term Note or Debentures.~~ Any note or debenture having a maturity of more than seven years.
- (5) ~~Medium Term Note or Debentures.~~ Any note or debenture having a maturity of not less than one or more than seven years.
- (6) ~~Non convertible Debentures.~~ A debenture which may not be converted into the shares of the capital stock of the issuing bank.
- (7) ~~Subordinated Debentures.~~ Debentures which are subordinated to and junior in right of payment to a banker's obligations to its depositors, its obligations under banker's acceptances and letters of credit, its obligations to any Federal Reserve Bank and any similar obligations to its other creditors, which, in the event of insolvency, receivership, conservatorship, reorganization, readjustment of debt, marshaling of assets and liabilities or like proceedings, or in any liquidation or

~~winding up of or relating to the bank, whether voluntary or involuntary, shall be entitled to be paid in full before any amount shall be made on account of the principal of, or premium, if any, or interest on the debentures or notes.~~

Authority G.S. 53-43.4; 53-92; 53-104.

04 NCAC 03C .1102 CAPITAL DEBENTURES AND NOTES

~~(a) Application for the issuance of such long term debentures or notes shall be in such form as the Commissioner of Banks may prescribe and each applicant will furnish to the Commissioner all information which he requests, together with a full statement and explanation of the need for the funds proposed to be borrowed, and the use proposed to be made of such funds.~~

~~(b) The Commissioner of Banks shall not pass upon any application for nor give his approval to the issuance of any long term nonconvertible debentures or notes unless and until the same shall have been approved by the bank's board of directors. Approval by stockholders is not required in connection with the issuance of any long term nonconvertible debentures or notes.~~

~~The Commissioner of Banks shall not pass upon any application for nor give his approval to the issuance of any long term convertible debentures unless and until the same shall have been approved at a stockholders' meeting by the holders of two thirds of the outstanding capital stock of the bank. Prior to any meeting of the shareholders, at which approval of long term convertible debentures is sought, a copy of the proposed debenture or agreement shall be mailed or otherwise delivered to each stockholder together with full and adequate notice that such proposal is to be submitted at the meeting.~~

~~(c) The indebtedness of the bank evidenced by any long term debentures or notes, including the principal thereof and premium, if any, and interest thereon, shall be subordinate and junior in right of payment to its obligations to its depositors, its obligations under banker's acceptances and letters of credit, its obligations to any Federal Reserve Bank and any similar obligations to its other creditors, whether now outstanding or hereafter incurred, in that in case of any insolvency, receivership, conservatorship, reorganization, readjustment of debt, marshaling of assets and liabilities, or similar proceedings or any liquidation or winding up of or relating to the bank, whether voluntary or involuntary, all such obligations shall be entitled to be paid in full before any payment shall be made on account of the principal of, or premium, if any, or interest on the debentures or notes. The provisions of this Paragraph shall be incorporated in every long term debenture, note, and agreement with respect to the purchase or sale of such debentures or notes.~~

~~(d) No long term debentures or notes shall be issued in an amount in excess of 50 percent of the combined capital stock and unimpaired surplus of the bank.~~

~~(e) The terms and conditions of any issue of or prepayment of capital debentures or notes must have the prior approval of the Commissioner of Banks affirming that in his opinion such issue~~

or prepayment is in the best interest of the depositors, creditors and stockholders of the bank.

~~(f) Such long term debentures or notes shall not be subject to being converted into capital stock of the issuing bank without prior consent of the Commissioner of Banks and under conditions as he may approve.~~

~~(g) Such long term debentures or notes may be treated as meeting the requirements of the unimpaired capital fund as defined in G.S. 53-1(9) provided such debentures or notes shall have an average original maturity of at least seven years and have been specifically designated as part of the bank's unimpaired capital fund by resolution duly adopted by the Board of directors of the bank. Such debentures or notes shall not be treated as meeting any capital requirements for branching authority.~~

~~(h) Any bank chartered by the State of North Carolina which issues long term debentures or notes shall not acquire or hold any such of its own debentures or notes in carrying out its duties in investing any funds which it holds in trust, or in its own assets. Any bank with the prior approval of the Commissioner of Banks may purchase any of its own outstanding debentures provided they are immediately retired.~~

Authority G.S. 53-1; 53-43.4; 53-92; 53-104.

SECTION .1300 - BANK PERSONNEL

04 NCAC 03C .1301 ANNUAL VACATION

~~(a) Every bank or branch thereof, under the supervision of the Commissioner of Banks, must grant to each officer and employee an annual vacation period of at least five working days. The annual vacation period must be granted on consecutive working days and each officer and employee must remain absent from his duties continuously throughout the vacation period. This Rule shall not apply to any specified individual, officer or employee or group or class of officers or employees, upon application by any bank or branch thereof and with the approval of the Commissioner of Banks.~~

~~(b) This Rule does not apply to those officers and employees who have been in a bank's employment for a period of less than one year. Neither does this Regulation apply to employees of a bank's incorporated subsidiary when the employee does not perform any banking services or duties for the parent bank.~~

Authority G.S. 53-92; 53-104.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Code Officials Qualification Board/ NC Department of Insurance intends to amend the rules cited as 11 NCAC 08 .0713 and .0720.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: January 23, 2007

Time: 1:00 p.m.

Location: 322 Chapanoke Road, Room 100, Raleigh, NC

Reason for Proposed Action: *Technical amendments for continuing education requirements and approved courses.*

Procedure by which a person can object to the agency on a proposed rule: *The Code Officials Qualification Board/ NC Department of Insurance will accept written objections to these rules until the expiration of the comment period on February 13, 2007.*

Comments may be submitted to: *Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 733-4529, fax (919) 733-6495, email esprenke@ncdoi.net*

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 08 - ENGINEERING AND BUILDING CODES DIVISION

SECTION .0700 - QUALIFICATION BOARD-STANDARD CERTIFICATE

11 NCAC 08 .0713 CONTINUING EDUCATION REQUIREMENTS

(a) To be eligible to renew a certificate, whether active standard or active limited, a Code Enforcement Official (CEO) shall have completed the requisite number of credit hours by June 30, 2007, and each June 30 thereafter.

(b) A credit hour is ~~60~~ 50 minutes of class contact course instruction or ~~60~~ 50 minutes of distance learning time.

(c) A CEO with an active limited certificate ~~must~~ shall complete six hours of continuing education courses per renewal year in each technical area for which the limited certificate is valid. A CEO with an active standard certificate ~~must~~ shall complete six

hours of continuing education courses per renewal year for each standard certificate. A CEO with a limited and a standard certificate valid for the same technical area ~~must~~shall complete only six hours for that technical area.

(d) A CEO with only a probationary certificate and no standard or limited certificate is not required to complete any continuing education courses.

(e) If a course exceeds the number of credit hours specified for renewal of a technical area certificate, the excess credit hours may be carried forward into the following renewal year of that technical area certificate. The number of ~~carry over~~carry-forward credit hours ~~may~~shall not exceed six.

~~(f) Within 180 days prior to or subsequent to the effective date of a new edition of the Building Code, each CEO must complete Building Code coursework offered by the Engineering and Building Codes Division of the Department of Insurance, or offered by a course sponsor approved in accordance with 11 NCAC 08 .0718. In order to meet this requirement, the CEO must complete two credit hours of coursework in each area in which that CEO holds certificates. The coursework shall address Code changes appearing in the new edition of the Code. The credit hours received for completion of this coursework shall be credited towards the continuing education requirements for a CEO. Any additional credit hours of coursework taken may be applied towards the continuing education requirement for that renewal year or towards carry over credit subject to the limitations of Paragraph (e) of this Rule.~~

Authority G.S. 143-151.13A(b); 143-151.13A(f)(1); 143-151.13A(f)(4); 143-151.13A(f)(5); 143-151.16(b).

11 NCAC 08 .0720 APPROVED COURSES

(a) To be approved for credit in the continuing education program, a course ~~must~~shall be directly related to State Building Codes, inspection, administration, or enforcement of State Building Codes; construction or design of buildings or electrical, mechanical, plumbing, or fire prevention systems; or certification courses approved for CEOs.

(b) Credit shall be given only for courses that have been approved by the Board. Continuing education courses for other State occupational licenses must be specifically approved to satisfy the Board's continuing education requirements. Courses from approved sponsors must be specifically approved before being offered.

(c) Some courses shall be approved for credit in more than one area of certification. A CEO with multiple certificates may apply the credit to any certificate for which the course is approved. If the course hours are greater than required for one certificate, the remaining hours may be applied to other certificates for which the course is approved or the remaining hours may be carried over in accordance with 11 NCAC 08 .0713(e).

(d) A CEO shall only receive credit for the same course once within any three-year period.

(e) A course shall contain a minimum of one credit hour.

(f) A CEO may select a course other than one offered by an approved provider. In order to obtain approval for the course, the CEO shall, upon completion of the course, submit an application for approval on a form provided by the Board. The

application shall include: The topic, content of lecture material, date, time, location, name and qualifiers of the instructor, and the number of course contact hours received upon completion of the course. In lieu of the form, the CEO may submit a course brochure that contains all of the information required by the form. The CEO shall also provide verification of attendance from the course instructor. The Board shall not accept any applications for course approval under this paragraph after April 30 of each year.

(g) Approved instructors shall receive twice the number of course credit hours for each instructional hour in an approved course. An instructor shall only receive twice the number of course credit hours for the same course once within any two-year period.

Authority G.S. 143-151.13A(f)(1); 143-151.13A(f)(4).

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Insurance intends to adopt the rule cited as 11 NCAC 11F .0801.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: January 4, 2007

Time: 10:00 a.m.

Location: 3rd Floor Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, NC

Reason for Proposed Action: *To be consistent with NAIC standards*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to this rule until the expiration of the comment period on February 13, 2007.*

Comments may be submitted to: *Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 733-4529, fax (919) 733-6495, email esprenke@ncdoi.net*

Comment period ends: February 13, 2007

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

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11F - ACTUARIAL

SECTION .0800 – PREFERRED CLASS STRUCTURE MORTALITY TABLE

11 NCAC 11F .0801 MODEL REGULATION PERMITTING THE RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

(a) The North Carolina Department of Insurance incorporates by reference, including subsequent amendments and editions, the National Association of Insurance Commissioners Model No. 815, Model Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities. Copies of Model No. 815 may be obtained from: The National Association of Insurance Commissioners, 2301 McGee Street, Kansas City, MO 64108-1662; the North Carolina Department of Insurance, Actuarial Services Division, 1201 Mail Service Center, Raleigh, NC 27699-1201; and from the Department of Insurance web page at <http://www.ncdoi.com/>.

(b) For purposes of this Rule, Section 2 of Model No. 815 shall read as follows:

The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between Preferred and Standard lives in determining minimum reserve liabilities in accordance with G.S. 58-58-50(c)(2)(a), 11 NCAC 11F .0403(a), and 11 NCAC 11F .0403(b).

(c) For purposes of this Rule, Section 4 of Model No. 815 shall read as follows:

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election shall be made until the company demonstrates that at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this regulation, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of 11

NCAC 11F .0601, 11 NCAC 11F .0602, 11 NCAC 11F .0603, and 11 NCAC 11F .0604.

(d) For purposes of this Rule, Paragraph C of Section 3, and Paragraph C of Section 5 of Model No. 815 are not applicable.

Authority G.S. 58-2-40; 58-58-50(k).

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Alarm Systems Licensing Board intends to amend the rule cited as 12 NCAC 11 .0210.

Proposed Effective Date: July 1, 2007

Public Hearing:

Date: January 17, 2007

Time: 1:00 p.m.

Location: Conference Room, ASLB Office, 1631 Midtown Place, #104, Raleigh, NC 27609

Reason for Proposed Action: *The Board determined in 1995 that it was important for any firm, association, corporation, department, division, or branch office to employ an individual who holds an electrical license. The Board proposes to amend the rule to require that the electrical licensee be employed full-time.*

Procedure by which a person can object to the agency on a proposed rule: *Objections should be submitted in writing to Director Terry Wright, Alarm Systems Licensing Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609. All written comments should be submitted on or before the expiration of the public comment period.*

Comments may be submitted to: *Terry Wright, 1631 Midtown Place, Suite #104, Raleigh, NC 27609, phone (919) 875-3611*

Comment period ends: March 5, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR LICENSEES

12 NCAC 11 .0210 ELECTRICAL CONTRACTING LICENSE REQUIREMENTS

Each firm, association, corporation, department, division, or branch office required to be licensed pursuant to G.S. 74D-2(a) must maintain at all times employ on a full-time basis a licensee or registered employee who holds a license for either a SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors. Pursuant to 12 NCAC 11 .0206, each firm, association, corporation, department, division, or branch office must maintain in its records a copy of the licensee's or registered employee's Electrical Contractors License. In the event the licensee holding the electrical contractor's license ceases to perform his duties, the business entity shall notify the Board in writing within 10 working days. The business entity must obtain a substitute electrical contractor licensee within 30 days after the original electrical licensee ceases to serve.

Authority G.S. 74D-2(a); 74D-5.

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to amend the rule cited as 13 NCAC 15 .0703.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: January 17, 2007

Time: 10:00 a.m.

Location: 4 West Edenton Street, Raleigh, NC 27699 (Room 249)

Reason for Proposed Action: The NC Department of Labor proposes to amend 13 NCAC 15 .0703 in order to clarify the fee for inspection of rock walls. Certain rock walls are considered "amusement devices" pursuant to the NCGS 95.111.3(a), and have been inspected as such in the past. This proposed rule would clarify the fee that is charged for those inspections and is consistent with what has been charged for those inspections in

the past. Additionally, The Amusement Device Safety Act authorizes the Commissioner of Labor to establish fees "not to exceed \$250.00 for the inspection and issuance of certificates of operation." The current fees were established through temporary rulemaking on October 17, 2001 and became permanent on July 1, 2003. Since that time, expenses associated with the inspection of amusement devices throughout the State have increased such that it is necessary to increase the fees charged for said inspections.

Procedure by which a person can object to the agency on a proposed rule: Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733- 4235. Objections may also be submitted during the public hearings conducted on this rule, which is noticed above. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on February 13, 2007.

Comments may be submitted to: Erin T. Gould, 1101 Mail Service Center, Raleigh, NC 27699-1101, phone (919) 733-7885, fax (919) 733-4235, email erin.gould@nclabor.com

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 15 - ELEVATOR AND AMUSEMENT DEVICE DIVISION

SECTION .0700 – FEES

13 NCAC 15 .0703 AMUSEMENT DEVICE

INSPECTION FEE SCHEDULE

Inspection fees for amusement devices shall be as follows:

	Equipment	Unit Fee	Inspection Required
(a)	Inflatables <u>and Rock Walls</u>	\$100.00	Annually
(b)	Kiddie Rides (48" maximum height restriction) or Go Karts	\$30.00 <u>\$45.00</u>	Every setup, except in permanent parks, which shall be inspected annually
(c)	Major Rides (including water slides)	\$60.00 <u>\$90.00</u>	Every setup, except permanent parks, which shall be inspected annually
(d)	Roller Coasters, other than mobile or portable roller coasters	\$250.00	Annually

Authority G.S. 95-107; 95-111.4(19).

TITLE 14A – DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Crime Control and Public Safety/State Highway Patrol intends to amend the rules cited as 14A NCAC 09H .0308, .0310 - .0311, .0313 - .0317, and .0320 - .0324.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: January 18, 2007

Time: 9:00 a.m.

Location: SHP Troop C Headquarters, 1831 Blue Ridge Road, Raleigh, NC 27607

Reason for Proposed Action: Agency desires to improve existing rules.

Procedure by which a person can object to the agency on a proposed rule: The agency will accept written objections to the proposed rule amendments until the expiration of the comment period on February 13, 2007.

Comments may be submitted to: Joseph P. Dugdale, General Counsel, 4702 Mail Service Center, Raleigh, NC 27609-4702, phone (919) 733-5007, fax (919) 733-1189, email dpdugdale@ncshp.org

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in

G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (\geq \$3,000,000)
- None

CHAPTER 09 - STATE HIGHWAY PATROL

SUBCHAPTER 09H - ENFORCEMENT REGULATIONS

SECTION .0300 - WRECKER SERVICE

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 a sufficient length of wire rope (cable) on winch drum; drum with a working load limit (WLL) that meets or exceeds the pulling capacity of the power winch utilized; 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) Debris. Includes, but is not limited to, any parts of a vehicle or material that may be strewn upon the surface of the roadway or highway right-of-way as a result of the collision and which may reasonably be cleared or removed. This definition shall also include any mud, soil, antifreeze, transmission, brake or other liquids/fluids that have been deposited onto the surface of the roadway as a result of a vehicle collision. Debris does not include cargo from property hauling vehicles.
- (6)(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; 450 feet or more of 5/8 inch or larger cable a sufficient length of wire rope (cable) with a working load limit (WLL) that meets or exceeds the pulling capacity of the power winch utilized 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.
- (7)(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.
- (8)(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.
- (9)(8) Major Violations. All violations of the regulations not determined to be minor.
- (10) Open Enrollment Period. The period of time between November 1st – November 30th each calendar year in which applications or reapplications for inclusion to the Highway Patrol Rotation Wrecker List for the next calendar year may be submitted.
- (11)(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.
- (12)(40) Removal. Being taken off the Patrol Rotation Wrecker List for a determinate or indeterminate period of time.
- (13)(44) 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).
- (14)(42) Small Wrecker means a truck chassis having a minimum gross vehicle weight (GVWR) rating of 10,000 pounds and a maximum GVWR of ~~that does not exceed~~ 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 sufficient length of wire rope (cable) on winch drum with a working load limit (WLL) that meets or exceeds the pulling capacity of the power winch utilized; 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.
- (15)(43) Rotation Wrecker Zone means a geographic area which may encompass all or part of a District of a Troop.

~~(16)(14)~~ Member means all uniformed personnel of the Patrol who are charged with enforcement duties, including troopers and officers, noncommissioned and commissioned duties.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0310 SECURING VEHICLES WHEN OPERATOR IS ARRESTED

Upon arresting or placing a vehicle operator in custody a member shall:

- (1) With consent of owner, operator, or legal possessor, allow another licensed, competent individual to drive or move the vehicle to a position off the roadway; or
- (2) If no licensed, competent operator is present, or if the owner, operator, or legal possessor will not consent to such removal:
 - (a) Move the vehicle, if necessary, to a position off the roadway, lock the vehicle and return the key to the owner, operator, or legal possessor; possessor, except that, in any case where the operator if the vehicle is arrested for DWI, a member shall either turn the keys over to the magistrate/jailer or, when appropriate, to a sober, responsible person; or
 - (b) With or without consent of the owner, operator, or legal possessor, transport and store vehicle in accordance with 14A NCAC 09H .0311.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0311 VEHICLES TRANSPORTED AND STORED OVER OBJECTION OF OWNER

A member may transport and store a vehicle over the objection or without consent of the owner, operator, or legal possessor when:

- (1) The vehicle cannot be lawfully parked off the roadway; or
- (2) The vehicle is lawfully parked off the roadway but creates a hazard; or
- (3) The owner, operator, or legal possessor refuses or is unable to remove the vehicle from the roadway; or
- (4) The vehicle is subject to seizure pursuant to G.S. 20-28.3 or other lawful ~~authority.~~ authority;
- (5) The vehicle is being held pursuant to G.S. 20-96.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0313 TRANSPORTING AND STORING VEHICLES

(a) A member shall arrange transportation and safe storage of a vehicle pursuant to this wrecker service Directive.

(b) A member who authorizes the transportation and storage of a vehicle shall, in every case, immediately notify the appropriate Communications Center and request a wrecker service in accordance with these rules and furnish information necessary to complete a Signal 4 (Report of Vehicle Stored or Recovered). The member shall notify the Communications Center in any case where a rollback should not be dispatched.

(c) A member shall notify the Communications Center whenever he transports or stores a vehicle. If the vehicle is towed, stored, or removed to the shoulder of the road and left at the scene at the request of or with the consent of the owner, operator, or legal possessor, the member shall mark the applicable entries on the HP-305 and obtain the signature of the person making the request or giving the consent. Refusal to sign the HP-305 shall be deemed a withdrawal of the consent or request to tow. In such a situation, members shall be governed by Rule .0311 of this Section.

(d) A member shall, when notified by a magistrate of a hearing regarding payment of towing or storage fees, appear in person at the hearing or file HP-305.1 "Affidavit" with the magistrate prior to the hearing.

(e) When necessary for accident reconstruction or a criminal investigation in which multiple vehicles are involved in an incident a single storage location may be designated. The storage facility of the first wrecker service dispatched shall be used unless otherwise designated by a supervisor.

(f) When necessary for an accident reconstruction or a criminal investigation, a member may designate at which indoor or other appropriate storage facility a vehicle shall be stored to ensure preservation of the evidence. The storage facility shall be the first wrecker service dispatched unless otherwise designated by a supervisor.

(g) DWI seized vehicles shall be towed and stored in accordance with instructions from the ~~County School Board~~ or state or regional contractor.

(h) Vehicles stored pursuant to G.S. 20-96 shall be held by the towing/storage company until all civil assessment(s) have been satisfied and release is approved by the investigating member.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0314 NOTIFICATION

(a) Unless exempted by vehicle seizure law, a registered owner must be notified of the vehicle being towed and stored. In order to accomplish this, the authorizing member shall immediately notify the appropriate Troop Communications Center of the following:

- (1) a description of the vehicle;
- (2) the place where the vehicle is stored;
- (3) the procedure the owner must follow to have the vehicle returned to him; and
- (4) the procedure the owner must follow to request a probable cause hearing on the towing.

(b) Upon notification by theA member who authorized the towing and/or storage of a vehicle in the absence of the registered owner, the Troop Communications Center shall, as soon as practicable, attempt to notify the owner of such towing and/or storage. ~~The member~~ The Troop Communications Center

shall attempt to contact the owner by telephone ~~or request a Telecommunicator to attempt to contact the owner by telephone~~ and provide the owner with the location of the vehicle. At least three attempts must be made for vehicles registered in North Carolina and one attempt for vehicles registered out-of-state. ~~A member or the~~ The Telecommunicator must record the person contacted or the attempts made.

(c) Whether or not the owner is reached by telephone, a copy of the HPC-305.2 (Vehicle Towing/Notification, which is computer-generated at the Troop Communications Center) shall be mailed to the last registered owner by the Troop Communications Center. In the absence of an HP-305 signed by the registered owner, Form HPC-305.2 shall be mailed to the owner within 24 hours. A duplicate copy of the HPC-305.2 is also computer-generated and will print automatically in the District office of the member.

(d) Whenever a vehicle with neither a valid registration plate nor registration is towed, in the absence of an HP-305 signed by the registered owner, the authorizing member shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in Paragraph (a) of this Rule.

(e) If a vehicle is seized pursuant to G.S. 20-28.3, the appropriate DMV notification form shall be completed and forwarded to DMV and to the statewide contractor within ~~72~~ 24 hours.

Authority G.S. 20-28.3; 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0315 RELEASE OF VEHICLES

~~Unless the vehicle is seized, if no justification to hold the vehicle exists,~~ a member shall immediately authorize the release of a stored vehicle to the owner upon proof of ownership. ~~ownership if no other justification to hold the vehicle exists.~~

Authority G.S. 20-184; 20-185; 20-187; 20-188.

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 reasonable precautions to protect all property in and on the ~~vehicle.~~ vehicle prior to removal from the scene.

(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-storing member may shall~~ conduct an inventory, itemizing all property contained in the vehicle, 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~~ securely 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~~ attaché 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.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0317 REIMBURSEMENT OF WRECKER OPERATORS

(a) A member shall promptly obtain a statement of transportation and storage fees from the wrecker operator involved when the court orders the release of any vehicle without payment of transportation and storage costs. The member shall promptly transmit to the ~~appropriate Zone Director,~~ Director of Field Operations, through the chain-of-command, the statement and a copy of the HP-305.1 in addition to any other relevant information.

(b) ~~The Zone Director~~ The Director of Field Operations shall, in consultation with the Patrol Commander, determine whether to appeal the action of the magistrate.

(c) The Patrol shall compensate the wrecker operator for reasonable transportation and storage fees in cases where no appeal is taken. When an appeal is taken, the Patrol shall not compensate wrecker operators until all appeals are exhausted.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0320 ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM

(a) The Troop Commander shall arrange for the Telecommunications Center to maintain a rotation wrecker system within each District of the Troop which shall include the following:

- (1) Separate computerized large and small rotation wrecker lists and manual rotation lists for the entire District whereby wrecker services are called in the order they appear on a list;
 - (2) A zone system within the District with a rotation wrecker list being maintained in each Rotation Wrecker Zone;
 - (3) A zone, contract or other system operated in conjunction with one or more local agencies; or
 - (4) A combination of any such system.
- (b) It is the policy of the Patrol to use the wrecker service requested by the vehicle owner or person in apparent control of the motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services, but may answer questions and provide factual information. If no such request is made, the Patrol system in place in the Rotation Wrecker Zone will be used, absent an emergency or other legitimate reason.
- (c) The Troop Commander, in his discretion, may deviate from any of these rules in emergency situations if there are insufficient wrecker services of the type needed within a District to meet the needs of the Patrol.
- (d) The Telecommunicator shall enter in the computerized log the name of the wrecker service contacted and the response by the service to the request. The date and time of the call is automatically recorded in the computerized log as well as the identification number of the Telecommunicator making the entry.
- (e) In the event the computerized rotation wrecker list is not in service (CAD down), the member requesting wrecker service shall be notified and a wrecker from the manual rotation wrecker list will be utilized. The Telecommunicator shall refer to the manual list that is maintained by the Telecommunicator Center Supervisor at each Communication Center. The wrecker service name shall be entered on the slip log, the slip log will indicate CAD DOWN.
- (f) Pursuant to G.S. 20-161(f), whenever a controlled-access highway is closed or partially blocked by a wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property interfering with the regular flow of traffic, the priority shall be to clear the roadway as soon as possible.
- (g) Whenever vehicles are removed pursuant to Paragraph (f) of this Rule, investigating member(s) are authorized to request the closest available zone rotation wrecker service and/or available Department of Transportation (DOT) resource for the purpose of removing the obstruction from the roadway. Members shall ensure that the requested wrecker service is capable of responding without delay, and is properly staffed and equipped to handle the request for service. All requests for assistance from DOT shall be made through the appropriate Telecommunications Center, where a list of on-duty/recall DOT personnel with the authority to concur with the decision to implement Quick Clearance shall be maintained.

Authority G.S. 20-161(f); 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0321 ROTATION WRECKER

SERVICE REGULATIONS

(a) ~~In order to assure that the needs of the Patrol are met, The Highway Patrol recognizes the need to utilize private wrecker services to remove abandoned, seized, damaged, or disabled vehicles from public roadways as part of its public safety responsibility. In order to assure that this public safety responsibility is accomplished,~~ 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. A Highway Patrol Rotation Wrecker List shall be valid for the calendar year. A wrecker service desiring to be included on the Highway Patrol Rotation Wrecker List shall, on an annual basis complete a wrecker application on a form designated by the Patrol. Once included, wrecker services that desire to remain on the Highway Patrol Rotation Wrecker List shall be required to reapply for inclusion annually on a form as may be designated by the Patrol. All initial applications and reapplications shall be submitted to the appropriate District First Sergeant during the annual "Open Enrollment" period of November 1st – November 30th each calendar year. Applications or reapplications for inclusion to the Highway Patrol Rotation Wrecker List will only be accepted during the annual "Open Enrollment" period.~~
- (2) In order to be listed on a rotation wrecker list within a zone, a wrecker service must have a full-time business office within that Rotation Wrecker Zone that is ~~maned~~ staffed and open during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays, for business at least eight hours per day, five days per week, and a 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. The Wrecker service must have someone available to accept telephone calls from the Patrol, and to allow access to towed vehicles, or to retrieve towed vehicles by the registered owner, operator, or legal possessor during business hours. The business office may not be the same physical address as the owner's residence unless zoned for commercial purposes and distinctly advertised

as a business property. A representative from the wrecker service shall be available on call on a 24-hour basis, for emergencies and to allow the towed vehicle to be retrieved by the person having control over the towed vehicle. An individual (registered owner, legal possessor, or operator) shall not be charged a storage fee for days that he/she could not retrieve his/her vehicle as a result of an action or omission on the part of the wrecker service (such as where the wrecker service was not open, did not answer the telephone or a representative was not available to release the vehicle.

(3) Wrecker service facilities and equipment, including vehicles, office, telephone lines, office equipment and storage facilities may not be shared with or otherwise located on the property of another wrecker service and must be independently insured. Vehicles towed at the request of the Patrol must be placed in the approved storage owned and operated by the wrecker service on the rotation list. 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 at least one approved large wrecker. To be listed on the small rotation wrecker list, a wrecker service must have at least one small wrecker. In any case where husband and wife or other family members are engaged in the business of towing vehicles and desire to list each business separately on the Patrol wrecker rotation list, the burden will be on the wrecker service to establish that it is separate legal entity for every purpose, including federal and state tax purposes.

(4)(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.

(5)(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.

(6)(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. This service must be completed as a part of the required rotation service and shall not be charged as an extra service provided. Hazardous materials consist of those materials and amounts that are required by law to be

handled by local Hazardous Materials Teams. Hazardous Materials or extensive road clean-up other than debris may be billed in quarter hour increments after the first hour on scene.

(7)(6) The wrecker service must be available to the Patrol for rotation service on a ~~24-hour~~ 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.~~

(8)(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.

(9)(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.

(10)(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 for all small wreckers and rollbacks with a GVWR of less than 26,001 pounds shall be furnished, in writing on a Patrol approved form, to the District First Sergeant during the annual "Open Enrollment" period with an effective date of January 1st of the following year, and made available to customers upon request. The wrecker service shall notify the District First Sergeant in writing prior to any price change. The District First Sergeant shall cause this price list to be filed under the appropriate wrecker service file located in the district office for review as necessary. Vehicle storage per day indicated on the price list for all small wreckers and rollbacks with a GVWR of less than 26,001 pounds shall not exceed the maximum amount allowed by G.S. 20-28.3 Storage fees shall not begin to accrue until the next calendar day following the initial towing of the vehicle. Wrecker service towing fees for recovery and transport of vehicles after 5:00 p.m. and on weekends may not

exceed approved towing fees for recovery and transport of vehicles charged during regular "Business Hours" by more than 10%. A mileage fee may only be charged if the customer requests the vehicle to be towed to a location outside of the assigned wrecker zone or county. If a mileage fee is warranted, the wrecker driver shall inform the owner, operator or legal possessor of the vehicle of any additional charge for mileage prior to towing. Each Troop Commander shall designate a Troop Lieutenant to serve as a Rotation Wrecker Liaison for their respective Troop. Price lists for all small wreckers and rollbacks with a GVWR of less than 26,001 pounds shall then be forwarded to the appropriate Rotation Wrecker Liaison Lieutenant who shall review all price lists submitted for consideration in their respective Troop based upon a median of all proposed fees submitted in that Troop. Wrecker Services that submit fees that are determined to exceed the median fee by more than 15% shall be notified by the appropriate District First Sergeant and will be afforded the opportunity to resubmit fees only one additional time within five business days of notification. Re-submission of a price list that continues to exceed the median fee by more than 15% will disqualify the wrecker service from the Highway Patrol's Rotation Wrecker System until the next "Open Enrollment" which will commence on 1 November of the following year. Upon approval, the individual price list for each respective wrecker service will be in effect beginning 1 January for the next calendar year and shall be made available to customers upon request. Copies of the approved price list be maintained within each wrecker and shall be given to the owner, operator or legal possessor of a vehicle being towed as a result of a Highway Patrol rotation wrecker call by the wrecker driver, if the owner, operator or legal possessor of the vehicle being towed is present at the scene. Prices indicated on this form shall be the maximum amount that will be charged for a particular service and may not be increased during the specific calendar year in which they were approved; however, this does not prevent charges of a lesser amount for said service.

~~(11)~~(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.

~~(12)~~(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.

~~(13)~~(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).

~~(14)~~(13) Employ only wrecker operators who demonstrate an ability and desire to perform required services in a safe, timely, efficient and courteous ~~manner~~-manner and who satisfy all of the requirements for wrecker drivers established or referenced herein.

~~(15)~~(14) The wrecker service must immediately notify the District First Sergeant of any insurance lapse or change. Wrecker Services shall ensure the NC Highway Patrol is listed as "Certificate Holder" on the Certificate of Liability Insurance, in c/o the District First Sergeant, complete with the current mailing address for the Highway Patrol District Office tasked with the responsibility for ensuring compliance with Highway Patrol policy regarding the respective wrecker service.

~~(16)~~(15) Notify the Patrol without delay whenever the wrecker service is unable to respond to calls.

~~(17)~~(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.

~~(18)~~(17) Mark each wrecker service vehicle on each side with the wrecker service 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.

~~(19)~~(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. Dealer tags shall not be displayed on wreckers that respond to rotation calls.

~~(20)~~(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.

~~(21)~~(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 or~~
 - (iii) Any Class F, G, H or I felony involving sexual assault, 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 injury;~~
 - (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; designee; and~~
- (iv) Convicted of or pled guilty to three felony offenses in any federal or state court or combination thereof. The commission of a felony shall not be considered to be a second or subsequent felony unless it is committed after the conviction or guilty plea to the previous felony.
- (22)(24) Immediately upon employment or upon the request of the District First Sergeant, the owner of the wrecker service ~~agrees to shall~~ supply the Patrol with the full name, current address, date of birth, ~~social security number, driver's license number and state of issuance for the owner and wrecker driver(s).~~ photo copy of drivers license, Social Security Card, valid work VISA, or other appropriate INS Documentation for all wrecker drivers and owner(s) in order for the Patrol to obtain criminal history information. The Wrecker Service shall also provide a certified copy of the driving record for the owner and each driver authorized to drive on rotation upon initial application and re-hire. Following this initial request the Wrecker Service shall provide a certified copy of the driving record for the owner and each rotation wrecker driver under their employment at the time of periodic wrecker inspections. This obligation is a continuing obligation. If the owner or a driver is charged with, 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 ~~District First Sergeant~~ Patrol immediately. Upon notification that a driver or owner was charged with any of the above crimes, the Patrol may conduct an independent administrative investigation and, based on the result of such investigation, may take appropriate action. Willful failure to notify the District First Sergeant as required herein shall result in removal from the rotation wrecker service for a minimum of 12 months.
- (23)(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. Personal property, for purposes of this provision, includes any goods, wares, freight, or any other property having any value whatsoever other than the functioning vehicle itself.
- (24)(23) Tow disabled vehicles to any destination requested by the vehicle owner or other person

- with apparent authority, after financial obligations have been finalized.
- (25) Unless the vehicle is being preserved by the Patrol as evidence, the wrecker service shall allow insurance adjusters access to and allow inspection of the vehicle at any time during normal working hours.
- (26)(24) Being called by the Patrol, to tow a vehicle, does not create a contract with or obligation on the part of Patrol or 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.
- (27)(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 no wrecker service shall be entitled to any compensation as a consequence for not being agree that they will not receive compensation when not called in accordance with the list or when removed from the rotation wrecker list.
- (28)(26) The failure to respond to a call by the Patrol will result in being placed at the bottom of any rotation wrecker list list and the wrecker service shall then be "automatically by-passed" when that wrecker service comes up for its next rotation call. A wrecker service must respond to at least 75 percent of the Patrol rotation wrecker calls within the previous 12-month period.
- (29)(27) Rotation wreckers and facilities are subject to periodic or unannounced inspections by the District First Sergeant or his designee during normal business hours, at any time.
- (30)(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.
- (31)(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-in writing, no later than ten days prior to the projected move. The wrecker service shall not be entitled to receive rotation calls prior to inspection of the new facility.
- (32)(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. shall have the discretion to dispatch either a wrecker or a car carrier "rollback" in response

to a Patrol rotation wrecker call, except in those limited circumstances where the wrecker service is advised by a particular type of recovery vehicle is needed due to existing circumstances.

(33)(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.

(34)(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-wrecker~~ wrecker or as otherwise required by Federal regulation, whichever is greater. In addition, each wrecker service shall have a garage ~~keep-keeper's~~ 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 shall remain on that list for the remainder of the calendar year. Any wrecker service that fails to comply with the requirements of these rules shall may be removed from the rotation wrecker list.

(c) The Troop Commander or designee 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 or designee 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~~ service, through no fault of its own, is not used or and receives no compensation for the call. In that event, it will be placed back at the top of the rotation list.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0322 RECORDING WRECKER REQUESTS/INCIDENTS

(a) Members investigating collisions shall enter on the Collision Report Form the authorization for removal of vehicles from the scene.

(b) Troop Commanders shall require members to submit written verification of wrecker requests on Patrol Form HP-305.

- (c) Members observing any violations of the rotation wrecker rules and regulations shall notify the District First Sergeant.
- (d) Complaints concerning any wrecker service on the rotation wrecker list, whether instituted by the public or by a member, shall be investigated by the District First ~~Sergeant~~ Sergeant or designee.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

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~~ Remove the wrecker service from the rotation wrecker list for a specific period of time ~~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 09H .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. If a wrecker service owner is charged with any of the offenses specified in 14 NCAC 09H .0321(20), the wrecker service may be removed from the rotation wrecker list for the designated period of time prior to conviction only if an administrative investigation by the Patrol corroborates the commission of the offense. In such cases, the period of ineligibility shall commence on the date of removal.

(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 09H .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~~ list for a minimum of 12 months.

(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~~ not less than 12 months. 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~~ not less than 12 months. This period of removal is in addition to any removal that may result ~~from any violation of~~ as a consequence of a

conviction, plea of guilty or prayer for judgment continued (PJC) pursuant to 14A NCAC 09H .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 as a consequence of a conviction, plea of guilty or prayer for judgment continued (PJC) pursuant to ~~from any violation of~~ 14A NCAC 09H .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~~ remains ineligible for reinstatement ~~merely because even if~~ 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.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

14A NCAC 09H .0324 HEARING PROCEDURES

(a) If, the District First Sergeant refuses to include a wrecker service on the rotation wrecker list, the wrecker service may appeal the First Sergeant's decision, in writing, to the Troop Commander or designee within 20 calendar days of receipt of the decision. The Troop Commander or designee may, in his ~~their~~ discretion, conduct a hearing or review the record. In either event, ~~he~~ the Troop Commander or designee shall render a decision, in writing, within 10 calendar days of receipt of the appeal. The Troop ~~Commander's~~ Commander or designee's decision, if unfavorable, may be appealed to the Office of Administrative Hearings ~~(OAH)~~ (OAH), within 30 calendar days of receipt of the decision, pursuant to the provisions of G.S. 150B.

(b) If a District First Sergeant issues a written warning to a wrecker service for a violation of any of these Rules, the wrecker service may, within 20 days of receipt of the warning, submit a written response to the First Sergeant in mitigation, explanation or rebuttal. After considering the mitigation, explanation or rebuttal, the First Sergeant may reconsider, and remove the written warning. Written warnings may not be appealed.

(c) If a District First Sergeant determines that a violation of these rules has occurred, and determines that removal from the rotation wrecker list may be warranted, ~~he~~ the District First Sergeant shall notify the affected wrecker service, in writing, of this determination and afford the wrecker service an opportunity to be heard. The hearing shall take place within 10 calendar days of actual notice or, if notice is by first class mail, within 13 days of the date the notice is placed in the mail. The hearing

shall take place within 10 calendar days of the request for hearing and not less than three days written notice. If a District First Sergeant removes a wrecker service from the rotation wrecker list, the wrecker service may appeal the removal to the Troop Commander ~~(or his designee), or designee,~~ in writing, within 20 calendar days of receipt of the notice. The Troop ~~Commander, Commander or designee,~~ in ~~his~~their discretion, may conduct a hearing or review the record. If the Troop Commander or designee decides to conduct a hearing, ~~he~~they will give the wrecker service not less than 10 calendar days notice. ~~He~~The Troop Commander or designee shall render a decision, in writing, within 10 calendar days of receipt of the appeal or date of the hearing, whichever occurs last. The Troop ~~Commander's~~ Commander or designee's decision, if unfavorable, may be appealed to the Office of Administrative Hearings ~~(OAH)~~ (OAH), within 30 calendar days, pursuant to the provisions of G.S. 150B.

(d) Hearings conducted by District First Sergeants and/or Troop Commanders or their designee's shall be informal and no party shall be represented by legal counsel.

(e) A wrecker service that is removed from the rotation wrecker list and subsequently placed back on the list, for any reason, shall not be entitled to additional calls, priority listing or any other form of compensation.

(f) Ordinarily, a wrecker service ~~shall~~may remain on the rotation wrecker list pending a final decision of the Troop ~~Commander, Commander or designee.~~ A District First Sergeant, with the concurrence of the Troop ~~Commander, Commander or designee,~~ may, however, summarily remove a wrecker service from the rotation wrecker list in those cases where there exists reasonable grounds to believe a violation enumerated in 14A NCAC 09H .0321(a)(12), (a)(20), or (a)(31) or any other violation relating to licensing, registration, insurance requirements or the safe and proper operation of the business or which may jeopardize the public health, safety or welfare.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02R .0101, .0201, .0203, .0401 - .0402.

Proposed Effective Date: May 1, 2007

Public Hearing:

Date: January 8, 9, and 11, 2007

Time: 6:30 p.m.

Location:

New Bern, NC (Jan. 8 – Craven County Cooperative Extension); 300 Industrial Drive, New Bern, NC

Raleigh, NC (Jan. 9 – Archdale Building; Ground Floor Hearing Room), 512 N. Salisbury Street, Raleigh, NC

Morganton, NC (Jan. 11 – Western Piedmont Community College), 1001 Burkemont Avenue, Morganton, NC

Reason for Proposed Action: *To revise fees associated with stream and wetland restoration and the fee for monitoring and maintenance of casements (not associated with restoration) to reflect the actual costs for these activities being incurred by the program.*

Procedure by which a person can object to the agency on a proposed rule: *You may attend the public hearing and make relevant verbal comments, and /or submit written comments, data or other relevant information by February 13, 2007. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. The EMC is very interested in all comments pertaining to the proposed fee revisions. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed revisions. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see General Statute 150B 21.2 (g)). Written comments may be submitted to Suzanne Klimek of the Ecosystem Enhancement Program at the postal address, e-mail address, or fax number listed in the notice.*

Comments may be submitted to: *Suzanne Klimek, 1652 Mail Service Center, Raleigh, NC 27699-1652, phone (919) 715-1835, fax (919) 715-2219, email Suzanne.klimek@ncmail.net*

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State 15A NCAC 02R .0402
- Local 15A NCAC 02R .0402
- Substantive (≥\$3,000,000) 15A NCAC 02R .0402
- None 15A NCAC 02R .0101, .0201, .0203, and .0401

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02R - WETLANDS RESTORATION

PROGRAM

SECTION .0100 - PURPOSE AND DEFINITIONS

15A NCAC 02R .0101 PURPOSE

This Section establishes the North Carolina ~~Wetlands Restoration Program~~ Ecosystem Enhancement Program pursuant to G.S. 143-214.8 through 143-214.13.

Authority G.S. 143-214.8; 143-214.9; 143-215.3.

SECTION .0200 - BASINWIDE RESTORATION PLANS

15A NCAC 02R .0201 PURPOSE

The purpose of the Basinwide Restoration Plans is to identify wetlands and riparian areas within each of the 17 major river basins of the state that have the potential, through restoration, enhancement, creation or preservation, to contribute to the goals of the ~~Wetlands Restoration Program~~ Ecosystem Enhancement Program.

Authority G.S. 143-214.10; 143-215.3.

15A NCAC 02R .0203 PUBLIC INVOLVEMENT; AVAILABILITY

(a) The Secretary, or the Secretary's designee, shall provide interested parties an opportunity to review and comment on the proposed Basinwide Restoration Plans.

(b) The Basinwide Restoration Plans shall be available for review ~~in the offices of the Wetlands Restoration Program, Division of Water Quality, 512 North Salisbury Street, Raleigh, NC 27604~~ through the Ecosystem Enhancement Program's website at www.nceep.net.

Authority G.S. 143-214.10; 143-215.3.

SECTION .0400 - WETLANDS RESTORATION FUND

15A NCAC 02R .0401 PURPOSE

This Section establishes the ~~Wetlands~~ Ecosystem Restoration Fund pursuant to G.S. 143-214.12.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

15A NCAC 02R .0402 SCHEDULE OF FEES

(a) The amount of payment into the Fund necessary to achieve compliance with compensatory mitigation requirements shall be determined in accordance with Subparagraphs (1) through ~~(3)~~ (6) of ~~this Paragraph~~ Paragraph (b). The fee shall be based on the acres and types of compensatory mitigation specified in the approved certifications issued by the Department under 33 USC 1341; and permits or authorizations issued by the United States Army Corps of Engineers under 33 USC 1344. Payments shall be rounded up in increments of linear feet for streams and in 0.25 acre increments for wetlands, e.g. for streams, 520.3 linear feet of compensatory mitigation would be considered as 521 feet, and for wetlands, 2.35 acres of required compensatory mitigation would be considered as 2.5 acres for the purpose of calculating the amount of payment.

(b) Payments made pursuant to Subparagraphs (4) and (5) of this Paragraph will be subject to the following fee categories: Urban, Coastal and Rural.

- (1) Urban fees shall be applied to the following counties: Alamance, Alexander, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Harnett, Haywood, Henderson, Hoke, Mecklenburg, Nash, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne
- (2) Coastal fees shall be applied to the following counties: Beaufort, Brunswick, Camden, Carteret, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington
- (3) Rural fees shall be applied to all counties not defined in Subparagraphs (b)(1) and (2) as Urban or Coastal
- ~~(4)~~(4) Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The payment shall be ~~be two hundred dollars (\$200.00) per linear foot of stream.~~
 - (A) Three hundred and thirty-two dollars (\$332.00) per linear foot of stream in Urban counties;
 - (B) Two hundred and thirty-two dollars (\$232.00) per linear foot of stream in Coastal counties;
 - (C) Two hundred and thirty-two dollars (\$232.00) per linear foot of stream in Rural counties.
- ~~(2)~~(5) Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8). The payment shall be:
 - (A) ~~Twelve thousand dollars (\$12,000.00) per acre for~~ For non-riparian wetlands, wetlands:
 - (i) Twenty-one thousand dollars (\$21,000) per acre in Urban counties;
 - (ii) Twenty-one thousand dollars (\$21,000) per acre in Rural counties;
 - (iii) Twenty-four thousand dollars (\$24,000) per acre in Coastal counties.
 - (B) ~~Twenty four thousand dollars (\$24,000.00) per acre for~~ For riparian wetlands, wetlands:
 - (i) Fifty-six thousand dollars (\$56,000) per acre in Urban counties;
 - (ii) Thirty-two thousand dollars (\$32,000) per acre in Rural counties;
 - (iii) Thirty-eight thousand dollars (\$38,000) per acre in Coastal counties.

~~(3)(6)~~ Class SWL wetlands as defined in 15A NCAC 02B .0101(d)(4). The payment shall be ~~one hundred twenty thousand dollars (\$120,000.00)~~ one hundred and thirty-nine thousand and two hundred and thirty-five dollars (\$139,235) per acre.

~~(b)(c)~~ The fees outlined in Subparagraphs ~~(a)(1)-(b)(4)~~ through ~~(a)(3)-(b)(6)~~ and Paragraph ~~(d)(e)~~ of this Rule shall be reviewed annually by the Department and compared to the actual cost of restoration activities conducted by the Department, including planning, monitoring and maintenance costs. Based upon this annual review, revisions to Paragraph ~~(a)(b)~~ of this Rule shall be recommended to the Commission when adjustments to this Schedule of Fees are deemed necessary to ensure that the Schedule of Fees reflects the actual costs of restoration activities.

~~(c)(d)~~ The fees outlined in Subparagraphs ~~(a)(1)-(b)(4)~~ through ~~(a)(3)-(b)(6)~~ of this Rule shall be adjusted for inflation on an annual basis using the Civil Works Construction Cost Index System published by the US Army Corps of Engineers. This adjustment shall occur at the end of each calendar year as follows: the fees in Subparagraphs ~~(a)(1)-(b)(4)~~ through ~~(a)(3)-(b)(6)~~ and Paragraph ~~(d)(e)~~ of this Rule for each year shall be multiplied by the annual composite Civil Works Construction Cost Index yearly percentage change issued in September of each year and the result shall be the increase to that fee for the next fiscal year. The revised fees shall be made available via the NC Wetland Restoration-Ecosystem Enhancement Program's web site (~~h2o.enr.state.nc.us/wrp/index.htm~~) (www.nceep.net) and become effective on the following July 1st. ~~The first adjustment shall be made at the close of calendar year 2003 to become effective July 1, 2004. This process shall continue annually thereafter.~~

~~(d)(e)~~ For properties and easements donated to the NC Wetlands Restoration Program, Department of Environment and Natural Resources, a fee of ~~three hundred fifty dollars (\$350.00)~~ one thousand dollars (\$1,000) per acre shall be charged at the time the land or easement is transferred to the program-Department's Conservation Grant Fund Endowment to cover costs of long-term management of the property. For properties that are less than one acre in size, the minimum payment shall be one thousand dollars (\$1,000). This charge applies only to properties and easements donated to the program for the sole purpose of property or easement maintenance. This does not apply to properties or easements donated to the program in association with restoration projects conducted by the program.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10A .1001; 10F .0327 and .0350.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: January 3, 2007

Time: 10:00 a.m.

Location: Wildlife Resources Commission 5th floor conference room, 1751 Varsity Drive, Raleigh, NC

Reason for Proposed Action:

15A NCAC 10A .1001 is amended to add to the list of offenses for which a warning may be issued.

15A NCAC 10F .0327 is amended to add two new no wake zones to Lake Tillery.

15A NCAC 10F .0350 is amended to add a no wake zone at Falls Lake.

Procedure by which a person can object to the agency on a proposed rule: Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for this rule. For this rule, the contact person is Joan Troy.

Comments may be submitted to: Joan Troy, 1701 Mail Service Center, Raleigh, NC 27699-1701

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION

SECTION .1000 - WARNING TICKETS

15A NCAC 10A .1001 PARTICULAR OFFENSES

(a) Warning Tickets Prohibited. Wildlife Enforcement Officers shall not issue warning tickets for the following offenses, classes of offenses or offenses committed in a particular manner:

PROPOSED RULES

- (1) second offense of a similar charge;
- (2) hunting, fishing, or trapping without a license, except as listed in this Rule;
- (3) exceeding bag or creel limits;
- (4) taking fish or wildlife by use of poison, explosives, or electricity;
- (5) hunting, fishing, or trapping in closed season;
- (6) hunting on Game Lands during closed days;
- (7) firelighting deer;
- (8) unlawful taking or possession of antlerless deer;
- (9) unlawful taking or possession of bear or wild turkey;
- (10) unlawful purchase or sale of wildlife;
- (11) unlawful taking of fox; or
- (12) taking wildlife with the aid of or from a motor vehicle or boat under power or while in motion.

(b) Warning Tickets Permitted. In accordance with the conditions provided in G.S. 113-140(c) and where there is a contemporaneous occurrence of more than three violations of the motorboat statutes or administrative rules, Wildlife Enforcement Officers may issue a citation on the two most serious violations and a warning ticket on the lesser violation(s). In addition, Wildlife Enforcement Officers may issue warning tickets for the following offenses:

- (1) Boating Violations:
 - (A) number missing, lack of contrast, not properly spaced or less than three inches in height;
 - (B) no validation decal affixed or incorrect placement;
 - (C) fire extinguisher not charged or non-approved;
 - (D) no fire extinguisher on boats with false bottoms not completely sealed to hull or filled with flotation material;
 - (E) failure to notify North Carolina Wildlife Resources Commission of change of address of boat owner;
 - (F) personal flotation device not Coast Guard approved;
 - (G) failure to display navigation lights when there is evidence that lights malfunctioned while underway;
 - (H) no sound device (on Class I boats only);
 - (I) muffler not adequate;
 - (J) loaded firearm on access area;
 - (K) parking on access area in other than designated parking area, provided traffic to ramp not impeded;
 - (L) motorboat registration expired 10 days or less;
 - (M) no Type IV throwable personal flotation device on board, but other personal flotation device requirements met;

- (N) violation of no-wake speed zone when mitigating circumstances present;
- (O) running lights on motorboat are obstructed, not visible or improperly configured;
- (P) personal flotation device is not readily accessible on board motorboat;
- (Q) failure to wear a kill-switch lanyard on personal watercraft;
- (R) exceeding capacity of personal watercraft while towing a skier;
- (S) allowing youth under the age of 12 to operate a personal watercraft while accompanied by an adult; or
- (T) wearing an inflatable personal flotation device while operating a personal watercraft.

(2) License Violations:

- (A) persons under 16 hunting, trapping, or trout fishing without meeting statutory requirements;
- (B) senior citizens hunting or fishing without valid license(s) (Senior citizens are those persons 65 years old or older);
- (C) when it appears evident that the wrong license was purchased or issued by mistake;
- (D) failure to carry required license or identification on person, if positive identification can be established;
- (E) non-resident hunting, fishing, or trapping with resident license, if domicile is established, but not 60 days;
- (F) hunting, fishing, or trapping on Game Lands or fishing in Designated Trout Waters that are not properly posted or have been posted for no more than 30 days;
- (G) persons who are 18 years or older or who do not reside with their parents, when such persons are taking wildlife upon their parent's land without a license as required by G.S. 113-270.2, 113-270.3(b) except for subdivision (5), 113-270.5, 113-271, or ~~113-272-113-272~~;
- (H) failure to comply with a statutorily enacted license requirement that has been in effect for less than a year; or
- (I) license expiration of 10 days or less.

(3) Game Lands Violations:

- (A) camping on Game Lands in other than designated area; or

- (B) possession of weapons readily available for use while on game land thoroughfare, during closed season.
- (4) Trapping Violations:
 - (A) improper chain length at dry land sets;
 - (B) trap tag not legible;
 - (C) trap tag missing, but with a group of properly tagged traps;
 - (D) trap tag missing, but evidence that animal destroyed;
 - (E) improper jawsize;
 - (F) failure to comply with "offset" jaw requirement for traps with jaw spread of more than 5 ½ inches;
 - (G) failure to attend traps daily, during severe weather (ice, high water, heavy snow); or
 - (H) no written permission, but on right-of-way of public road.
- (5) Miscellaneous Violations:
 - (A) allowing dogs, not under the control of the owner to chase deer during closed season;
 - (B) attempting to take deer with dogs, or allowing dogs to chase deer in restricted areas;
 - (C) using dogs to track wounded deer during primitive weapon season;
 - (D) failure to report big game kill to nearest cooperater agent, when game is tagged and subject is enroute to another agent;
 - (E) training dogs or permitting them to run unleashed on Game Lands west of I-95 during the period of April 1 through August 15;
 - (F) violation of newly adopted regulations, when not readily available to the public;
 - (G) violation of local laws, when information not available to the public;
 - (H) all permits (except for fox depredation permit);
 - (I) closed season, if misprinted in digest or suddenly changed;
 - (J) minor record violation (taxidermist);
 - (K) failure to put name and address on marker (trotline); or
 - (L) failure to put name and address on nets.

(c) Special Consideration. Special consideration may be given in local areas where the offender is hunting or fishing out of his normal locality and is unfamiliar with the local law. Consideration may also be given for violations on newly opened or established Game Lands and on reclassified or newly Designated Mountain Trout Waters. Special consideration may be given to offenders under 18 years of age.

Authority G.S. 113-140.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - ANNUAL REGULATIONS PROCEDURE

15A NCAC 10F .0327 MONTGOMERY COUNTY

(a) Regulated Areas. This Rule applies to the waters and portions of waters described as follows:

- (1) Badin Lake:
 - (A) Lakeshore Drive Cove as delineated by appropriate markers.
 - (B) Entrance to fueling site and marina west of the main channel of Lake Forest Drive Cove.
 - (C) Gar Creek.
 - (D) Beyer's Island waterfront channel facing the mainland
- (2) Lake Tillery:
 - (A) Woodrun Cove as delineated by appropriate markers.
 - (B) Carolina Forest Cove as delineated by appropriate markers.
 - (C) Cove at Fairway Shores as delineated by appropriate markers.
 - (D) Cove at Emerald Shores as delineated by appropriate markers.
- (3) Tuckertown Reservoir.

(b) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule.

(c) Speed Limit. No person shall operate a vessel at greater than no-wake speed within any regulated area described in Paragraph (a) of this Rule.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Wildlife Resources Commission on the waters of the regulated areas described in Paragraph (a) of this Rule.

(e) Placement and Maintenance of Markers. The Board of Commissioners of Montgomery County is hereby designated a suitable agency for placement and maintenance of the markers implementing this Rule in accordance with the Uniform System.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0350 DURHAM AND WAKE COUNTIES

(a) Definitions. In addition to the definitions set forth in Paragraph (b) of Rule .0301 of this Section, the following definitions apply for the purposes of this Rule:

- (1) Corps - Corps of Engineers, United States Army;

- (2) State Parks - Division of Parks and Recreation, N. C. Department of Environment, Health, and Natural Resources;
 - (3) Regulated Area - Those portions of Falls Lake located within the boundaries of Durham and Wake Counties.
- (b) Speed Limit. No person shall operate a vessel at greater than no-wake speed:
- (1) while within a designated mooring area established on the regulated area by or with the approval of the Corps and State Parks;
 - (2) within 50 yards of any public boat launching ramp or boat service facility, including docks used for fueling or boat repair, located on the regulated area;
 - (3) within 50 yards of any state road bridge crossing over that portion of Falls Lake located within the boundaries of Wake County. County;
 - (4) within 50 yards of the area marked as the Holly Point Recreation Swim and boat launch area and the New Light Road Bridge.
- (c) Restricted Zones. No person operating or responsible for the operation of any vessel, surfboard or water skis shall permit the same to enter:
- (1) any marked swimming area located on the regulated area;
 - (2) any areas near the dam structures located on the regulated area that shall be marked by or with the approval of the Corps against entry by vessels.
- (d) Placement and Maintenance of Markers. The Board of Commissioners of Durham County and the Board of Commissioners of Wake County are designated suitable agencies for placement and maintenance of markers implementing this Rule within their respective counties, subject to the approval of the Corps. Provided the said boards exercise their supervisory responsibilities, they may delegate the actual placement and maintenance of markers to some other responsible agency. With regard to marking of the regulated area described in Paragraph (a) of this Rule, all of the Supplementary standards listed in Paragraph (g) of Rule .0301 of this Section shall apply.

Authority G.S. 75A-3; 75A-15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 15A NCAC 18A .2646 and amend the rules cited as 15A NCAC 18A .2601, .2606.

Proposed Effective Date:
15A NCAC 18A .2646 – April 1, 2007
15A NCAC 18A .2601 and .2606 – July 1, 2007

Public Hearing:
Date: January 4, 2006

Time: 10:30 a.m.
Location: 1A224, 2728 Capital Blvd., Raleigh, NC

Reason for Proposed Action: These rules offer food service establishments the option of submitting supporting documentation to the Department for review and, if accepted, utilize an alternative method of food handling without penalty.

Procedure by which a person can object to the agency on a proposed rule: Contact Susan Grayson, Branch Head, DENR Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, email sue.grayson@ncmail.net or telephone (919) 715-0926 or (919) 733-2905.

Comments may be submitted to: Sue Grayson, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0926, fax (919) 715-4739, email sue.grayson@ncmail.net

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:
 State
 Local
 Substantive (≥\$3,000,000)
 None

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 – THE SANITATION OF FOOD SERVICE ESTABLISHMENTS

NOTE: The text in italics represents previously proposed amendments to this Rule as published in Volume 21, Issue 09 of the NC Register.

15A NCAC 18A .2601 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

- (1) "Approved" means procedures and equipment determined by the Department to be in

compliance with this Section. Food equipment that is certified for sanitation by an American National Standards Institute (ANSI) – accredited program shall be approved. ANSI sanitation standards are incorporated by reference including subsequent amendments and editions. These standards may be obtained from ANSI, 1819 L Street, NW, 6th Floor, Washington, DC 20036, at a cost of six-hundred sixty-five dollars (\$665.00) and are also available for inspection at the Division of Environmental Health.

- (2) "Branch Head" means the person in charge of the Dairy and food Protection Branch of the North Carolina Department of Environment and Natural Resources or the superiors of the Branch Head. This term does not include the authorized representative of the Department.
- ~~(2)~~(3) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the rules of the N.C. Department of Human Resources, Division of Aging.
- ~~(3)~~(4) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.
- ~~(5)~~(4) "Critical Violation" means a violation relating to any one of the five risk factors that directly contribute to foodborne disease outbreaks:
 - (a) improper hot and cold holding, cooling or reheating potentially hazardous foods;
 - (b) inadequate cooking;
 - (c) poor personal hygiene of food handlers;
 - (d) cross-contamination; or
 - (e) food from unapproved sources.
- ~~(6)~~ "Critical control point" means the steps of the process in a specific food system in which controls can be applied to prevent, reduce, or eliminate a food safety hazard and where loss of control may result in an adverse health risk.
- ~~(7)~~ "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
- ~~(8)~~ "Cure accelerator" means compounds such as ascorbic acid or erythorbic acid or their derivatives, sodium ascorbate and sodium erythorbate as defined for use in 9 CFR 424.21 which shortens the time required for the distinctive pink color to develop in cured meat and poultry products.
- ~~(9)~~ "Curing" means the process of preserving meat by the addition of salt alone or the combination of one or more ingredients such

as sodium nitrate, sugar, curing accelerators, and seasonings and is characterized by the interaction of nitrate and meat pigment resulting in the development of a "cured" pink color.

- ~~(5)~~(10) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department. For purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to "Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources," 1632 Mail Service Center, Raleigh, NC 27699-1632.
- ~~(6)~~(11) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
- ~~(7)~~(12) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating, cooking, or processing utensils or equipment, or who is employed at any time in a room in which food or drink is prepared or served.
- ~~(8)~~(13) "Environmental Health Specialist" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- ~~(9)~~(14) "Equipment" means refrigeration, including racks and shelving used in refrigeration, utensil cleaning and culinary sinks and drainboards, warewashing and dishwashing machines, food preparation tables, counters, stoves, ovens, and other food preparation and holding appliances.
- ~~(40)~~(15) "Food" means any raw, cooked, or processed edible substance including meat, meat food products, poultry, poultry products, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- ~~(16)~~ "Food Additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act 201(s) and 21 CFR 170.
- ~~(44)~~(17) "Food service establishment" means any establishment or operation where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- ~~(42)~~(18) "Food stand" means a food service establishment which prepares or serves foods

- and which does not provide seating facilities for customers to use while eating or drinking.
- ~~(13)~~(19) "Good repair" means that the item in question can be kept clean and used for its intended purpose.
- (20) "HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
- (21) "Hazard" means a biological, chemical, or physical property that may cause an adverse consumer health risk.
- ~~(14)~~(22) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- ~~(15)~~(23) "Highly susceptible population" means persons who are more likely than other persons in the general population to experience foodborne disease because they are:
- (a) immunocompromised, preschool age children or adults, 55 years of age or older; and
 - (b) obtaining food as a patient or client at a facility that provides services such as custodial care, health care or assisted living, such as an adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.
- ~~(16)~~(24) "Limited food service establishment" means a food service establishment as described in G.S. 130A-247(7).
- ~~(17)~~(25) "Local health director" means the administrative head of a local health department or his authorized representative.
- ~~(18)~~(26) "Meat" or "meat food products" means meat and meat food products as defined in G.S. 106-549.15(14).
- ~~(19)~~(27) "Meat market" means those food service establishments as defined in G.S. 130A-247(1)(v).
- ~~(20)~~(28) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.

- (29) "Package" means to bottle, can, carton, securely bag, or securely wrap a food in a food service establishment or a processing plant. It does not include the use of a wrapper, carry-out box, or other non-durable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
- ~~(21)~~(30) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- ~~(22)~~(31) "Potentially hazardous food" means a food that requires time and temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation. ~~any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.~~
- (a) "Potentially hazardous food (time and temperature control for safety food)" includes:
- (i) An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, or garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support pathogenic microorganism growth or toxin formation; and
 - (ii) Except as specified in Subparagraph (3)(d) of this definition, a food that because of the interaction of its AW and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

Table A. Interaction of pH and A_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged			
A _w values	pH values		
	4.6 or less	>4.6 – 5.6	≥ 5.6
≤0.92	Non-PHF*/non-TCS food**	Non-PHF/non-TCS food	Non-PHF/non-TCS food
≥0.92 - .95	Non-PHF/non-	Non-PHF/non-	PA***

PROPOSED RULES

	<u>TCS food</u>	<u>TCS food</u>	
<u>>0.95</u>	<u>Non-PHF/non-TCS food</u>	<u>PA</u>	<u>PA</u>
<u>* PHF means Potentially Hazardous Food</u> <u>** TCS food means Time/Temperature Control for Safety Food</u> <u>*** PA means Product Assessment required</u>			

Table B. Interaction of pH and A_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged

<u>A_w values</u>	<u>pH values</u>			
	<u><4.2</u>	<u>4.2 – 4.6</u>	<u>>4.6 – 5.0</u>	<u>>5.0</u>
<u><0.88</u>	<u>non-PHF*/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>
<u>0.88 – 0.90</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>PA ***</u>
<u>>0.90 – 0.92</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>PA</u>	<u>PA</u>
<u>>0.92</u>	<u>non-PHF/non-TCS food</u>	<u>PA</u>	<u>PA</u>	<u>PA</u>
<u>* PHF means Potentially Hazardous Food</u> <u>** TCS food means Time/Temperature Control for Safety Food</u> <u>*** PA means Product Assessment required</u>				

(b) "Potentially hazardous food (time and temperature control for safety food)" does not include:

- (i) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;
- (ii) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
- (iii) A food that because of its pH or A_w value, or interaction of A_w and pH values, is designated as a non-PHF/non-TCS food in Table A or B of this definition;
- (iv) A food that is designated as Product Assessment Required (PA) in Table A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to

occur in that food is precluded due to:

- (A) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;
- (B) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use, or
- (C) A combination of intrinsic and extrinsic factors; or
- (v) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the Subparagraphs (2)(a) - (d) of

this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

- ~~(23)~~(32) "Poultry" or "poultry products" means poultry and poultry products as defined in G.S. 106-549.51(25) and (26).
- ~~(24)~~(33) "Private club" means a private club as defined in G.S. 130A-247(2).
- ~~(25)~~(34) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.
- ~~(27)~~(35) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- ~~(28)~~(36) "Restaurant" means a food service establishment which prepares or serves food and which provides seating.
- (37) "Reduced oxygen packaging" means:
 - (a) the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding 21% oxygen atmosphere; and
 - (b) A process as specified in Subparagraph (A) of this definition that involves a food for which the hazards Clostridium botulinum or Listeria monocytogenes require control in the final packaged form.
- (38) "Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.
- ~~(26)~~(39) "Risk Factor" means a contributing factor that increases the change of developing foodborne illness as it relates to food safety issues within a food service establishment, such as approved sources, cooking temperatures, personal hygiene, contamination and holding.
- ~~(29)~~(40) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- ~~(30)~~(41) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term

does not include industrial process wastewater or sewage that is combined with industrial process wastewater.

- ~~(31)~~(42) "Shellstock" means any shellfish which remains in their shells. Shellfish which are shucked or on the half-shell shall not be considered shellstock.
- ~~(32)~~(43) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- (44) "Smoking" means the process of exposing food products to smoke as a means of preserving the food.
- ~~(33)~~(45) "Substantially similar" means similar in importance, degree, amount, placement or extent.
- ~~(34)~~(46) "Temporary food establishment" means those food or drink establishments which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- ~~(35)~~(47) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers and similar items with which food or drink comes in contact during storage, preparation, or serving.

Authority G.S. 130A-248.

15A NCAC 18A .2606 GRADING

(a) The sanitation grading of all restaurants, food stands, drink stands and meat markets shall be based on a system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all establishments receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all establishments receiving a score of at least 70 percent and less than 80 percent shall be awarded a Grade C. Permits shall be revoked for establishments receiving a score of less than 70 percent. The Sanitation Inspection of Restaurants or other Food Handling Establishments shall be used to document points assessed for violation of the rules of this Section as follows:

- (1) Violation of Rules .2608, .2612, .2615, or .2622 of this Section related to food from approved sources, free of spoilage, adulteration or contamination shall equal no more than 5 percent.
- (2) Violation of Rules .2608, .2609, .2610, .2611, .2612, .2613, .2614, .2622, ~~or~~ .2632 or .2646 of this Section related to potentially hazardous food temperatures or time requirements for food during storage, preparation, display, service or transportation shall equal no more than 5 percent.
- (3) Violation of Rules .2608, .2609, .2610, .2611, .2612, .2613, .2614, .2622, ~~or~~ .2632 or .2646 of this Section related to food storage, thawing, and preparation, cooking, handling,

PROPOSED RULES

- display, service, or transportation in a manner to prevent contamination, adulteration, or spoilage shall equal no more than 5 percent.
- (4) Violation of Rule .2611 of this Section related to re-serving food shall equal no more than 5 percent.
- (5) Violation of Rule .2609 of this Section related to accurate thermometer availability shall equal no more than 3 percent.
- (6) Violation of Rule .2610 of this Section related to written notice to customers about use of clean plates for return trips to buffet shall equal no more than 1 percent.
- (7) Violation of Rule .2610 of this Section related to properly labeling or storage of dry food shall equal no more than 2 percent.
- (8) Violation of Rule .2616 of this Section related to personnel with infections or communicable diseases restricted shall equal no more than 5 percent.
- (9) Violation of Rule .2609 of this Section related to proper handwashing or good hygienic practices shall equal no more than 5 percent.
- (10) Violation of Rule .2616 of this Section related to clean clothes or hair restraints shall equal no more than 1 percent.
- (11) Violation of Rules .2618 or .2619 of this Section related to food contact surfaces cleaned or sanitized by approved methods, sanitizing solution required shall equal no more than 5 percent.
- (12) Violation of Rules .2618, or .2619 of this Section related to approved utensil-washing facilities of sufficient size, with accurate thermometers or test methods available or used shall equal no more than 3 percent.
- (13) Violation of Rules .2617, .2618, or .2622, of this Section related to food contact surfaces shall equal no more than 3 percent.
- (14) Violation of Rules .2601, .2608, .2617 or .2621 of this Section related to food service equipment NSF or equal or approved utensils shall equal no more than 2 percent.
- (15) Violation Rule .2618 of this Section related to air-drying clean equipment or utensils shall equal no more than 3 percent.
- (16) Violation of Rule .2620 of this Section related to the storage of single service utensils shall equal no more than 2 percent.
- (17) Violation of Rules .2617 or .2622 of this Section related to non-food contact surfaces clean or in good repair shall equal no more than 2 percent. .
- (18) Violation of Rules .2618 or .2623 of this Section related to source of water supply, hot or cold water under pressure, or meets water temperature requirements shall equal no more than 5 percent.
- (19) Violation of Rule .2623 of this Section related to cross connections or other potential sources of contamination shall equal no more than 5 percent.
- (20) Violation of Rules .2624, or .2625 of this Section related to lavatory or toilet facilities approved, accessible, or in good repair shall equal no more than 4 percent.
- (21) Violation of Rules .2609, .2624, or .2625 of this Section related to lavatory facilities or toilet facilities with self-closing doors, fixtures or rooms clean, mixing faucet, soap, towels, dryer, or sign shall equal no more than 2 percent.
- (22) Violation of Rules .2612, .2613, or .2626 of this Section related to wastewater discharged into approved, properly operating wastewater treatment and disposal system: other by-products disposed of properly shall equal no more than 5 percent.
- (23) Violation of Rule .2626 of this Section related to garbage cans, containerized systems properly maintained, cleaning facilities provided or contract maintained for cleaning shall equal no more than 2 percent.
- (24) Violation of Rule .2633 of this Section related to animal or pest presence shall equal no more than 4 percent.
- (25) Violation of Rule .2633 of this Section related to self-closing doors or screened windows shall equal no more than 2 percent.
- (26) Violation of Rule .2633 of this Section related to pest breeding places or rodent harborages shall equal no more than 1 percent.
- (27) Violation of Rules .2613, .2624, .2627, or .2628 of this Section related to floors, walls, or ceilings properly constructed shall equal no more than 2 percent.
- (28) Violation of Rules .2613, .2624, .2627, or .2628 of this Section related to floors, walls, or ceilings clean or in good repair shall equal no more than 1 percent.
- (29) Violation of Rule .2630 of this Section related to lighting or ventilation that meets illumination or shield requirements shall equal no more than 1 percent.
- (30) Violation of Rule .2631 of this Section related to ventilation clean or in good repair shall equal no more than 1 percent.
- (31) Violation of Rule .2633 of this Section related to storage or labeling of toxic substances shall equal no more than 5 percent.
- (32) Violation of Rules .2620, .2632, or .2633 of this Section related to storage spaces clean or storage above the floor shall equal no more than 1 percent.
- (33) Violation of Rule .2633 of this Section related to storage space not used for domestic purpose shall equal no more than 1 percent.

- (34) Violation of Rule .2633 of this Section related to work clothing and linen properly handled or stored and proper storage of mops, brooms and hoses shall equal no more than 1 percent.

One half of the percent value may be assessed for any rule violation in this Section based on the severity or recurring nature of the ~~violation~~-violation, except that violations of .2646(a)(2) and (f) shall be assessed at full percentage value.

(b) The grading of restaurants, food stands, drink stands and meat markets shall be based on the standards of operation and construction as set forth in Rules .2607 through .2644 of this Section. An establishment shall receive a credit of two points on its score for each inspection if a manager or other employee responsible for operation of that establishment and who is employed full time in that particular establishment has successfully completed in the past three years a food service sanitation program approved by the Department. Request for approval of food service sanitation programs shall be submitted in writing to the Division of Environmental Health. The course shall include a minimum of 12 contact hours and provide instruction in the following subject areas:

- (1) basic food safety;
- (2) requirements for food handling personnel;
- (3) basic HACCP;
- (4) purchasing and receiving food;
- (5) food storage;
- (6) food preparation and service;
- (7) facilities and equipment;
- (8) cleaning and sanitizing;
- (9) pest management program; and
- (10) regulatory agencies and inspections.

Evidence that a person has completed such a program shall be maintained at the establishment and provided to the Environmental Health Specialist upon request. An establishment shall score at least 70 percent on an inspection in order to be eligible for this credit.

(c) The posted numerical grade shall not be changed as a result of a food sampling inspection.

(d) The posted grade card shall be black on a white background. All graphics, letters, and numbers for the grade card shall be approved by the State. The alphabetical and numerical sanitation score shall be 1.5 inches in height. No other public displays representing sanitation level of the establishment may be posted by the local health department, except for sanitation awards issued by the local health department. Sanitation awards shall be in a different color and size from the grade card and must be clearly labeled as an award.

(e) Nothing herein shall affect the right of a permit holder to a reinspection pursuant to Rule .2604 of this Section.

(f) Nothing herein shall prohibit the Department from immediately suspending or revoking a permit pursuant to G.S. 130A-23(d).

Authority G.S. 130A-248.

15A NCAC 18A .2646 ALTERNATE METHODS AND SPECIALIZED FOOD PROCESSES

(a) A food service establishment shall obtain an approval from the Branch Head before:

- (1) the use of alternate methods of compliance for specific food uses; or
- (2) utilizing the following specialized processing methods:
 - (A) using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement, or to render a food so that it is not potentially hazardous (time/temperature control for safety food);
 - (B) packaging food using reduced oxygen packaging (ROP);
 - (C) smoking food as a method of food preservation rather than as a method of flavor enhancement;
 - (D) curing food; and
 - (E) sprouting seeds or beans.

(b) The Branch Head may approve alternate methods or specialized food processes for compliance with these rules if in the opinion of the Branch Head the alternate methods or specialized food processes will result in safe, unadulterated food products.

(c) Before a request is approved, an application shall be provided to the Branch Head by the person requesting the approval. The application shall include:

- (1) a statement of the proposed alternate method or specialized food process that differs from the rule requirement, citing relevant rule section numbers;
- (2) an analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively controlled by the proposal; and
- (3) a HACCP plan if required as specified under Paragraph (d) of this Rule that includes the information specified under Paragraph (e) of this Rule as it is relevant to the request.

(d) An applicant must submit a HACCP plan along with an application to the Branch Head if:

- (1) an approval is required as specified under Subparagraph (a)(2) of this Rule; or
- (2) the Branch Head determines that a food preparation or processing method requires an approval based on a plan submittal specified under 15A NCAC 18A .2607, an inspectional finding, or a request from an applicant.

(e) For an application that is required under Paragraph (d) of this Rule to have a HACCP plan, the HACCP plan shall include:

- (1) a categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;
- (2) a flow diagram by specific food or category type identifying critical control points and providing information on the following:

(A) ingredients, materials and equipment used in the preparation of that food; and

(B) formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved.

(3) a food employee and supervisory training plan that addresses the food safety issues of concern; and

(4) a statement of standard operating procedures for the plan under consideration including clearly identifying:

(A) each critical control point;

(B) the critical limits for each critical control point;

(C) the method and frequency for monitoring and controlling each critical control point by the food employee designated by the responsible person;

(D) the method and frequency for the responsible person to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;

(E) action to be taken by the responsible person if the critical limits for each critical control point are not met, and

(F) records to be maintained by the responsible person, for a length of time specific to the hazard associated with the process, to demonstrate that the HACCP plan is properly operated and managed.

(5) additional scientific data or other information, as required by the Branch Head, supporting the determination that food safety is not compromised by the proposal.

(f) If the Branch Head approves a request for an alternate method or specialized food process, the food service establishment shall:

(1) comply with the specifications of the Alternate Method approval or HACCP plans and procedures that are submitted as specified under Paragraph (d) of this Rule and approved by the Branch Head;

(2) maintain and provide to the Department, upon request, records specified under .2646(3) that demonstrate the following are routinely employed:

(A) procedures for monitoring critical control points;

(B) monitoring of the critical control point;

(C) verification of the effectiveness of an operation or process; and

(D) necessary documentation of corrective actions if there is failure at a critical control point.

(3) submit to the Branch Head any significant changes in the product or manufacturing process that may affect the accuracy of the HACCP plan.

(g) If the food service establishment receiving the approval fails to comply with the conditions of approval for an alternate method of compliance or specialized food process, the Branch Head may suspend or rescind the approval for the food service establishment immediately. Nothing in this rule prohibits the Department from taking any other enforcement action.

(h) The Department shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under Paragraph (e) of this Rule.

Authority G.S 130A-24.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend the rule cited as 16 NCAC 06G .0312.

Proposed Effective Date: May 1, 2007

Public Hearing:

Date: January 4, 2007

Time: 2:00 p.m.

Location: Room 224 South, Education Building, 301 North Wilmington Street, Raleigh, NC

Reason for Proposed Action: *Amendments are needed to comply with testing requirements in the federal No Child Left Behind Act.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections regarding the proposed rules to Harry Wilson, Staff Attorney, State Board of Education, 6302 Mail Service Center, Raleigh, NC 27699-6302.*

Comments may be submitted to: *Harry E. Wilson, 6302 Mail Service Center, Raleigh, NC 27699-6302, phone (919) 807-3406, fax (919) 807-3198, email hwilson@dpi.state.nc.us*

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission*

approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 06 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06G - EDUCATION AGENCY RELATIONS

SECTION .0300 -SCHOOL-BASED MANAGEMENT AND ACCOUNTABILITY PROGRAM

16 NCAC 06G .0312 ANNUAL PERFORMANCE STANDARDS

(a) In carrying out its duty under G.S. 115C-105.35 to establish annual performance goals for each school, the SBE shall use both growth standards and performance standards. (NOTE: see SBE policy HSP-C-020, which lists the components of the ABCs Accountability Program including Adequate Yearly Progress (AYP).)

- (1) In grades 3-8, when two previous assessments are available, the expectation for student performance in the change scale shall be the average of the two previous assessments minus the results of multiplying the average by the factor for regression to the mean. When only one previous assessment is available, the expectation for student performance shall be the previous assessment score on the change scale minus the result of multiplying the previous score by the factor for regression to the mean as defined in 16 NCAC 06G .0305.
- (2) The expectation for EOC scores shall be the average of the two previous assessments as specified below (should they be available) or the one assessment specified below minus the result of multiplying the regression to the mean as defined in 16 NCAC 06G .0305 by either the average of the two previous assessments or the previous assessment. The expected performance for each EOC subject shall be based upon previous performance on the EOG or EOC scores as follows:
 - (A) For Biology, use EOG Reading Grade 8 and English I, if available, or EOG Reading Grade 8 if English I is not available.

- (B) For Physical Science, use EOG Mathematics Grade 8.
 - (C) For Physics, use Chemistry and Geometry score.
 - (D) For Chemistry, use Biology score.
 - (E) For Algebra II, use Algebra I score.
 - (F) For Algebra I, use EOG Mathematics Grade 8.
 - (G) For Geometry, use Algebra I and EOG Mathematics Grade 8 if available, or Algebra I only, if EOG Mathematics Grade 8 is not available.
 - (H) For English I, use EOG Reading Grade 8.
 - (I) For US History, use English I and Biology if available, or Biology only, if English I is not available.
 - (J) For Civics & Economics, use English I and Biology if available, or English I only, if Biology is not available.
- (3) To be included in accountability measures for the growth standard, a student must:
- (A) have a pre-test score and a post-test score as listed in subdivision (2) above or the previous two years EOG assessments if available, or last year's assessment if two years are not available.
 - (B) have been in membership for the full academic year, which is defined as 140 of 180 days as of the time of EOG or EOC testing in a school on traditional schedule, or 70 of 90 days as of the time of EOC testing in a school on block schedule.
- (4) Students shall be included in the performance composite without reference to pretest scores or length of membership.
- (b) All eligible students shall take the SBE-adopted tests. If a school fails to test at least 95 percent of its eligible students for two consecutive school years, the SBE may designate the school as low-performing and may target the school for assistance and intervention. Each school shall make public the percent of eligible students that the school tests.
- (c) Demographic information from the state student information management system shall be used for each student. In the case of disagreement between the information coded on an answer document and the state student information system used by the LEA, the information in the student information management system shall be used. In the event that required demographic information is not a part of the state student information management system, the LEA shall comply with data requests, in electronic format or by coding on answer documents as required by the SBE.
- (d) Students identified as limited English proficient shall be included in the statewide testing program as follows: standard test administration, standard test administration with accommodations, or the state-designated alternate ~~assessments~~ assessment.

- (1) Students identified as limited English proficient who have been assessed on the state identified English language proficiency tests as below Intermediate High in reading and who have been enrolled in United States schools for less than two years may participate in the state designated alternate assessment in the areas of reading and mathematics at grades 3-8 and 10, ~~writing at grades 4, 7, and 10, science at grades 5 and 8,~~ and in high school courses in which an end-of-course assessment is administered. Students identified as limited English proficient who have been assessed on the state identified English language proficiency tests (SBE policy HSP-A-011) as below Superior in writing and who have been enrolled in U.S. schools for less than two years may participate in the state designated alternate assessment in writing for grades 4, 7, and 10.
 - (2) To be identified as limited English proficient students must be assessed using the state identified English language proficiency tests at initial enrollment. All students identified as limited English proficient must be assessed using the state identified English language proficiency test annually thereafter during the ~~window of February 1 to April 30, spring testing window.~~ A student who enrolls after January 1 does not have to be retested during the same school year.
 - (3) Schools shall:
 - (A) continue to administer state reading, mathematics, science, EOC assessments, and writing assessments for students identified as LEP who score at or above Intermediate High on the state English language proficiency reading test during their first year in US schools. Results from these assessments shall be included in the ABCs and AYP.
 - (B) not require students identified as LEP who score below Intermediate High on the state English language proficiency reading test in their first year in US schools to be assessed on the reading end-of-grade assessments, high school comprehensive test in reading, the writing assessment, the state designated alternate assessment for reading, or the state designated alternate assessment for writing.
 - (i) Scores from students who are in their first year in U.S. schools and who have scored below Intermediate High on the reading section of the state identified English language proficiency test shall not be included in either growth, the performance composite or AYP determinations for reading or mathematics.
- (ii) For purposes of determining participation, the state identified English language proficiency reading test will be used as reading participation for the students identified in this section and participation in the state identified English language proficiency writing test will be used as writing participation for students identified in this section.
 - (C) include students previously identified as LEP, who have exited LEP identification during the last two years, in the calculations for determining the status of the LEP subgroup for AYP only if that subgroup already met the minimum number of 40 students required for a subgroup.
 - (e) All students with disabilities including those identified under Section 504 in membership in grades 3-8 and 10 and in high school courses in which an end-of-course assessment is administered shall be included in the statewide testing program through the use of state assessments with or without accommodations or an alternate assessment.
 - (1) The student's IEP team shall determine whether a student can access the assessment without accommodations, with one or more accommodations, or whether the student should be assessed using a state-designed alternate assessment.
 - (2) Students with disabilities in grades 3-8 and 10 with the most significant cognitive disabilities may participate in a state designated alternate assessment based on alternate achievement standards.
 - (A) For the purposes of ABCs performance composite and AYP these students shall be evaluated by alternate achievement standards.
 - (B) Only students with the most significant cognitive disabilities may be deemed proficient against alternate achievement standards. LEAs shall be held to having a maximum of 1% of their total number of students in the assessed grades (3 through 8 and 10) deemed proficient based on alternate achievement standards for AYP and ABCs purposes. This prohibition

shall not apply to student level accountability. If an LEA finds that greater than 1% of its students in these grades are proficient based on alternate achievement standards, the LEA superintendent may apply to the state superintendent for an exception as prescribed in the Federal Register Vol. 68 No. 236 page 68703 RIN 1810-AA95.

- (C) If an LEA does not receive an exception to the 1% limit and it has exceeded this limit, the state shall randomly reassign enough proficient student scores for students held to alternate achievement standards to non-proficient such that the LEA will fall within the 1% limitation. This process shall be done using a statistically random process across schools in the LEA and shall apply to AYP and ABCs statuses but not to students.
- (3) Students with disabilities in grades 3-8 and 10 with persistent academic disabilities as referenced in the NC Accountability Workbook (as accepted by the US Department of Education) may participate in a state designated alternate assessment.
 - (A) For the purposes of ABCs performance composite and AYP these students shall be evaluated by modified achievement standards.
 - (B) LEAs shall be held to having a maximum of 2% of their total number of students in the assessed grades deemed proficient based on modified achievement standards for AYP and ABCs purposes. This prohibition shall not apply to student level accountability. If an LEA finds that greater than 2% of its students in these grades are proficient based on modified achievement standards, the LEA superintendent may apply to the state superintendent for an exception as prescribed in the Federal Register Vol. 68 No. 236 page 68703 RIN 1810-AA95.
 - (C) If an LEA does not receive an exception to the 2% limit and it has exceeded this limit, the state shall randomly reassign enough proficient student scores for students held to modified achievement standards to non-proficient such that the LEA will fall within the 2% limitation. This process shall be done using a statistically random process across

schools in the LEA and shall apply to AYP and ABCs statuses but not to students.

- (f) The SBE shall calculate a school's attainment of growth in student performance using the following process:
 - (1) Convert all student scores to the change scale.
 - (2) Calculate the difference between the expectation for each student using the previous assessments as outlined in this policy (including the factor for regression to the mean) and the student's actual performance in the current year's assessments.
 - (3) Average together all differences from all grades and subjects encompassed in the school. This is the Academic Change term.
 - (4) The SBE shall calculate a school's growth component in college university prep/college tech prep using the following process:
 - (A) Compute the percent of graduates who receive diplomas (minus the diploma recipients who completed the Occupational Course of Study) who completed either course of study in the current accountability year. Students shall be counted only once if they complete more than one course of study.
 - (B) Find the baseline, which is the average of the two prior school years' percent of graduates who received diplomas and who completed a course of study (except for the Occupational Course of Study).
 - (C) Subtract the baseline from the current year's percentage.
 - (D) Subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero.
 - (E) Divide by 10.0, which is the associated standard deviation. The result is the standard growth for college university prep/college tech prep. This number is then multiplied by the number of graduates for inclusion in the growth standards.
 - (5) The SBE shall calculate a school's growth component in the competency passing rate by comparing the grade 10 competency passing rate to the grade 8 passing rate for the group of students in grade 10 who also took the 8th grade end-of-grade assessment.
 - (A) Subtract the grade 8 rate from the grade 10 rate.
 - (B) Subtract 0.1.
 - (C) Divide by 12.8, which is the standard deviation. The result is the standard growth in competency passing rate. Multiply this number by the number of 10th graders included in the

calculation for inclusion in the growth standards.

- (6) The SBE shall calculate a school's growth component in the drop-out rate by comparing the average percent of dropouts from the two most recent years prior to the current drop-out rate to the current drop out rate for the school.
 - (A) Subtract the current year drop-out rate from the average of the two previous years' drop-out rate.
 - (B) Divide by 2.1 (the standard deviation). The result is the standard growth in drop-out rate. Multiply this number by ¼ the school ADM for inclusion in the growth standards.
- (7) For expected growth, multiply the Academic Change for the school by the number of scores used in 2 and 3 above, add to that the results from 4, 5 and 6 above. Divide by the number of students included in 2 and 3 above plus the number of graduates, plus the number of 10th graders from 5 above plus the ¼ ADM from 6 above. If the resulting number is "0.00" or above, the school has met the expected growth standard.
- (8) The SBE shall compute high growth using as the high growth standard a c-ratio of 1.50 or greater when the school has already met the expected growth standard.

(g) If school officials believe that the school's growth standards were unreasonable due to specific, compelling reasons, the school may appeal its growth standards to the SBE. The SBE shall appoint the compliance commission to review written appeals from schools. The school officials must document the circumstances that made the goals unrealistic and must submit its appeal to the SBE within 30 days of receipt of notice from the Department of the school's performance. The appeals committee shall review all appeals and shall make recommendations to the SBE. The SBE shall make the final decision on the reasonableness of the growth goals.

(h) In compliance with the No Child Left Behind Act of 2001 (P.L. 107-110), its subsequent final regulations (34 CFR Part 200) released November 26, 2002, and pursuant to GS 115C-105.35 the SBE shall incorporate adequate yearly progress (AYP) as the "closing the achievement gap" component of the ABCs. The calculations shall use forty (40) students' scores as the minimum number of scores for a group to be statistically reliable and valid for AYP purposes along with the use of a confidence interval around the percentage of students scoring proficient on the assessments.

(i) Upon written request by the Department, the SBE may waive specific factors in the accountability measures used to set growth expectations in this Rule upon consideration of:

- (1) the need for the waiver;
- (2) the degree of public benefit; and
- (3) whether the Department had control over the circumstances that required the requested waiver.

Authority G.S. 115C-12(9)c4.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 28 - REGISTRATION BOARD OF LANDSCAPE CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Landscape Contractors Registration Board intends to amend the rules cited as 21 NCAC 28 .0301 and .0304.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: January 8, 2007

Time: 10:00 a.m. - noon

Location: 7419 Knightdale Blvd., Suite 112, Knightdale, NC 27545

Reason for Proposed Action:

21 NCAC 28 .0301 – To set a definite period in which the applicant can complete the requirements to become a Registered Landscape Contractor. This rule change will insure that no substantial changes occur in the applicant's professional intentions, work history, or conduct of character between time of application and completion of requirements to become a NC Registered Landscape Contractor.

21 NCAC 28 .0304 – To encourage NC Registered Landscape Contractors to maintain their registration while working in landscape contracting.

Procedure by which a person can object to the agency on a proposed rule: Send written comment to NCLCRB, P.O. Box 1578, Knightdale, NC 27545; fax comments to (919) 266-6050; email comments to nclcrb@msn.com; or attend a Public Hearing on January 8, 2007, at the offices of NCLCRB, 7419 Knightdale Boulevard, Suite 112, Knightdale, NC 27545.

Comments may be submitted to: Sandra L. Kelly, P.O. Box 1578, Knightdale, NC 27545, phone (919) 266-8070, fax (919) 266-6050, email nclcrb@msn.com

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or

facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
Local
Substantive (>=\$3,000,000)
None

SECTION .0300 - EXAMINATION AND LICENSING PROCEDURES

21 NCAC 28 .0301 APPLICATIONS AND EXAMINATION

(a) Notice. The Board shall hold at least one examination during each year and may hold such additional examinations as may appear necessary.

(b) Applications. Applications on forms prescribed by the Board and accompanied by the required application fee must be filed with the Board at least 60 days prior to the date of examination.

(c) Education and Experience Equivalents. Applicants for examination shall be given credit for education and experience to meet the statutory requirements as follows:

- (1) Education Equivalents. Credit for educational attainment shall be credited as follows:
(A) Graduation from a four-year program in Landscape Architecture, Landscape Horticulture, or Horticulture: Maximum Credit - 1.5 years;
(B) Graduation from a four-year curriculum in any other field: Maximum Credit - 6 months;
(C) Graduation from a two-year program in Horticulture or similar curriculum in a land grant institution or community college: Maximum Credit - 1 year.
(2) Experience Equivalents. Time spent in the jobs listed shall be credited as follows:
(A) Landscape Crew Leader 100% credit
(B) Landscape Designer or Landscape Architect 100% credit
(C) Landscape Estimator or Landscape Sales Person 100% credit
(D) Landscape Project Manager 100% credit

- (E) Landscape Crew Member 75% credit
(F) Nursery retail sales person 75% credit
(G) Grading operator 50% credit
(H) Irrigation installer 50% credit
(I) Nursery worker 50% credit
(J) Turfgrass installer or turfgrass maintenance worker 50% credit

(d) Certificate. After each examination, the Board shall notify each examinee of the result of the examination and the Board shall issue certificates of title to all persons successfully completing the examination.

(e) Applicants who have not met registration requirements within a period of three years from date of initial application to the Board will be considered inactive. Inactive applications will be destroyed after giving 30 days notice to the last known address of the applicant.

Authority G.S. 89D-4(c); 89D-5(a); 89D-5(b).

21 NCAC 28 .0304 REINSTATEMENT AFTER REVOCATION

(a) Any person whose license is suspended or revoked may, at the discretion of the Board, be relicensed or reinstated at any time without an examination by majority vote of the Board on written application made to the Board showing cause justifying relicensing or reinstatement.

(b) If a registration has lapsed for a period of five years or more, the individual must complete and submit a new application. Once the application is approved, the applicant must pass the Registration Board exam requirements and a new registration number will be assigned.

Authority G.S. 89D-4(c); 89D-7.

CHAPTER 61 - NORTH CAROLINA RESPIRATORY CARE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Respiratory Care Board intends to amend the rule cited as 21 NCAC 61 .0401.

Proposed Effective Date: July 1, 2007

Public Hearing:
Date: January 24, 2007
Time: 1:00 p.m.

Location: NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609

Reason for Proposed Action: To increase the continuing education hourly requirements to the national average for Respiratory Care Practitioners. To allow for other opportunities to meet the annual continuing education requirements.

Procedure by which a person can object to the agency on a proposed rule: A person may object to the Board on a proposed rule by sending a written objection addressed to Floyd Boyer, RCP Executive Director, North Carolina Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609. (919) 878-5595 (Phone), (919) 878-5565 (Fax), fboyer@ncrcb.org (e-mail).

Comments may be submitted to: Floyd Boyer, RCP, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609, phone (919) 878-5595, fax (919) 878-5565, email fboyer@ncrcb.org

Comment period ends: March 1, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

SECTION .0400 – CONTINUING EDUCATION REQUIREMENTS FOR LICENSE HOLDERS

21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS

~~(a) Each year on or before the expiration date of the respiratory care practitioner's license, each respiratory care practitioner who is in active practice in the State of North Carolina shall complete continuing education as outlined in either Subparagraph (1) or (2) of this Paragraph:~~

- ~~(1) Provide proof of completion of 10 hours each year of Category I Continuing Education (CE) to the Board. "Category I" Continuing Education is defined as participation in an~~

~~educational activity directly related to respiratory care, which includes any one of the following:~~

- ~~(A) Lecture a discourse given for instruction before an audience or through teleconference.~~
- ~~(B) Panel a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution.~~
- ~~(C) Workshop a series of meetings for intensive, hands on study, or discussion in a specific area of interest.~~
- ~~(D) Seminar a directed advanced study or discussion in a specific field of interest.~~
- ~~(E) Symposium a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters.~~
- ~~(F) Distance Education includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package.~~

~~(2) Retake the certified respiratory therapist (CRT) examination with a passing score, or take and pass the Registry Examination for Advanced Respiratory Therapists (RRT), the Neonatal/Pediatric Respiratory Care Specialty Examination, the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), or the Registry Examination for Advanced Pulmonary Function Technologist (RPFT). Licensees may take the examination anytime during the year prior to the expiration of their respiratory care practitioner license.~~

~~(b) Licensees shall list on a form provided by the Board, the Category I CE courses completed that meet the 10-hour requirement, as well as specified subject matter of the courses completed. Space shall be provided on the form for listing the number of hours, course names, dates and providers, as well as the general subject matter of the courses. If the practitioner takes an examination in lieu of the CE requirements, a notation of the examination taken with the date taken is to be placed on the form.~~

~~(c) CE course work must be completed through one or more of the providers of CE as identified in this Section of the Rules or CE programs approved by the Board.~~

~~(d) All CE course work must be directly related to the practice of respiratory care or to expanding the scope of practice for respiratory care practitioners.~~

~~(e) CE courses approved by the American Association for Respiratory Care or the Accreditation Council for Continuing Medical Education (ACCME) are approved for Respiratory Care~~

~~Practitioners to receive continuing education credit and are not required to make application to the Board or pay a fee.~~

~~(f) The following Certification Programs are approved for Respiratory Care Practitioners to receive continuing education credit. The sponsor is not required to make application to the Board or pay a fee. Certification or recertification as an instructor in ACLS, PALS, or NRP shall receive the same CE credit as listed.~~

- ~~(1) Advanced Cardiac Life Support (ACLS) (10 hours for Initial certification and 5 hours for re certification)~~
- ~~(2) Pediatric Advanced Life Support (PALS) (10 hours for Initial certification and 5 hours for re certification)~~
- ~~(3) Neonatal Resuscitation Protocol (NRP) (8 hours for Initial certification and 4 hours for re certification)~~
- ~~(4) Basic Life Support (BLS) Instructor (8 hours for Initial certification and 4 hours for re certification)~~

~~(g) The Board shall charge the following fees to all other providers of CE for approval of continuing education programs:~~

- ~~(1) Programs approved for 1 to 2 hours of CE: Non Profit Organizations and Government Agencies, ten dollars (\$10.00); For Profit Organizations, twenty dollars (\$20.00).~~
- ~~(2) Programs approved for 3 to 5 hours of CE: Non Profit Organizations and Government Agencies, twenty dollars (\$20.00); For Profit Organizations, forty dollars (\$40.00).~~
- ~~(3) Programs approved for 6 to 10 hours of CE: Non Profit Organizations and Government Agencies, forty dollars (\$40.00); For Profit Organizations, eighty dollars (\$80.00).~~
- ~~(4) Programs approved for 11 or more hours of CE: Non Profit Organizations and Government Agencies, eighty dollars (\$80.00); For Profit Organizations, one hundred fifty dollars (\$150.00).~~

~~(h) Verification of Compliance with Continuing Education Requirements. The Board may randomly audit the continuing education documentation forms submitted and confirm the validity of all information on the form with the appropriate parties.~~

~~(i) The Board shall grant requests for extensions of the continuing education requirements due to personal circumstances as follows. The Board shall require documentation of the circumstances surrounding the licensee's request for extension.~~

- ~~(1) having served in the regular armed services of the United States at least 6 months of the 12 months immediately preceding the license renewal date; or~~
- ~~(2) having suffered a serious or disabling illness or physical disability that prevented completion of the required number of continuing education hours during the twelve months immediately preceding the licensee renewal date.~~

(a) Upon application for license renewal, the licensee shall attest to having completed one or more of the following learning activity options during the preceding renewal cycle and be prepared to submit evidence of completion if requested by the Board:

- (1) Retake the Certified Respiratory Therapist Examination (CRT) with a passing score, or take and pass the Registry Examination for Advanced Respiratory Therapists (RRT), the Neonatal/Pediatric Respiratory Care Specialty Examination (NPS), the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), the Registry Examination for Advanced Pulmonary Function Technologist (RPFT), the Registry Examination for Polysomnographic Technologist (RPSGT) or the Asthma Educators Certification Examination (AE-C).
- (2) Completion of a minimum of 12 contact hours of continuing education activities directly related to the licensee's practice of respiratory care and currently approved by the Board, the American Association for Respiratory Care (AARC) or the Accreditation Council for Continuing Medical Education (ACCME).
- (3) Completion of a Board approved Respiratory Care refresher course.
- (4) Completion of a minimum of three semester hours of post-licensure respiratory care academic education leading to a baccalaureate or masters degree in Respiratory Care.
- (5) Presentation of a Respiratory Care Research study at a national continuing education conference.
- (6) Authoring a published Respiratory Care book or Respiratory Care article published in a medical peer review journal.

(b) Licensees approved by the Board to provide advanced practice Respiratory Care procedures must complete a minimum five hours of Board approved continuing education directly related to the advanced respiratory care practice.

(c) The completion of certification or recertification in Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) and/or Neonatal Resuscitation Protocol (NRP) may count for a maximum of five hours of continuing education for each renewal period.

(d) A licensee shall retain supporting documentation to provide proof of completion of the option chosen in Paragraph (a) of this Rule for a period of no less than three years. A licensee approved by the Board to provide advanced practice Respiratory Care procedures shall retain supporting documentation to provide proof of completion of the continuing education in Paragraph (b) of this Rule for a period of no less than three years.

(e) A licensee shall maintain a file at his or her practice facility that contains the documents required in Paragraph (d) of this Rule and include a copy of the RCP licensee, a copy of a current Basic Cardiac Life Support (BCLS) certification, a copy of advanced life support certifications, a copy of annual skills

evaluations required by the facility and a copy of all credentials issued by the National Board for Respiratory Care.

(f) A licensee may be subject to random audit for proof of compliance with the Board's requirements for continuing education.

(g) The Board shall inform licensees of their selection for audit upon notice of license renewal or request for reinstatement. Evidence shall be submitted to the Board no later than 30 days of receipt of the audit notice.

(h) Failure of a licensee to meet the requirements of this Rule shall result in disciplinary action pursuant to G.S. 90-666.

(i) The Board shall charge the following fees for providers of continuing education that apply for approval of continuing education programs:

- (1) Programs approved for one to two hours of CE: Non Profit Organizations and Government Agencies, ten dollars (\$10.00); For Profit Organizations, twenty dollars (\$20.00).
- (2) Programs approved for three to five hours of CE: Non Profit Organizations and Government Agencies, twenty dollars (\$20.00); For Profit Organizations, forty dollars (\$40.00).
- (3) Programs approved for six to 10 hours of CE: Non Profit Organizations and Government Agencies, forty dollars (\$40.00); For Profit Organizations, eighty dollars (\$80.00).
- (4) Programs approved for 11 or more hours of CE: Non Profit Organizations and Government Agencies, eighty dollars (\$80.00); For Profit Organizations, one hundred fifty dollars (\$150.00).

(j) The Board may grant requests for extensions of the continuing education requirements due to personal circumstances as follows. The Board shall require documentation of the circumstances surrounding the licensee's request for extension.

- (1) Having served in the regular armed services of the United States at least six months of the 12 months immediately preceding the license renewal date; or
- (2) Having suffered a serious or disabling illness or physical disability that prevented completion of the required number of continuing education hours during the twelve months immediately preceding the licensee renewal date.

Authority G.S. 90-652(2)(13); 90-660(b)(9).

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to amend the rule cited as 23 NCAC 02E .0204.

Proposed Effective Date: April 1, 2007

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Requests for public hearing should be made in writing to the Rule-making Coordinator at the following address: North Carolina Community College System, 5001 Mail Service Center, Raleigh, NC 27699-5001.*

Reason for Proposed Action: *The State Board of Community Colleges seeks minor editorial changes to clarify Special Credit and Seminar Courses, and add flexibility in the "other required" category of the program of study. The "other required" category of the program of study is currently restricted to courses required for graduation (example: orientation courses, intro computer courses). The removal of this restriction would allow colleges to utilize the other required area to incorporate any course(s) up to a maximum of seven hours in the AAS, four hours in the diploma and one hour in the certificate.*

Procedure by which a person can object to the agency on a proposed rule: *Objections must be in writing and received by the North Carolina Community College System Office no later than 5:00 p.m. on the last day of the written comment period. Written objections postmarked on the last day of the written comment period shall be deemed received by 5:00 p.m. on the last day of the written comment period. Written objections should be addressed as follows: President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5001.*

Comments may be submitted to: *David J. Sullivan, 5001 Mail Service Center, Raleigh, NC 27699, email sullivan@nccommunitycolleges.edu*

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.*

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 02 - COMMUNITY COLLEGES

SUBCHAPTER 02E – EDUCATIONAL PROGRAMS

SECTION .0200 - EDUCATIONAL PROGRAMS

23 NCAC 02E .0204 COURSES AND STANDARDS FOR CURRICULUM PROGRAMS

The Combined Course Library and curriculum standards for associate degree, diploma, and certificate programs shall be as follows:

- (1) Combined Course Library.
 - (a) The Combined Course Library shall contain the following elements for all curriculum program credit and developmental courses approved for the North Carolina Community College System.
 - (i) Course prefix;
 - (ii) Course number;
 - (iii) Course title;
 - (iv) Classroom hours and laboratory, clinical, and work experience contact hours, if applicable;
 - (v) Credit hours;
 - (vi) Prerequisites and corequisites, if applicable; and,
 - (vii) Course description consisting of three sentences.
 - (b) ~~A~~The numbering system for curriculum courses within the Combined Course Library is as follows:
 - (i) The numbers 050-099 shall be assigned to developmental courses.
 - (ii) The numbers 100-109 and 200-209 shall be assigned to ~~courses approved only at the certificate and diploma level-level courses.~~ These courses shall not be included in associate degree programs.
 - (iii) The numbers 110-199 and 210-299 shall be ~~used for courses approved at the~~assigned to associate degree ~~level-level courses.~~ These courses may also be included in certificate and diploma programs.
 - (iv) The numbers 190-199 and 290-299 shall be assigned to seminar or selected topic courses which may be offered for a single term and which courses offer content

not found in existing courses. In order to offer the course content after the initial term, a new course must be approved for inclusion in the Combined Course Library.

- (c) ~~The~~A college shall use the course information (prefix, number, title, and classroom, laboratory, clinical, work experience, and credit hours; prerequisites and corequisites; and course description) as listed in the Combined Course Library.
 - (i) ~~The~~A college may add a fourth sentence to the course description to clarify instructional content or instructional methodology.
 - (ii) A college may divide courses into incremental units for greater flexibility in providing instruction to part-time students or to provide shorter units of study for abbreviated calendars. Each of the following criteria shall apply to courses divided into incremental units:
 - (A) A ~~curriculum program~~course may be divided into two or three units, which are designated with an additional suffix following the course prefix and number.
 - (B) The units shall equal the entire course of instruction, without omitting any competencies.
 - (C) The combined contact and credit hours for the units shall equal the contact and credit hours for the course.
 - (D) If the course is a prerequisite to another course, the student shall complete all component parts

- before enrolling in the next course.
- (E) ~~If the course is a co-requisite to another course it must be taken before or in conjunction with that course.~~
- (E)(F) ~~The components of a split curriculum program—course shall not be used to supplant training for occupational extension.~~
- (d) The Community College System Office shall revise and maintain courses in the Combined Course Library.
- (e) When a student receives credit for a Combined Course Library course, this credit shall be transferable to any college in the North Carolina Community College System.
- (2) ~~Development—Revision of Curriculum Standards. The standards for each curriculum program title shall be established jointly by the Community College System Office and the institution(s) proposing to offer the curriculum program based on criteria established by the State Board of Community Colleges.—A revision of curriculum standard requires that two thirds of colleges approved to offer that curriculum program concur, in writing with the revision. Upon their concurrence changes in curriculum standards shall be approved become effective after approval by the State Board of Community Colleges. Requests for changes in the standards shall be made to the State Board of Community Colleges under the following conditions:~~
- (a) ~~A request is made to the Community College System Office to change the standards for a curriculum program title; and,~~
- (b) ~~A two thirds majority of institutions approved to offer the curriculum program title must concur with the request.~~
- (3) Criteria for Curriculum Standards. The standards for each curriculum program title shall be based on the following criteria established by the State Board of Community Colleges for the awarding of degrees, diplomas, and certificates.
- (a) Associate in Applied Science Degree. The associate in applied science degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 76 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the ~~institution—college~~ shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. The requirements for the Associate in Applied Science Degree are as follows:
- (i) The associate in applied science degree curriculum program shall include a minimum of 15 semester hours of credit from general education curriculum courses selected from the Combined Course Library, including six hours in communications, three hours in humanities/fine arts, three hours in social/behavioral sciences, and three hours in either natural sciences or mathematics.
- (ii) The associate in applied science degree curriculum program shall include a minimum of 49 semester hours of credit from major courses selected from the curriculum courses in the Combined Course Library. Library assigned numbers from 110-199 and 210-299. Major courses are those which offer specific job knowledge or skills. Criteria for the major hours category are as follows:
- (A) Major Core Hours. The major hours category shall be comprised of identified core courses or subject areas or both which are required for each ~~curriculum~~ program. Subject areas or core courses shall be based on curriculum competencies and shall teach essential

- skills and knowledge necessary for employment. The number of credit hours required for the core shall not be less than 12 semester hours of credit.
- (B) Major Concentration Hours. The major hours category may also include hours required for a concentration of study. A concentration of study is a group of courses required beyond the core for a specific related employment field. A concentration shall include a minimum of 12 semester hours, and the majority of the course credit hours shall be unique to the concentration.
- (C) Other Major Hours. Other major hours shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or ~~concentration.~~ concentration, or unique prefixes as noted on the standard.
- (D) Work Experience Hours. The major hours category may include up to a maximum of eight semester hours credit for work experience, including cooperative education, practicum's, and internships. Under a ~~curriculum~~ standard specifically designed for select associate degree programs, work experience shall be included in a curriculum up to a maximum of 16 semester hours of credit. The select associate degree programs shall be based on a program of studies registered under the North Carolina Department of Labor Apprenticeship programs. Only eight semester hours of credit of work experience shall earn budget FTE. ~~The Community College System Office shall implement the Pilot Work Experience Project and shall submit to the State Board of Community Colleges a report, including the number of students involved and associated costs, one year after this Rule as revised is effective.~~
- (iii) An associate in applied science degree curriculum program may include a maximum of seven other ~~required hours to complete college graduation requirements.~~ semester hours of credit from curriculum courses. These

curriculum courses shall be selected from the Combined Course ~~Library~~. Library, and must be approved by the System Office prior to implementation of the program. Restricted, unique or free elective courses may not be included as other required courses.

(iv) Selected topics or seminar courses may be included in an associate in applied science degree program up to a maximum of three semester hours of credit. Selected topics or seminar courses shall not substitute for required general education or major core courses. Such courses shall be listed on a program of study as other major hours. Selected topics and seminar courses shall not be used more than once in a program.

(b) Associate in Arts Degree. The associate in arts degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. Certificates are not allowed under this degree program. The requirements for the Associate in Arts Degree are as follows:

(i) The associate in arts degree program shall include a minimum of 44 semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

(A) Six semester hours of English composition;

- (B) 12 semester hours of humanities/fine arts;
- (C) 12 semester hours of social/behavioral sciences;
- (D) Six semester hours of mathematics; and,
- (E) Eight semester hours of natural sciences.

(ii) The associate in arts degree programs shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from curriculum courses in the Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in arts program. This course will receive transfer evaluation by the receiving institution.

(iii) A college may award a diploma under an approved associate in arts degree program for a series of courses taken from the approved associate in arts degree program of study. This diploma shall include a minimum of 44 and a maximum of 47 semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The diploma shall include a minimum of:

- (A) Six semester hours of English composition;
- (B) 12 semester hours of humanities/fine arts;
- (C) 12 semester hours of social/behavioral sciences;

- (D) Six semester hours of mathematics; and,
 - (E) Eight semester hours of natural sciences.
- A non-college transfer course of one semester hour of credit may be included in a 47 semester hour credit diploma program. This course will receive transfer evaluation by the receiving institution.
- (c) Associate in Science Degree. The associate in science degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. Certificates are not allowed under this degree program. The requirements for Associate in Science Degree are as follows:
- (i) The associate in science degree program shall include a minimum of 44 semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:
 - (A) Six semester hours of English composition;
 - (B) Nine semester hours of humanities/fine arts;
 - (C) Nine semester hours of social/behavioral sciences; and,
 - (D) 20 semester hours of mathematics and natural sciences that shall include a minimum of six semester hours in mathematics and a minimum of eight semester hours in natural sciences.
 - (ii) The associate in science degree program shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from curriculum courses in the Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in science program. This course will receive transfer evaluation by the receiving institution.
 - (iii) A college may award a diploma under an approved associate in science degree program for a series of courses taken from the approved associate in science degree program of study. This diploma shall include a minimum of 44 and a maximum of 47 semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The diploma shall include a minimum of:
 - (A) Six semester hours of English composition;
 - (B) Nine semester hours of humanities/fine arts;
 - (C) Nine semester hours of social/behavioral sciences; and,
 - (D) 20 semester hours of natural sciences and mathematics that shall include a

minimum of six hours in mathematics and a minimum of eight hours in natural sciences.

A non-college transfer course of one semester hour of credit may be included in a 47 semester hour credit program. This course will receive transfer evaluation by the receiving institution.

- (d) Associate in Fine Arts Degree. The associate in fine arts degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. Diplomas and certificates are not allowed under this degree program. The requirements for the Associate in Fine Arts Degree are as follows:

- (i) The associate in fine arts degree programs shall include a minimum of 28 semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:
- (A) Six semester hours of English composition;
 - (B) Six semester hours of humanities/fine arts;
 - (C) Nine semester hours of social/behavioral sciences;
 - (D) Three semester hours of mathematics; and,
 - (E) Four semester hours from the natural sciences.

- (ii) The associate in fine arts degree programs shall include a minimum of 36 and a maximum of 37 additional semester hours of credit from curriculum courses in the Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in fine arts program. This course will receive transfer evaluation by the receiving college.

- (e) Associate in General Education. The associate in general education shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the ~~institution~~ college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of ~~computers~~ computers. Diplomas and certificates are not allowed under this degree program. The requirements for the Associate in General Education Degree are as follows:

- (i) The associate in general education degree curriculum program shall include a minimum of 15 semester hours of credit from general education curriculum courses selected from the Combined Course Library, including six hours in communications, three hours in humanities/fine arts, three hours in social/behavioral sciences, and three hours in natural sciences or mathematics.
- (ii) The remaining hours in the associate in general education degree curriculum program shall consist of additional general education curriculum courses selected

- from the Combined Course Library. A maximum of seven semester hours of credit in health, physical education, and college orientation or study skills courses may be included. ~~Selected topics or seminar courses may be included in a program of study up to a maximum of three semester hours credit.~~
- (iii) Selected topics or seminar courses may be included in an associate in general education program up to a maximum of three semester hours of credit. Selected topics and seminar courses shall not substitute for required general education or major core courses. Courses must appear on a program of study as Other Major Hours.
- (f) Diploma. ~~The A~~ Diploma shall be granted for a planned program of study consisting of a minimum of 36 and a maximum of 48 semester hours of credit from courses at the 100-299 level. The requirements for the diploma curricula are as follows:
- (i) Diploma curricula shall include a minimum of six semester hours of general education curriculum courses selected from the Combined Course Library. A minimum of three semester hours of credit shall be in communications, and a minimum of three semester hours of credit shall be selected from courses in humanities/fines arts, social/behavioral sciences, or natural sciences and mathematics.
- (ii) Diploma curricula shall include a minimum of 30 semester hours of major courses selected from curriculum courses in the Combined Course Library.
- ~~(A)(iii)~~ (iii) A diploma curriculum program ~~which is a stand-alone curriculum program title~~ shall include ~~identified~~ designated core courses or core subject areas or both within the major hours category.
- ~~(B)(iv)~~ (iv) Courses for other major hours in a ~~stand-alone~~ diploma curriculum program ~~title~~ shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or ~~concentration~~ concentration or unique prefixes as noted on the curriculum standard.
- ~~(C)(v)~~ (v) Work experience, including cooperative education, practicums, and internships, may be included in a diploma curriculum program up to a maximum of ~~eight~~ four semester hours of credit.
- ~~(iii)(vi)~~ (vi) A diploma curriculum program may include a maximum of four other required ~~hours to complete college graduation requirements.~~ hours. These courses shall be selected from curriculum courses in the Combined Course Library. ~~Library.~~ and must be approved by the System Office staff prior to implementation of the program. Restricted, unique or free elective courses may not be included as other required courses.
- ~~(iv)(vii)~~ (vii) An ~~institution~~ college may award a diploma under an approved associate degree curriculum program for a series of courses taken from the approved associate degree curriculum program of ~~study.~~ unless prohibited by the standard.
- (A) A diploma curriculum program offered under an approved associate degree ~~curriculum~~ program shall meet the standard general

education and major course requirements for the diploma credential.

(B) A college may substitute general education courses at the ~~100-109-100-299~~ level for the associate-degree level general education courses in a diploma curriculum program offered under an approved degree program.

(C) ~~The~~ A diploma curriculum program offered under an approved associate degree curriculum program shall require a minimum of 12 semester hours of credit from courses extracted from the required core courses ~~and~~ and/or subject areas of the respective associate in applied science degree curriculum program.

(D) A diploma program offered under an approved associate degree concentration program shall require the utilization of all core courses and a minimum of a 12 semester hours of credit from concentration courses.

~~(viii)~~ Selected topics or seminar courses may be included in a diploma program up to a maximum of three semester hours of credit. Selected topics and seminar courses shall not substitute for required general education or major core courses.

Courses must be on a program of study as other major hours.

(g) Certificate Programs. ~~The~~ A certificate shall be granted for a planned program of study consisting of a minimum of 12 and a maximum of 18 semester hours of credit from courses at the 100-299 level. The requirements for the Certificate Programs are as follows:

(i) General education is optional in certificate curricula.

(ii) Certificate curricula shall include a minimum of 12 semester hours of major courses selected from curriculum courses in the Combined Course Library.

(A) A certificate ~~curriculum~~ program which is a stand-alone curriculum program title or which is the highest credential level awarded under an approved associate in applied science degree or diploma program shall include a minimum of 12 semester hours of credit from core courses ~~or~~ and/or subject areas ~~or both~~ within the major hours category.

(B) Courses for other major hours in a stand-alone certificate curriculum program shall be selected from prefixes identified on the curriculum standard. ~~A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.~~

- (C) Work experience, including cooperative education, practicums, and internships, may be included in a certificate program up to a maximum of two semester hours of credit.
- (iii) A certificate curriculum program may include a maximum of one other required ~~hour, hour of credit to complete college graduation requirements.~~ This curriculum course shall be selected from the curriculum courses in the Combined Course ~~Library~~-Library, and must be approved by the System Office prior to implementation of the program. Restricted, unique, or free elective courses may not be included as other required courses.
- (iv) An institution may award a certificate under an approved degree or diploma curriculum program for a series of courses totaling a minimum of 12 semester hours of credit and a maximum of 18 semester hours of credit taken from the approved associate degree or diploma curriculum program of study.
- (v) Selected topics or seminar courses may be included in a certificate program up to a maximum of three semester hours of credit.
- (4) Curriculum Standards Compliance. Each ~~institution-college~~ shall select curriculum ~~program~~ courses from the Combined Course Library in order to comply with the standards for each curriculum program title the ~~institution-college~~ is approved to offer. The selected courses shall comprise the college's program of study for that curriculum program. The initial and revised program shall be filed with and approved by the System Office prior to implementation.
- (a) ~~Each institution shall maintain on file with the Community College System Office a copy of the official program of study approved by the institution's board of trustees.~~
- (b) ~~When requesting approval to offer a curriculum program title, an institution shall submit a program of study for that curriculum program title.~~
- (c) ~~A copy of each revised program of study shall be filed with and approved by the Community College System Office prior to implementation at the institution.~~

Authority G.S. 115D-5; S.L. 1995, c. 625.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 04 – DEPARTMENT OF COMMERCE

Rule-making Agency: North Carolina Alcoholic Beverage Control Commission

Rule Citation: 04 NCAC 02S .0237

Effective Date: December 1, 2006

Date Approved by the Rules Review Commission: November 16, 2006

Reason for Action: Without the above rule, the sale and purchase of malt beverages in kegs will be illegal starting December 1, 2006. Pursuant to NCGS 18B-403.1, the North Carolina Alcoholic Beverage Control Commission shall provide a keg purchase-transportation permit form to retailers for the purchase and transportation of kegs of malt beverages by patrons by December 1, 2006. The statute requires that the Commission adopt rules specifying the content of the permit form. The form will enable the tracking of the keg purchases and may deter the distribution of malt beverages by of-age purchasers to persons under the legal age to purchase and consume alcohol.

- (4) Address of destination of keg(s);
- (5) Total number of kegs purchased;
- (6) Underage responsibility warning; and
- (7) Signatures of the purchaser and an authorized retail employee.

(c) The retailer shall retain a copy of the permit at the retail location where the purchase was made for 90 days unless requested by any individual in writing to the retailer to retain the copy for a specified period longer than 90 days but not longer than 180 days. The permit shall accompany the keg during its transport and usage and shall be exhibited to any law enforcement officer upon request.

(d) The Commission shall provide Keg Purchase-Transportation Permits to any retailer who requests such permits. Permittees may also download a copy of the Keg Purchase-Transportation Permit from the Commission's website (www.ncabc.com).

History Note: Authority G.S. 18B-207; 18B-403.1; Temporary Adoption Eff. December 1, 2006.

TITLE 13 – DEPARTMENT OF LABOR

Rule-making Agency: NC Department of Labor

Rule Citation: 13 NCAC 20 .0101, .0302 - .0303

Effective Date: November 30, 2006

Date Approved by the Rules Review Commission: November 16, 2006

Reason for Action: Effective August 27, 2006, Section 52(b) of Senate Bill 602/S.L. 2006-264 (=H668) provides that the Department of Labor shall adopt temporary rules to clarify the procedural requirements for the administration of controlled substance examinations. Effective August 27, 2006, Senate Bill 602/S.L. 2006-264 (=H668) amends the procedural requirements for the administration of controlled substance examinations as set forth in NCGS 95, Article 20. Any delay in the effective date presents an unforeseen threat to employee/ employer welfare as 13 NCAC 20 .0101 does not currently include definitions pertinent to the interpretation and understanding of the procedural requirements set forth in NCGS 95, Article 20.

CHAPTER 02 - BOARD OF ALCOHOLIC CONTROL

SUBCHAPTER 02S - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

SECTION .0200 - GENERAL RULES AFFECTING RETAILERS AND BROWNBAGGING PERMITTEES

04 NCAC 02S .0237 KEG PURCHASE-TRANSPORTATION PERMIT

(a) Retail Permittee to Issue. Whenever a person chooses to purchase and transport a keg designed to hold and dispense 7.75 gallons or more of malt beverages, the person shall apply to the retail permittee from whom such purchase will be made for a Keg Purchase-Transportation Permit. The retail permittee from whom the keg is purchased shall issue the purchaser such permit following G.S. 18B-403.1.

(b) The Keg Purchase-Transportation Permit shall specify the following information on the face of the permit:

- (1) Date of issue;
- (2) Name and address of the retail business from which the purchase is made;
- (3) Purchaser's name, address, and driver's license, North Carolina ID, Military ID or passport number;

CHAPTER 20 – CONTROLLED SUBSTANCES EXAMINATION REGULATION

SECTION .0100 - DEFINITIONS

13 NCAC 20 .0101 DEFINITIONS

As used in G.S. 95, Article 20 and this Chapter:

- (1) "All actions" means procedures performed on the sample to detect, identify, or measure controlled substances. Examples include, but are not limited to, "examinations and screening for controlled substances," "controlled substances testing," "drug testing," "screening," "screening test," "confirmation," and "confirmation test".
- (2) "Chain of custody" means the process of establishing the history of the physical custody or control of the sample from the time the examiner provides the container for the sample to the examinee through the later of:
 - (a) The reporting of the negative result to the examiner;
 - (b) The 90 day period specified in G.S. 95-232(d); or
 - (c) The completion of the retesting described in G.S. 95-232(f).
- (3) "On-site" means any location, other than an approved laboratory, at which a screening test is performed on prospective employees. For example, "on-site" locations include, but are not limited to, the examiner's place of business or a hospital, physician's office, or third-party commercial site operated for the purpose of collecting samples to be used in controlled substance examinations.
- (4) "Sample" means the examinee's urine, blood, hair or oral fluids obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing.
- (5) "Employer or person charged" means an examiner found by the Commissioner to have violated G.S. 95, Article 20.
- (6) "Preliminary screening procedure" means a controlled substance examination that uses a single-use test device that:
 - (a) Is portable and can be administered on-site;
 - (b) Meets the requirements of the U.S. Food and Drug Administration for commercial distribution contained in Title 21, Part 807 of the Code of Federal Regulations; and

(c) Meets the generally accepted cutoff levels contained in the Mandatory Guidelines for Federal Workplace Drug Testing Programs adopted by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration in 69 FR 19644.

- (7) "Single-use test device" means the reagent-containing unit of a test system that:
 - (a) Is in the form of a sealed container or cartridge that has a validity check, a nonresealable closure, or an evidentiary tape that ensure detection of any tampering;
 - (b) Is self-contained and individually packaged;
 - (c) Is discarded after each test; and
 - (d) Does not allow any test component or constituent of a test system to interact between tests.

History Note: Authority G.S. 95-231; 95-232; 95-234; Eff. April 1, 2001; Temporary Amendment Eff. January 16, 2002; Amended Eff. July 1, 2003; Temporary Amendment Eff. November 30, 2006.

SECTION .0300 - USE OF CONTRACTORS

13 NCAC 20 .0302 CURRENT EMPLOYEES

~~The examiner shall contract with an approved laboratory to perform the screening and confirmation test for current employees.~~

History Note: Authority G.S. 95-232; 95-234; Eff. April 1, 2001; Temporary Repeal Eff. November 30, 2006.

13 NCAC 20 .0303 PROSPECTIVE EMPLOYEES

~~The examiner may perform the screening test for prospective employees or may contract with an approved laboratory for the screening test for prospective employees. The examiner shall contract with an approved laboratory for the confirmation test for prospective employees.~~

History Note: Authority G.S. 95-232; 95-234; Eff. April 1, 2001; Temporary Repeal Eff. November 30, 2006.

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 <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.
Beryl E. Wade
Melissa Owens Lassiter
Joe Webster*

*Beecher R. Gray
Selina Brooks
A. B. Elkins II
Don Overby*

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Steven Forrest Brubaker v. NC Criminal Justice Education and Training Standards Commission	05 DOJ 1405	Elkins	05/31/06	21:01 NCR 158
Jeffrey Michael Quinn v. Criminal Justice Training Standards Comm.	05 DOJ 1406	Elkins	08/04/06	
Christopher Paul Stanfield v. Criminal Justice and Training Standards Commission and Sheriff's Education and Training Standards Comm.	05 DOJ 1520	Wade	08/28/06	
Christopher Paul Stanfield v. Criminal Justice and Training Standards Commission and Sheriff's Education and Training Standards Comm.	05 DOJ 1521	Wade	08/28/06	
Todd Franklin Wyke v. Criminal Justice Education and Training Standards Commission	05 DOJ 2223	Lassiter	09/15/06	
Michael Edward Sutton v. NC Criminal Justice Education & Training Standards Commission	06 DOJ 0012	Morrison	05/09/06	
Philip Lee Holdaway v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0069	DeLuca	08/04/06	
Anthony Lee Davis v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0070	Gray	08/26/06	
Todd Franklin Wyke v. DOJ, Company Police Program	06 DOJ 0146	Lassiter	09/15/06	
Angela Renee Lail v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0228	Gray	08/06/06	21:06 NCR 514
James Woodrow Jacobs v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0229	Gray	07/12/06	
Jason Matthew Lish v. Criminal Justice Education and Training Standards Commission	06 DOJ 0579	Wade	09/12/06	
Christopher Brian Mingia v. Criminal Justice Education and Training	06 DOJ 0598	Wade	09/12/06	

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Standards Commission			
Christopher S. Cummings v. DOJ, Company Police Program	06 DOJ 0696	Gray	08/11/06
Allison M. Burdette v. Company Police Program	06 DOJ 0733	Wade	08/11/06
Amber Lee Baldwin v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0814	Gray	06/26/06
Reginald Warren v. Criminal Justice Education and Training Standards Commission	06 DOJ 0880	Gray	09/08/06
Betty Perry v. Criminal Justice Education and Training Standards Comm.	06 DOJ 0881	Lassiter	09/20/06
Danny Kaye Barham and NC Detective Agency, Inc v. Private Protective Services Board	06 DOJ 0870	Morrison	08/07/06
David L. Willams v. Private Protective Services Board	06 DOJ 0876	Morrison	07/18/06
Donna G. Redding v. Private Protective Services Board	06 DOJ 0877	Morrison	08/01/06
Joseph O. Smiley v. Private Protective Services Board	06 DOJ 0878	Morrison	08/01/06
Amy Pearl King v. Sheriffs' Education and Training Standards Comm.	06 DOJ 1295	Lassiter	10/10/06
<u>DEPARTMENT OF STATE TREASURER</u>			
Percy E. Myers v. Retirement Systems Division, LGERS,	06 DST 0048	Chess	05/31/06
Harry Whisnat v. Teachers' and State Employees' Retirement System of NC, A Corporation, Board of Trustees of the Teachers' and State Employees' Retirement System of NC, A body politic and Corporate, DOT, Retirement Systems Div. and the State of NC	06 DST 0591	Gray	09/19/06
<u>EDUCATION, STATE BOARD OF</u>			
Darrell Wayne Purcell v. State Board of Education	05 EDC 1861	Morrison	10/11/06
Elizabeth Ann Mical v. Department of Public Instruction	05 EDC 1962	Morrison	08/04/06
Margaret Frances Handest v. Dept. of Public Instruction, Center for Recruitment and Retention	05 EDC 2057	Morrison	10/11/06
Linda Ellis v. Dept. of Public Instruction – National Board – Certification	06 EDC 0002	Morrison	10/12/06
Monica Robertson v. Department of Public Instruction	06 EDC 0359	Morrison	08/02/06
Gail G. Brooks v. Department of Public Instruction	06 EDC 0437	Morrison	08/07/06
Reginald Powe v. Public Schools of North Carolina, State Board of Educ. Department of Public Instruction, Superintendent's Ethics Advisory Committee	06 EDC 1116	Elkins	10/03/06
<u>DEPT. OF ENVIRONMENT AND NATURAL RESOURCES</u>			
Howard L. Hardy v. Co. of Craven Department of Health	00 EHR 0803	Gray	06/26/06
Wheatly Oil Company, Inc v. DENR, Div. of Waste Management	03 EHR 0030	Gray	08/04/06
Auddies, Inc v. DENR	03 EHR 1312	Lassiter	10/18/06
Joe L. Wilson v. DENR	03 EHR 1641	Gray	10/09/06
Ronald L. Preston v. Davidson County Health Department	03 EHR 2329	Gray	08/24/06
Auddies, Inc v. DENR	04 EHR 0103	Lassiter	10/18/06
Sandra M. Netting v. DENR	04 EHR 1768	Gray	09/29/06
County of Davidson v. DENR, Div. of Air Quality	04 EHR 0362	Wade	09/01/06
Laney Oil Company, Inc, UST# 04-049P, UST# 04-050P v DENR	05 EHR 0135	Gray	06/20/06
Anton Tomassetti v. DENR, Div. of Air Quality	05 EHR 0321	Gray	06/12/06
Raymond S. Carpenter v. DENR	05 EHR 2009	Bryan	08/28/06
John Graham v. DENR, Div. of Air Quality	05 EHR 2029	Gray	05/08/06
Samuel Buck Kiser v. DENR, Div. of Waste Management	05 EHR 2120	Chess	07/25/06
Christopher S. Anderson, Jan HP Anderson v. Ashe County Health Dept.	06 EHR 0558	Elkins	07/31/06
Heyward Ledford, Wolfpen Associates, Inc. v. DENR	06 EHR 0679	Gray	06/12/06
Parnell-Kinlaw Group, Inc v. DENR, Div. of Land Quality	06 EHR 0743	Mann	09/26/06
Danny Ray Thorpe v. Brunswick Co. Health Dept., Environmental Health Department	06 EHR 1041	Gray	08/07/06
Dianne D. Vereen v. Brunswick Co. Health Department	06 EHR 1126	Elkins	09/27/06
C.F. Little and Patsy H. Little v. DENR	06 EHR 1340	Lassiter	09/22/06
John P. Leonard, Agent for Magnolia Pointe LP v. County of Durham Engineering Department	06 EHR 1568	Gray	10/13/06
<u>DEPARTMENT OF INSURANCE</u>			
James D. Kelly Jr. v. State Health Plan	06 INS 0013	Morrison	08/07/06
Daniel C. Johnson v. Teachers' and State Employees' Comprehensive Major Medical Plan	06 INS 0353	Morrison	07/03/06
<u>OFFICE OF STATE PERSONNEL</u>			
Sgt. Gerry R. Mouzon v. Crime Control & Public Safety, NC State Highway Patrol, and Brian Beatty, Secretary CC & PS	02 OSP 0392	Gray	06/15/06
Sgt. Gerry R. Mouzon v. Crime Control & Public Safety, NC State Highway Patrol, and Brian Beatty, Secretary CC & PS	02 OSP 1036	Gray	06/15/06
Georgia Warren v. DOT	02 OSP 1911	Wade	08/08/06
Georgia Warren v. DOT	02 OSP 2179	Wade	08/08/06
Emily Flores v. College of Agriculture and Life Sciences NC State	04 OSP 1518	Lassiter	10/13/06

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Charles H. Boykin, Jr. v. Halifax County Health Dept.	05 OSP 0851	Gray	09/15/06	
Tiffany Bowick-Richardson v. Fayetteville State University	05 OSP 0901	Lassiter	08/23/06	
Hank L. Silverthorne v. DOT, Bridge Maintenance (Division One)	05 OSP 0291	Gray	05/11/06	
Jeffrey Michael Quinn v. Dept. of Crime Control and Public Safety, State Highway Patrol	05 OSP 1012	Elkins	08/04/06	21:06 NCR 527
Deena Ward v. Columbus Co. Dept. of Social Services	05 OSP 1017	Lassiter	06/23/06	
Alma Chinita Trotter v. DHHS, Public Health Department	05 OSP 1183	Chess	06/01/06	
Tonita Derr Dawkins v. DOC, Alexander Correctional Institution	05 OSP 1449	Gray	07/27/06	
Thomas H. Jones v. NC State Highway Patrol, Dept. of Crime Control & Public Safety	05 OSP 1495	Chess	05/17/06	
W. Frank Etheridge v. DOA, State Capital Police	05 OSP 1771	Lassiter	08/03/06	21:06 NCR 536
Sandra Harris v. DOT	05 OSP 1886	Lassiter	07/13/06	
Marisa Lail Setzer v. Department of Public Instruction	05 OSP 1963	Morrison	08/02/06	
Melissa H. Bailey v. DOT	05 OSP 2119	Wade	06/28/06	
Michael D. Bognanowicz v. NC Wildlife Resources Commission	05 OSP 2024	Bryan	05/18/06	
Malcolm Shelton Davis v. DHHS	06 OSP 0015	Smith	09/12/06	
Kamaria Smith v. DHHS	06 OSP 0130	Mann	06/06/06	
Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0134	Gray	03/29/06	
Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0135	Gray	03/29/06	
Lelia J. Bailey v. Winston-Salem State University	06 OSP 0211	Chess	09/06/06	
Reginald Powe v. Public Schools of NC State Board of Education, Dept of Public Instruction	06 OSP 0238	Lassiter	05/09/06	
Nita Bass v. Craven County Department of Social Services	06 OSP 0346	Lassiter	09/12/06	
Lisa Green v. DOC	06 OSP 0379	Lassiter	06/02/06	
James Walter Gibson v. DOT	06 OSP 0543	Gray	05/19/06	
Caria Faulk v. Columbus Co. Dept. of Social Services	06 OSP 0546	Lassiter	07/06/06	
Robin D. Long v. UNC Greensboro	06 OSP 0684	Lassiter	06/27/06	
Rena Coltraine McLeod v. Guilford Co. Dept. of Public Health	06 OSP 0703	Wade	06/28/06	
Jan-Lee Wells v. Fayetteville Sate	06 OSP 0731	Gray	08/10/06	
Timothy Scott Reynolds v. Morrison Correctional Institution	06 OSP 0803	Lassiter	07/26/06	
Geraldine Blackston-Ramos v. Maurice Boswell, Mary Washun, Cynthia Chamblee, Phyllis Sharpe, Dennis Davis, Bill McNeal, Wake County Public Schools/Human Resource Department/Preventive Services/ Partnership for Educational Success	06 OSP 0831	Morrison	07/12/06	
Rick Van Kerkhove v. DOC	06 OSP 0851	Gray	08/25/06	
Odessa D. Gwynn v. Caswell County Senior Center	06 OSP 0863	Wade	08/26/06	
Juliana W. Smith v. Alamance-Caswell Area Mental Health, Developmental Disabilities, and Substance Abuse Authority	06 OSP 1059	Lassiter	08/09/06	
Dr. Mirian W. McIntosh v. Durham Co. Health Department	06 OSP 1060	Lassiter	08/09/06	
Maria Olea-Lingg v. UNC-Health Care	06 OSP 1143	Lassiter	10/12/06	
Tamra M. Burroughs v. Div. of Services for the Deaf and Hard of Hearing	06 OSP 1280	Elkins	09/07/06	
James D. Abrams v. Craven Co. DOT	06 OSP 1358	Gray	10/13/06	
<u>SECRETARY OF STATE</u>				
Tisha L. Jones v. Dept. of Secretary of State	05 SOS 1987	Gray	05/19/06	
Temeka A. Brooks v. Dept of Secretary of State	06 SOS 0276	Mann	05/26/06	
Laksha England v. Dept. of SOS	06 SOS 0630	Mann	09/13/06	
Brendalyn D. Blackmon v. Dept. of Secretary of State	06 SOS 0701	Wade	08/11/06	
Jennifer Carol Daniels v. Dept. of SOS	06 SOS 1167	Lassiter	10/12/06	
<u>UNC HOSPITALS</u>				
Linda Sisco v. UNC Hospitals	05 UNC 0781	Gray	05/09/06	
Karen H. Moore v. UNC Hospitals	06 UNC 0351	Elkins	06/08/06	
Krista Singletary v. UNC Hospitals	06 UNC 0468	Mann	10/12/06	
Larry E. Rogers v. UNC Hospitals	06 UNC 0697	Elkins	07/31/06	
Cynthia Lodestro v. UNC Hospitals	06 UNC 0707	Wade	08/11/06	
Margaret Branham v. UNC Hospitals	06 UNC 0903	Elkins	09/07/06	
Ta-Wanda & David Wilson v. UNC Hospitals	06 UNC 1084	Lassiter	09/12/06	
Angel C. Carey v. UNC Hospitals	06 UNC 1146	Lassiter	09/07/06	