

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 01 • Pages 1 - 104

July 2, 2007

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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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Rules Division
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424 North Blount Street
Raleigh, North Carolina 27601-2817
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(919) 733-3462 FAX

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Rule Review and Legal Issues

Rules Review Commission
1307 Glenwood Ave., Suite 159
Raleigh, North Carolina 27605
(919) 733-2721
(919) 733-9415 FAX

contact: Joe DeLuca Jr., Staff Attorney joe.deluca@ncmail.net (919) 715-8655
Bobby Bryan, Staff Attorney bobby.bryan@ncmail.net (919) 733-0928

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
(919) 807-4700
(919) 733-0640 FAX

contact: Nathan Knuffman, Economist III nathan.Knuffman@ncmail.net (919)807-4728
Jonathan Womer, Asst. State Budget Officer jonathan.womer@ncmail.net (919)807-4737

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street(919)
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611
(919) 733-2578
(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
Raleigh, North Carolina 27603
(919) 715-2893

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

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

contact: Anita Watkins awatkins@ncmlm.org

NORTH CAROLINA REGISTER
Publication Schedule for January 2007 – December 2007

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

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.



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 118
CONTINUITY OF OPERATIONS PLANNING**

WHEREAS, pursuant to Executive Order No. 102 which remains in effect, good progress has been made in Continuity of Operations and Continuity of Government planning, particularly with regard to identification of alternate work facilities; and

WHEREAS, the possibility of a pandemic influenza event is real and demands planning effort in government as well as the private sector; and

WHEREAS, efforts are well underway to minimize the effects of pandemic influenza on North Carolina citizens; and

WHEREAS, personnel shortages that could result from a pandemic influenza or other widespread disease event have not heretofore been included in Continuity of Operations planning; and

WHEREAS, should multiple State agencies at once need alternate work facilities or to continue work during significant personnel shortages, an overarching Continuity of Operations plan for State Government is necessary to assure a coordinated response; and

WHEREAS, a standard format will lead to more consistent, understandable, and executable Continuity of Operations plans;

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

Section 1. By August 1, 2007, each North Carolina Executive Branch agency (at the Division level) will include in its Continuity of Operations Plan provisions to deal with a pandemic influenza event. Plans will be developed using guidance available from the North Carolina Office of State Personnel, the North Carolina Division of Public Health, and the Federal Emergency Management Agency.

Section 2. The North Carolina State Government Complex Continuity of Operations Plan, dated June 4, 2007, is promulgated by this Order. All North Carolina Executive Branch agencies are directed to cooperate in implementing provisions of this plan.

Section 3. The Secretary of Crime Control and Public Safety, through the Division of Emergency Management is designated executive agent for the North Carolina State Government Complex Continuity of Operations Plan. The Secretary, with necessary coordination, will exercise approval authority for changes to this plan and assure it is reviewed at least annually and updated as necessary. The Department of Administration remains the lead agency for purposes of procuring and assigning alternate facilities to displaced agencies.

Section 4. Agency heads are reminded that an annual review of Continuity of Operations plans is due on November 1 of each year. Continuity of Operations plans are to be updated as necessary. Compliance with this requirement should be documented by reports submitted by November 15 each year from Executive Branch department heads to the Director of Emergency Management.

Section 5. By November 1, 2008, each North Carolina Executive Branch agency will revise its Continuity of Operations plan to conform to a standard format based on guidance from the Federal Emergency Management Agency and provided by the Secretary of Crime Control and Public Safety through the Division of Emergency Management.

Section 6. As with Executive Order No. 102, State agencies outside the Executive Branch and not directly subject to this order are invited and encouraged to comply with this order and to participate fully in the North Carolina Continuity of Operations planning effort.

Section 7. This order, together with Executive Order No. 102, will remain in effect until amended or rescinded.

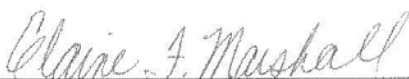
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fourth day of June in the year of our Lord two thousand and seven, and of the independence of the United States the two hundred thirty-first.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

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.

**SUMMARY OF NOTICE OF
INTENT TO AMEND BROWNFIELDS DOCUMENTS
South End Silos, LLC**

Pursuant to N.C.G.S. § 130A-310.34, South End Silos, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Amend Brownfields Documents regarding a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Parties entered into a Brownfields Agreement (the "Agreement") with an effective date of February 14, 2007, regarding property at 2701 Youngblood Street, Charlotte, Mecklenburg County, North Carolina. The Agreement constitutes Exhibit A to the Notice of Brownfields Property recorded in connection with the Agreement at Book 21850, Page 365 of the Mecklenburg County Registry of Deeds. The amendments in question add approximately 0.768 acres, in a right of way abandoned by the City of Charlotte along Griffith Road, to the property covered by the Agreement and the Notice of Brownfields Property. The amendments also set forth soil and groundwater data regarding said property that was not included in the Agreement; and revise the Agreement's land use restrictions. Environmental contamination exists on the Property in groundwater and soil. South End Silos, LLC has renewed its commitment to mixed use redevelopment of the Property that may include commercial, office, retail and residential uses. The Notice of Intent to Amend Brownfields Documents includes: (1) a proposed Amended Brownfields Agreement between DENR and South End Silos, LLC, (2) the Brownfields Agreement between DENR and South End Silos, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (3) a proposed Amended Notice of Brownfields Property.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Public Library of Charlotte & Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202 by contacting Rita Rouse at that address or at (704) 336-2725; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 14 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 10 days after the later of the two dates referenced in the preceding sentence. Thus, if South End Silos, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on July 3, 2007. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to amend the rules cited as 02 NCAC 52J .0203, .0210, .0302.

Proposed Effective Date: November 1, 2007

Public Hearing:

Date: July 18, 2007

Time: 10:00 a.m.

Location: Martin Building, State Fairgrounds, 1025 Blue Ridge Blvd., Raleigh, NC

Reason for Proposed Action: The proposed changes clarify that: separate housing is not required for the unweaned offspring of an animal shelter; that rabies vaccination is not required for animals less than 12 weeks old or that have been in the shelter less than 15 days; ambient temperature requirements do not apply during transit of one hour or less; enclosures must be secured to the vehicle during transit; and other technical and conforming changes.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Comments may be submitted to: David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125 extension 238, fax (919) 716-0090, email david.mcleod@ncmail.net

Comment period ends: August 31, 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 52 - VETERINARY DIVISION

SUBCHAPTER 52J - ANIMAL WELFARE SECTION

**SECTION .0200 - FACILITIES AND OPERATING
STANDARDS**

02 NCAC 52J .0203 OUTDOOR FACILITIES

(a) Primary enclosures and walkways with which an animal comes in contact shall be constructed of sealed concrete or other surfaces impervious to moisture. Gravel may be used if maintained at a minimum depth of six inches and kept in a sanitary manner.

(b) Dogs and cats kept outdoors shall be provided housing to allow them to remain dry and comfortable during inclement weather. Housing shall be constructed of material which is impervious to ~~moisture, moisture~~ and which can be disinfected. One house shall be available for each animal within each ~~enclosure, enclosure~~ except for a mother and its unweaned offspring.

(c) In addition to housing, the enclosure shall provide protection from excessive sun and inclement weather.

(d) Animal owners shall be advised at the time of reservation and admission if the animal will be kept in outside facilities.

(e) A suitable method of drainage shall be provided to rapidly eliminate excess water. The drainage system shall be constructed to prevent cross-contamination among animals.

Authority G.S. 19A-24.

02 NCAC 52J .0210 VETERINARY CARE

(a) A written program of veterinary care to include disease control and prevention, vaccination, euthanasia, and adequate veterinary care shall be established with the assistance of a licensed veterinarian.

(b) If there is a disease problem that persists for more than 30 days at the facility, the facility operator shall obtain and follow a veterinarian's written recommendations for correcting the problem.

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision.

Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained ~~on a Letter of Euthanasia Certification form and kept on file at the facility~~ in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.

Authority G.S. 19A-24.

SECTION .0300 - TRANSPORTATION STANDARDS

02 NCAC 52J .0302 PRIMARY ENCLOSURES USED IN TRANSPORTING DOGS AND CATS

(a) Primary enclosures such as compartments or transport cages, cartons, or crates used to transport cats and dogs shall be constructed, ventilated and designed to protect the health and insure the safety of the animals. Such enclosures shall be constructed or positioned in the vehicle in such a manner that:

- (1) Each animal in the vehicle has sufficient fresh air for normal breathing.
- (2) The openings of such enclosures are easily accessible for emergency removals at all times.
- (3) The animals are adequately protected from the elements.

The ambient temperature shall be maintained between 50 degrees F and 85 degrees F. This provision shall not apply to animals in transit for one hour or less.

(b) Animals transported in the same primary enclosure shall be of the same species. Puppies or kittens less than four months of age shall not be transported in the same primary enclosure with adult dogs and cats other than their dams.

(c) Primary enclosures used to transport dogs and cats shall be large enough for each animal to turn about freely, and to easily stand, sit, or lie down in a natural position. Primary enclosures used to transport dogs and cats shall be secured to the vehicle to prevent sliding or tipping of the enclosure during transit.

(d) Animals shall not be placed in primary enclosures over other animals in transit unless such enclosure is constructed so as to prevent animal excreta from entering lower enclosures.

(e) All primary enclosures used to transport dogs and cats shall be sanitized between use for shipments.

Authority G.S. 19A-24.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to adopt the rules cited as 02 NCAC 52J .0401 - .0420, .0501 - .0502, .0601 - .0609, .0701 - .0705, .0801 - .0803.

Proposed Effective Date: November 1, 2007

Public Hearing:

Date: July 18, 2007

Time: 10:00 a.m.

Location: Martin Building, State Fairgrounds, 1025 Blue Ridge Blvd., Raleigh, NC

Reason for Proposed Action: S.L. 2005-267, s. 11.5, requires the Board of Agriculture to adopt rules on the euthanasia of animals in the possession of an animal shelter, including those operated by local governments. The rules are required to include standards for equipment, procedures, and training of persons who participate in euthanasia of shelter animals.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Comments may be submitted to: David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125 extension 238, fax (919) 716-0090, email david.mcleod@ncmail.net

Comment period ends: August 31, 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 52 - VETERINARY DIVISION

SUBCHAPTER 52J - ANIMAL WELFARE SECTION

SECTION .0400 - EUTHANASIA STANDARDS

02 NCAC 52J .0401 ADOPTION BY REFERENCE

Except as provided in the rules of this Section, any method of euthanasia approved by the American Veterinary Medical Association, Humane Society of the United States or the American Humane Association is hereby incorporated by reference. In all circumstances, the euthanasia method should be selected and used with the highest ethical standards.

Authority G.S. 19A-24(5).

02 NCAC 52J .0402 AUTHORIZED PERSONS

Only a Certified Euthanasia Technician, Probationary Euthanasia Technician, a veterinarian licensed to practice veterinary medicine in North Carolina, or a registered veterinary technician licensed in North Carolina working under the supervision of a licensed veterinarian may euthanize an animal in a certified animal shelter. A Certified Euthanasia Technician shall not euthanize animals using a method for which they are not currently certified except as specified in 02 NCAC 52J .0700.

Authority G.S. 19A-24(5).

02 NCAC 52J .0403 DEFINITIONS

As used in this Subchapter:

- (1) "Certified Euthanasia Technician" means a person employed by a certified facility who has been instructed in the proper methods of humane euthanasia, security and record keeping and possesses other skills as deemed necessary by the Animal Welfare Section.
- (2) "Certified facility" means a certified animal shelter, kennel or pet shop that employs at least one Certified Euthanasia Technician, registered veterinary technician or licensed veterinarian to perform euthanasia on animals at that certified facility.
- (3) "Approved Certified Euthanasia Technician trainer" means a person or organization that received permission from the Animal Welfare Section to provide training to applicants or individuals seeking to be Certified Euthanasia Technicians.
- (4) "Chemical Agent" means any chemical approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association which is used to induce death.
- (5) "Applicant" means a person seeking certification as a Euthanasia Technician.
- (6) "Commercially manufactured chamber" means a chamber built with the intention for sale with the purpose of euthanizing animals, and which meets the requirements of 02 NCAC 52J .0600.

Authority G.S. 19A-24(5).

02 NCAC 52J .0404 CERTIFICATION REQUIREMENTS FOR EUTHANASIA TECHNICIANS

(a) Individuals who perform euthanasia must be trained and qualified as a Certified Euthanasia Technician as set forth in this Rule.

(b) Individuals seeking certification as a Euthanasia Technician shall submit a written application documenting their qualifications to the Animal Welfare Section, North Carolina Department of Agriculture and Consumer Services, 1030 Mail Service Center, Raleigh, NC 27699-1030, on the form provided by the Animal Welfare Section.

(c) The Animal Welfare Section shall receive and review all applications for Euthanasia Technician certification and determine whether or not to issue the individual applicant proof of certification in the form of a printed certificate.

Authority G.S. 19A-24(5).

02 NCAC 52J .0405 CERTIFICATION STANDARDS

Applicants for certification as a Certified Euthanasia Technician shall be at least 18 years of age at the date they receive certification, shall not have been convicted of a felony offense or a crime or infraction involving animal abuse or neglect within 10 years of the date when the applicant applies for certification and shall demonstrate compliance with this Section.

Authority G.S. 19A-24(5).

02 NCAC 52J .0406 APPLICATION REQUIREMENTS

Application requirements:

- (1) a completed and signed application form;
- (2) a document from an approved Certified Euthanasia Technician trainer establishing that the applicant has completed an approved course, passed the course written examination and passed a practical examination in the specific euthanasia techniques for which the applicant is seeking certification;
- (3) the applicant can provide separate documentation of having taken an approved course and passed the written examination and having passed a practical examination given by a different approved Certified Euthanasia Technician trainer;
- (4) each applicant shall specify in the application form the specific euthanasia techniques the applicant is requesting certification.

Authority G.S. 19A-24(5).

02 NCAC 52J .0407 TRAINING AND EXAMINATIONS

(a) Training and examinations for euthanasia certification shall consist of:

- (1) Classroom lecture covering the entire list of subjects in Paragraph (b) of this Rule;

(2) Earning a score of 80 percent correct on a written test provided by the Animal Welfare Section, demonstrating adequate knowledge of the subjects listed in Paragraph (b) of this Rule;

(3) Successfully passing a practical examination in each of the euthanasia methods for which the applicant is seeking certification.

(b) The Animal Welfare Section shall develop Certified Euthanasia Technician training programs and materials or accredit training programs and materials to be offered by other individuals, schools, agencies or veterinary practices. Said programs and materials shall conform to the processes set forth by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association and shall include, but not be limited to, the following topics:

- (1) The theory and history of euthanasia methods and practice;
- (2) Animal anatomy;
- (3) Proper animal restraint, handling and methods for controlling animal stress;
- (4) Proper chemical agent dosages, record keeping and usage documentation, chemical agent, instrument and equipment storage, handling and disposal in accordance with rules and the Code of Federal Regulations;
- (5) Proper injection techniques;
- (6) Proper euthanasia techniques not utilizing injected chemical agents;
- (7) Proper and accurate verification of animal death;
- (8) Proper record keeping;
- (9) Proper disposal of euthanized animals;
- (10) Stress management for euthanasia personnel;
- (11) Proper methods and techniques of euthanasia under extraordinary circumstances; and
- (12) Proper methods, techniques and chemicals inducing anesthesia and sedation in animals prior to euthanasia;
- (13) Proper methods, techniques and chemicals used in the practical examination section for Certified Euthanasia Technician.

(c) The Animal Welfare Section shall prepare written examinations to be given to applicants. Following the classroom training detailed in 02 NCAC 52J .0407, the applicant shall take a written examination provided by the Animal Welfare Section that will be used by the approved trainer. Those passing the written examination in accordance with 02 NCAC 52J .0407 will be eligible for the practical examination of the methods of euthanasia for which the applicant seeks certification.

(d) The applicant must pass a practical examination on each method of euthanasia for which they seek certification.

- (1) Prior to certification the applicant shall euthanize one or more animals in the presence of an approved trainer using the techniques the applicant has listed or intends to list in his or her application for certification. Any animals

used shall be animals previously scheduled for euthanasia.

(2) In the alternative, upon prior written approval by the Animal Welfare Section the practical examination may consist of simulation of the euthanasia technique, using an appropriately anesthetized animal or an Animal Welfare Section-approved animal simulator. The Animal Welfare Section shall determine and render in writing beforehand whether equipment and/or harmless substances as shall be deemed adequate for use in determining the applicant's competency.

(e) Applicants for certification in Euthanasia by Injection shall demonstrate the following knowledge and competencies:

- (1) Correctly calculate chemical agent dosage based upon the species, age, weight and condition of the animal;
- (2) Correctly complete all required documentation;
- (3) Correctly draw the properly calculated chemical dosage into a syringe and needle of a type and size appropriate for the animal;
- (4) Correctly administer the chemical agent to the animal or administer a substance to an approved animal simulator as described in this Section;
- (5) Applicants shall be able to properly perform intravenous and intraperitoneal injections on dogs and intravenous or intraperitoneal injections on cats;
- (6) Knowledge of the medical procedures and drugs necessary for an animal to be euthanized by cardiac injection;
- (7) Demonstrate ability to verify death by:
 - (A) lack of respiration;
 - (B) lack of ocular reflexes;
 - (C) lack of a heartbeat;
- (8) Knowledge about the human health risks associated with the use of chemical agents used for euthanasia including signs and symptoms associated with accidental exposure of the Certified Euthanasia Technician;
- (9) Proper first aid for a person accidentally exposed to chemical agents used for euthanasia.

(f) Applicants for certification in Euthanasia by Gas Inhalation shall meet the standards set forth in this Paragraph:

- (1) Demonstrate proper knowledge of the dangers and human health effects of exposure to carbon monoxide gas;
- (2) Demonstrate proper knowledge about which animals Euthanasia by Gas Inhalation is approved and which species, age, medical or physical conditions make it improper to use Euthanasia by Gas Inhalation;
- (3) Demonstrate proper techniques in placing animals into the chamber;

- (4) Demonstrate adequate knowledge about the maintenance, operation and cleaning of the chamber, fittings, gas cylinder, valves, and other parts of the equipment;
- (5) Demonstrate proper operation of the chamber;
- (6) Demonstrate ability to verify death by:
 - (A) lack of respiration;
 - (B) lack of ocular reflexes;
 - (C) lack of a heartbeat;
- (7) Knowledge about the human health risks associated with the use of carbon monoxide when used for euthanasia. Such knowledge shall also include signs and symptoms associated with accidental exposure of the Certified Euthanasia Technician;
- (8) Proper first aid for a person accidentally exposed to carbon monoxide used for euthanasia.

Authority G.S. 19A-24(5).

02 NCAC 52J .0408 TRAINERS

Training will be provided by the Animal Welfare Section or by companies or individuals meeting the following criteria:

- (1) Possess working knowledge of euthanasia conducted according to this Section;
- (2) Have demonstrated a proficiency in euthanasia of animals;
- (3) Have experience training staff in euthanasia;
- (4) Provide references from individuals or organizations previously trained;
- (5) Information taught shall conform to this Section and the guidelines set forth by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association;
- (6) Shall disclose to their students and the Animal Welfare Section any potential conflicts of interest;
- (7) Shall agree to allow unannounced audit of their instruction and testing by the Animal Welfare Section;
- (8) Prior to providing euthanasia training leading to certification as a Euthanasia Technician, the person or company shall obtain approval before each class for its training program from the Animal Welfare Section.

Authority G.S. 19A-24(5).

02 NCAC 52J .0409 PROBATIONARY EUTHANASIA TECHNICIANS

An individual who has passed the written exam, but has not taken and successfully passed the practical examination may serve as a Probationary Euthanasia Technician under the direct supervision of:

- (1) a licensed veterinarian;

- (2) a registered veterinary technician working under the direct supervision of a licensed veterinarian; or

- (3) Certified Euthanasia Technician

for up to three consecutive months or until such time as the next practical euthanasia exam is conducted, whichever is longer. Certified animal shelters employing probationary euthanasia technicians must notify the Animal Welfare Section no later than five days prior to the probationary euthanasia technician's first day serving in that capacity.

Authority G.S. 19A-24(5).

02 NCAC 52J .0410 EXAM REQUIRED

An individual who has not passed the written exam may not serve as a Certified Euthanasia Technician or Probationary Euthanasia Technician.

Authority G.S. 19A-24(5).

02 NCAC 52J .0411 NEW APPLICATION

If the individual or applicant fails to pass the practical exam a second time and wishes to apply for certification again, the individual shall submit a new application to the Animal Welfare Section, attend an accredited training program, pass the written exam and take and pass a practical examination on euthanasia. The Animal Welfare Section will cancel the application of any applicant who fails the written examination twice.

Authority G.S. 19A-24(5).

02 NCAC 52J .0412 ISSUANCE OF CERTIFICATION

Upon the receipt of materials specified in this Section the Animal Welfare Section shall issue a Certificate.

Authority G.S. 19A-24(5).

02 NCAC 52J .0413 LENGTH OF CERTIFICATION

A Certificate issued by the Animal Welfare Section shall be valid for five years from the date of issuance unless it is revoked pursuant to this Section or upon termination of employment or volunteer status as described in this Section.

Authority G.S. 19A-24(5).

02 NCAC 52J .0414 TERMINATION OF EMPLOYMENT

Upon termination of employment or volunteer status from a certified facility, a Certified Euthanasia Technician shall not perform animal euthanasia in a certified facility until recertified by the Animal Welfare Section. The Certified Euthanasia Technician's certification shall be cancelled effectively upon termination of employment or volunteer status. No later than 10 days from the date of the termination of a Certified Euthanasia Technician's employment or volunteer status at that certified facility the Certified Euthanasia Technician shall complete a form notifying the Animal Welfare Section of the termination of employment or volunteer status and shall return the form and the Certificate to the Animal Welfare Section.

Authority G.S. 19A-24(5).

02 NCAC 52J .0415 NOTICE OF TERMINATION

A certified facility shall notify the Animal Welfare Section in writing, no later than 10 days from the date of the termination of a Certified Euthanasia Technician's employment or volunteer status at that certified facility.

Authority G.S. 19A-24(5).

02 NCAC 52J .0416 RECERTIFICATION

(a) If a former Certified Euthanasia Technician is employed or is accepted as a volunteer at a certified facility before the expiration of his certification, the former Certified Euthanasia Technician and/or employer may request reinstatement of his/her certification from the Animal Welfare Section. The reinstated Certification shall be good for five years from the date of its initial issue.

(b) If a former Certified Euthanasia Technician is employed or is accepted as a volunteer at a certified facility after the expiration of his certification, the former Certified Euthanasia Technician may only euthanize animals under the direct supervision of a licensed veterinarian, registered veterinary technician working under the direct supervision of a licensed veterinarian or currently certified euthanasia technician for three months or until he/she passes practical examination whichever is less. The former Certified Euthanasia Technician and the manager of the certified facility will each notify the Animal Welfare Section within 10 days of the date the former Certified Euthanasia Technician is employed or accepted as a volunteer.

Authority G.S. 19A-24(5).

02 NCAC 52J .0417 CERTIFICATION RENEWAL

Certifications may be renewed every five years provided that:

- (1) within the 12 months immediately preceding the application for certification renewal the Certified Euthanasia Technician has taken and passed a practical examination for each method of euthanasia for which they are seeking certification renewal;
- (2) the applicant receives up-to-date information about the method of euthanasia for which the applicant is seeking certification;
- (3) the applicant receives training in stress management for the employee.

The applicant shall submit an application for certification renewal to the Animal Welfare Section. The application shall be on a form created by the Animal Welfare Section and shall include a document from an approved Certified Euthanasia Technician trainer establishing that the applicant has passed a practical examination in the specific euthanasia techniques for which they are seeking certification.

Authority G.S. 19A-24(5).

02 NCAC 52J .0418 DUTIES

The scope of duties of a Certified Euthanasia Technician shall include, but are not limited to:

- (1) Preparing animals for euthanasia;
- (2) Accurately recording the identification number of the animal, its species, sex, breed description and date, dosages for drugs that are administered and amounts for drugs wasted;
- (3) Ordering euthanasia supplies;
- (4) Maintaining the security of all controlled substances and other approved drugs in accordance with applicable state and federal laws and regulations;
- (5) Directly supervising probationary Euthanasia Technicians;
- (6) Reporting to the appropriate government agencies violations or suspicions of a violation of these Rules or any abuse of drugs;
- (7) Humanely euthanizing animals; and
- (8) Proper and lawful disposal of euthanized animals and expired or unwanted chemical agent(s) or the containers, instruments and equipment used in the administration of approved drugs in accordance with all applicable federal, state and local laws and regulations;
- (9) Properly notify the Animal Welfare Section as required in this Section upon leaving employment or volunteer status at a covered facility.

Authority G.S. 19A-24(5).

02 NCAC 52J .0419 GROUNDS FOR DISCIPLINE – CERTIFIED EUTHANASIA TECHNICIANS

The Department may refuse to issue, renew, or reinstate the certification of a Euthanasia Technician, or may deny, revoke, suspend, sanction, or place on probation, impose other forms of discipline, and enter into consent agreements and negotiated settlements with Certified Euthanasia Technician pursuant to the procedures set forth in G.S. 150B, Article 3, for any of the following reasons:

- (1) Failure to Carry Out Duties. Failure to carry out the duties of a Certified Euthanasia Technician;
- (2) Abuse of Chemical Substances. Abuse of any drug or chemical substance by:
 - (a) Selling, diverting or giving away drugs or chemical substances;
 - (b) Stealing drugs or chemical substances;
 - (c) Misusing chemical substances; or
 - (d) Abetting anyone in the foregoing activities;
- (3) Euthanizing animals without proper supervision;
- (4) Allowing uncertified individuals to euthanize animals;
- (5) Allowing probationary Euthanasia Technicians to euthanize animals outside of the Certified Euthanasia Technician's personal presence;

- (6) Fraud, misrepresentation, or deception in obtaining certification;
- (7) Unethical or Unprofessional Conduct. Unethical or unprofessional conduct means to knowingly engage in conduct of a character likely to deceive or defraud the public. Such conduct includes but is not limited to working in conjunction with any agency or person illegally practicing as a Certified Euthanasia Technician; failing to provide sanitary facilities or apply sanitary procedures for the euthanizing of any animal; euthanizing animals in a manner that endangers the health or welfare of the public; gross ignorance, incompetence or inefficiency in the euthanizing of animals as determined by, but not limited to, the practices generally and currently followed and accepted as approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association; intentionally performing a duty, task or procedure involved in the euthanizing of animals for which the individual is not qualified; and swearing falsely in any testimony or affidavits relating to practicing as a Certified Euthanasia Technician;
- (8) Conviction of any criminal offense as described in this Section;
- (9) Improper Record Keeping. Failure to follow proper record keeping procedures as outlined in these Rules;
- (10) Improper Security and Storage for Approved Chemical Agents. Failure to provide and maintain proper security and storage for approved euthanasia and restraint drugs as established under applicable United States Drug Enforcement Administration and North Carolina Department of Health and Human Services statutes and rules;
- (11) Improper Disposal of Approved Chemical Agents and Equipment. Failure to properly dispose of approved drugs and the containers, instruments and equipment;
- (12) Improper Labeling of Approved Chemical Agents. Failure to properly label approved euthanasia and restraint chemical agents;
- (13) Revocation, Suspension or Limitation. The revocation, suspension, limitation, of a license, certificate or registration or any other disciplinary action by another state or United States jurisdiction or voluntary surrender of a license, certificate or registration by virtue of which one is licensed, certified or registered to practice as a Certified Euthanasia Technician in that state or jurisdiction on grounds other than nonpayment of the renewal fee;
- (14) Failure of any applicant or certificate holder to cooperate with the North Carolina Department

of Agriculture and Consumer Services during any investigation or inspection;

- (15) Any action or omission by the Certified Euthanasia Technician that the Commissioner of the North Carolina Department of Agriculture and Consumer Services believes is contrary to the best interest of the public to continue having the person certified to euthanize animals.

Authority G.S. 19A-24(5).

02 NCAC 52J .0420 CRIMINAL CONVICTIONS

"Conviction of a charge or crime" in this Section means being found guilty, convicted, placed on probation or entering a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure one's own appearance in a criminal proceeding or having received a withheld judgment, prayer for judgment continued or suspended sentence by a court of competent jurisdiction in this state, in a federal court or another state of one or more of the following:

- (1) any felony as defined by federal or state law;
- (2) any criminal act that in any way is related to practicing as a Certified Euthanasia Technician.

Authority G.S. 19A-24(5).

SECTION .0500 - EUTHANASIA BY INJECTION

02 NCAC 52J .0501 AUTHORIZED PERSONS

Only a Certified Euthanasia Technician or person listed as an exception to the Certified Euthanasia Technician requirement shall administer euthanasia by injection.

Authority G.S. 19A-24(5).

02 NCAC 52J .0502 INTRACARDIAC INJECTION

Intracardiac injection shall only be used on animals that have been properly anesthetized or heavily sedated.

Authority G.S. 19A-24(5).

SECTION .0600 - EUTHANASIA BY CARBON MONOXIDE

02 NCAC 52J .0601 CARBON MONOXIDE EQUIPMENT

If carbon monoxide is used for euthanasia, the following requirements shall be met:

- (1) Only commercially compressed, bottled gas shall be used;
- (2) The gas shall be delivered in a commercially manufactured chamber that allows for the individual separation of animals;
- (3) Animals placed inside of the chamber shall be of the same species;

- (4) The chamber shall rapidly achieve a minimum six percent uniform concentration of carbon monoxide;
- (5) Death shall occur within five minutes of beginning the administration of the gas;
- (6) Animals shall remain in the chamber with carbon monoxide for a minimum of 20 minutes.

Authority G.S. 19A-24(5).

02 NCAC 52J .0602 PROHIBITED USES

Carbon monoxide shall not be used to euthanize the following animals:

- (1) Animals that appear to be less than 16 weeks of age;
- (2) Animals that are pregnant;
- (3) Animals that are moderately to significantly clinically ill;
- (4) Animals that are significantly injured;
- (5) Animals that are near death;
- (6) Animals that are geriatric.

Authority G.S. 19A-24(5).

02 NCAC 52J .0603 DEAD ANIMALS

Live animals shall not be placed into a chamber with dead animals.

Authority G.S. 19A-24(5).

02 NCAC 52J .0604 INDIVIDUAL SEPARATION

Animals shall be individually separated within the euthanasia chamber.

Authority G.S. 19A-24(5).

02 NCAC 52J .0605 CHAMBER REQUIREMENTS

- (a) The chamber shall be located in a well-ventilated place, preferably outdoors.
- (b) The chamber shall be of good working order.
- (c) The chamber shall have strong airtight seals around the doors and viewports.
- (d) The chamber shall have at least one port for viewing of the animals during euthanasia.
- (e) The chamber shall be well lit.
- (f) Any chamber electrical wiring or components exposed to carbon monoxide must be warranted by the manufacturer to be explosion proof.
- (g) Any light inside of the chamber shall be shatterproof.
- (h) The chamber shall use exhaust ventilation to evacuate the gas from the chamber before the doors are opened upon completion of the process.
- (i) If the chamber is located outdoors:
 - (1) The exhaust shall be vented well above the operator;
 - (2) The minimum stack velocity shall be at least 3,000 feet per minute;

- (3) If there is a roof above the chamber, the exhaust shall be vented at least three feet above the highest point of the roof;

- (4) The exhaust shall not be located near any building air intakes.

(j) If the chamber is located indoors:

- (1) The exhaust shall be vented to the outdoors at least three feet above the highest point of the roof;

- (2) The exhaust shall not be located near any building air intakes;

- (3) The minimum stack velocity shall be at least 3,000 feet per minute;

- (4) At least two carbon monoxide detectors shall be placed in the room.

Authority G.S. 19A-24(5).

02 NCAC 52J .0606 INSPECTIONS AND RECORDS

(a) Chamber seals, exhaust flow, carbon monoxide monitors and other equipment used in the euthanasia process shall be inspected at least monthly and repaired or replaced as necessary.

(b) Chamber must be inspected at least annually by the manufacturer, an authorized representative or an industrial hygienist knowledgeable about the manufacture and operation of the chamber.

(c) A record shall be made of each inspection recording the results, the date of the inspection, and the name of the person performing the inspection. The record shall be maintained in the policy and procedure manual for at least two years.

Authority G.S. 19A-24(5).

02 NCAC 52J .0607 CLEANING CHAMBER

The chamber shall be well cleaned between uses.

Authority G.S. 19A-24(5).

02 NCAC 52J .0608 OPERATIONAL GUIDES AND INSTRUCTION MANUALS

Current operational guides and maintenance instruction manuals shall be kept in the room with the chamber at all times.

Authority G.S. 19A-24(5).

02 NCAC 52J .0609 PERSONS REQUIRED TO BE PRESENT

The chamber shall not be operated unless a Certified Euthanasia Technician, veterinarian licensed in North Carolina or a registered veterinary technician and one other adult are present at the time of its use.

Authority G.S. 19A-24(5).

SECTION .0700 - EXTRAORDINARY CIRCUMSTANCES

02 NCAC 52J .0701 METHODS OF EUTHANASIA PERMITTED UNDER EXTRAORDINARY CIRCUMSTANCES AND SITUATIONS

An extraordinary circumstance or situation includes but is not limited to a situation which is offsite from the shelter, in which an animal poses a significant or immediate risk to life, limb or public health and in which no alternative, less extreme measure of euthanasia is feasible. It also includes circumstances or situations in which it would be inhumane to transport an animal to another location to perform euthanasia.

Authority G.S. 19A-24(5).

02 NCAC 52J .0702 GUNSHOT OR OTHER METHODS

Under the most extraordinary circumstances and situations which occurs offsite from the shelter a shelter employee may use gunshot or other extreme method of euthanasia.

Authority G.S. 19A-24(5).

02 NCAC 52J .0703 METHODS AND STANDARDS
Methods of euthanasia used under this Section must be approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association for use on that species of animal and must conform to standards set forth by that organization.

Authority G.S. 19A-24(5).

02 NCAC 52J .0704 TECHNICIAN NOT REQUIRED
If such an extraordinary circumstance or situation occurs and euthanasia is necessary, the person performing the euthanasia is not required to be a Certified Euthanasia Technician.

Authority G.S. 19A-24(5).

02 NCAC 52J .0705 REPORTS
If euthanasia is performed under extraordinary circumstances or situations, a report shall be made of the circumstances and kept on file for at least two years. The report shall include the date, time, identification of the animal, the name of the person performing the final euthanasia, the method of euthanasia and the reason for euthanasia of the animal as permitted by this Section.

Authority G.S. 19A-24(5).

SECTION .0800 - POLICY AND PROCEDURE MANUAL

02 NCAC 52J .0801 MANUAL REQUIRED
Any animal shelter performing euthanasia shall have a current policy and procedure manual about euthanasia.

Authority G.S. 19A-24(5).

02 NCAC 52J .0802 CONTENTS
The manual shall set forth the shelter's equipment, process, and the individual separation of animals.

Authority G.S. 19A-24(5).

02 NCAC 52J .0803 ADDITIONAL CONTENTS
The manual shall be kept consistent with the publications listed below and reflect the current information for each. The manual shall include but not be limited to:

- (1) A copy of the most current North Carolina Animal Welfare Act including statutes and rules;
- (2) A copy of the 2000 Report of the American Veterinary Medical Association Panel on Euthanasia and any future revisions, replacements, supplements or changes thereto issued by said organization;
- (3) A current copy of the Euthanasia Training Manual of the Humane Society of the United States;
- (4) If printed, a copy of a publication on euthanasia by the American Humane Association;
- (5) A list of methods of euthanasia allowed at the shelter and the policy and procedures for each method;
- (6) A list of Certified Euthanasia Technicians, the methods of euthanasia in which they have received training, the date of training and the date of expiration of their Certification;
- (7) The name, address and contact information for the veterinarian responsible for the Annual Program of Veterinary Care;
- (8) The name, address and contact information for veterinarians responsible for the veterinary medical care of the animals. The contact information will include telephone numbers for working hours, weekends, nights and holidays;
- (9) Euthanasia procedure to use in emergencies, after hours, holidays and weekends;
- (10) Procedures to follow if no Certified Euthanasia Technician is present and euthanasia of an animal is necessary;
- (11) Methods of verifying death of an animal after a euthanasia process is performed;
- (12) The name and contact information of the supplier of euthanasia materials shall be listed. It shall include but not be limited to:
 - (a) Bottled gas (if applicable);
 - (b) Manufacturer of the chamber used to euthanize animals by inhalant gas (if applicable);
 - (c) Injectable euthanasia solution;
 - (d) Tranquilizer or anesthetic solution;
- (13) Original of DEA certification permitting the use of controlled substances;
- (14) A material safety data sheet for any chemical or gas used for euthanasia in that shelter;
- (15) A material safety data sheet for any anesthetic or tranquilizer used in that facility;
- (16) Notice of the signs and symptoms associated with human exposure to the agents used for euthanasia at the facility;

- (17) Proper first aid for people accidentally exposed to the agents used for euthanasia at the facility;
- (18) Contact information of the physician or medical facility providing medical treatment to employees of the facility. The information shall include but not be limited to the name of the medical facility, the telephone number for both working and after-hours contact and directions to the medical facility from the certified facility including a map. If the medical facility does not provide service after-hours, on weekends or on holidays, there must be contact information as described above for the nearest medical facility, urgent care clinic or emergency room that does provide care during that time.

Authority G.S. 19A-24(5).

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alcoholic Beverage Control Commission intends to adopt the rule cited as 04 NCAC 02S .0237.

Proposed Effective Date: *November 1, 2007*

Public Hearing:

Date: *September 11, 2007*

Time: *10:00 a.m.*

Location: *North Carolina ABC Commission, 3322 Garner Road, Raleigh, NC 27610*

Reason for Proposed Action: *Pursuant to NCGS 18B-403.1, the North Carolina Alcoholic Beverage Control Commission shall provide forms to retailers for the purchase and transportation of kegs by patrons which hold 7.75 gallons or more of malt beverage. A temporary rule was adopted and made effective 12/1/2006. The Commission seeks to make the rule permanent.*

Procedure by which a person can object to the agency on a proposed rule: *Interested persons can comment in written form via fax, email, or US Mail to the contact persons listed below.*

Comments may be submitted to: *Fred Gregory or Tim Morse, NC ABC Commission, 3322 Garner Road, Raleigh, NC 27610, phone (919) 779-0700, fax (919) 661-6165.*

Comment period ends: *September 18, 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 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;
- (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).

Authority G.S. 18B-207; 18B-403.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of the Commissioner of Banks intends to adopt the rules cited as 04 NCAC 03M .0205-.0206 and amend the rules cited as 04 NCAC 03M .0101, .0204, .0301, .0401-.0403, .0501.

Proposed Effective Date: November 1, 2007

Public Hearing:

Date: August 2, 2007

Time: 9:00 a.m.

Location: Office of the Commissioner of Banks, 2nd Floor Hearing Room, 316 W. Edenton Street, Raleigh, NC 27603

Reason for Proposed Action:

04 NCAC 03M .0101 – is amended to change the definition of a "Certified statement of financial condition" to read "Audited statement of financial condition" prepared by a certified public accountant.

04 NCAC 03M .0204 – is amended to remove out-of-date requirement.

04 NCAC 03M .0205 – is to identify the standards the Commissioner shall consider in assessing the financial responsibility of applicants for licensure or renewal of licenses.

04 NCAC 03M .0206 – is to require that surety bonds for licensees remain at the full amount at all times and to require bonding companies to notify the Office of the Commissioner of Banks of any claims reported and/or paid against a licensee's surety bond.

04 NCAC 03M .0301 – is amended to increase fundamentals training for new licensees to 24 hours and to add a quality assurance requirement for providers of training.

04 NCAC 03M .0401 – is amended to change reporting requirements of licensees.

04 NCAC 03M .0402 – is amended to modify the requirements that changes in information be reported to the Commissioner.

04 NCAC 03M .0403 – is amended to modify the requirement that a licensee notify the Commissioner of termination of operations.

04 NCAC 03M .0501 – is amended to modify the records maintenance requirements of a licensee.

Procedure by which a person can object to the agency on a proposed rule: Comments in writing on the proposed rule adoptions and changes are welcomed via letter, fax, or e-mail 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 parties.

Comments may be submitted to: Daniel E. Garner, 316 W. Edenton Street, 4309 Mail Service Center, Raleigh, NC 27699-4309, phone (919)733-4662, fax (919)733-6918, email dgarner@nccob.org.

Comment period ends: August 31, 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 (\geq \$3,000,000) – 04 NCAC 03M .0401

☒ None – 04 NCAC 03M .0101, .0204, .0301, .0402-.0403, .0501

CHAPTER 3 - BANKING COMMISSION

SUBCHAPTER 03M – MORTGAGE LENDING

SECTION .0100 – GENERAL

04 NCAC 03M .0101 DEFINITIONS

As used in this Subchapter, unless a contrary definition is expressly provided or clearly required by the context:

- (1) Terms used in this Subchapter which are defined in the Act shall have the same meaning as set forth in the Act.
- (2) When any term herein is defined by reference to or incorporation of a regulation or rule of a federal or state agency, board, commission or other regulatory body other than the Commissioner, such reference shall be deemed to be to such regulation or rule as the same is in effect and interpreted on the effective date of this Subchapter.
- (3) "Act" means G.S. 53-243.01 through G.S. 53-243.15, commonly known as the "Mortgage Lending Act", as the same may be codified and as amended from time to time.
- (4) "Advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. The term shall include any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a licensee or exempt entity whether disseminated by direct mail, newspaper,

magazine, radio or television broadcast, electronic mail or other electronic means, billboard or similar display. The term shall not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor shall such term include any material or communication which has been excluded for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.

- (5) ~~"Certified"~~ "Audited" statement of financial condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by ~~the preparer~~ a certified public accountant as fairly and accurately reflecting the financial condition of the licensee as of the date specified therein.
- (6) "Commission" means the North Carolina Banking Commission.
- (7) "Continuing education program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
- (8) "Controlling person" means a person who, with regard to a licensee:
 - (a) has the ability to exercise "control", as such term is defined in G.S. 53-243.01(6), or
 - (b) otherwise has the power to direct the management and policy of the licensee.
- (9) "Fundamentals Examination" means the mortgage lending fundamentals examination required by G.S. 243.05(b)(2).
- (10) "Fundamentals program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
- (11) "Instructor" means an individual who is employed by a provider and who is responsible for teaching a program.
- (12) "License" means a mortgage lender, mortgage broker or loan officer license issued pursuant to the Act and this Subchapter.
- (13) "Material" facts or "Material" information are facts or information, or changes in such facts or information, that, if known, would be likely to influence a decision to grant or revoke a license or to take other disciplinary action against a licensee or exempt person.
- (14) "Program" means either a fundamentals or continuing education program.
- (15) "Provider" means any person who provides a program.
- (16) "Testing Service" means an organization selected by the Commissioner to develop and administer the examination.

Authority G.S. 53-243.04.

SECTION .0200 – LICENSING

04 NCAC 03M .0204 EXPERIENCE

~~(a)~~ As used in G.S. 243.05(c)(1), a person shall be considered to have acquired "experience in residential mortgage lending" during any documented period in which:

- (1) that person's employment income was principally derived from employment in the mortgage banking, banking or mortgage brokerage industry; and
- (2) he or she had actual responsibility for job functions in each area of study included in a fundamentals program approved by the Commissioner pursuant to 4 NCAC 03M .0301(c).

~~(b) Persons to whom a mortgage lender or mortgage broker license is issued pursuant to Sections 5(a) or 5(e) of the S.L. 2001-393 shall comply with the minimum experience requirements of G.S. 53-243.05(e) by not later than the date the licensee files for renewal of such license for the July 1, 2003–June 30, 2004 license year.~~

Authority G.S. 53-243.05.

04 NCAC 03M .0205 FINANCIAL RESPONSIBILITY

(a) In order for applicants to be deemed to have the financial responsibility such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly under G.S. 53-243.05(i), the applicant shall:

- (1) If a mortgage banker:
 - (A) provide an audited financial statement that demonstrates a net worth of at least one hundred thousand dollars (\$100,000);
 - (B) provide evidence of warehouse line of credit of one million dollars (\$1,000,000) or other evidence of funding capacity to conduct mortgage originations;
 - (C) demonstrate a history of satisfying debt obligations, as indicated by a trade and/or personal credit report(s) that does not contain evidence of current outstanding judgments or tax liens against applicant, its officers or directors, by creditors within the past seven years; and
 - (D) provide an explanation of the corporate or ownership structure of the applicant, including information regarding any required distributions to investors or owners.
- (2) If a mortgage broker:
 - (A) provide an audited financial statement that demonstrates a net worth of at least twenty-five thousand dollars (\$25,000); and

(B) demonstrate a history of satisfying debt obligations, as indicated by a trade and/or personal credit report(s) that does not contain evidence of current outstanding judgments or tax liens against applicant, its officers or directors, by creditors within the past seven years.

(3) If a loan officer or limited loan officer:

(A) have a Beacon credit score of 600 or greater; and

(B) demonstrate a history of satisfying debt obligations, as indicated by an absence of current outstanding judgments by creditors or tax liens within the past seven years.

(b) Commissioner may, in his discretion, waive any requirement listed in Paragraph (a) of this Rule if he believes the predominant weight of the evidence supports a determination that the applicant has the financial responsibility necessary to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly.

Authority G.S. 53-92; 53-104; 53-243.04; 53-243.05(i).

04 NCAC 03M .0206 SURETY BOND

(a) All licensees with surety bonds under G.S. 53-243.05(f) must ensure that full amount of the surety bond is in effect at all times. In the event of a claim against the bond, licensee shall have 30 days to reinstate the bond to the level required in G.S. 53-243.05(f). Failure to maintain the surety bond at the level required in G.S. 53-243.05(f) shall be grounds for immediate suspension of licensure.

(b) All licensees with surety bonds under G.S. 53-243.05(f) must report any claims made against the surety bond to the Commissioner within 10 business days upon receipt of notice of any claim.

(c) All surety bonds under G.S. 53-243.05(f) shall:

(1) require bonding company to report all claims and any claims paid on the bond to the Commissioner within 10 days of such claim or payment;

(2) require bonding company to pay within 30 days any amount ordered so paid by the Commissioner for failure to faithfully perform the obligations of the licensee; and

(3) remain in effect for a minimum of five years after lapse or termination of new coverage of the bond in order to satisfy possible claims for failure to faithfully fulfill obligations during the term of the bond.

Authority G.S. 53-92; 53-104; 53-243.04; 53-243.05(f).

SECTION .0300 – RECORD AND BOOK-KEEPING REQUIREMENTS

04 NCAC 03M .0301 APPROVAL OF PROVIDERS AND PROGRAMS

(a) A licensee or prospective licensee shall receive credit for participation in a program if it is presented by a provider approved by the Commissioner and the Commissioner has approved the program pursuant to this Rule. The Commissioner shall make available to the public a current listing of approved providers. The list shall indicate whether a provider is approved to present fundamentals programs, continuing education programs, or both.

(b) Any provider desiring to conduct a fundamentals or continuing education program shall, at least 30 days prior to any advertisement, promotion or solicitation of prospective attendees of the program, request that the Commissioner approve the provider's qualifications and approve one or more specific programs. The application shall be upon a form provided by the Commissioner and shall include the following information:

- (1) the name and address of the provider and date(s) on and locations at which the program is to be offered;
- (2) the qualifications and experience of the provider's principal officers, staff, and instructor(s);
- (3) the costs of all programs for which approval is sought; and
- (4) a description of each program for which approval is sought.

A prospective provider will be approved if the Commissioner determines that its general business experience, its knowledge of and experience in the mortgage lending and brokerage industries, its experience in the provision of professional educational presentations and the quality of such presentations warrant belief that its fundamentals or continuing education programs will meet the standards set forth in Paragraphs (c) and (d) of this Rule.

(c) Fundamentals programs must provide prospective loan officer licensees with a basic knowledge of and competency in the following: basics of home purchase and ownership, the mortgage industry generally, loan evaluation and documentation, the operation of a mortgage firm, features of various loan products, state and federally required disclosures, and ethical considerations. Fundamentals programs shall consist of at least 24 hours of classroom instruction.

(d) Continuing education programs must enhance the existing professional competence of the target group of licensees by providing updated information or more detailed or narrowly focused information than the fundamentals program.

(e) The Commissioner's approval of any provider or program shall expire one year from the date of issuance and thereafter on each subsequent anniversary of the renewal date. Application for renewal of provider or program approval must be filed by not later than 60 days prior to each such expiration date.

(f) The Commissioner may deny, revoke, suspend, or terminate approval of any provider or any individual program upon a finding that:

- (1) the provider has refused or failed to comply with any applicable provision of this Subchapter or of any contractual agreement with the Commissioner or has refused or failed to submit in a timely manner information or

- properly completed forms prescribed by the Commissioner; or
- (2) any provider officer or employee has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions; or
 - (3) during any six month period fewer than 50 percent of the provider's fundamentals program students taking the examination for the first time achieve a passing score; or
 - (4) the provider has not conducted at least one fundamentals or continuing education program (as applicable) during the preceding 12-month period; or
 - (5) the provider has knowingly employed in connection with any program any person who has been convicted of any crime described in G.S. 53-243.05(a)(4)(ii) or (iii); or
 - (6) the provider of an on-line or video course fails to provide satisfactory evidence of a control system sufficient to certify that licensees participating in the on-line course have personally accessed the course and have fully met the number of hours required for continuing education requirements.

Authority G.S. 243.05; 53-243.07; 53-243.13.

SECTION .0400 - REPORTING AND NOTIFICATION REQUIREMENTS

04 NCAC 03M .0401 ANNUAL REPORTING REQUIREMENTS

- (a) ~~No later than 90 days after the end of a mortgage banker licensee or mortgage broker licensee's fiscal year, it shall file an annual report. The report shall be filed on a form provided by the Commissioner and shall be supplemented or accompanied by a certified statement of financial condition. the calendar year, mortgage bankers and mortgage brokers shall file an annual report in a format required by the National Mortgage Licensing System, unless the Commissioner determines the report to be burdensome or unnecessary. In addition, the Commissioner may require the annual report to be supplemented with additional information in a form prescribed by the Commissioner.~~
- (b) ~~The annual report required by this Rule shall be verified by the oath of the licensee or a principal officer thereof. Mortgage bankers and mortgage brokers shall provide an audited statement of financial condition within 90 days of the end of the licensee's fiscal year. If not shown in the audited statement of financial condition, mortgage bankers shall provide evidence of available warehouse lines of credit or other funding facilities.~~
- (c) ~~Failure of a licensee to submit an annual report in the manner required by this Rule shall be grounds for discipline pursuant to G.S. 53-243.12. Mortgage bankers and mortgage brokers shall provide information on the characteristics of loan originations in an electronic format prescribed by the Commissioner on a quarterly basis within 45 days after the close of the calendar quarter.~~

(d) Mortgage bankers, mortgage brokers, and loan officers shall report within 30 days the name of any person suspected of making a material misstatement in connection with the mortgage lending process. In addition, mortgage bankers and mortgage brokers shall report within 30 days any loan requested to be repurchased due to a material misstatement made in connection with the mortgage lending process.

Authority G.S. 53-243.04.

04 NCAC 03M .0402 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER

(a) A licensee shall notify the Commissioner within 30 days of any material change in any document or information previously submitted to the Commissioner during the application process, upon renewal, upon filing of the annual statement, or otherwise filed with the Commissioner. For purposes above, a material change includes, but is not limited to:

- (1) notice of a pending administrative action by any state or federal authority to which the licensee is subject;
- (2) an administrative order by any state or federal authority to which the licensee is subject;
- (3) notice of a pending criminal charge against a person licensed under this statute for actions related to financial services; or
- (4) a conviction or other plea agreement on a criminal charge against a person licensed under this statute for actions related to financial services.

(b) Upon a licensee's discovery of an information security breach as defined in G.S. 75-61(14), the licensee shall immediately provide to the Commissioner a copy of any notification which the licensee is required to give under G.S. 75-65.

~~(b)(c)~~ Notification shall be accomplished by letter or by submission of revised pages of the application or annual report filed pursuant to Rule .0201 and .0401, respectively, of this Subchapter.

Authority G.S. 53-243.04.

04 NCAC 03M .0403 TERMINATION OF OPERATIONS

(a) A licensee shall notify the Commissioner in writing of its decision to cease operations as a mortgage banker or mortgage broker in this State, and the anticipated effective date of the cessation of operations, within seven days of such decision.

(b) A mortgage broker or mortgage banker that has not originated a mortgage loan in the prior calendar year shall be considered to have ceased operations. The Commissioner shall suspend the license of any such mortgage broker or mortgage banker, until such time as the mortgage broker or mortgage banker provides reasonable evidence of intent to restart its operations and the Commissioner determines the mortgage broker or mortgage banker satisfies the requirements for licensure under this statute.

Authority G.S. 53-243.04.

**SECTION .0500 - RECORD AND BOOKKEEPING
REQUIREMENTS**

04 NCAC 03M .0501 RECORDS TO BE MAINTAINED

(a) A licensee shall maintain or cause to be maintained a record of all cash, checks or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose.

(b) A licensee shall maintain a record showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker or mortgage lender, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly. Financial records must be kept in a professional manner such as to permit efficient review by examiners.

(c) A licensed mortgage banker or mortgage broker shall maintain a current listing of all mortgage loan applications in a form acceptable to the Commissioner. The licensee shall create and retain a file for each mortgage loan application which shall contain, as applicable, applicant's name, date, name of person taking the application, the application itself, and if closed, the HUD-1 Settlement Statement, copies of the loan note, deed of trust, and copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by State and Federal law.

(d) A licensee shall maintain a record of samples of each piece of advertising relating to the licensee's business of mortgage brokerage or mortgage banking in North Carolina for a period of 12 months.

(e) A licensee shall maintain copies of all contracts, agreements and escrow instructions to or with any ~~depository~~ depository institution, any mortgage lender or mortgage broker, any warehouse lender or other funding facility, any servicer of mortgage loans, and any investor, for a period of not less than three years after expiration of any such contract or agreement.

Authority G.S. 53-243.13.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services intends to adopt the rules cited as 10A NCAC 41B .0322 - .0323, amend the rules cited as 10A NCAC 41B .0101, .0320 - .0321 and repeal the rule cited as 10A NCAC 41B .0311.

Proposed Effective Date: November 1, 2007

Public Hearing:

Date: July 23, 2007

Time: 2:00 p.m.

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action:

10A NCAC 41B .0101 – Definition (6) addresses the removal of dental devices or oral jewelry. Leaving such devices in place has been found to be scientifically sound in that it does not affect breath test results. This will eliminate problematic court challenges. This change will make this rule consistent with 10A NCAC 41B .0502(a)(1). Definition (9) clarifies the actual function of the instruments in "Verify Instrument Accuracy". This function is conducted prior to every subject breath test. The definition will also allow for an "Ethanol Gas Canister" to be used in verifying instrument accuracy. Every Ethanol Gas Canister comes with a traceable certification regarding its content to ensure accurate results. Definition (11) is no longer necessary to define automated instrument.

10A NCAC 41B .0311 – The "Log" is no longer utilized by the Department.

10A NCAC 41B .0320 – This amendment defines the function of this step when conducting the "operational procedures" as defined in .0101 Definitions (9).

10A NCAC 41B .0321 – This amendment defines the function of this step when conducting the Preventive Maintenance procedures, as defined in .0101 Definitions (9).

10A NCAC 41B .0322 – This rule establishes operational procedures for a new evidential breath alcohol instrument to be utilized in testing impaired drivers. This instrument was developed with the latest technology in breath testing instrumentation.

10A NCAC 41B .0323 – This rule establishes Preventive Maintenance procedures for a new evidential breath alcohol instrument to be utilized in testing impaired drivers. This instrument was developed with the latest technology in breath testing instrumentation.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, J.D., the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for this rule.

Comments may be submitted to: Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915, phone (919) 707-5006, email chris.hoke@ncmail.net

Comment period ends: August 31, 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 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41B – INJURY CONTROL

SECTION .0100 – GENERAL POLICIES

10A NCAC 41B .0101 DEFINITIONS

The definitions in G.S. 18B-101, G.S. 20-4.01, G.S. 130A-3 and the following shall apply throughout this Subchapter:

- (1) "Alcoholic Breath Simulator" shall mean a specially designed constant temperature water-alcohol solution bath instrument devised for the purpose of providing a standard alcohol-air mixture;
- (2) "Breath-testing Instrument" shall mean an instrument for making a chemical analysis of breath and giving the resultant alcohol concentration in grams of alcohol per 210 liters of breath;
- (3) "Controlled Drinking Program" shall mean a bona fide scientific, experimental, educational, or demonstration program in which tests of a person's breath or blood are made for the purpose of determining his alcohol concentration when such person has consumed controlled amounts of alcohol;
- (4) "Director" shall mean the Director of the Division of Public Health of the Department;
- (5) "Handling Alcoholic Beverages" shall mean the acquisition, transportation, keeping in possession or custody, storage, administration, and disposition of alcoholic beverages done in connection with a controlled-drinking program;
- (6) "Observation Period" means a period during which a chemical analyst observes the person or persons to be tested to determine that the person or persons has not ingested alcohol or other fluids, regurgitated, vomited, eaten, or smoked in the 15 minutes immediately prior to the collection of a breath specimen; the chemical analyst may observe while conducting the operational procedures in using a breath-testing instrument; dental devices or oral jewelry need not be removed;
- (7) "Permittee" shall mean a chemical analyst currently possessing a valid permit from the Department to perform chemical analyses, of the type set forth within the permit;

- (8) "Simulator Solution" shall mean a water-alcohol solution made by preparing a stock solution of distilled or American Society for Testing and Materials Type I water and 48.4 grams of alcohol per liter of solution. Each 10 ml. of this stock solution is further diluted to 500 ml. by adding distilled or American Society for Testing and Materials Type I water. The resulting simulator solution corresponds to the equivalent alcohol concentration of 0.08;
- (9) "Verify Instrument ~~Calibration~~—"Accuracy" shall mean verification of instrumental accuracy of an approved breath testing instrument or approved alcohol screening test device by employment of a control sample from an alcoholic breath simulator using simulator solution and obtaining the expected result or 0.01 less than the expected result as specified in Item (8) of this Rule; or by employment of a control sample from an ethanol gas canister and obtaining the expected result or 0.01 less than the expected result as specified in Item (10) of this Rule. When the procedures set forth for approved breath testing instruments in Section .0300 of this Subchapter and for approved alcohol screening test devices in Section .0500 of this Subchapter are followed and the result specified herein is obtained, the instrument shall be deemed properly calibrated; accurate;
- (10) "Ethanol Gas Canister" shall mean a dry gas calibrator producing an alcohol-in-inert gas sample at an accurately known concentration from a compressed gas cylinder. The resulting alcohol-in-inert gas sample corresponds to the equivalent concentration of 0.08;
- ~~(11) "Intoxilyzer 5000" is an automated instrument which tests the breath of a person to determine the person's alcohol concentration and prints the results of the analysis on a Test Record Ticket.~~

Authority G.S. 20-139.1(b); 20-139.1(g).

SECTION .0300 - BREATH ALCOHOL TEST REGULATIONS

10A NCAC 41B .0311 LOG

~~(a) Logs shall be kept on forms provided by the Department. Each permittee shall keep a monthly log identifying each individual who submits to or refuses a chemical analysis by completing all identifying information. If no chemical analysis is performed during the month, the permittee shall enter name, permit number, agency, month and write "NONE" across the form. All monthly logs shall be forwarded to the Director and are due by the end of the following month unless otherwise specified in Paragraph (b) of this Rule. However, any log~~

~~identifying a blood analysis shall not be submitted until the result is recorded.~~

~~(b) A permittee who performs chemical analyses of the breath utilizing an automated breath test instrument placed in service for the statewide program administered by the Injury Control Section of the Department shall not be required to comply with Paragraph (a) of this Rule.~~

Authority G.S. 20-16.5(j); 20-139.1(b).

10A NCAC 41B .0320 INTOXILYZER: MODEL 5000

The operational procedures to be followed in using the Intoxilyzer, Model 5000 are:

- (1) Insure instrument displays time and date;
- (2) Insure observation period requirements have been met;
- (3) Press "START TEST"; when "INSERT CARD" appears, insert test record;
- (4) Enter information as prompted;
- (5) Verify instrument ~~calibration; accuracy;~~
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample; and
- (8) When test record ejects, remove.

If the alcohol concentrations differ by more than 0.02, a third breath sample shall be collected when "PLEASE BLOW" appears. Subsequent tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

Authority G.S. 20-139.1(b).

10A NCAC 41B .0321 PREVENTIVE MAINTENANCE: INTOXILYZER: MODEL 5000

The preventive maintenance procedures for the Intoxilyzer Model 5000 to be followed at least once every four months are:

- (1) Verify alcoholic breath simulator thermometer shows 34 degrees, plus or minus .2 degree centigrade;
- (2) Verify instrument displays time and date;
- (3) Press "START TEST"; when "INSERT CARD" appears, insert test record;
- (4) Enter information as prompted;
- (5) Verify instrument ~~calibration; accuracy;~~
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample;
- (8) When test record ejects, remove;
- (9) Verify Diagnostic Program; and
- (10) Verify alcoholic breath simulator solution is being changed every four months or after 125 Alcoholic Breath Simulator tests, whichever occurs first.

A signed original of the preventive maintenance record shall be kept on file for at least three years.

Authority G.S. 20-139.1(b)(b4).

10A NCAC 41B .0322 INTOXIMETER: MODEL EC/IR II

The operational procedures to be followed in using the Intoximeter, Model EC/IR II are:

- (1) Insure instrument displays time and date;
- (2) Insure observation period requirements have been met;
- (3) Initiate breath test sequence;
- (4) Enter information as prompted;
- (5) Verify instrument accuracy;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample; and
- (8) Print test record.

If the alcohol concentrations differ by more than 0.02, a third or fourth breath sample shall be collected when "PLEASE BLOW" appears. Subsequent tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

Authority G.S. 20-139.1(b).

10A NCAC 41B .0323 PREVENTIVE MAINTENANCE: INTOXIMETER: MODEL EC/IR II

The preventive maintenance procedures for the Intoximeter, Model EC/IR II to be followed at least once every four months are:

- (1) Verify the ethanol gas canister displays pressure, or the alcoholic breath simulator thermometer shows 34 degrees, plus or minus .2 degree centigrade;
- (2) Verify instrument displays time and date;
- (3) Initiate breath test sequence;
- (4) Enter information as prompted;
- (5) Verify instrument accuracy;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample;
- (8) Print test record;
- (9) Verify Diagnostic Program; and
- (10) Verify that the ethanol gas canister is being changed before expiration date, or the alcoholic breath simulator solution is being changed every four months or after 125 Alcoholic Breath Simulator tests, whichever occurs first.

A signed original of the preventive maintenance record shall be kept on file for at least three years.

Authority G.S. 20-139.1(b).

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Justice, Campus and Company Police Programs intends to adopt the rule cited as 12 NCAC 02I .0501

and amend the rules cited as 12 NCAC 02I .0202-.0203, .0210-.0212, .0214, .0301, .0304-.0306.

Proposed Effective Date: November 1, 2007

Public Hearing:

Date: July 19, 2007

Time: 9:00 a.m.

Location: Department of Justice, Old Education Building, Room G-22, 114 West Edenton Street, Raleigh, NC 27602

Reason for Proposed Action:

12 NCAC 02I .0202 – Removed note regarding examination questions, clarified the requirement to notify the Company Police Administrator of all criminal offenses for which the officer is arrested for or charged with. This also includes notification of all domestic violence protection orders. Added case law references to define "good moral character." Added requirement for a background investigation to be conducted on all company police applicants.

12 NCAC 02I .0203 – Added the following requirements for application for a company police agency: Commissioning of a department head of a company police agency requires the submission of application materials to the Company Police Administrator; Persons wishing to establish a company police agency must submit a notification form signed by the local district attorney, sheriff and local police chief stating their intent to operate a company agency; submission of two affidavits signed by persons within the community attesting that the corporate officer and director of the corporation of the proposed company police agency are of good moral character; the Company Police Administrator may issue a six month probationary certification to the new agency, during which time the agency must obtain certification of at least one company police officer and obtain a contract for police services with at least one entity.

12 NCAC 02I .0210 – Added requirement that the declaration of insurance statement must be delivered by certified mail at the beginning of each new insurance coverage period.

12 NCAC 02I .0211 – Added as reason for suspension, revocation, or denial of company police agency certification the requirement to maintain at least one employee who is commissioned, other than the department head, as a company police officer, and to maintain at least one contract for services.

12 NCAC 02I .0212 – Clarified reasons a company officer commission can be suspended, revoked, or denied. Added two new reasons: knowingly making a material misrepresentation of information required for the commission, and having been denied certification by the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission, or other similar in or out of state certifying agencies.

12 NCAC 02I .0214 – Grants authority to the Company Police Administrator to utilize summary suspension for the conviction of a felony or a positive result on a drug screening test.

12 NCAC 02I .0301 – Revised requirements for continued company police agency certification and company police officer commission.

12 NCAC 02I .0304 – Revised qualifications of prohibited acts by company police officers, including carrying of a concealed weapon and representing themselves as federal, state, county, or municipal law enforcement officers.

12 NCAC 02I .0305 – Revised the prohibition of a company police officer transferring company police commission form one company police agency to another, and outlines exceptions to the prohibition.

12 NCAC 02I .0306 – Revised requirements for wording on company police officer shoulder patches and company police agency vehicles.

12 NCAC 02I .0501 – New rule outlining requirements for retention of company police officer records by the employing agency.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objection, and the clearly identified portion of the rule which the objection pertains, must be submitted in writing to Vickie Huskey, Company Police Program Administrator, Department of Justice, 114 West Edenton Street, Raleigh, NC 27602

Comments may be submitted to: Vickie Huskey, 114 West Edenton Street, Raleigh, NC 27602, phone (919)716-6470, fax (919)716-6752, email vhuskey@ncdoj.com

Comment period ends: August 31, 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 - OFFICE OF THE ATTORNEY GENERAL

SUBCHAPTER 02I - COMPANY AND RAILROAD POLICE

SECTION .0200 - COMMISSIONING

12 NCAC 02I .0202 MINIMUM STANDARDS FOR COMPANY POLICE OFFICERS

(a) Every company police officer must meet the following requirements to obtain and maintain a company police commission:

- (1) be a citizen of the United States;
- (2) be a high school graduate (means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located), or have passed the General Educational Development Test indicating high school equivalency; A specific exception to this educational requirement is granted to:
 - (A) an applicant who was the holder of a valid company police commission on June 30, 1972; or
 - (B) an applicant properly certified as a law enforcement officer by the Criminal Justice Education and Training Standards Commission on March 14, 1973.

In either case, the exception will not be applicable if the applicant has had more than a 12 month break in service;

- (3) have attained a score of not less than 80 percent on a written examination of basic knowledge of laws of arrest, search, and investigation, and of these Rules to be administered by a representative of the North Carolina Department of Justice;

~~Note: All examination questions will be based on the book Arrest, Search, and Investigation as published by and available from the Institute of Government, the University of North Carolina at Chapel Hill, Chapel Hill, North Carolina 27514, and these Rules.~~

Applicants will be advised in writing of test dates and sites at least five days prior to the examination. In the event an applicant fails to successfully complete the examination, only one re-test will be allowed. Upon an applicant's failure to successfully complete the second test, the applicant must successfully complete accredited Basic Law Enforcement Training coursework prior to re-testing;

- (4) meet the minimum standards for criminal justice officers established by the North Carolina Criminal Justice Education and Training Standards Commission, appearing in Title 12, Chapter 9 of the North Carolina Administrative Code; which Standards are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced material;
- (5) applicants who do not hold general certification as a law enforcement officer issued by the Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission, must submit to and successfully complete a polygraph examination administered by the State Bureau of Investigation;
- (6) be at least 20 years of age;

(7) have produced a negative result on a drug screen administered according to the following specifications:

- (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive test result using a gas chromatography mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
- (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
- (C) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
- (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced material;
- (E) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
- (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Item (8) of this Rule; and
- (G) every agency head shall be responsible for making adequate arrangements for the services of a Medical Review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;

(8) notify the Company Police Administrator in writing of all criminal offenses for which the officer is ~~arrested~~, arrested for or charged with, pleads no contest, pleads guilty, or is found guilty ~~of~~ of, as well as all Domestic Violence

Orders (50B) which are issued by a judicial official. This shall include all criminal offenses except minor traffic infraction offenses and shall specifically include any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). ~~A minor traffic offense is defined, for purposes of this Item, as an offense where the maximum punishment allowable is 60 days or less. The notifications required for an arrest or charge must specify the nature of the offense and date of arrest or charge. The~~ Further notifications required must specify the nature of the offense, the court in which the case was handled and the date of the ~~conviction~~ conviction or adjudication. ~~The~~ All notifications must be received by the Company Police Administrator within ~~30~~ five days of the date of the arrest or charge and case disposition. Applicants and officers required to notify the Company Police Administrator under this Item shall also make the same notification to their Department Head within ~~20~~ 5 days of the date the case was disposed of in court. However, the notification to the Company Police Administrator does not excuse the officer from making an independent notification otherwise required by either the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission. The notifications required by this section shall be required while the application is pending as well as, subsequent to a commission being issued;

- (9) be of good moral character ~~as referred to in G.S. 17C-10(e); within the meaning of: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 appeal dismissed 423 U.S. 076 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny;~~
- (10) not having committed or been convicted of a crime or crimes as specified in 12 NCAC ~~21 .0212(b)~~, 02I .0212(a) or (b), such that the applicant would be ineligible for commissioning as a Company Police ~~officer-officer~~;
- (11) shall submit to a background investigation as specified in 12 NCAC 02I .0205.

(b) the requirements of this rule shall apply to all applications for commission and shall also be applicable at all times during which the officer holds commission with the company police program.

Authority G.S. 74E-4.

12 NCAC 02I .0203 APPLICATION FOR COMPANY POLICE AGENCY

(a) Each company police agency shall complete and submit to the Company Police Administrator the following items and documentation:

- (1) an application form;
- (2) articles of incorporation or other agency originating documentation, which specifies the agency's law enforcement functions;
- (3) names and addresses for all corporate officers and directors;
- (4) a copy of the company police agency's insurance policy, or if self insured, the certificate of self insurance (applicable to non-public entities only);
- (5) a criminal history record check on each corporate officer and director of the corporation through the clerk of superior court in each county where the individual ~~resided or~~ resided, maintained a residence ~~or~~ and place of business over a five year period prior to such application. However, this Rule does not require the agency to submit a criminal history record check on currently commissioned company police officers;
- (6) the appropriate fees as required by 12 NCAC 2I .0206;
- (7) a listing of the names and addresses of all employing businesses and institutions for which the company police agency has contracted with to provide ~~services~~ services;
- (8) application materials, as mandated by the Company Police Program, seeking commissioning of a department head of the company police agency;
- (9) notification form signed by the local District Attorney, Sheriff and if applicable, local Police Chief, for the location where the primary business will be conducted stating their intent to operate as a company police agency;
- (10) at least two affidavits signed by other individuals within the community who have personal knowledge stating that the corporate officer and director of the corporations are of good moral character as defined in 12 NCAC 02I . 0202(a)(9).

(b) Upon submission of the above information, the Company Police Administrator may issue a probationary agency certification which will remain in effect for six months, during which time the agency must obtain certification of at least one company police officer and secure a contract for police services with at least one entity. If the company police agency has not otherwise violated the provisions of this code or of G.S. Chapter 74E, the agency shall be awarded agency certification at the end of the six month period. Should the agency fail to employ at least one company police officer and at least one contract for

services, the probationary certification will automatically expire at the end of the six month period. Upon re-application, the agency will need to resubmit all materials required pursuant to these Rules.

Authority G.S. 74E.

12 NCAC 02I .0210 LIABILITY INSURANCE

(a) Any applicant for a non-public company police agency certification must file with the Company Police Administrator, either a copy of the liability insurance policy or a certificate of self insurance, at the following address:

Company Police Administrator
Company Police Program
Post Office Drawer 310
Raleigh, North Carolina 27602-0310
Telephone: (919) ~~733-2530~~ 716-6472

(b) Any notice of cancellation by an insurance carrier shall be delivered by certified mail, return receipt requested, to the following address:

Company Police Administrator
Company Police Program
Post Office Drawer 310
Raleigh, North Carolina 27602-0310
Telephone: (919) ~~733-2530~~ 716-6472

(c) A declaration of insurance statement shall be delivered by certified mail, return receipt requested, at the beginning of each new insurance coverage period, to the following address:

Company Police Administrator
Company Police Program
Post Office Drawer 310
Raleigh, North Carolina 27602-0310

Authority G.S. 74E-3.

12 NCAC 02I .0211 SUSPENSION, REVOCATION OR DENIAL OF AGENCY CERTIFICATION

(a) A company police agency certification may be suspended, revoked or denied upon a finding that the agency has:

- (1) failed to pay any required fees;
- (2) failed to produce or maintain a copy of a liability insurance policy or a certificate of self insurance;
- (3) failed to meet any of the requirements for certification provided in 12 NCAC 2I .0203;
- (4) failed to provide any of the required documentation pursuant to 12 NCAC 2I .0203;
- (5) failed to allow for the reasonable inspection of the Company Police agency records pursuant to G.S. 74E-4(3);
- (6) failed to ensure compliance by the agency's company police officers of any and all in-service training requirements as specified by 12 NCAC 9E .0100;
- (7) failed to submit the required in-service training compliance reports as required by 12 NCAC 9E .0100;
- (8) failed to submit any and all reports, notification or other information required or

requested by the Company Police Administrator;

- (9) knowingly made a material misrepresentation of any information required for certification or commissioning from the Company Police Administrator or the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;
- (10) knowingly and willfully by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training, certification or commissioning from the Company Police Administrator of the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;
- (11) aided another in obtaining or attempting to obtain credit, training, or certification from the Company Police Administrator, the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission by means of deceit, fraud or misrepresentation or cheating; or
- (12) failed to ensure that any employee not commissioned as a company police officer is not violating a prohibition set forth in 12 NCAC 2I ~~.0304~~ .0304;
- (13) fails to maintain at least one employee who is commissioned as a company police officer and to maintain at least one contract for services.

(b) An agency whose certification has been suspended, revoked, or denied may appeal the action in accordance with the provisions of G.S. 150B.

Authority G.S. 74E-4.

12 NCAC 02I .0212 SUSPENSION, REVOCATION, OR DENIAL OF OFFICER COMMISSION

(a) A company police commission shall be revoked or denied upon a finding that the officer has committed or been convicted of:

- (1) any felony (unless ~~pardoned by the President of the United States or a state Governor~~); granted an unconditional pardon of innocence; or
- (2) any crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Attorney General, or his designee, may revoke, suspend, or deny the commission of a company police officer when the Company Police Administrator finds that the applicant for commission or the commissioned company police officer has committed or been convicted of:

- (1) a crime or unlawful act as defined in 12 NCAC 09A ~~.0103(20)(b)~~ .0103(23)(b) as a Class B misdemeanor and which occurred after the date of initial ~~certification~~; certification (see 12 NCAC 09A .0103(23)(b);
 - (2) a crime or unlawful act as defined in 12 NCAC 09A ~~.0103(20)(b)~~ .0103(23)(b) as a Class B misdemeanor within a five-year period prior to the date of ~~application for certification~~; certification (see 12 NCAC 09A .0103(23)(b);
 - (3) four or more crimes or unlawful acts as defined in 12 NCAC 09A ~~.0103(20)(b)~~ .0103(23)(b) as Class B misdemeanors regardless of the date of commission or ~~conviction~~; conviction (see 12 NCAC 09A .0103(23)(b);
 - (4) four or more crimes or unlawful acts as defined in 12 NCAC 09A ~~(.0103(20)(b)~~ .0103(23)(b) as a Class A misdemeanor, each of which occurred after the date of initial ~~certification~~; or certification (see 12 NCAC 09A .0103(23)(a); or
 - (5) ~~four or more crimes or unlawful acts as defined in 12 NCAC 09A .0103(20)(a) as a Class A misdemeanor except the applicant may be certified if the last conviction or commission occurred more than two years prior to the date of the application for certification. any combination of four or more crimes or unlawful acts defined in 12 NCAC 09A .0103(23)(b) as a Class A misdemeanor or defined in 12 NCAC 09A .0103(23)(b) as a Class B misdemeanor regardless of the date of commission or conviction (see 12 NCAC 09A .0103(23)(b)).~~
- (c) In addition, a company police commission shall be revoked or denied upon a finding that the officer:
- (1) lacks good moral character as referred to in G.S. ~~17C-10(c); 17C-10(c)~~ and 12 NCAC 02I ~~.0202(a)(9);~~
 - (2) fails to meet any of the required minimum standards as specified in 12 NCAC 02I .0202;
 - (3) has been terminated from employment with the company police agency for which the officer is commissioned or is no longer employed with such company police agency;
 - (4) has committed any act prohibited by 12 NCAC 02I ~~.0304; or .0304;~~
 - (5) termination, suspension, or revocation of the certification of the company police agency with which the officer is ~~commissioned~~; commissioned;
 - (6) knowingly made a material misrepresentation of any information required for commissioning or certification from the Company Police Administrator, the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs'

Education and Training Standards Commission; or

- (7) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Sheriff's Education and Training Standards Commission or a similar North Carolina, out of state or federal approving, certifying or licensing agency.

(d) An officer whose certification has been suspended, revoked, or denied may appeal the action in accordance with the provisions of G.S. 150B.

Authority G.S. 74E-4.

12 NCAC 02I .0214 SUMMARY SUSPENSIONS

(a) The Company Police Administrator, through designation by the Attorney General, may summarily suspend the commission of the company police officer before the commencement of proceedings for suspension or revocation of the certification when, in the opinion of the Company Police Administrator, the public health, safety, or welfare requires this emergency action of summary suspension. The Company Police Administrator has determined that the following conditions specifically affect the public health, safety, or welfare, and therefore, the Company Police Administrator may utilize summary suspension when:

- (1) the person has committed or been convicted of a violation of the criminal code which would require a ~~permanent~~ revocation or denial of certification; or
- (2) the person has been convicted of any felony (unless granted an unconditional pardon of innocence) or any crime for which the authorized punishment could have been imprisonment for more than two years; or
- ~~(2)~~(3) the commissioned company police officer fails to satisfactorily complete the minimum in-service training requirements as prescribed in Title 12, Chapter 9 of the North Carolina Administrative ~~Code. Code; or~~
- (4) the commissioned company police officer produces a positive result on a drug screening administered as set out in 12 NCAC 02I .0202(7).

(b) A summary suspension shall be effective on the date specified in the order of the summary suspension or upon the service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain in effect during the proceedings.

(c) Upon verbal notification by the Company Police Administrator that the company police commission of any officer is being summarily suspended by written order, the Department Head of the company police agency shall take such steps as are necessary to ensure that the officer does not perform duties requiring a company police commission through the Attorney General.

Authority G.S. 74E-4; 74E-10; 150B-3.

**SECTION .0300 - CONDUCT OF COMMISSIONED
POLICEMEN**

12 NCAC 02I .0301 TENURE

~~A company police officer commission or company police agency certification shall remain in effect until:~~

- ~~(1) The Attorney General directs termination;~~
- ~~(2) The company police officer ceases to be employed by a company police agency;~~
- ~~(3) The required liability insurance is terminated or suspended by the agency's insurance carrier;~~
- ~~(4) The need for a commission no longer exists;~~
- ~~(5) Evidence is presented that the person has committed an act which would have originally caused denial of the application or an act prohibited by Rule .0304 of this Section; or~~
- ~~(6) The Criminal Justice Education and Training Standards Commission suspends or revokes an officer's certification for cause.~~

(a) A company police agency certification shall remain in effect until:

- (1) The Attorney General directs termination; or
- (2) The required liability insurance is terminated or suspended by the agency's insurance carrier.

(b) A company police officer commission shall remain in effect until:

- (1) The Attorney General directs termination; or
- (2) The company police officer ceases to be employed by a company police agency; or
- (3) The agency by which the officer is employed no longer exists; or
- (4) Evidence is presented that the person has committed an act which would have originally caused denial of the application or an act prohibited by Rule .0304 of this Section; or
- (5) Either the Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission suspends or revokes an officer's certification for cause.

Authority G.S. 74E-4; 74E-6; 74E-10.

12 NCAC 02I .0304 PROHIBITED ACTS

In addition to the prohibited acts set forth elsewhere in these Rules and in Chapter 74E, ~~the following acts are prohibited and may result in civil or criminal action or both: company police officers are prohibited from committing the following acts:~~

- (1) use of excess force while in the performance of their official duties;
- (2) carrying a concealed weapon except:
 - (A) when on his own business property or at home;
 - (B) ~~when employed as a company police officer, while on duty and acting in the discharge of his official duties and while within those property jurisdiction limitations specifically~~

~~set forth and described under G.S. 74E-6; when employed as a company police officer, while on duty and in compliance with NG.S. 14-269(b)(4) and G.S. 74E-6; or~~

(C) when off duty and in compliance with G.S. 14-269(b)(5).

(3) activating or operating a red light in or on any vehicle in this State unless such vehicle is exempted from the provisions of G.S. 20-130.1(b);

(4) activating or operating a blue light in or on any vehicle in this State except:

(A) when operating a motor vehicle used primarily by company or railroad police in the performance of their official duties;

(B) when in property jurisdiction limitations specifically described under G.S. 74E-6; or

(C) when in continuous or immediate pursuit of a person for an offense committed upon real property owned by or in the possession or control of their employer or real property or in the possession and control of a person who has contracted with the employer to provide on-site police security personnel services for the property; or

(D) during the transportation of an arrested, which the company ~~police~~ police agency has taken into custody;

(5) activating or operating a siren when operating any motor vehicle used primarily by any company police agency in the performance of their official duties when outside of the property jurisdiction limitations specifically described under G.S. 74E-6 unless in immediate and continuous pursuit;

(6) representing in any manner at any time that he is a federal, state, county, or municipal law enforcement officer, ~~unless the company police officer is dually certified as one of the classifications listed in this Rule; while in performance of official duties as a company police officer within their territorial jurisdiction;~~

(7) impeding traffic, stopping motorists or pedestrians, or in any manner imposing or attempting to impose his will upon another person as police authority unless:

(A) he is on the property specifically described under G.S. 74E-6; or

(B) when in immediate and continuous pursuit of any person for an offense which occurred within the property jurisdiction limitations specifically described under G.S. 74E-6;

- (8) using or attempting to use authority granted under a company police commission pursuant to this Subchapter outside the political boundaries of North Carolina; or
- (9) violating Rule .0306 of this Section.

Authority G.S. 74E-4; 74E-6.

12 NCAC 02I .0305 TRANSFERS

(a) No individual commissioned as a company police officer can transfer his company police commission from one employing company police agency to ~~another~~, another, except in the following circumstances:

- (1) When a company police officer is separated from a company police agency, the commissioned officer may transfer from the company police agency from which he is separated to another company police agency if there has been less than a 12 month break in law enforcement service. No company police officer may transfer a company police officer commission to another agency while still commissioned with the previous company police agency. Prior to employing the transferring officer, the employing agency shall:
 - (A) verify the commission of the officer with the Company Police Administrator.
 - (B) submit an up-to-date fingerprint check in the same manner as prescribed for non-certified new applicants. No certification will be transferred if the holder has been convicted since initial certification of any offense for which revocation or suspension of certification is authorized.
 - (C) advise the officer that he will be serving under a probationary appointment with the agency for one year.
 - (D) notify the Company Police Administrator, by submitting a Report of Appointment, that the officer is being employed and stating the date on which employment will commence.
- (2) Prior to transfer of a company police commission, the company police officer shall meet all those requirements for transfer set out in 12 NCAC 09C .0306.
 - (A) complete a Medical History Statement Form within one year prior to the transfer to the employing agency.
 - (B) submit to examination by a physician licensed to practice medicine in North Carolina in the same manner

prescribed for non-certified new applicants in 12 NCAC 9B .0104 within one year prior to the transfer to the employing agency.

- (C) submit results of the physical examination to the employing agency for placement in the officer's permanent personnel file.
- (D) produce a negative result on a drug screen administered according to the specifications outlined in 12 NCAC 09B .0101(5).
- (E) submit a copy of the Commission's annual in-service training report form to the employing agency for placement in the officer's permanent personnel file when the duty and off duty weapon(s) remain the same as those previously used to qualify. Such in-service training compliance must have occurred within the 12 month period preceding transfer or satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 9E .0105 and .0106.
- (3) Officers previously commissioned who were not previously required to meet the educational or basic training requirements are not required to meet such requirements when laterally transferring to another agency with less than a 12-month break in law enforcement service. If an individual has been separated from a company police agency for greater than 12 months, that individual may not transfer his commission and must comply with the rules for application for company police commission.

Authority G.S. 74E-4; 74E-6.

12 NCAC 02I .0306 BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION

(a) Badges:

- (1) All company police officers shall, when on duty, wear a badge bearing the name of the certified company police agency and the general title of Company Police Officer or the specific title of:
 - (A) Railroad Police officer; or
 - (B) Campus Police Officer; or
 - (C) Special Police Officer.
- (2) The badge is to be carried at all times by the company police officer. The badge shall always be worn in plain view, except in situations where the officer's weapon is concealed under the provisions set forth in Rule .0304 of this Section.

- (3) No identification card shall be issued to or possessed by any company police officer except in the form of identification issued to the officer by the Attorney General.
- (b) Uniforms:
- (1) All company police officers shall, when on duty, wear the uniform of the company police agency unless directed to wear other attire by the Department Head.
 - (2) When wearing civilian attire, the company police officer shall comply with 12 NCAC 2I .0306(a).
 - (3) Those company police agencies which employ both company police commissioned and non-commissioned security personnel shall provide the commissioned company police officers with a uniform of a different color that would clearly distinguish the company police officer from other employees of the agency.
 - (4) The uniform of the company police officer shall bear shoulder patches that contain:
 - (A) the terms "Railroad Police Officer," "Campus Police Officer," ~~or "Special Police Officer";~~ "Special Police Officer," or "Company Police Officer"; and
 - (B) the name of the company police agency.
- (c) Vehicles:
- (1) Each marked vehicle used by a company police agency subject to this Rule shall prominently display the agency name and one of the following agency classifications: "Railroad Police," ~~Campus~~ "Campus Police," ~~or "Special Police";~~ "Special Police," or "Company Police".
 - ~~(2)~~ The agency classifications required by 12 NCAC 02I .0306(c)(1) shall be of uniform size with any other writing on the company police vehicle.
 - ~~(2)(3)~~ The Department Head shall ensure that employees who have not been commissioned as company police officers do not operate any marked vehicle used by the company police agency.
 - ~~(3)(4)~~ The Department Head shall ensure that employees who are not commissioned as a company police officer do not operate any company police vehicle with a blue light contained therein.
 - ~~(4)(5)~~ The Department Head shall ensure that any marked company police agency vehicle is not operated outside of those property jurisdiction limitations set forth in G.S. 74E-6, unless such operation is performed by an on-duty officer in the performance of his official duties and authorized by the Department Head.
- (d) Except as provided in Paragraph (e) of this Rule, all company police agencies shall comply with the provisions of

this rule for badges, vehicles, uniforms, and other equipment no later than ~~July 1, 1994.~~ January 1, 2008.

(e) The requirements contained in this Rule shall not apply to those agencies and commissioned officers who are regulated by the Tennessee Valley Authority, United States Nuclear Regulatory Commission, or the Railroad Police Certification Act of 1990.

Authority G.S. 74E-7.

SECTION .0500 – AGENCY RECORD RETENTION

12 NCAC 02I .0501 AGENCY RETENTION OF RECORDS OF COMMISSION

Each agency shall place in personnel files the official notification from the Company Police Administrator of either probationary or general certification for each company police officer employed or appointed by the agency. Such files shall be available for examination at any reasonable time by representatives of the North Carolina Criminal Justice Education and Training Standards Commission for the purpose of verifying compliance with these Rules. The personnel files shall also contain those documents required by Appendix II of the Company Police Department Head Manual, which is provided to each agency by the Company Police Administrator.

Authority: G.S. 74E-4.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Soil and Water Conservation Commission intends to adopt the rules cited as 15A NCAC 06I .0101 - .0106.

Proposed Effective Date: December 1, 2007

Public Hearing:

Date: July 17, 2007

Time: 6:00 p.m.

Location: Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC 27604

Reason for Proposed Action: *This rule is being proposed in order to set forth procedures for the Soil and Water Conservation Commission to implement and supervise the Community Conservation Assistance Program (CCAP) in accordance with Session Law 2006-78. CCAP is designed to support the installation of water quality best management practices on non-agricultural lands. CCAP will focus its efforts on retrofitting stormwater BMPs on existing land uses. It will not be used to assist new development sites to meet state and federal stormwater mandates. CCAP will work in cooperation with local Soil and Water Conservation districts to encourage local governments, individual landowners, and businesses to incorporate stormwater BMPs within their landscape to reduce*

the input of nonpoint source pollution into the waters of the State.

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 August 31, 2007. The Hearing Officer may limit the length of time that you may speak at the public hearing so that all those who wish to speak may have an opportunity to do so. The Soil and Water Conservation Commission is very interested in all comments pertaining to the proposed rules. All persons interested and potentially affected by the proposed rules are strongly encouraged to read this entire notice and make comments. The Soil and Water Conservation Commission 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 (General Statute 150B 21.2(g)). Written comments may be submitted to Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, vernon.cox@ncmail.net or fax at (919) 715-3559.*

Comments may be submitted to: *Vernon Cox, DENR-Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, fax (919) 715-3559*

Comment period ends: *August 31, 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 - SOIL AND WATER CONSERVATION
COMMISSION**

**SUBCHAPTER 06I – COMMUNITY CONSERVATION
ASSISTANCE PROGRAM FOR NONPOINT SOURCE
POLLUTION CONTROL**

**SECTION .0100 – COMMUNITY CONSERVATION
ASSISTANCE PROGRAM**

15A NCAC 06I .0101 PURPOSE

This Subchapter describes the operating procedures for the division under the guidance of the commission implementing the Community Conservation Assistance Program for Nonpoint Source Pollution Control. Procedures and guidelines for participating districts are also described. The purpose of the voluntary program is to reduce the delivery of nonpoint source (NPS) pollution into the waters of the State.

Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294.

**15A NCAC 06I .0102 DEFINITIONS FOR
SUBCHAPTER 06I**

The following terms used in this Subchapter have the following meanings:

- (1) Nonpoint Source (NPS) Pollution means pollution originating from a diffuse source.
- (2) Allocation means the annual share of the state's appropriation to participating districts.
- (3) Applicant means a person(s) who applies for best management practice cost sharing monies from the district. An applicant may also be referred to as a cooperator.
- (4) Average Costs means the calculated cost, determined by averaging recent actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required for physical installation of a practice.
- (5) Best Management Practice (BMP) means a practice used to reduce nonpoint source inputs to receiving waters, including both those types of practices which are structural or nonstructural management practices.
- (6) Conservation Plan of Operation (CPO) means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the operating unit.
- (7) Cost Share Agreement means an annual or long term agreement between the applicant and the district which defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.
- (8) Cost Share Incentive (CSI) means a predetermined fixed payment paid to an applicant for implementing a nonstructural management BMP in lieu of cost share on a structural practice.

- (9) Cost Share Rate means a cost share percentage paid to an applicant for implementing BMPs.
- (10) Detailed Implementation Plan means the plan approved by the commission that specifies the guidelines for the current program year pursuant to the Rules of the Commission.
- (11) District BMP means a BMP designated by a district to reduce the delivery of NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.
- (12) Encumbered Funds means monies from a district's allocation, which have been committed to an applicant after initial approval of the cost share agreement.
- (13) Full Time Equivalent (FTE) means 2,080 hours per annum which equals one full time technical position.
- (14) In-kind Contribution means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and can include but not be limited to labor, fuel, machinery use, and supplies and materials necessary for implementing the approved BMPs.
- (15) Landowner means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but does not include an estate at will or by sufferance in land. Furthermore, a governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of these Rules if the governmental agency holds an easement in land.
- (16) Program Year means the period from July 1 through June 30 for which funds are allocated to districts.
- (17) Proper Maintenance means that a practice(s) is being maintained such that the practice(s) is successfully performing the function for which it was originally implemented.
- (18) Strategy Plan means the annual plan for the Community Conservation Assistance Program for Nonpoint Source Pollution Control to be developed by each district. The plan identifies

pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.

- (19) Technical Representative of the district means a person designated by the district to act on their behalf who participates in the planning, design, implementation and inspection of BMPs. These practices shall be technically reviewed by the Division. The district chairman shall certify that the technical representative has properly planned, designed and inspected the BMPs.
- (20) Unencumbered Funds means the portion of the allocation to each district, which has not been committed for cost sharing.

Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294.

15A NCAC 06I .0103 ALLOCATION GUIDELINES AND PROCEDURES

(a) The Commission shall allocate the cost share funds to the districts in the designated program areas. To receive fund allocations, each district designated eligible by the commission shall submit an annual strategy plan to the commission at the beginning of each fiscal year. Funds may be allocated to each district and the Division for any or all of the following purposes:

- (1) cost share and cost share incentive payments,
- (2) technical assistance and administrative assistance, and
- (3) statewide or local education and outreach activities.

(b) The Commission shall consider the relative needs of the program for BMP implementation, local technical assistance, and education to determine the proportion of available funds to be allocated for each eligible purpose prior to allocating funds to districts and the Division.

(c) Funds for cost share and cost share incentive payments shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that sufficient funds are available to justify a reallocation. Districts shall be allocated monies based on the identified level of nonpoint source pollution problems and the respective district's BMP installation goals as demonstrated in the district annual strategy plan. The allocation method used for disbursement of funds is based on the relative position of each respective district for those parameters approved by the Commission pursuant to Sub-Paragraph (c-9) of this rule. Each district is assigned points for each parameter, and the points are totaled and proportioned to the total dollars available under the current program year funding according to the following formula:

$$\begin{array}{lcl}
 \text{(1)} & & \\
 \text{Sum of Parameter Points} & & \equiv \frac{\text{Total Points}}{\text{Points}} \\
 \\
 \text{(2)} & & \\
 \frac{\text{Percentage Total Points}}{\text{Each District}} & \times & \frac{\text{Total Dollars Available}}{\text{District}} \equiv \frac{\text{Dollars Available to Each District}}{\text{District}}
 \end{array}$$

- (3) The minimum allocated to a particular district shall be one thousand five hundred dollars (\$1,500) per program year, unless the district requests less than one thousand five hundred dollars (\$1,500).
- (4) If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds beyond those requested by the district are shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.
- (5) 95 percent of the total program funding shall be allocated to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to be used to respond to an emergency or natural disaster. If the funds are not needed to respond to an emergency, then the contingency fund will be allocated at the March meeting of the Commission.
- (6) The Commission may recall funds allocated to a district during a fiscal year that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.
- (7) At any time a district may submit a revised strategy plan and apply to the Commission for additional funds.
- (8) CPOs that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on the first Wednesday in June.
- (9) Districts shall be allocated funds based on their respective data for each of the following parameters:
 - (A) Relative rank of the number of miles of stream identified as less than fully supporting due to nonpoint source pollution as reported in the state's 303(d) list, 305(b) report, and basin plan, where the source of pollution is not solely due to agriculture. (20%)
 - (B) Relative rank of the Percentage of the county draining to waters classified as Outstanding Resource Waters, High Quality Waters, Trout, or

Shellfishing (open) on the current schedule of Water Quality Standards and Classifications. (20%)

- (C) The percentage of each county covered by NPDES Phase I and Phase II requirements. (20%)
- (D) Relative rank of population density for the county. (20%).
- (E) Relative susceptibility-weighted ranking of the county's land that is located within drinking water assessment areas and/or wellhead protection areas, as delineated by the Public Water Supply Section of the Division of Environmental Health.(20%)
- (F) Susceptibility weighting factors for parameter e. above shall be 0.9 for lower susceptibility, 1.0 for moderate susceptibility, and 1.1 for higher susceptibility with the susceptibility rating for each public water supply being determined by the Public Water Supply Section of the Division of Environmental Health.

(d) The funds available for technical and administrative assistance shall be allocated by the Commission based on the recommendation of the Division and the needs as expressed by the district and needs to accelerate the installation of BMPs in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance. Districts must provide an itemized budget to the division in order to qualify for technical assistance funds. N. C. Community Conservation Assistance Program technical assistance funds may be used for technical assistance with the district matching at least 50 percent of the total. Matching funds for district technical assistance shall be approved by the Commission prior to any expenditure of funds. The allocation method used for disbursement of funds is based on the relative position of each respective district for those parameters approved by the Commission pursuant to sub-paragraph (d-4) of this rule. Each district is assigned points for each parameter, and the points are totaled and proportioned to the total dollars available under the current program year funding according to the following formula:

(1) Sum of Parameter Points

$\equiv \frac{\text{Total Points}}{\text{Total Points}}$

(2) Percentage Total Points x Total Dollars Available Each District

$\equiv \frac{\text{Dollars Available to Each District}}{\text{Dollars Available to Each District}}$

- (3) If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds beyond those requested by the district are shall be

allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.

- (4) Priority for funding shall be based upon the following parameters:
- (A) Whether the position is presently funded by Community Conservation Assistance Program technical assistance funds (25%).
- (B) The proportion of Community Conservation Assistance Program funds for cost share and cost share incentive allocated to districts served by this technical assistance request (normalized to 1 to 100 scale) (50%), and
- (C) The amount of additional funds leveraged by grants and other funds committed to districts served by this technical assistance request (normalized to 1 to 100 scale) (25%).
- (5) Subject to availability of funds and local match, provide support for technical assistance for every district.
- (6) District technicians may be jointly funded by more than one district to accelerate the program in each participating district. Each district must be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the division by all concerned

districts and the division shall cost share to the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position must be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) shall be paid to one district only.

- (7) Funds, if available, may be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and shall be matched with in-kind funds of an equal amount from the district.

(e) The funds available for the education and outreach purpose shall be allocated by the Commission based on the recommendation of the Division and the needs as expressed by the district and needs to accelerate the installation of BMPs in that respective district. Districts and the Division may use these funds for holding workshops for potential applicants and for developing, duplicating, and distributing outreach materials or signs. Districts must provide an itemized budget to the Division in order to qualify for education and outreach funds. Education and outreach funds shall be allocated to each district in accordance with the following formula:

- (1) Each district shall receive the lesser of one thousand dollars (\$1,000) or the result of the following equation:

$$\frac{\text{Total Dollars Available}}{\text{Requested by Each District}} \times \frac{\text{Total Dollars Requested by All Districts}}{\text{Total Dollars Available}} = \frac{\text{Dollars Available to Each District}}{\text{Total Dollars Available}}$$

- (2) If more funds are available for allocation than are requested by districts or the Division, then the excess funds shall be added to the funds to be allocated for cost share and cost share incentive payments.

Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294.

15A NCAC 06I .0104 BEST MANAGEMENT PRACTICES ELIGIBLE FOR COST SHARE PAYMENTS

(a) BMPs eligible for cost sharing will be restricted to those BMPs listed in the Detailed Implementation Plan approved by the commission for the current program year. BMPs shall meet the following criteria to be listed in the Detailed Implementation Plan:

- (1) All eligible BMPs must be designed to reduce the input of nonpoint source pollution into the water courses of the state.
- (2) Information establishing the average cost of the specified BMP must be available. District BMPs may use actual costs as indicated by receipts, if average costs are not available.
- (3) Eligible BMPs shall have adequate technical specifications as set forth in Paragraph (b) of this Rule.

(b) BMP definitions and specifications shall be determined by the Commission using the process outlined in "15A NCAC 06H .0103 Approval of Best Management Practices."

Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294.

15A NCAC 06I .0105 COST SHARE AND INCENTIVE PAYMENTS

(a) Cost share and incentive payments shall be made through Cost Share Agreements between the district and the applicant.

(b) For all practices except those eligible for CSI, the state shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivision (4) of G.S. 143-215.74(M-b), and the applicant shall contribute the remainder of the cost. In-kind contributions by the applicant shall be included in the applicants' cost share contribution. In-kind contributions shall be specified in the agreement for cost sharing and shall be approved by the district.

(c) CSI payments shall be limited to a maximum of three years per applicant per incentive practice.

(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triennially by the Division for approval by the Commission.

(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivision (4) of G.S. 143-215.74(M-b).

(f) Cost share payments to implement BMPs under this program may be combined with other funding programs, as long as the combined cost share rate does not exceed the amount and percentages set forth in Paragraphs (b) and (e) of this Rule. Community Conservation Assistance Program funding shall not exceed the maximum cost share percentages shown in subdivision (4) of G.S. 143-215.74(M-b).

(g) Use of cost share payments is restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's land is not located solely within a county, the entire tract, if contiguous, shall be eligible for cost share payments.

(h) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or amounts less than the maximum allowable in subdivision (4) of G.S. 143-215.74(M-b) if:

- (1) The Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants;
- (2) The district establishes other criteria in its annual strategy plan for cost sharing percentages or amounts less than those allowable in subdivision (4) of G.S. 143-215.74(M-b).

(i) For purposes of determining eligible payments under practice-specific caps described in the detailed implementation plan, all business entities with which the applicant is associated by ownership or partnership interest, including those in other counties, shall be considered the same applicant for purposes of calculating caps.

Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294.

15A NCAC 06I .0106 TECHNICAL ASSISTANCE FUNDS

(a) Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel and mileage or for a contracted technical employee.

(b) Technical assistance funds may not be used to fund provision of service by any technical assistance local district personnel who do not meet the following minimum requirements:

- (1) associates degree in engineering, agriculture, forestry or related field, or
- (2) high school diploma with two years experience in the fields listed in Rule .0106(c)(1) of this Section, or

(c) Cost shared positions must be used to accelerate the program activities in the district. A district technician cost shared with program funds may work on other activities as delegated by the field office supervisor but the total hours charged to the program by field office personnel must equal or exceed those hours funded through the program. Also, these hours must be in addition to those hours normally spent in BMP planning and installation by district personnel.

Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0201.

Proposed Effective Date: *November 1, 2007*

Public Hearing:

Date: *July 23, 2007*

Time: *2:00p.m.*

Location: *NC Wildlife Resources Commission Meeting Room, 5th floor, 1751 Varsity Drive, Raleigh, NC 27606*

Reason for Proposed Action: *Conform state safety equipment regulations to federal safety equipment regulations consistent with General Statutes 75A-6, Title 46 CFR Part 25 and Title 33 CFR Part 175.*

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, joan.troy@ncwildlife.org.*

Comment period ends: *August 31, 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 10F - MOTORBOATS AND WATER
SAFETY**

**SECTION .0200 - SAFETY EQUIPMENT AND
ACCIDENT REPORTS**

15A NCAC 10F .0201 SAFETY EQUIPMENT

(a) Federal Regulations Adopted. As its regulations governing required equipment of vessels as defined in G.S. 75A-2(5), pursuant to G.S. 75A-6, the Wildlife Resources Commission adopts the following federal regulations, to be applicable to vessels operated on all waters of this state as defined by G.S. 75A-2(6): Code of Federal Regulations, Title 46, Part 25, and Title 33, Part 175, as supplemented by the Federal Register. To the extent that the vessel equipment requirements of G.S. 75A-6 conflict with these federal regulations, they are hereby modified to conform to the federal regulations as authorized by G.S. 75A-6(m).

~~(b) Vessels of 10 Horsepower or Less. On waters of this State not subject to the jurisdiction of the United States, vessels propelled by machinery of 10 horsepower or less, in lieu of the foregoing requirements, may carry from one half hour after sunset to one half hour before sunrise a white light in the stern or have on board a hand flashlight in good working condition which shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision. On waters of this State that are subject to the jurisdiction of the United States, this exception, though permissible under state law, is not sanctioned by any federal law or regulation.~~

Without limitation to the adoption of the Federal regulations named herein, the rules set forth in Paragraph (b) through (e) of this Rule shall apply to vessels operating in State waters.

(b) Personal Flotation Devices (hereinafter referred to as PFDs).

- (1) No person may operate a vessel unless at least one PFD of the following types is on board and readily accessible for each person:
 - (A) Type I PFD;
 - (B) Type II PFD; or
 - (C) Type III PFD.

- (2) No person may operate a vessel 16 feet or more in length unless one type IV PFD is on board and immediately available for use, in addition to the total number of PFDs required in Subparagraph (1) of this Paragraph.

- (3) No person may operate a vessel while such vessel is underway with any child under 13 years old aboard unless each such child is:
 - (A) wearing an appropriate PFD approved by the Coast Guard; or
 - (B) below decks or in an enclosed cabin.

This does not apply to a vessel that is registered as a commercial vessel.

- (4) A Type V PFD may be carried in lieu of any PFD required under Subparagraph (b)(1) of this Rule provided: the approval label for the Type V PFD indicates that the device is approved for the activity in which the vessel is used; or as a substitute for a PFD of the Type

required on the vessel in use; or the PFD is used in accordance with the requirements on the approval label, and the PFD is used in accordance with the requirements in it's owners manual, if the approval label makes reference to such a manual.

- (5) No person may operate a vessel unless each required PFD is:

- (A) in serviceable condition,
- (B) of appropriate size and fit for the intended wearer, and
- (C) USCG approved, and
- (D) legibly marked with its approval number, as specified in CFR Title 46 Part 25 and CFR Title 33 Part 175.

(c) Fire Extinguishers

- (1) All motorboats shall carry at least the minimum number of USCG approved hand portable fire extinguishers specified in this rule if any one of the following conditions exist:

- (A) Closed compartments under thwarts and seats wherein portable fuel tanks may be stored,
- (B) double bottoms not sealed to the hull or which are not completely filled with flotation material,
- (C) closed living spaces,
- (D) closed stowage compartments in which combustible or flammable materials are stowed,
- (E) permanently installed fuel tanks, or
- (F) motorboats of Class 2 or longer.

- (2) Motorboats of Class A and 1 (less than 26 feet): One Type B-I

- (3) Motorboats of Class 2: Two Type B-I extinguishers

- (4) Motorboats of Class 3: Three Type B-I extinguishers

- (5) One Type B-II hand held fire extinguisher may be substituted for two B-I hand portable fire extinguishers. A fixed fire extinguishing system installed in the engine compartment is equal to one Type B-I hand portable fire extinguisher.

Exemption to fire extinguisher requirements: Open Vessels. Vessels less than 26 feet in length, propelled by outboard motors and not carrying passengers for hire, need not carry such portable fire extinguishers if the construction of such motorboats will not permit the entrapment of explosive or flammable gases or vapors.

(d) Every engine installed in a vessel using gasoline as fuel must be equipped with an acceptable means of backfire flame control, except outboard motors. An acceptable means of backfire flame control meets the requirements of CFR Title 46 Part 25 and CFR Title 33 Part 175.

(e) Every vessel, except those Open Vessels defined in Paragraph (c) of this Rule, using as fuel any liquid of a volatile nature, shall be provided with such means of properly and efficiently ventilating the bilges of the engine and fuel tank

compartments so as to remove any explosive or inflammable gases. Proper and efficient ventilation meets the requirements of CFR Title 46 Part 25 and CFR Title 33 Part 175.

(f) Sound Devices

- (1) Vessels of less than 12 meters (39.4 feet) in length shall be equipped with some means of making an efficient sound signal.
- (2) Vessels greater than 12 meters (39.4 feet) in length shall be provided with a whistle and a bell which complies with 33USC2033.

(g) Lights. The lights prescribed by these Rules shall be exhibited from sunset to sunrise, and in restricted visibility. During such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with keeping a proper lookout. They may be exhibited in all other circumstances when deemed necessary.

- (1) Vessels greater than 12 meters (39.4 feet) but less than 20 meters (65.6 feet) in length:
A masthead light forward visible for three miles
Sidelights, green to starboard and red to port visible for two miles
A stern light visible for two miles
- (2) Vessels less than 12 meters (39.4 feet) in length:
An all-round white light visible for two miles
Sidelights, green to starboard and red to port visible for one mile
- (3) Sailing vessels underway shall exhibit:
A stern light visible for two miles
Sidelights, green to starboard and red to port visible for two miles
- (4) Sailing vessels less than 20 meters in length:
In a sailing vessel less than 20 meters in length the lights prescribed in Subparagraph (f)(3) of this Rule may be combined in one lantern carried at or near the top of the mast where it can be best seen.
- (5) A sailing vessel of less than seven meters (23 feet) in length shall, if practicable, exhibit the lights prescribed in Subparagraph (3) or (4) of this Paragraph; if not the vessel shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent a collision.
- (6) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels, but if not, shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent a collision.
- (7) Vessels of 10 Horsepower or Less. On waters of this State not subject to the jurisdiction of the United States, vessels propelled by machinery of 10 horsepower or less, in lieu of the foregoing requirements, may carry from

one-half hour after sunset to one-half hour before sunrise a white light in the stern or have on board a hand flashlight in good working condition which shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision. On waters of this State that are subject to the jurisdiction of the United States, this exception, though permissible under state law, is not sanctioned by any federal law or regulation.

Authority G.S. 75A-3; 75A-6; 113-307.

TITLE 18 – DEPARTMENT OF SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of the Secretary of State intends to adopt the rules cited as 18 NCAC 12 .0101 - .0104, .0201 - .0220, .0301 - .0307, .0401 - .0410, .0501 - .0505, .0601 - .0608, .0701 - .0708, .0801 - .0804, .1001, .1101, .1201 - .1205, .1301 - .1312, .1501 - .1504, .1601.

Proposed Effective Date: November 1, 2007

Public Hearing:

Date: Monday, August 6, 2007

Time: 1:00 – 3:00 p.m.

Location: Hearing Room #2115 Dobbs Building, 430 North Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *The Department proposes these permanent rules as permitted under G.S. 150B-21.2. The proposed permanent rules pertain to administration of the Department's lobbying regulation function as modified effective January 1, 2007 by S.L. 2006-201, which amends the General Statutes by adding a new Chapter 120C, entitled "Lobbying". If you wish to speak at the scheduled public hearing, please let us know in advance by calling or sending electronic mail to us using the contact information below. Formatting Note: The Department submits this notice of text for proposed permanent rules as the next step in a continuing rulemaking effort which began with temporary rulemaking. To assist the reader and increase process transparency, the Department presents these proposed permanent rules in a format designed to highlight changes between the current effective temporary rules and the new proposed permanent rules. This format is used under the permission of and with the assistance of the NC Register's editorial staff. The formatting for the following proposed permanent rule text works as follows: (1) If a temporary rule is proposed for permanent rule adoption without any changes, the rule text is presented without any underlining or other formatting marks. (2) If a temporary rule is proposed for permanent rule adoption with changes, the text is formatted to show these changes, with deletions struck through and additions underlined. (3) If a rule proposed for permanent rule adoption is completely new, the entire rule text is underlined. (4) Finally, if an existing temporary rule is not proposed as a permanent*

rule, the Department will let that temporary rule expire normally as provided by law. The Department appreciates all previously received public comment and participation and looks forward to continuing public involvement with this process point forward.

Procedure by which a person can object to the agency on a proposed rule: Written comments, including objections, may be sent to Ann Wall, Secretary of State's Office, 2 South Salisbury Street, Raleigh, NC 27601-2903 or P.O. Box 29622, Raleigh, NC 27626-0622, telephone number (919) 807-2070, facsimile (919) 807-2010, email address: rules@sosnc.com.

Comments may be submitted to: Ann Wall, General Counsel, NC Department of the Secretary of State, P.O. Box 29622, Raleigh, NC 27626-0622, phone (919) 807-2070, fax (919) 807-2010, email address: rules@sosnc.com.

Comment period ends: August 31, 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 12 – LOBBYING

SECTION .0100 – GENERAL

18 NCAC 12 .0101 SCOPE

The rules in this Chapter implement Chapter 120C of the North Carolina General Statutes.

Authority G.S. 120C-101(a),(b); 120C-200; 120C-201; 120C-206; 120C-207; 120C-400; 120C-401; 120C-600; 120C-603; 120C-800.

18 NCAC 12 .0102 TERMS AND DEFINITIONS

(a) The terms and definitions applicable to the rules in this Chapter are those:

- (1) Set out in Article 1 of Chapter 120C of the North Carolina General Statutes; and

- (2) Set out in Article 1 of Chapter 138A of the North Carolina General Statutes; and
- (3) Set out in Paragraphs (b) and (c) of this Rule.
- (b) As used in G.S. 120C-100(a)(3) of the North Carolina General Statutes, ~~Statutes; the following terms and definitions shall apply:~~
- (1) "Adoption" means formal acceptance;
- (2) "Amendment" means proposed or actual alteration, change or modification;
- (3) "Approval" means confirmation, sanction, ratification, authorization or endorsement;
- (4) "Consideration" means a designated individual's deliberative process and may include deliberation with others;
- (5) "Defeat" means a designated individual's abolition, cancellation, reduction, limitation, or voiding of an action or course of action from present or future consideration;
- (6) "Development" means bringing into existence, creation, or evolution of any action;
- (7) "Drafting" means composition or writing of a document whether in single or multiple versions;
- (8) "Guideline" means a code, protocol, scheme, plan, instruction or criterion;
- (9) "Ministerial" means execution of a specific non-discretionary duty arising from fixed and designated facts. NOTE: For example, calculation of prejudgment interest is a ministerial action;
- (10) "Modification" means an alteration or adjustment or a change in form, qualities or content;
- (11) "Postponement" means putting off to a later time, deferral, delay, extension of a time period, or suspension of consideration;
- (12) "Preparation" means development, creation or composition, getting ready, laying groundwork for, setting up, scheduling or preliminary actions;
- (13) "Procedure" means a regular or established method or way of taking an action or reaching a result;
- (14) "Purporting to act in an official capacity" means to convey expressly or by implication that the individual is communicating or acting because of, due to, or as authorized by law or rule with regard to the individual's position as a designated individual and in conformity with the responsibilities or duties accompanying the position as a designated individual;
- (15) "Reject" means a designated individual's refusal, denial, disallowance, ending, or elimination of an action or course of action from present or future consideration;
- (16) "Request for proposal" ~~means means: a formal procedure such as an Invitation for Bids, Request for Proposals, Negotiation, or Request for Quotations~~

- (A) A document such as an Invitation for Bids, Request for Quotation, Request for Proposals, Waiver of Competition or Negotiation; or
- (B) A government entity issued document requesting or inviting offers pursuant to G.S. 143-53(a)(2), G.S. 116-31.10 and 01 NCAC 05B .0301. NOTE: For example, a solicitation document pursuant to agency small purchase procedures for a purchase less than five thousand dollars (\$5,000) would be covered under this section;
- (17) "Research" means gathering or acquisition of data, facts, statistics, opinions or other information, including inquiry into a subject, for use by a designated individual; and
- (18) "Tabling" means to suspend consideration at that time, to reserve for future discussion, to postpone or shelve indefinitely.
- (c) For purposes of these Rules:
- (1) "Designated individual" includes:
- (A) A person listed pursuant to G.S. 138A-10(3)(b);
- (B) A person known to another as a designated individual; or
- (C) A person for whom there is constructive knowledge that the person is a designated individual. NOTE: For example, a lobbyist would be deemed to have constructive knowledge that a person is a designated individual after that person's appointment to a covered position is announced in the media and before it is posted on the list maintained by the Ethics Commission. The lobbyist would be required, therefore, to include any reportable expenditures related to that person.
- (2) "Lobbying" does not include:
- (A) Communications which are prompted by ordinary human courtesy and etiquette and which would occur in the ordinary course of civic, fraternal, religious or personal relationships regardless of the status of the parties under the Act. NOTE: For example, sending of thank you notes, RSVPs, sympathy cards or holiday cards is not lobbying; and
- (B) Tips which are included in the wages of a tipped employee pursuant to G.S. 95-25.3(f). NOTE: For example, it is not lobbying if a lobbyist leaves a tip for an immediate family member of a designated individual who has waited on the lobbyist while working for a
- restaurant which includes tips in the wages of its employees.
- ~~(e)~~(d) As used in this Chapter and Chapter 120C of the North Carolina General Statutes, the following terms and definitions shall apply:
- (1) "Act" means Chapter 120C of the North Carolina General Statutes entitled "Lobbying";
- (2) "Business relationship" means an association, employment, or involvement related to earning a livelihood or engaging in commerce or the purchase, sale or trade of goods or services;
- (3) "Civic relationship" means an alliance, connection, association or involvement derived from participation in or related to leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare;
- (4) "Civil fine" means a fine or civil penalty assessed pursuant to the Act and these Rules;
- (5) "Commercial relationship" means an alliance, connection, investment, association or involvement derived from participation in an activity related to the purposes of trade or services in any form;
- ~~(2)~~(6) "Communication" means the action of imparting or exchanging thoughts, facts, opinions, or other information whether in person, through paper, electronic or other means;
- ~~(3)~~(7) "Department" means the North Carolina Department of the Secretary of State;
- ~~(4)~~(8) "Disclose" means to affirmatively communicate or confirm information to a designated individual. An oral declarative statement spoken in a manner heard and understood by the designated individual; in a document in bold or large typeface or other method clearly stating; or, by a visible display such as a name tag constitutes disclosure;
- ~~(5)~~(9) "Disclose the identity of the principal":
- (A) For a lobbyist representing a single principal means an affirmative communication of the identity of the principal. An oral and affirmative statement identifying the principal; or the act of supplying a business card with the name of the principal; or stating in correspondence the identity of the principal; or the act of placing the words "lobbyist for" and the identity of the principal in correspondence; or the visible displaying of a name tag containing the identity of the principal; or words that affirmatively convey that the person is representing a principal and the identity of the principal constitutes disclosure of the identity of the principal; and

- (B) For a lobbyist representing multiple principals, an affirmative communication of the identity of the specific principal or principals on whose behalf the lobbyist is currently communicating with the designated individual. An oral and affirmative declaration stating the identity of the specific principal or principals on whose behalf the lobbyist is currently communicating; or stating in correspondence the identity of the specific principal or principals on whose behalf the lobbyist is currently communicating; or placing the words "lobbyist for" and the identity of the specific principal or principals on whose behalf the lobbyist is currently communicating in correspondence constitutes disclosure of the identity of the principal;
- ~~(6)~~(10) "Economic development activity" means any project, initiative or business or industrial recruitment activity which satisfies the statutory requirements to withhold a public record under G.S. 132-6(d);
- ~~(7)~~(11) "Economic development designation" means a written request completed and submitted for the purpose of withholding economic development activity information;
- ~~(8)~~(12) "Filer" means a person making a filing;
- ~~(9)~~(13) "Filing," "document" and "record" mean those completed forms, attachments and information submitted in paper or electronic form;
- ~~(10)~~(14) "Form" means a form or report required or permitted to be filed;
- (15) "Fraternal relationship" means an alliance, connection, association or involvement derived from participation in a fraternity, sorority or an association of persons formed for mutual assistance and benefit, but not for profit. Examples: Members of a college sorority or VFW have a fraternal relationship;
- (16) "Furnish" as used in G.S. 120C-220(d) means to equip or supply with:
- (A) A physical copy;
 - (B) An electronic copy;
 - (C) Direct access to an electronic copy; or
 - (D) Any other means which equips or supplies the recipient with the ability to readily use the information;
- ~~(11)~~(17) "Identify himself or herself as a lobbyist" means to affirmatively communicate that the person is a lobbyist. Note: Examples of such identification include: orally and affirmatively stating that the person is a lobbyist; or supplying a business card with the word "lobbyist"; or stating in correspondence that the person is a "lobbyist"; or visibly displaying a name tag containing the word "lobbyist" or words that affirmatively convey that the individual is a lobbyist and represents a disclosed, specific principal or principals;
- ~~(12)~~(18) "Invitation" means either an oral or written request seeking a person's presence, participation or attendance. Note: Examples include requests to attend events, meetings, or conferences;
- ~~(13)~~(19) "Leaving office" means the date on which an individual no longer holds office for any reason including those reasons set forth in Chapter 128 of the North Carolina General Statutes;
- (20) "Making an inquiry" means asking a question or series of questions or seeking information from a state agency or entity and does not include seeking to change the requirements, standards, or qualifications for a benefit, claim, right, obligation, duty, entitlement, payment, or penalty. NOTE: For example, when a business owner asks an agency for information regarding a grant related to job creation, he or she is "making an inquiry";
- (21) "Personal relationship" means an association, involvement, friendship, or kinship between two or more persons which predates the application of Chapter 120C to one or both of the parties and is primarily unrelated to a business or commercial relationship or has one or more of the following characteristics:
- (A) Based upon an exchange among unemancipated minors;
 - (B) Based upon an exchange between parties based upon the relationship between their unemancipated minor children; or
 - (C) A relationship between an immediate or extended family member and a child in the family;
- (22) "Production costs" means the amount spent in excess of the fixed costs of operation for goods or services, including costs to develop, create, print, publish or manufacture a solicitation communication. NOTE: For example, the costs of a contract with a printing company are costs of production;
- ~~(14)~~(23) "Recruitment filer" means a person who files an economic development designation form;
- ~~(15)~~(24) "Registration" means submission of a complete registration form to the Department;
- (25) "Religious relationship" means an association or friendship established because of, resulting from, in the course of, exercise of, or related to divine worship, religious teachings or that demonstrates the beliefs and objectives of a particular system of faith and worship recognized and practiced by a particular church, sect or denomination;

- ~~(16)~~(26) "Result or outcome" means conclusion or point in a process or activity at which either a decision is made to proceed or not to proceed; ~~and~~
- (27) "Secretary of State" means the North Carolina Department of the Secretary of State, the Lobbying Compliance Division or the Secretary's designee;
- (28) "Transmission costs" means the amount spent in excess of the fixed costs of operation for goods and services to convey a solicitation communication from the solicitor or his or her agent to the recipients of a solicitation. NOTE: For example, the cost of a contract to hire employees or independent contractors to convey the solicitor's message by means of "phone bank" or door-to-door solicitation is a cost of transmission;
- (29) "Unemancipated" means a person who is under the age of 18, is not married, is living in the home with the designated individual, and has not been legally emancipated; and
- ~~(17)~~(30) "Withhold" and "withheld" mean to remove or be removed from the public record pursuant to law and Rule.

Authority G.S. 120C-100; 120C-101(a); 120C-220.

18 NCAC 12 .0103 TIME

- (a) Calculation of time periods. Time periods are calculated according to the requirements of G.S. 1A-1, Rule 6.
- (b) Quarters. When calculating a deadline for any filing required on a quarterly basis or for a quarterly reporting period:

- (1) The reporting period for the first quarter ends on March 31;
- (2) The reporting period for the second quarter ends on June 30;
- (3) The reporting period for the third quarter ends on September 30; and
- (4) The reporting period for the fourth quarter ends on December 31.

- (c) Months. When calculating a deadline for any filing required on a monthly basis for a monthly reporting period, the reporting period ends on the last calendar day of the month.

Authority G.S. 1A-1, Rule 6; 120C-101(a); 120C-401; 120C-402; 120C-403; 120C-404; 120C-800.

18 NCAC 12 .0104 WAIVER

The Director may waive any rule in this Subchapter that is not statutorily required based on the factors set forth in Rule .1307 of this Chapter.

Authority G.S. 120C-101(a).

SECTION .0200 – FILING

18 NCAC 12 .0201 FILING SUBMISSION LOCATIONS AND METHODS

Each required filing shall be submitted to the Department by one of the following methods:

- (1) By United States mail at the following address: Secretary of State, P. O. Box 29622, Raleigh, N.C. 27626-0622;
- (2) In person or by a designated delivery service authorized pursuant to G.S. 1A-1, Rule 4 at the following street address: Lobbying Compliance Division, Department of the Secretary of State, 2 South Salisbury Street, Raleigh, N. C. ~~27601-2903; 27601-2903~~ or at a location designated by the Department;
- (3) Electronically by electronic mail via the Internet site at the following address: lobbyistfiling@sosnc.com. Any document(s) attached to the filing other than the form or report shall be compatible with or convertible to the most recently issued version of Microsoft Word®. NOTE: Until such time as the Department is authorized to accept credit card payments, payment of fees must be submitted within two business days of an electronic filing or the filing shall be rejected; or
- (4) By facsimile for filings not requiring a fee, provided the original signed document is received by the Department within five business days following the Department's receipt of the faxed transmission. A filing for which the original is not received within five business days following the Department's receipt of the faxed transmission is void.

Authority G.S. 1A-1, Rule 4; 120C-101(a).

18 NCAC 12 .0202 FILERS MUST USE DEPARTMENT'S FORMS

Filers shall use Departmental forms.

Authority G.S. 120C-101(a); 120C-200; 120C-206; 120C-401; 120C-800.

18 NCAC 12 .0203 FORM COMPLETION REQUIREMENTS

- (a) All information requested on a form shall be completed by the filer whether requested by means of a block to be marked or a line to be completed.
- (b) If a question or item is not applicable to the filer, the filer shall not leave the question or item blank but shall enter "not applicable" or check the "not applicable" box.
- (c) Forms may be submitted in paper or electronic format.
- (d) A form is not complete unless it complies with all applicable filing requirements in this Chapter.

Authority G.S. 120C-101(a); 120C-200; 120C-206; 120C-401; 120C-800.

18 NCAC 12 .0204 FORM SIGNATURE REQUIRED

(a) A form shall be legibly signed by the person required or authorized to file the ~~form, or in form.~~

(b) ~~In the case of an entity, a form shall be signed by an officer authorized to do so, and shall include the so.~~ The officer's title or indication of the officer's authority to sign the form shall also be entered on the form.

(c) The exact name of the person signing shall also be legibly printed in the designated space.

Authority G.S. 120C-101(a); 120C-206; 120C-401; 120C-800.

18 NCAC 12 .0205 ELECTRONIC SIGNATURE

An electronic signature may be used only if it is:

- (1) A digital signature; or
- (2) A visual representation of the person's signature. For purposes of the Department's interpretation of the Act and this Chapter, an electronic signature shall not include a sound.

Authority G.S. 120C-101(a).

18 NCAC 12 .0205-.0206 FORM PREPARATION OR COMPLETION BY ANOTHER

Any person who prepares or completes all or part of a form on behalf of a filer shall sign the form in the space provided for a preparer's signature. This rule does not apply if information is entered on a filer's form without the exercise of independent judgment or discretion by the person entering the information. For example, an administrative assistant who enters information supplied by and at the direction of a filer would not have to sign the form in the space provided for a preparer's signature.

Authority G.S. 120C-101(a); 120C-200; 120C-206; 120C-402; 120C-403; 120C-404; 120C-800.

18 NCAC 12 .0206-.0207 SIGNING PURSUANT TO POWER OF ATTORNEY

A person signing a filing on behalf of another under a power of attorney granted pursuant to Chapter 32A of the General Statutes shall provide:

- (1) A legible copy of the power of attorney with each filing; and
- (2) For an entity, a legible copy with each filing of a resolution or evidence of other formal action granting the power of attorney.

Authority G.S. 120C-101(a); 120C-402(a); 120C-403(a); 120C-404(a); 120C-800.

18 NCAC 12 .0207-.0208 SIGNING AND EXECUTING A FORM UNDER OATH

When the Act or this Chapter requires a report filed with the Department to be signed under oath, that report shall be signed by the filer or authorized person before a Notary Public or a person authorized to administer oaths by the state in which the report is being signed.

Authority G.S. 120C-101(a); 120C-402(a); 120C-403(a); 120C-404(a).

18 NCAC 12 .0208-.0209 SIGNATURE VERIFIES INFORMATION IS TRUE

An individual's signature on a filing submitted to the Department constitutes that person's verification that all information entered on the report is true and complete.

Authority G.S. 120C-101(a); 120C-402; 120C-403; 120C-404; 120C-800.

18 NCAC 12 .0209-.0210 SIGNATURE AND EXECUTION UNDER OATH OF AN ELECTRONIC FILING

(a) A form for which notarization is required may be filed electronically if the form is electronically notarized pursuant to Article 2 of Chapter 10B of the General Statutes.

(b) If a form for which notarization is required is filed electronically and is not electronically notarized without an electronic notarization pursuant to Article 2 of Chapter 10B of the General Statutes, an independent affidavit shall be delivered to the Department within seven days after the form is electronically filed. Failure to deliver the affidavit renders the filing void. The affidavit shall include the following information:

- (1) A statement that the person signing did electronically file a form required by the Act;
- (2) The date and time at which the electronic filing was transmitted;
- (3) The email address from which the electronic filing was transmitted; and
- (4) A signature under oath pursuant to ~~Rule .0207~~ Rule .0208 of this Chapter.

Authority G.S. 10B-115; 120C-101(a); 120C-402(a); 120C-403(a); 120C-404(a).

18 NCAC 12 .0210-.0211 FILING SUBMISSION DATE AND TIME

A filing is submitted:

- (1) By hand-delivery, when it is received by the Department before 5:00 p.m. of that day; ~~or~~
- (2) By mail, when the mailing is postmarked by the United States Postal Service or an equivalent marking used by a delivery service authorized pursuant to G.S. 1A-1, Rule 4; ~~or~~
- (3) By facsimile (fax), when it is received by the Department before 5:00 p.m. of that day; or
- (4) Electronically, when it is transmitted to the Department by 11:59 p.m. of that day.

Authority G.S. 120C-101(a).

18 NCAC 12 .0211-.0212 PROOF OF SUBMISSION

A person may obtain proof of submission of a filing to the Department by:

- (1) Any means acceptable pursuant to G.S. 1A-1, Rules of Civil Procedure;
- (2) Requesting that the Department return a file stamped copy and supplying to the Department both a copy of the form and a self-addressed,

- stamped envelope or other prepaid delivery service envelope; or
- (3) Requesting that the Department file stamp a copy at the time of in person delivery.

Authority G.S. 120C-101(a).

18 NCAC 12 .~~0212~~.0213 DEPARTMENT REVIEW OF SUBMITTED FILING

- (a) The Department shall examine each filing to determine whether the filing is complete.
- (b) The Department shall reject any filing which:
- (1) Contains any illegible information; or
 - (2) Lacks any required information; or
 - (3) Contains any blank, unfilled, or unanswered questions or data entry areas.
- (c) The Department shall reject any filing which is not signed as required by the Act or the rules in this Chapter unless corrected in compliance with ~~Rule .0213~~ Rule .0214 or ~~.0214~~ .0215 of this Chapter.
- (d) The Department shall reject any filing which is not submitted together with any required fee unless corrected in compliance with Rule .0201, ~~.0213~~ .0214 or ~~.0214~~ .0215 of this Chapter.

Authority G.S. 120C-101(a); 120C-600.

18 NCAC 12 .~~0213~~.0214 OMISSIONS REQUIRING CORRECTION WITHIN ONE BUSINESS DAY

- (a) Principal's authorization statement. The absence of the signature of the principal on the principal's authorization statement shall be corrected within one business day after notification by the Department or the filing shall be rejected as incomplete.
- (b) Filing under oath. The absence of notarization of quarterly principal, lobbyist and solicitor reports shall be corrected within one business day after notification by the Department or the filing shall be rejected as incomplete.

Authority G.S. 120C-101(a); 120C-206; 120C-402; 120C-403; 120C-404.

18 NCAC 12 .~~0214~~.0215 OMISSIONS REQUIRING CORRECTION WITHIN SEVEN DAYS

- (a) Omissions other than those set forth in ~~Rule .0213~~ Rule .0214 of this Chapter shall be corrected within seven days after notification by the Department or the filing shall be rejected.
- (b) A filing that contained an omission corrected pursuant to Paragraph (a) of this Rule shall be deemed filed pursuant to the provisions of ~~Rule .0210~~ Rule .0211 of this Chapter.

Authority G.S. 120C-101(a); 120C-401.

18 NCAC 12 .~~0215~~.0216 EFFECTIVE DATE OF COMPLETE FILING

After the Department reviews a filing and determines that the filing is complete, the filing shall be deemed accepted and filed on the date on which it was submitted.

Authority G.S. 120C-101(a).

18 NCAC 12 .~~0216~~.0217 REJECTED FILINGS

A filing which is reviewed by the Department and rejected as incomplete is not filed and the filer is subject to ~~sanctions~~ sanctions pursuant to G.S. §120C-401.

Authority G.S. 120C-101(a); 120C-401; 120C-602.

18 NCAC 12 .~~0217~~.0218 EFFECTIVE DATE OF LATE FILING

For a late filing, there shall be no relation back of the filing to the date on which it was due.

Authority G.S. 120C-101(a).

18 NCAC 12 .0219 PROCESS FOR AMENDING A FILING

A filer may amend a filing by:

- (1) Submitting to the Department the appropriate Amendment Form;
- (2) Specifying and amending the items of information amended; and
- (3) An Amendment Form for a Quarterly Report shall be notarized.

Authority G.S. 120C-101(a); 120C-200(c); 120C-206(c); 120C-215; 120C-401; 120C-404; 120C-800.

18 NCAC 12 .0220 EFFECT OF AMENDED FILING
There shall be no relation back of an amended filing to the date on which it was due.

Authority G.S. 120C-101(a); 120C-200(c); 120C-206(c); 120C-401.

SECTION .0300 - FEES

18 NCAC 12 .0301 GENERAL

- (a) A required fee shall be submitted together with the filing to which the fee applies.
- (b) A fee shall be paid by cash, warrant, uncertified check, certified check, money order, credit card or another instrument freely negotiable at par through the Federal Reserve System. Checks, money orders, credit cards or other instruments must be drawn on U.S. financial institutions in U.S. ~~dollars and cents~~ currency. NOTE: The Department will post a notice on its website as soon as it is authorized to accept payment by credit card.
- (c) A filing is void if a check or other instrument for a required fee is returned by the institution upon which it was issued as "insufficient funds" or for other similar reason.
- (d) A fee reduction or fee waiver applies only to the specific filing for which the request was submitted.

Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3).

18 NCAC 12 .0302 NONPROFITS TO WHICH NO

FEE REDUCTION OR WAIVER SHALL BE GRANTED

The Department shall not grant a fee reduction or waiver if a nonprofit principal had annual gross revenues in its most recent fiscal year of more than three hundred thousand dollars (\$300,000) or is represented by more than two lobbyists.

Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3).

18 NCAC 12 .0303 NONPROFIT FEE REDUCTION PROCEDURE

(a) The Department shall reduce the fee to fifty dollars (\$50.00) if a nonprofit principal:

- (1) Had annual gross revenues in its most recent fiscal year of three hundred thousand dollars (\$300,000) or less; and
- (2) Is represented by no more than two lobbyists.

(b) The fifty dollar (\$50.00) fee shall be submitted together with the filing to which it applies.

(c) Documentation required in Rules .0305 and .0306 of this Chapter must be submitted together with the filing to which the fee reduction applies.

(d) The reduced fee shall apply to filing fees for both lobbyist and lobbyist's principal.

(e) If the Department finds that the nonprofit principal does not qualify for fee reduction, the remaining fifty dollars (\$50.00) shall be paid by the filer within 10 business days of the date on the Department's denial letter. If the full fee is not paid, the registration is void and the filer shall not lobby after the 10th business day following the date on the Department's denial letter.

Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3).

18 NCAC 12 .0304 NONPROFIT FEE WAIVER PROCEDURE

(a) The Department shall waive the fee if the nonprofit principal:

- (1) Was formed within 12 months of filing;
- (2) Does not possess fund balance information or net assets for the immediately preceding fiscal year; and
- (3) Is represented by no more than two lobbyists.

(b) A nonprofit principal shall submit a fee of fifty dollars (\$50.00) together with the filing for which it is requesting fee waiver. If fee waiver is granted, the Department shall refund the fee of fifty dollars (\$50.00).

(c) Documentation required in Rules .0305 and .0307 of this Chapter must be submitted together with the filing to which the fee waiver applies.

(d) The waiver shall apply to filing fees for both lobbyist and lobbyist's principal.

Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3).

18 NCAC 12 .0305 PROOF OF NONPROFIT STATUS

(a) "Nonprofit" means an entity to which tax-exempt status has been granted pursuant to 26 U.S.C. Sec. 501(c)(3), including those entities granted tax-exempt status which are permitted but not required to obtain a tax-exempt determination letter from the United States Internal Revenue Service.

(b) For purposes of the provisions of this Chapter relating to fee reduction or waiver, an "authorized officer":

- (1) For a nonprofit corporation, is any person authorized to act on behalf of the corporation pursuant to Chapter 55A of the General Statutes of North Carolina;
- (2) For a nonprofit trust, is any person authorized pursuant to law to act on behalf of the trust; and
- (3) For an unincorporated association, is any person to whom the association has delegated authority to act on behalf of the association.

(c) Federal tax-exempt determination letter. A nonprofit principal which is required to obtain a federal tax-exempt determination letter shall submit a copy of that letter together with a filing for which fee reduction or waiver is requested.

(d) No federal tax-exempt determination letter. A nonprofit principal which is not required to obtain a tax-exempt determination letter under 26 U.S.C. Sec. 501(c)(3) shall submit the following information together with the filing for which fee reduction or waiver is requested:

- (1) A statement signed by an authorized officer verifying the nonprofit's federal tax-exempt status under 26 U.S.C. Sec. 501(c)(3); and
- (2) A statement signed by an authorized officer setting forth the reason(s) a tax-exempt determination letter is not required under 26 U.S.C. Sec. 501(c)(3).

Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b); 26 U.S.C. Sec. 501(c)(3).

18 NCAC 12 .0306 ADDITIONAL INFORMATION FOR FEE REDUCTION

(a) If the nonprofit principal has nonprofit status pursuant to a tax-exempt determination letter under 26 U.S.C. Sec. 501(c)(3), the fee reduction request shall include:

- (1) A statement signed by an authorized officer verifying that the nonprofit has no more than two lobbyists; and
- (2) A copy of the nonprofit's most recent federal Form 990, Form 990-EZ or Form 990-PF.

(b) If the nonprofit has nonprofit status pursuant to a tax exempt determination letter under 26 U.S.C. Sec. 501(c)(3) and is not required to file a federal Form 990, Form 990-EZ or Form 990-PF, then the fee reduction request shall include:

- (1) A statement signed by an authorized officer verifying that the nonprofit has no more than two lobbyists;
- (2) A statement signed by an authorized officer containing a copy of the nonprofit's annual financial statement for the preceding tax year; and

- (3) A copy of the notice filed pursuant to Section 1223 of the United States Pension Protection Act of 2006 (PL 109-280) for notices and returns associated with annual periods beginning on or after January 1, 2007.

(c) If the nonprofit principal has nonprofit status and a tax exempt determination letter is not required under 26 U.S.C. Sec. 501(c)(3), the fee reduction request shall include:

- (1) A statement signed by an authorized officer verifying that the nonprofit has no more than two lobbyists;
- (2) A statement signed by an authorized officer containing a copy of the nonprofit's annual financial statement for the preceding tax year.

Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b).

18 NCAC 12 .0307 ADDITIONAL INFORMATION FOR FEE WAIVER

If the nonprofit was formed within 12 months of filing and has no net assets or fund balance information, the fee waiver request shall include the following information:

- (1) A statement signed by an authorized officer verifying that the nonprofit has no more than two lobbyists;
- (2) A statement signed by an authorized officer verifying the nonprofit's formation date; and
- (3) A statement signed by an authorized officer verifying that the nonprofit has no fund balance information or net assets.

Authority G.S. 120C-101(a); 120C-201(b); 120C-207(b).

SECTION .0400 – ECONOMIC DEVELOPMENT DESIGNATION

18 NCAC 12 .0401 WITHHOLDING PUBLIC RECORD PURSUANT TO ECONOMIC DEVELOPMENT DESIGNATION

(a) If Economic Development Designation is requested, a lobbyist and lobbyist's principal shall attach to and incorporate in their respective registration—registrations an Economic Development Designation form.

(b) Both the lobbyist and the lobbyist's principal shall file an Economic Development Designation request for an economic development activity.

(c) A lobbyist and lobbyist principal shall file an Economic Development Designation confirmation form with each quarterly or monthly report.

(d) All filings and records related to the Economic Development Designation are confidential until disclosure is permitted by law. All filings and records which are not related to the Economic Development Designation shall be disclosed as if the Economic Development Designation did not exist.

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

18 NCAC 12 .0402 EFFECT OF FAILURE TO REQUEST DESIGNATION

Failure to ~~request~~ file an Economic Development Designation shall result in the disclosure by the Department of the information filings as a public record.

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

18 NCAC 12 .0403 ONE DESIGNATION FORM PER ACTIVITY

An Economic Development Designation form shall cover only one economic development activity. A recruitment filer shall file a separate Economic Development Designation form for each economic development activity as if for a separate principal.

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

18 NCAC 12 .0404 DESCRIPTION OF ECONOMIC DEVELOPMENT ACTIVITY

A recruitment filer shall provide on or submit with the Economic Development Designation form a description of the economic development activity sufficient to enable the Department to determine whether and to what extent a public records request is applicable.

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

18 NCAC 12 .0405 IDENTIFICATION OF AUTHORIZED INDIVIDUAL

A recruitment filer shall designate and authorize at least one other individual to file a release authorizing disclosure of the economic development designation information. The recruitment filer shall provide the name, title, address, telephone number and email address of the authorized individual(s).

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

18 NCAC 12 .0406 IDENTIFICATION OF AUTHORIZED GOVERNMENT EMPLOYEE, OFFICIAL, OR PUBLIC SERVANT

(a) A recruitment filer shall identify at least one government employee or official or public servant who:

- (1) Is involved in or aware of the economic development activity;
- (2) Is knowledgeable about the circumstances that give rise to the need for confidentiality and the economic development designation for the activity;
- (3) Has the authority to make a determination as to whether and when a release of records or an announcement of the activity would be appropriate and proper; and
- (4) Has authority to file a ~~request for~~ release of economic development activity information or to make an announcement regarding the activity.

(b) The recruitment filer shall ensure that any government employee or official or public servant who is identified pursuant to this Rule signs the Economic Development Designation form:

- (1) Agreeing to identification as a person who meets the criteria set out in Paragraph (a) of this Rule;
- (2) Confirming that the economic development activity qualifies for Economic Development Designation pursuant to G.S. 120C-101(b) and G.S. 132-6(d); and
- (3) Confirming that he or she has authority to file a request for release or make an announcement pursuant to G.S. 120C-101(b) and G.S. 132-6(d).

~~(e) The identification of government employees or officials or public servants pursuant to this Rule shall include the following information for each identified person: name, title, address, email address, telephone number.~~

~~(c) A recruitment filer may specify the North Carolina Secretary of Commerce or his or her designee as the government employee, official or public servant identified pursuant to this Rule, upon compliance with Paragraph (b) of this Rule.~~

~~(d) If the recruitment filer is himself or herself a government employee or official or public servant, an additional government employee(s) or official(s) or public servant(s) shall be identified pursuant to this Rule.~~

~~(d) A recruitment filer may authorize the government employee, official or public servant designated pursuant to this Rule to extend the Economic Development Designation.~~

~~(e) The identification of government employees or officials or public servants pursuant to this Rule shall include the following information for each identified person: name, title, government agency or entity and division or office, address, email address, and telephone number.~~

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

18 NCAC 12 .0407 EXTENSION OF ECONOMIC DEVELOPMENT DESIGNATION

~~(a) Extension of Economic Development Designation. A recruitment filer or a person designated pursuant to Rule .0406(d) of this Chapter may extend an Economic Development Designation for one year by filing an Economic Development Designation confirmation form together with the recruitment filer's annual registration form. A recruitment filer may only extend an Economic Development Designation once.~~

~~(b) An extension request shall include certification that the circumstances continue to exist which qualify for Economic Development Designation pursuant to G.S. 120C-101(b) and 132-6.~~

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

18 NCAC 12 .0407.0408 RELEASE OF ECONOMIC DEVELOPMENT DESIGNATION RECORDS

(a) For purposes of this Rule, "recruitment filer" includes the authorized person(s), government employee(s) or official(s) or public servant(s) designated pursuant to Rules .0405 and .0406 of this Chapter.

(b) ~~The Department shall disclose economic development activity information filed with the Department one year from the date of filing unless: An Economic Development Designation~~

shall be released and shall cease to be confidential upon the occurrence of the earliest of:

(1) ~~Specified Date. The recruitment filer specifies an earlier date on the Economic Development Designation form; or A date specified on the initial Economic Development Designation form by the recruitment filer;~~

(2) ~~Early Request for Release. The recruitment filer files a request for release of Economic Development Designation information before a year has elapsed; or Two years from the date of the initial filing of the Economic Development Designation Form;~~

(3) ~~Request for Extension. A recruitment filer may extend an Economic Development Designation for one year by filing an Economic Development Designation confirmation form together with the recruitment filer's annual registration form; or Certification That Qualification Criteria Cease to Apply. Upon certification by the recruitment filer that the circumstances no longer exist which qualified the information for Economic Development Designation and the information should be released; or~~

(4) ~~Change in Information. For purposes of Economic Development Designation, a change in information occurs because the circumstances no longer exist which qualified the information for Economic Development Designation. Filing of a request for release of the information within 10 days shall constitute compliance with the notice of change of information requirements in the Act. Note: For example, the circumstances which qualified the information for Economic Development Designation would cease to exist if: an economic development activity is publicly announced, and communicated to the appropriate governmental entity as having been located in another State and that North Carolina is no longer under consideration for that economic development activity. The circumstances which qualified the information for Economic Development Designation would cease to exist. The recruitment filer would be required to file the request for release of information within 10 business days after the public announcement.~~

~~(e) A request for release of Economic Development Designation information shall bear the signature of at least one of the government representatives identified pursuant to Rule .0406 of this Chapter and shall include a statement that the business has communicated to the State or local government agency involved with the project either:~~

(1) ~~A commitment to expand or locate the economic development project in this State; or~~

(2) ~~A decision not to expand or locate the economic development project in this State.~~

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

18 NCAC 12 .0409 CONTENTS OF RELEASE

A release of Economic Development Designation information shall:

- (1) Bear the signature of at least one of the government representatives identified pursuant to Rule .0406 of this Chapter;
- (2) Verify that the business has communicated to the State or local government agency involved with the project either:
 - (a) A commitment to expand or locate the economic development project in this State; or
 - (b) A decision not to expand or locate the economic development project in this State.

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

18 NCAC 12 .0410 DEPARTMENT OF COMMERCE CERTIFICATION OF STATUS

The Secretary of Commerce or his or her designee may certify to the department prior to December 10th of each year whether the statutory circumstances continue to exist for economic development designation for each filing pursuant to the Act and this section and whether the filings continue to be confidential pursuant to G.S. 120C-101(b).

Authority G.S. 120C-101(a); 120C-101(b); 132-6(d); 132-9.

SECTION .0500 –GENERAL REGISTRATION REQUIREMENTS

18 NCAC 12 .0501 REGISTRATION NOT REQUIRED

Registration is not required when:

- (1) Informational material listing and describing products or services is provided without further attempt to persuade or to influence the selection or purchase of one or more particular products, services, contractors or bidders;
- (2) When making an inquiry about a Request For Proposal which does not include an attempt to persuade or influence the selection or purchase of one or more particular products, services, contractors or bidders.
- (3) When a person who has been awarded a contract is making an inquiry related to specifications of, or compliance with, a contract without attempting to change the terms or specifications.
- (4) When responding to a general communication from a designated individual requesting information about the kinds of criteria, specifications, or products which may be included in a particular Request for Proposal.

- (5) When a person initially introduces themselves to a designated individual to provide information regarding person's available services or product.

Authority G.S. 120C-101(a).

18 NCAC 12 .0502 REGISTRATION REQUIRED RELATED TO SALES

Registration is required when:

- (1) An attempt is made to influence the contents of a particular Request for Proposal, the standards and requirements for Requests for Proposal, the Request for Proposal process or the awarding of the RFP or the selection of the winning bidder. Note: for example, registration is required when a potential bidder seeks to influence an RFP so that the potential bidder is awarded the contract where the bidder's product or services would otherwise fail to meet the specifications of the RFP.
- (2) A person contacts a designated individual and engages in goodwill lobbying. NOTE: For example contacting for the purpose of goodwill lobbying would be one in which the primary purpose of the contact is to establish a relationship with a designated individual in order to encourage the designated individual to consider including the person's company, product or services in any future purchases pursuant to 01 NCAC 05B .0301(1); or
- (3) An attempt is made to change, modify, or eliminate terms or specifications or compliance with the Request for Proposal[s] after the award. NOTE: For example, registration is required when an attempt is made by the successful bidder to change terms and specifications in a manner which might have affected the initial awarding of the contract or RFP or eligibility of others to apply.

Authority G.S. 120C-101(a); 120C-200.

18 NCAC 12 .0503 CONTRACTORS FOR SOLICITORS NOT REQUIRED TO REGISTER

A contractor for a solicitor, hired solely to produce or transmit a solicitation, is not required to register. However, the costs of the contract are reportable by the solicitor.

Authority G.S. 120C-101(a); 120C-215(a); 120C-404.

18 NCAC 12 .0501.0504 MATTERS ON WHICH THE REGISTRANT EXPECTS TO ACT AS LOBBYIST

- (a) An individual registering as a lobbyist shall specify on the registration form one or more categories in which the registrant expects to act as lobbyist.

(b) Any changes in the matters on which the individual expects to act as a lobbyist shall be reported pursuant to G.S. 120C-200(c).

Authority G.S. 120C-101(a); 120C-200.

18 NCAC 12 .0505 TERMINATION OF REGISTRATION

(a) Termination of a registration does not end the reporting obligation for any month or quarter in which reportable expenses were made while the person was required to report.

(b) A re-registration for a lobbyist or principal within the same year shall be deemed a new registration and shall be accompanied by the required fee.

Authority G.S. 120C-101(a); 120C-200; 120C-201; 120C-206; 120C-207.

SECTION .0600 – LOBBYISTS

18 NCAC 12 .0601 CALCULATION OF TIME TO DETERMINE REGISTRATION REQUIREMENTS

(a) For purposes of determining whether an employee has engaged in lobbying within the meaning of ~~G.S. 120C-400(a)(10)~~ d. G.S. 120C-100(a)(10)(d), the employee's actual duties shall include:

- (1) Actual time communicating with designated individuals; and
- (2) Actual time spent in goodwill lobbying as defined in ~~G.S. 120C-100(a)(9)~~ b. 120C-100(a)(9)(b), including time traveling with designated individuals.

(b) The 30-day period within which an employee's actual duty time is calculated shall be calculated in consecutive days and not by month. NOTE: For example, based on a 40-hour work week, an employee who lobbies eight hours on January 31 and then eight hours on February 1 will not be exempt from classification as a lobbyist by virtue of the exception in ~~G.S. 120C-400(a)(10)~~ d. 120C-100(a)(10)(d).

Authority G.S. 120C-100; 120C-101(a); 120C-200.

18 NCAC 12 .0602 QUARTERLY REPORT MAY INCLUDE LAST MONTH OF QUARTER REPORT

Instead of filing the monthly report for the last month of the quarter, a lobbyist may incorporate by reference that monthly report within the quarterly report.

Authority G.S. 120C-101(a); 120C-402.

18 NCAC 12 .0603 QUARTERLY REPORT MAY INCORPORATE SEPARATELY FILED MONTHLY REPORTS BY REFERENCE

Instead of entering separately filed monthly report information on the quarterly report form, a lobbyist may incorporate the separately filed monthly reports by reference in the applicable quarterly report form.

Authority G.S. 120C-101(a); 120C-402.

18 NCAC 12 .0604 QUARTERLY REPORT VERIFICATION OF MONTHLY REPORT INFORMATION

By signing the quarterly report, a lobbyist verifies the information as true and complete as contained in the incorporated monthly reports for that quarter and any amendments to the monthly reports, including those previously filed and those specified in the quarterly report.

Authority G.S. 120C-101(a); 120C-402; 120C-403; 120C-404.

18 NCAC 12 .0605 CALCULATION OF REPORTABLE EVENT EXPENDITURES

In order to determine whether or not to report a reportable event expenditure a lobbyist shall:

- (1) Determine the total cost of the event;
- (2) Divide the total cost by the total number of people who actually attended; and
- (3) Multiply by the number of designated individuals who actually attended;

Authority G.S. 120C-101(a); 120C-400(1); 120C-400(2); 120C-401(c); 120C-402(b)(1).

18 NCAC 12 .0606 REPORTING OF EVENT EXPENDITURES

(a) A lobbyist may report the expenditures for an event based upon either:

- (1) Cost per person; or
- (2) Total cost of the event.

(b) A lobbyist is not required to attach copies of invitations or sign-up sheets to a monthly or quarterly report.

Authority G.S. 120C-101(a); 120C-400.

18 NCAC 12 .0607 REPORTING OF CONFIDENTIAL INFORMATION

No filer shall report information that is confidential pursuant to State or federal law.

Authority G.S. 120C-101(a); 120C-101(b); 120C-401(h).

18 NCAC 12 .0608 REPORTING OF CONTRACTS IN THE NORMAL CONDUCT OF DAILY LIFE

A filer shall not report contracts with designated individuals which are available to the public under the same terms in the ordinary course of business. NOTE: For example, a principal's contract with a designated individual to supply power to the designated individual's home is not a reportable expenditure.

Authority G.S. 120C-101(a); 120C-400; 120C-401(c); 120C-402(b)(1).

SECTION .0700 – PRINCIPALS

18 NCAC 12 .0701 METHOD OF REPORTING COMPENSATION

A filer shall report lobbyist compensation in the same manner on each report. NOTE: For example, a principal who pays a lobbyist quarterly has the option of reporting the compensation quarterly or dividing it and reporting one-third in each month of the quarter but shall use the same method for each report.

Authority G.S. 120C-101(a); 120C-403(b)(3).

18 NCAC 12 .0701.0702 SEPARATE REPORTS

(a) When a principal has more than one lobbyist, the principal may use one report for all lobbyists.

(b) A principal shall report the compensation paid to each lobbyist separately on the quarterly report.

Authority G.S. 120C-101(a); 120C-403.

18 NCAC 12 .0702.0703 QUARTERLY REPORT MAY INCLUDE LAST MONTH OF QUARTER REPORT

Instead of filing the monthly report for the last month of the quarter, a principal may incorporate that monthly report within the quarterly report.

Authority G.S. 120C-101(a); 120C-403.

18 NCAC 12 .0703.0704 QUARTERLY REPORT MAY INCORPORATE SEPARATELY FILED MONTHLY REPORTS BY REFERENCE

Instead of entering separately filed monthly report information on the quarterly report form, a principal may incorporate the separately filed monthly reports by reference in the applicable quarterly report form.

Authority G.S. 120C-101(a); 120C-403.

18 NCAC 12 .0704.0705 QUARTERLY REPORT VERIFICATION OF MONTHLY REPORT INFORMATION

By signing the quarterly report, a principal verifies the information contained in the incorporated monthly reports for that quarter and any amendments to the monthly reports, including those previously filed and those specified in the quarterly report.

Authority G.S. 120C-101(a); 120C-403.

18 NCAC 12 .0706 CALCULATION OF REPORTABLE EVENT EXPENDITURES

In order to determine whether or not to report a reportable expenditure a principal shall:

- (1) Determine the total cost of the event;
- (2) Divide the total cost by the total number of people who actually attended; and
- (3) Multiply by the number of designated individuals who actually attended.

Authority G.S. 120C-101(a); 120C-400(1); 120C-400(2); 120C-401(c); 120C-403(b)(1).

18 NCAC 12 .0707 REPORTING OF REPORTABLE

EVENT EXPENDITURES

(a) A principal may report the expenditures for an event based upon either:

- (1) Cost per person; or
- (2) Total cost of the event.

(b) A principal is not required to list either all event attendees or those attendees who are designated individuals but should maintain that information as required in Rule .1601 of this Chapter.

(c) A principal is not required to include copies of invitations or sign-up sheets in a monthly or quarterly report.

Authority G.S. 120C-101(a); 120C-400(1); 120C-400(2); 120C-401(c); 120C-403(b)(1).

18 NCAC 12 .0708 REPORTING OF CONTRACTS IN THE NORMAL CONDUCT OF DAILY LIFE

A principal shall not report contracts with designated individuals which are generally applicable to the public. NOTE: For example, a contract with a designated individual to supply power to the designated individual's home is not a reportable expenditure.

Authority G.S. 120C-101(a); 120C-400(1); 120C-400(2); 120C-401(c); 120C-403(b)(1).

SECTION .0800 – SOLICITORS

18 NCAC 12 .0801 SOLICITOR REGISTRATION

When registering, solicitors shall provide the following:

- (1) The full legal name of the solicitor;
- (2) The full legal name of any firm or organization, if applicable;
- (3) If applicable, the name and title of the solicitor's representative authorized to sign a report;
- (4) The complete mailing and physical address of the solicitor;
- (5) The telephone number at which the solicitor can be reached between 8:00 a.m. and 5:00 p.m. on weekdays; and
- (6) The electronic mail address of the solicitor.

Authority G.S. 120C-100; 120C-101(a); 120C-215; 120C-404.

18 NCAC 12 .0802 REGISTRATION

(a) A solicitor must register within 10 days after the total expense for solicitation of others exceeds three thousand dollars (\$3,000) during any 90-day period.

(b) The 90-day period within which the triggering expenditure is calculated shall be calculated in consecutive days and not by quarter. NOTE: For example, an individual who solicits others and spends two thousand nine hundred dollars (\$2,900) on March 31 and two hundred dollars (\$200.00) on April 2 shall be required to register as a solicitor.

Authority G.S. 120C-100; 120C-101(a); 120C-215; 120C-404.

18 NCAC 12 .0803 CALCULATION

To determine whether the three thousand dollars (\$3,000) threshold is met, solicitors shall include:

- (1) Production costs;
- (2) Transmission costs; and
- (3) Costs of planning, hosting, sponsoring and attending a conference, meeting or similar event at which a solicitation communication was made.

Authority G.S. 120C-100(a)(13); 120C-101(a); 120C-400; 120C-404.

18 NCAC 12 .0804 REPORTING

(a) Solicitors who register and report when they meet the three thousand dollars (\$3,000) threshold shall then report for each remaining quarter of that year.

(b) In each report, solicitors shall include:

- (1) The cost of solicitation which includes the production costs and transmission costs;
- (2) Costs of planning, hosting, sponsoring and attending a conference, meeting or similar event at which a solicitation communication was made; and
- (3) Reportable expenditures.

Authority G.S. 120C-101(a); 120C-400; 120C-404.

SECTION .0900 – RESERVED FOR FUTURE CODIFICATION

SECTION .1000 - LIAISON PERSONNEL

18 NCAC 12 .1001 REPORTING

(a) Liaisons need not report things of value which are paid with State funds.

(b) The government entity which employs a liaison need not file monthly or quarterly reports.

Authority G.S. 120C-101(a); 120C-501(c); 120C-800(e)(5).

SECTION .1100 – PROVISION OF LISTS TO DESIGNATED INDIVIDUALS

18 NCAC 12 .1101 METHOD OF FURNISHING LOBBYIST LISTS

(a) The Department ~~shall~~ may furnish lobbyist lists to designated individuals for whom it has no current electronic mail address by electronically ~~mailing~~ furnishing a copy to the head of the employing entity and requesting that it be forwarded to the designated individual.

(b) The Department may electronically furnish a website link for accessing an electronic copy of the lobbyist and principal lists to all designated individuals.

(c) If an electronically furnished list is rejected by a designated individual's electronic mail system, the Department may provide the list to the employing entity's ethics liaison or agency head.

Authority G.S. 120C-101(a); 120C-220.

SECTION .1200 - INVESTIGATIONS

18 NCAC 12 .1201 REVIEWS OF REPORTS

(a) When reviewing reports, the Department may consider documentation supporting a filing maintained by:

- (1) The filer;
- (2) The associated lobbyist or principal; and
- (3) Any other person with relevant information.

(b) The Department may obtain documentation supporting a filing by:

- (1) Requesting that the filer supply the documentation within 10 days;
- (2) Obtaining a subpoena or subpoena duces tecum pursuant to G.S. 120C-600(b); or
- (3) Any other lawful method.

(c) When reviewing reports to determine whether they provide complete and timely disclosure of reportable expenditures, the Department may consider:

- (1) Any matter discoverable pursuant to G.S. 1A-1, Rule 26(b)(1)-(3); and
- (2) Any other lawfully obtained information.

Authority G.S. 120C-101(a); 120C-600.

18 NCAC 12 .1202 SYSTEMATIC REPORT REVIEW PROCESS

If the Department determines that there may be an irregularity during the systematic review process, the Department may take action including:

- (1) Continuing to review the report;
- (2) Opening an investigation;
- (3) Closing the review;
- (4) Permitting the filer to amend the report; or
- (5) Taking other action.

Authority G.S. 120C-101(a); 120C-600.

18 NCAC 12 .1203 INVESTIGATION INITIATION

(a) Investigations may be initiated when:

- (1) A complaint is received. For purposes of this Chapter, a person who files a complaint shall be known as the "Complainant";
- (2) Irregularity has been found during the systematic report review process; or
- (3) The Department becomes aware of a possible violation of the Act.

(b) Failure of a Complainant to provide his or her name, address and contact information shall not bar the Department from investigating the complaint

(c) Withdrawal of a complaint shall not mean that the Department ceases an investigation but may be taken into consideration by the Department.

Authority G.S. 120C-101(a); 120C-600.

18 NCAC 12 .1204 FILING COMPLAINTS

(a) Complaints shall be in writing, including the text of an email, and,

- (1) Shall include:
 - (A) The name of the person(s) required to report who is alleged to have violated the Act; and
 - (B) A clear and concise statement of the facts constituting the alleged violation;
- (2) May include:
 - (A) The complainant's name, address and contact information;
 - (B) Supporting documentation;
 - (C) Other relevant information;
 - (D) The date(s) of the violation(s), if known; and
 - (E) The location(s) at which the violation(s) occurred, if known.

(b) Complaints shall be filed with the Department as set forth in Rule .0201 of this Chapter.

Authority G.S. 120C-101(a); 120C-600.

18 NCAC 12 .1205 INVESTIGATION

Based upon its review of a complaint, the Department shall take investigative action, which may include:

- (1) Determination that the complaint does not warrant further investigation;
- (2) Full or partial investigation of the complaint;
- (3) Referral of the complaint to another agency;
- (4) Sanctions as set forth in the Act and Section .1300 of this Chapter; or
- (5) Completion and closure of the investigation without action.

Authority G.S. 120C-101(a); 120C-600.

SECTION .1300 - ADMINISTRATIVE SANCTIONS

18 NCAC 12 .1301 SANCTIONS

(a) Consistent with the provisions and objectives of the Act and these Rules, the Department may impose sanctions for violation of the Act including:

- (1) Late filing fees;
- (2) Civil fines;
- (3) Voiding of a registration; and
- (4) Nothing in this Rule shall restrict the Department from using any other penalty available by law.

(b) The Department may issue a written order to a person covered by the Act if the Department determines that a violation occurred and the situation does not warrant imposition of a civil fine.

Authority G.S. 120C-401(e); 120C-601; 120C-602; 120C-603.

18 NCAC 12 .1302 CIVIL PENALTIES FOR EACH VIOLATION

A separate penalty may be imposed for each violation.

Authority G.S. 120C-101(a); 120C-602(b).

18 NCAC 12 .1303 WAIVER OR REDUCTION OF FEE ASSESSED DUE TO LATE FILING

(a) A filer may seek a waiver or reduction of a fee assessed due to a late filing by contacting the Lobbying Compliance Division of the Department and presenting evidence in mitigation.

(b) Mitigating factors which may be considered by the Department in determining whether to waive or reduce a late filing fee include:

- (1) A lobbyist or principal was given an associated filing to file on behalf of the other party and filed both his or her own filing and the associated filing late;
- (2) The information about lobbying activity or expenditures was in an associated lobbyist's or principal's report;
- (3) The amount of the expenditures reported in the late filing was less than one hundred dollars (\$100.00);
- (4) The lobbyist is the same as the officer of the principal authorized to sign for the principal;
- (5) The lobbyist resigned and:
 - (A) There was no lobbying activity in that quarter;
 - (B) There were no reportable expenses in that quarter; and,
 - (C) The lobbyist did not re-register for the same principal in that year; and
- (6) Those factors set forth in Rule .1306(a) of these Rules.

(c) Aggravating factors which may be considered by the Department in determining whether to waive or reduce a late filing fee include:

- (1) The filer has submitted more than two reports late during a registration year;
- (2) The information about lobbying activity or expenditures was not accessible in an associated lobbyist's or principal's report;
- (3) The amount of the expenditures reported in the late filing was:
 - (A) More than one hundred dollars (\$100.00) but less than five hundred dollars (\$500.00);
 - (B) More than five hundred dollars (\$500.00) but less than one thousand dollars (\$1,000); or,
 - (C) More than one thousand dollars (\$1,000).
- (4) A principal's report omits more than three lobbyists' compensation or expenses; and
- (5) Those factors set forth in Rule .1307 of this Chapter.

Authority G.S. 120C-101(a); 120C-602(b).

18 NCAC 12 .1304 FACTORS USED TO DETERMINE SANCTION

The sanction imposed by the Department shall be determined by a variety of factors including:

- (1) Nature of violations;
- (2) Number of violations;
- (3) Severity of violations;
- (4) Actual or potential harm to the public, group, individual, designated individual or client;
- (5) Record of timeliness of filings;
- (6) Record of completeness of filings;
- (7) Accuracy of filings;
- (8) Prior sanctions imposed by the Department;
- (9) Evidence in mitigation;
- (10) Evidence in aggravation;
- (11) Willfulness;
- (12) Negligence; and
- (13) Consistency with the provisions and objectives of the Act and this Chapter.

Authority G.S. 120C-101(a); 120C-602(b).

18 NCAC 12 .1305 SCHEDULE OF CIVIL PENALTIES

The amount of the civil fine shall be assessed in accordance with the following schedule:

- (1) A civil fine in an amount up to five thousand dollars (\$5,000) may be imposed for:
 - (a) Failure to register within one day of lobbying;
 - (b) A violation which affects the ability of another to comply with the Act or Chapter 138A of the General Statutes;
 - (c) A violation which has the effect of deceiving, misleading or concealing the existence of lobbying, solicitation activity or reportable expenditures;
 - (d) A violation which is part of an unlawful scheme to influence legislative or executive action;
 - (e) Provision of false or misleading information which leads to improper classification of a required filing as confidential pursuant to G.S. 120C-101(b) and this Chapter;
 - (f) A pattern of violations;
 - (g) Alteration or destruction of records required to be maintained pursuant to this Chapter, where the person or the person's agent or employee knew or should have known that an investigation or inquiry related to a filing has been initiated; or
 - (h) Any violation not otherwise covered by this Schedule.
- (2) A civil fine in an amount up to two thousand five hundred dollars (\$2,500) may be imposed for:
 - (a) A violation of the requirement that a lobbyist identify himself or herself as a lobbyist;

- (b) A violation of the requirement that a lobbyist identify the specific principal for whom lobbying;
- (c) Misrepresentation of a principal's identity;
- (d) Failure by a principal to timely submit a lobbyist authorization; or
- (e) Deceptive or misleading designation of persons receiving a solicitation in order to avoid registering as a solicitor;
- (3) A civil fine in an amount up to one thousand dollars (\$1,000) may be imposed for:
 - (a) Misrepresentation leading a person to affirmatively assent to receive solicitations;
 - (b) Provision of other false or misleading material information; or
 - (c) Repeat violations.
- (4) A civil fine in an amount up to five hundred dollars (\$500.00) may be imposed for the following types of violations:
 - (a) Provision of false or misleading information in order to obtain a nonprofit fee waiver; or
 - (b) Failure to retain records as required.
- (5) A civil fine in an amount up to two hundred fifty dollars (\$250.00) may be imposed for:
 - (a) Failure to notify the Department of changes within 10 days as required by the Act and this Chapter; or
 - (b) Repeated submission of payment which is rejected for insufficient funds or other similar reasons.

Authority G.S. 120C-101(a); 120C-602(b).

18 NCAC 12 .1306 MITIGATING FACTORS

- (a) Mitigating factors which may be considered by the Department in regard to all cases of sanctions include:
 - (1) The filer was physically or mentally incapacitated;
 - (2) Prevention of filing or destruction of a filing due to flood, fire or similar catastrophic event;
 - (3) The filer was materially affected by military duty as provided for in the Service member's Civil Relief Act (2003);
 - (4) Good faith effort to comply;
 - (5) The amount of expenditures was less than one hundred dollars (\$100.00); and
 - (6) Officer and lobbyist are the same individual.
- (b) Mitigating factors which may be considered by the Department in regard to all cases of sanctions other than late filing fees include:
 - (1) The filer did not know and could not have reasonably known that an individual had changed status to become covered as a designated individual;

- (2) The filer did not know and could not reasonably have known that an agency or board was covered by Chapter 138A of the General Statutes;
- (3) The filer did not know and could not reasonably have known that an individual is an immediate family member of a designated individual;
- (4) Size of entity;
- (5) In the case of a principal, failure by a lobbyist authorized to sign or submit a report on behalf of the principal to timely submit a report;
- (6) The information about lobbying activity or expenditures was accessible in an associated lobbyist's or principal's report.
- (7) Employee turnover or absence;
- (8) Three or fewer lobbyists' compensation or expenses were omitted from a principal's report;
- (9) The lobbyist resigned with no lobbyist activity and no expenditures for that quarter;
- (10) Failure by a principal authorized to sign or submit a report on behalf of the lobbyist to timely submit a report; and
- (11) A designated individual was misled to believe that the fair market value of a reportable expenditure was less than \$200.00 and, therefore, that no reporting was required pursuant to G.S. 120C-800.

Authority G.S. 120C-101(a); 120C-602(b).

18 NCAC 12 .1307 AGGRAVATING FACTORS
Aggravating factors which may be considered by the Department in regard to all cases of sanctions include;

- (1) A filer has a pattern of filing reports late or has filed two of the last three reports late;
- (2) Lobbying activity is not revealed in any other report;
- (3) Solicitation activity is not revealed in any other report;
- (4) Expenditures are not revealed in any other report;
- (5) Costs of solicitation are not revealed in any other report;
- (6) The amount of expenditures exceeds one hundred dollars (\$100.00);
- (7) More than three lobbyists' expense reports are missing from a principal's expense report.
- (8) A report omits expenditures related to the salary or contractual retainer between the lobbyist and the principal;
- (9) A report omits expenditures for lobbying related to legislative action;
- (10) The expenditures include only the legislative expenditures and omit expenditures for lobbying related to executive action;
- (11) A report omits goodwill lobbying expenditures;

- (12) A report omits solicitation expenditures;
- (13) The filer had authority to file on behalf of another person (and knew or should have known that the filing was to be made on behalf of the other person) and failed to timely submit the filing;
- (14) The filer knew or had constructive knowledge that a person is a designated individual or immediate family member of a designated individual;
- (15) The filer provided false or misleading information in a filing or in response to a request for information from the Department; and
- (16) The filer misled a person covered by Section .0800 of the Act with regard to the fair market value of a gift.

Authority G.S. 120C-101(a). 120C-602(b).

18 NCAC 12 .1308 PRESENTATION OF EVIDENCE OF MITIGATION

If evidence of mitigating factors based upon the action or inaction of another person is presented, such evidence shall include an affidavit.

Authority G.S. 120C-101(a).

18 NCAC 12 .1309 PAYMENT OF FINE

Within 60 days after receipt of notification of a monetary sanction, the respondent must tender payment to the Department.

Authority G.S. 120C-101(a).

18 NCAC 12 .1310 PROCEDURE FOR REQUESTING SETTLEMENT PURSUANT TO G.S. 150B-22

(a) A filer who contests a sanction by the Department may request a settlement of the issues by submitting a written request for settlement to the attention of the Director, Lobbying Compliance Department.

(b) Request Contents. The request for settlement shall include:

- (1) Name and address of the person requesting settlement;
- (2) Identity of the principal, lobbyist, solicitor, person or entity being sanctioned;
- (3) The date on the Department's administrative action;
- (4) The type of action disputed, e.g., Late Fee Assessment;
- (5) The specific settlement sought by the person. For example, reduction of a late fee;
- (6) The reasons the person is requesting the particular settlement sought;
- (7) Documentation supporting the reasons given and the settlement sought; and
- (8) Any other information which the person believes would be helpful to the Department in assessing the settlement request.

Authority G.S. 120C-101(a); 150B-22.

18 NCAC 12 .1311 MANNER OF SETTLEMENT

(a) Settlement discussions may be conducted by:

- (1) Written or electronic correspondence;
- (2) Telephonic communications; or
- (3) In person appearance.

(b) Settlement discussions conducted after the issuance of an administrative action by the Department shall be pursuant to G.S. 8C, Rule 408.

Authority G.S. 120C-101(a).

18 NCAC 12 .1312 SETTLEMENT

(a) The Department may grant a filer's requested resolution, modify the requested resolution or reject the requested resolution.

(b) A filer requesting a settlement shall be notified in writing of the Department's decision regarding the requested resolution.

Authority G.S. 120C-101(a).

**SECTION .1400 –OTHER REPORTABLE EXPENSES
(RESERVED)**

SECTION .1500 – CONFIDENTIALITY AND RECORDS

18 NCAC 12 .1501 GENERAL REQUIREMENTS

(a) A person who requests that information be held confidential ("confidentiality request") pursuant to G.S. 120C-401 shall make the request prior to or at the time of filing.

(b) A person who makes a "confidentiality request" pursuant to G.S. 120C-401 shall include a cover sheet marked: "Confidentiality Requested" with any documents submitted.

Authority G.S. 120C-101(a); 120C-401(h).

18 NCAC 12 .1502 CONFIDENTIALITY REQUEST CONTENTS

The following information shall be included with a confidentiality request pursuant to G.S. 120C-401:

- (1) Identification of all filings which contain information to which the confidentiality request applies;
- (2) Identification of any attachments to filings which contain information to which a confidentiality request applies; and
- (3) A copy of either:
 - (a) The protective order pursuant to Chapter 50B of the General Statutes which orders that a payee's actual address be kept confidential; or
 - (b) The Address Confidentiality Program authorization card issued to the payee by the Attorney General under G.S. 15C-8.

Authority G.S. 120C-101(a); 120C-401(h).

**18 NCAC 12 .1503 DISCLOSURE OF
CONFIDENTIAL INFORMATION**

(a) Unless the provisions of Paragraph (b) of this Rule apply, the Department shall disclose information for which there is not a confidentiality request presented to the Department pursuant to G.S. 120C-401 before or at the time of filing.

(b) If the Department has not already made a filing(s) public and a confidentiality request pursuant to G.S. 120C-401 is submitted, the Department shall hold the covered information confidential as requested.

(c) A payee address designated as confidential pursuant to a 50B order and pursuant to G.S. 120C- 401(h) remains confidential until the Department receives:

- (1) A signed, notarized request from the payee to remove the confidentiality designation, or
- (2) A copy of a court order directing removal of confidential address status.

(d) A payee address designated as confidential pursuant to the Address Confidentiality Program under Chapter 15C of the General Statutes and pursuant to G.S. 120C-401(h) remains confidential until the Department receives:

- (1) A signed, notarized request from the payee to remove the confidentiality designation, or
- (2) A written notification from the Attorney General issued pursuant to Chapter 15C modifying the payee's address under the program or canceling the payee's participation in the program.

Authority G.S. 120C-101(a); 120C-401(h).

**18 NCAC 12 .1504 CONFIDENTIALITY OF
INVESTIGATIVE RECORDS**

Public access to investigative records shall be governed by Chapter 132 of the General Statutes and G.S. 120C-600(c).

Authority G.S. 120C-101(a); 120C-600.

SECTION .1600 – PRESERVATION OF RECORDS

18 NCAC 12 .1601 GENERAL REQUIREMENTS

(a) A filer shall retain copies of all filings, forms, information and supporting documentation related to filings generated in response to the requirements of the Act and this Chapter for a period of three years after the date on which the record was made or the report submitted.

(b) If a filer knows or has reason to believe that an official investigation or inquiry related to a filing has been initiated for any reason, the filer shall preserve and maintain all filings and associated documents until three years from the later of:

- (1) Receipt of notice that the investigation has been closed and that no further action will be taken by the investigating authority and no other related investigation or inquiry is open; or
- (2) Termination or closure of any judicial or quasi-judicial proceeding related to the investigation or inquiry.

(c) A filer retaining information pursuant to this Rule must retain the information in the original form in which the information was created, or in any other form that accurately captures and retains information contained in the original form in which the information was created.

Authority G.S. 120C-101(a); 120C-603.

Note from the Codifier: The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website (www.ncioah.com/rules) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60th day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

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

CHAPTER 11 – RADIATION PROTECTION

Rule-making Agency: North Carolina Department of Environment and Natural Resources – Office of the Secretary

SECTION .1100 - FEES

Rule Citation: 15A NCAC 11 .1102

Effective Date: June 19, 2007

Findings Reviewed and Disapproved by the Codifier: The Codifier of Rules disapproved the findings of need for the emergency rule on June 8, 2007. The Codifier did not find that the need for the rule was "unforeseen" by the agency (See G.S. 150B-21.1A(a)). Pursuant to G.S. 150B-21.1A(b), the agency requested that the Codifier enter the emergency rule into the NC Administrative Code. The amendment to this rule will take effect on June 19, 2007.

Reason for Action: Because of the threat of terrorist use of radioactive materials, the U.S. Nuclear Regulatory Commission (NRC) is increasing controls on facilities that use radioactive materials. The Nuclear Regulatory Commission, General Accounting Office and Dept. of Homeland Security are requiring state programs to put additional resources toward prevention of unauthorized use of radioactive materials and assurance that radioactive material licenses will not be issued to inappropriate persons. The Radiation Protection Section also has new responsibilities to support the State's participation in a pilot project with the U.S. Dept. of Homeland Security and the Domestic Nuclear Detection Office to guard against transportation-related nuclear incidents. Meeting these new homeland security needs and ensuring that DENR's Radiation Protection program is consistent with federal requirements will require more facility inspections; training of licensees in radioactive materials security; additional communication links between the State agency and federal agencies; cross-training of state agencies in radioactive materials security and response and other activities. To meet those requirements, DENR needs 4.5 new positions to be consistent with the staffing levels reflected in the State's implementation agreement with the Nuclear Regulatory Commission. The funding for the new positions is to come from an increase in the radioactive materials and accelerator fees. These fees are established in a proposed rule 15A NCAC 11 .1106, as published in issue 21:17 NCR. The amendment of 15A NCAC 11 .1102 reflected in the proposed emergency rule will allow a one-time delay of the due date of the fees on October 1, 2007 rather than July 1, 2007. This will allow funds to be available in 2007 to meet the new federally unfunded mandates.

15A NCAC 11 .1102 PAYMENT DUE

(a) For fiscal year 2007-2008, the fees established in Rule .1106 shall be due on October 1, 2007 and on the first day of July each subsequent year. All other fees established in this Section shall be due on ~~the effective date of this Rule~~ July 1, 2007 and on the first day of July of each subsequent year.

(b) Notwithstanding Paragraph (a) of this Rule, when a new license or registration is issued by the agency after the first day of July of any year, the initial fee shall be due on the date of issuance of the license or registration.

(c) The initial fee in Paragraph (b) of this Rule shall be computed as follows:

- (1) When any new license or registration is issued before the first day of January of any year, the initial fee shall be the full amount specified in Rule .1105 or .1106 of this Section; and
- (2) When any new license or registration is issued on or after the first day of January of any year, the initial fee shall be one-half of the amount specified in Rule .1105 or .1106 of this Section.

(d) All fees received by the agency pursuant to provisions of this Section shall be nonrefundable.

(e) Each licensee or registrant shall pay all fees by check or money order made payable to "~~Division of Radiation Protection~~ Radiation Protection Section" and mail such payment to: ~~Division of Radiation Protection, North Carolina Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687.~~ Radiation Protection Section, Division of Environmental Health, Department of Environment and Natural Resources, 1645 Mail Service Center, Raleigh, North Carolina 27699-1645. Such payment may be delivered to the agency at its office located at 3825 Barrett Drive, Raleigh, North Carolina 27609-7221.

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a); Eff. July 1, 1982;
Amended Eff. May 1, 1993; May 1, 1992; July 1, 1989;
Temporary Amendment Eff. June 30, 2002;
Temporary Amendment Expired on March 28, 2003;
Findings of need for Emergency Rule disapproved by Codifier on June 8, 2007;
Emergency Amendment Eff. June 19, 2007 pursuant to G.S. 150B-21.1A(b).

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on May 17, 2007.

**REGISTER CITATION TO THE
NOTICE OF TEXT****ADMINISTRATION, DEPARTMENT OF**

<u>Responsibility</u>	01	NCAC	05C	.0101	21:14 NCR
<u>Organization</u>	01	NCAC	05C	.0102	21:14 NCR
<u>Transfer of Sale</u>	01	NCAC	05C	.0201	21:14 NCR
<u>Notification of Surplus</u>	01	NCAC	05C	.0202	21:14 NCR
<u>Trade-In</u>	01	NCAC	05C	.0203	21:14 NCR
<u>Order of Priority in Disposition</u>	01	NCAC	05C	.0204	21:14 NCR
<u>Public Sale</u>	01	NCAC	05C	.0205	21:14 NCR
<u>First-Come: First-Served</u>	01	NCAC	05C	.0206	21:14 NCR
<u>Request for Bids on State Surplus Property</u>	01	NCAC	05C	.0207	21:14 NCR
<u>Disposal By Other Means</u>	01	NCAC	05C	.0208	21:14 NCR
<u>Rejection of Bids</u>	01	NCAC	05C	.0209	21:14 NCR
<u>Receipt of Bids</u>	01	NCAC	05C	.0210	21:14 NCR
<u>Execution of Bids</u>	01	NCAC	05C	.0211	21:14 NCR
<u>Telefax Proposals (BIDS)</u>	01	NCAC	05C	.0212	21:14 NCR
<u>Inspection of Property</u>	01	NCAC	05C	.0213	21:14 NCR
<u>State Does Not Guarantee</u>	01	NCAC	05C	.0214	21:14 NCR
<u>Deposits</u>	01	NCAC	05C	.0215	21:14 NCR
<u>Failure to Pay</u>	01	NCAC	05C	.0217	21:14 NCR
<u>Bond</u>	01	NCAC	05C	.0218	21:14 NCR
<u>Demolition of State Buildings</u>	01	NCAC	05C	.0219	21:14 NCR
<u>Timber Sales and Pinestraw Sales</u>	01	NCAC	05C	.0220	21:14 NCR
<u>Surplus Weapons</u>	01	NCAC	05C	.0221	21:14 NCR
<u>Payment</u>	01	NCAC	05C	.0222	21:14 NCR
<u>Surplus Paper</u>	01	NCAC	05C	.0223	21:14 NCR
<u>Request for Bids on Sale of Surplus State Property</u>	01	NCAC	05C	.0301	21:14 NCR
<u>Invoice: State Surplus Property</u>	01	NCAC	05C	.0305	21:14 NCR
<u>Scope</u>	01	NCAC	43A	.0101	21:14 NCR
<u>Notification of Surplus</u>	01	NCAC	43A	.0302*	21:14 NCR
<u>Trade In</u>	01	NCAC	43A	.0303*	21:14 NCR
<u>Disposal By Executive Order</u>	01	NCAC	43A	.0305	21:14 NCR
<u>Public Sale</u>	01	NCAC	43A	.0307*	21:14 NCR
<u>First-Come First-Served</u>	01	NCAC	43A	.0308*	21:14 NCR
<u>Receipt of Bids</u>	01	NCAC	43A	.0310	21:14 NCR
<u>Inspection of Property</u>	01	NCAC	43A	.0311	21:14 NCR
<u>State Does Not Guarantee</u>	01	NCAC	43A	.0312	21:14 NCR
<u>Refunds</u>	01	NCAC	43A	.0313*	21:14 NCR
<u>Extension to Pay or Remove Property</u>	01	NCAC	43A	.0314	21:14 NCR

APPROVED RULES

<u>Failure to Pay or Remove Property</u>	01	NCAC	43A	.0315*	21:14 NCR
<u>Bond</u>	01	NCAC	43A	.0316*	21:14 NCR
<u>Demolition of State Buildings</u>	01	NCAC	43A	.0317*	21:14 NCR
<u>Timber Sales, Pinestraw, and Forest Commodities Sales</u>	01	NCAC	43A	.0318	21:14 NCR
<u>Surplus Weapons and Firearms</u>	01	NCAC	43A	.0319	21:14 NCR
<u>Payment</u>	01	NCAC	43A	.0320*	21:14 NCR

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<u>Scope of Housing and Home Improvement Service</u>	10A	NCAC	06E	.0101	21:16 NCR
<u>Definitions</u>	10A	NCAC	06E	.0102	21:16 NCR
<u>Target Eligible Population</u>	10A	NCAC	06E	.0103	21:16 NCR
<u>Service Delivery</u>	10A	NCAC	06E	.0202	21:16 NCR
<u>Purpose</u>	10A	NCAC	06E	.0301*	21:16 NCR
<u>Definitions</u>	10A	NCAC	06E	.0302*	21:16 NCR
<u>Service Populations</u>	10A	NCAC	06E	.0303*	21:16 NCR
<u>Application for Services</u>	10A	NCAC	06E	.0304	21:16 NCR
<u>Service Provider responsibilities</u>	10A	NCAC	06E	.0401*	21:16 NCR
<u>Prohibited Service Activities</u>	10A	NCAC	06E	.0402	21:16 NCR
<u>Request for Waiver</u>	10A	NCAC	06E	.0403*	21:16 NCR

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<u>Unsound Condition</u>	11	NCAC	11A	.0102	21:16 NCR
<u>Definitions</u>	11	NCAC	11A	.0502*	21:16 NCR
<u>Adequacy of Surplus</u>	11	NCAC	11B	.0223*	21:16 NCR
<u>Accounting for Mortgage Guaranty Insurance</u>	11	NCAC	11C	.0403	21:16 NCR
<u>Contingency Reserve: Mortgage Guaranty Insurance</u>	11	NCAC	11C	.0404	21:16 NCR
<u>Report of Policyholders Position--Mortgage Guaranty Insurers</u>	11	NCAC	11C	.0407*	21:16 NCR
<u>Guaranty Capital Certificates: When Permitted</u>	11	NCAC	11D	.0168	21:16 NCR

WILDLIFE RESOURCES COMMISSION

<u>Wildlife Service Agent Agreement</u>	15A	NCAC	10G	.0403*	21:13 NCR
<u>Wildlife Service Agent Terms and Conditions</u>	15A	NCAC	10G	.0405*	21:13 NCR

HEALTH SERVICES, COMMISSION FOR

<u>Solid Wastes</u>	15A	NCAC	18A	.3611*	21:09 NCR
<u>Cleaning of Equipment and Utensils</u>	15A	NCAC	18A	.3629*	21:09 NCR

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<u>Annual Performance Standards</u>	16	NCAC	06G	.0312*	21:12 NCR
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REVENUE, DEPARTMENT OF

<u>EFT Definitions</u>	17	NCAC	01C	.0503*	n/a G.S. 150B-1(d)(4)
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APPROVED RULES

<u>Methods of Electronic Funds Transfer</u>	17	NCAC	01C	.0508*	n/a G.S. 150B-1(d)(4)
<u>Certification Requirements for County Assessors</u>	17	NCAC	10	.0504*	n/a G.S. 150B-1(d)(4)

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<u>Sanitary Ratings and Posting of Ratings</u>	21	NCAC	14H	.0105*	21:14 NCR
<u>Full Time and Part Time Equivalency</u>	21	NCAC	14N	.0115*	21:14 NCR

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<u>Authority to Prescribe</u>	21	NCAC	32B	.1001*	21:13 NCR
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OCCUPATIONAL THERAPY, BOARD OF

<u>Purpose</u>	21	NCAC	38	.0101*	21:13 NCR
<u>Application Process</u>	21	NCAC	38	.0201*	21:13 NCR
<u>License Renewal</u>	21	NCAC	38	.0302*	21:13 NCR
<u>Continuing Competence Definitions</u>	21	NCAC	38	.0801*	21:13 NCR
<u>Qualified Activities for Maintaining Continuing Competence</u>	21	NCAC	38	.0805*	21:13 NCR
<u>Delineation of Clinical Responsibilities</u>	21	NCAC	38	.0905*	21:13 NCR
<u>Limited Permit Defined</u>	21	NCAC	38	.1001*	21:13 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

STATE PERSONNEL COMMISSION

<u>Temporary Employment Services</u>	25	NCAC	01C	.0216*	21:10 NCR
<u>Office of State Personnel Temporary Employment Service</u>	25	NCAC	01C	.0217*	21:10 NCR
<u>Temporary Appointment</u>	25	NCAC	01C	.0405*	21:10 NCR
<u>Temporary Part-time Appointment</u>	25	NCAC	01C	.0407	21:10 NCR

TITLE 01 – DEPARTMENT OF ADMINISTRATION		DISPOSITION	
01 NCAC 05C .0101	RESPONSIBILITY	01 NCAC 05C .0205	PUBLIC SALE
01 NCAC 05C .0102	ORGANIZATION	01 NCAC 05C .0206	FIRST-COME: FIRST-SERVED
		01 NCAC 05C .0207	REQUEST FOR BIDS ON STATE
		SURPLUS PROPERTY	
		01 NCAC 05C .0208	DISPOSAL BY OTHER MEANS
		01 NCAC 05C .0209	REJECTION OF BIDS
		01 NCAC 05C .0210	RECEIPT OF BIDS
		01 NCAC 05C .0211	EXECUTION OF BIDS
		01 NCAC 05C .0212	TELEFAX PROPOSALS (BIDS)
		01 NCAC 05C .0213	INSPECTION OF PROPERTY
		01 NCAC 05C .0214	STATE DOES NOT
		GUARANTEE	
		01 NCAC 05C .0215	DEPOSITS
01 NCAC 05C .0201	TRANSFER OR SALE		
01 NCAC 05C .0202	NOTIFICATION OF SURPLUS		
01 NCAC 05C .0203	TRADE-IN		
01 NCAC 05C .0204	ORDER OF PRIORITY IN		

History Note: Authority G.S. 143-49; 143-64.1 to 143-64.5; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Transferred from T01-05C Eff. November 25, 1986; Amended Eff. July 1, 1987; Transferred from T01-04G Eff. November 1, 1995; Amended Eff. February 1, 1996; Repealed Eff. June 1, 2007.

History Note: Authority G.S. 143-49; Eff. February 1, 1976; Readopted Eff. February 27, 1979;

*Transferred from T01-05C Eff. November 25, 1986;
Amended Eff. November 1, 1988; July 1, 1987; February 1, 1996; March 1, 1994; July 1, 1991;
Transferred from T01-05C Eff. November 25, 1986;
Transferred from T01-04G Eff. November 1, 1995;
Repealed Eff. June 1, 2007.*

01 NCAC 05C .0217 FAILURE TO PAY
01 NCAC 05C .0218 BOND
01 NCAC 05C .0219 DEMOLITION OF STATE BUILDINGS
01 NCAC 05C .0220 TIMBER SALES AND PINESTRAW SALES
01 NCAC 05C .0221 SURPLUS WEAPONS
01 NCAC 05C .0222 PAYMENT
01 NCAC 05C .0223 SURPLUS PAPER

*History Note: Authority G.S. 130A-309.14; 143-64.04; 143-63.1(d); 143-49;
Eff. August 1, 1992; November 1, 1988; September 1, 1985; February 1, 1976;
Eff. Readopted Eff. February 27, 1979;
Transferred from T01-05C Eff. November 25, 1986;
Transferred from T01-04G Eff. November 1, 1995;
Amended Eff. February 1, 1996; November 1, 1988; July 1, 1987;
Repealed Eff. June 1, 2007.*

01 NCAC 05C .0301 REQUEST FOR BIDS ON SALE OF SURPLUS STATE PROPERTY

*History Note: Authority G.S. 150B-11;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Transferred from T01-05C Eff. November 25, 1986;
Amended Eff. November 1, 1988;
Transferred from T01-04G Eff. November 1, 1995;
Repealed Eff. June 1, 2007.*

01 NCAC 05C .0305 INVOICE: STATE SURPLUS PROPERTY

*History Note: Authority G.S. 150B-11;
Eff. February 27, 1979;
Transferred from T01-05C Eff. November 25, 1986;
Transferred from T01-04G Eff. November 1, 1995;
Repealed Eff. June 1, 2007.*

01 NCAC 43A .0101 SCOPE

This Subchapter shall apply to entities engaging in the sale, purchase, or transfer of surplus property through the State Surplus Property Agency.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.*

01 NCAC 43A .0302 NOTIFICATION OF SURPLUS
 State agencies shall notify the State Surplus Property Agency of the Division of Surplus Property of any personal property which

is surplus to their needs by entering the necessary information into the electronic State Surplus Property Disposal System. In doing so, agencies may suggest a fair market price which they desire to receive from any disposition made.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.*

01 NCAC 43A .0303 TRADE-IN

(a) Agencies desiring to trade-in property for new or replacement property shall gain State Surplus Property Agency approval prior to said trade-in.

(b) Where an agency solicits competition for the purchase of a new item and it appears that a trade-in may be advantageous, the solicitation shall contain a provision requesting that a trade-in allowance be offered and the agency's Purchasing Officer shall seek approval from the State Surplus Property Agency prior to the issuance of a purchase order.

(c) It is the responsibility of the agency to document the advantages to the State of a proposed trade-in. However, the State Surplus Property Agency shall be the final authority when concluding advantages to the State.

(d) Advantages other than for cost-effectiveness and ease of disposal shall be considered exceptions, and shall be documented and approved by the agency head prior to submission to the State Surplus Property Agency for final determination.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.*

01 NCAC 43A .0305 DISPOSAL BY EXECUTIVE ORDER

Notwithstanding 01 NCAC 43A .0304, the Governor, through Executive Order, may direct the disposal of surplus State property by transfer or donation to any North Carolina State agency or political subdivision or to the State Government of any other State within the United States, in response to a declared Federal or North Carolina State Disaster.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.*

01 NCAC 43A .0307 PUBLIC SALE

Unless otherwise disposed of, State Surplus Property shall be offered for public sale. Public sale of weapons is limited to licensed firearms dealers. Public sale is through sealed competitive bids, competitive bids, electronic bids, auction, and other methods.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.*

01 NCAC 43A .0308 FIRST-COME FIRST-SERVED

State surplus property is available on a first-come, first-served basis. This applies to retail sales to the general public as well as transfers to state agencies, political subdivisions or non-profit tax exempt organizations.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.

01 NCAC 43A .0310 RECEIPT OF BIDS

It is the responsibility of the bidder to have the bid properly received in the State Surplus Property Agency by the specified time and date of bid opening.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.

01 NCAC 43A .0311 INSPECTION OF PROPERTY

Bidders are urged to inspect property prior to submitting bids. All property is sold "as is" and "where is." Any property descriptions provided by the State are solely as an aid to identification. Verbal communications by custodians of property cannot be deemed reliable, and will not be considered by the State Surplus Property Agency. Reasonable opportunity will be afforded for inspection up to the time for opening bids, but no labor will be furnished for such purpose. The purchaser assumes all liability for the property after award is made.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.

01 NCAC 43A .0312 STATE DOES NOT GUARANTEE

The description of the property offered for sale is compiled from available information. All property is sold "as is" and "where is." In addition, all property offered for sale or a portion thereof is subject to withdrawal prior to the bid opening date. A refund or an adjustment will not be made on account of property not meeting expectations, a bidder's failure to inspect prior to sale, or change of condition of property from the time of award to the time of pickup. Any cost of weighing, packaging, crating, loading or hauling property is assumed by the bidder unless otherwise provided.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.

01 NCAC 43A .0313 REFUNDS

Refunds or adjustments due to change in condition from time of inspection until time of award are limited to the change in value as determined by the State Surplus Property Officer. In such cases, the State Surplus Property Officer may remove the property from bid or reverse the award and re-bid the property.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.

01 NCAC 43A .0314 EXTENSION TO PAY OR REMOVE PROPERTY

Extensions to pay or remove property may be granted under the following conditions:

- (1) The purchaser's inability to pay or remove property was due to the actions or inactions of the State Surplus Property Agency or the custodian of the property, and

- (2) In the case of removal of property, the State Surplus Property Officer determines that space is available.

The purchaser waives all rights to recourse for change in the condition of the property as a condition of the extension.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.

01 NCAC 43A .0315 FAILURE TO PAY OR REMOVE PROPERTY

(a) If the successful bidder fails to pay in full for the property by the time and date indicated on the notice of award, the award shall be rescinded, the property resold, and the defaulting bidder shall be charged with loss to the State, if any, together with all expenses of the sale.

(b) If the successful bidder does not remove the property purchased by the time and date indicated on the notice of award, the State Surplus Property Agency shall retain the purchase price and resell the property a second time and retain all proceeds therefrom.

(c) Successful bidders who fail to pay shall be ineligible for award of future bids.

History Note: Authority G.S. 143-64.01; 143-64.04; 143-64.05;
Eff. June 1, 2007.

01 NCAC 43A .0316 BOND

(a) The selling agency or the State Surplus Property Agency may require performance bonds for the purchase of commodities.

(b) The selling agency or the State Surplus Property Agency shall set the amount and terms of the bond.

(c) Selling agencies shall document the need for performance bonds.

(d) Selling agencies shall request a bond release from the State Surplus Property Agency once the requirements of the bond have been met by the successful bidder.

(e) Selling agencies shall submit a justification to the State Surplus Property Agency for any retention in whole or in part of the performance bond.

(f) The State Surplus Property Agency is the final authority on releasing the performance bond.

History Note: Authority G.S. 143-64.01; 143-64.04; 143-64.05;
Eff. June 1, 2007.

01 NCAC 43A .0317 DEMOLITION OF STATE BUILDINGS

(a) The State Surplus Property Agency handles bids and awards of contracts for the demolition of state buildings including those of universities, hospitals, and other state agencies.

(b) Requests for bid forms are sent to interested, contractors and are further available upon request.

(c) The owning agency shall submit the requirements for permits, insurances, performance bonds and any other applicable requirements from local, state or federal authorities regarding the

demolition of a state building to the State Surplus Property Agency.

(d) The successful bidder is responsible for obtaining all necessary permits, insurances, licenses, performance bonds and other requirements to complete the demolition.

*History Note: Authority G.S. 143-64.01; 143-64.04; 143-64.05;
Eff. June 1, 2007.*

01 NCAC 43A .0318 TIMBER SALES, PINESTRAW, AND FOREST COMMODITIES SALES

Timber, pine straw, and other forest commodities owned by state agencies are disposed of by the State Surplus Property Agency on a competitive bid basis. A request for bid form shall be sent to any interested party upon request as well as to entities on a list maintained by the State Surplus Property Office compiled from individuals who have previously expressed an interest in similar sales.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.*

01 NCAC 43A .0319 SURPLUS WEAPONS AND FIREARMS

(a) Subject to G.S. 20-187.2, Surplus weapons and firearms possessed by the North Carolina State Highway Patrol, North Carolina Department of Correction, North Carolina State Bureau of Investigation, State Capitol Police, and other non-military armed state security agencies shall be sold through the State Surplus Property Agency upon notification in writing to the State Surplus Property Agency that such weapons or firearms are surplus.

(b) The notification shall list each weapon by description and serial number.

(c) Weapons and firearms are subject to transfer between non-military armed state security agencies.

(d) The selling agency is responsible for notifying the State Surplus Property Agency of any federal or state restrictions on sale of non-firearm weapons.

(e) The State Surplus Property Agency, if requested, shall make available to federally licensed firearms dealers a list of firearms to be sold and a statement of the times and locations at which they may be inspected.

(f) Surplus weapons and firearms sales shall be made by competitive bids.

(g) When payment has been received in full by the State Surplus Property Agency, the State Surplus Property Agency shall authorize the release of the weapons to the successful bidder; provided, however, that no weapons shall be released to any person without the production of satisfactory proof of identification and, in the case of firearms, a valid federal firearms license.

*History Note: Authority G.S. 143-63.1; 143-64.01; 143-64.04;
Eff. June 1, 2007.*

01 NCAC 43A .0320 PAYMENT

All payments must be in the form of cash (retail sales only), cashier's or certified check, postal money order, or other methods as approved by the Department of Administration Fiscal Officer. Payment for retail sales items must be at the time of purchase. Payment in full for all other property purchases must be made by the time and date indicated on the notice of award. Extensions to pay or remove property must be in accordance with 01 NCAC 43A. 0314. No property may be removed by the successful bidder prior to full payment of the purchase price. Payments for retail sales shall be made at the retail site where the property is located. All other payments must be made directly to the State Surplus Property Agency. Agencies are not authorized to accept payments on behalf of the State Surplus Property Agency. If an agency releases property prior to receiving documentation that payment in full has been made to the State Surplus Property Agency said agency shall assume all liability related to the release.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.*

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 06E .0101 SCOPE OF HOUSING AND HOME IMPROVEMENT SERVICE

10A NCAC 06E .0102 DEFINITIONS

10A NCAC 06E .0103 TARGET ELIGIBLE POPULATION

*History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c);
Eff. August 3, 1992;
Repealed Eff. July 1, 2007.*

10A NCAC 06E .0202 SERVICE DELIVERY

*History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c);
Eff. August 3, 1992;
Repealed Eff. July 1, 2007.*

10A NCAC 06E .0301 PURPOSE

The Older Americans Act, through the Administration on Aging (AoA), awards funds to the North Carolina Division of Aging and Adult Services (DAAS) for supportive services targeted to individuals with the greatest economic or social need as indicated in 10A NCAC 05C .0205. Housing and Home Improvement is a supportive service which can make a vital difference in the lives of older individuals wishing to live independently in safe affordable homes within their communities of choice. This service can enable them to obtain, retain, or return to independent housing and resolve health and safety issues affecting their home or areas adjacent to their home. For the purpose of this Subchapter, the service has three elements:

- (1) Housing services that support independent living by providing information on:

- (a) fair housing;
- (b) foreclosures;
- (c) grants or loans for home repair;
- (d) home buying;
- (e) homelessness prevention;
- (f) independent housing options and locations;
- (g) landlord tenant relations;
- (h) mortgage delinquency and default resolution counseling;
- (i) predatory lending;
- (j) reasonable accommodations;
- (k) reverse mortgage counseling; and
- (l) tenant's rights and responsibilities;
- (2) Home improvement services that identify health and safety issues affecting the home or areas adjacent to the home in which an individual or family lives, and provide needed improvements to resolve those issues through:
 - (a) installation of security features;
 - (b) minor home repairs and improvements; and
 - (c) modifications to the home to promote mobility; and
- (3) Provision of, or replacement of, basic furnishings or household appliances that promote independent living.

History Note: Authority G.S. 143B-181.1; 42 U.S.C. § 3030d(a)(4); Eff. July 1, 2007.

10A NCAC 06E .0302 DEFINITIONS

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

- (1) "Activities of Daily Living (ADL)" means personal care activities including bathing or showering, dressing, eating, getting in or out of bed or chair, and toileting.
- (2) "Instrumental Activities of Daily Living (IADL)" means independent living activities including doing household chores, managing personal money, preparing meals, shopping for groceries and personal items, and using the telephone or transportation.
- (3) "Greatest economic need" means the need resulting from an income level at or below the poverty line.
- (4) "Greatest social need" means the need caused by physical or mental disabilities; language barriers; or cultural, social or geographical isolation caused by racial or ethnic status that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently.
- (5) "Home" means a housing unit for individuals or families. The home may be owned, rented, or accessed through a lifetime right. It may stand alone and be stick built, manufactured or

- modular; or may be an apartment or condominium within a larger structure that is secured by lock and key.
- (6) "Independent housing" means a home that provides a private living arrangement and is not part of a licensed facility.
- (7) "Service provider" is an area agency on aging or any public or private agency or individual from whom an area agency purchases services to conduct housing and home improvement services.
- (8) "Waiting for service" means that an individual has requested housing and home improvement service that exists in the county but is not receiving it and is potentially eligible for the service, and could be served if the service were expanded.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); Eff. July 1, 2007.

10A NCAC 06E .0303 SERVICE POPULATIONS

For the purposes of this Subchapter:

- (1) Eligible population. Individuals are eligible for housing and home improvement services if they:
 - (a) are 60 years of age or older;
 - (b) have no one able and willing to perform the services for them; and
 - (c) reside within a county where housing and home improvement services are funded.
- (2) Target population. Services shall be provided to individuals based on need for one or more elements of the housing and home improvement services:
 - (a) to obtain independent housing, to receive housing services in order to retain their home, or to return to their home from other settings;
 - (b) to secure security features, to secure minor home repairs and improvements, and to secure modifications to the home to enhance mobility; and
 - (c) to secure basic furnishings or household appliances that promote independent living.
- (3) Priority population. When more than one eligible individual is waiting for services, priority for housing and home improvement services shall be given in accordance with 10A NCAC 05G. 0302(a).

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); Eff. July 1, 2007.

10A NCAC 06E .0304 APPLICATION FOR SERVICES

For services pursuant to this Subchapter, an application shall be signed and dated for housing and home improvement services and shall be made by:

- (1) an adult on his or her own behalf; or
- (2) an adult acting on behalf of a disabled adult as defined in G.S. 108A-101(d).

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); Eff. July 1, 2007.

10A NCAC 06E .0401 SERVICE PROVIDER RESPONSIBILITIES

For purposes of this Subchapter, the housing and home improvement service provider shall:

- (1) provide orientation, training, or supervision for volunteers assisting with housing and home improvement service provision;
- (2) refer individuals to federal, state, and local agencies for additional housing and home improvement services;
- (3) maintain records documenting financial and service activities for each individual receiving services;
- (4) request reimbursement from Division of Aging and Adult Services for actual project costs: administrative, labor, and materials, not to exceed one thousand five hundred dollars (\$1,500) per home per program year;
- (5) provide opportunities for individuals to voluntarily contribute towards the cost of services received;
- (6) maintain confidentiality of all individual records; and
- (7) maintain a listing of individuals waiting for housing and home improvement services.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); Eff. July 1, 2007.

10A NCAC 06E .0402 PROHIBITED SERVICE ACTIVITIES

For purposes of this Subchapter, housing and home improvement service funding shall not be used for:

- (1) rent;
- (2) utility bills;
- (3) food;
- (4) medicine;
- (5) security and utility deposits;
- (6) taxes;
- (7) home improvements negatively affecting the structural integrity of the housing unit;
- (8) home improvements which are an obligation of the landlord;
- (9) work done to the property of a landlord without written approval; and

- (10) duplication of any home improvement service to the same housing unit for three consecutive years following receipt of initial service.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); Eff. July 1, 2007.

10A NCAC 06E .0403 REQUEST FOR WAIVER

The Division of Aging and Adult Services (DAAS) may waive any rule in this Subchapter that is not statutorily required if an area agency on aging submits a written request. Factors DAAS shall use in determining whether to grant the waiver are:

- (1) additional cost requirements;
- (2) need for the waiver;
- (3) degree of benefit to the service recipient;
- (4) whether the agency had control over the circumstances that required the requested waiver; and
- (5) previous requests for waivers submitted from the agency.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); Eff. July 1, 2007.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 11A .0102 UNSOUND CONDITION

History Note: Authority G.S. 58-2-40; 58-3-100; 58-30-60(b); Eff. February 1, 1976; Readopted Eff. February 28, 1978; Amended Eff. July 1, 2004; April 1, 1993; Repealed Eff. June 1, 2007.

11 NCAC 11A .0502 DEFINITIONS

As used in this Section:

- (1) "Audited Financial Report" means those items specified in 11 NCAC 11A .0504.
- (2) "Commissioner" means the Commissioner of Insurance of North Carolina or his authorized representative.
- (3) "CPA" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they hold a certificate.
- (4) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other

- (5) misrepresentations made by the insurer or its representatives.
 "Insurer" means any insurance entity as identified in G.S. 58, Articles 7, 15, 16, 17, 26, 65 and 67 and regulated by the Department.

Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Amended Eff. April 1, 1993;
Repealed Eff. June 1, 2007.

History Note: Authority G.S. 58-2-40; 58-2-205;
Eff. December 1, 1990;
Amended Eff. June 1, 2007; April 1, 1993.

11 NCAC 11B .0223 ADEQUACY OF SURPLUS

In addition to the factors set forth in G.S. 58-19-30(d), the Commissioner shall consider the net effect of all of those factors and other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner shall consider the extent to which each of these factors varies from company to company. In determining the quality and liquidity of investments in subsidiaries, the Commissioner shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments warrant.

History Note: Authority G.S. 58-2-40; 58-19-25; 58-19-30;
Eff. April 1, 1993;
Amended Eff. June 1, 2007.

11 NCAC 11C .0403 ACCOUNTING FOR MORTGAGE GUARANTY INSURANCE

History Note: Authority G.S. 58-2-40; 58-2-165;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Amended Eff. April 1, 1993;
Repealed Eff. June 1, 2007.

11 NCAC 11C .0404 CONTINGENCY RESERVE: MORTGAGE GUARANTY INSURANCE

History Note: Authority G.S. 58-2-40(1);
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. June 1, 2007.

11 NCAC 11C .0407 REPORT OF POLICYHOLDERS POSITION – MORTGAGE GUARANTY INSURERS

Each mortgage guaranty insurance company doing business in this State shall file with the Commissioner a Mortgage Guaranty Insurers Report of Policyholders Position form, which is available at www.ncdoi.com.

History Note: Authority G.S. 58-2-40; 58-10-120; 58-10-125;
Eff. July 1, 2004;
Amended Eff. June 1, 2007.

11 NCAC 11D .0168 GUARANTY CAPITAL CERTIFICATES: WHEN PERMITTED

History Note: Authority G.S. 58-2-40; 58-8-20;

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 10G .0403 WILDLIFE SERVICE AGENT AGREEMENT

Each Wildlife Service Agent shall execute an Agreement with the Commission acknowledging that the business shall comply with all rules and laws related to the sale of licenses and the registration of vessels. The business shall operate as a public convenience and shall serve the public in an efficient and helpful manner with all reasonable requests for assistance related to the duties of a Wildlife Service Agent whenever open for business. The agent shall be informed and knowledgeable of the laws and rules governing requirements for licenses and vessel transactions and stay abreast of changes in these requirements so that the agent can provide accurate and reliable information and instruction to persons who seek assistance in these matters. The appointment as a Wildlife Service Agent and the Agreement under which the appointment is made are singularly valid for the person named thereon who is authorized to act on behalf of the business and applies only to the business and location named and is non-transferable.

History Note: Authority G.S. 113-134; 113-270.1;
Eff. April 1, 1997;
Amended Eff. June 1, 2007; July 1, 1998.

15A NCAC 10G .0405 WILDLIFE SERVICE AGENT TERMS AND CONDITIONS

Failure to comply with the following terms and conditions of this Section may result in temporary suspension or termination of a Wildlife Service Agent's appointment:

- (1) Public Service. Wildlife Service Agents shall provide a public service to all persons seeking assistance with matters related to the duties of a Wildlife Service Agent.
- (2) Training. New Wildlife Service Agents shall attend a training session at a location specified by the Commission prior to activation of agent status and prior to receiving any equipment or supplies from the Commission.
- (3) Activation of Agent Status. Upon completion of training and receipt of equipment and supplies, Wildlife Service Agents shall have their equipment set up and ready for operation 10 days after the date they receive the equipment and supplies.
- (4) If equipment and Internet service provided by the Commission. Upon completion of training, each Wildlife Service Agent shall be equipped with the computer equipment and peripherals necessary to perform transactions

required by the Commission. This computer application is web-based and is linked to the Commission's central database via the Internet. Agents shall provide a telephone line for this purpose. Equipment and service is provided subject to the following:

- (a) Using the equipment and Internet service provided, the agent shall issue all transactions required by the Commission. The record of sale and issuance of each item shall be transmitted immediately to the Commission's database via the Internet. The Commission shall communicate information and instructions about individual agent accounts and messages of general interest to all agents via the computer application and the agent web site.
 - (b) All training, trouble-shooting, maintenance, equipment replacements, materials and supplies shall be furnished by the Commission. Toll-free telephone service to link transaction equipment to the system's central database shall be supplied by the Commission.
 - (c) Upon termination of an agent appointment, all computer equipment and peripherals shall be returned to the Commission as instructed by the Commission.
 - (d) Wildlife Service Agents shall be financially responsible for any damage to computer equipment and peripherals resulting from negligence, malicious activity, equipment abandonment, failure to return equipment upon request of the Commission or improper electrical service to the equipment. In the event of fire, theft, or natural disaster, if insured, agents shall relinquish to the Commission any insurance payment(s) for damaged computer equipment or peripherals provided by the Commission within 10 days of receipt. Agents shall report, by telephone to the Commission, any lost, stolen, damaged, or destroyed equipment within 48 hours of the occurrence and shall submit a written report within 10 days thereafter.
- (5) If equipment and internet service is provided by the Agent. Upon completion of training, each Wildlife Service Agent shall be given access to the Commission's agent web site in order to perform transactions required by the Commission. This web site is linked to the

Commission's central database via the internet. Agents using their own equipment shall provide their own Internet service provider and shall provide a telephone line for this purpose. Agents providing their own Internet service provider shall receive a monthly credit to their bank account from the Commission. The amount of monthly credit is determined by the Commission's savings on internet service provider costs as a result of the agent providing his or her own service. Use and service provided by the Agent is subject to the following:

- (a) Using the web site provided, the agent shall issue all transactions required by the Commission. There record of sale and insurance of each item shall be transmitted immediately to the Commission's database via the internet. The Commission shall communicate information and instructions about individual agent accounts and message of general interest to all agents via the computer application and the agent web site.
 - (b) All training, materials, and supplies shall be furnished by the Commission. The Commission shall not provide technical support, trouble-shooting, or maintenance to agents using their own equipment and Internet service provider.
 - (c) Upon termination of an agent appointment, access to the Commission's agent web site shall be terminated.
- (6) Supplies. The Commission shall provide each wildlife service agent the forms and supplies necessary to perform transactions or to provide information required by the Commission. In the event that any records or supplies related to the operations of a Wildlife Service Agent are stolen, lost, damaged or destroyed, the agent shall notify the Commission by telephone within 48 hours of the occurrence and shall submit a written report within 10 days thereafter.
- (7) Documentation. Wildlife Service Agents shall mail all transaction documentation to the Commission daily.
- (8) Application. Each Wildlife Service Agent shall notify the Commission of any changes to the original application for appointment such as business name, address, agent contact information, bank account information, business hours and other information related to agent appointment, immediately upon its change.

- (9) Business Change of Ownership, Location, or Management. If the ownership of the business, location or management changes, then the Agreement becomes null and void. Written notice of any change in ownership, location, or management shall be sent to the Commission at least 10 days prior to the change along with an application for a new Wildlife Service Agreement, if desired, pursuant to the rules in this Section.
- (10) Renewal. All Wildlife Service Agent Agreements are issued for a term of three years, but may be renewed upon agreement of the Commission and the Wildlife Service Agent.
- (11) Cancellation. A Wildlife Service Agent may cancel the Agreement at any time by sending written notice to the Commission. The Commission shall immediately instruct resigning agents on the procedures for returning all equipment and supplies and to settle their account. Upon resignation of appointment as a Wildlife Service Agent, the former agent must return all consigned equipment and supplies to the Commission and settle the agent financial account within 10 days of the resignation letter's date.
- (12) Suspension. The Commission shall temporarily suspend any Wildlife Service Agent appointment for failure to comply with this Rule.
 - (a) Deficiencies that shall result in temporary suspension include:
 - (i) Failure to comply with the terms and conditions as outlined in the Wildlife Service agent Agreement.
 - (ii) Failure to deposit sufficient funds one or more times to cover the electronic transfer of funds each week.
 - (iii) Failure to operate as a public convenience as specified in the Agreement one or more times.
 - (iv) Failure to provide proper and correct information one or more times about wildlife transactions and related issues to customers as documented by customer complaints or agency inspections.
 - (v) Failure to submit or return all required documentation for transactions as outlined in the Agreement one or more times.
 - (vi) Failure to safeguard or care for the equipment and supplies, and any other act or omission by the agent that results in financial loss or that reflects poorly on the Commission.
 - (b) Temporary suspension is effective immediately upon communication of that fact to the Wildlife Service Agent. Such communication shall state the grounds for temporary suspension and that the agent may request a hearing within 5 working days if he contests the grounds for temporary suspension. If the initial notification is not in writing, it shall be followed by written notice of temporary suspension containing the same information. An employee of the Commission may enter the premises and impound all property and supplies issued or entitled to by the Commission such as equipment, moneys, record books, reports, license forms, other documents and materials pertinent to the agent being suspended. The Commission must make the impounded property, or copies of it, available to the agent during the period of temporary suspension. If a hearing is requested, it shall be before the Executive Director or his designee and shall be held at a location specified by the Executive Director.
 - (c) Temporary suspension remains in effect until the hearing. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if, at the end of the suspension period, the agent has not corrected the deficiency or deficiencies that resulted in the suspension. A Wildlife Service Agent may at any time after a hearing appeal his suspension to the Commission. A new suspension shall comply with the provisions of this Item.
- (13) Termination. The Commission may terminate any Wildlife Service Agent appointment for failure to comply with this Rule.
 - (a) Deficiencies that may result in termination include:
 - (i) Failure to comply with the terms and conditions as outlined in the wildlife service agreement.

- (ii) Failure to deposit sufficient funds two or more times to cover the electronic transfer of funds each week.
 - (iii) Failure to meet the minimum transaction sales requirement of one thousand dollars (\$1,000) annually.
 - (iv) Failure to operate as a public convenience as specified in the Agreement two or more times.
 - (v) Failure to provide proper and correct information two or more times about wildlife transactions and related issues to customers as documented by customer complaints or agency inspections.
 - (vi) Failure to return all required documentation for transactions as outlined in the Agreement two or more times.
 - (vii) Failure to safeguard or care for the equipment and any other act or omission by the agent that results in financial loss or that reflects poorly on the Commission.
- (b) Notice of termination of the appointment may be sent to the Wildlife Service Agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the agent's right to a hearing if he has not previously been afforded one. If the appointment is to be terminated, the notice must state the effective date and hour of termination. If the agent has not been previously afforded a hearing, the agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at a location specified by the Executive Director. If the Executive Director upholds the decision to terminate the appointment, an agent may appeal his termination to the Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no transaction may be made once the agent's termination effective date and time have passed.
- (c) Upon termination of appointment as a Wildlife Service Agent, the former agent must return all consigned equipment and supplies to the Commission and settle the agent financial account within 10 days of the date of receiving written notice from the Commission. Employees of the Commission may conduct inspections and audits when terminating an agent.
- (d) The Executive Director or his designee holding any hearing under this Item must keep a written record of evidence considered and findings made. Upon appeal to the Commission, the Commission Chairman or another presiding officer must cause such a written record of evidence and findings to be made and kept.
- (e) No person denied appointment or whose appointment was terminated under this section may apply again for an appointment as a Wildlife Service Agent for a minimum of two years. Upon application, the Commission may not grant the appointment as a Wildlife Service Agent unless the applicant produces evidence, convincing to the Commission, that he meets all standards and qualifications and will comply with all requirements of statutes and rules pertaining to Wildlife Service Agents.
- (14) Use of customer identifying information. Customer identifying information for customers of the Commission is protected by G.S. 143-254.5. Wildlife Service Agents shall not disclose any customer identifying information to any third party without the express authorization of the Commission. Wildlife Service Agents shall not use such customer identifying information for any purpose whatsoever other than the processing of Commission transactions requested by the customer. Failure to abide by provisions in this Item shall be grounds for immediate termination of the agency.

History Note: Authority G.S. 113-134; 113-270.1; Eff. June 1, 2007.

15A NCAC 18A .3611 SOLID WASTES AND BY-PRODUCTS DISPOSAL

- (a) In Resident Camps, all solid wastes containing food scraps and other decomposable material shall, prior to disposal, be kept in leak-proof, non-absorbent containers such as garbage cans, which shall be kept covered with tight-fitting lids when filled or stored, or not in continuous use. Lids shall be kept in place,

except for cans inside the kitchen, which are being used during normal operations. The contents of these cans without lids in place shall be removed when the garbage can becomes full, or when flies and foul odor occurs, and the cans shall be washed. Storage racks elevated above the ground are required for outside storage of garbage cans. All dry rubbish (including scrap paper, cardboard or similar items) shall be stored in containers.

(b) The rooms, enclosures, designated areas and containers shall be adequate for the storage of all solid wastes accumulating on the premises. Cleaning facilities, including a mixing faucet with hose threads, shall be provided and each container, room or designated area shall be cleaned after emptying or removal of wastes.

(c) Indoor or outdoor facilities shall be provided for the washing and storage of all garbage cans and mops. Cleaning facilities shall include combination faucet, hot and cold water, threaded nozzle and curbed impervious pad sloped to drain.

(d) Where containerized systems are used for garbage storage, facilities shall be provided for the cleaning of such systems with a dumpster pad sloped to drain into a sewer system and hot and cold running water available for cleaning. Alternate methods can be used for off-site cleaning by having a contract with a waste management company that will take the dumpster or containerized system to an off-site location for cleaning. A contract for off-site cleaning shall constitute compliance with this provision and evidence of such contract shall be made available within 21 days to the Environmental Health Specialist upon request.

*History Note: Authority G.S. 130A-235; 130A-248;
Eff. October 1, 2007.*

15A NCAC 18A .3629 CLEANING OF EQUIPMENT AND UTENSILS

(a) All equipment and fixtures shall be kept clean in resident camps. All cloths used by chefs and other employees in the kitchen shall be clean.

(b) All multi-use eating and drinking utensils shall be washed, rinsed and subjected to a bactericidal treatment after each usage as specified in Paragraph (c) of this Rule.

(c) In a hand dishwashing operation, after cleaning and rinsing, all multi-use eating and drinking utensils shall be subjected to one of the following or other equivalent bactericidal processes:

- (1) Immersion for at least one minute in the third compartment in clean hot water at a temperature of at least 170 degrees F (77 degrees C). A thermometer accurate to 2 degrees F (1 degrees C) shall be available and convenient to the compartment. Where hot water is used for bactericidal treatment, a booster heater that maintains a water temperature of at least 170 degrees F (77 degrees C) in the third compartment at all times when utensils are being washed shall be used. The heating device may be integral with the immersion compartment.
- (2) Immersion for at least two minutes in the third compartment in a chemical bactericide of strength:

(A) for chlorine products, a solution containing at least 50 parts per million of available chlorine at a temperature of at least 75 degrees F (24 degrees C);

(B) for iodophor products, a solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and having a temperature of at least 75 degrees F (24 degrees C); or

(C) for quaternary ammonium products, a solution containing at least 200 parts per million of QAC and having a temperature of at least 75 degrees F (24 degrees C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.

(3) Other equivalent products and procedures approved in 21 CFR 178.1010 "Sanitizing Solutions" from the "Food Service Sanitation Manual" which is hereby incorporated by reference including subsequent amendments, published by the U.S. Food and Drug Administration.

(d) A testing method or equipment shall be available, convenient and regularly used to test chemical sanitizers to ensure minimum prescribed strengths.

(e) The supply of eating and drinking utensils shall be of sufficient quantity to allow washing, rinsing, sanitizing and air-drying before reuse. All multi-use utensils except pizza pans and similar type pans (not used for table service) used in the storage, preparation, cooking or serving of food or drink shall be cleaned and rinsed immediately after the day's operations, after each use or upon completion of each meal as indicated. Pizza pans and similar type pans (not used for table service) that are continually subjected to high temperatures do not require cleaning after each use, or day's use but shall be kept clean and maintained in good repair.

(f) In addition to washing and rinsing multi-use utensils as indicated in Paragraph (c) of this Rule, preparation surfaces which come in contact with potentially hazardous foods and are not subjected to heat during routine cooking operations shall be sanitized. Utensils and equipment that have been used for the preparation of raw meat or raw poultry shall not be used for the preparation of cooked meat, cooked poultry or other ready-to-eat products unless such utensils and equipment have been cleaned and sanitized. Examples of food contact surfaces that must be sanitized are utensils used in preparing cold salads and cold beverages, cutting boards, table tops, knives, saws and slicers. For utensils and equipment that are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, and for those resident camps that do not have dishwashing equipment, a spray-on or wipe-on sanitizer may be used. When spray-on or wipe-on sanitizers are used, the chemical strengths shall be those required for sanitizing multi-use eating and drinking utensils.

(g) Hand dishwashing facilities shall consist of an approved three-compartment sink of sufficient size and depth to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drain boards that are an integral part of and continuous with the sink. These drain boards shall be of a sufficient size to accommodate the drainage of liquids of the washed utensils after being sanitized. Air-drying of utensils may be accomplished with the use of a drain board, overhead or wall mounted shelves, or with the use of stationary or portable racks or by cross stacking.

(h) Where the Department determines that the volume of dishes, glasses and utensils to be washed cannot be processed in a single warewashing facility, separate dish, glass or utensil washing facilities shall be required. Separate vegetable washing facilities shall be provided in resident camps which wash raw vegetables except where plan review shows that volume and preparation frequency do not require separate vegetable washing facilities or where vegetables are purchased pre-washed and packaged. Resident camps which scale, eviscerate, thaw or wash fish, raw poultry or other food shall provide separate sinks with preparation space for these processes except where plan review shows that volume and preparation frequency do not require separate washing facilities.

(i) When warewashing machines are used, the machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions. Machines shall be fitted with drain boards on each side, and a countersunk sink or a sink with a faucet, spray nozzle or brushes for pre-cleaning, pre-flushing or pre-soaking of the utensils in the dirty dish lane. Thermometers indicating the wash and rinse water temperatures shall be provided and kept in good repair.

(j) When warewashing machines are used, the machines shall be approved as sufficient for size, capacity and type for the number of utensils to be washed. Glasses may be washed with power-driven brushes and passed through door-type machines, which are also used for dishwashing, for final rinse and bacterial treatment. For this method, a motor-driven glass-washer and a single-vat sink shall suffice.

(k) Warewashing machines shall render equipment clean to sight and touch and provide bactericidal treatment in accordance with Paragraph (c) of this Rule.

(l) When only single-service eating and drinking utensils are used, at least an approved two-compartment sink shall be provided. This sink shall be of sufficient size to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drain boards that are an integral part of and continuous with the sink. These drain boards shall be of sufficient size to accommodate the drainage of liquids of the washed utensils after being sanitized. Air drying of utensils may be accomplished with the use of a drain board, overhead or wall mounted shelf or with the use of stationary or portable racks.

(m) Facilities for the heating of water shall be provided. Capacity of hot water heating facilities shall be based on number and size of sinks, capacity of dishwashing machines and other food service and cleaning needs. Hot water storage tanks shall provide a minimum of 130 degree F (54 degree C) hot water when water is not used for sanitizing; when hot water is used for sanitizing, a minimum storage temperature of 140 degree F (60 degrees C) hot water is required.

(n) No article, polish or other substance containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of eating or cooking utensils.

(o) In determining the sufficiency of the size of drain boards, machine dishwashers and sinks in a resident camp, the environmental health specialist shall consider the number and size of multi-use utensils regularly cleaned. For drain boards only, the specialist shall also consider the available shelf space, racks and other areas that may be used for air-drying.

*History Note: Authority G.S. 130A-235; 130A-248;
Eff. October 1, 2007.*

TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION

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 as follows:

- (1) In grades 3 through 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 end-of-course scores shall be the average of the two previous assessments as specified below (if they are 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 end-of-course subject shall be based upon previous performance on the end-of-grade or end-of-course scores as follows:
 - (A) For Biology, end-of-grade Reading Grade 8 and English I, if available, or end-of-grade Reading Grade 8 if English I is not available, shall be used.
 - (B) For Physical Science, end-of-grade Mathematics Grade 8 shall be used.
 - (C) For Physics, Chemistry and Geometry score shall be used.
 - (D) For Chemistry, Biology score shall be used.
 - (E) For Algebra II, Algebra I score shall be used.

- (F) For Algebra I, end-of-grade Mathematics Grade 8 shall be used.
 - (G) For Geometry, Algebra I and end-of-grade Mathematics Grade 8 if available, or Algebra I only, if end-of-grade Mathematics Grade 8 is not available, shall be used.
 - (H) For English I, end-of-grade Reading Grade 8 shall be used.
 - (I) For US History, English I and Biology if available, or Biology only, if English I is not available, shall be used.
 - (J) For Civics and Economics, English I and Biology if available, or English I only, if Biology is not available, shall be used.
- (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 Subparagraph (2) of this Paragraph or the previous two years end-of-grade 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 end-of-grade or end-of-course testing in a school on traditional schedule, or 70 of 90 days as of the time of end-of-course 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. The failure of a school to test at least 95 percent of its eligible students for two consecutive years shall be grounds for the SBE to designate the school as low-performing and 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:

- (1) Students identified as limited English proficient who have been assessed on the state 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 through 8 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 English language proficiency tests 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 English language proficiency tests at initial enrollment. All students identified as limited English proficient must be assessed using the state English language proficiency test annually thereafter during the 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, end-of-course assessments, and writing assessments for students identified as limited English proficient 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 limited English proficient 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. 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 English language proficiency test shall not be included in either growth, the performance composite or AYP determinations for reading or mathematics. For purposes of determining participation, the state English language proficiency reading test shall be used as reading

participation for the students identified in this section and participation in the state English language proficiency writing test shall be used as writing participation for students identified in this section.

- (C) include students previously identified as limited English proficient, who have exited limited English proficient identification during the last two years, in the calculations for determining the status of the limited English proficient 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 of the Rehabilitation Act of 1973 in membership in grades 3 through 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. 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. Students with disabilities in grades 3 through 8 and 10 with the most significant cognitive disabilities may participate in a state designated alternate assessment based on alternate achievement standards. For the purposes of ABCs performance composite and AYP these students shall be evaluated by alternate achievement standards. 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 1percent 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 1percent 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. If an LEA does not receive an exception to the 1percent 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 1percent 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. Students with disabilities in grades 3 through 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. For the purposes of ABCs performance composite and AYP these students shall be evaluated by modified achievement standards. LEAs shall be held to having a maximum of 2 percent 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 percent 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. If an LEA does not receive an exception to the 2 percent 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 percent 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) The SBE shall convert all student scores to the change scale.
- (2) The SBE shall calculate the difference between the expectation for each student using the previous assessments as outlined in this Rule (including the factor for regression to the mean) and the student's actual performance in the current year's assessments.
- (3) The SBE shall 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) The SBE shall 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) The SBE shall 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) The SBE shall subtract the baseline from the current year's percentage.
 - (D) The SBE shall subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero.
 - (E) The SBE shall 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) The SBE shall subtract the grade 8 rate from the grade 10 rate.
 - (B) The SBE shall subtract 0.1.
 - (C) The SBE shall divide by 12.8, which is the standard deviation. The result is the standard growth in competency passing rate. The SBE shall 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 as follows:
- (A) The SBE shall subtract the current year drop-out rate from the average of the two previous years' drop-out rate.
 - (B) The SBE shall divide by 2.1 (the standard deviation). The result is the standard growth in drop-out rate. The SBE shall multiply this number by $\frac{1}{4}$ the school average daily membership for inclusion in the growth standards.
- (7) For expected growth, the SBE shall multiply the Academic Change for the school by the number of scores used in Subparagraphs (2) and (3) of this Paragraph and add to that the results from Subparagraphs (4), (5), and (6) of this Paragraph. The SBE shall divide by the number of students included in Subparagraphs (2) and (3) of this Paragraph plus the number of graduates, plus the number of 10th graders from Subparagraph (5) of this Paragraph plus the $\frac{1}{4}$ ADM from Subparagraph (6) of this Paragraph. 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.

History Note: Authority G.S. 115C-12(9)c4.; Eff. April 1, 2005; Amended Eff. June 1, 2007; January 2, 2006.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 01C .0503 EFT DEFINITIONS

The terms and phases used in this Section shall have the meanings prescribed in this Rule, unless a different meaning is indicated by the context in which the term or phase is used.

- (1) "ACH" or "Automated Clearing House" means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions rather than the physical movement of paper items.
- (2) "ACH Credit" means the electronic transfer of funds initiated by a taxpayer, cleared through the ACH for credit to the State Treasurer.
- (3) "ACH Debit" means the electronic transfer of funds from the taxpayer's account which is initiated to the Data Collection Center upon the taxpayer's instruction and cleared through the ACH for deposit to the State Treasurer.
- (4) "ACH Trace Number" means a unique number assigned to an electronic payment transaction by the financial institution originating the transaction.
- (5) "Addenda Record" means the tax information and electronic format required by the Department in an ACH Credit transfer.
- (6) "Call-in Day" means the day on which a taxpayer communicates information to the Data Collection Center to initiate an ACH Debit transaction.
- (7) "CCD+" or "Cash Concentration or Disbursement Plus Addenda" means a standard ACH transaction format which includes one 80 character addenda record.

- (8) "CB\$" or "Core Banking System" means the Department of State Treasurer's agency online banking system for state agencies and institutions within the University of North Carolina system for transferring funds electronically.
- (9) "Data Collection Center" or "DCC" means the third party vendor, who, under contract with the Department's financial institution, collects and processes EFT payment information from taxpayers and initiates an ACH Debit transaction.
- (10) "Department" means the North Carolina Department of Revenue.
- (11) "Due Date" means the date on which a payment is required to be made by a taxpayer under a General Statute of the State of North Carolina.
- (12) "Electronic Funds Transfer" or "EFT" means any transfer of funds initiated through an electronic terminal, telephonic instrument, computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account using the methods specified in the rules in this Section.
- (13) "Fiscal Year" means July 1 through June 30.
- (14) "Holiday" means a State Holiday or a Holiday recognized by the Federal Reserve District.
- (15) "NACHA" means the National Automated Clearing House Association which is the regulatory body for the ACH Network.
- (16) "OBI Fields" or "Originator to Beneficiary Information" means a field in a wire transfer that contains information required by the Department from the taxpayer.
- (17) "Payment Information" means the data which the Department requires of a taxpayer making an EFT payment and which must be communicated to the Data Collection Center or be provided in the TXP Banking Convention addenda record of an ACH Credit Transaction.
- (18) "Payor" means the taxpayer.
- (19) "Payor Identification Number" means a confidential code assigned to each taxpayer which uniquely identifies the payor and allows the payor to communicate payment information to the Data Collection Center.
- (20) "Selection Period" means any 12 consecutive month period on which a determination is made regarding a taxpayer's EFT status.
- (21) "Settle" means a deposit of good funds into the State's bank account.
- (22) "Settlement Day or Date" means the day an EFT transaction settles.
- (23) "Taxpayer" means any taxpayer required to remit an amount by electronic funds transfer. For the purpose of the rules in this Section, "taxpayer" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit and includes any political subdivision, municipality, bureau, state agency, and institution within the University of North Carolina system. The term "taxpayer" does not include, local school boards and community colleges.
- (24) "Tax Type" means a tax which is subject to EFT, each of which shall be considered a separate category of payment.
- (25) "Trace Number" means the verification number provided by the Data Collection Center upon receipt of all payment information from the payor which uniquely identifies the completed communication of payment information.
- (26) "Treasurer" or "State Treasurer" means the Treasurer of the State of North Carolina.
- (27) "TXP Format" means the standard CCD+ Addenda record format to be used in ACH Credit transactions approved by Banker's EDI Council of the National Automated Clearing House Association and the Federation of Tax Administrators. This format is required by the Department when a taxpayer is afforded the ACH Credit payment method.
- (28) "Wire Transfer" means an instantaneous electronic funds transfer generated by the taxpayer to the State Treasurer. (i.e. Fedwire or Bankwire)

History Note: Authority G.S. 105-241; 105-262; Eff. October 1, 1993; Amended Eff. June 1, 2007; November 1, 1994.

17 NCAC 01C .0508 METHODS OF ELECTRONIC FUNDS TRANSFER

- (a) The ACH Debit payment method is the preferred method used by taxpayers to make payments for a tax type via EFT.
- (b) The ACH Credit payment method is available to taxpayers with permission of the Department. The taxpayer must demonstrate a valid operational reason for using the ACH Credit payment method in lieu of the ACH Debit method and demonstrate the ability to meet all the criteria of the Department.
- (c) The Department may revoke the right of a taxpayer to use the ACH Credit method of payment if the taxpayer:
 - (1) does not consistently transmit error free payments;
 - (2) varies from the requirements and specifications of the rules in this Section;
 - (3) repeatedly fails to make timely EFT payments or provide timely payment information;
 - (4) repeatedly fails to provide the addenda record with the EFT payment as required by 17 NCAC 01C .0511.

(d) Wire transfer is not an EFT payment option available to taxpayers. Wire transfer shall be used only on an emergency basis with prior authorization by the Department.

(e) The Department of State Treasurer's Core Banking System (CB\$) is available to state agencies and institutions within the University of North Carolina system to make tax payments to the Department electronically.

History Note: Authority G.S. 105-241; 105-262; Eff. October 1, 1993; Amended Eff. June 1, 2007.

17 NCAC 10 .0504 CERTIFICATION REQUIREMENTS FOR COUNTY ASSESSORS

(a) Except for persons deemed to be qualified as county assessors under G.S. 105-294, every person serving as county assessor after July 1, 1983, must, within two years after appointment, achieve a passing grade in the four courses listed in this Rule and then achieve a passing grade on a comprehensive examination administered by the Department of Revenue. Persons who do not meet these requirements are not eligible for reappointment.

(b) The courses required for county assessors are as follows:

- (1) The Fundamentals of Property Tax Listing and Assessing;
- (2) International Association of Assessing Officers (IAAO) Course 101 - The Fundamentals of Real Property Appraisal;
- (3) Personal Property Appraisal and Assessment - Department of Revenue; and
- (4) International Association of Assessing Officers (IAAO) Course 400 Assessment Administration.

(c) The comprehensive examination for county assessors consists of multiple choice or true/false questions. It is designed to test the assessor's knowledge of the listing, appraisal and assessment requirements of the Machinery Act (G.S. 105-271 et seq.) and the theories and procedures involved in the appraisal of real and personal property. A passing grade is 70 percent correct or above.

History Note: Authority G.S. 105-262; G.S. 105-289(d); 105-294(b)(c); Eff. August 1, 1984; Amended Eff. June 1, 2007; July 1, 2000; July 1, 1993.

grading, all establishments will be rated in the following manner:

- (1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;
- (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded grade B.

(b) Every beauty establishment shall be given a sanitary rating. A cosmetic art school shall be graded no less than three times a year, and a cosmetic art salon shall be graded once a year.

(c) The sanitary rating given to a beauty establishment shall be posted in a conspicuous place at all times.

(d) No beauty establishment shall be permitted to operate without first having obtained a sanitary rating card with a grade of not less than 80 percent.

(e) Cosmetic art inspectors shall give each beauty establishment a new sanitary rating card each year.

(f) Violation of any rule in this Chapter or the operation of a beauty establishment which fails to receive a sanitary rating of at least 80 percent (grade B) shall be sufficient cause for revoking or suspending the letter of approval or permit.

(g) A re-inspection for the purpose of raising the sanitary rating of a beauty establishment shall not be given within 30 days of the last inspection, unless the rating at the last inspection was less than 80 percent.

(h) A pedi-spa unit sanitation record must be kept for inspection on a form provided by the Board.

History Note: Authority G.S. 88-23; 88-30; Eff. February 1, 1976; Amended Eff. June 1, 2007; August 1, 1998; June 1, 1994; April 1, 1991; January 1, 1989.

21 NCAC 14N .0115 FULL TIME AND PART TIME EQUIVALENCY

Candidates for teacher exams must work a minimum of 10,400 hours in the cosmetic arts industry to be eligible for Board examination. Applicants cannot receive credit for more than 2,080 hours per year for full-time work or less than 1,040 per year for part-time work.

History Note: Authority G.S. 88B-11; Eff. June 1, 2007.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14H .0105 SANITARY RATINGS AND POSTING OF RATINGS

(a) The sanitary rating of a beauty establishment shall be based on a system of grading outlined in this Subchapter. Based on the

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32B .1001 AUTHORITY TO PRESCRIBE

(a) A license to practice medicine issued under this Subchapter allows the physician to prescribe medications, including controlled substances, so long as the physician complies with all state and federal laws and regulations governing the writing and issuance of prescriptions.

(b) A physician must possess a valid United States Drug Enforcement Administration ("DEA") registration in order for the physician to supervise any other health professional (physician assistant, nurse practitioner, clinical pharmacist

practitioner) with prescriptive authority for controlled substances. The DEA registration of the supervising physician must include the same schedule(s) of controlled substances as the supervised health professional's DEA registration.

*History Note: Authority G.S. 90-2(a);
Eff. June 1, 2007.*

CHAPTER 38 - BOARD OF OCCUPATIONAL THERAPISTS

21 NCAC 38 .0101 PURPOSE

(a) These Rules set out standards and procedures, to license occupational therapists and occupational therapy assistants and to see that the qualifications and activities of those engaged in occupational therapy are in accord with law and to carry out the purpose of the Occupational Therapy Practice Act.

(b) The Board is not a Board of arbitration and has no jurisdiction to settle disputes between parties.

*History Note: Authority G.S. 90-270.66; 90-270.69;
Eff. July 1, 1985;
Amended Eff. July 1, 2007.*

21 NCAC 38 .0201 APPLICATION PROCESS

Each applicant, including those trained outside the United States or its territories, for an occupational therapist or occupational therapy assistant license shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) one head and shoulders photograph (passport type), taken within the past six months, of the applicant of acceptable quality for identification, two inches by two inches in size;
- (2) the proper fees, as required by 21 NCAC 38 .0204;
- (3) evidence from the National Board for Certification of Occupational Therapy (NBCOT) of successful completion of the certification examination administered by it. Evidence of successful completion of the NBCOT certification examination shall be accepted as proof of graduation from an accredited curriculum and successful completion of field work requirements;
- (4) two signed statements on forms provided by the Board attesting to the applicant's good moral character; and
- (5) successful completion of a jurisprudence exam administered by the Board.

*History Note: Authority G.S. 90-270.69(4); 90-270.70;
Eff. July 1, 1985;
Amended Eff. July 1, 2007; May 1, 1989; May 1, 1987.*

21 NCAC 38 .0302 LICENSE RENEWAL

(a) Any licensee desiring the renewal of a license shall apply for renewal and shall submit the renewal application, documentation of continuing competence activities, and the fee. Occupational therapy assistants who are employed must also include evidence of required supervision.

(b) Licenses not renewed by June 30 are expired. Persons whose licenses are expired for 24 months or less and who desire to be licensed shall apply for and complete the requirements to renew the license. The person shall also provide proof of 15 points of continuing competence activities for the last year the license was current and for each full year the person's license was expired.

(c) Any person whose license is expired and who engages in any occupational therapy activities governed by the occupational therapy law shall be subject to the penalties prescribed in G.S. 90-270.76, 90-270.79, 90-270.80 and 90-270.80A.

(d) Licenses expired in excess of 24 months shall not be renewed. Persons whose licenses are expired in excess of 24 months and who desire to be licensed shall apply for and complete the requirements for a new license.

*History Note: Authority G.S. 90-270.69(4); 90-270.75;
Eff. July 1, 1985;
Amended Eff. July 1, 2007; May 1, 1989.*

21 NCAC 38 .0801 CONTINUING COMPETENCE DEFINITIONS

As used in this Section:

- (1) "AOTA Approved Provider Program" refers to a voluntary process of review and approval of continuing education (CE) providers by the American Occupational Therapy Association (AOTA) based on criteria and guidelines that assess a provider's ability to develop and implement CE activities that are relevant to the practice of occupational therapy.
- (2) "Contact Hour" means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks. One contact hour equals one point.
- (3) "Continuing Competence" means a process in which an occupational therapist or an occupational therapy assistant develops and maintains the knowledge, performance skills, interpersonal abilities, critical reasoning skills, and ethical reasoning skills necessary to perform his or her professional responsibilities.
- (4) "Continuing Education" means structured educational experiences beyond entry-level academic degree work that are intended to provide advanced or enhanced knowledge in a particular area.
- (5) "Continuing Education Credit" means credit given for a formalized activity in the form of contact hours or continuing education units.
- (6) "Continuing Education Unit (CEU)" means a unit of measure for continuing education. One

CEU is defined as 10 contact hours of participation in a learning activity excluding meals and breaks.

- (7) "Peer Reviewed" means any written work that is blind reviewed by more than one person.
- (8) "Points" means an assigned unit of measure for each continuing competence activity as defined in Rule .0805 of this Section.

History Note: Authority G.S. 90-270.69; 90-270.75(a); Eff. July 1, 2007.

21 NCAC 38 .0805 QUALIFIED ACTIVITIES FOR MAINTAINING CONTINUING COMPETENCE

Activities that qualify for maintaining continuing competence are:

- (1) Continuing Education:
 - (a) Includes attendance and participation at a live presentation such as a workshop, seminar, conference, or in-service educational program. May also include participation in other continuing education activities that require a formal assessment of learning. Examples include electronic or Web-based courses, AOTA Self-Paced Clinical Courses or other formalized self-study courses, or AOTA Continuing Education Articles;
 - (b) A licensee may earn one point for each contact hour or equivalent unit that is awarded by the provider. There are no maximum points in this category; and
 - (c) Documentation shall include a certificate of completion or similar documentation including name of course, date, author/instructor, sponsoring organization, location, and number of hours attended.
- (2) Academic Coursework:
 - (a) Includes participation in on-site or distance learning academic courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy;
 - (b) A licensee may earn one point for each contact hour, up to a maximum of six points;
 - (c) A licensee enrolled in a graduate or post-graduate OT curriculum has no maximum points in this category; and
 - (d) Documentation shall include an original official transcript indicating successful completion of the course, date, and a description of the course

from the school catalogue or course syllabus.

- (3) Small Group Study:
 - (a) Includes review and discussion of journal articles, clinical videotapes or audiotapes by at least two licensed practitioners;
 - (b) A licensee may earn one point for one hour spent in an independent study activity, up to a maximum of three points; and
 - (c) Documentation shall include title, author, publisher, time spent, and date of completion. Licensee must complete the Small Group Study Form provided by the NCBOT and include a statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.
- (4) Mentorship Agreement:
 - (a) Participation as a Mentee;
 - (i) Participation in a formalized mentorship agreement with a mentor as defined by a signed contract between the mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee. These activities must be related to the development of new occupational therapy skills outside current required job performance;
 - (ii) A licensee may earn one point for each four hours spent in activities directly related to achievement of goals and objectives up to a maximum of five points; and
 - (iii) Documentation shall include name of mentor and mentee, copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
 - (b) Participation as Mentor:
 - (i) Participation in a formalized mentorship agreement with a mentee as defined by a signed contract between the mentor and mentee that designates the responsibilities of the mentor and specific goals and objectives that are to be met

- by the mentee. These activities must be related to the development of new occupational therapy skills for the mentee that are outside current required job performance;
 - (ii) A licensee may earn one point for each four hours spent in mentorship activities as a mentor up to a maximum of five points; and
 - (iii) Documentation shall include name of mentor and mentee, copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
- (5) Fieldwork Supervision:
 - (a) Participation as the primary clinical fieldwork educator for Level I or Level II OT or OTA fieldwork students;
 - (b) A licensee may earn one-half point for each 40 hours of fieldwork, up to a maximum of six points;
 - (c) Documentation shall include verification provided by the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form. Evaluation scores and comments shall be deleted or blocked out; and
 - (d) If fieldwork spans two licensure years, credit shall be given only for the year it is completed.
- (6) Professional Writing:
 - (a) Publication of a peer-reviewed book, chapter, article or contracted review of occupational therapy resource material;
 - (b) During the year written, edited or reviewed a licensee may earn;
 - (i) 15 points as author of a book;
 - (ii) 10 points as author of a chapter;
 - (iii) Five points as author of a peer-reviewed article;
 - (iv) Five points as a contracted reviewer of a print or multimedia occupational therapy resource; or
 - (v) 10 points as listed editor of a book.
 - (c) Documentation shall consist of full reference for publication including title, author, editor, and date of publication; or copy of acceptance letter, if not yet published; and
- (7) Presentation and Instruction:
 - (a) Presentation of an academic course or peer-reviewed or non peer-reviewed workshop, seminar, in-service, electronic or Web-based course for the first time or for which more than 50% of the material has been revised;
 - (b) A licensee may earn two points for each one hour of credit that is awarded for an activity, up to a maximum of six points; and
 - (c) Documentation shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of such, signed by the sponsor.
- (8) Professional Meetings and Activities:
 - (a) Consistent with Rule .0804 of this Section, participation in board or committee work with agencies or organizations to promote and enhance the practice of occupational therapy;
 - (b) A licensee may earn one point for five hours or two points for 10 or more hours for participation on committees or boards; and
 - (c) Documentation must include name of committee or board, name of agency or organization, purpose of service, and description of licensee's role. Participation and hours must be validated by an officer or representative of the organization or committee.
- (9) Board Certification or Specialty Certification:
 - (a) The Board shall recognize completion of activities that result in board certification or specialty certification by AOTA during the current licensure period;
 - (b) A licensee may earn 15 points for each board certification or specialty certification credential earned or re-certified during the current licensure period; and
 - (c) Documentation shall include certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of requirements for obtaining board certification or specialty certification.
- (10) Research and Grants:

- (a) Development of or participation in a research project or grant proposal;
- (b) A licensee may earn one point for each three hours spent working on a research project or grant proposal, up to a maximum of five points; and
- (c) Documentation includes verification from the primary investigator indicating the name of the research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project or name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

History Note: Authority G.S. 90-270.69; 90-270.75(a); Eff. July 1, 2007.

21 NCAC 38 .0905 DELINEATION OF CLINICAL RESPONSIBILITIES

Regardless of the setting in which occupational therapy services are delivered, the occupational therapist and the occupational therapy assistant have the following responsibilities during evaluation, intervention, and outcomes evaluation:

- (1) Evaluations:
 - (a) The occupational therapist shall:
 - (i) Direct the evaluation process;
 - (ii) Determine the need for services;
 - (iii) Define the problems within the domain of occupational therapy that need to be addressed;
 - (iv) Determine the client's goals and priorities in collaboration with the occupational therapy assistant and the client or caregiver;
 - (v) Interpret the information provided by the occupational therapy assistant and integrate that information into the evaluation decision-making process;
 - (vi) Establish intervention priorities;
 - (vii) Determine specific future assessment needs;
 - (viii) Determine specific assessment tasks that can be delegated to the occupational therapy assistant; and

- (ix) Initiate and complete the evaluation, interpret the data, and develop the intervention plan in collaboration with the occupational therapy assistant.
- (b) The occupational therapy assistant may contribute to the evaluation process by implementing specifically delegated assessments for which service competency has been established.
- (2) Intervention Planning:
 - (a) The occupational therapist shall develop the occupational therapy intervention plan. The plan shall be developed collaboratively with the occupational therapy assistant and the client or caregiver; and
 - (b) The occupational therapy assistant may provide input into the intervention plan.
- (3) Intervention implementation:
 - (a) The occupational therapist:
 - (i) Is responsible for implementing the occupational therapy intervention;
 - (ii) May delegate aspects of the occupational therapy intervention to the occupational therapy assistant depending on the occupational therapy assistant's service competency; and
 - (iii) Is responsible for supervising all aspects of intervention delegated to the occupational therapy assistant.
 - (b) The occupational therapy assistant shall implement delegated aspects of intervention in which the occupational therapy assistant has established service competency; and
 - (c) Occupational therapists or occupational therapy assistants shall not be subject to disciplinary action by the Board for refusing to delegate or refusing to provide the required training for delegation, if the occupational therapist or occupational therapy assistant determines that delegation may compromise client safety.
- (4) Intervention; review:
 - (a) The occupational therapist shall meet with each client who has been

- assigned to an occupational therapy assistant, to further assess the client, evaluate intervention, and, if necessary, to modify the individual's intervention plan. The occupational therapy assistant may be present at this meeting.
- (b) The occupational therapist shall determine the need for continuing or discontinuing services; and
 - (c) The occupational therapy assistant shall contribute to the process of determining continuing or discontinuing services by providing information about the client's response to intervention to assist with the occupational therapist's decision making.
- (5) Documentation:
- (a) The occupational therapist shall determine the overall completion of the evaluation, intervention, or discharge plan; and
 - (b) The occupational therapy assistant shall;
 - (i) Document intervention, intervention response and outcome; and
 - (ii) Document client's level of function at discharge.
- (6) Discharge:
- (a) The occupational therapist shall determine the client's discharge from occupational therapy services; and
 - (b) The occupational therapy assistant;
 - (i) Reports data for discharge summary; and
 - (ii) Formulates discharge and/or follow-up plans under the supervision of the occupational therapist.
- (7) Outcome evaluation:
- (a) The occupational therapist is responsible for the selection, measurement, and interpretation of outcomes that are related to the client's ability to engage in occupations; and
 - (b) The occupational therapy assistant must be knowledgeable about the client's targeted occupational therapy outcome and provide information relating to outcome achievement.
- (8) Supervision of occupational therapy students:
- (a) An occupational therapy practitioner shall comply with Accreditation Council for Occupational Therapy Education (ACOTE) requirements for experience when supervising Level II fieldwork occupational therapist and occupational therapy assistant students, which ACOTE requirements, including subsequent amendments and editions, are incorporated by reference. Copies of the incorporated material are available for inspection at the Board office and are available for purchase for five dollars (\$5.00);
 - (b) The occupational therapist may supervise Level I and Level II fieldwork occupational therapist and occupational therapy assistant students; and
 - (c) The occupational therapy assistant may:
 - (i) Supervise Level I occupational therapist or occupational therapy assistant students;
 - (ii) Supervise Level II occupational therapy assistant students; and
 - (iii) Participate in the supervision of Level II occupational therapist students under the direction and guidance of the supervising occupational therapist.
- (9) Supervision of unlicensed personnel and volunteers. Unlicensed personnel or volunteers may be supervised by occupational therapists or occupational therapy assistants.

History Note: Authority G.S. 90-270.69; Eff. July 1, 2007.

21 NCAC 38 .1001 LIMITED PERMIT

A limited permit does not infer clinical competence, only the completion of academic preparation. Therefore, a limited permittee may not practice occupational therapy without supervision.

History Note: Authority G.S. 90-270.74; Eff. July 1, 2007.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01C .0216 TEMPORARY EMPLOYMENT SERVICES

- (a) Any agency may establish and administer a temporary employment service, which may be utilized by that agency or by a specified group of agencies.
- (b) The rules for temporary appointments, 25 NCAC 01C .0405, and specifically the rule regarding length of temporary service,

shall not apply to employees of any temporary employment service utilized by an agency.

(c) Employees of temporary employment services do not earn leave; do not receive total state service credit, health benefits, retirement credit, severance pay, or priority reemployment consideration; do not have access to the rules governing grievances and appeals with the exception of workplace harassment and illegal discrimination; or do not receive any other benefits of State employment.

History Note: Authority G.S. 126-4; 143-34.1; N.C. Constitution, Article V, Section 7; Eff. Pending Legislative Review.

25 NCAC 01C .0217 OFFICE OF STATE PERSONNEL TEMPORARY EMPLOYMENT SERVICE

(a) The Office of State Personnel shall administer a temporary employment service, which may be utilized by any State agency.

(b) The State Personnel Director shall charge any agency using the service an hourly rate, which shall include base pay, FICA taxes, and an administrative fee not to exceed three dollars (\$3.00) per hour.

History Note: Authority G.S. 126-4; 143-34.1; N.C. Constitution, Article V, Section 7; Eff. Pending Legislative Review.

25 NCAC 01C .0405 TEMPORARY APPOINTMENT

(a) A temporary appointment is a full-time or part-time appointment to a permanent or temporary position for a period of up to 12 months performing the same job function in the same work unit within the same agency. Agency heads may approve a temporary appointment for a period of time longer than 12 months in situations where the position is critical to the health, safety, or welfare of citizens or where such an appointment is critical to maintaining the level or quality of services provided by the agency. Such approval shall be documented in writing

and placed in the employee's personnel file. The employee shall be notified that an appointment of greater than 12 months has been approved, the reason therefore, and the employee shall further be reminded that further service in the temporary position does not entitle the employee to benefits of any type, and that the employee is free at any time to seek employment with the State or otherwise that provides benefits.

(b) Students are exempt from the 12-month maximum limit.

(c) Employees retired from any employer are exempt from the 12-month maximum limit if they sign a statement that they are not available for and are not seeking permanent employment. "Retired" is defined as drawing a retirement income or social security benefits.

(d) Employees with a temporary appointment, regardless of their length of service, do not earn leave; do not receive total state service credit, health benefits, retirement credit, severance pay, or priority reemployment consideration; do not have access to the rules governing grievances and appeals with the exception of unlawful workplace harassment and illegal discrimination; or do not receive any other benefits of State employment.

History Note: Authority G.S. 126-4; 143-34.1; N.C. Constitution, Article V, Section 7; Eff. February 1, 1976; Amended Eff. August 1, 1995; November 1, 1991; December 1, 1978; Amended Eff. Pending Legislative Review.

25 NCAC 01C .0407 TEMPORARY PART-TIME APPOINTMENT

History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. August 1, 1995; November 1, 1991; December 1, 1978; Repealed Eff. Pending Legislative Review.

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.
Selina Brooks
Melissa Owens Lassiter
Don Overby

Beecher R. Gray
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
ABC Commission v. La Fiesta Mexicana II, Inc., T/A La Fiesta Mexicana	07 ABC 0149	Gray	04/19/07	
ABC Commission v. NK Group, Inc., T/A NK Food Mart,	07 ABC 0163	Overby	04/18/07	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>CRIME VICTIMS COMPENSATION</u>				
Pricilla McAllister v. Crime Victims Compensation Commission	06 CPS 1166	Webster	06/14/07	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Hanson Hill Rest Home and Faiger Blackwell v. DHHS, DFS, Adult Care Licensure Section	03 DHR 0945	Overby	04/16/07	
Kristen Valerie Kennedy v. Div. of Mental Health/Development Disabilities/ Substance Abuse Services at Dix	06 DHR 0984	Mann	05/08/07	
Eyvette Abbott, Robbie Wilson Community Services, Inc., v. DHHS (DMH/ DD/SAS)	06 DHR 1139	Webster	06/06/07	
Amran Hussein, Trading as Laurinburg Food Mart v. DHHS, Div. of Public Health	06 DHR 1569	Webster	04/17/07	
James Hampton for South Haven Assisted Living v. DHHS, DFS, Mental Health Licensure and Certification Section	06 DHR 1783	Gray	04/23/07	
Burnell Yancey, Jr. v. DHHS, Div. of Medical Assistance	06 DHR 1817	Elkins	05/29/07	22:01 NCR 82
Nidal Dahir, DHHS, Division of Public Health	06 DHR 1916	Lassiter	05/14/07	
Mary K. Short for Kathryn M. Short v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse	06 DHR 2282	Gray	05/18/07	
Egusta Ford v. DMA, Third Party Recovery	06 DHR 2364	Gray	05/14/07	
Annette L. Gwynn v. DHHS, Division of Medical Assistance	07 DHR 0030	Webster	06/08/07	
John A. Millan and Cornelia D. Millan v. DHHS	07 DHR 0031	Gray	05/23/07	
Doris Durden/MID #945-63-2642K v. DHHS	07 DHR 0055	Overby	06/04/07	
Rita Amirahmadi v. DHHS, Division of Medical Assistance	07 DHR 0250	Elkins	06/05/07	
Linda S. Little, Littles Day Care	07 DHR 0266	Overby	05/23/07	
Kareem S. Scott v. DHHS, DFS	07 DHR 0300	Webster	05/11/07	
Peter Emeka Nwankwo v. DHHS	07 DHR 0355	Overby	05/04/07	
Geraldine Fenner v. DHHS	07 DHR 0367	Overby	05/23/07	
Annette L. Gwyn v. DHHS/Division of Medical Assistance	07 DHR 0382	Lassiter	04/16/07	
Jessie Duncan v. DHHS	07 DHR 0424	Elkins	06/08/07	
Leonard Atkins Jr. v. Rowan County DSS (Ms. Tate)	07 DHR 0464	Gray	06/07/07	
Visitacion T Uy v. DHHS/Division of Medical Assistance	07 DHR 0489	Overby	05/10/07	
Dorothy Sue Johnson v. DHHS, DFS	07 DHR 0502	Webster	06/15/07	
Robin E. Peacock, Bridging to Success, Inc v. DHHS, DFS, Mental Health Licensure Section	07 DHR 0510	Gray	05/30/07	
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Citizens for the Preservation of Willis Landing, Kenneth M. Seigler v. DOT	07 DOT 0175	Gray	03/27/07		
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DEPARTMENT OF STATE TREASURER

Sparkle Nicole Jones v. DST and Denise Virginia Lee and Arthur E. Seay, III	05 DST 1612	Gray	05/23/07		
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Charles R. Franklin, Jr. v. DST, Retirement Systems Division	06 DST 1672	Overby	05/14/07	22:01 NCR	85
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Wildcat Investments LLC, James Cook v. Cherokee County Health Depart.	06 EHR 0631	Gray	04/23/07		
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Terry Collins v. DENR, Division of Waste Management	06 EHR 2414	Gray	05/01/07		

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Toni W. Goodwin v. Teachers and State Employees Comprehensive Major Medical Plan	06 INS 1016	Overby	05/07/07		
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Angelia Davis v. UNC-Charlotte	06 OSP 1908	Gray	03/08/07		
Keith Dial v. Dept. of Juvenile Justice and Delinquency Prevention	06 OSP 2346	Gray	04/20/07		
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Dorothy H. Williams v. John Umstead Hospital	07 OSP 0265	Lassiter	04/24/07		
Pei Wang v. UNC-Chapel Hill	07 OSP 0273	Lassiter	04/19/07		
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Mr. Tim Rhodes, President, Event Marketing Services, Inc. v. SOS	07 SOS 0374	Overby	06/14/07

UNC HOSPITALS

Kenneth Trivette v. UNC Hospitals	06 UNC 2014	Elkins	04/02/07
Mark A. Parrish v. UNC Hospitals	06 UNC 2406	Elkins	06/15/07

STATE OF NORTH CAROLINA
COUNTY OF WARREN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
06 DHR 1817

BURNELL YANCEY, JR.,)	
	Petitioner,)	
)	
v.)	
)	
N.C. DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES, DIVISION)	
OF MEDICAL ASSISTANCE,)	
	Respondent.)	

DECISION

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, sitting in Raleigh, Wake County, North Carolina for the February 27, 2007 session of the Office of Administrative Hearings. The record was left open for submission of materials by the parties. After filing by Petitioner on March 26, 2007, and the Respondent on April 2, 2007 the record was held open for an additional fifteen days to allow for settlement discussions and possible settlement by the parties. With no settlement agreement coming forth from the parties, the record was closed on April 17, 2007

APPEARANCES

For the Petitioner:	Burnell Yancey, <i>pro se</i> Ridgeway, NC
For the Respondent:	Susannah P. Holloway Assistant Attorney General NC Department of Justice PO Box 629 Raleigh, NC 27602

ISSUE

Whether Respondent exceeded its authority, acted erroneously, failed to use proper procedure, or failed to act as required by law or rule, when it denied Petitioner's request for a waiver of Respondent's Medicaid recovery for the reason of undue hardship.

APPLICABLE LAW

42 U.S.C. § 1396p
N.C. Gen. Stat. § 108A-70.5
10A N.C.A.C. 21D .0502
N.C. Gen. Stat. Chapter 150B, Administrative Procedure Act.

EXHIBITS

For Petitioner: None presented

For Respondent: Respondent's exhibits 1-3, and 6-8.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed

all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of witnesses and all other evidence, the Undersigned makes the following:

FINDINGS OF FACT

1. Petitioner, Burnell Yancey, Jr., is the nephew of Bessie J. Wilson, who died on July 27, 2004. Bessie Wilson received Medicaid services which, at her death, subjected her estate to a claim by the North Carolina Department of Health and Human Services, Division of Medical Assistance. Bessie Wilson died owning property located at 113 Wycoff Rd., Ridgeway, North Carolina.

2. Ms. Wilson died with a will which was filed with the proper Clerk of Court in August 2004. Petitioner was named in Ms. Wilson's will and was appointed administrator of the estate. After Ms. Wilson's death, her next of kin found that the house at 113 Wycoff Rd., Ridgeway, North Carolina, was in need of repair. Repairs were made to make the house habitable in the amount of \$3,000.00 in materials with a total of approximately \$10,000.00 including labor. Petitioner moved into the house in June 2005.

3. Prior to Ms. Wilson's death, a tenant had lived in the home and made rent payments to Warren Hills Nursing Home in Warrenton, North Carolina to assist in payment for the nursing home care. The Clerk of Court in Warren County holds over \$6,000.00 as a result of these rent payments.

4. At her death, Medicaid expenses in the amount of \$45,484.57 had been paid by North Carolina's Medicaid agency. Claims were made on the estate by Respondent in November 2005, approximately 1 year and 4 months after Ms. Wilson's death. The delay in the claim came as a result of manpower issues in the recovery agency.

5. When Petitioner learned of the Medicaid claim, he requested a hardship waiver. Petitioner is a disabled Veteran and draws \$881.00 per month in Veteran's disability payment as his income. Petitioner asserted that if the waiver were not approved, he would face homelessness, and need food stamps, housing and medical care assistance from the State.

6. Petitioner made his hardship waiver request on March 24, 2006. The Division of Medical Assistance made the initial agency decision denying Petitioner's request for a waiver of estate recovery pursuant to the regulations set forth in the North Carolina Administrative Code on September 22, 2006.

7. The provisions of the North Carolina Administrative Code Title 10A, Chapter 21, Subchapter 21D, "Estate Recovery," Section .0502, "Undue Hardship," govern the instant proceeding.

8. The evidence supports the finding that the property in question is not the Petitioner's sole source of income as demonstrated by the notice of Veterans' Administration disability benefits admitted into evidence as Respondent's Exhibit No. 7, and the testimony of Mr. McDonald Yancey.

9. Based on the testimony of Mr. McDonald Yancey and Petitioner's PreHearing Statement which was accepted into evidence as Respondent's Exhibit 8, the Petitioner moved into the residence in question in June of 2005 and therefore had not been living on the property for twelve months prior to and including Bessie Wilson's date of death.

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction of this contested case pursuant to applicable State and Federal laws. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.

2. Because the property is not the Petitioner's sole source of income and the Petitioner did not live in the residence in question for at least twelve months immediately prior to and on the date of Bessie Wilson's death, the Petitioner has failed to establish

the elements necessary to support a waiver of estate recovery as required under the provisions of the North Carolina Administrative Code Title 10A, Chapter 21, Subchapter 21D, Section .0502.

3. However, the Respondent set on its rights for approximately sixteen (16) months, making no claim upon the property of Bessie Wilson. Respondent had full knowledge of, or with due diligence, should have been aware of the relevant facts and circumstances of this matter for over a year prior to its filing for recovery. Both the principles and case law governing Equity as well as Public Policy should not and does not allow for any party to profit from its own inaction. As such, the amount of \$10,000.00 should be deducted from Respondent's recovery.

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

DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based on those conclusions and the facts in this case, Respondent has not exceeded its authority or failed to act lawfully in its denial of a hardship waiver. However, the value of recovery for the home of Bessie Wilson should be reduced by \$10,000.00, including returning that amount to the Petitioner, should the home of Bessie Wilson be seized and placed for sale by Respondent or if purchased by Petitioner, such amount of sale to Petitioner shall be less \$10,000.00 from the value of the home.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency shall adopt the Decision of the Administrative Law Judge unless the agency demonstrates that the Decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina Department of Health and Human Services.

IT IS SO ORDERED.

This the 29th day of May, 2007.

Augustus B. Elkins II
Administrative Law Judge

CHARLES R. FRANKLIN, JR.,

Petitioner,

V.

NORTH CAROLINA DEPARTMENT OF
STATE TREASURER,
RETIREMENT SYSTEMS DIVISION.

Respondent.

DECISION

This matter came on for hearing before Administrative Law Judge Donald W. Overby on March 30, 2007, in Raleigh, North Carolina. The Petitioner was present and represented by his counsel, John S. Morrison; the Respondent was present through its agent and represented by Robert Curran of the Attorney General's Office.

Respondent's pending motion for discovery sanctions and a further order to compel was withdrawn.

APPEARANCES

For Petitioner: John S. Morrison, The Twiford Law Firm, PC

For Respondent: Robert M. Curran, Assistant Attorney General

ISSUE

The issue to be resolved is: Whether Petitioner can prove his claims of wrongfully terminated retirement payments and wrongful requirement of payback of overpayments and contradict Respondent's Final Agency Decision with respect to his retirement status.

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. § 128-21

N.C. Gen. Stat. §§ 122C-111, 122C-117 and 122C-121.

STIPULATIONS

1. Petitioner Charles R. Franklin, Jr. joined the Local Governmental Employees' Retirement System (hereinafter "LGERS") and became a contributing member in 1971. Petitioner worked as Area Program Director of the Albemarle Mental Health Center, (hereinafter "AMHC") for approximately 34 years prior to submitting an application for retirement in June 2005. AMHC is a participating employer in the LGERS.

2. On May 19, 2005, the AMHC Budget and Finance Committee recommended approval of a five-year contract for the Area Program Director beginning July 1 as included in the Proposed FY 2005-06 Budget Ordinance and Budget Document. The proposed FY 2005-06 budget included a provision for a contract with Nugget Management Services, LLC to provide LME/Area Director Management Services at a cost of \$289,170 for FY 2005-06. The Committee authorized the Area Board Chairman to finalize the contract on behalf of the full Area Board of Directors.

3. At its May 26, 2005 meeting, the AMHC Area Board of Directors accepted the minutes of the May 19, 2005 Budget and Finance Committee meeting and authorized a public hearing on the proposed FY 2005-06 budget at the Board's June 23, 2005

meeting. The minutes of the June 23, 2005 Area Board meeting indicate that “no one [was] present for public comment on the budget,” and the proposed FY 2005-06 budget was approved.

4. On June 2, 2005, the Retirement System received Petitioner’s Form 6, Application for Retirement, showing a retirement effective date of July 1, 2005. On his application, Petitioner stated that his last day worked would be June 30, 2005. The application shows that it was signed by Petitioner on May 26, 2005. The application was certified by the employer on May 23, 2005.

5. On June 1, 2005, Petitioner caused to be filed with the North Carolina Secretary of State articles of organization for Nugget Management Services, LLC (“Nugget”). The articles were signed by John S. Morrison as organizer on May 24, 2005. Nugget was formed, at least in part, to allow Petitioner to continue working as Area Program Director at AMHC after his retirement date.

6. Since its organization in June 2005, Petitioner has been the sole member and employee of Nugget.

7. Sometime prior to June 30, 2005, Nugget entered into an “LME/Area Program Director Agreement” with the AMHC. Petitioner executed the contract on behalf of Nugget. The Chairman of the Area Board of Directors, D. Ben Berry, executed the contract on behalf of the AMHC. The contract provides that, effective July 1, 2005, AMHC would employ Nugget as its LME/Area Program Director for a period of five years according to the terms and conditions set forth in the agreement for the annual compensation of \$289,179, payable in monthly installments, together with \$1,000 per month for automobile depreciation, plus reimbursement for “out of pocket expenses” such as mileage, meals and lodging. The agreement provided that the LME/Area Program Director would earn 25 days of vacation and 12 days of sick leave per year, and that all employees of Nugget would be covered by AMHC’s liability coverage. The agreement was amended on June 27, 2006 to provide that, beginning July 1, 2006, the annual compensation would be \$318,750 payable in monthly installments.

8. Since July 1, 2005, the AMHC has issued payments to Nugget each month pursuant to the terms of the agreement, as amended. All monies paid to Nugget by AMHC have in turn been paid to or used for the benefit of Petitioner. AMHC has not made any withholding or deductions from those payments and, since July 1, 2005, has not made retirement contributions for the position of Area Program Director.

9. Since July 1, 2005, Petitioner has continued to perform all of the duties and responsibilities of an Area Mental Health Director, as he had done for many years prior to that date. Petitioner contends that he has performed those duties as an employee of Nugget. Respondent contends that Petitioner was and continues to be an “employee” of AMHC as that term is defined in N.C.G.S. § 128-21(10).

10. On August 25, 2005, Respondent mailed Petitioner’s first retirement benefits check, which included payment for the months of July 2005 and August 2005. Respondent continued paying retirement benefits to Petitioner through July 31, 2006, totaling \$156,980.36. Respondent suspended Petitioner’s retirement benefits effective August 1, 2006, soon after it learned about Petitioner’s work at AMHC.

11. Neither Petitioner nor AMHC reported to Respondent the work arrangement involving Petitioner, Nugget and AMHC.

12. Aside from its contract to provide mental health director services for the AMHC, since its organization Nugget has done consulting for two other mental health consultants for a flat fee of \$500.

Based upon careful consideration of the stipulations of the parties, the evidence presented at the hearing, and the arguments of the parties, the undersigned makes the following:

FINDINGS OF FACT

13. The minutes of the AMHC Board’s 2005 meetings make no reference to Petitioner’s retirement as Area Director. There is no evidence as to how or when the Petitioner submitted his resignation to the County and/or the AMHC, except that his application for retirement with the Respondent is “certified” on behalf of his employer by Sarah Tyson, Personnel Technician.

14. The minutes of the AMHC Board’s 2005 meetings make no reference to the formation of a search committee to hire a new Area Director. There is no evidence a search committee was ever formed to hire a new Area Director as required by law.

15. The minutes of the AMHC Board’s 2005 meetings make no reference to the hiring of Nugget Management as Area Director, except insofar as the Area Board voted to approve the minutes of the May 19, 2005 meeting of the AMHC Budget and

Finance Committee. The Budget and Finance Committee's May 19 minutes, in turn, recommend "approval of a five-year contract with the Area Program Director beginning July 1. . . . The details of the contract were discussed with the Budget and Finance Committee."

16. The minutes of the AMHC Budget and Finance Committee meeting of May 19, 2005, are signed by the Petitioner as "Recording Secretary." There is no evidence of the extent of the Petitioner's participation in the Committee meeting, nor whether his position as secretary poses a conflict of interest. There is no evidence that the Budget and Finance Committee had the authority to authorize the Area Board Chairman to undertake an obligation on behalf of the entire Board of Directors.

17. There is no evidence that the county commissioners approved the hiring of Nugget as the Area Director or that the county commissioners waived the requirement of its approval.

18. The only evidence before the court is that Nugget has properly filed articles of organization, but the court assumes *arguendo* that Nugget is otherwise compliant with requirements of incorporated entities in the State of North Carolina.

19. The agreement which was entered at an unknown date prior to July 1, 2005 and amended on June 27, 2006, between Nugget and AMHC constitutes a written contract wherein the corporation is employed to perform the duties of LME/Area Program Director. The recitation within the contract states that AMHC is relying on the qualifications of the corporation in employing Nugget as opposed to any individual, including the Petitioner.

20. The contract purports to be entered in accordance with the requirements of North Carolina General Statutes 122C, but continues by putting the statutory requirements of a master's degree, related experience and management experience on the corporate entity. The contract does not delineate nor make clear the distinction between the corporate identity and benefits payable to or accrued by an individual.

21. AMHC has made all payments for services rendered pursuant to the contract payable to Nugget since July 1, 2005.

22. Payments were made to the Petitioner by the Respondent until such time as the Respondent stopped those payments and rendered a final agency decision at issue herein.

23. Correspondence from the AMHC for at least eighteen months following Petitioner's effective retirement continues to refer to "Charles R. Franklin, Jr. LME/Area Program Director," and not the Nugget Management Services, LLC.

24. Annual employee evaluations conducted by the AMHC Board in September 2005 and September 2006 were of Charles R. Franklin, Jr., and continue to show Mr. Franklin in the position of LME/Area Program Director without reference to Nugget Management Services, LLC.

25. A June 2006 inter-agency agreement between AMHC and Tideland Mental Health Center was executed on behalf of AMHC by "Charles R. Franklin, Jr. LME/Area Program Director," without reference to Nugget Management Services, LLC.

26. There was no interruption of services being provided by the Petitioner to AMHC from June 30, 2005 through July 1, 2005 and thereafter.

Based upon the above Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. N.C.G.S. 128-21 provides the following relevant definitions for purposes of the Local Governmental Employees' Retirement System:

(10) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (11) of this section, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. . . . In all cases of doubt the Board of Trustees shall decide who is an employee.

(11) "Employer" shall mean any county, incorporated city or town . . . and the State Association of County Commissioners. "Employer" shall also mean any separate, juristic political subdivision of the State as may be approved by the Board.

(19) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this Article. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.

(22) "Service" shall mean service as an employee as described in subdivision (10) of this section and paid for by the employer as described in subdivision (11) of this section.

Moreover, N.C. Admin. Code tit. 20, r. 2C.0802 (September 1977) states that: "[a]n . . . employee in a regular position, the duties of which require not less than 1,000 hours of service per year shall be an employee as defined in G.S. 128-21(10)."

2. N.C.G.S. § 122C-121(a) provides in part that "[t]he area director is an employee of the area board and shall be appointed in accordance with G.S. § 122C-117(7). The area director is the administrative head of the area program." The duties of an area director and the minimum qualifications for an area director are spelled out in state statute as well. N.C.G.S. §§ 122C-111, 122C-121. The statute includes the requirement that the area director have a Master's degree. *Id.* The Bylaws of the Albemarle Mental Health Center likewise require that the area director be an employee of the area authority.

3. N.C.G.S. § 122C-117(7) provides that the Area Board shall appoint the area program director "based on a selection by a search committee of the area authority board," as well as require approval by the county commissioners unless the county commissioners waive the approval.

4. The requirements of N.C.G.S. § 122C are mandatory. A search committee was not formed for the hiring of the Area Program Director. The county commissioners did not approve the contract hiring Nugget, nor waive that requirement. The minimum requirements for the Area Program Director were not met by Nugget, nor waived. The Area Board did not properly approve of the contract hiring Nugget. The contract was void *ab initio*.

5. The North Carolina Supreme Court has set forth criteria to be considered in determining whether an individual is an employee or an independent contractor. While the Court held that no one particular criterion must be present, it held that an independent contractor:

(a) is engaged in an independent business, calling, or occupation; (b) is to have the independent use of his special skill, knowledge, or training in the execution of the work; (c) is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis; (d) is not subject to discharge because he adopts one method of doing the work rather than another; (e) is not in the regular employ of the other contracting party; (f) is free to use such assistants as he may think proper; (g) has full control over such assistants; and (h) selects his own time.

Hayes v. Elon College, 224 N.C. 11, 16, 29 S.E.2d 137, 140 (1944). Under the common law, or "right to control" test, the focus is on:

the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Nationwide Mutual Ins. Co. v. Darden, 503 U.S. 318, 323-24, 112 S.Ct. 1344 (1992). "Since the common-law test contains 'no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.'" *Id.*

6. Petitioner did not retire on July 1, 2005, but rather continued working in the same position, performing the same duties, as he had for the previous 30-plus years. Petitioner admits that he continued performing the same duties as he did when he was an "employee" of the AMHC. Nugget Management was not engaged in a separate business, but was formed for the sole purpose of allowing Petitioner to stay on as the full-time Area Program Director at AMHC while collecting his retirement. Under the "right to control" test, the Petitioner's work continued to be under the control of the Area Board, just as it had been prior to July 1, 2005.

Petitioner has presented no evidence that his work was under the direction and control of Nugget Management rather than the direction and control of the AMHC Board. Petitioner has presented no evidence tending to show that his performance of all the duties of area director did not render him an employee of the area authority, as also expressly required by the bylaws of the AMHC. The Petitioner was not retired from service with AMHC, but rather continued to serve as an “employee” as defined by statute.

7. In North Carolina, if a corporation “is so operated that it is a mere instrumentality or alter ego of the sole or dominant shareholder and a shield for his activities in violation of the declared public policy or statute of the State, the corporate entity will be disregarded and the corporation and the shareholder treated as one and the same person.” *Henderson v. Finance Co.*, 273 N.C. 253, 260, 160 S.E.2d 39, 44 (1968). It is not necessary to address the doctrine of piercing the corporate veil in rendering this decision, however, the undersigned concludes that the “instrumentality test” supports disregarding Nugget Management LLC as a separate corporate entity and treating Petitioner as the employee of AMHC.

Based upon the above Findings and Conclusions, the undersigned makes the following:

DECISION

Respondent properly determined that Petitioner did not retire, but has remained employed as Area Program Director of Albemarle Mental Health Center for purposes of N.C.G.S. §§ 128-21, *et seq.* Respondent therefore properly terminated Petitioner’s retirement payments and required repayment of all retirement benefits paid to Petitioner from July 1, 2005 through July 31, 2006.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with G.S. § 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision and to present written arguments to those in the agency who will make the final decision. G.S. § 150B-36(a).

The agency is required by G.S. § 150B-36(b3) to serve a copy of the final decision on all parties and to furnish a copy to the parties’ attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Board of Trustees of the Local Governmental Employees’ Retirement System.

This the 14th day of May, 2007.

Donald W. Overby
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAYNE

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
06 EDC 1725**

KAREN STALLINGS,)	
Petitioner,)	
)	
v.)	DECISION
)	
NORTH CAROLINA STATE BOARD)	
OF EDUCATION & National Board)	
Certification Appeals Panel,)	
Respondent.)	

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on January 22, 2007. The record was left open for submission of materials by the parties after receipt of a copy of the transcript of the proceeding. After filing by Respondent on March 8, 2007, the record was held open for filing by Petitioner and closed on March 19, 2007.

APPEARANCES

For the Petitioner: Karen Stallings, *pro se*
Pikeville, NC 27863

For the Respondent: Laura E. Crumpler
Assistant Attorney General
NC Department of Justice
PO Box 629
Raleigh, NC 27602

ISSUE

Whether Respondent exceeded its authority, acted erroneously, failed to use proper procedure, or failed to act as required by law or rule, when it denied Petitioner's request for a waiver of repayment of the National Board for Professional Teaching Standards (NBPTS) certification fee to the State.

STATUTES AND RULES AT ISSUE

§ 115C-296.2. National Board for Professional Teaching Standards Certification.

(a) State Policy. – It is the goal of the State to provide opportunities and incentives for good teachers to become excellent teachers and to retain them in the teaching profession; to attain this goal, the State shall support the efforts of teachers to achieve national certification by providing approved paid leave time for teachers participating in the process, paying the participation fee, and paying a significant salary differential to teachers who attain national certification from the National Board for Professional Teaching Standards (NBPTS).

The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. Participation in the program gives teachers the time and the opportunity to analyze in a systematic way their professional development as teachers, successful teaching strategies, and the substantive areas in which they teach. Participation also gives teachers an opportunity to demonstrate superior ability and to be compensated as superior teachers. To receive NBPTS certification, a teacher must successfully (i) complete a process of

developing a portfolio of student work and videotapes of teaching and learning activities and (ii) participate in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination.

(b) Definitions. – As used in this subsection:

(2) A “teacher” is a person who:

a. Either:

1. Is certified to teach in North Carolina; or
2. Holds a certificate or license issued by the State Board of Education that meets the professional license requirement for NBPTS certification;

b. Is a State-paid employee of a North Carolina public school;

c. Is paid on the teacher salary schedule; and

d. Spends at least seventy percent (70%) of his or her work time:

1. In classroom instruction, if the employee is employed as a teacher. Most of the teacher’s remaining time shall be spent in one or more of the following: mentoring teachers, doing demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers; or
2. In work within the employee’s area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction.

(c) Payment of the NBPTS Participation Fee; Paid Leave. – The State shall pay the NBPTS participation fee and shall provide up to three days of approved paid leave to all teachers participating in the NBPTS program who:

(1) Have completed three full years of teaching in a North Carolina public school and;

(2) Have (i) not previously received State funds for participating in any certification area in the NBPTS program, (ii) repaid any State funds previously received for the NBPTS certification process, or (iii) received a waiver of repayment from the State Board of Education.

Teachers participating in the program shall take paid leave only with the approval of their supervisors.

(d) Repayment by a Teacher Who Does Not Complete the Process. A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not complete the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher’s immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(e) Repayment by a Teacher Who Does Not Teach for a Year After Completing the Process – A teacher for whom the State pays the participation fee who does not teach for a year in a North Carolina public school after completing the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not teach in a North Carolina public school for at least one year after completing the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may extend the time before which a teacher must either teach for a year or repay the participation fee if the State Board finds that the teacher is unable to teach the next year due to the illness of the teacher, the death or catastrophic illness of a member of the teacher’s immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(f) Rules – The State Board shall adopt policies and guidelines to implement this section.

EXHIBITS

For Petitioner: Petitioner's exhibits 1-6.

For Respondent: Respondent's exhibits 1-7.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of witnesses and all other evidence, the Undersigned makes the following:

FINDINGS OF FACT

1. All teachers employed in the public schools of North Carolina must be certified, or licensed, to teach. The North Carolina State Board of Education (SBE) has control of certifying all applicants for teaching positions in all public elementary, middle and high schools of North Carolina.

2. In addition to the system for mandatory licensing of teachers, there exists the opportunity to obtain national licensing through the National Board for Professional Teaching Standards (NBPTS). National licensing is optional. National licensing involves a strenuous and lengthy process that includes the development by the teacher of a comprehensive portfolio.

3. The North Carolina legislature has for many years encouraged and assisted (incentives are codified in G.S. 115C-296.2) teachers in achieving this national certification by paying a fee of \$2300 directly to the NBPTS to cover the cost of the process; allowing a participating teacher three days of annual leave; and awarding successful completers a 12% raise for achieving the certification.

4. Jeanne Washburn testified regarding the role that the Department of Public Instruction plays in ensuring that the mandate of G.S. 115C-296.2 gets carried out. Ms. Washburn is employed by the North Carolina Department of Public Instruction as a Program Assistant in the Center for Recruitment and Retention, which is a part of the Division of Human Resource Management. Ms. Washburn's duties are to work specifically with the NBPTS teacher certification program. Ms. Washburn receives applications from teachers wishing to access State funds in order to pursue certification and then verifies the eligibility of those teachers to receive the State funding. Once she has verified eligibility, Ms. Washburn is responsible for requesting that appropriate checks be drawn and forwarded to NBPTS.

5. A teacher who wants to apply for National Board certification must first go to the NBPTS website and fill out the general application. After completing the general application, the teacher may access the specific North Carolina website in order to request State funding pursuant to G.S. 115C-296.2

6. At the State funding website, the teacher must enter basic information that will permit verification of his or her eligibility. The teacher must also agree to the terms of a promissory note. Specifically, the teacher applicant agrees, in consideration of the State's undertaking to pay the \$2300 application fee, to complete the certification process in one year. The teacher also agrees that, if he or she fails to complete the process in one year, he or she will repay the \$2300 to the State. Once the teacher has entered the required information and has agreed to the necessary terms and conditions, Ms. Washburn verifies the teacher's eligibility for funding. If the teacher is eligible, Ms. Washburn then forwards a check to NBPTS.

7. In the event a teacher discovers a hardship or barrier to completion of the process, he or she may withdraw prior to the date the portfolio is due and prior to the assessment and will not be charged the full repayment of the \$2300, but only \$300. The procedures for withdrawal are set forth on the website for both NBPTS and North Carolina. Teachers may withdraw anytime before the portfolio is due on March 31 of the school year in which certification is being attempted.

8. Typically, the certification process takes several months culminating in the taking of assessments no later than June of the school year in which certification is sought. Because of the time needed for scoring, NBPTS does not release the applicant's scores until November of the following school year. At some point following the release of the scores in November, NBPTS notifies the Department of Public Instruction of the names of all applicants who did not complete the process, or made no attempt to do so.

9. Pursuant to G.S. 115C-296.2(d), “A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.” Individuals designated by NBPTS whose status is “incomplete” are notified that they have not complied with the conditions of the promissory note requiring them to complete the process in one year, and if they have not properly and timely withdrawn, they must repay the State the \$2300 participation fee.

10. In certain circumstances, the State Board may waive the repayment requirement “if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher’s immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.” G.S. 115C-296.2(d) The letter that notifies persons whose status is either “incomplete” or “no attempt” also informs them that they may seek a waiver as provided by State statute.

11. An Appeals Panel has been established by the Department of Public Instruction consisting of professional educators. Department of Public Instruction staff mails out in advance to Panel members the appeals materials and documentation submitted in support of individual teachers’ appeals. Teachers are informed in advance that they must include “copies of validated documentation to substantiate” their requests. Examples of physician notes, deployment papers and legal documents are given in the letter.

12. By a February 15, 2006 letter to Petitioner from Danny Holloman, Manager, Center for Recruitment and Retention in the Division of Human Resource Management of the Department of Public Instruction, the Petitioner was informed that she had failed to complete the certification process per information submitted to DPI by NBPTS.” The letter went on to state that Petitioner “did not submit one portfolio entry and did not respond to one assessment center exercise.” Petitioner was informed that she should forward a check in the amount of \$2300 to DPI. Further the letter informed Petitioner that, “if you believe the requested payment should be waived due to provisions set forth in GS 115C-296.2, please notify Jeanne in writing by March 31, 2006.” (Res. Ex. 5)

13. The February 15, 2006 letter informed Petitioner that an Appeals Panel would “convene in May 2006 to review all requests for waivers.” Petitioner was informed that she may appear personally before the Appeals Panel for 15 minutes to present her request, with an additional ten minutes provided for panel members to follow up on her comments. Lastly, Petitioner was informed that after the Appeals Panel met and submitted their recommendations to the State Board of Education, she would be notified as to the State Board’s decision.

14. Petitioner notified Jeanne Washburn that she wished to request a waiver due to illness as allowed in the statutes. By a 3/24/06 email to Washburn, Petitioner stated that there were extraordinary marital circumstances for not completing the process. Petitioner stated that she would provide the documentation by the March 31st deadline.

15. By a March 28, 2006 email to Petitioner, Ms. Washburn stated that she (Washburn) believed, “you are correct is seeking a waiver, and I want to help you with that.” Ms. Washburn went on to explain that Petitioner send a letter explaining the circumstances that prevented completion of the process or withdrawing properly in a time line format and “supporting documentation such as doctor(s) statements as to the diagnosis and prognosis.” Ms. Washburn informed Petitioner that “when I receive the documentation, I then review it and if I feel there is something else you can send, I will let you know.” The email from Ms. Washburn stated that all information needed to be received prior to July 1, 2006. She informed Petitioner that the “Board of Appeals” was scheduled to convene in August 2006. (Pet. Ex. 1)

16. A letter dated 3/25/06 to Ms. Washburn from a private practice Psychotherapist, Rhonda Bean, ACSW, LCSW, stated that Petitioner was referred to her in May 2005 with symptoms including “a history of sadness, restlessness, irritability, difficulty concentrating, memory impairment, problems making decisions, feelings of hopelessness and worthlessness, appetite disturbance with weight gain, anhedonia and fatigue.” Psychotherapist Bean diagnosed Petitioner with “Major Depression, single episode, moderate severity.” She went on to state that Petitioner’s illness greatly impacted her capacity to complete fully the National Board Certification testing. (Pet. Ex. 2)

17. The Appeals Panel met in one sitting on May 19, 2006 to review 45 requests for waivers. Ms. Washburn submitted all the documentation she had in her file regarding the Petitioner approximately one month before the meeting. She did not know who if any had read Petitioner’s file. Ms. Washburn did not know how long the Panel discussed Petitioner’s waiver and the documentation.

18. The Appeals Panel issued a Report of its May 19, 2006 meeting which was admitted as Respondent’s Exhibit 6. The Report is the record of the Panels work for the day. Petitioner’s name is cited three times in the Report. In one citing it states that Petitioner’s “Reason for Request” for the waiver request of \$2,300 was “Incomplete- Did not submit one portfolio entry and did not answer one assessment exercise.” The line following the waiver request under “Panel Recommendation” states “Denial of waiver request.” The waiver request amount and Panel recommendation is cited again on a separate sheet. In the third citation of Petitioner’s name in the Report, the following is stated, “Ms. Stallings did not complete the National Board Certification process due to failure to submit one

portfolio entry and to answer one assessment exercise.” Under Recommendation, the Report states, “Denial of waiver, inadequate documentation.”

19. The evidence strongly indicates that the Appeals Panel did not consider, review or discuss whether repayment should be required “due to the death or disability of the teacher.” In this failing the State Board of Education could not have looked to waiving the repayment requirement “if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher.”

20. A note dated 6/27/06 referencing Petitioner, from Dr. Hal B. Woodall at Kenly Medical Associates said, “Please accept this note as evidence of ongoing treatment for chronic anxiety and depression.” He stated she was on antidepressant therapy for those conditions. (Pet. Ex. 6) Also in June 2006, in a one and a half page letter dated June 2006, to the members of the State Board of Education, (Pet. Ex. 5), Petitioner sets forth her illness/disability that is the basis of her waiver request. She reveals that she takes “medication daily to help treat my depression, which results from a chemical imbalance and runs through both sides of my family.”

21. Besides receiving no report from the Appeals Panel regarding the Petitioner’s illness/disability, the record indicates the State Board of Education did not review independently Petitioner’s waiver request based on illness. The process used by the State Board does not give Petitioner or any Petitioner the opportunity to make an oral presentation to it. In fact, the evidence supports the notion that any Petitioner requesting a waiver, not only does not know the recommendation coming out of the Appeals Panel meeting but does not know the date the State Board of Education will meet to take up this most important matter to this Petitioner and to all teachers requesting waivers.

22. In the above reference case, Petitioner received an August 14, 2006 letter from the Deputy Superintendent of the Department of Public Instruction simply stating that the “State Board of Education considered the recommendation of the National Board Certification Appeals Panel at its regular meeting, August 2-3, 2006.” The letter goes on to state that the “Board approved the Panel’s recommendation to deny your request for a waiver of National Board Certification fees paid on your behalf by the State of North Carolina.” The letter directs Petitioner to “forward a check for \$2,300” to the Department of Public Instruction. (Res. Ex. 7)

23. The evidence in the record supports Petitioner’s eligibility for a waiver based on Petitioner’s very serious illness of depression which is set forth in several documents and quite frankly put by Psychotherapist, Rhonda Bean, as greatly impacting her capacity to complete fully the National Board Certification testing. (Pet. Ex. 2)

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction of this contested case pursuant to applicable State and Federal laws. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.

2. Pursuant to G.S. 115C-295, all teachers employed in the public schools of North Carolina must be certified, or licensed, to teach. G.S. 115C-296 provides that the State Board of Education (SBE) “shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina . . .” G.S. 115C-296(a) The SBE has exercised its authority to control the licensing of teachers by the adoption of numerous policies governing licensure. See 16 N.C.A.C. 6C. 0101 *et seq.*

3. A teacher for whom the State pays the participation fee for National Board certification who does not complete the process in the first year shall repay the certification fee to the State. Repayment is not required if a teacher does not complete the process due to the death or disability of the teacher. The State Board of Education may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher’s immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

4. Petitioner has the burden of proof by a preponderance of the evidence as to her claims against Respondent. The responsible party for the burden of proof must carry that burden by a greater weight or preponderance of the evidence. Black’s Law Dictionary cites that “preponderance means something more than weight; it denotes a superiority of weight, or outweighing.” The finder of fact

cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side.

5. Petitioner has met her burden of proof that the Respondent improperly denied Petitioner's request for a waiver of repayment of the National Board for Professional Teaching Standards (NBPTS) certification fee to the State. This case also brings forth the notion that Respondent may find it beneficial to review its appeals process, particularly reviewing due process rights and opportunities by persons seeking waivers being notified of the Appeals Panel recommendation and notice of the State Board of Education's meeting dates and times to review those recommendations.

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

DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based on those conclusions and the facts in this case, Respondent acted erroneously in its denial of Petitioner's waiver request.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency shall adopt the Decision of the Administrative Law Judge unless the agency demonstrates that the Decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina State Board of Education.

IT IS SO ORDERED.

This the 3rd day of May, 2007.

Augustus B. Elkins II
Administrative Law Judge

STATE OF NORTH CAROLINA
NEW HANOVER COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

Robert Don Foster
Petitioner

vs.

N. C. Department of Environment and Natural
Resources, Division of Coastal Management
Respondent

and

William F. Canady
Respondent Intervenor

06 EHR 1833

Andrew Price
Petitioner

vs.

N. C. Department of Environment and Natural
Resources, Division of Coastal Management
Respondent

and

William F. Canady
Respondent Intervenor

06 EHR 1834

DECISION

These contested cases were heard jointly in a consolidated hearing on February 16, 2007 in the Surf City Town Hall, Surf City, North Carolina, before Fred G. Morrison Jr., Senior Administrative Law Judge, on Petitions for Contested Case Hearings regarding the issuance by the Division of Coastal Management (DCM) of a minor permit under the Coastal Area Management Act for development on property of William F. Canady in New Hanover County, North Carolina.

APPEARANCES

For Petitioners:

W. A. Raney, Jr.
Wessell & Raney, L.L.P.
P. O. Box 1049
Wilmington, NC 28402-1049,

For Respondent:

Meredith Jo Alcock
Assistant Attorney General
NC Department of Justice
400 Commerce Avenue
Morehead City, NC 28557

For Respondent- Intervenor: Kenneth A. Shanklin
 Shanklin & Nichols
 P. O. Box 1347
 Wilmington, NC 28402-1347.

ISSUE

Did the Local Permit Officer (LPO) for New Hanover County, acting on behalf of the Division of Coastal Management, exceed her authority, act arbitrarily or capriciously or fail to act as required by law or rule in applying CRC Rule 15A NCAC 7H.0209(b)(10)(I)("small house exception") to the permit application of William F. Canady, thereby granting Canady a permit to construct a residence within 20 feet of the normal high water level instead of the 30 foot distance normally required by the Coastal Shoreline Buffer Rule?

TESTIFYING WITNESSES

Debra Wilson
Linda Painter
James L. Seay, Jr.
Ann Hines
Jim Gregson
Charles Howell
William F. Canady
Dexter Hayes
Don Foster
Andrew Price

PETITIONERS' EXHIBITS

1. Subdivision Map - Ocean View Subdivision.
2. Subdivision Map - Ocean View, Section 2.
3. Subdivision Map - Ocean View, Section 3.
4. Subdivision Map - Ocean View with notations by Jim Seay.
5. Deed - Livingston to Sneed - recorded 1945.
6. Declaration of Restrictions - Ocean View - recorded July 25, 1955.
7. Deed - Sneed to Garvey - lot north of Lot 3, Ocean View, recorded August 18, 1965.
8. Deed - Sneed to Vance - parcel from Sneed tract recorded September 8, 1965.
9. Deed - Sneed to Sammons (referred to in transcript as Salmons) recorded December 30, 1965.
10. Deed - Sneed heirs to Joseph Canady recorded August 12, 1987.
11. Deed - Joseph Canady to William F. Canady recorded March 28, 1995.
12. Deed - Same as Petitioners Exhibit #11.
13. Deed - William F. Canady to William F. Canady Trustee, recorded May 27, 2006.
- 14A. Letter - Raney to Hayes dated August 13, 2004.
14. Letter - Hayes to Raney dated August 19, 2004.
15. Letter - Debra Wilson to William Canady dated May 31, 2005.
16. Letter - Hines to William Canady dated March 13, 2006.
17. Letter - Weaver to Howell dated July 3, 2006.
18. Letter - Hines to William Canady dated July 5, 2006.
19. Aerial photo of Canady property with lot lines.

RESPONDENT'S EXHIBITS

1. CAMA Minor Permit Application.
2. Survey dated 9-11-06.
3. CAMA Minor Permit dated 9-13-06

INTERVENOR RESPONDENT EXHIBITS

1. Plat (Site Plan).

2. Zoning Ordinance.
3. Subdivision Regulations.
4. Letter - Hines to Shanklin dated 8-4-04.
5. Letter - Hines to Canady dated 9-27-06.
6. Tax Revaluation Notice.
7. Tax Statements.
8. Joseph Canady Deed.
9. William Canady Deed.
10. Re-recorded Canady Deed.
11. Canady Trust Deed.
12. Foster Deed.
13. Price Deed.

FINDINGS OF FACT

Parties:

1. Petitioner Robert Don Foster ("Foster") owns property and resides at 2029 Trinity Avenue, Wilmington, NC. The property directly adjoins the western line of the property owned by William F. Canady, the Permittee in this case. Foster's lot is landward of and adjacent to the building site for which a permit was issued to build a residence. Foster's property is located adjacent to [Lot 3 of] Ocean View Subdivision, which is located off Middle Sound Loop Road in northern New Hanover County. (Stipulated Facts 1)

2. Petitioner James A. Price ("Price") owns property and resides at 2035 Trinity Avenue, also known as Lot 3 in the Ocean View Subdivision. Price's property is also landward of and adjacent to the building site for which a permit was issued to build a residence. (Stipulated Facts 2)

3. The Intervenor - Respondent in this case is the Permittee, William F. Canady ("Canady"). Canady and his wife in their capacity as Trustees under the Canady Revocable Trust dated November 17, 2006, are owners of the property on which a CAMA Minor Permit has been issued to construct a residence adjacent to the Foster and Price property. (Stipulated Facts 3)

4. Respondent is the North Carolina Department of Environment and Natural Resources, Division of Coastal Management ("DCM"). DCM regulates the coastal areas of the State pursuant to authority conferred upon it by the 1974 Coastal Area Management Act ("CAMA") which is found in Chapter 113A, Article 7 of the North Carolina General Statutes and various regulations promulgated thereunder by the Coastal Resources Commission, and codified at Title 15A, Chapter 7 of the North Carolina Administrative Code (collectively, "CRC Rules"). (Stipulated Facts 4)

5. New Hanover County has an approved "implementation and enforcement program" pursuant to G.S. 113A-116 and 117 and has been delegated the responsibility to process CAMA Minor Permits. (Stipulated Facts 5)

6. The County's Local County Permit Officer ("LPO") acted as agent of the State of North Carolina pursuant to G.S. 113A-116 and GS 113A-121 with regard to the CAMA Minor Permit. (Stipulated Facts 6)

PROPERTY

7. The property is located in northern New Hanover County off Middle Sound Loop Road. The property is located adjacent to the waters of Middle Sound and the Atlantic Intracoastal Waterway. At this location the waters of Middle Sound are classified as Outstanding Resource Waters ("ORW") by the Environmental Management Commission. The CRC's rules provide extra protection for ORW coastal shoreline in 15A NCAC 7H.0209(f). (Stipulated Facts 7)

8. Intervenor - Respondent's Deed recorded March 28, 1995, describes the property as follows:

Tract 1

Being all of Tract A, as shown on map of Ocean View, as recorded in Map Book 6 at Page 4 of the New Hanover County Registry. Being Tract 2 of the property conveyed in Book 1386 at Page 1382 of the New Hanover County Registry.

Tract 2

BEGINNING at a point, the same being the Southwest corner of Lot 3, Ocean View, map of same being recorded in Map Book 6 at Page 4 of the New Hanover County Registry. Running thence from said beginning point North 44 degrees 52 minutes East 101.72 feet to a point. Running thence South 30 degrees 19 minutes East 50.06 feet to a point in the high water line of Middle Sound. Thence the same course continued South 30 degrees 19 minutes East 225 feet, more or less, to the right-of-way line of the Intracoastal Water Way. Thence with the right-of-way line of the Intracoastal Water Way Southwestwardly 180 feet, more or less, to a point that is located South 44 degrees 52 minutes West 49.09 feet and South 26 degrees 08 minutes East from the point of beginning. Running thence North 26 degrees 08 minutes West 270 feet, more or less, to the high water line of Middle Sound. Thence the same course continued North 26 degrees 08 minutes West 36.0 feet to a point. The same being the Southeast corner of Tract A as shown on the above mentioned Ocean View map. Running thence North 44 degrees 52 minutes East 49.09 feet to the point of BEGINNING. (Stipulated Facts 8).

9.The Restrictive Covenants for Ocean View Subdivision dedicated all of Tract A as extended to the Intracoastal Waterway as an area for water access to the owners of lots in Ocean View. There is a dirt road and an area for launching and retrieving boats on Tract A as extended. (Stipulated Facts 9)

10.Canady proposes to build a residence on a piece of upland property which adjoins the north side of Tract A as extended. (Stipulated Facts 10)

11.The County tax records show Tract A, the upland building site and the marsh and water between the upland building site and the Intracoastal Waterway as one parcel for tax purposes. (Stipulated Facts 11)

12.As shown on the site plan, the Permittee's only access to his building site is through Tract A, the same tract over which the other residents of Ocean View have a right of ingress, egress and regress. (Stipulated Facts 12)

13.The parcel on which Canady proposes to build a residence was first described as a separate parcel in a Deed from the Sneedens heirs to Joseph Canady recorded August 12, 1987, in which it is described by a metes and bounds description as Tract 3 ("Remnant Parcel").

14.The Remnant Parcel is part of a large tract of land acquired by J. Earl Sneedens and wife, Gladys A. Sneedens, from D. O. Livingston and wife in 1945 (Parent Parcel).

15.Ocean View Subdivision and Ocean View Sections 2 and 3 were created out of the property of the Parent Parcel.

16.The parcel conveyed to Joseph Canady in 1987 is the property from the Parent Parcel that was left over after J. Earl Sneedens and Gladys Sneedens had subdivided parts of the Parent Tract and had conveyed other parts of the Parent Tract by metes and bounds descriptions.

17.The Remnant Parcel consists of property lying southeast of Tract A of Ocean View, Lot 3, Ocean View and the Foster lot.

18.Most of the Remnant Parcel lies below the mean high water level of Middle Sound. (Stipulated Facts 11)

19.The Remnant Parcel first came into existence as a separate parcel when Sneedens conveyed a tract of land to W. Paul Sammons and wife Helen Moore Sammons by Deed recorded in December 1965. The Remnant Parcel is the remaining small strip of upland and marsh land left over after the Sneedens had conveyed all of their property in the Parent Parcel.

20.J. Earl Sneedens died before his wife, at which time she became the sole owner of the Remnant Parcel.

21.Gladys Sneedens died on April 15, 1979, almost 14 years after the Sammons conveyance, and left all her real estate to her 7 children.

22.The 7 children of Gladys Sneedens conveyed the property to Joseph Canady and wife, Theresa Canady, by Deed recorded on August 12, 1987.

23.J. Earl Sneedens sold or subdivided into lots all of the properties in the Parent Parcel between June 1955 and December 1965 except the Remnant Parcel.

24.The Deed to Joseph and Teresa Canady reflects that there was no consideration paid for the transfer of the property.

25.J. Earl Sneed and Gladys Sneed showed no indication that they considered the Remnant Parcel to be a parcel suitable for development as a residential lot as they did not include it on the subdivision maps or convey it as a separate parcel for the 14-year period from the conveyance of the Sammon's parcel to Mrs. Sneed's death.

26.The map of Ocean View Subdivision recorded in 1955 shows a narrow strip of land lying between the waters of Middle Sound and the eastern boundaries of Lots 3 and Tract A, which, according to the scale on the subdivision map, is approximately 20 feet wide.

27.The Deed from the Sneed heirs to Joseph Canady describes the distance from the corner of the Foster lot and the high water line to be 50.6 feet and the distance from the southern corner of Tract A to the high water line to be 36 feet.

28.The most recent map prepared for Canady to determine the upland acreage of the Remnant Parcel in September of 2006 shows the distance from the corner of the Foster lot to the high water line to be 64.76 feet and the distance for the southern boundary to be 67.60 feet.

29.The Remnant Parcel has been enlarged by filling since Ocean View Subdivision was platted in 1955.

COASTAL SHORELINE BUFFER RULE

30.The Coastal Shoreline Buffer Rule ("Buffer Rule") generally prohibits development activity within 30 feet of the normal high water level of coastal waters. 15A NCAC 7H.0209(d)(10)

31.There is an exception to the Buffer Rule that allows construction on lots, parcels and tracts platted prior to June 1, 1999 where application of the Buffer Rule would preclude construction of a residence with a footprint of 1,200 square feet (small house exception). 15A NCAC 7H.0209(d)(10)(I) (emphasis added)

32. The exception requires the residential structure to be located a distance landward of the normal high water level equal to 20% of the greatest depth of the lot. 15A NCAC 7H.0209(d)(10)(I)(ii)(emphasis added)

PLATTED PRIOR TO JUNE 1, 1999

33.Tract A was platted in 1955 when the Ocean View Subdivision map was prepared and recorded.

34.The New Hanover County Subdivision Ordinance applicable to this property became effective in November 1965, prior to the subdivision of Sneed property by the Deed to Sammons recorded December 30, 1965.

35.At the time Jim Gregson, Supervisor in the Division of Coastal Management, made the determination that the Remnant Parcel qualified for the small house exception, he had not researched the meaning of "platted." He interpreted "platted" to mean "created."

36.The determination was made by DCM in about 2003 that the Remnant Parcel qualified for the small house exception on the basis that "platted" meant "created".

37. The New Hanover County Subdivision Ordinance (Subdivision Ordinance) defines plat as ". . . a map or plan of a tract or parcel of land which is to be or which has been subdivided." The definition also states that plat "includes the map, plan, plat, re-plat, re-plot. . ."

38.The Subdivision Ordinance defines "Plat, Preliminary" and "Plat Final" as "a map . . .".

39.There is no recorded subdivision map in New Hanover County which shows the Remnant Parcel as a lot, parcel or tract.

40. There was no evidence presented by the Respondent or Intervenor Respondent showing that the Remnant Parcel was platted prior to June 1, 1999.

41.The creation of a metes and bounds description to describe the Remnant Parcel does not constitute a "plat".

42.Dexter Hayes, who was accepted as an expert witness in land use planning and who was Planning Director for New Hanover County for 26 years, does not consider the Remnant Parcel to be a platted lot.

43.The purpose of requiring plats or maps to be prepared and approved as part of regulatory subdivisions of property is to assure that the property meets all legal requirements and the division by a metes and bounds description in a deed does not receive the necessary review to determine legality.

44.The creation of the Remnant Tract as a separate parcel by selling off a piece of a larger tract by a metes and bounds description did not provide a planning or regulatory agency the opportunity to review a plat to determine if the subdivision was legal at the time it was accomplished.

45.The Remnant Parcel on which Canady proposes to construct a residence was not platted prior to June 1, 1999.

LOT DEPTH

46.Canady discussed development of the Remnant Parcel with representatives of DCM in 2003. A determination was made at that time that the lot depth for purposes of applying the small house exception should be the depth of the Remnant Parcel rather than the depth of Tract A and the Remnant Parcel combined.

47.After DCM determined that only the Remnant Parcel should be used to determine the lot depth for the small house exception, Canady received a variance from the New Hanover Board of Adjustment to allow an encroachment into the normally required setbacks on the west side of the Remnant Parcel. The County variance contained a condition that the Canady property must not have been created by an illegal subdivision.

48.For purposes of arguing that the property complied with the Subdivision Ordinance, Canady combined Tract A of Ocean View with the Remnant Parcel in order to meet the 15,000 square foot minimum lot size required by the Subdivision Ordinance.

49.Initially, this approach was rejected by New Hanover County Planning Director Dexter Hayes, but his decision was later overruled by Acting Planning Director Dave Weaver after Hayes retired.

50.One essential fact in determining whether the creation of the Remnant Parcel constituted an illegal subdivision was whether the parcel was 15,000 square feet or greater.

51.The CRC Rules applicable to the Canady proposal require that the built-upon area within the AEC shall not exceed 25%. 15A NCAC 7H .0209(a)and (f)

52.The entirety of the Remnant Parcel and Tract A are within the AEC as they are within the area that is S 75' from the normal high water level. 15A NCAC 7H .0209(a)

53.The area of the lot used by the Local Permit Officer and the Division of Coastal Management to determine the application of the 25% rule was the area of the Remnant Parcel and Tract A combined into one development area.

54.Three different site plan maps attached to the permit application and permit all show Tract A and the Remnant Parcel as one lot.

55.Ann Hines, Zoning Enforcement Officer for New Hanover County, considered Tract A and the Remnant Parcel to be one lot for purposes of applying County zoning setbacks.

56.If the Remnant Parcel and Tract A are considered one lot, the greatest depth of the lot would be 226 feet and the proposed development by Canady would not meet the requirement of being set back 20% of the depth of the lot.

57. The purpose of the Shoreline Buffer Rule is to protect coastal waters from the adverse effects of pollutants carried by storm-water runoff from developed areas. 15A NCAC 7H.0209(d)(2); (d)(3)(A); (d)(10)(I)(i); (d)(10)(J)(ii); (d)(10)(J)(iv).

58. Petitioner Foster lives very close to the waters adjacent to the Canady remnant parcel and uses the waters adjacent to the Canady remnant parcel for swimming and docking a boat. (Stipulated Facts 1)

59. Sneed, owner of the parent parcel from which the Canady remnant parcel was created, granted riparian rights across the area that is now the Canady remnant parcel to the purchaser of the current Foster parcel, thus giving that owner and subsequent owners, including Foster, a right of access to the water adjacent to the Canady parcel.

60. Petitioner Price, by virtue of ownership of a lot in Ocean View Subdivision, has access to the body of water adjacent to the Canady remnant parcel across Tract A of the Ocean View Subdivision.

61. Price lives very close to the waters adjacent to the Canady remnant parcel and regularly uses the body of water adjacent to the Canady remnant parcel for swimming and kayaking and has an interest in the quality of the water adjacent to the remnant parcel. (Stipulated Fact 2)

CONCLUSIONS OF LAW

- 1.The Office of Administrative Hearings has jurisdiction to hear this case pursuant to G.S. 113A-121.1 and G.S. 150B-23.
- 2.All parties have been correctly designated and are properly before the Office of Administrative Hearings.
- 3.The Office of Administrative Hearings has jurisdiction over the parties and the subject matter.
- 4.A CAMA Minor Development Permit is required by Canady in order to construct a proposed residence on the Remnant Parcel.
- 5.The Coastal Shoreline Buffer Rule requires development to be located 30 feet from the normal high water level. The structure proposed by Canady is located 20 feet from the normal high water level and is in violation of the Coastal Shoreline Buffer Rule unless it is entitled to an exception known as the small house exception set forth in 15A NCAC 7H.0209(d)(10)(I).
- 6.The Canady lot was not "platted prior to June 1, 1999" as required by the small house exception. Black's Law Dictionary, Special Deluxe, 5th Edition, 1979 defines plat or plot as "a map of a subdivision showing the location and boundaries of individual parcels of land subdivided into lots, with streets, alleys, easements, etc., usually drawn to a scale". Plat map is defined as: "A plat map is generally drawn after the property has been described by some other means---Once a plat map is set, legal descriptions are defined by referring to the given map---."
- 7.The proposed Canady residential structure violates the provisions of the Buffer Rule and is not entitled to the small house exception.
- 8.The DCM erred in its determination that the small house exception applies to the Canady proposal.
- 9.The DCM acted erroneously in applying the small house exception to the Canady proposal and in issuing the Minor Development Permit to Canady.
- 10.The "greatest depth" of the Canady lot within the meaning of 7H.0209(d)(10)(I)(ii) would be the depth of the Remnant Parcel and Tract A combined.
- 11.The residential structure proposed by Canady is not located a distance landward of the normal high water level equal to 20% of the greatest depth of the lot or 30 feet and the Canady proposal would not be entitled to a permit under the small house exception.
- 12.The DCM acted erroneously, arbitrarily or capriciously in determining that the Canady property should be treated as 2 lots for purposes of determining lot depth when the property was considered as one property for purposes of the built-upon area rule, the County Subdivision Ordinance, and the County Zoning Ordinance.
- 13.The Petitioners' rights have been substantially prejudiced by the issuance of the CAMA Minor Development Permit to Canady.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the decision by the DCM to issue Minor Development Permit 05-027 to William Canady is reversed. DCM shall revoke or otherwise terminate this permit.

ORDER AND NOTICE

The North Carolina Coastal Resources will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 11th day of May, 2007.

Fred G. Morrison Jr.
Senior Administrative Law Judge