

# NORTH CAROLINA REGISTER

VOLUME 24 • ISSUE 24 • Pages 2155 - 2259

June 15, 2010

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**PUBLISHED BY**

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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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### **Legislative Process Concerning Rule-making**

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**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2010 – December 2010

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
24:14	01/15/10	12/22/09	01/30/10	03/16/10	03/22/10	05/01/10	05/12/10	10/12/10
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24:16	02/15/10	01/25/10	03/02/10	04/16/10	04/20/10	06/01/10	01/26/11	11/12/10
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24:18	03/15/10	02/22/10	03/30/10	05/14/10	05/20/10	07/01/10	01/26/11	12/10/10
24:19	04/01/10	03/11/10	04/16/10	06/01/10	06/21/10	08/01/10	01/26/11	12/27/10
24:20	04/15/10	03/24/10	04/30/10	06/14/10	06/21/10	08/01/10	01/26/11	01/10/11
24:21	05/03/10	04/12/10	05/18/10	07/02/10	07/20/10	09/01/10	01/26/11	01/28/11
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25:07	10/01/10	09/10/10	10/16/10	11/30/10	12/20/10	02/01/11	05/2012	06/28/11
25:08	10/15/10	09/24/10	10/30/10	12/14/10	12/20/10	02/01/11	05/2012	07/12/11
25:09	11/01/10	10/11/10	11/16/10	01/03/11	01/20/11	03/01/11	05/2012	07/29/11
25:10	11/15/10	10/22/10	11/30/10	01/14/11	01/20/11	03/01/11	05/2012	08/12/11
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## 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.

**Notice of Receipt of the Second Amended and Restated Certificate of Public Advantage (COPA) Periodic Report, dated September 30, 2009**

In accordance with the provisions of G.S. 131E-192.9 Periodic Reports, the Department of Health and Human Services ("the Department") is hereby giving notice that it has received the **Mission Hospitals, Inc. Second Amended and Restated Certificate of Public Advantage Periodic Report dated September 30, 2009**. A copy of the report is on file at the offices of the Director of the Division of Health Service Regulation, 701 Barbour Drive Raleigh, NC 27603 and is available for inspection by members of the public during normal business hours (8am -5pm Monday – Friday). In accordance with G.S. 131E-192.9 the public has 30 days from the date of publication of this notice to file written comments on the report with the Department.

Department of Health and Human Services  
Division of Health Service Regulation  
Christopher B. Taylor, CPA, Assistant Secretary  
North Carolina Medical Care Commission  
Chris.Taylor@DHHS.NC.Gov  
June 15, 2010

**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**

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Structural Pest Control Committee intends to amend the rule cited as 02 NCAC 34 .0102.*

**Fiscal Impact:**

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

**Proposed Effective Date:** October 1, 2010

**CHAPTER 34 - STRUCTURAL PEST CONTROL COMMITTEE**

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than June 30, 2010, to James W. Burnette, Jr., Secretary, NC Structural Pest Control Committee, 1090 Mail Service Center, Raleigh, NC 27699-1090.

**SECTION .0100 - INTRODUCTION AND DEFINITIONS**

**02 NCAC 34 .0102 DEFINITIONS**

In addition to the definitions contained in the Act, the following definitions apply:

**Reason for Proposed Action:** These revisions clarify that the contact spray application of pesticides (insecticides) to control Subterranean Termite Alates (winged forms, also commonly termed "swarmers") is not considered to be control of wood-destroying organisms ("W-Phase"), but is considered to be a part of Household pest ("P-Phase") pest control.

- (1) "Act or law" means the Structural Pest Control Act of North Carolina of 1955.
- (2) "Active infestation of a specific organism" means evidence of present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (3) "Active ingredient" means an ingredient which will or is intended to prevent, destroy, repel, or mitigate any pest.
- (4) "Acutely toxic rodenticidal baits" means all baits that, as formulated, are classified as Toxicity Category I or II (Signal Word "Danger" or "Warning") under 40 CFR Part 156.10.
- (5) "Board of Agriculture" means the Board of Agriculture of the State of North Carolina.
- (6) "Commercial certified applicator" shall mean any certified applicator employed by a licensed individual.
- (7) "Commercial structure" means any structure which is not a residential structure, including but not limited to shopping centers, offices, nursing homes, and similar structures.
- (8) "Complete surface residual spray" means the over-all application of any pesticide by spray or otherwise, to any surface areas within, on, under, or adjacent to, any structure in such a manner that the pesticide will adhere to surfaces and remain toxic to household pests and rodents or other pests for an extended period of time.
- (9) "Continuing education units" or "CEU" means units of noncredit education awarded by the

**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 James W. Burnette, Jr., Secretary, NC Structural Pest Control Committee, 1090 Mail Service Center, Raleigh, NC 27699-1090.

**Comments may be submitted to:** James W. Burnette, Jr., Secretary, NC Structural Pest Control Committee, 1090 Mail Service Center, Raleigh, NC 27699-1090; phone (919) 733-3556; fax (919) 733-9796; email james.burnette@ncagr.gov

**Comment period ends:** August 16, 2010

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

- Division of Continuing Studies, North Carolina State University or comparable educational institution, for satisfactorily completing course work.
- (10) "Continuing certification unit" or "CCU" means a unit of credit awarded by the Division upon satisfactory completion of one clock hour of approved classroom training.
- (11) "Crack and crevice application" means an application of pesticide made directly into a crack or void area with equipment capable of delivering the pesticide to the target area.
- (12) "Deficient soil sample" shall mean any soil sample which, when analyzed, is found to contain less than 25 percent, expressed in parts per million (ppm), of the termiticide applied by a licensee which would be found if the termiticide had been applied at the lowest concentration and dosage recommended by the labeling.
- (13) "Department" means the Department of Agriculture and Consumer Services of the State of North Carolina.
- (14) "Disciplinary action" means any action taken by the Committee as provided under the provisions of G.S. 106-65.28.
- (15) "Division" means the Structural Pest Control Division of the Department of Agriculture and Consumer Services of the State of North Carolina.
- (16) "Enclosed space" means any structure by whatever name known, including household structures; commercial buildings; warehouses; docks; vacant structures; places where people congregate such as hospitals, schools, churches, and others; railroad cars; trucks; ships; aircraft; and common carriers. It shall also mean vaults, tanks, chambers, and special rooms designed for use, being used, or intended to be used for fumigation operations.
- (17) "EPA" means the Environmental Protection Agency of the United States Government.
- (18) "EPA registration number" means the number assigned to a pesticide label by EPA.
- (19) "Flammable pesticidal fog" means the fog dispelled into space and produced:
- (a) from oil solutions of pesticides finely atomized by a blast of heated air or exhaust gases from a gasoline engine; or
  - (b) from mixtures of water and pesticidal oil solutions passed through a combustion chamber, the water being converted to steam, which exerts a shearing action, breaking up the pesticidal oil into small droplets (thermal fog); or
  - (c) from oil solutions of pesticides which are forced through very narrow space
- by centrifugal force and atomized as they are thrown off into the air (mechanical or cold fogs).
- (20) "Fog or fogging" means micron sized particles of pesticide(s) dispersed by means of a thermal or centrifugal fogger or a pressurized aerosol pesticide.
- (21) "Fumigation" means the use of fumigants within an enclosed space, or in, or under a structure, in concentrations which may be hazardous to man.
- (22) "Fumigation crew" or "crew" means personnel performing the fumigation operation.
- (23) "Fumigation operation" means all details prior to application of fumigant(s), the application of fumigant(s), fumigation period, and post fumigation details as outlined in these Rules.
- (24) "Fumigation period" means the period of time from application of fumigant(s) until ventilation of the fumigated structure(s) is completed and the structure or structures are declared safe for occupancy for human beings or domestic animals.
- (25) "Fumigator" means a person licensed under the provisions of G.S. 106-65.25(a)(3) or certified under the provisions of G.S. 106-65.26 to engage in or supervise fumigation operations.
- (26) "Gas-retaining cover" means a cover which will confine fumigant(s) to the space(s) intended to be fumigated.
- (27) "General fumigation" means the application of fumigant(s) to one or more rooms and their contents in a structure, at the desired concentration and for the necessary length of time to control rodents, insects, or other pests.
- (28) "Household" means any structure and its contents which are used for man.
- (29) "Household pest" means any vertebrate or invertebrate organism occurring in a structure or the surrounding areas thereof, including but not limited to insects and other arthropods, commensal rodents, and birds which have been declared pests under G.S. 143-444. "Household pest" does not include wood-destroying ~~organisms~~. organisms: except that subterranean termite alates swarming in or around a structure may be considered household pests.
- (30) "Household pest control" means that phase of structure al pest control other than the control of wood-destroying organisms and fumigation and shall include the application of remedial measures for the purpose of curbing, reducing, preventing, controlling, eradicating, and repelling household ~~pests~~. pests: except that contact spray application of pesticide to control subterranean termite alates shall be permitted under the "P" phase license.

- (31) "Inactive license" shall mean any structural pest control license held by an individual who has no employees and is not engaged in any structural pest control work except as a certified applicator or registered technician.
- (32) "Infestation of a specific organism" means evidence of past or present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (33) "Inspection for a specific wood-destroying organism" means the visual examination of all accessible areas of a building and the probing of accessible structural members adjacent to slab areas, chimneys, and other areas particularly susceptible to attack by wood-destroying organisms to determine the presence of and the damage by that specific wood-destroying organism.
- (34) "Inspector" means any employee of the Structural Pest Control Division of the Department of Agriculture and Consumer Services of the State of North Carolina.
- (35) "Licensed structural pest control operation," or "pest control operation," or "operator," or "licensed operator" means any person licensed under the provisions of G.S. 106-65.25(a) or unlicensed who, for direct or indirect hire or compensation is engaged in the business of structural pest control work, as defined in G.S. 106-65.24(23).
- (36) "Liquefied gas aerosol" means the spray produced by the volatilization of a compressed and liquefied gas, to which has been added a nonvolatile oil solution containing a pesticide.
- (37) "Noncommercial certified applicator" shall mean any certified applicator not employed by a licensed individual.
- (38) "Open porch" means any porch without fill in which the distance from the bottom of the slab to the top of the soil beneath the slab is greater than 12 inches.
- (39) "Physical barrier" as used in 02 NCAC 34 .0500, means a barrier, which, by its physical properties and proper installation, is capable of preventing the passage of subterranean termites into a structure to be protected from subterranean termites.
- (40) "Residential structure" means any structure used, or suitable for use, as a dwelling such as a single- or multi-family home, house trailer, motor home, mobile home, a condominium or townhouse, or an apartment or any other structure, or portion thereof.
- (41) "Secretary" means the Secretary to the North Carolina Structural Pest Control Committee.
- (42) "Service vehicle" means any vehicle used regularly to transport the licensee or certified applicator or registered technician or other employee or any equipment or pesticides used in providing structural pest control services.
- (43) "Slab-on-ground" means a concrete slab in which all or part of that concrete slab is resting on or is in direct contact with the ground immediately beneath the slab.
- (44) "Solid masonry cap" means a continuous concrete or masonry barrier covering the entire top, width and length, of any wall, or any part of a wall, that provides support for the exterior or structural parts of a building.
- (45) "Space spray" means any pesticide, regardless of its particle size, which is applied to the atmosphere within an enclosed space in such a manner that dispersal of the pesticide particles is uncontrolled. Pesticidal fogs or aerosols, including those produced by centrifugal or thermal fogging equipment or pressurized aerosol pesticides, shall be considered space sprays.
- (46) "Spot fumigation" means the application of a fumigant to a localized space or harborage within, on, under, outside of, or adjacent to, a structure for local household pest or rodent control.
- (47) "Spot surface residual spray" means the application of pesticidal spray directly to a surface and only in specific areas where necessary and in such a manner that the pesticidal material will largely adhere to the surface where applied and will remain toxic to household pests or rodents or other pests for which applied for an extended period of time.
- (48) "Structure" means all parts of a building, whether vacant or occupied, in all stages of construction.
- (49) "Structural pests" means all pests that occur in any type of structure of man and all pests associated with the immediate environs of such structures.
- (50) "Sub-slab fumigation" means the application of a fumigant below or underneath a concrete slab and is considered spot fumigation.
- (51) "Supervision," as used in 02 NCAC 34 .0325, shall mean the oversight by the licensee of the structural pest control activities performed under that license. Such oversight may be in person by the licensee or through instructions, verbal, written or otherwise, to persons performing such activities. Instructions may be disseminated to such persons either in person or through persons employed by the licensee for that purpose.
- (52) "Termiticide(s)" (as used in these Rules) means those pesticides specified in 02 NCAC 34 .0502, Pesticides for Subterranean Termite Prevention and/or Control.



- (53) "Termiticide barrier" shall mean an area of soil treated with an approved termiticide, which, when sampled, is not deficient in termiticide.
- (54) "To use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling. Provided that, the term shall not include:
  - (a) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency;
  - (b) applying a pesticide against any target pest not specified on the labeling if the application is to the site specified on the labeling, unless the EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling; or
  - (c) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified by the labeling.
- (55) "Type of treatment" means the method used to apply a pesticide formulation to a specific location, including but not limited to: space spray, crack and crevice, complete surface residual, spot surface residual, bait placement, or fog.
- (56) "Unauthorized personnel" means any individual or individuals not given specific authorization by the licensee or certified applicator to enter areas to which access is restricted by these Rules.
- (57) "Waiver" means a standard form prescribed by the Committee pursuant to 02 NCAC 34 .0603 which will, when completed correctly, permit the licensee to deviate from or omit one or more of the minimum treatment methods and procedures for structural pests which are set forth in the Committee rules, definitions, and requirements.
- (58) "Wood-decaying fungi" means any of the brown or white rot fungi in the Class Hymenomycetes that are capable of digesting or consuming the structural elements of wood after installation and causing a significant decline in strength or failure of wooden structural members.
- (59) "Wood-destroying insect report" means any written statement or certificate issued by an operator or his authorized agent, regarding the presence or absence of wood-destroying insects or their damage in a structure.
- (60) "Wood-destroying organism" is an organism such as a termite, beetle, other insect, or

fungus which may devour or destroy wood or wood products and other cellulose material in, on, under, in contact with, and around structures.

- (61) "Wood-destroying organism report" means any written statement or certificate issued by an operator or his authorized agent, regarding the presence or absence of wood-destroying organisms or their damage in a structure.

Authority G.S. 106-65.29.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rules cited as 10A NCAC 41C .0901-.0907.*

**Proposed Effective Date:** *October 1, 2010*

**Public Hearing:**

**Date:** *July 7, 2010*

**Time:** *2:00 p.m. – 4:00 p.m.*

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

**Reason for Proposed Action:** *Adoption of these rules is necessary in order to implement House Bill 1151, which was ratified on August 11, 2009. This legislation requires the Commission for Public Health to adopt rules to implement legislation establishing a new EPA-authorized state-administered lead-based paint removal program. These Rules will improve the safety of the public at large by reducing the chemical dangers caused by lead-based paints. Temporary rule adoptions made this possible on a temporary basis. These permanent rule changes make the temporary changes permanent. **Note: The underlines and strike through marks indicate changes the agency is proposing comparing the text of the temporary rules effective January 1, 2010 and the proposed permanent rules.***

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be submitted in writing to Chris G. Hoke, JD, the Rulemaking Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for these Rules.*

**Comments may be submitted to:** *Chris G. Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 715-5006; email Chris.Hoke@dhhs.nc.gov*

**Comment period ends:** *August 16, 2010*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the*

Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal Impact:**

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

*Note: The underlines and strike through marks indicate changes the agency is proposing comparing the text of the temporary rules effective January 1, 2010 and the proposed permanent rules.*

**CHAPTER 41 - HEALTH: EPIDEMIOLOGY**

**SUBCHAPTER 41C - OCCUPATIONAL HEALTH**

**SECTION .0900 – LEAD-BASED PAINT HAZARD MANAGEMENT PROGRAM FOR RENOVATION, REPAIR AND PAINTING**

**10A NCAC 41C .0901 GENERAL**

(a) In addition to the definitions found in 40 CFR Part 745 Subpart E and Subpart L and G.S. 130A-453.12 the following definitions -apply throughout this Section:

- (1) "Accredited training course" means a lead training course accredited by the Program.
- (2) "Accredited training provider" means a training provider who is accredited by the Program, and who provides accredited training courses.
- (3) "Program" means the Lead-Based Paint Hazard Management Program for Renovation, Repair and Painting within the Division of Public Health.
- (4) "Training hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.
- (5) "Working day" means Monday through Friday. Holidays falling on any of these days are included in the definition.

(b) Residential Property Renovation and Lead-Based Paint Activities, 40 CFR Part 745 Subpart E and Subpart L, is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for

inspection at the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27499-1915. A copy of this document may be obtained in writing from the US Government Printing Office, P.O. Box 979050, St Louis, MO 63197-9000, at a cost of sixty-one dollars (\$61.00).

Authority G.S. 130A-453.21.

**10A NCAC 41C .0902 CERTIFICATION OF INDIVIDUALS**

(a) No person shall perform lead-based paint renovation activities for compensation in target housing and child-occupied facilities until that person has been certified by the Program in the applicable certification category. Certification is not required for a trained renovation worker as defined by G.S. 130A-453.12(b)(7).

(b) An applicant for certification shall successfully complete applicable, discipline specific training courses accredited by the Program pursuant to Rule .0904 of this Section. Successful completion includes attendance of at least 95 percent of the course, passing the course exam with a minimum score of 70 percent, and successful completion of the hands-on skills assessment pursuant to 40 CFR 745, Subpart L. An applicant for initial certification shall also meet the applicable, discipline-specific, certification requirements in Paragraphs (c) and (d) of this Rule:

(c) To obtain dust sampling technician certification or renewal of certification, the applicant shall meet the following:

- (1) An applicant for initial certification shall have successfully completed an accredited initial dust sampling technician training course within the 12 months immediately preceding application. If initial training was completed more than 12 months prior to application, the applicant shall have successfully completed an accredited dust sampling technician training course at least every 60 months from the date of the last training, and within 12 months immediately preceding the application.
- (2) An applicant shall submit a completed dust sampling technician certification application with the following information to the Program:
  - (A) full name of the applicant;
  - (B) address, including city, state, zip code, and telephone number;
  - (C) date of birth, sex, height, and weight;
  - (D) name, address, including city, state, zip code, and telephone number of certified renovation firm;
  - (E) -name of training provider;
  - (F) name of training course completed;
  - (G) dates of course attended;
  - (H) one color photograph of the applicant; and
  - (I) confirmation of completion of accredited initial and refresher training courses, as applicable, from the training provider. The confirmation shall be in the form of

an original certificate of completion of the accredited training course, or an original letter from the training provider, on training provider letterhead, confirming completion of the course.

- (3) Initial dust sampling technician certification expires on the last day of the twelfth month after training was taken.
- (4) An applicant for renewal of dust sampling technician certification shall have successfully completed an accredited initial or refresher training course within 48 months prior to applying for certification renewal, and shall meet the requirements of this Paragraph and Paragraph (b) of this Rule. All renewal certifications expire on the last day of the 12th month from the date of certification. If a person fails to obtain the required training within 48 calendar months of the date of last training, that person may renew certification only by successful completion of an accredited dust sampling technician ~~initial~~ course and by meeting the requirements of this Paragraph and Paragraph (b) of the Rule. If a person fails to obtain the required training within 60 calendar months of the date of last training, that person may renew certification only by successful completion of an accredited initial dust sampling technician course and by meeting the requirements of this Paragraph and Paragraph (b) of this Rule.

(d) To obtain certification as a certified renovator or to renew certification, the applicant shall meet the following:

- (1) An applicant for renovator certification shall have successfully completed an accredited initial renovator training course prior to application. If initial training was completed more than 60 months prior to application, the applicant shall have successfully completed an accredited refresher course for the specific discipline at least every 60 months from the date of completion of initial training.
- (2) An applicant shall submit a completed renovator certification application with the following information to the Program:
  - (A) full name of the applicant;
  - (B) address, including city, state, zip code, and telephone number;
  - (C) date of birth and sex;
  - (D) name, address, including city, state, zip code, and telephone number of certified renovation firm;
  - (E) name, address, including city, state, zip code, and telephone number of training provider that provided the training;
  - (F) name of training course completed and language in which it was taught;

- (G) date(s) of course completion and exam;
- (H) confirmation of completion of accredited initial and refresher training courses, as applicable from the training provider. The confirmation shall be in the form of a copy of an original certificate of completion of the accredited training course, or an original letter from the training provider, on training provider letterhead, including the information in Parts (A) – (G) of this Subparagraph, and confirming completion of the course; and
- (I) one color photograph of the applicant.

~~(3)~~ Renovator certification shall expire on the last day of the 60th month after training was taken.

~~(3)(4)~~ An applicant for renewal of renovator certification shall have successfully completed the required accredited refresher training course no more than 60 months prior to applying for certification renewal, and shall meet the requirements of this Paragraph and Paragraph (b) of this Rule. All renewal certifications shall expire on the last day of the 60th month after training was taken. If a person fails to obtain the required training within 60 calendar months of the date of last training, that person may renew certification only by successful completion of an accredited initial renovator ~~initial~~ course and by meeting the requirements of this Paragraph and Paragraph (b) of this Rule.

(e) All certified persons shall be assigned a unique certification number by the Program.

(f) A person whose certification or certification renewal is revoked, suspended or denied because of misrepresentations or because of violations that create a public health threat as defined in G.S. 130A-475(d), shall not reapply for certification or certification renewal before 12 months after the effective date of the revocation, suspension, or denial and shall repeat the initial training course and other requirements as set out in Paragraphs (b), (c), and (d) of this Rule.

(g) The Program may revoke, suspend or deny certification or certification renewal upon a finding that the certified person has violated any requirement referenced in the following provisions with regard to renovation activities, as determined by the agencies which administer these Rules:

- (1) Department of Labor Rules found at Chapter 7, Title 13 of the North Carolina Administrative Code;
- (2) Department of Transportation Rules found at Title 19A of the North Carolina Administrative Code;
- (3) Solid Waste Management Rules found at Chapter 13, Title 15A of the North Carolina Administrative Code; and

- (4) NC Childhood Lead Poisoning Prevention Program requirements found at G.S. 130A, Article 5, Part 4.

*Authority G.S. 130A-453.14; 130A-453.15; 130A-453.21; 130A-23.*

**10A NCAC 41C .0903 CERTIFICATION OF RENOVATION FIRMS**

(a) The Program shall issue a certificate of approval to firms meeting the requirements in Paragraphs (b) and (c) of this Rule.

(b) A firm applying for certification shall submit a completed firm certification application provided by the Program for evaluation. The application shall include:

- (1) The name, address, including city, state, and zip code, and telephone number of the firm;
- (2) A statement that attests that all individuals to be used by the firm as renovators and dust sampling technicians are certified by the Program;
- (3) A statement that attests that the firm will perform lead-based paint renovation activities in accordance with the rules of this Section and all applicable local, State, and Federal requirements, including all applicable record keeping, record retention, information distribution, and reporting requirements;
- (4) A disclosure of any action by US EPA or a US EPA authorized program involving violations, suspension, revocations, or modifications of a firm's activities or the activities of employees performing a renovation on behalf of a firm;
- (5) A list of renovators and dust sampling technicians employed by the firm to perform lead-based paint renovation activities, and their Program certification numbers; and
- (6) The original signature, title, and printed name of an official of the firm.

(c) All certifications may be renewed annually by submitting a completed application provided by the Program for evaluation.

(d) A firm whose certification is revoked, suspended or denied because of misrepresentations or because of violations that create a public health threat as defined in G.S. 130A-475(d) shall not reapply for certification or renewal of certification before 12 months after the effective date of the revocation, suspension, or denial and shall comply with the requirements for firm certification as set out in Paragraphs (a), (b), and (c) of this Rule. The Program may revoke, suspend or deny certification or certification renewal upon a finding that a certified firm, or an individual performing a renovation on behalf of the firm, has violated any requirement referenced in Rule .0902(g) of this Section. Firm certification may be revoked, suspended or denied upon revocation of certification by US EPA or a US EPA authorized program.

*Authority G.S. 130A-453.14; 130A-453.15; 130A-453.21; 130A-23.*

**10A NCAC 41C .0904 ACCREDITATION OF TRAINING COURSES**

(a) Pursuant to Rule .0902 of this Section, applicants for certification and certification renewal are required to successfully complete training courses accredited by the Program. Training courses:

- (1) Taught in locations other than North Carolina and accredited by US EPA or by a state with a US EPA authorized program shall be deemed accredited for certification purposes of the Program;
- (2) Taught in North Carolina and accredited by a state, tribe, or territory that has a written reciprocating agreement with the Program shall meet the requirements of Paragraphs (b), (c), (e), (h), and (i) of this Rule to be accredited by the Program;
- (3) Taught in North Carolina, other than those covered in Subparagraphs (2) and (4) of this Paragraph, shall meet the requirements of this Rule;
- (4) Taught in North Carolina prior to August 1, 2010, and accredited by US EPA or by a state with a US EPA authorized program shall be deemed accredited for certification purposes of the Program.

(b) A training provider may apply for initial and refresher training course accreditation for the following disciplines: renovator and dust sampling technician. Training providers applying for course accreditation shall submit a completed training course application to the Program for review and ~~approval~~, evaluation, pursuant to Paragraph (e) of this Rule. Once a training course is accredited, any changes in curriculum, hands-on exercises, examination, training manual or materials, or quality control plan from the original course accreditation application shall be submitted and approved by the Program prior to implementation.

(c) For all courses, the training provider shall administer a closed book examination. Initial courses shall include a hands-on skills assessment. Initial and refresher course examinations shall consist of a minimum of 25 multiple choice questions.

(d) Training courses shall be evaluated for accreditation purposes by the Program for course administration, course length, curriculum, training methods, instructors' teaching effectiveness, technical accuracy of written materials and instruction, examination, and training certificate. The evaluation shall be conducted using 40 CFR Part 745 Subpart L.

(e) Training course providers shall submit the following for evaluation by the Program:

- (1) A completed application on a form provided by the Program, along with supporting documentation. The form and supporting documentation shall include the following:
  - (A) name, address including city, state, and zip code, and telephone number of the training provider, and name and signature of the contact person, training manager, and principal instructor;

- (B) course title, location, and the language in which the course is to be taught;
  - (C) course agenda;
  - (D) a copy of all written instructional material to be used;
  - (E) learning or performance objectives for each topic to be taught;
  - (F) a copy or description of all audio/visual materials to be used;
  - (G) a description of each hands-on training activity and skills assessment, including criteria for determining student proficiency;
  - (H) a description of instructional facilities and equipment; ~~and~~
  - (I) a copy of a sample exam with correct answers marked and exam ~~blueprint~~ blueprint; and
  - (J) a written policy for administration of oral exams.
- (2) A sample course certificate with the following information:
- (A) name and address, including city, state, and zip code of the student;
  - (B) training course title specifying "initial" or "refresher" of training course completed;
  - (C) inclusive dates of course and applicable examination;
  - (D) a statement that the student successfully completed the course and hands-on skills assessment and passed the required examination;
  - (E) unique certificate number;
  - (F) ~~location of student photo on certificate; photo;~~
  - (G) printed name and signature of the training course manager and printed name of the principal instructor;
  - (H) name, address including city, state, and zip code, and telephone number of the training provider;
  - (I) training course location; and
  - (J) for training courses taught in languages other than English, the certificate shall indicate the language of the ~~course;~~ course.
- (3) A list of accredited lead training courses being offered for certification;
- (4) A list of instructors who will teach in North Carolina and their qualifications in accordance with Paragraph (f) of this Rule; and
- (5) A copy of the course quality control plan that meets the requirements of 40 CFR 745 Subpart L Subsection .225(c)(9).

training manager for courses covered under these Rules and taught in North Carolina shall meet the following requirements:

- (1) Training managers and instructors shall meet the requirement of 40 CFR 745 Subpart L .225(c), except that guest instructors who teach work practice topics shall meet the requirements of 40 CFR 745, Subpart L, .225(c)(2)(i) and (iii).
- (2) Principal instructors and guest instructors who teach work practice topics shall meet the training requirements for certification, pursuant to Rule .0902 of this Section, for the discipline in which instructor approval is sought. Training required to maintain instructor approval must be acquired from a training provider other than the instructor's employer; and
- (3) Training managers and instructors shall submit to the Program a completed application with the following information:
  - (A) name, address including city, state and zip code, and telephone number of the applicant;
  - (B) name, address including city, state, and zip code, and telephone number of the training provider that is employing the applicant;
  - (C) confirmation of completion of the required training if applicable. The confirmation shall be in the form of a copy of the original certificate of completion of the accredited training course or must include the following information: the course title, dates of instruction, names of instructors, name, address, and telephone number of the training provider;
  - (D) when education is a requirement, a copy of the diploma or other written documentation; and
  - (E) when work experience is a requirement, documentation of relevant work history, including employer name, address, and telephone number, positions held, dates when positions were held, and legible copies of any relevant licenses, registrations, or certifications.

~~(f)(g)~~ An application for course accreditation by the Program shall be processed as follows:

- (1) The ~~program~~ Program shall review the application and supporting documentation and advise the applicant of any deficiencies. If the deficiencies are not corrected within 12 months from the date of application, the application and any supporting documentation shall be returned to the applicant and the applicant shall re-submit a completed

application. Approval of submitted documentation does not constitute course accreditation;

- (2) If the submitted documentation meets all applicable requirements of this Rule, the Program shall notify the applicant of this and also advise the applicant that it may contact the Program to schedule an on-site audit. The on-site audit shall be of a class of at least two student attendees and taught in North Carolina;
- (3) If the Program determines, as a result of the on-site audit, that the training course meets all applicable requirements of this Rule, it shall issue course accreditation. If the course does not meet these requirements, the Program shall notify the applicant of the deficiencies and advise the applicant that it may request one additional on-site audit, which shall be held no more than six months from the date of the first audit; and
- (4) If the Program determines, as the result of the second audit, that the training course meets all applicable requirements of this Rule, it shall issue course accreditation. If the course does not meet all these requirements, the Program shall notify the applicant of the deficiencies, return all the application materials, and advise the applicant that it may not reapply for course accreditation for the audited course for a period of six months from the date of the last audit.

~~(g)~~(h) Training course providers shall perform the following in order to maintain accreditation of all initial and refresher courses:

- (1) Issue a certificate of training meeting the requirements of Subparagraph (e)(2) of this Rule to any student who successfully completes the required training and the hands-on skills assessment, and passes the applicable examination;
- (2) Submit to the Program written notice of intention to conduct a training course for North Carolina lead certification purposes, if the course is to be taught in North Carolina. Notices for training courses shall be postmarked or received 10 working days before the training course begins. If the training course is ~~annulled~~, canceled or there is a change of instructors or course location, the training course provider shall notify the Program at least ~~one~~ two working ~~day~~ days prior to the scheduled start date. Notification of intent to conduct a training course shall be made using a form provided by the Program and shall include the following:
  - (A) training provider name, address including city, state, and zip code, telephone number, and contact person;

- (B) training course title;
- (C) inclusive dates of course and applicable exam;
- (D) start and completion times;
- (E) location of the course facility and directions to the course ~~facility~~; facility;
- (F) language in which the course is taught; and
- (G) signature of the training manager;
- (3) Notify the Program, in writing, at least 10 working days prior to the scheduled course start date, of any changes to course length, ~~curriculum~~, training methods, ~~training manual or materials~~, ~~instructors~~, ~~examination~~, training certificate, or training course ~~manager~~ manager ~~or contact person~~;
- (4) Submit to the Program information and documentation for any course accredited pursuant to this Rule if requested by the Program;
- (5) Ensure that all training courses covered under this Rule meet the requirements of 40 CFR Part 745 Subpart L, Subsection .225(c), (d), and (e) and the following requirements:
  - (A) the instructor must follow the curriculum that was approved by the Program, US EPA, or a state, tribe, or territory with whom the Program has a reciprocity agreement. The schedule may be adjusted, but all curriculum elements shall be covered;
  - (B) all initial and refresher training courses shall have a maximum of 30 students;
  - (C) a day of training shall include at least ~~six and one half hours of direct instruction, including classroom and hands-on training~~ eight training hours;
  - (D) students' work time and instruction time shall not exceed 12 hours in a 24-hour period;
  - (E) a training course shall be completed within a two-week period;
  - (F) instructor ratio for hands-on training shall be no more than 10 students per instructor;
  - (G) all course materials shall be in the language in which the course is being taught;
  - (H) each training course shall be discipline specific;
  - (I) students shall be allowed to take an examination no more than twice for each course. ~~Each~~ The exam used for retesting shall be different from the previous exam. After two failures,

(J) the student shall retake the full course before being allowed to retest; and training providers shall provide examination security to prevent student access to the examination materials before and after the exam. Training providers shall take measures to preclude cheating during the exam, such as providing space between students, prohibiting talking, and monitoring students throughout the exam; and exam.

~~(K) training providers shall provide a written policy for administration of oral exams.~~

(6) Verify, by photo identification, the identity of any student requesting training;

(7) Submit a completed renewal application on a form provided by the Program for each course accredited by the Program, and taught in North Carolina, for which the training provider is seeking renewal; and

(8) Conduct work practice and worker protection demonstrations and hands-on exercises presented in all training courses covered under this Rule in accordance with Rule .0906 of this Section and 29 CFR 1926.62, which is hereby incorporated by reference, including any subsequent amendments and ~~editions.~~ editions:

~~(9) Work practice topics taught by lecture or hands-on training activities include:~~

~~(A) for the renovator courses: procedures for using acceptable test kits to determine whether paint is lead-based paint, renovation methods to minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing, waste handling and disposal; and~~

~~(B) for the dust sampling technician: dust sampling methodologies, clearance standards and testing, and report preparation; and~~

~~(10) Training courses accredited by the Program under Paragraph (g) of this Rule shall be taught at least once every five years in North Carolina.~~

~~(h)(i)~~ Training course providers shall permit Program representatives to attend, evaluate and monitor any training course, take the course examination, and have access to records of training courses without charge or hindrance to the Program for the purpose of evaluating compliance with these Rules. The Program shall perform periodic and unannounced on-site audits of training courses.

~~(i)(j)~~ In accordance with G.S. 130A-23, the Program may suspend, revoke, or deny accreditation for a training course for any violation of G.S. 130A, Article 19B or the Rules of this Section and shall revoke accreditation upon revocation of accreditation by the US EPA or by any state with a US EPA authorized accreditation program. The Program shall also revoke course accreditation for all courses taught by a training provider upon a finding that the training course provider has issued one or more certificates to an individual who did not actually attend the course, successfully complete the hands-on exercises, and pass the examination. When course accreditation is revoked for improper issuance of certificates, the training course provider is not eligible for reaccreditation for a period of 36 months from the date of revocation.

Authority G.S. 130A-453.16; 130A-453.21; 130A-23.

**10A NCAC 41C .0905 ACCREDITATION OF TRAINING PROVIDERS**

(a) To become accredited, training providers shall meet the following requirements:

(1) Submit a completed application on a form provided by the Program including:

(A) the name, address including city, state and zip code, and telephone number of the training provider;

(B) a statement that all courses taught in North Carolina for certification will comply with all of the requirements of the rules in this Section;

(C) a statement that the training provider is responsible for maintaining the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics;

(D) a statement that the training provider is responsible for maintaining the validity and integrity of the course examination to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics;

(E) documentation for the training manager, pursuant to Rule ~~.0904~~ .0904(f) of this Section; and

(F) the original signature, title, and printed name of an official of the training provider.

(2) Training Providers accredited by US EPA or by a state with a US EPA authorized program shall submit ~~a copy of the original certificate of accreditation for the training provider~~ documentation of their accreditation to the Program.

(b) In accordance with G.S. 130A-23, the Program may suspend, revoke, or deny accreditation of a training provider for

any violation of G.S. 130A, Article 19B or the rules of this Section and shall revoke accreditation upon revocation of accreditation by the US EPA or by any state with a US EPA authorized accreditation program. A training provider whose course accreditation has been revoked by the Program is not eligible for accreditation for a period of 12 months from the date of revocation. The Program shall also revoke a training provider's accreditation upon a finding that the training course provider has falsified training documents or issued one or more certificates to an individual who did not actually attend the course, complete the hands-on exercises, and pass the examination. When accreditation is revoked for falsification of documents or improper issuance of certificates, the training course provider shall not be eligible for reaccreditation for a period of 36 months from the date of revocation.

Authority G.S. 130A-453.16; 130A-453.21; 130A-23.

**10A NCAC 41C .0906 STANDARDS FOR CONDUCTING LEAD-BASED PAINT RENOVATION ACTIVITIES**

(a) All lead-based paint renovation activities performed for compensation in target housing and child-occupied facilities shall be conducted in accordance with 40 CFR 745 Subpart E, Subsections .85 and .90.

(b) The following shall be maintained on site during renovation activities and be immediately available for review by the Program:

- (1) A copy of the Program issued firm certification;
- (2) A copy of the Program issued certification letter for the certified renovator assigned to the project; and
- (3) Photo-identification cards issued by the Department for inspectors, risk assessors and dust sampling technicians performing dust wipe sampling or clearance sampling as applicable.

Authority G.S. 130A-453.18; 130A-453.21.

**10A NCAC 41C .0907 STANDARDS FOR RECORDS RETENTION, INFORMATION DISTRIBUTION, AND REPORTING REQUIREMENTS**

(a) All certified renovation firms shall comply with the records retention, information distribution, and reporting requirements related to lead-based paint renovation activities, in accordance with 40 CFR 745 Subpart E, Subsections .84 and .86.

(b) All certified renovation firms using USEPA-recognized test kits prior to conducting renovation activities in target housing and child-occupied facilities must provide in writing to the person who contracted for the renovation the identifying information as to the manufacturer and model of the test kits used, a description of the components that were tested including their locations, and the test kit results. This information must be provided prior to the start of the renovation activities.

(c) All accredited training providers shall comply with the training program recordkeeping requirements in accordance with 40 CFR 745 Subpart L, Subsection .225(i).

Authority G.S. 130A-453.19; 130A-453.21.

**TITLE 11 – DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend the rule cited as 11 NCAC 04 .0423.*

**Proposed Effective Date:** *October 1, 2010*

**Public Hearing:**

**Date:** *July 6, 2010*

**Time:** *10:00 a.m.*

**Location:** *430 N. Salisbury Street, Raleigh, NC 27603, 3<sup>rd</sup> Floor Conference Room*

**Reason for Proposed Action:** *To create a more efficient and current method of verifying licensure.*

**Procedure by which a person can object to the agency on a proposed rule:** *The North Carolina Department of Insurance will accept written objections to the rule until the expiration of the comment period on August 16, 2010.*

**Comments may be submitted to:** *Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495, email karen.waddell@nc.doi.gov*

**Comment period ends:** *August 16, 2010*

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

**Fiscal Impact:**

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

**CHAPTER 04 - CONSUMER SERVICES DIVISION**

**SECTION .0400 - PROPERTY AND LIABILITY**



11 NCAC 04 .0423 ETHICAL STANDARDS

(a) Every agent, limited representative, broker, adjuster, appraiser, or other insurer's representative shall, when in contact with the public:

- (1) promptly identify himself and his occupation;
(2) carry the license issued to him by the Department of Insurance while performing his duties and display it - shall provide his National Producer Number and the Department's website address and phone number for verification of licensure status when requested to show proof of licensure by upon request to any claimant, any repairer at which he is investigating a claim or loss, any department representative, or any other person with whom he has contact while performing his duties;
(3) conduct himself in such a manner as to inspire confidence by fair and honorable dealings.

(b) No claims management person, agent, agency employee, limited representative, broker, adjuster, appraiser, or other insurer's representative shall:

- (1) accept any gratuity or other form of remuneration from any provider of services for recommending that provider to claimants;
(2) purchase salvage from a claimant;
(3) intimidate or discourage any claimant from seeking legal advice and counsel by withdrawing and reducing a settlement offer previously tendered to the claimant or threatening to do so if the claimant seeks legal advice or counsel. No adjuster shall advise a claimant of the advisability of seeking legal counsel nor recommend any legal counsel to any claimant under any circumstance;
(4) cause any undue delay in the settlement of a property damage claim on account of the claimant's choice of a motor vehicle repair service.

(c) No claims management person, agent, agency employee, limited representative, broker, or other insurer's representative shall recommend the utilization of a particular motor vehicle repair service without clearly informing the claimant that he is under no obligation to use the recommended repair service and that he may use the service of his choice.

Authority G.S. 58-2-40; 58-33-10; 58-33-25; 58-33-30; 58-35-25; 58-63-65; 58-65-40.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rules cited as 11 NCAC 06A .0418, .0814, .0906 amend the rules cited as 11 NCAC 06A .0201, .0212, .0305, .0402, .0501, .0504-.0506, .0701-.0704, .0801-.0802, .0805, .0811-.0813 and repeal the rules cited as 11 NCAC 06A .0234, .0238, .0413, .0901-.0905.

Proposed Effective Date: October 1, 2010

Public Hearing:

Date: July 6, 2010

Time: 10:00 a.m.

Location: 430 N. Salisbury Street, Raleigh, NC 27603, 3rd Floor Hearing Room

Reason for Proposed Action: For the purpose of updating the current operational structure of the Division, complying with NAIC uniformity initiatives, streamlining revenue collection functions, incorporating recommendations from the FBI Audit Unit regarding fingerprint submission, reducing division operational expenses by leveraging electronic processing options, and adding changes put forth by the insurance and Bail Bond CE advisory committees. Based on the 2009 General Assembly Session, authority to make many of these proposed rule changes is included in HB 1166, HB 1159, HB 1313, and SB 458 legislation.

Procedure by which a person can object to the agency on a proposed rule: The North Carolina Department of Insurance will accept written objections to this rule until the expiration of the comment period on August 16, 2010.

Comments may be submitted to: Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495, email karen.waddell@nc.doi.gov

Comment period ends: August 16, 2010

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

Fiscal Impact:

- State
Local
Substantial Economic Impact (≥\$3,000,000)
None

CHAPTER 06 - AGENT SERVICES DIVISION

SUBCHAPTER 06A - AGENT SERVICES DIVISION

SECTION .0200 - DESCRIPTION OF FORMS

**11 NCAC 06A .0201 GENERAL INFORMATION**

~~(a) All forms pertaining to licensure including applications, bonds, appointments, termination of appointments and other forms required by Chapter 58 necessary for the daily operation of the Division in fulfilling its purpose shall be supplied by the Division. The Division shall make these forms available in an electronic format and require the licensee or company to file documents electronically with the Commissioner or the Commissioner's designee. The actual cost of the electronic filing is the administrative fee charged by the Commissioner's designee which may include a transaction fee, a credit card processing fee, or other bank processing fee. The administrative fee shall be paid at the time of the electronic filing transaction by the electronic payment options made available by the Commissioner's designee through electronic check, credit card, automated clearing house (ACH), or electronic funds transfer (EFT). In addition, the The Division will shall provide instructions for proper completion of all forms.~~

~~(b) Forms shall be completed in full and must contain necessary signatures in order to be accepted. Companies and applicants shall submit all forms or complete other requirements within time schedules established by the Division under Chapter 58.~~

~~(c) Companies or applicants that are authorized to may duplicate forms must do so without alteration or modification thereto.~~

~~(d) If any additional supporting documents, information or fees are required, required under Chapter 58, they shall be submitted with the appropriate forms or applications. The additional supporting documents, information, or fees required under Chapter 58 shall be filed electronically to the Commissioner or the Commissioner's designee. The actual cost of the electronic filing is the administrative fee charged by the Commissioner's designee which may include a transaction fee, a credit card processing fee, or other bank processing fee. The administrative fee shall be paid at the time of the electronic filing transaction by the electronic payment options made available by the Commissioner's designee through electronic check, credit card, automated clearing house (ACH) or electronic funds transfer (EFT).~~

*Authority G.S. 58-2-40; 58-2-250.*

**11 NCAC 06A .0212 LICENSES**

~~All licenses shall include the name of the licensee, type of license, kind of insurance covered by the license, date of issuance, name of company represented, if applicable, and terms of the license. In addition, all licenses shall bear the signature of the Commissioner. The Commissioner shall issue an electronic license record to the licensed individual or business entity showing the name of the licensee, identifying number of the licensee, date of issue and, if applicable, the type of insurance the licensee is authorized to sell and the terms of the license.~~

*Authority G.S. 58-2-40; 58-33-26(k).*

**11 NCAC 06A .0234 RESIDENT SURPLUS LINES LICENSE RENEWAL**

~~Each year the Division shall send to each surplus lines licensee an invoice for the license renewal fee. Upon receipt of the renewal fee by the Division the license shall be renewed and a new license shall be mailed to the licensee. The applicant must be a member of a surplus lines advisory organization at the time of application for renewal.~~

*Authority G.S. 58-2-40; 58-21-40(d); 58-21-65(d),(f).*

**11 NCAC 06A .0238 RENTAL CAR COMPANY LICENSE APPLICATION**

~~The "Application For A Limited License For A Rental Car Company" shall contain pertinent information concerning the rental car company and other information that is relevant in aiding the Division in determining if the applicant meets eligibility requirements for licensing. Each applicant must submit the fee prescribed by G.S. 58-33-125(e). The fee must be paid by a company check, certified check, money order, or cashier's check payable to the N.C. Department of Insurance.~~

*Authority G.S. 58-2-40; 58-33-17; 58-33-125(c).*

**SECTION .0300 - EXAMINATIONS**

**11 NCAC 06A .0305 ADMINISTRATION OF EXAMINATION**

~~(a) Applicants Individuals applying for an agent or adjuster license shall present to the test site personnel upon request the applicable items described in 11 NCAC 06A .0304(a) through (d).~~

~~(b) Applicants shall follow carefully all instructions given by the examination proctors.~~

~~(c) Applicants may not take simple function calculators, but shall not take textbooks, other books or papers into the examinations. Applicants found to have any of these materials or other aids shall not be allowed to continue the examination.~~

~~(d) All examinations shall be administered in a form prescribed by the Commissioner.~~

~~(e) Applicants may shall leave the examination room only after obtaining permission from the examination proctors and handing in exam materials. No extra time shall be allowed for completing the examination.~~

~~(f) Any applicant who gives or receives assistance during the examination shall not receive an examination score. The proctors of the examination shall report the incident be required to turn in all exam materials immediately and leave the room. Under these circumstances, the applicant's answer sheet shall not be scored and the relevant facts shall be reported by the proctors to the Commissioner.~~

*Authority G.S. 58-2-40; 58-33-30(e).*

**SECTION .0400 - LICENSING PROCEDURES**

**11 NCAC 06A .0402 LICENSING OF RESIDENT AGENT, LTD REPRESENTATIVE AND ADJUSTER**

(a) An applicant for a resident variable life and variable annuity product shall hold a resident life license before making application for a resident variable life and variable annuity product license. An agent licensed to sell variable life and variable annuity products shall be appointed by a company authorized to sell variable annuities and variable life insurance products in North Carolina. The company shall verify that the agent has met the requirements of the NASD or its successor organization.

(b) A limited representative shall be appointed with each company for which he will solicit business for the following kinds of insurance:

- (1) Dental services;
- (2) Limited line credit insurance;
- (3) Motor club;
- (4) Prerearrangement insurance, as defined in G.S. 58-60-35(a)(2), when offered or sold by a preneed sales licensee licensed under Article 13D of Chapter 90 of the General Statutes; or
- (5) Travel, accident and ~~baggage~~; or baggage.
- (6) ~~Vehicle service agreements and mechanical breakdown insurance.~~

(c) Responsibility of insurance companies for forms:

- (1) Companies shall have on file with the Division the address and email address of one central licensing office and the individual within such office to which all correspondence, licenses, and invoices will be forwarded.
- (2) Companies shall have on file with the Division the name of the individual responsible for all agent appointments and termination of agent appointments submitted by the company to the Division.
- (3) A company shall verify the licensure of an agent before the company appoints the agent.
- (4) Companies shall notify the Division within 10 days after any change of address or email address of the central licensing office and of any change of the individual within such office to which all correspondence, licenses, and invoices will be forwarded.

(d) Responsibility of the agent, limited representative and adjuster:

- (1) ~~An applicant who must take the examination shall comply with Section .0300 of this Subchapter.~~
- (2)(1) A person, after surrender or termination of a license for such period of time that he is no longer eligible for waiver of the examination, shall meet all legal requirements for previously unlicensed persons.
- (3)(2) Every licensee shall, upon demand from the Division, furnish in writing any information relating to the licensee's insurance business within 10 business days after the demand.

(e) An applicant for a resident license shall, if applicable, ~~an~~ electronic record is not available, obtain an original letter of

clearance from his former state of residency certifying the kinds of insurance for which the applicant was licensed, that all licenses held in that state have been canceled and that the applicant was in good standing in that state at the time of the cancellation of licenses. A letter of clearance is valid for 90 days from date of issuance.

~~(f) A person who applies for a license before January 1, 2008, shall receive the license in accordance with G.S. 58-33-26(e1) without paying an additional registration fee if the license is issued on or after January 1, 2008.~~

~~(g)~~(f) Only individuals may apply for limited representative and adjuster licenses.

Authority G.S. 58-2-40; 58-2-195(a); 58-33-26; 58-33-30; 58-33-66.

**11 NCAC 06A .0413 LICENSING OF BUSINESS ENTITIES**

~~A business entity shall notify the Division of the addition or deletion of an agent or insurance company within 30 days after the change.~~

Authority G.S. 58-2-40; 58-33-31.

**11 NCAC 06A .0418 FINGERPRINTS REQUIRED FOR CRIMINAL RECORD CHECKS**

(a) An applicant for a resident insurance producer license shall furnish the Commissioner with a complete set of the applicant's fingerprints as authorized by G.S. 58-33-48. An applicant for an insurance producer license as further defined in G.S. 58-33-10(7), includes:

- (1) An applicant for an initial resident insurance producer license;
- (2) A non-resident insurance producer applying for a resident insurance producer license;
- (3) An adjuster applying for an initial resident insurance producer license;
- (4) A resident insurance producer license applicant applying for reinstatement of an insurance producer license that has been lapsed for more than one year; and
- (5) A resident insurance producer license applicant whose license has been suspended or revoked for non-payment of child support pursuant to G.S. 110-142.1.

(b) As authorized by G.S. 58-33-48, fingerprints shall be furnished in the following manner:

- (1) Each resident insurance producer license applicant who is required to submit fingerprints under G.S. 58-33-48 shall have a complete set of their fingerprints electronically captured by a criminal law enforcement agency approved by State Bureau of Investigation (SBI) to submit fingerprints via electronic means;
- (2) Each resident insurance producer license applicant who is required to submit fingerprints under G.S. 58-33-48 shall submit with the insurance producer license application

the Electronic Fingerprint Submission Release of Information Form that has been completed and certified by a law enforcement officer that the applicant's fingerprints have been submitted via electronic means to the SBI;

- (3) Each resident insurance producer license applicant who is required to submit fingerprints under G.S. 58-33-48 shall submit with the insurance producer license application the Authority for Release of Information form required by the SBI to release the criminal history record check information to the Department;
- (4) Each resident insurance producer license applicant who is required to submit fingerprints under G.S. 58-33-48 shall submit with the insurance producer license application the cost for the state and national criminal history record fee that is set forth pursuant to G.S. 114-19.1(a); and
- (5) All fingerprint impressions must be suitable for use by the SBI to conduct a state criminal history record check and for the Federal Bureau of Investigations (FBI) to conduct a national criminal history record check. If the SBI deems the electronic fingerprints are not suitable, the Commissioner shall notify and provide instructions to the applicant to resubmit his fingerprints in the manner set forth in Subparagraph (1) of this Paragraph within 30 days.

(c) The application of a resident insurance producer required to submit fingerprints is not be complete until the Commissioner receives the state and national criminal history record information. In accordance with G.S. 58-33-30(a), the Commissioner shall not issue the license of an insurance producer that does not satisfy the license application requirements.

*Authority G.S. 58-2-40; 58-33-30; 58-33-48.*

**SECTION .0500 - RENEWAL AND CANCELLATION OF LICENSES**

**11 NCAC 06A .0501 RENEWAL OF AGENT APPTS: LICENSES/LIMITED REPS: COMPANY ADJUSTERS**

- (a) Annually the Division shall notify each adjusting company, insurance company, and motor club company of dates and procedures for renewing agent appointments and limited representative and adjuster licenses. Companies shall be given at least 30 days' advance notice of the last date the Division shall process terminations.
- (b) On the date specified by the Division as On the last date to submit terminations, the Division shall cease processing all terminations and bill companies for renewals. All appointments and licenses shall automatically be billed for the appointment renewal renewed unless the Division has received a termination request from the company within the specified time.

~~(c) Each company shall be sent~~ The Division shall send each company an invoice stating the total amount of money due due and a list of all appointees or licensees associated with the total due. The Division shall make this invoice and a list of all appointees or licensees associated with the total due available electronically to each company. Companies shall remit the amount stated in the invoice to the Department by electronic payment to the Commissioner or the Commissioner's designee and shall pay all associated fees for electronic processing. Any discrepancies claimed by companies shall be investigated only after full payment is received.

~~(d) Upon receipt of the company payment check,~~ the Division shall mail provide to the company a an electronic list of all appointments and licenses renewed.

~~(e) Appointments recorded and licenses issued prior to the renewal date, but after the date specified by the Division as the last date to process termination shall be considered~~ are valid until the following year.

~~(f) Annually the Division shall, upon written request and payment of the fee prescribed in G.S. 58-33-125, provide to any company a list of all appointees or licensees.~~

~~(g)(f) Failure of a company to pay any quarterly or annual invoice within the time prescribed by the due date shall automatically result in the cancellation termination of all appointees or licensees of that company. No new appointments or licenses shall be issued until all outstanding invoices have been paid. The Commissioner shall not issue any new appointments until all outstanding invoices have been paid. Any company that has had appointments or licensees cancelled by the Commissioner pursuant to this Rule shall not process any new electronic appointments until all outstanding invoices have been paid. When the outstanding invoices are paid, the company may re-appoint limited representatives or adjusters and shall pay the appointment fees.~~

*Authority G.S. 58-2-40; 58-33-40(f); 58-33-56; 58-33-125(a); 58-33-125(h).*

**11 NCAC 06A .0504 FAILURE TO RENEW LICENSE**

Failure to renew a broker, limited representative, adjuster or motor vehicle damage appraiser license by March 31 by payment of the annual renewal fee as specified in G.S. 58-33-125(a) the date specified by the Division will shall result in automatic cancellation lapse of the license on April 1 by the Division. This rule applies to all self-employed adjusters, brokers, and motor vehicle damage appraisers.

*Authority G.S. 58-2-40; 58-33-26(m); 58-33-125(a).*

**11 NCAC 06A .0505 TERMINATION OF APPOINTMENTS FOR LIMITED REPS AND COMPANY ADJUSTERS**

(a) Any adjusting company wishing to cancel the license appointment of any of its limited representatives or adjusters shall submit the termination form N.C. Notice of Cancellation to the Division within 30 days of the date on which the limited representative's or adjuster's employment with the company was terminated.

~~(b) It is the company's responsibility to retrieve and destroy any license issued in its name to any limited representative or adjuster terminated by such company. Any insurance company or motor club company wishing to cancel the appointment of any of its limited representatives shall terminate the appointment electronically within 30 days of the date on which the limited representative's employment with the company was terminated.~~

*Authority G.S. 58-2-40; 58-33-56(b).*

**11 NCAC 06A .0506 CANCELLATION OF LICENSES ISSUED TO INDIVIDUALS**

(a) Any insurance producer, adjuster, viatical settlement broker or surplus lines licensee desiring to cancel a license shall submit a ~~notarized~~ written request to the ~~Division~~ along with the license. ~~If the license cannot be located, the licensee shall furnish a statement explaining the reason for not returning the license.~~

(b) Cancellation of a license automatically terminates all appointments for the kind of insurance covered by the license.

*Authority G.S. 58-2-40; 58-33-40(e).*

**SECTION .0700 - PRELICENSING EDUCATION**

**11 NCAC 06A .0701 GENERAL REQUIREMENTS**

(a) This Section applies to individuals attempting to obtain a resident license to solicit property, casualty, personal lines, life, accident and health, or sickness insurance in North Carolina except as specifically exempted by ~~Paragraphs~~ Paragraph (b) and ~~(e)~~ of this Rule.

~~(b) Individuals who are exempt from the requirement for a written examination pursuant to G.S. 58-33-35 are exempt from prelicensing education requirements.~~

~~(e)~~(b) Individuals holding one or more of the following insurance designations are exempt from prelicensing education requirements:

- (1) Accident and health or sickness:
  - (A) Registered Health Underwriter (RHU);
  - (B) Certified Employee Benefits Specialist (CEBS);
  - (C) Registered Employee Benefits Consultant (REBC); and
  - (D) Health Insurance Associate (HIA).
- (2) Life:
  - (A) Certified Insurance Counselor (CIC);
  - (B) Certified Employee Benefits Specialist (CEBS); ~~and~~
  - (C) Certified Financial Planner ~~(CFP)~~ (CFP);
  - (D) Fellow, Life Management Institute (FLMI);
  - (E) Life Underwriter Training Council Fellow (LUTCF); and
  - (F) Certified Life Underwriter (CLU).
- (3) Property:
  - (A) Accredited Advisor in Insurance (AAI);

- (B) Associate in Risk Management (ARM); ~~and~~
- (C) Certified Insurance Counselor ~~(CIC)~~ (CIC); ~~and~~
- (D) Chartered Property and Casualty Underwriter (CPCU).

- (4) Casualty:
  - (A) Accredited Advisor in Insurance (AAI);
  - (B) Associate in Risk Management (ARM); ~~and~~
  - (C) Certified Insurance Counselor ~~(CIC)~~ (CIC); ~~and~~
  - (D) Chartered Property and Casualty Underwriter (CPCU).

- (5) Personal lines:
  - (A) Accredited Advisor in Insurance (AAI);
  - (B) Associate in Risk Management (ARM); ~~and~~
  - (C) Certified Insurance Counselor ~~(CIC)~~ (CIC); ~~and~~
  - (D) Chartered Property and Casualty Underwriter (CPCU).

(6) Property, casualty, personal lines, life, accident and health or sickness:

- (A) Holder of four year bachelor degree in insurance (associate or bachelors); insurance; and
- ~~(B) An individual whose license in another state or jurisdiction for the same kind of insurance as that for which applied has been cancelled within 60 days of the Division's receipt of the letter of clearance and the individual's request for waiver of prelicensing education; and~~
- ~~(C)~~(B) An individual who is licensed in another state or jurisdiction for the same kind of insurance as that for which applied.

~~(d)~~(c) If an applicant exempted from prelicensing education under the provisions of Paragraph ~~(e)~~(b) of this Rule fails the examination, the applicant must successfully meet North Carolina's mandatory prelicensing education requirement prior to retaking the examination. These guidelines are hereby incorporated by reference including the subsequent amendments and editions. Copies of the North Carolina mandatory prelicensing education requirement is available free of charge from the Agent Services Division by email at ASD@ncdoi.gov.

~~(e)~~(d) In this Section, unless otherwise noted the following definitions apply:

- (1) "Classroom School" means an entity that provides prelicensing education sponsored by a company, agency, association or educational institution by an instructor utilizing a teaching curriculum based on the outline.

- (2) "Correspondence Course" means home, self, individual, Internet or correspondence study utilizing programmed text instructions.
- (3) "Correspondence School" means an entity that provides prelicensing education sponsored by a company, agency, association or educational institution through completion of a correspondence course that has been approved by the Commissioner, pursuant to 11 NCAC 06A .0705, with students individually supervised by an approved instructor.
- (4) "Disinterested Third Party" means a person not concerned about possible gain or loss in the result of a pending course final examination and does not include the current employer, prospective employer and a member of the applicant's immediate family. "Immediate Family" means a parent, adopted parent, guardian, sibling, children, spouse or grandparent.
- (5) "Distance Learning" means an educational program in which the licensee and the instructor are in different physical locations and interact with each other through telecommunication.
- ~~(4)(6)~~ "Instructional Hour" means a 50-minute ~~hour-hour~~ for courses taught in a classroom. For courses taught by a correspondence school, one "instructional hour" is determined by using the National Association of Insurance Commissioner's (NAIC) recommended guidelines for online and correspondence courses.
- ~~(5)(7)~~ "Instructor" means an individual who meets the qualifications required by Rule .0705 of this Section. ~~Section~~
- ~~(A)~~ ~~to instruct and instructs in a classroom school, or correspondence school. A classroom instructor who is responsible for preparation and the presentation of lesson plans to assure that the outline is taught to that school's students, students and for administration of the and who prepares a final course examination; and examination.~~
- ~~(B)~~ ~~in a A~~ correspondence school instructor is responsible for assisting and supervising ~~to assist and supervise~~ students in the completion of an approved correspondence or Internet course.
- ~~(6)(8)~~ "Outline" means an instructor/examination content outline prepared and published by the Department in the "State of North Carolina Insurance Licensure Examination Candidate Guide".
- ~~(7)(9)~~ "Program Director" means the individual associated with an approved classroom or correspondence school who is responsible for the administration of that school according to Rule .0702(1) of this Section.
- ~~(10)~~ "Supervised Examination" means a timed, closed book examination that is monitored and graded by a disinterested third party.
- ~~(11)~~ "Supervised Individual Study" means learning through the use of audio tapes, video tapes, computer programs, programmed learning courses, and other types of electronic media that are completed in the presence of an instructor.

Authority G.S. 58-2-40; 58-33-30 (d); 58-33-132.

**11 NCAC 06A .0702 PRELICENSING EDUCATION SCHOOLS**

- (a) This Rule applies to all classroom and correspondence schools offering a prelicensing course prescribed by G.S. 58-33-30. All schools desiring to conduct a prelicensing course shall be approved by the Commissioner before commencement of the courses.
- (b) A school seeking approval to conduct a prelicensing course shall make written application to the Commissioner.
- (c) The Division shall approve a school when:
- (1) the school has submitted all information required by the Rules in this Section;
  - (2) the course to be conducted complies with Rule .0704 of this Section;
  - (3) the program director has been approved by the Commissioner in accordance with Rule .0703 of this Section; and
  - (4) the school has a qualified instructor to teach each kind of insurance for which it is seeking approval.
- (d) The Commissioner shall deny, revoke, suspend, or terminate approval of any school upon finding that:
- (1) the school has refused or failed to comply with any of the provisions of this Section;
  - (2) any school official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, licensing examination questions;
  - (3) the school's students have a first-time licensing examination performance record that is below the average examination performance record of all first-time examination candidates;
  - (4) the school has not conducted at least one prelicensing course during any 12-month period; or
  - (5) the school has refused or failed to submit information or properly completed forms prescribed by the Commissioner.
- (e) In all proceedings to deny, revoke, suspend, or terminate approval of a school, the provisions of Chapter 150B of the General Statutes are applicable.
- (f) When a school's approval is discontinued, the procedure for reinstatement is to apply as a new school, with a statement of the reasons that the school is now eligible for reconsideration.

(g) If a school's approval has been suspended upon the Commissioner's finding that the school has not conducted at least one preclicensing course during any 12-month period that school may reapply after one year of suspension. At such time, the Commissioner shall give the school six months to conduct at least one preclicensing course.

(h) A school shall notify the Commissioner of any change of course location or schedule information no fewer than five business days before the change. Notification of the changes shall be in writing.

(i) An approved school that intends to terminate its preclicensing program shall notify the Commissioner in writing.

(j) A school shall notify the Commissioner in writing of a change of textbook.

(k) An approved school may use, for advertising or promotional purposes, examination performance data made available to the school by the Commissioner, or the examination contractor, provided that any data disclosed by the school shall be accurate, shall be presented in a manner that is not misleading, and shall:

- (1) be limited to the annual examination performance data for the particular school and for all insurance examination candidates in the State; and
- (2) include the type of insurance examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination.

(l) A classroom school's facilities and equipment shall have been found by appropriate local code inspectors to be in compliance with all applicable local, State and federal laws and regulations regarding safety, sanitation, and access by persons with disabilities.

(m) The school shall designate one person as the program director. The program director shall be responsible for administrative matters such as recruiting, evaluating and certifying the qualifications of instructors, developing programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the preclicensing program.

(n) A school shall publish and provide to all preclicensing students before enrollment a publication ~~of that school~~ that contains the following information:

- (1) name of school and publication date;
- (2) name of sponsor;
- (3) all associated costs; and
- (4) an outline or description of all preclicensing courses offered.

(o) With the exception of correspondence or Internet courses, a school shall file with the Commissioner information giving exact dates, times, locations, and instructor name for each scheduled preclicensing course. This information may be submitted either at the beginning of each quarter or semester or no later than one week before the first class meeting of each preclicensing course.

(p) Classroom schools shall retain the following material on file at one location for at least ~~three~~ five years:

- (1) class schedules;
- (2) advertisements;

- (3) bulletins, catalogues, and other official publications;
- (4) grade reports, showing a numeric grade for each student;
- (5) attendance records;
- (6) master copy of each final course examination, indicating the answer key, the school name, course location, course dates and name of instructor;
- (7) list of student names and their license identifying numbers for each course, and the name of the instructor; and
- (8) student registration information.

All files shall be made available to the Commissioner upon request.

(q) Correspondence and Internet schools shall retain the following material on file at one location for at least ~~three~~ five years:

- (1) advertisements;
- (2) bulletins, catalogues and other official publications;
- (3) grade reports;
- (4) list of student names and their license identifying numbers for each course, and the name of the instructor;
- (5) student registration information that shall be obtained prior to the distribution of course material; and
- (6) student records to validate the integrity of the security measures utilized by the provider.

All files shall be made available to the Commissioner upon request.

(r) In the event of illness, injury or death of an instructor, the program director may use a qualified instructor to complete a course.

*Authority G.S. 58-2-40; 58-33-30(d); 58-33-132; 58-58-235.*

**11 NCAC 06A .0703 PROGRAM DIRECTORS**

(a) All program directors shall be approved by the Commissioner in accordance with the provisions of this ~~Section~~ Rule.

(b) A person desiring approval as a program director shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) Applications must be endorsed by the ~~president/~~ chief operating president or chief operating officer of the sponsoring educational institution, company, agency or association. If the employing school is not currently approved by the Commissioner, an application for school approval shall be submitted along with the application for program director approval.

(d) The Commissioner shall approve an applicant as a program director upon finding that the applicant is recommended by the ~~president/~~ chief operating president or chief operating officer of the sponsoring educational institution, company, agency or association; has submitted all information required by the Commissioner; ~~possesses good character and reputation; has not been disqualified in any manner under Chapter 58; and:~~

- (1) Holds a baccalaureate or higher degree and has at least two years of experience as an instructor of insurance or as an educational administrator;
- (2) Holds a baccalaureate or higher degree and has at least six years of experience in the insurance industry with a minimum of two years of experience in insurance management;
- (3) Is a full-time college or faculty member who ~~regularly~~ teaches at least one risk management or insurance ~~courses;~~ course in a calendar year;
- (4) Has education and experience that are found by the Commissioner to be equivalent to the qualifications described in Subparagraphs (d)(1) and (d)(2) of this Rule.

(e) Program director approval ~~shall be~~ is valid for an indefinite period, subject to future changes in laws or regulations regarding approval of program directors.

(f) The Commissioner shall deny, revoke, or suspend the approval of any program director upon finding that:

- (1) The program director fails to meet the criteria for approval provided by this Rule;
- (2) The program director has failed to comply with any provisions of this Section;
- (3) The program director's employment has been terminated by any sponsoring educational institution/company;
- (4) The program director provided false information to the Commissioner when making application for approval;
- (5) The program director has at any time had an insurance license denied, suspended or revoked by the North Carolina Department of Insurance or any other insurance department, or has ever been required to return a license while under investigation; or
- (6) The program director has obtained or used, or attempted to obtain or use, in any manner or form, examination questions.

(g) In all proceedings to deny, revoke, or suspend approval, the provisions of Chapter 150B of the General Statutes ~~shall be~~ is applicable.

(h) When a program director's approval is discontinued, the procedure for reinstatement is to apply as a new program director, with a statement of the reasons that he is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(i) An approved program director shall inform the Commissioner of any change in program affiliation by filing an application for program director approval prior to directing a new program.

(j) The program director is responsible for the actions of the approved school's instructors.

(k) The program director shall provide to the Commissioner current contact information including mailing address and the email address to which the Commissioner or the examination contractor can send electronic notifications and other messages.

Authority G.S. 58-2-40; 58-2-69(b); 58-2-250; 58-33-30(d); 58-33-132.

**11 NCAC 06A .0704 COURSES**

(a) This Rule establishes minimum standards for property, casualty, personal lines, life, accident and health or sickness and Medicare supplement, and long term care insurance prelicensing courses required under G.S. 58-33-30.

(b) Insurance prelicensing programs shall comprise courses in the following subjects:

- (1) Accident and health or sickness;
- (2) Casualty;
- (3) Life;
- (4) Medicare supplement insurance and long-term care insurance;
- (5) Personal lines; and
- (6) Property.

(c) A school shall not offer a property, casualty, personal lines, life, accident and health or sickness course comprising fewer than 20 hours or a Medicare supplement and long term care course comprising fewer than 10 hours.

(d) The following requirements are course standards:

- (1) All courses shall consist of instruction in the subject areas described in G.S. 58-33-30(d)(2) and 58-33-30(d)(3).
- (2) Courses may also include coverage of related subject areas not prescribed by the Commissioner; however, such courses must provide additional class time, above the minimum requirement stated in Paragraph (c) of this Rule, for the coverage of such subject areas.
- (3) Prelicensing courses shall be for instructional purposes only and not for promoting the interests of or recruiting employees for any particular insurance agency or company.
- (4) Schools shall establish and enforce academic standards for course completion that assure that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course. In any course for which college credit is awarded, the passing grade for such course shall be the same as the grade that is considered passing under the school's uniform grading system.
- (5) Schools shall conduct a final comprehensive course examination that covers all subject areas prescribed by the Commissioner for each course. Schools may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the school. No final examination shall be given until a student has completed the instructional requirement. Correspondence study programs shall administer a supervised examination by a disinterested third party who shall sign a sworn affidavit certifying the authenticity of the examination. The provider



shall retain the affidavit and examination records for five years.

- (6) Students shall attend a minimum of 20 hours of property, casualty, personal lines, life, accident and health or sickness instruction or a minimum of 10 hours of Medicare supplement and long term care instruction. Time set aside for breaks, pop-tests, quizzes, the final comprehensive course examination and other non-instructional activities ~~shall~~ does not count toward the minimum instructional requirement. If a property, casualty, personal lines, life, accident and health or sickness course is scheduled for 25 or more instructional hours, a student shall attend at least 80 percent of the total hours offered by the course.

(e) The following requirements shall be met for scheduling purposes:

- (1) Class meetings or correspondence courses shall be limited to a maximum of eight hours of instruction in any given day.
- (2) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open-entry/open-exit basis.
- (3) Correspondence or Internet courses shall not have fixed beginning and ending dates and shall be conducted on an open-entry basis.

(f) The following ~~shall~~ apply to the use of text books:

- (1) Choice of classroom course text is at the discretion of each school.
- (2) Text books used in correspondence or Internet courses shall be approved by the Commissioner before use. No text book used in a correspondence course shall be approved unless it contains instruction in the subject areas described in G.S. 58-33-30(d)(2) and 58-33-30(d)(3).

(g) All prelicensing classroom school courses shall be taught by instructors who meet the qualifications described in Rule .0705 of this Section.

(h) All prelicensing correspondence courses shall be monitored by instructors who meet the qualifications described in Rule .0705 of this Section. An instructor shall be designated for each correspondence or Internet course student.

(i) The following certification of course completion procedures ~~shall apply:~~ applies:

- (1) Schools shall validate each student who successfully completes a prelicensing course with an Examination Admission Ticket/Certificate of Course Completion. The Examination Admission Ticket/Certificate of Course Completion shall not be validated for a student prior to completion of all course requirements and the passing of the course's comprehensive final examination. Applicants who complete their prelicensing course requirement by attending a correspondence course shall not have their Examination

Admission Ticket/Certificate of Course Completion validated until they submit to the instructor of the course a sworn affidavit signed by a third party who was the instructor or program director of the course. The affidavit shall state that the applicant has completed all course requirements and passed the final course examination as required by this Rule.

- (2) An Examination Admission Ticket/Certificate of Course Completion shall be ~~validated~~ signed by the instructor for each course successfully completed by a student. An Examination Admission Ticket/Certificate of Course Completion presented at the examination site that indicates completion of more than one course ~~shall be~~ is invalid.

- (3) An Examination Admission Ticket/Certificate of Course Completion ~~shall be~~ is valid for access to the examination for 90 days or a maximum of five examination attempts, whichever occurs first. If an applicant for a license does not successfully pass the examination within 90 days or five examination attempts in the 90-day period, the applicant shall again meet the prelicensing education requirement to be eligible for the examination

(j) Correspondence courses administered through the Internet shall:

- (1) Require each applicant to enroll for the course before having access to course material;
- (2) Prevent access to the course exam before review of the course materials;
- (3) Prevent downloading of any course exam; and
- (4) Provide review questions at the end of each unit or chapter and prevent access to the final exam until the student answers at least 70 percent of each set of unit or chapter questions correctly.

Authority G.S. 58-2-40; 58-33-30(d); 58-33-132; 58-58-235.

**SECTION .0800 - CONTINUING EDUCATION**

**11 NCAC 06A .0801 DEFINITIONS**

As used in this Section:

- (1) "Biennial compliance period" means the 24-month period during which an agent or adjuster shall comply with continuing education requirements.
- (2) "Cluster of courses" means a number of courses, each of which is less than 100 minutes in length, but altogether 100 minutes or more in length, that are offered within one state or national program or convention.
- (3) "Compliance year" means the second year of the biennial compliance period.

- (4) "Continuing Education Administrator" or "Administrator" means the entity with which the Commissioner contracts for continuing education administration, including the approval of providers and courses and the retention of ICEC records for licensees.
- (5) "Course" means a continuing education course directly related to insurance principles and practices or a course designed and approved specifically for licensees; but does not mean a business course of a general nature or an insurance marketing or sales course. Courses shall be for instructional purposes only and not for promoting the interests of or recruiting employees for any particular insurance agency or company.
- (6) "Disinterested third party" means a person not concerned, with respect to possible gain or loss, in the result of a pending course final ~~examination~~ examination and does not include the current employer, prospective employer, or a member of the licensee's immediate family. "Immediate family" means a parent, adopted parent, guardian, sibling, child, spouse, or grandparent.
- (7) "Distance learning" means an educational program in which the licensee and the instructor are in different physical locations and interact with each other through various methods of telecommunication.
- (8) "Ethics course" means a continuing education course that deals with usage and customs among members of the insurance profession involving their moral and professional duties toward one another, toward clients, toward insureds, and toward insurers.
- (9) "Insurance continuing education credit" or "ICEC" means a value assigned to a course by the Commissioner after review and approval of a course information. This term means the same as "credit hour" as used in G.S. 58-33-130.
- (10) "Instructor" means an individual who teaches, lectures, leads, or otherwise instructs a course.
- (11) "Instructional Hour" means a 50 minute hour for courses taught in the classroom. For courses taught by a correspondence school, "instructional hours" are determined by using the National Association of Insurance Commissioner's (NAIC) Recommended Guidelines for Online and Correspondence courses which are hereby incorporated by reference including subsequent amendments and editions. Copies of the NAIC Recommended Guidelines for Online and Correspondence courses are available free of charge from the Agent Services Division by email at ASD@ncdoi.gov.

- ~~(11)~~(12) "Licensee" means a licensed adjuster, a licensed broker, or a licensed agent with any of the following lines of authority: property, casualty, personal lines, life, or accident and health or sickness.
- ~~(12)~~(13) "Supervised examination" means a timed, closed book examination that is monitored and graded by a disinterested third party.
- ~~(13)~~(14) "Supervised individual study" means learning through the use of audio tapes, video tapes, computer programs, programmed learning courses, and other types of electronic media that are completed in the presence of an instructor.

*Authority G.S. 58-2-40; 58-33-130.*

**11 NCAC 06A .0802 LICENSEE REQUIREMENTS**

- (a) Each person holding a life, accident and health or sickness, property, casualty, personal lines, or adjuster license shall obtain 24 ICECs during each biennial compliance period. Each person holding one or more life, accident and health or sickness, property, casualty, personal lines, variable life and variable annuity products or adjuster license shall complete an ethics course or courses within two years after January 1, 2008, and every biennial compliance period thereafter as defined in this Section. The course or courses shall comprise three ICECs.
- (b) Each person holding one or more property, personal lines, or adjuster license, shall complete a continuing education course or courses on flood insurance and the National Flood Insurance Program, or any successor programs, within the first biennial compliance period after January 1, 2008, and every other biennial compliance period thereafter. The course or courses shall comprise three ICECs.
- (c) Each licensee shall, before the end of that licensee's biennial compliance year, furnish evidence as set forth in this Section that the continuing education requirements have been satisfied.
- (d) An instructor shall receive the maximum ICECs awarded to a student for the course.
- (e) Licensees shall not receive ICECs for the same course more often than one time in any biennial compliance period.
- (f) Licensees shall receive ICECs for a course only for the biennial compliance period in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.
- (g) Licensees shall maintain records of all ICECs for ~~three~~ five years after obtaining those ICECs, which records shall be available for inspection by the Commissioner.
- (h) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident adjusters who qualify for licensure by passing the North Carolina adjuster examination pursuant to G.S. 58-33-30(h)(2)a shall meet the same continuing education requirements as a resident adjuster including mandatory flood and ethics courses. Nonresident adjusters who qualify for licensure by passing an adjuster examination in another state pursuant to G.S. 58-33-30(h)(2)b and are in good standing in that state shall be credited with having met the same

**PROPOSED RULES**

continuing education requirements as resident adjusters, including mandatory flood and ethics courses.

~~(i)~~ A licensee is exempt from the requirements of this Section, other than ethics and flood courses as described in Paragraph (j) of this Rule, if the licensee: A licensed insurance producer who is unable to comply with continuing education requirements due to military service, or long-term medical disability may request a waiver for continuing education requirements. A long-term medical disability means that it is certified on an annual basis by an attending physician to the licensee. The Commissioner shall grant an exemption from Continuing Education requirements for up to one year if the producer submits the following:

- (1) Deployment orders from the United States Department of Defense; or
- (2) A notarized statement from a licensed physician stating the producer is unable to do the work he is licensed to do.

(j) A licensee who was granted an exemption from the requirements of this Section prior to the effective date of this Rule continues to be exempt from continuing education requirements for as long as the licensee certifies to the Commissioner that he:

- (1) is age 65 or older; and
- (2) has been continuously licensed in the line of insurance for at least 25 years; and
- (3) either:
  - (A) holds a professional designation specified in 11 NCAC 06A .0803; or
  - (B) certifies to the Commissioner annually that the licensee is an inactive agent who neither solicits applications for insurance nor takes part in the day to day operation of an agency.

~~(j)~~(k) Any licensee who qualifies for exemption under Paragraph (i) of this Rule shall meet the ethics and flood courses as required in Paragraph (a) and (b) of this Rule and in Rule .0812 of this Section.

~~(k)~~(l) Courses completed before the issue date of a new license do not meet the requirements of this Section for that new license.

~~(l)~~(m) No credit shall be given for courses taken before they have been approved by the Commissioner.

~~(m)~~(n) Each person with an even numbered birth year shall meet continuing education requirements in an even numbered compliance year. Each person with an odd numbered birth year shall meet continuing education requirements in an odd numbered compliance year. The licensee shall complete 24 hours of continuing education by the last day of the licensee's birth month in the compliance year.

~~(n)~~(o) An existing licensee requiring continuing education is an individual who holds any of the following licenses on or before December 31, 2007: life and health, property and liability, personal lines, or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The licensee's birth month determines the month that continuing education is due. (Example: An individual born in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year.) The number of ICECs required by this Rule are prorated based on one ICEC per month, up to 24 months. This conversion shall be completed within four years. (Example: An individual with a birth date of February 16, 1960, would have the following two compliance periods during the continuing education conversion: 1st – two ICECs by the end of February 2008; the 2nd – 24 ICECs by the end of February 2010. An individual with a birth date of April 4, 1957, would have the following two compliance periods during the continuing education conversion: 1st – 16 ICECs by the end of April 2009; the 2nd – 24 ICECs by the end of April 2011.) The chart below reflects the number of hours an existing licensee requiring continuing education must have during the four-year conversion.

Compliance Year	EXISTING LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH																							
	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEPT		OCT		NOV		DEC	
	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd
2008	1		2		3		4		5		6		7		8		9		10		11		12	
2009		13		14		15		16		17		18		19		20		21		22		23		24
2010	24		24		24		24		24		24		24		24		24		24		24		24	
2011		24		24		24		24		24		24		24		24		24		24		24		24

(p) A new licensee requiring continuing education is an individual who is issued any of the following licenses on or after January 1, 2008: life, accident and health or sickness, property, casualty, personal lines or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The licensee's birth month determines the month that continuing education is due. (Examples: An individual born in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year. An individual with a birth date of December 1, 1960, licensed in 2008, is required to meet 24 hours of continuing education by December 31, 2010. An individual with a birth date of October 1, 1957, licensed in 2008, is required to meet 24 hours of continuing education by October 31, 2011.) The chart below shows the first deadline by which a new licensee would be required to complete 24 hours of continuing education.

License Issue Year	NEW LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH																							
	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEPT		OCT		NOV		DEC	
	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd
<b>2008</b>	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
<b>2009</b>	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011
<b>2010</b>	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013
<b>2011</b>	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013

(q) A member of a professional insurance association may receive no more than two ICECs during the biennial compliance period based solely on membership in the association. The professional insurance association shall be approved as a continuing education provider, shall have been in existence for at least five years, and shall have been formed for purposes other than providing continuing education. The professional insurance association shall:

- (1) Provide the Commissioner or the Administrator with the association's Articles of Incorporation on file with the N.C. Secretary of State;
- (2) Certify to the Commissioner or Administrator that the licensee's membership is active during the biennial compliance period;
- (3) Certify to the Commissioner or Administrator that the licensee attended 50 percent of the regular meetings;
- (4) Certify to the Commissioner or Administrator that the licensee attended a statewide or intrastate regional educational meeting on an annual basis, where the regional meeting covered an area of at least 25 counties of the State; and
- (5) Pay the one dollar (\$1.00) per ICEC to the Commissioner or Administrator.

Authority G.S. 58-2-40; 58-2-185; 58-2-195; 58-33-130; 58-33-133.

**11 NCAC 06A .0805 CALCULATION OF ICECS**

The following standards are used to evaluate all courses submitted for continuing education approval:

- (1) Programs requiring meeting or classroom attendance:
  - (a) Courses or clusters of courses of less than one ICEC ~~50 minutes~~ shall not be evaluated for continuing education ICECs.
  - (b) Courses shall not be approved for less than one ICEC.
  - (c) One ICEC shall be awarded for each 50 minutes of instruction ~~instructional hour~~ unless the Commissioner assigns fewer ICECs based upon the evaluation of the submitted course

materials. Courses shall only be approved for whole ICECs.

- (d) Course providers shall monitor participants for attendance and ~~attention.~~ ensure that licensees complete the course hours approved by the Commissioner.
- (2) In addition to the requirements in Item (1) the following requirements apply to Independent study programs:
  - (a) Independent study programs qualify for continuing education only when there is a supervised examination. No examination administered or graded by insurance company personnel for its own employees is

considered to be administered by a disinterested third party. The examination supervisor shall submit to the provider a sworn affidavit that certifies the authenticity of the examination. The provider shall retain the affidavit and examination records.

- (b) Each course shall be assigned ICECs, which shall be awarded upon the passing of the supervised examination.
- (3) In addition to the following requirements in Item (1) the following requirements apply for Distance Learning Programs:
  - (a) Distance learning qualifies only when an instructor is available to respond to questions and to maintain attendance records.
  - (b) Any organization sponsoring a teleconference shall have an on-site instructor.
- (4) Internet programs qualify only when there is a secure examination required at the end of the licensee's study of the course material and when ~~periodic~~ security measures have been used throughout the course ~~material~~ before the final examination.
- (5) Security measures shall include the following:
  - (a) Each agent enrolls and pays for the course before having access to course material.
  - (b) The course examination cannot be accessed until after the course materials have been reviewed and completed by the licensee.
  - (c) Agents are prevented from downloading course exams.
  - (d) Review questions are provided at the end of each unit or chapter and access to the following unit or chapter is blocked until review questions are answered.
  - (e) Final exam questions do not duplicate unit or chapter questions.
  - (f) Course materials cannot be accessed during course exams.
  - (g) The test monitor affidavit is not completed until after the examination is completed.
- (~~5~~)(6) Webinar courses qualify only when there is a method of monitoring attendance, by way of a random question and answer segment throughout the course, or a monitor at each location. Examinations are not required in Webinar courses.

**11 NCAC 06A .0811 SANCTIONS FOR NONCOMPLIANCE**

- (a) If the license of any person lapses under G.S. 58-33-130(c), the license shall be reinstated when the person has completed the continuing education ~~requirements~~ requirements and paid an administrative fee of seventy-five dollars (\$75.00) within four months after the end of the person's previous compliance year. If the person does not satisfy the requirements for licensure reinstatement within ~~120 days~~ four months after the end of the person's previous compliance year, the person shall complete the appropriate prelicensing education requirement and pass the appropriate licensing examination, at which time the Commissioner shall reinstate the person's license.
- (b) The Commissioner may suspend, revoke, or refuse to renew a license for any of the following causes:
  - (1) Failing to respond to Department inquiries, including continuing education audit requests, within seven calendar days after the receipt of the inquiry or request.
  - (2) Requesting an extension or waiver under false pretenses.
  - (3) Refusing to cooperate with Department employees in an investigation or inquiry.
- (c) The Commissioner may suspend, revoke, or refuse to renew a course provider's, presenters, or instructor's authority to offer courses for any of the following causes:
  - (1) Advertising that a course is approved before the Commissioner has granted such approval in writing.
  - (2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content.
  - (3) Presenting or using unapproved material in providing an approved course.
  - (4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner.
  - (5) Preparing and distributing certificates of attendance or completion before the course has been approved.
  - (6) Issuing certificates of attendance or completion before the completion of the course.
  - (7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course.
  - (8) Failing to notify the Commissioner in writing of suspected or known violations of the North Carolina General Statutes or Administrative Code within 30 days after suspecting or knowing about the violations.
  - (9) Violating the North Carolina General Statutes or Administrative Code.
  - (10) Failing to monitor attendance and attention of attendees.
  - (11) Preparing and distributing fraudulent certificates of attendance or completion.

Authority G.S. 58-2-40; 58-33-130.

(12) Failing to ensure that the licensee completes the course hours approved by the Commissioner.

(d) Course providers and presenters are responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of any of the activities associated with the course.

(e) The Commissioner may require any one of the following upon a finding of a violation of this Section:

- (1) Refunding all course tuition and fees to licensees.
- (2) Providing licensees with a course to replace the course that was found in violation.
- (3) Withdrawal of approval of courses offered by the provider, presenter, or instructor.

(f) Each year, the Commissioner shall verify each nonresident licensee's record through the NAIC Producer Data Base to ensure that the licensee has complied with the continuing education requirements in the licensee's home state. If the license lapses under G.S. 58-33-32, the Commissioner shall cancel the license.

Authority G.S. 58-2-40; 58-33-125(a); 58-33-130; 58-33-132; 58-33-133.

**11 NCAC 06A .0812 SPECIAL CASES**

(a) In addition to the courses in 11 NCAC 6A .0803, the Commissioner shall prepare courses to address and remedy deficiencies in licensee professional performance or conduct detected by the Commissioner through analyses of consumer complaints or from Departmental audits or examinations of insurance companies, licensees, or insurance agencies or brokerages.

(b) The Commissioner shall require individual licensees to take remedial or rehabilitative courses because of complaints or examination or audit findings:

- (1) showing a pattern of irregularities in professional performance or conduct; or
- (2) resulting in the finding of civil violations.

(c) The Commissioner shall award 24 biennial continuing professional educational credit hours based on government service relative to insurance or finance, such as service as a legislator on a committee in the General Assembly that hears insurance and finance matters.

Authority G.S. 58-2-40; 58-33-130; 58-33-130(a)(5).

**11 NCAC 06A .0813 ISSUANCE/CONTINUATION OF PROVIDER APPROVAL**

(a) Any individual or entity intending to provide classes, seminars, or other forms of instruction as approved courses shall submit:

- (1) an application prescribed by the Commissioner for provider approval; and
- (2) a course approval application in accordance with Rule .0809 of this Section.

(b) The Commissioner or the Administrator shall approve or deny the provider and course approval application.

(c) Any provider approval that is denied shall be furnished a written explanation for the denial in accordance with Rule .0809(4) of this Section.

(d) Any provider receiving a provider approval denial shall have 15 business days to respond to the denial.

(e) As a condition to continued provider approval, providers shall conduct a minimum of one course within the State of North Carolina each calendar year.

(f) Providers shall retain continuing education records for ~~three~~ five years and shall provide these records upon request to the Commissioner or to the Administrator.

Authority G.S. 58-2-40; 58-33-130; 58-33-132; 58-58-235.

**11 NCAC 06A .0814 REVIEW OF APPROVED COURSES**

(a) Providers shall review their approved courses every 24 months to ensure the accuracy of the course information. If an approved course at any time requires substantial alterations, the provider shall refile the course for approval pursuant to 11 NCAC 06A .0809 and pay the appropriate fees.

(b) As used in this Rule "Substantial Alterations" are any changes that would modify the content or time allocations stated in the course outline or would change any of the course topics. A change in the focus of a course where portions are based on a particular concept (ISO policy form or policy type, for example) is considered substantial. A change to update a minor point (such as a change in Medicare deductibles or changes in state tax limits) is not considered substantial.

Authority G.S. 58-2-40; 58-33-130; 58-33-132.

**11 NCAC 06A .0901 DEFINITIONS**

As used in this Section:

- (1) ~~"Catastrophic disaster", according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; or severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor.~~
- (2) ~~"Public adjuster" means any individual who, for salary, fee, commission, or other compensation, engages in public adjusting and who is licensed under G.S. 58-33-30 or who is authorized to adjust under G.S. 58-33-70; but does not mean an attorney at law, licensed to practice by the North Carolina State Bar, who adjusts insurance losses in the course of the practice of law.~~
- (3) ~~"Public adjusting" means investigating, reporting to, and assisting an insured in~~

~~relation to first party claims arising under insurance contracts, other than life or annuity, that insure the real or personal property, or both, of the insured; but does not include acting in any manner in relation to liability claims for personal injury or property damage, other third party claims, nor physical damage to motor vehicles.~~

~~(5) — Conspicuously disclose the insured's right to cancel or revoke the contract as specified in 11 NCAC 06A .0904(c).~~

~~(6) — Be in writing.~~

~~(i) A public adjuster shall not acquire any interest in salvage property, except with the express written permission of the insured, after settlement with the insurer.~~

Authority G.S. 58-2-40; 58-33-10; 58-33-30; 58-33-70.

Authority G.S. 58-2-40; 58-33-10; 58-33-30; 58-33-70; 58-33-76; 58-63-15(11).

**11 NCAC 06A .0902 TRANSACTIONS WITH INSURED**

~~(a) A public adjuster shall in all respects be fair and honest with an insured and in all communications with an insurer or its representatives.~~

~~(b) A public adjuster shall have no financial interests in any aspect of an insured's claim, other than the salary, fee, commission, or compensation that may be established in the written contract between the insured and the public adjuster.~~

~~(c) A public adjuster shall not refer or direct any insured needing repairs or other services in connection with a loss to any person with whom the public adjuster has a financial interest; nor to any person who will or is reasonably anticipated to provide the public adjuster any direct or indirect compensation for the referral of any resulting business.~~

~~(d) A public adjuster shall not prevent or attempt to dissuade an insured from communicating with an insurer, the insurer's adjuster, an independent adjuster representing the insurer, an attorney, or any other person, regarding the settlement of the insured's claim.~~

~~(e) The public adjuster's full consideration for the public adjuster's services shall be stated in the written contract with the insured. If the consideration is based on a share of the insurance proceeds, the exact percentage shall be specified. Any costs to be reimbursed to the public adjuster out of the proceeds shall be specified by type, with dollar estimates set forth in the contract. Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to an insurer. Such a redaction shall constitute the use of fraudulent, coercive or dishonest practices and the demonstration of untrustworthiness in the conduct of business in this State as described in G.S. 58-33-46(8).~~

~~(f) Any choice of counsel to represent the insured shall be made solely by the insured.~~

~~(g) A public adjuster may not settle a claim unless the terms and conditions of the settlement are approved by the insured.~~

~~(h) All contracts for the services of public adjusters shall:~~

- ~~(1) — Legibly state the full name, as specified in the Department's records, of the licensed public adjuster who is the other party to the contract.~~
- ~~(2) — Be signed by the public adjuster who solicited or in whose name the contract was solicited.~~
- ~~(3) — Show the insured's full name and street address, the address and description of the loss, and the name of the insured's insurance company and policy number, if available.~~
- ~~(4) — Show the date on which the contract was actually signed by both parties.~~

**11 NCAC 06A .0903 RELATIONSHIPS WITH THIRD PARTIES**

~~(a) No public adjuster shall compensate or provide any thing of value to a person who is not licensed as an adjuster under G.S. 58-33-30 in return for the referral of a business prospect to the public adjuster; provided, however, a public adjuster may enter into an agreement with another public adjuster for referral of business and sharing compensation.~~

~~(b) No public adjuster shall represent or act as an adjuster representing an insurance company, either as an employee of the insurance company or as an independent adjuster. No independent adjuster or insurance company adjuster shall act as a public adjuster.~~

Authority G.S. 58-2-40; 58-33-10(b); 58-33-25(a); 58-33-30; 58-33-70.

**11 NCAC 06A .0904 REGULATORY MATTERS**

~~(a) Only public adjusters shall solicit business from an insured who has sustained an insured loss.~~

~~(b) All advertising by a public adjuster shall fairly and accurately describe the services to be rendered, shall not misrepresent either the public adjuster or the public adjuster's abilities, and shall comply with the following requirements:~~

- ~~(1) — Except as authorized by this Subparagraph, only public adjusters residing in North Carolina licensed by the Department may advertise, whether in print, or in other media, within the State of North Carolina. Nonresident public adjusters licensed by the Department shall not advertise, unless such advertising complies with G.S. 58-63-15(2), and has been approved by the Department.~~
- ~~(2) — An advertisement shall state the full name of the public adjuster and the public adjuster's firm.~~

~~(c) No public adjuster shall solicit or enter into any agreement for the repair or replacement of damaged property on which the public adjuster has been engaged to adjust or settle claims.~~

~~(d) If an insured enters into an agreement with a public adjuster to adjust a loss within three business days after the date of the loss, the insured shall have until the close of business on the third business day after the date of the loss to rescind the agreement.~~

~~(e) The exercise of the right to rescind the agreement by the insured must be in writing and delivered to the public adjuster at the address shown on the agreement.~~

~~(f) If the insured property that is the subject of the claim is not the primary residence of the insured or used by the insured primarily for personal, family, or household purposes, the insured may waive the right to rescind the agreement. The waiver shall be in writing and signed by the insured.~~

~~(g) If the insured rescinds the agreement with a public adjuster in accordance with this Rule, the public adjuster shall be entitled to payment by the insured for the reasonable value of the service rendered and any expenses incurred by the public adjuster prior to receiving notice of the rescission.~~

~~(h) Every public adjuster shall maintain all records of losses and claims adjusted for three years after the settlement or closing of each claim.~~

~~(i) An adjuster shall not undertake the adjustment of any claim concerning which the adjuster is not currently competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the adjuster's current expertise.~~

~~(j) A public adjuster shall not represent or imply to any client or potential client that insurers, company adjusters, or independent adjusters routinely attempt to, or do in fact, deprive claimants of their full rights under an insurance policy. Likewise, no insurer, independent adjuster, or company adjuster shall represent or imply to any claimant that public adjusters are unscrupulous, or that engaging a public adjuster will delay or have other adverse effect upon the settlement of a claim.~~

~~(k) No public adjuster shall knowingly enter into a contract to adjust a residential property claim subsequent to an insurer declaring the property a total loss, unless the services to be provided by the public adjuster can be proven to result in the claimant obtaining an insurance settlement, net of the adjuster's compensation, in excess of what the insured claimant would have obtained without the services of the public adjuster.~~

*Authority G.S. 58-2-40; 58-33-10; 58-33-30; 58-33-70; 58-33-76; 58-63-15(2),(11).*

**11 NCAC 06A .0905 CATASTROPHIC DISASTERS**

~~(a) In addition to the rules in this Section, in the event of a catastrophic disaster, no public adjuster shall:~~

- ~~(1) charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than 10 percent of any insurance settlement or proceeds; or~~
- ~~(2) require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.~~

~~(b) Notwithstanding 11 NCAC 06A .0904(d), in the event of a catastrophic disaster, a public adjuster's contract with an insured or other client shall be revocable or cancelable by the insured or claimant, without penalty or obligation, for at least 14 business days after the contract is entered into.~~

~~(c) Notwithstanding 11 NCAC 06A .0904(f), in the event of a catastrophic disaster, waiver of the right to rescind is prohibited, any such waiver is void ab initio, and any knowing attempt by a public adjuster to secure such a waiver constitutes an unfair and deceptive trade practice.~~

*Authority G.S. 58-2-40; 58-33-46; 58-33-70; 58-33-120; 58-63-10; 58-63-15.*

**11 NCAC 06A .0906 FINGERPRINTS REQUIRED FOR CRIMINAL RECORD CHECKS**

(a) An applicant for a resident public adjuster license shall furnish the Commissioner with a complete set of the applicant's fingerprints as authorized by G.S. 58-33A-15. An applicant for a public adjuster license includes:

- (1) An applicant for an initial resident public adjuster license;
- (2) A non-resident public adjuster applying for a resident public adjuster license;
- (3) A resident public adjuster license applicant applying for reinstatement of license that has been lapsed for more one year; or
- (4) A resident public adjuster license applicant whose license has been suspended or revoked for non-payment of child support pursuant to G.S. 110-142.1.

(b) As authorized by G.S. 58-33A-15, fingerprints shall be furnished in the following manner:

- (1) Each resident public adjuster license applicant who is required to submit fingerprints under G.S. 58-33A-15 shall have a complete set of their fingerprints electronically captured by a criminal law enforcement agency approved by State Bureau of Investigation (SBI) to submit fingerprints via electronic means;
- (2) Each resident public adjuster license applicant who is required to submit fingerprints under G.S. 58-33A-15 shall submit with the public adjuster license application the Electronic Fingerprint Submission Release of Information Form that has been completed and certified by a law enforcement officer that the applicant's fingerprints have been submitted via electronic means to the SBI;
- (3) Each resident public adjuster license applicant who is required to submit fingerprints under G.S. 58-33A-15 shall submit with the public adjuster license application the Authority For Release Of Information form required by the SBI to release the criminal history record check information to the Department; and
- (4) Each resident public adjuster license applicant who is required to submit fingerprints under G.S. 58-33A-15 shall submit with the public adjuster license application the cost for the state and national criminal history record fee that is set forth pursuant to G.S. 114-19.1(a); and
- (5) All fingerprint impressions must be suitable for use by the SBI to conduct a state criminal history record check and for the Federal Bureau of Investigations (FBI) to conduct a national criminal history record check. If the SBI deems the electronic fingerprints are not suitable, the Commissioner shall notify and



provide instructions to the applicant to resubmit his fingerprints in the manner set forth in Subparagraph (1) of this Paragraph within 30 days.

(c) The application of a resident public adjuster required to submit fingerprints is not be complete until the Department receives the state and national criminal history record information. In accordance with G.S. 58-33A-20(c), the Commissioner shall not issue the license of a public adjuster that does not satisfy the license application requirements.

Authority G.S. 58-2-40; 58-33A-15; 58-33A-20.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rules cited as 11 NCAC 13 .0519-.0528, .0530, .0532-.0537, .0539, .0541-.0542, amend the rules cited as 11 NCAC 13 .0405, .0512-.0513 and repeal the rules cited as 11 NCAC 13 .0101-.0105, .0304, .0309, .0516.

Proposed Effective Date: October 1, 2010

**Public Hearing:**

Date: July 6, 2010

Time: 10:00 a.m.

Location: 430 N. Salisbury Street, Raleigh, NC, 3<sup>rd</sup> Floor Conference Room

**Reason for Proposed Action:** For the purpose of updating the current operational structure of the Division, streamlining revenue collection functions, incorporating recommendations from the FBI Audit Unit regarding fingerprint submission, reducing division operational expenses by leveraging electronic processing options, and adding changes put forth by the Bail Bond CE advisory committees. Based on the 2009 General Assembly Session, authority to make many of these proposed rule changes is included in HB 1166, HB 1159 and SB 458.

**Procedure by which a person can object to the agency on a proposed rule:** The North Carolina Department of Insurance will accept objections to this rule until the expiration of the comment period on August 16, 2010.

**Comments may be submitted to:** Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495, email karen.waddell@nc.doi.gov

**Comment period ends:** August 16, 2010

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

approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal Impact:**

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

**CHAPTER 13 – AGENT SERVICES DIVISION – NON-INSURANCE ENTITIES**

**SECTION .0100 - GENERAL PROVISIONS**

**11 NCAC 13 .0101 DEFINITIONS**

In this Chapter, unless the context requires otherwise, the following definitions shall apply:

- (1) "Special services division" or "the Division" means the special services division of the North Carolina Department of Insurance.
- (2) "Insurance premium finance company" or "finance company" means any entity properly licensed to finance insurance premiums in this state and shall further be defined as in G.S. 58-35-1.
- (3) "Collection agency" means any entity properly licensed to collect delinquent accounts in this state and shall further be defined as in G.S. 58-70-15.
- (4) "Motor club" is as defined in G.S. 58-69-1.
- (5) "Bail bondsman" is as defined in G.S. 58-71-1.
- (6) The singular includes the plural and the masculine includes the feminine wherever appropriate.

Authority G.S. 58-2-40; 58-35-5(b); 58-35-15(a).

**11 NCAC 13 .0102 PURPOSE OF DIVISION**

The Division is established to provide protection to the citizens of North Carolina by assuring the reliability and competence of all persons engaged in the business of financing insurance premiums, collecting past due accounts, signing bail bonds or providing motor club memberships in the state. The Division develops, establishes and administers procedures for the supervision and regulation of all insurance premium finance companies, collection agencies, motor clubs and bail bondsmen.

Authority G.S. 58-9; 66-46; 66-49.13; 85C-2.

**11 NCAC 13 .0103 DEPUTY COMMISSIONER**

There shall be a Deputy Commissioner of Insurance in charge of the Division whose duties shall include, but not be limited to, the

supervision of all activities related to the purpose of the Division as stated in 11 NCAC 13 .0102.

Authority G.S. 58-7.3.

**11 NCAC 13 .0104 DIVISION PERSONNEL**

(a) Administrative Personnel. Administrative personnel shall have duties including, but not limited to the following:

- (1) reviewing, approving or disapproving applications for license as an insurance premium finance company, collection agency, motor club or bail bondsman in accordance with the North Carolina General Statutes and other standards developed by the Department;
- (2) reviewing, approving or disapproving the issue of renewal licenses for all premium finance companies, collection agencies, motor clubs and bail bondsmen in North Carolina;
- (3) supervising internal audits of financial statements submitted by insurance premium finance companies, collection agencies, motor clubs and bail bondsmen;
- (4) assigning and supervising field audits and examinations of insurance premium finance companies, collection agencies, bail bondsmen and motor clubs;
- (5) assigning field examinations of consumer complaints arising against both licensed and unlicensed insurance premium finance companies, collection agencies, motor clubs and bail bondsmen;
- (6) reviewing all examination reports submitted by Department of Insurance field personnel and initiating corrective action whenever appropriate;
- (7) reviewing and giving written approval or disapproval to all forms used by insurance premium finance companies and collection agencies;
- (8) supervising the collecting and accounting for all license fees due from insurance premium finance companies, collection agencies, motor clubs and bail bondsmen;
- (9) conducting personal interviews with prospective applicants for licenses;
- (10) reviewing consumer inquiries and complaints with reference to licensing information or actions of licensees or permittees;
- (11) supervising the compilation of statistical data concerning the operations of licensed insurance premium finance companies, collection agencies, motor clubs and bail bondsmen;
- (12) administering and grading of all examinations for license and permits.

(b) Field Personnel. Duties of Department of Insurance field personnel shall include but not be limited to:

- (1) conducting field audits and examinations of licensed premium finance companies,

collection agencies, motor clubs or bail bondsmen to determine their compliance with the laws of North Carolina and departmental regulations;

- (2) conducting field investigation of consumer complaints arising against both licensed and unlicensed insurance premium finance companies, collection agencies, motor clubs and bail bondsmen;
- (3) conducting in depth background investigations on all license applicants to determine their qualifications;
- (4) extensive writing of reports concerning examinations and investigations so that complete, concise and accurate records are available for departmental hearings or legal action by the courts.

(c) Office Personnel. Department office personnel shall have duties that include, but are not limited to:

- (1) maintenance of files for each applicant and each licensee reflecting qualifications, results of field examinations, copies of all approved forms and other pertinent information;
- (2) compiling statistical data concerning the operations of licensed insurance premium finance companies, collection agencies, motor clubs and bail bondsmen;
- (3) answering all public inquiries regarding proper procedures for licensing, examination, renewal of license or permit, bond requirements and all other information available in the Division;
- (4) issuance of all application forms and instructions for proper completion of each;
- (5) collecting and accounting for all license fees received from insurance premium finance companies, collection agencies, motor clubs and bail bondsmen.

Authority G.S. 58-7.3; 58-9.2; 58-57; 66-48; 66-49.13; 85C-2; 85C-35.

**11 NCAC 13 .0105 FIELD INVESTIGATIONS: EXAMINATIONS**

Field investigations or examinations or both may be conducted by the Division personnel for several reasons, including, but not limited to the following:

- (1) to make a determination that an applicant for license as a premium finance company, collection agency, bail bondsman or motor club is qualified to hold a license under the laws of North Carolina and departmental rules and regulations;
- (2) to determine whether or not a present licensee or permittee is operating within the laws of the state and departmental rules and regulations;
- (3) to obtain information to satisfy consumer complaints or inquiries or both alleging unlawful or unethical conduct by a licensed insurance premium finance company,

collection agency, motor club or bail bondsman;

- (4) ~~to obtain information based on consumer complaints or inquiries or both in reference to an insurance premium finance company, collection agency, bail bondsman or motor club allegedly operating in the state without first obtaining a license.~~

Authority G.S. 58-9; 66-46; 66-49.13; 85C-2.

**SECTION .0300 - INSURANCE PREMIUM FINANCE COMPANIES**

**11 NCAC 13 .0304 RENEWAL OF INSURANCE PREMIUM FINANCE LICENSE**

- (a) ~~The Division will mail to each licensed premium finance company a "Premium Finance License Renewal Application."~~
- (b) ~~The premium finance company shall complete the application and return it to the Division by the date specified on the form. The application shall have attached to it a check made payable to the North Carolina Department of Insurance for the proper fee as specified in G.S. 58-35-5.~~
- (c) ~~Surety bonds must be in force at the time of renewal.~~

Authority G.S. 58-2-40; 58-35-15(c).

**11 NCAC 13 .0309 QUARTERLY REPORT**

~~Each licensee shall file a special report entitled "Analysis of Contracts and Operation" with the Commissioner on or before the 15th day of January, April, July and October of each year. The report shall be a record of the business financed during the three months immediately preceding the month in which it is filed (example: January 15 report will include October, November and December). The quarterly report form will be supplied by the Commissioner and shall include the name and address of the licensee, instructions for filing the report, and all the following information separated by month:~~

- (1) ~~number of contracts written;~~
- (2) ~~total premiums financed on those contracts;~~
- (3) ~~down payments collected on those contracts;~~
- (4) ~~principal balance on those contracts;~~
- (5) ~~service charges on those contracts;~~
- (6) ~~number of contracts cancelled by power of attorney.~~

Authority G.S. 58-2-40; 58-35-30.

**SECTION .0400 - MOTOR CLUBS**

**11 NCAC 13 .0405 SURETY BOND**

The surety bond described in G.S. ~~58-59-10~~ 58-69-10 shall be executed on a the Bond-MC form supplied by the Commissioner of Insurance and shall be completed and executed in accordance with the laws of North Carolina governing surety bonds by a surety company ~~duly~~ authorized to transact business in this state. ~~The surety bond form shall include the name of the motor club, name of the surety, amount of the bond, effective date of~~

~~the bond, terms of cancellation of the bond and other pertinent information.~~

Authority G.S. 58-2-40; 58-69-20(5).

**SECTION .0500 - BAIL BONDSMEN AND RUNNERS**

**11 NCAC 13 .0512 COLLATERAL SECURITY REQUIRED BY BONDSMEN**

(a) The collateral security required by bail bondsmen must be reasonable in relation to the amount of the bond in that any collateral security (including personal property, real property, indemnity agreement and guarantee) received by such licensee shall not, in the aggregate, exceed the amount of the bond. Any collateral security shall be returned to the person who deposited it with the bail bondsman ~~or his representative~~ immediately after the obligation, the satisfaction of which was secured by the collateral, is discharged. Any bail bondsman, runner or other representative who receives collateral security shall hold such collateral security in trust. No indemnity agreement or other security received as collateral security for a bond shall contain any provision whereby any liability or obligation under such agreement extends beyond the termination of liability under the bond.

(b) If the bondsman's liability is reduced at any time and for any reason, the collateral security and all obligations under collateral indemnity agreements or guarantees shall be reduced to the same extent that the liability under the bond was reduced, and any excess thereof shall be immediately returned to the depositor of the security.

(c) No indemnity agreement or other security agreement taken as collateral for bonds shall include any provision for the payment of interest or other additional fees or charges. All persons who sign any type of indemnity agreement or other type of security agreement to be used as collateral shall be furnished by the bondsman or his representative with a copy of such agreement. The provisions of this Section relating to indemnity agreements or other security agreements apply to all such agreements whether set forth on the face of the bond or contained in a separate agreement.

(d) All indemnity agreements or other security agreements shall be considered as collateral security and shall be listed and described in detail on the form provided by the Administrative Office of the Courts (Form No. 277 AOC-L or its successor) entitled "Affidavit of Surety."

(e) Upon any modification or alteration of the collateral security, the bondsman ~~or his representative~~ shall comply with the provisions of 11 North Carolina Administrative Code 13 .0513.

(f) All agreements and contracts with defendants or anyone on behalf of the defendant, shall have a form number and the license number of the bail bondsman printed thereon and must be submitted to the Department for approval. No such agreements or contracts shall be used by the licensee until written final approval has been given by the Department.

Authority G.S. 58-2-40; 58-71-5(a); 58-71-95; 58-71-100.

**11 NCAC 13 .0513 ALTERATION OF AFFIDAVIT OF SURETY**

Upon any modification or alteration of the collateral security, the bondsman shall execute a written amendment to the Affidavit of Surety setting forth the details of such modification or alteration. A copy of any such amendment shall be furnished to the principal and the person furnishing the collateral security or premium, and a copy shall be on file in the office of the bondsman.

Authority G.S. 58-2-40; 58-71-5(a).

**11 NCAC 13 .0516 SURETY BONDSMEN LICENSING PROCEDURES**

~~(a) A surety bondsman as defined by G.S. 58-71-1(11) shall be required to appear in person and take a written examination prepared by the Commissioner testing his ability and qualifications. No person shall be appointed by power of attorney to execute and countersign bail bonds for an insurer until that insurer shall have been notified in writing by a representative of the Commissioner that the person has successfully completed the written examination.~~

~~(b) A surety bondsman shall register the written notification of his successful completion of the written examination with the clerks of superior court in those counties wherein he is required to register a certified copy of his current power of attorney, but it is not required that he register the written notification annually in those counties wherein he has previously registered it.~~

~~(c) This Rule shall only apply to those surety bondsmen who may qualify after the effective date of this Rule, and written certification of successful completion of the written examination shall qualify the surety bondsmen for successive appointments by power of attorney by insurers.~~

Authority G.S. 58-2-40; 58-71-5(a).

**11 NCAC 13 .0519 FINGERPRINTS REQUIRED FOR CRIMINAL RECORD CHECKS**

(a) The following individuals shall furnish the Commissioner with a complete set of fingerprints as authorized by G.S. 58-71-51:

- (1) An applicant for an initial professional bail bondsman, surety bail bondsman, or runner license;
- (2) A licensed professional bail bondsman, surety bail bondsman, or runner applying for another type professional bail bondsman, surety bail bondsman, or runner license;
- (3) A professional bail bondsman, surety bail bondsman, or runner license applicant applying for reinstatement of a license that has lapsed or expired;
- (4) A professional bail bondsman, surety bail bondsman, or runner license applicant who has been disqualified in any manner under Chapter 58;
- (5) A professional bail bondsman, surety bail bondsman, or runner license applicant whose license has been suspended or revoked for

non-payment of child support pursuant to G.S. 110-142.1; and

- (6) A licensed professional bail bondsman, surety bail bondsman, or runner submitting a renewal application in an even-year pursuant to G.S. 58-71-75.

(b) As authorized by G.S. 58-71-51, fingerprints shall be furnished in the following manner:

- (1) Each applicant shall have a complete set of their fingerprints electronically captured by a criminal law enforcement agency approved by the State Bureau of Investigation to submit fingerprints via electronic means
- (2) The Electronic Fingerprint Submission Release of Information Form that has been completed and certified by a law enforcement officer that the applicant's fingerprints have been submitted via electronic means to the SBI shall be submitted with the application;
- (3) The Authority For Release of Information form required by the SBI to release the criminal history record check information to the Department shall be submitted with the application;
- (4) The cost for the state and national criminal history record fee that is set forth pursuant to G.S. 114-19.1(a) shall be submitted with the application; and
- (5) All fingerprint impressions must be suitable for use by the SBI to conduct a state criminal history record check and for the Federal Bureau of Investigations (FBI) to conduct a national criminal history record check. If the SBI deems the electronic fingerprints are not suitable, the Commissioner shall notify the applicant and provide instructions for them to resubmit their fingerprints in the manner set forth in Subparagraph (1) of this Paragraph within 30 days.

(c) The professional bail bondsman, surety bail bondsman, or runner initial or renewal license application is not complete until the Department receives the state and national criminal history record information. In accordance with G.S. 58-71-50 and 58-71-75, the Commissioner shall not issue a license to a professional bail bondsman, surety bail bondsman, or runner license applicant who does not satisfy the initial and renewal license application requirements.

Authority G.S. 58-2-40; 58-71-50; 58-71-51; 58-71-75.

**11 NCAC 13 .0520 PRELICENSING EDUCATION: DEFINITIONS FOR BAIL BOND PRELICENSING AND CONTINUING EDUCATION**

(a) As used in this Section, unless the context indicates otherwise:

- (1) "Agent Services Division" or "Division" means the Agent Services Division of the North Carolina Department of Insurance, the Division responsible for the licensing,

education and regulation of professional bail bondsmen, surety bail bondsmen, and bail bond runners.

- (2) "Bail bond continuing education" means instruction in subjects related to the duties and responsibilities of a runner or a bail bondsman.
- (3) "Bail bond continuing education credit or "BCEC" means a value assigned to a course by the Commissioner after review and approval of course information. This terms means the same as "hours of continuing education" as used in G.S. 58-71-71(b).
- (4) "Certificate Of Course Completion" means a document from the approved bail bond pre-licensing or continuing educational provider certifying that the applicant has met the requirements of pre-licensing or continuing education.
- (5) "Compliance year" means the annual license period running from July 1 to June 30 in which the licensee is required to complete three hours of BCEC pursuant to G.S. 58-71-71(b).
- (6) "Course" means a continuing education course directly related to bail bond principles and practices.
- (7) "Instructor" means an individual who meets the qualifications required by 11 NCAC 13 .0525 and who teaches, lectures, leads, or otherwise instructs a course, who is responsible for the preparation and presentation of lesson plans to that school's students and who prepares a final course examination.
- (8) "Instructional hour" means a 50 minute hour in the classroom.
- (9) "Licensee" means a licensed professional bail bondsman, surety bail bondsman or runner.
- (10) "Outline" means the content outline prepared and published by the Department that summarizes the specific bail bond subject areas in which the professional bail bondsman, surety bail bonds, or runner license examination is based.
- (11) "Professional Testing Service" or "Service" means the organization specializing in the development and administration of licensing examinations on a contract basis for the Department.
- (12) "Provider" means an entity that provides prelicensing or continuing education approved by the Department.
- (13) "State Licensing Examination" or "Examination" means a collection of questions designed to test the professional bail bondsman, surety bail bondsman, or runner license knowledge of the basic concepts, principles and laws relevant to the bail bond profession to determine his competence to be licensed in North Carolina.

*Authority G.S. 58-2-40; 58-71-5(a); 58-71-70; 58-71-71.*

**11 NCAC 13 .0521 BAIL BOND MONTHLY REPORT**

A professional bail bondsman shall file the written report required by G.S. 58-71-165 electronically with the Commissioner or the Commissioner's designee.

*Authority G.S. 58-2-40; 58-2-250; 58-71-165.*

**11 NCAC 13 .0522 CONTINUING EDUCATION REQUIREMENTS**

(a) Each person holding a professional bail bondsman, surety bail bondsman or runner's licensee shall obtain three hours of continuing education pursuant to G.S. 58-71-71(b).

(b) An instructor shall receive the maximum BCEC awarded to a student for the course.

(c) Licensees shall maintain records of all BCECs for five years after obtaining the BCEC, and shall make them available for inspection by the Commissioner upon request.

(d) A licensee is exempt from the requirements of this Section, of this Rule, if the licensee provides proof of one of the following:

- (1) active military service; or
- (2) he is 65 years of age or older and has been continuously licensed as a bondsman or runner for 15 years or more.

(e) Courses completed before the issue date of a new license do not meet the requirements of this Section for that new license.

(f) No BCEC shall be given for courses taken before they have been approved by the Commissioner.

*Authority G.S. 58-2-40; 58-2-185; 58-2-195; 58-71-71.*

**11 NCAC 13 .0523 QUALIFICATION FOR BCEC**

(a) The Commissioner shall award one BCEC for each instructional hour.

(b) Courses shall not be approved for less than one BCEC.

(c) Course providers shall monitor participants for attendance and ensure that licensees complete the BCEC hours approved by the Commissioner. Participants shall not read any material other than related to the course during instructional hours or use any electronic devices such as cell phones, laptops, computers other than what is provided by the instructor as part of the curriculum of the course.

(d) The licensee shall attend 100 percent of the course for BCEC.

*Authority G.S. 58-2-40; 58-71-71.*

**11 NCAC 13 .0524 BCEC EXTENSION OF TIME: HARSHIP**

A licensee may request in writing to the Commissioner an extension of time in which to complete BCEC during or before the last month of the licensee's compliance year.

*Authority G.S. 58-2-40; 58-71-71.*

**11 NCAC 13 .0525 BCEC INSTRUCTOR QUALIFICATION**

(a) Continuing education providers shall certify that continuing education instructors meet the qualification requirements, which are the same as those for bail bond prelicensing instructors set forth in 11 NCAC 13 .0542(c).

(b) Applicants for a certificate of authority as a BCEC instructor shall submit to a personal interview by the Agents Services Division. A written history of courses taught previously by them or other documentation may be requested to verify the applicant's qualifications to instruct approved bail bond courses. A written history of courses taught previously by them or other documentation may be requested to verify the applicant's qualifications to instruct approved bail bond courses.

*Authority G.S. 58-2-40; 58-71-71.*

**11 NCAC 13 .0526 APPROVAL OF BCEC COURSES**

(a) Providers of all courses approved pursuant to this Section shall file with the Commissioner copies of program catalogs, course outlines and copies of advertising literature before the course is approved pursuant to G.S. 58-71-72(d).

(b) A provider shall submit course attendance records electronically within 15 business days after course completion.

(c) An error on the licensee's record that is caused by the provider in submitting the course attendance records shall be resolved by the provider within 15 days after the discovery of the error by the provider.

*Authority G.S. 58-2-40; 58-71-71.*

**11 NCAC 13 .0527 BCEC: COURSE ADVERTISING**

(a) Courses shall not be advertised as approved for BCEC unless such approval has been granted by the Commissioner in writing.

(b) Advertisements shall be truthful and not deceptive or misleading.

(c) Any approved provider or instructor who violates this Rule shall lose the authority to provide or instruct for bail bonding continuing education in North Carolina.

*Authority G.S. 58-2-40; 58-71-71; 58-71-12(b).*

**11 NCAC 13 .0528 SANCTIONS FOR BCEC NONCOMPLIANCE BY LICENSEES, COURSE PROVIDERS AND INSTRUCTORS**

(a) The Commissioner shall proceed with administrative action under G.S. 58-71-80 against a professional bail bondsman, surety bail bondsman or runner license for any of the following causes:

- (1) Failing to respond to Department inquiries, including continuing education audit requests, within seven calendar days after the receipt of the inquiry or request;
- (2) Requesting an extension of time to complete BCEC under false pretenses; or
- (3) Refusing to cooperate with Department employees in an investigation or inquiry.

(b) The Commissioner shall summarily suspend or terminate the provider or instructor's certificate of authority to provide or instruct a course for any of the following causes:

- (1) Advertising that a course is approved before the Commissioner has granted such approval in writing;
- (2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content;
- (3) Presenting or using materials in a course that were not previously filed with the Commissioner pursuant to 11 NCAC 13 .0256(a);
- (4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner;
- (5) Preparing and distributing certificates of attendance or completion before the course has been approved;
- (6) Issuing certificates of attendance or completion before the completion of the course;
- (7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course;
- (8) Failing to notify the Commissioner in writing of suspected or known violations of the North Carolina General Statutes or Administrative Code within 30 days after becoming aware of the violations;
- (9) Violating the North Carolina General Statutes or Administrative Code;
- (10) Failing to monitor attendance and ensure that licensees complete the course hours approved by the Commissioner; or
- (11) Preparing and distributing fraudulent certificates of attendance or completion.

(c) Course providers and instructors are responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of any of the activities associated with the course.

(d) Upon a finding of a violation of this rule the Commissioner shall require the violator to:

- (1) Refund all course tuition and fees to licensees;
- (2) Provide licensees with a course to replace the course that was found in violation; or
- (3) Cease all courses offered by the provider or instructor.

*Authority G.S. 58-2-40; 58-71-71; 58-71-72.*

**11 NCAC 13 .0530 ISSUANCE OF AND CONTINUATION BCEC OF PROVIDER APPROVAL**

(a) Any individual or entity intending to provide classes, seminars, or other forms of instruction as approved courses shall submit:

- (1) an application prescribed by the Commissioner for provider approval; and

(2) an application prescribed by the Commissioner for course approval.

(b) The Commissioner shall provide any potential course provider who is denied approval a written explanation for the denial.

(c) Any provider receiving a provider approval denial has 15 business days from the date of the denial to respond to the denial.

(d) Providers shall retain continuing education records for five years and shall provide these records upon request to the Commissioner.

*Authority G.S. 58-2-40; 58-71-71.*

**11 NCAC 13 .0532 EXAMINATIONS: SPECIAL ACCOMMODATIONS (AMERICANS WITH DISABILITIES ACT)**

An individual with a physical disability may have special assistance from other individuals acting as readers or recorders for the state licensing examination. Applicants requiring special assistance shall request the assistance from the professional testing service before registration for the examination. Verification of handicaps and a statement of all assistance needed shall be included at the time of application.

*Authority G.S. 58-2-40; 58-71-70.*

**11 NCAC 13 .0533 SCHEDULE OF EXAMINATIONS**

The Division shall publish or cause to have published the current schedules of state professional bail bondsman, surety bail bondsman, and runner examinations. The schedules shall include day, time and location of each examination.

*Authority G.S. 58-2-40; 58-71-70.*

**11 NCAC 13 .0534 CERTIFICATE OF COURSE COMPLETION**

A Certificate of Course Completion shall be signed by an approved prelicensing provider or instructor indicating that the applicant has completed the mandatory prelicensing education requirements as specified in G.S. 58-71-71. Certificates of Course Completion expire six months from issuance.

*Authority G.S. 58-2-40; 58-71-71.*

**11 NCAC 13 .0535 EXAMINATION AUTHORIZATION LETTER**

After review of the professional bail bondsman, surety bail bondsman, or runner license application and verification the applicant meets the qualifications for licensure as prescribed by G.S. 58-71-50 and has submitted license fees as specified in G.S. 58-71-55, the Division shall issue an Examination Authorization Letter which allows the professional bail bondsman, surety bail bondsman, and runner license applicant to make a reservation to sit for the bail bond examination. The Examination Authorization letter is valid for 30 days from date of issuance.

*Authority G.S. 58-2-40; 58-71-70; 58-71-71.*

**11 NCAC 13 .0536 RESPONSIBILITY OF APPLICANT AT EXAMINATION SITE**

(a) Professional bail bondsman, surety bail bondsman, or runner license applicants shall bring to the examination site the Examination Authorization letter issued by the Division, the confirmation numbers obtained from the testing service at the time of examination reservation, and two forms of proof of identity, one of which shall be photo bearing.

(b) Applicants are allowed to bring the following examination supplies to the examination site:

- (1) a simple function calculator;
- (2) pens; and
- (3) pencils.

(c) No applications shall be supplied at the examination site for completion by applicants and no supplies as described in paragraph (b) shall be furnished to applicants at the examination site.

(d) Applicants shall arrive at the examination site at the time specified in the examination schedule.

*Authority G.S. 58-2-40; 58-71-70; 58-71-7.*

**11 NCAC 13 .0537 ADMINISTRATION OF EXAMINATION**

(a) Professional bail bondsman, surety bail bondsman, or runner license applicants may use a simple function calculator during the examination.

(b) Applicants shall not take cellular telephones, textbooks, other books or papers into the examinations. Applicants found to have any of these materials shall not be allowed to continue the examination.

(c) Applicants may leave the examination room only after obtaining permission from the examination proctors and handing in exam materials. No extra time shall be allowed for completing the examination.

(d) Any applicant who gives or receives assistance during the examination shall turn in all exam materials and leave the room. Under these circumstances, the applicant's answer sheet shall not be scored and information regarding the giving of assistance shall be reported by the proctors to the Commissioner.

*Authority G.S. 58-2-40; 58-71-70; 58-71-71.*

**11 NCAC 13 .0539 BAIL BOND PRELICENSING EDUCATION PROVIDER**

(a) This Rule applies to all bail bond prelicensing providers offering a prelicensing course prescribed by G.S. 58-71-71. All providers desiring to conduct a prelicensing course shall be approved and issued a certificate of authority by the Commissioner before commencement of the courses.

(b) A provider seeking approval to conduct a prelicensing course shall make written application to the Commissioner for a certificate of authority.

(c) The Division shall approve a provider when:

- (1) the provider has submitted all information required by the rules in this Section;
- (2) the course to be conducted complies with Rule .0541 if this Section; and

- (3) the provider has a qualified instructor to teach bail bonding for which it is seeking approval.
- (d) The Commissioner shall deny, revoke, suspend, or terminate approval of any provider upon finding that:
  - (1) the provider has failed to comply with any of the provisions of this Section;
  - (2) any provider official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, licensing examination questions for the state exam;
  - (3) the provider has not conducted at least one prelicensing course during any 12-month period; or
  - (4) the provider has refused or failed to submit information or forms prescribed by the rules in this Section.
- (e) In all proceedings to deny, revoke, suspend, or terminate the certificate of authority of a provider, the provisions of Chapter 150B of the General Statutes are applicable.
- (f) When a provider's approval is discontinued, the procedure for reinstatement is to apply as a new provider, with a statement of the reasons that the provider is now eligible for reconsideration.
- (g) If a provider's approval has been suspended upon the Commissioner's finding that the provider has not conducted at least one prelicensing course during any 12-month period, that provider may reapply after one year of suspension. At such time, the Commissioner shall give the provider six months to conduct at least one prelicensing course.
- (h) A provider shall notify the Commissioner of any change of course location or schedule information no fewer than five business days before the change in writing.
- (i) A provider shall notify the Commissioner in writing of a change of textbook prior to use in an approved prelicensing course.
- (j) An approved provider may use, for advertising or promotional purposes, examination performance data made available to the provider by the Commissioner, provided that any data disclosed by the provider shall be accurate, shall be presented in a manner that is not misleading, and shall:
  - (1) be limited to the annual examination performance data for the particular provider and for all examination candidates in the State; and
  - (2) include the type of examination, the time period covered, the number of candidates examined, and either the number or percentage of candidates passing the examination.
- (k) A provider's facilities and equipment shall have been found by appropriate local building code inspectors to be in compliance with all applicable local, State and federal laws and regulations regarding safety, sanitation, and access by persons with disabilities.
- (l) The provider is responsible for administrative matters such as recruiting instructors, evaluating and certifying the qualifications of instructors, developing educational programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the prelicensing program.

- (m) A provider shall publish and provide to all prelicensing students before enrollment a publication that contains the following information:
  - (1) name of provider and publication date;
  - (2) name of sponsor;
  - (3) all associated costs; and
  - (4) an outline or description of all prelicensing courses offered.
- (n) A provider shall file with the Commissioner a report that sets forth the exact dates, times, locations, and instructor name for each scheduled prelicensing course. This information may be submitted either at the beginning of each quarter or semester or no later than one week before the first class meeting of each prelicensing course.
- (o) Providers shall retain the following material on file at one location for at least five years:
  - (1) class schedules;
  - (2) advertisements;
  - (3) bulletins, catalogues, and other official publications;
  - (4) grade reports, showing a numeric grade for each student;
  - (5) attendance records;
  - (6) master copy of each comprehensive course examination, indicating the answer key course location, course dates and name of instructor;
  - (7) list of student names and the name of the instructor; and
  - (8) student registration information.
  - (9) All files shall be made available to the Commissioner upon request.
- (p) In the event of illness, injury or death of an instructor, the provider may use another instructor to complete a course.

Authority G.S. 58-2-40; 58-2-40; 58-71-71.

**11 NCAC 13 .0541 BAIL BOND PRELICENSING EDUCATION COURSES**

- (a) Providers shall offer no less than 12 instructional hours of prelicensing education.
- (b) The following requirements are course standards:
  - (1) All courses shall consist of instruction in the subject areas described in Chapter 58 Article 71 and Chapter 15A Article 26 and Chapter 150B of the North Carolina General Statutes.
  - (2) Courses may also include coverage of related subject areas not prescribed by the Commissioner; however, such courses must provide additional class time, above the minimum requirement stated in Paragraph (a) of this Rule, for the coverage of such subject areas.
  - (3) Prelicensing courses shall be for instructional purposes only and not for promoting the interests of or recruiting employees for any particular bail bond agency or surety insurance company.
  - (4) Providers shall establish and enforce academic standards for course completion that assure



that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course.

- (5) Providers shall conduct a comprehensive course examination that covers all subject areas prescribed by the Commissioner for each course. Providers may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the provider. No comprehensive course examination shall be given until a student has completed the instructional requirement as prescribed in 11 NCAC 13.0541(b)(1).
- (6) Students shall attend the minimum 12 hours of bail bond instruction set forth in Paragraph (a) of this Rule. Time set aside for breaks, pop-tests, quizzes, the final comprehensive course examination and other non-instructional activities shall not count toward the minimum instructional requirement.

(c) The following requirements shall be met for scheduling purposes:

- (1) Class meetings shall not exceed eight hours of instruction in any given day.
- (2) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open-entry or open-exit basis.

(d) The choice of classroom course text is at the discretion of each provider.

(e) All prelicensing courses shall be taught by instructors who meet the qualifications described in Rule .0542 of this Section.

(f) The following certification of course completion procedures apply:

- (1) Providers shall validate each student who successfully completes a prelicensing course by issuing a Certificate of Course Completion. The Certificate of Course Completion shall not be validated for a student prior to the student completing all course requirements and passing the course's comprehensive examination; and
- (2) A Certificate of Course Completion shall be attached to the application for bail bond license(s) and expires six months after issuance. If an applicant does not apply for a license within six months after receiving the Certificate of Course Completion, the applicant must complete the prelicensing education requirements again.

*Authority G.S. 58-2-40; 58-2-40; 58-71-71.*

**11 NCAC 13 .0542 BAIL BOND PRELICENSING INSTRUCTORS**

(a) A person desiring approval as a bail bond prelicensing instructor shall make written application to the Commissioner.

(b) Instructor applicants must be sponsored by a prelicensing provider seeking to employ the applicant as an instructor. If the

employing prelicensing provider is not currently approved by the Commissioner, an application for prelicensing provider approval shall be submitted along with the application for instructor approval.

(c) The Commissioner shall approve an applicant for a bail bond prelicensing instructor upon finding that the applicant has met the following qualifications:

- (1) Has not been disqualified in any manner under Chapter 58 of the North Carolina General Statutes;
- (2) Has 10 years or more experience in the NC bail bond industry;
- (3) Five years of experience as a full time employee of a surety insurance company; or
- (4) Five years of experience in NC law enforcement or the judicial system.

(d) Instructor applicants shall submit to a personal interview by the Agent Services Division. A written history of courses taught by the applicant or other documentation may be required to verify the applicant's qualifications to instruct approved courses.

(e) The Commissioner shall deny, summarily suspend, or terminate the approval of an instructor upon finding that:

- (1) The instructor fails to meet the criteria for approval provided by this Rule;
- (2) The instructor has failed to comply with statutes or rules regarding prelicensing courses;
- (3) The instructor provided false information to the Commissioner;
- (4) The instructor has at any time been disqualified under Chapter 58 of the North Carolina Department of Insurance; or
- (5) The instructor has obtained or used, or attempted to obtain or use examination questions, in any manner or form.

(f) In all proceedings to deny, revoke, suspend, or terminate approval of an instructor, the provisions of Chapter 150B of the General Statutes are applicable.

(g) When an instructor's approval is discontinued, the procedure for reinstatement is to apply as a new instructor, with a statement of reasons that he is now eligible for reconsideration. The Commissioner shall perform an investigation before new approval is granted.

*Authority G.S. 58-2-40; 58-71-7; 58-71-7.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02B .0275-.0283 and amend the rules cited as 15A NCAC 02B .0235, .0315.*

**Proposed Effective Date:** *January 15, 2011*

**Public Hearing:**

**Date:** June 30, 2010  
**Time:** 7:00 p.m.  
**Location:** Neal Middle School, 201 Baptist Church Road, Durham, NC 27704

**Date:** July 1, 2010  
**Time:** 7:00 p.m.  
**Location:** Campbell Lodge, Durant Nature Park, 3237 Spottswood Street, Raleigh, NC 27615

**Reason for Proposed Action:** *The Falls Lake Reservoir is located in the northeastern Piedmont of North Carolina and makes up the northern portion of the Neuse River Basin. The lake serves as the main water supply for the City of Raleigh and approximately 450,000 residents throughout several municipalities in Wake County and has significant recreational use. Following questions in 2004 over the condition of Falls Lake, DWQ began more intensive sampling for use support assessment. Based on water quality data collected between 2002 and 2006, Falls Lake was listed as impaired for chlorophyll a on the NC 2008 303(d) list. The 303(d) list is a list of impaired waters which are not meeting water quality standards and require a Total Maximum Daily Load. The portion of the lake above I-85 was also listed as impaired for turbidity. In 2005 the NC General Assembly passed SL 2005-190 (S981), which includes a requirement for the Commission to adopt a nutrient strategy for the Falls Lake Reservoir. The 2009 regular session produced Senate Bill 1020, a bill devoted to water quality improvements in Falls Lake. This bill revises the EMC adoption deadline to January 15, 2011 and adds certain requirements aimed at water quality improvement in the watershed.*

**Procedure by which a person can object to the agency on a proposed rule:** *You may attend the public hearings and make relevant verbal comments, and/or submit written comments, data or other relevant information by August 16, 2010. The Hearing Officers may need to limit the length of time that you speak at the public hearings, so that all those who wish to speak may have that opportunity.*

*The EMC is very interested in all comments pertaining to the proposed set of rules. All persons interested and potentially affected by this proposal are strongly encouraged to read this entire notice and make comments on the proposed strategy. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see General Statute 150B-21.2 (g)). The proposed effective date for final rules pursuant to this public comment process is January 15, 2011, pending approval by the Rules Review Commission. Written comments may be submitted to John Huisman or Rich Gannon of the Water Quality Planning Section at 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919)807-6437 or (919)807-6440, fax (919)807-6497, email john.huisman@ncdenr.gov or rich.gannon@ncdenr.gov.*

**Comments may be submitted to:** *John Huisman or Rich Gannon of the Water Quality Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919)807-6437*

or (919)807-6440, fax (919)807-6497, email john.huisman@ncdenr.gov or rich.gannon@ncdenr.gov.

**Comment period ends:** August 16, 2010

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

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

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

**Fiscal Note posted at** [http://www.osbm.state.nc.us/files/pdf\\_files/DENR06082010.pdf](http://www.osbm.state.nc.us/files/pdf_files/DENR06082010.pdf)

**CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 2B - SURFACE WATER AND WETLAND STANDARDS**

**SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA**

**15A NCAC 02B .0235 NEUSE RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: BASINWIDE STORMWATER REQUIREMENTS**

The following is the urban stormwater management strategy for the Neuse River Basin:

- (1) The following local governments shall be designated, based on population and other factors, for stormwater management requirements as part of the Neuse River Nutrient Sensitive Waters stormwater management strategy:
  - (a) Cary,
  - (b) Durham,
  - (c) Garner,
  - (d) Goldsboro,
  - (e) Havelock,
  - (f) Kinston,

- (g) New Bern,
  - (h) Raleigh,
  - (i) Smithfield,
  - (j) Wilson
  - (k) Durham County,
  - (l) Johnston County,
  - (m) Orange County,
  - (n) Wake County, and
  - (o) Wayne County.
- (2) Other incorporated areas and other counties, not listed under Item (1) of this Rule, may seek to implement their own local stormwater management plan by complying with the requirements specified in Items (5), (6) and (7) of this Rule.
- (3) The Environmental Management Commission may designate additional local governments by amending this Rule based on their potential to contribute significant nutrient loads to the Neuse River. At a minimum, the Commission shall review the need for additional designations to the stormwater management program as part of the basinwide planning process for the Neuse River Basin. Any local governments that are designated at a later date under the Neuse Nutrient Sensitive Waters Stormwater Program shall meet the requirements under Items (5), (6) and (7) of this Rule.
- (4) Within 12 months of the effective date of this Rule, the Division of Water Quality shall submit a model local stormwater management program plan to control nutrients to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model plan. The model plan shall address nitrogen reductions for both existing and new development and include, but not be limited to, the following elements:
- (a) Review and approval of stormwater management plans for new developments to ensure that:
    - (i) the nitrogen load contributed by new development activities is held at 70 percent of the average nitrogen load contributed by the 1995 land uses of the non-urban areas of the Neuse River Basin. The local governments shall use a nitrogen export standard of 3.6 pounds/acre/year, determined by the Environmental Management Commission as 70 percent of the average collective nitrogen load for the 1995

non-urban land uses in the basin above New Bern. The EMC may periodically update the design standard based on the availability of new scientific information. Developers shall have the option of partially offsetting their nitrogen loads by funding wetland or riparian area restoration through the North Carolina Wetland Restoration Fund at the rate specified in Rule .0240 of this Section. However, before using offset payments, the development must attain, at a minimum, a nitrogen export that does not exceed 6 pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development. For the following local governments and any additional local governments identified in rule by the Commission, the post-construction requirements of 15 NCAC 02B .0277 shall supersede the requirements in this Sub-Item for areas within their jurisdiction within the watershed of the Falls of the Neuse Reservoir: Durham, Raleigh, Durham County, Orange County, and Wake County.

- (ii) there is no net increase in peak flow leaving the site from the predevelopment conditions for the 1-year, 24-hour storm.
- (b) Review of new development plans for compliance with requirements for protecting and maintaining existing riparian areas as specified in 15A NCAC 02B .0233;
- (c) Implementation of public education programs;
- (d) Identification and removal of illegal discharges;
- (e) Identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources; and
- (f) Submittal of an annual report on October 30 to the Division

documenting progress on and net changes to nitrogen load from the local government's planning jurisdiction.

- (5) Within 12 months of the EMC's approval of the model local government stormwater program or later designation (as described in Item (3) of this Rule), subject local governments shall submit their local stormwater management program plans to the Commission for review and approval. These local plans shall equal or exceed the requirements in Item (4) of this Rule. Local governments may submit a more stringent local stormwater management program plan. Local stormwater management programs and modifications to these programs shall be kept on file by the Division of Water Quality.
- (6) Within 18 months of the EMC's approval of the model local government stormwater program or designation, subject local governments shall adopt and implement a local stormwater management program according to their approved plan. Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.
- (7) If a local government fails to submit an acceptable local stormwater management program plan within the time frames established in this Rule or fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126.
  - (a) Subject local governments shall develop and implement comprehensive stormwater management programs, tailored toward nitrogen reduction, for both existing and new development.
  - (b) These stormwater management programs shall provide all components that are required of local government stormwater programs in Sub-items (4)(a) through (f) of this Rule.
  - (c) Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a local stormwater management program for consideration and approval by the EMC.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572.

**15A NCAC 02B .0275 FALLS WATER SUPPLY NUTRIENT STRATEGY: PURPOSE AND SCOPE**

PURPOSE. The purpose of this Rule and Rules .0276 through .0282 and .0315(q) of this Section shall be to attain the full classified uses of Falls of the Neuse Reservoir set out in Rule .0211 of this Section from current impaired conditions related to excess nutrient inputs; protect its classified uses as set out in Rule .0216 of this Section, including use as a source of water supply for drinking water; and maintain or enhance protections currently implemented by local governments in existing water supply watersheds encompassed by the watershed of Falls of the Neuse Reservoir. The reservoir, and all waters draining to it, have been supplementally classified as Nutrient Sensitive waters (NSW) pursuant to Rules .0101(e)(3) and .0223 of this Section. These Rules, as enumerated in Item (6) of this Rule, together shall constitute the Falls water supply nutrient strategy, or Falls nutrient strategy, and shall be implemented in accordance with Rule .0223 of this Section. The following items establish the framework of the Falls nutrient strategy:

(1) SCOPE AND LIMITATION. Falls of the Neuse Reservoir is hereafter referred to as Falls Reservoir. All lands and waters draining to Falls Reservoir are hereafter referred to as the Falls watershed. The Falls nutrient strategy rules require controls that reduce nitrogen and phosphorus loads from significant sources of these nutrients throughout the Falls watershed. These rules do not address atmospheric emission sources of nitrogen that is deposited into the watershed but do include provisions to account for reductions in such deposition as the water quality benefits of air quality regulations are quantified. Neither do these Rules address sources on which there is insufficient scientific knowledge to base regulation, other sources deemed adequately addressed by existing regulations, sources currently considered minor, or nutrient contributions from lake sediments, which are considered outside the scope of these rules. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to Falls Reservoir.

(2) CRITICAL WATER SUPPLY WATERSHED DESIGNATION. Water supply waters designated WS-II, WS-III, and WS-IV within the Falls watershed shall retain their classifications. The remaining waters in the Falls watershed shall be classified WS-V. For waters classified WS-V, the requirements of water supply Rule .0218 of this Section shall be applied. The requirements of all of these water supply classifications shall be retained and applied except as specifically noted

elsewhere within the Falls nutrient strategy. In addition, pursuant to G.S. 143-214.5(b), the entire Falls watershed shall be designated a critical water supply watershed and through the Falls nutrient strategy given additional, more stringent requirements than the state minimum water supply watershed management requirements. Water supply requirements of Rule .0104 of this Subchapter apply except to the extent that requirements of the Falls nutrient strategy are more stringent than provisions addressing agriculture, forestry, and existing development. These requirements supplement the water quality standards applicable to Class C waters, as described in Rule .0211 of this Section, which apply throughout the Falls watershed. For WS-II, WS-III, and WS-IV waters, the retained requirements of Rules .0214 through .0216 of this Section are characterized as follows:

- (a) Item (1) addressing best usages;
- (b) Item (2) addressing predominant watershed development conditions, discharges expressly allowed watershed-wide, general prohibitions on and allowances for domestic and industrial discharges, Maximum Contaminant Levels following treatment, and the local option to seek more protective classifications for portions of existing water supply watersheds;
- (c) Sub-Item (3)(a) addressing waste discharge limitations;
- (d) Sub-Item (3)(b) addressing nonpoint source and stormwater controls; and
- (e) Sub-Items (3)(c) through (3)(h) addressing aesthetic and human health standards.

(3) GOAL AND OBJECTIVES. To achieve the purpose of the Falls nutrient strategy, the Commission establishes the goal of attaining and maintaining nutrient-related water quality standards identified in Rule .0211 of this Section throughout Falls Reservoir pursuant to G.S. 143-215.8B and 143B-282(c) and (d) of the Clean Water Responsibility Act of 1997. The Commission establishes a staged and adaptive implementation plan, outlined hereafter, to achieve the following objectives. The objective of Stage I is to, at minimum,

achieve and maintain nutrient-related water quality standards in the Lower Falls Reservoir and to improve water quality in the Upper Falls Reservoir. The objective of Stage II is to achieve and maintain nutrient-related water quality standards throughout the Reservoir by reducing average annual mass loads of nitrogen and phosphorus delivered from the sources named in Item (6) in the Upper Falls Watershed by forty and seventy-seven percent, respectively, from a baseline of 2006. The resulting allowable loads to Falls Reservoir from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek shall be 658,000 pounds of nitrogen per year and 35,000 pounds of phosphorus per year. Portions of Falls Reservoir and its watershed shall be defined as follows:

- (a) Upper Falls Reservoir shall mean that portion of the reservoir upstream of State Route 50;
- (b) Upper Falls Watershed shall mean the area of Falls watershed draining to Upper Falls Reservoir;
- (c) Lower Falls Reservoir shall mean that portion of the reservoir downstream of State Route 50; and
- (d) Lower Falls Watershed shall mean the area of Falls watershed draining to Lower Falls Reservoir without first passing through Upper Falls Reservoir.

(4) STAGED IMPLEMENTATION. The Commission shall employ the staged implementation plan set forth below to achieve the goal of the Falls nutrient strategy:

- (a) STAGE I. Stage I requires intermediate or currently achievable controls throughout the Falls watershed with a minimum objective of reducing nitrogen and phosphorus loading to attain nutrient-related water quality standards in the Lower Falls Reservoir by 2021, while also improving water quality in the Upper Falls Reservoir as described in this Item. Implementation timeframes are described in individual rules, with full implementation occurring no later than 2021;

Note: The Commission seeks public comment on an alternative timeframe for Stage I of 7 years with full implementation occurring no later than 2018.

- (b) STAGE II. Stage II requires implementation of additional controls in the Upper Falls Watershed beginning no later than 2021 to achieve the percent reduction objective to the maximum extent technically and

economically feasible by 2041. Implementation timeframes are described in individual rules, with full implementation occurring no later than 2036; and

(c) MAINTENANCE OF ALLOCATIONS. Throughout these implementation stages and indefinitely beyond, sources shall maintain the load reductions they achieve and the ultimate allowable loads they attain.

Note: The Commission seeks public comment on the following option: that prior to setting Stage II limits that the results of Stage I be reviewed and an opportunity for establishing Stage II results or numbers be considered at the end of Stage I. In commenting on this option it is suggested that readers review the following section in the draft Goals Rule (.0275) to see if further clarification or modifications are needed to the existing draft language:

- Sub-Item (5)(b) of the Goals Rule already includes language allowing for a party to submit a supplemental model for EMC approval and that the Commission could consider revisions to the requirements of Stage II based on the results of such modeling.
- Sub-Item (5)(b)(v) enables the Commission to establish revised allocations based on the outcome of an approved supplemental model.
- Sub-Item (5)(b)(vi) and (vii) call for strategy implementation to continue until any amended allocation become effective.
- Sub-Item (5)(d) requires DWQ to report to the EMC and public in 2016 and every five years thereafter on a host of items that will inform future implementation including technological advancements, results of any instream loading studies, updates on accounting tools, evaluation of available nutrient-related lake monitoring data and recommendation of rule revisions.

(5) ADAPTIVE IMPLEMENTATION. The Commission shall employ the following adaptive implementation plan in concert with the staged implementation approach described in this Rule.

(a) The Division shall perform water quality monitoring throughout Falls Reservoir and shall accept reservoir water quality monitoring data provided by other parties that meet Division standards and quality assurance protocols. The Division shall utilize this data to produce load reduction estimates and to perform periodic use support assessments pursuant to 40 CFR 130.7(b). It shall utilize support determinations to judge progress on and compliance with the goal of the Falls nutrient strategy, including the following assessments:

- (i) Attainment of nutrient-related water quality standards in the Lower Falls Reservoir no later than 2021;
- (ii) Attainment of nutrient-related water quality standards in the Lick Creek arm of Falls Reservoir and points downstream no later than 2026;
- (iii) Attainment of nutrient-related water quality standards in the Ledge and Little Lick Creek arms of Falls Reservoir and points

downstream no later than 2031;

- (iv) Attainment of nutrient-related water quality standards at points downstream of the Interstate 85 crossing of Falls Reservoir no later than 2036;
- (v) Attainment of nutrient-related water quality standards throughout Falls Reservoir no later than 2041;
- (vi) Where the Division finds that standards are not attained as described in Sub-Items (i) through (v) of this Item, or that conditions have deteriorated in a portion of Falls Reservoir at any time, it shall evaluate compliance with the Falls nutrient strategy rules, and may request Commission approval to initiate additional rulemaking;
- (vii) Where the Division finds, based on reservoir monitoring, that nutrient-related water quality standards are attained in a previously impaired portion of Falls Reservoir, and are met for sufficient time to provide reasonable assurance of sustained maintenance of standards, as

specified in individual rules of this strategy it may notify affected parties in that portion's watershed that further load reductions are not required and of requirements for maintenance of measures to prevent loading increases; and

(viii) Where the Division finds that average annual mass loads of nitrogen and phosphorus from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek have been reduced to the allowable loads identified in Item (3), but that nutrient-related water quality standards are not attained in a portion or portions of Falls Reservoir, and that standards may not be attained, it may consider re-modeling Falls Reservoir for the purpose of establishing revised reduction needs and developing a revised nutrient strategy through additional rulemaking. The Division shall determine the likelihood of attaining standards by comparing the scale of impairment against the recency and magnitude of load reduction measures implemented in Upper Falls watershed.

(b) Recognizing the uncertainty associated with model-based load reduction targets, to ensure that allowable loads to Falls Reservoir remain appropriate as implementation proceeds, a party may develop and submit for Commission approval supplemental nutrient response modeling of Falls Reservoir based on additional data collected after a period of implementation. The Commission may consider revisions to the requirements of Stage II based on the results of such modeling according to the following criteria:

(i) A party shall obtain Division review and approval of any monitoring study plan and

description of the modeling framework to be used prior to commencement of such a study. The study plan and modeling framework shall meet any Division requirements for data quality and model support or design in place at that time;

(ii) Supplemental modeling shall include a minimum of three years of lake water quality data unless a party can provide information to demonstrate that a shorter time span is sufficient;

(iii) The Commission may review Stage II requirements if a party submits supplemental modeling data, products and results acceptable to the Commission for this purpose;

(iv) The Commission may accept modeling products and results that estimate a range of combinations of nitrogen and phosphorus percentage load reductions needed to meet the goal of the Falls nutrient strategy, along with associated allowable loads to Falls Reservoir, from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek and that otherwise comply with the requirements of this Item. Such modeling may incorporate the results of studies that provide new data on various nutrient sources such as atmospheric deposition, internal loading, and loading from tributaries other than those identified in this Sub-item;

(v) Where supplemental modeling is accepted by the Commission, and results indicate allowable loads of nitrogen and phosphorus to Falls Reservoir from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek that are substantially

- different than those identified in Item (3), then the Commission may establish those allowable loads as the revised objective of Stage II relative to their associated baseline values. Otherwise, the Commission shall continue to implement the Falls nutrient strategy as established in this Rule;
- (vi) Where the substantially different allowable loads to Falls Reservoir are greater than those identified in Item (3), the Division shall work with affected parties to revise the accounting and implementation for individual rules according to these less stringent requirements. The Division shall establish revised allocations and the Director shall notify all affected parties of these revised requirements and allocations. Until such revisions are completed, implementation shall continue according to existing requirements; and
- (vii) Where the substantially different allowable loads to Falls Reservoir are lesser than those identified in Item (3), the Commission may initiate rulemaking to amend the Falls nutrient strategy rules to incorporate these more stringent objectives. Until such amendments become effective, strategy implementation shall continue according to existing requirements.
- (c) Nothing in this strategy shall be construed to limit, expand, or modify the authority of the Commission to undertake alternative regulatory actions otherwise authorized by state or federal law, including the reclassification of waters of the State pursuant to G.S. 143-214.1, the revision of water quality standards pursuant to G.S. 143-214.3, and the granting of variances pursuant to G.S. 143-215.3.
- (d) Given that these regulations require significant load reductions over extended timeframes, to address resulting uncertainties including those related to technological advancement, scientific understanding, actions chosen by affected parties, resultant loading effects, and loading effects of other regulations, the Division shall report to the Commission and provide information to the public in January 2016 and every five years thereafter as necessary. The reports shall address all of the following subjects:
- (i) The state of wastewater and stormwater nitrogen and phosphorus control technology, including technological and economic feasibility;
  - (ii) Use and projected use of wastewater reuse and land application opportunities;
  - (iii) The utilization and nature of nutrient offsets and projected changes;
  - (iv) Results of any studies evaluating instream loading changes resulting from implementation of individual rules;
  - (v) Results of any studies evaluating nutrient loading from conventional septic systems and discharging sand filter systems;
  - (vi) Assessment of the instream benefits of local programmatic management measures such as fertilizer or pet waste ordinances, improved street sweeping and the extent to which local governments have implemented these controls;
  - (vii) Results of applicable studies, monitoring, modeling and establish a baseline for atmospheric nitrogen deposition;
  - (viii) Projected reductions in atmospheric deposition based on current modeling;
  - (ix) Results of any studies evaluating nutrient loading from groundwater;
  - (x) Updates to nutrient loading accounting tools;



- (xi) Evaluation of available nutrient-related lake monitoring data; and
  - (xii) Recommendations, if any, on rule revisions.
- (6) RULES ENUMERATED. The Falls nutrient strategy rules shall be titled as follows:
- (a) Rule .0275 Purpose and Scope;
  - (b) Rule .0276 Definitions. An individual rule may contain additional definitions for terms that are used in that rule only;
  - (c) Rule .0277 Stormwater Management for New Development;
  - (d) Rule .0278 Stormwater Management for Existing Development;
  - (e) Rule .0279 Wastewater Discharge Requirements;
  - (f) Rule .0280 Agriculture;
  - (g) Rule .0281 Stormwater Requirements for State and Federal Entities;
  - (h) Rule .0282 Options for Offsetting Nutrient Loads;
  - (i) Rule .0283 Fertilizer Management; and
  - (j) Rule .0315 Neuse River Basin.
- (7) APPLICABILITY. Categories of parties responsible for implementing the Falls nutrient strategy rules and, as applicable, their geographic scope of responsibility, are identified in each rule. The specific local governments responsible for implementing Rules .0277, .0278, and .0282 shall be as follows:
- (a) All incorporated municipalities, as identified by the Office of the Secretary of State, with planning jurisdiction within or partially within the Falls watershed. Those municipalities are currently:
    - (i) Butner;
    - (ii) Creedmoor;
    - (iii) Durham;
    - (iv) Hillsborough;
    - (v) Raleigh;
    - (vi) Roxboro;
    - (vii) Stem; and
    - (viii) Wake Forest.
  - (b) All counties with jurisdiction in Falls watershed and where municipalities listed in Sub-Item (6)(a) do not have an implementation requirement:
    - (i) Durham;
    - (ii) Franklin;
    - (iii) Granville;
    - (iv) Orange;
    - (v) Person; and
    - (vi) Wake.

- (c) A unit of government may arrange through interlocal agreement or other instrument of mutual agreement for another unit of government to implement portions or the entirety of a program required or allowed under any rule of this strategy to the extent that such an arrangement is otherwise allowed by statute. The governments involved shall submit documentation of any such agreement to the Division. No such agreement shall relieve a unit of government from its responsibilities under these rules.
- (8) ENFORCEMENT. Failure to meet requirements of Rules .0275, .0277, .0278, .0279, .0280, .0281, or .0282 of this Section may result in imposition of enforcement measures as authorized by G. S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

*Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486.*

**15A NCAC 02B .0276 FALLS WATER SUPPLY NUTRIENT STRATEGY: DEFINITIONS**

The following words and phrases, which are not defined in G.S. 143, Article 21, shall be interpreted as follows for the purposes of the Falls nutrient strategy:

- (1) "Allocation" means the mass quantity of nitrogen or phosphorus that a discharger, group of dischargers, nonpoint source, or collection of nonpoint sources is assigned as part of a TMDL. For point sources, possession of allocation does not authorize the discharge of nutrients but is prerequisite to such authorization through a NPDES permit.
- (2) "Applicator" means the same as defined in Rule .0202(4) of this Section.
- (3) "Delivered," as in delivered allocation, load, or limit, means the allocation, load, or limit that is measured or predicted at Falls Reservoir. A delivered value is equivalent to a discharge value multiplied by the transport factor for that discharge location.
- (4) "Development" means the same as defined in Rule .0202(23) of this Section.
- (5) "Discharge," as in discharge allocation, load, or limit means the allocation, load, or limit that is measured at the point of discharge into surface waters in the Falls watershed. A discharge value is equivalent to a delivered value divided by the transport factor for that discharge location.

- (6) "Existing development" means development, other than that associated with agricultural or forest management activities that meets one of the following criteria:
- (a) It either is built or has established a vested right based on statutory or common law as interpreted by the courts, as of the effective date of either local new development stormwater programs implemented under Rule .0277 of this Section for projects that do not require a state permit or, as of the applicable compliance date established in Rule.0281(5) and (6) of this Section; or
- (b) It occurs after the compliance date set out in Sub-Item (4)(d) of Rule .0277 of this Section but does not result in a net increase in built-upon area.
- (7) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
- (8) "Falls nutrient strategy," or "Falls water supply nutrient strategy" means the set of Rules .0275 through .0282 of this Section and .0315(p) of this Subchapter.
- (9) "Falls Reservoir" means the surface water impoundment operated by the US Army Corps of Engineers and named Falls of Neuse Reservoir.
- (10) "Upper Falls Reservoir" means that portion of the reservoir upstream of State Route 50.
- (11) "Upper Falls Watershed" means that area of Falls watershed draining to Upper Falls Reservoir.
- (12) "Lower Falls Reservoir" means that portion of the reservoir downstream of State Route 50.
- (13) "Lower Falls Watershed" means that are of Falls watershed draining to lower falls Reservoir without first passing through Upper Falls Reservoir.
- (14) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered load" or an equivalent "discharge load."
- (15) "Load allocation" means the same as set forth in federal regulations 40 CFR 130.2(g), which is incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.
- (16) "New development" means any development project that does not meet the definition of existing development set out in this Rule.
- (17) "Nitrogen" or "total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.
- (18) "NPDES" means National Pollutant Discharge Elimination System, and connotes the permitting process required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
- (19) "Nutrients" means total nitrogen and total phosphorus.
- (20) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- (21) "Phosphorus" or "total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater.
- (22) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.
- (23) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.
- (24) "Technical specialist" means the same as defined in 15A NCAC 06H .0102(9).
- (25) "Total Maximum Daily Load," or "TMDL," means the same as set forth in federal regulations 40 CFR 130.2(i) and 130.7(c)(1), which are incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.
- (26) "Total nitrogen" or "nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.
- (27) "Total phosphorus" or "phosphorus" means the sum of the orthophosphate, polyphosphate,

- and organic forms of phosphorus in a water or wastewater.
- (28) "Wasteload" means the mass quantity of a nutrient or pollutant released into surface waters by a wastewater discharge over a given time period. Wasteloads may be expressed in terms of pounds per year and may be expressed as "delivered wasteload" or an equivalent "discharge wasteload."
- (29) "Wasteload allocation" means the same as set forth in federal regulations 40 CFR 130.2(h), which is incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.

*Authority G.S. 143-214.1; 1432-214.3;143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L 2009-337; S.L 2009-486.*

**15A NCAC 02B .0277 FALLS RESERVOIR WATER SUPPLY NUTRIENT STRATEGY: STORMWATER MANAGEMENT FOR NEW DEVELOPMENT**

The following is the stormwater strategy, as prefaced in 15A NCAC 02B .0275, for new development activities within the Falls watershed:

- (1) PURPOSE. The purposes of this Rule are as follows:
- (a) To achieve and maintain the nitrogen and phosphorus loading objectives established for Falls Reservoir in 15A NCAC 02B .0275 from lands in the Falls watershed on which new development occurs;
- (b) To provide control for stormwater runoff from new development in Falls watershed to ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows; and
- (c) To protect the water supply, aquatic life and recreational uses of Falls Reservoir from the potential impacts of new development.
- (2) APPLICABILITY. This Rule shall apply to those areas of new development, as defined in 15A NCAC 02B .0276, that lie within the Falls watershed and the planning jurisdiction of a municipality or county that is identified in 15A NCAC 02B .0275.
- (3) REQUIREMENTS. All local governments subject to this Rule shall develop stormwater management programs for submission to and

approval by the Commission, to be implemented in areas described in Item (2) of this Rule, based on the standards in this Item:

**\*\**(Land Disturbance Threshold Option: A)*\*\***

- (a) An approved stormwater management plan shall be required for all proposed new development disturbing one acre or more for single family and duplex residential property and recreational facilities, and one-half acre or more for commercial, industrial, institutional, multifamily residential, or local government property. These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:

**\*\**(Land Disturbance Threshold Option: B)*\*\***

- (a) An approved stormwater management plan shall be required for all proposed new development disturbing 5,000 square feet or more. These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:

- (i) Nitrogen and phosphorus loads contributed by the proposed new development activity shall not exceed the unit-area mass loading rates as follows for nitrogen and phosphorus, respectively, expressed in units of pounds/acre/year: 2.2 and 0.33. The developer shall determine the load reductions needed to meet these loading rate targets by using the loading calculation method called for in Sub-Item (4)(a) or other equivalent method acceptable to the Division;

**\*\**(Onsite Treatment Option: A (50 Percent N / 60 Percent P)*\*\***

- (ii) The developer shall have the option of offsetting part of the nitrogen and phosphorus load by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that

attain a minimum of 50 percent reduction in post-construction nitrogen loading rate and 60 percent reduction in post-construction phosphorus loading rate on-site and shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iii) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the local government in which the development activity occurs. A developer may propose other offset measures to the local government, including providing his or her own offsite offset or utilizing a private seller. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282;

**\*\**(Onsite Treatment Option: B (60 Percent N / 60 Percent P))*\*\***

(ii) The developer shall have the option of offsetting part of the nitrogen and phosphorus load by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 60 percent reduction in post-construction nitrogen loading rate and 60 percent reduction in post-construction phosphorus loading rate on-site and shall

meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iii) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the local government in which the development activity occurs. A developer may propose other offset measures to the local government, including providing his or her own offsite offset or utilizing a private seller. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282;

(iii) Proposed new development subject to NPDES, water supply, and other state-mandated stormwater regulations shall comply with those regulations in addition to the other requirements of this Sub-Item. Proposed new development in any water supply watershed in the Falls watershed designated WS-II, WS-III, or WS-IV shall comply with the density-based restrictions, obligations, and requirements for engineered stormwater controls, clustering options, operation and maintenance responsibilities, vegetated setbacks, land application, and landfill provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable Rule among 15A

NCAC 02B .0214 through .0216. Notwithstanding the allowance in water supply watershed rules for 10 percent of a jurisdiction to be developed at up to 70 percent built-upon area without stormwater treatment, proposed new development in the Falls watershed shall not have the option to forego treatment;

(iv) Stormwater systems shall be designed to control and treat at a minimum the runoff generated from all surfaces in the project area by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the most recent version of the *Stormwater Best Management Practices Manual* published by the Division, or other at least technically equivalent standards acceptable to the Division. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the new development shall not contribute to degradation of waters of the State. At a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event;

(v) Proposed development that would replace or expand

structures or improvements that existed as of December 2006, the end of the baseline period, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that it shall provide stormwater control at least equal to the previous development. Proposed new development that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option either to achieve at least the percentage loading reduction objectives stated in 15A NCAC 02B .0275 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in Sub-Item (3)(a)(i). These requirements shall supersede those identified in 15A NCAC 02B .0104(q);

(vi) Proposed redevelopment that increases impervious surface within a local government's designated downtown area shall achieve a 30 percent reduction in both nitrogen and phosphorus loading from the untreated condition onsite before the remainder of the 40 percent nitrogen and 77 percent phosphorus reduction from the previous condition may be achieved through offsite offsets;

Note: The Commission seeks public comment on the question of which rule the redevelopment requirements should be defined. The New Development Rule (.0277) or Existing Development Rule (.0278)?

(vii) New development may satisfy the requirements of this Rule by meeting the post-development hydrologic criteria set out in

Chapter 2 of the North Carolina Low Impact Development Guidebook dated June 2009, or the hydrologic criteria in the

- most recent version of this guidebook;
- (viii) Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of 15A NCAC 02B .0233 and .0242.
- (b) A plan to ensure maintenance of best management practices (BMPs) implemented as a result of the provisions in Sub-Item (3)(a) of this Rule for the life of the development;
- (c) A plan to ensure enforcement and compliance with the provisions in Sub-Item (3)(a) of this Rule for the life of the new development;
- (d) Nothing in these Rules preempts local governments from establishing requirements that are more restrictive than those set forth in these Rules.
- (4) RULE IMPLEMENTATION. This Rule shall be implemented as follows:
- (a) Within two months after the effective date of this Rule, the Division shall submit a model local stormwater program, including a model local ordinance that embodies the criteria described in Item (3) of this Rule to the Commission for approval. The model program shall include a tool that will allow developers to account for nutrient loading from development lands and loading changes due to BMP implementation to meet the requirements of Item (3) of this Rule. The accounting tool shall utilize nutrient efficiencies and associated design criteria established for individual BMPs in the most recent version of the *Stormwater Best Management Practices Manual* published by the Division, or other more precise standards acceptable to the Division. At such time as data quantifying nutrient loads from onsite wastewater systems is made available, the new development nutrient export accounting tool shall be revised to require accounting for nutrient loading from onsite wastewater from newly developed lands that use such systems. Should research quantify significant loading from onsite wastewater systems, the Division may also make recommendations to the Commission for Public Health to initiate rulemaking to reduce nutrient loading
- to surface waters from these systems. The Division shall work in cooperation with subject local governments and other watershed interests in developing this model program.
- (b) Within five months after the Commission's approval of the model local stormwater program and model ordinance, subject local governments shall submit stormwater management programs, in conjunction with similar requirements in 15A NCAC 02B .0278, to the Division for preliminary approval. These local programs shall meet or exceed the requirements in Item (3) of this Rule;
- (c) Within 10 months after the Commission's approval of the model local stormwater program, the Division shall provide recommendations to the Commission on local stormwater programs. The Commission shall either approve the programs or require changes based on the standards set out in Item (3) of this Rule. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
- (d) Within six months after the Commission's approval of a local program, or upon the Division's first renewal of a local government's NPDES stormwater permit, whichever occurs later, the affected local government shall complete adoption of and implement its local stormwater management program; and
- (e) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Item (3) of this Rule, including changes to nutrient loading due to implementation of Sub-Item (3)(a) of this Rule.
- (5) EQUIVALENT PROGRAM OPTION. A local government may in its program submittal under Sub-Item (4)(b) of this Rule request that the Division accept the local government's implementation of another stormwater program or programs as satisfying one or more of the requirements set forth in Item (3) of this

Rule. The Division will provide determination on the acceptability of any such alternative prior to requesting Commission approval of local programs as required in Sub-Item (4)(c) of this Rule. Should a local government propose alternative requirements to achieve and maintain the rate targets described in Sub-Item (3)(a)(i) of this Rule, it shall include in its program submittal technical information demonstrating the adequacy of those requirements, and at a minimum include the following:

- (a) Engineering calculations that quantify expected loading from new development projects based on stormwater controls currently enforced;
- (b) At least three years of continuous flow and nutrient monitoring data demonstrating that watershed loading rates are at or below the rate targets described in Sub-Item (3)(a)(i) of this Rule;
- (c) An ongoing water quality monitoring program based on continuous flow and concentration sampling to be performed indefinitely into the future with results reported annually to the Division for review and approval;
- (d) A corrective action plan to be implemented should data collected under the ongoing monitoring program demonstrate watershed loading is within 10 percent of the rate targets described in Sub-Item (3)(a)(i) of this Rule;
- (e) Should a local government submit an alternate program for consideration that includes areas within its jurisdiction outside of the monitored watershed it shall submit technical information demonstrating the areas outside of the monitored watershed can reasonably be expected to load at equal or lesser rates than the rate targets described in Sub-Item (3)(a)(i) of this Rule based on comparative analysis of land uses and other factors affecting nutrient loading.

Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486.

**15A NCAC 02B .0278 FALLS WATER SUPPLY NUTRIENT STRATEGY: STORMWATER MANAGEMENT FOR EXISTING DEVELOPMENT**

This Rule establishes a staged, adaptive approach by which municipalities and counties shall contribute to achieving the nonpoint source loading objectives of the Falls Reservoir nutrient strategy by reducing or otherwise offsetting nutrient contributions from existing development. It provides local governments three years to develop plans that propose Stage I load reduction actions to the Division and requires local governments to begin and track measures to reduce nutrient loads from existing developed lands within their jurisdiction within three years of the effective date of this Rule, as specified in Item (7). Local governments shall submit for approval and implement Stage II load reduction programs within ten years after the effective date of this Rule and submit revised load reductions plans every five years thereafter. The following is the watershed stormwater strategy, as prefaced in Rule 15A NCAC 02B .0275, for existing development in the Falls watershed:

- (1) **PURPOSE.** The purposes of this Rule are as follows:
  - (a) To achieve and maintain the nonpoint source nitrogen and phosphorus percentage reduction objectives established for Falls Reservoir in Rule 15A NCAC 02B .0275 on nutrient loading from existing development in the Falls watershed relative to the baseline period defined in that Rule. Existing development is defined in Rule 15A NCAC 02B .0276; and
  - (b) To protect the water supply, aquatic life, and recreational uses of Falls Reservoir.
- (2) **APPLICABILITY.** This Rule shall apply to municipalities and counties in the Falls watershed as identified in Rule 15A NCAC 02B .0275.
- (3) **STAGED AND ADAPTIVE IMPLEMENTATION REQUIREMENTS.** Local governments shall employ the following staged and adaptive implementation plan. All local governments subject to this Rule shall develop load-reducing programs for submission to and approval by the Commission that include the following staged elements and meet the associated minimum standards for each stage of implementation:
  - (a) In Stage I, a local government subject to this Rule shall implement a load reduction program that provides estimates of, and plans for offsetting within 10 years of the effective date of this Rule, nutrient loading increases from lands developed subsequent to the baseline period but

prior to implementation of a Falls Lake new development stormwater program. For these post-baseline existing developed lands, the current loading rate shall be compared to the loading rate for these lands prior to development for the acres involved, and the difference shall constitute the load reduction need in annual mass load, in pounds per year. Alternatively, a local government may assume uniform pre-development loading rates of 2.89 pounds/acre/year N and 0.63 pounds/acre/year P for these lands. The local government shall achieve this Stage I load reduction within 10 years of the effective date of this Rule. This Stage I program shall meet the criteria defined in Item (4) of this Rule.

(b) 10 years after the effective date of this Rule and every five years thereafter, a local government located in the Upper Falls Watershed as defined in Item (3) of Rule 15A NCAC 02B .0275 shall submit a Stage II load reduction program designed to achieve the percent load reduction goals from existing developed lands in its jurisdiction, that includes timeframes for achieving these goals and that meets the criteria defined in Item (4) of this Rule.

(4) ELEMENTS OF LOAD REDUCTION PROGRAMS. A local government's load reduction program shall address the following elements:

(a) Jurisdictions in the Eno River and Little River subwatersheds shall, as a part of their Stage I load reduction programs, begin and continuously implement a program to reduce loading from discharging sand filters and malfunctioning septic systems discharging into waters of the State within those jurisdictions and subwatersheds.

(b) Jurisdictions within any Falls subwatershed in which chlorophyll a levels have exceeded 40 micrograms/liter in more than seventy-five percent of the monitoring events in any calendar year shall, as part of their Stage I load reduction programs, begin and continuously implement a program to reduce nutrient loading into the

waters of the State within those jurisdictions and that subwatershed.

(c) The total amount of nutrient loading reductions in Stage I is not increased for local jurisdictions by the requirements to add specific program components to address loading from malfunctioning septic systems and discharging sand filters or high nutrient loading levels pursuant to Sub-Items (4)(a) and (b) of this Rule.

(d) In preparation for implementation of their Stage I and Stage II load reduction programs, local governments shall develop inventories and characterize load reduction potential to the extent that accounting methods allow of the following within two years of the effective date of this Rule:

- (i) Wastewater collection systems;
- (ii) Discharging sand filter systems, including availability of or potential for central sewer connection;
- (iii) Properly functioning and malfunctioning septic systems;
- (iv) Restoration opportunities in utility corridors;
- (v) Fertilizer management plans for local government-owned lands;
- (vi) Structural stormwater practices, including intended purpose, condition, potential for greater nutrient control; and
- (vii) Wetlands and riparian buffers including potential for restoration opportunities.

(e) A local government's load reduction need shall be based on the developed lands that fall within its general police powers and within the Falls watershed.

(f) The load reduction need shall not include lands under state or federal control, and a county shall not include lands within its jurisdictional boundaries that are under municipal police powers.

(g) Nitrogen and phosphorus loading from existing developed lands, including loading from onsite wastewater treatment systems to the extent that accounting methods allow, shall be calculated by applying the



- accounting tool described in Sub-Item (7)(a) and shall quantify baseline loads of nitrogen and phosphorus to surface waters in the local government's jurisdiction as well as loading changes post-baseline. It shall also calculate target nitrogen and phosphorus loads and corresponding load reduction needs.
- (h) The Commission shall recognize reduction credit for early implementation of policies and practices implemented after January 1, 2007 and before timeframes required by this Rule, to reduce runoff and discharge of nitrogen and phosphorus per Session Law 2009-486. The load reduction program shall identify specific load-reducing practices implemented to date subsequent to the baseline period and for which the local government is seeking credit. It shall estimate load reductions for these practices and their anticipated duration using methods provided for in Sub-Item (5)(a).
- (i) The plan shall include a proposed implementation schedule that includes annual implementation expectations. The load reduction program shall identify the types of activities the local government intends to implement and types of existing development affected, relative proportions or a prioritization of practices, relative magnitude of reductions it expects to achieve from each, and the relative costs and efficiencies of each activity to the extent information is available. The program shall identify the duration of anticipated loading reductions, and may seek activities that provide long-term reductions.
- (j) The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps take or planned to secure such funding.
- (k) The plan shall address the extent of load reduction opportunities intended from the following types of lands:
- (i) Lands owned or otherwise controlled by the local government;
  - (ii) Each land use type of privately owned existing development as defined in
- Item (10) of Rule 15A NCAC 02B .0276, including redevelopment that does not result in net increase in built-upon area, on which the local government's load reduction need is based as described in this Item; and
- (iii) Lands other than those on which the local government's load reduction need is based as described in this Item, including lands both within and outside its jurisdiction and including through the use of interlocal agreements and private third party sellers.
- (l) The plan shall address the extent of load reduction proposed from, at a minimum, the following stormwater and ecosystem restoration activities:
- (i) Bioretention;
  - (ii) Constructed wetland;
  - (iii) Sand filter;
  - (iv) Filter strip;
  - (v) Grassed swale;
  - (vi) Infiltration device;
  - (vii) Extended dry detention;
  - (viii) Rainwater harvesting system;
  - (ix) Treatment of redevelopment;
  - (x) Overtreatment of new development;
  - (xi) Removal of impervious surface;
  - (xii) Retrofitting treatment into existing stormwater ponds;
  - (xiii) Off-line regional treatment systems;
  - (xiv) Wetland or riparian buffer restoration; and
  - (xv) Reforestation with conservation easement or other protective covenant.
- (m) A local government may propose in its load reduction program the use of the following measures in addition to items listed in (l) and (n), or may propose other measures for which it can provide accounting methods acceptable to the Division:
- (i) Redirecting runoff away from impervious surfaces;
  - (ii) Soil amendments;
  - (iii) Stream restoration;
  - (iv) Improved street sweeping; and

- (v) Source control, such as pet waste and fertilizer ordinances.
  - (n) The plan shall evaluate the extent of load reduction proposed from the following wastewater activities:
    - (i) Creation of surplus relative to an allocation established in Rule 15A NCAC 02B .0279;
    - (ii) Expansion of surplus allocation through regionalization;
    - (iii) Connection of discharging sand filters and malfunctioning septic systems to central sewer or replacement with permitted non-discharge alternatives;
    - (iv) Removal of illegal discharges; and
    - (v) Improvement of wastewater collection systems.
  - (o) The plan shall evaluate the extent of load reductions proposed relative to the following factors:
    - (i) Extent of physical opportunities for installation;
    - (ii) Landowner acceptance;
    - (iii) Incentive and education options for improving landowner acceptance;
    - (iv) Existing and potential funding sources and magnitudes;
    - (v) Practice cost-effectiveness (e.g., cost per pound of nutrient removed);
    - (vi) Implementation rate without the use of eminent domain; and
    - (vii) Need for and projected role of eminent domain.
- (5) The Commission shall approve a Stage I load reduction plan if it is consistent with Items (3) and (4) of this Rule. The Commission shall Approve a Stage II load reduction plan if it is consistent with Items (3) and (4) of this Rule and if it finds that the plan achieves the maximum level of reductions that is technically and economically feasible within the proposed timeframe of implementation based on plan elements identified elsewhere in this Item. Economic feasibility is determined by considering environmental impacts, capital cost of compliance, annual incremental compliance, per capita cost of local stormwater programs, cost-effectiveness of available measures, and impacts on local and regional commerce. The Commission shall not require additional or alternative measures that would require a local government to:
- (a) Install or require installation of a new stormwater collection system in an area of existing development unless the area is being redeveloped;
  - (b) Acquire developed private property; or
  - (c) Reduce or require the reduction of impervious surfaces within an area of existing development unless the area is being redeveloped.
- (6) A municipality shall have the option of working with the county or counties in which it falls, or with another municipality or municipalities within the same subwatershed, to jointly meet the loading targets from all lands within their combined jurisdictions within a subwatershed. A local government may utilize private or third party sellers. All reductions shall meet the requirements of Rule 15A NCAC 02B .0282.
- (7) RULE IMPLEMENTATION. This Rule shall be implemented as follows:
- (a) Within 30 months after the effective date of this Rule, the Division shall submit a Stage I model local program to the Commission for approval that embodies the criteria described in Items (3)(a) and (4) of this Rule. The Division shall work in cooperation with subject local governments and other watershed interests in developing this model program, which shall include the following:
    - (i) Model local ordinances as applicable;
    - (ii) Methods to quantify load reduction requirements and resulting load reduction assignments for individual local governments;
    - (iii) Methods to account for discharging sand filters, malfunctioning septic systems, and leaking collection systems; and
    - (iv) Methods to account for load reduction credits from various activities.
  - (b) Within six months after the Commission's approval of the Stage I model local program, subject local governments shall submit load reduction programs that meet or exceed the requirements of Items (3) and (4) of this Rule to the Division for review and preliminary approval

and shall begin implementation and tracking of measures to reduce nutrient loads from existing developed lands within their jurisdictions.

- (c) Within 20 months of the Commission's approval of the Stage I model local program, the Division shall provide recommendations to the Commission on existing development load reduction programs. The Commission shall either approve the programs or require changes based on the standards set out in Item (4) of this Rule. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions.
- (d) Within three months after the Commission's approval of a Stage I local existing development load reduction program, the affected local government shall complete adoption of and begin implementation of its existing development Stage I load reduction program.
- (e) Upon implementation of the programs required under Item (4) of this Rule, local governments shall provide annual reports to the Division documenting their progress in implementing those requirements within three months following each anniversary of program implementation date until such time the Commission determines they are no longer needed to ensure maintenance of reductions or that standards are protected. Local governments shall indefinitely maintain and ensure performance of implemented load-reducing measures.
- (f) Ten years after the effective date of this Rule and every five years thereafter until either accounting determines load reductions have been achieved, standards are met in the lake, or the Commission takes other actions per Rule 15A NCAC 02B .0275, local governments located in the upper Falls watershed as defined in Item (3) of Rule 15A NCAC 02B .0275 shall begin to implement and shall submit a Stage 2 load reduction program or program revision to the

Division. Within nine months after submittal, the Division shall make recommendations to the Commission on approval of these programs. The Commission shall either approve the programs or require changes based on the standards set out in this Rule should the Commission require changes, the applicable local governments shall submit revisions within two months, and the Division shall provide follow-up recommendations to the Commission within three months after receiving revisions. Upon program approval, local governments shall revise implementation as necessary based on the approved program.

- (g) A local government may, at any time after commencing implementation of its load reduction program, submit program revisions to the Division for approval based on identification of more cost-effective strategies or other factors not originally recognized.
- (h) Once either load reductions are achieved per annual reporting or water quality standards are met in the lake per Rule 15A NCAC 02B .0275, local governments shall submit plans to ensure no load increases and shall report annually per Item (e) on compliance with no increases and take additional actions as necessary.
- (i) At least every five years after the effective date, the Division shall review the accounting methods stipulated under Sub-Item (7)(a) to determine the need for revisions to those methods and to loading reductions assigned using those methods. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as nutrient removal efficiencies.

*Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337.*

**15A NCAC 02B .0279 FALLS WATER SUPPLY  
NUTRIENT STRATEGY: WASTEWATER DISCHARGE  
REQUIREMENTS**

The following is the NPDES wastewater discharge management strategy for the Falls of the Neuse Reservoir watershed (the Falls watershed):

- (1) Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for point source wastewater discharges in the Falls watershed in order to restore and maintain water quality in the reservoir and protect its designated uses.
- (2) Applicability. This Rule applies to all wastewater treatment facilities discharging in the Falls watershed that receive nutrient-bearing wastewater and are subject to requirements for individual NPDES permits.
- (3) Definitions. For the purposes of this Rule, the following definitions apply:
  - (a) In regard to point source dischargers, treatment facilities, and wastewater flows and discharges.
    - (i) "Existing" means that which was subject to an NPDES permit as of December 31, 2006;
    - (ii) "Expanding" means that which has increased or will increase beyond its permitted flow as defined in this Rule; and
    - (iii) "New" means that which was not subject to an NPDES permit as of December 31, 2006.

- (b) "Active" allocation means that portion of an allocation that has been applied toward and is expressed as a nutrient limit in an individual NPDES permit. Allocation that is held but not applied in this way is "reserve" allocation.
- (c) "Current flow" means the actual discharge flow reported by a facility for the period from July 2008 through June 2009.
- (d) "Limit," except when specified as a concentration limit, means the mass quantity of nitrogen or phosphorus that a discharger or group of dischargers is authorized through an NPDES permit to release into surface waters of the Falls watershed.
- (e) "MGD" means million gallons per day.
- (f) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 2006.
- (g) "Reserve" allocation means allocation that is held by a permittee or other person but which has not been applied toward and is not expressed as a nutrient limit in an individual NPDES permit. Allocation that has been applied and expressed in this way is "active" allocation.

(4) This Item establishes intermediate (Stage I) and final (Stage II) nutrient allocations for existing dischargers in the Upper Falls watershed.

(a) The initial collective nitrogen and phosphorus allocations are as follows:

<u>Implementation Stage and Discharger Subcategories</u>	<u>Mass Allocations (pounds/year)</u>	
	<u>Total Nitrogen</u>	<u>Total Phosphorus</u>
<u>Final (Stage II)</u>		
<u>Permitted flows ≥ 0.1 MGD</u>	95,858	5,228
<u>Permitted flows &lt; 0.1 MGD</u>	1,052	175
<u>Intermediate (Stage I)</u>		
<u>Permitted flows ≥ 0.1 MGD</u>	128,686	14,008
<u>Permitted flows &lt; 0.1 MGD</u>	527	88

(b) The Stage I allocations in Sub-Item (a) of this Item shall be divided among the existing dischargers in each subcategory in proportion to 110% of the dischargers' current flows as defined in this Rule; the Stage II allocations shall be divided in the same manner but in proportion to the dischargers' permitted flows; and the resulting nutrient allocations shall be assigned to each individual discharger.

(5) This Item describes allowable changes in nutrient allocations.

(a) The aggregate and individual nutrient allocations available to point source dischargers in the Falls watershed are subject to change:

**PROPOSED RULES**

- (i) Whenever the Commission, through rulemaking, revises the nutrient reduction targets in or pursuant to 15A NCAC 02B .0275 in order to ensure the protection of water quality in the reservoir and its tributaries or to conform with applicable state or federal requirements;
  - (ii) Whenever one or more point source dischargers acquires any portion of the nonpoint load allocations under the provisions in this Rule and 15A NCAC 02B .0282, Options for Offsetting Nutrient Loads; or
  - (iii) As the result of allocation transfers conducted between point sources or between point and nonpoint sources and in accordance with this Rule, provided that nutrient allocation can be transferred and applied only within the portion of the Falls watershed to which it was originally assigned (Upper or Lower).
- (b) In the event that the Commission changes any nutrient reduction target specified in 15A NCAC 02B .0275 or in Item (4) of this Rule, the Commission shall also re-evaluate the apportionment among the dischargers and shall revise the individual allocations as necessary.

Note: The Commission seeks public comment on the following option regarding estuary and lake allocations for point sources:

- Add provision to the Falls Wastewater Rule (.0279) that the rule does not change any other allocations (such as those established under the existing Neuse Wastewater Rule (.0234)) but the more stringent discharge limits will apply.
  - Example:
    - The current combined nitrogen allocation for the three major point sources in the Falls Watershed under the existing Neuse Rule is 443,673 pounds of nitrogen per year. Their combined nitrogen allocation proposed under the Falls Wastewater Rule is approximately 95,858 pounds/year This provision would require they meet the more stringent of the two allocations and anything above the Falls Lake load allocation (443,373 pounds/year – 95,858 pounds/year = 347,820 pounds/year x 10 percent Transport Factor = 34,782 reserve pounds) could be used in trade, below the dam.

- (6) This Item establishes nutrient discharge limitations for existing facilities discharging in the Upper Falls watershed.
- (a) Beginning with calendar year 2016, any existing discharger with a permitted flow of 0.1 MGD or greater shall limit its total nitrogen and phosphorus discharges to its active, individual Stage I allocations as defined or modified pursuant to this Rule.
  - (b) Beginning with calendar year 2036, each existing discharger with a permitted flow greater than or equal to 0.1 MGD shall limit its total nitrogen and phosphorus discharges to its active, individual Stage II allocations as defined or modified pursuant to this Rule.
  - (c) Not later than 60 days after the effective date of this Rule, the Director shall notify existing permittees of the individual Stage I and Stage II nutrient allocations initially assigned to them pursuant to this Rule.
- (7) This Item establishes nutrient discharge limitations for existing facilities discharging in the Lower Falls watershed.
- (a) Beginning with calendar year 2016, any existing discharger with a permitted flow of 0.1 MGD or greater shall limit its total nitrogen and phosphorus discharges as specified in this Item.
  - (b) Concentration limits. The nitrogen and phosphorus discharge limits for existing dischargers shall be as follows:

<u>Discharge Limits (milligrams/liter)</u>		
<u>Limit Type</u>	<u>Total Nitrogen</u>	<u>Total Phosphorus</u>
<u>Monthly Average</u>	8.0	1.0
<u>Annual Average</u>	5.5	0.5

- (c) Mass Limits.
  - (i) In addition to the concentration limits specified in this Item, the collective annual mass discharge of Total Phosphorus shall not exceed
    - 911 pounds in any calendar year.
  - (ii) Any discharger may request a mass discharge limit in lieu of the concentration limit for nitrogen or phosphorus or both, in which case the Director shall set a limit

- equivalent to the annual average concentration limit at the facility's permitted flow. The resulting mass limit shall become effective with the ensuing calendar year or with calendar year 2016, whichever is later.
- (8) This Item identifies nutrient control requirements specific to new discharges.
- (a) Any person proposing a new wastewater discharge in the Upper Falls watershed shall meet the following requirements prior to applying for an NPDES permit:
- (i) Evaluate all practical alternatives to said discharge, pursuant to 15A NCAC 02H .0105(c)(2);
- (ii) If the results of the evaluation support a new discharge, acquire sufficient nitrogen and phosphorus allocations for the discharge. The proponent may obtain allocation for the proposed discharge from existing dischargers pursuant to the applicable requirements of Item (10) of this Rule or obtain allocation from other sources to offset the increased nutrient loads resulting from the proposed discharge. The proponent may fund offset measures by making payment to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division, either of which shall meet the requirements of Rule 15A NCAC 02B .0282. The amount of allocation or offsets obtained shall be sufficient for the duration of the discharge or for a period of 30 years, whichever is shorter. Payment for each allocation or offset shall be made prior to the ensuing permit issuance;
- (iii) Determine whether the proposed discharge of nutrients will cause local water quality impacts; and
- (iv) Provide documentation with its NPDES permit application demonstrating that the requirements of Sub-Items (i) through (iii) of this Sub-Item have been met.
- (b) The nutrient discharge allocations and offsets for a new facility in the Upper Falls watershed shall not exceed the mass loads equivalent to a concentration of 3.0 milligrams per liter nitrogen or 0.1 milligrams per liter phosphorus at the permitted flow in the discharger's NPDES permit.
- (c) Upon the effective date of its NPDES permit, a new discharger shall be subject to nitrogen and phosphorus limits not to exceed its active individual discharge allocations in any given calendar year.
- (d) The Director shall not issue an NPDES permit for any new wastewater facility that would discharge in the Lower Falls watershed and to which this Rule would apply.
- (9) This Item identifies nutrient control requirements specific to expanding discharges.
- (a) Any person proposing to expand an existing wastewater discharge in the Upper Falls watershed beyond its permitted flow as defined in this Rule shall meet the following requirements prior to applying for an NPDES permit:
- (i) Evaluate all practical alternatives to said discharge, pursuant to 15A NCAC 02H .0105(c)(2);
- (ii) If the results of the evaluation support an expanded discharge, acquire sufficient nitrogen and phosphorus allocations for the discharge. The proponent may obtain allocation for the proposed discharge from existing dischargers pursuant to the applicable requirements of Item (10) of this Rule or obtain allocation from other sources to offset the increased nutrient loads resulting from the proposed discharge. The proponent

- may fund offset measures by making payment to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division, either of which shall meet the requirements of rule 15A NCAC 02B .0282. The amount of allocation or offsets obtained shall be sufficient for the duration of the discharge or for a period of 30 years, whichever is shorter. Payment for each allocation or offset shall be made prior to the ensuing permit issuance;
- (iii) Determine whether the proposed discharge of nutrients will cause local water quality impact; and
  - (iv) Provide documentation with its NPDES permit application demonstrating that the requirements of Sub-Items (i) through (iii) of this Sub-Item have been met.
- (b) The nutrient discharge limits for an expanding facility shall not exceed the mass value equivalent to a concentration of 3.0 milligrams per liter nitrogen or 0.1 milligrams per liter phosphorus at the expanded flow limit in the discharger's NPDES permit; except that this provision shall not result in an active allocation or limit that is less than originally assigned to the discharger under this Rule.
  - (c) Upon expansion or upon notification by the Director that it is necessary to protect water quality, any discharger with a permitted flow of less than 0.1 MGD, as defined under this Rule, shall become subject to total nitrogen and total phosphorus permit limits not to exceed its active individual discharge allocations.
  - (d) The Director shall not issue an NPDES permit for the expansion of any wastewater discharge in the Lower Falls watershed to which this Rule applies.
- (10) This Item describes additional requirements regarding nutrient discharge limits for wastewater facilities:
    - (a) Annual mass nutrient limits shall be established as calendar-year limits.
    - (b) Any discharger holding nutrient allocations pursuant to this Rule may by mutual agreement transfer all or part of its allocations to any new, existing, or expanding dischargers or to other person(s) in the Falls watershed, subject to the provisions of this Rule and the Falls nutrient strategy, except that allocation shall not be transferred between the Upper and Lower Falls watersheds.
    - (c) For NPDES compliance purposes, the enforceable nutrient limits for an individual facility or for a compliance association described in Item (11) of this Rule shall be the effective limits in the governing permit, regardless of the allocation held by the discharger or association.
    - (d) The Director may establish more stringent nitrogen or phosphorus discharge limits for any discharger upon finding that such limits are necessary to prevent the discharge from causing adverse water quality impacts on surface waters tributary to Falls Reservoir. The Director shall establish such limits through modification of the discharger's NPDES permit in accordance with applicable rules and regulations. When the Director does so, the discharger retains its nutrient allocations, and the non-active portion of the discharger's allocation becomes reserve allocation. The allocation remains in reserve until the Director determines that less stringent limits are allowable or until the allocation is applied to another discharge not subject to such water quality-based limits.
    - (e) In order for any transfer of allocation to become effective as a discharge limit in an individual NPDES permit, the discharger must request and obtain modification of the permit. Such request shall:
      - (i) Describe the purpose and nature of the modification;
      - (ii) Describe the nature of the transfer agreement, the amount of allocation transferred, and the

- dischargers or persons involved;
- (iii) Provide copies of the transaction agreements with original signatures consistent with NPDES signatory requirements; and
  - (iv) Demonstrate to the Director's satisfaction that the increased nutrient discharge will not violate water quality standards in localized areas.
- (f) Changes in a discharger's nutrient limits shall become effective upon modification of its individual permit but no sooner than January 1 of the year following modification. If the modified permit is issued after January 1, the Director may make the limit effective on that January 1 provided that the discharger made acceptable application in a timely manner.
- (g) Regional Facilities. In the event that an existing discharger or group of dischargers accepts wastewater from another NPDES-permitted treatment facility and that acceptance results in the elimination of the discharge from the other treatment facility, the eliminated facility's nutrient allocations shall be transferred and added to the accepting discharger's allocations, except that allocation shall not be transferred between the Upper and Lower Falls watersheds.
- (11) This Item describes the option for dischargers to join a group compliance association to collectively meet nutrient control requirements.
- (a) Any or all facilities within the Upper or the Lower Falls watersheds may form a group compliance association to meet nutrient limits collectively within their respective portion of the Falls watershed. More than one group compliance association may be established in either portion of the watershed. No facility may be a co-permittee member of more than one association for any given calendar year.
  - (b) Any such association must apply for and shall be subject to an NPDES permit that establishes the effective nutrient limits for the association and for its members.
  - (c) No later than 180 days prior to the proposed date of a new association's operation or expiration of an existing association's NPDES permit, the association and its members shall submit an application for an NPDES permit for the discharge of nutrients to surface waters of the Falls watershed. The association's NPDES permit shall be issued to the association and its members. It shall specify the nutrient limits for the association and for each of its co-permittee members. Association members shall be deemed in compliance with the permit limits for nitrogen and phosphorus contained in their individually issued NPDES permits so long as they remain members in an association.
  - (d) An association's nitrogen and phosphorus limits shall be the sum of its members' individual active allocations for each nutrient plus any other active allocation obtained by the association or its members.
  - (e) The individual limits for each member in the association permit shall initially be equivalent to the discharge limits in effect in the member's NPDES permit. Thereafter, changes in individual allocations or limits shall be incorporated into the members' individual permits before they are included in the association permit.
  - (f) An association and its members may reapportion the individual allocations of its members on an annual basis. Changes in individual allocations or limits must be incorporated into the members' individual permits before they are included in the association permit.
  - (g) Changes in an association's nutrient limits shall become effective no sooner than January 1 of the year following permit modification. If the modified permit is issued after January 1, the Director may make the limit effective on that January 1 provided that the association made acceptable application in a timely manner.
  - (h) Beginning with the first full calendar year that the nitrogen or phosphorus limits are effective, an association that does not meet its permit limit for nitrogen or phosphorus for a calendar



year shall, no later than May 1 of the year following the exceedance, make an offset payment to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program or by implementing other load offsetting measures contingent upon approval by the Division, either of which shall meet the requirements of Rule 15A NCAC 02B .0282.

- (i) Association members shall be deemed in compliance with their individual limits in the association NPDES permit for any calendar year in which the association is in compliance with its group limit for that nutrient. If the association fails to meet its limit, the association and the members that have failed to meet their individual nutrient limits in the association NPDES permit shall be deemed out of compliance with the association NPDES permit.

*Authority G.S. 143-214.1; 143-214.5; 143-215; 143-215.1; 143-215.3(a)(1); 143-215B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259.*

**15A NCAC 02B .0280 FALLS RESERVOIR WATER SUPPLY NUTRIENT STRATEGY: AGRICULTURE**

This Rule sets forth a staged process, as prefaced in Rule .0275 of this Section, by which agricultural operations in the Falls watershed will collectively limit their nitrogen and phosphorus loading to the Falls Reservoir. This process is as follows:

- (1) PURPOSE. The purposes of this Rule are to achieve and maintain the percentage reduction objectives defined in Rule .0275 of this Section for the collective agricultural loading of nitrogen and phosphorus from their respective 2006 baseline levels, to the extent that best available accounting practices will allow, in two stages. Stage I shall be 10 years and Stage II shall be 15 years, as set out in Item (5) of this Rule. Additionally this Rule will protect the water supply uses of the Falls Reservoir.
- (2) PROCESS. This Rule requires accounting for agricultural land management practices at the county level in the Falls watershed, and implementation of practices by farmers to collectively achieve the nutrient reduction objectives on a watershed basis. Producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' nutrient reductions. A Watershed Oversight Committee and Local Advisory Committees

will develop strategies, coordinate activities, and account for progress.

- (3) LIMITATION. This Rule may not fully address significant agricultural nutrient sources in that it does not directly address atmospheric sources of nitrogen to the Falls watershed from agricultural operations located both within and outside of the Falls watershed. As better information becomes available from ongoing research on atmospheric nitrogen loading to the Falls watershed from these sources, and on measures to control this loading, the Commission may undertake separate rule-making to require such measures it deems necessary from these sources to support the objectives of the Falls Nutrient Strategy.
- (4) APPLICABILITY. This Rule shall apply to all persons engaging in agricultural operations in the Falls watershed, including those related to crops, horticulture, livestock, and poultry. This Rule applies to livestock and poultry operations above the size thresholds in this Item in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Item. This Rule shall not apply to dedicated land application sites permitted under 15A NCAC 02T .1100. This Rule does not require specific actions by any individual person or operation if agriculture in the Falls watershed can collectively achieve its Stage I nutrient reduction objectives, in the manner described in Item (5) of this Rule, within ten years of the effective date of this Rule. If the Stage I nutrient reduction objectives are not met within ten years of the effective date of the rule, Stage II of implementation shall require specific actions by individuals and operations. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:
  - (a) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit;
  - (b) Research activities in support of such commercial production; and
  - (c) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:

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| <ul style="list-style-type: none"> <li>(i) Five or more horses;</li> <li>(ii) 20 or more cattle;</li> <li>(iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;</li> <li>(iv) 120 or more sheep;</li> <li>(v) 130 or more goats;</li> <li>(vi) 650 or more turkeys;</li> </ul> | <ul style="list-style-type: none"> <li>(vii) 3,500 or more chickens; or</li> <li>(viii) Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.</li> </ul> |
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Note: The Commission seeks public comment on appropriate ways to capture nutrient loads from “hobby farms” which are small farms not involved in commercial production and therefore not captured under the Agriculture rule as drafted. Comments requested on the following questions:

- Should these hobby farms be included in the rules and if so where? Agriculture Rule or Existing Development Rule?
- How should “hobby farms” be defined?
- Should they encompass large gardens (>=1 acre) and dog kennels (>= x# dogs/square feet)?
- What requirements should they meet?
- Should attention to “hobby farms” be complaint driven?

(5) METHOD FOR RULE IMPLEMENTATION.

This Rule shall be implemented in two stages and through a cooperative effort between the Watershed Oversight Committee and Local Advisory Committees in each county. The membership, roles and responsibilities of these committees are set forth in Items (7) and (8) of this Rule. Committee's activities shall be guided by the following constraints:

- (a) In Stage I, agriculture shall achieve a collective 20 percent reduction in nitrogen loading and a 40 percent reduction in phosphorus loading relative to the 2006 baseline within 10 years after the effective date of this Rule.
- (b) In Stage II, agriculture shall achieve a collective 40 percent reduction in nitrogen loading and a 77 percent reduction in phosphorus loading relative to the 2006 baseline within 25 years after the effective date of this Rule.
- (c) Within two years after the effective date of this Rule, the Watershed Oversight Committee shall provide the Commission with an initial assessment of the extent to which agricultural operations in the Falls watershed have achieved the Stage I nitrogen and phosphorus reduction objectives identified in Item (1) of this Rule through activities conducted

since the baseline period. The Watershed Oversight Committee shall use the accounting process described in Items (7) and (8) of this Rule to make its assessment.

- (d) Stage II shall require a collective 40 percent reduction in nitrogen loading and 77 percent reduction in phosphorus loading relative to the 2006 baseline to be achieved within 25 years after the effective date of this Rule.
- (e) If annual reporting following the tenth year of implementation indicates that agriculture has not collectively achieved its Stage I nitrogen and phosphorus reduction objectives identified in this Item within ten years of the effective date of this Rule, Stage II of implementation shall include additional requirements for individual operators to buffer all cropland and pasture and exclude all livestock from surface waters that meet the classification of intermittent or perennial streams using the most recent version of the *Identification Methods for the Origins of Intermittent and Perennial Streams Manual* published by the Division. The Commission may also consider alternative recommendations from the Watershed Oversight Committee based on its assessment of the practicability of agricultural operations meeting the watershed

objectives. Should the Commission require some form of individual compliance, then it shall also subsequently approve a framework proposed by the Watershed Oversight Committee for allowing producers to obtain credit through offsite measures. Such offsite measures shall meet the requirements of Rule .0282 of this Section.

(f) Should a committee called for under this Item not form nor follow through on its responsibilities such that a local strategy is not implemented in keeping with Item (8) of this Rule, the Commission shall require all persons subject to this Rule in the affected area to implement BMPs as needed to meet the objectives of this Rule.

(6) RULE REQUIREMENTS FOR INDIVIDUAL OPERATIONS. Persons subject to this Rule shall adhere to the following requirements:

(a) Persons subject to this Rule shall register their operations with their Local Advisory Committee according to the requirements of Item (8) of this Rule;

(b) With the exception of Sub-Item (d) of this Item, persons are not required to implement any specific BMPs in Stage I but may elect to contribute to the collective local nutrient strategy by implementing any BMPs they choose that are recognized by the Watershed Oversight Committee as nitrogen-reducing or phosphorus-reducing BMPs;

(c) The Division shall require that residuals application, animal waste application, and surface irrigation pursuant to permits issued under 15A NCAC 02T .1100, 15A NCAC 02T .1300, and 15A NCAC 02T.0500 respectively, to lands within the Falls watershed be done in a manner that minimizes the potential for nitrogen and phosphorus loading to surface waters. Persons subject to these permitting requirements shall meet Realistic Expectation Yield based nitrogen application rates and shall apply phosphorus in compliance with guidance established in the most recent version of North Carolina Agricultural research Service's Technical Bulletin 323, "North Carolina Phosphorus Loss

Assessment: I Model Description and II. Scientific Basis and Supporting literature" developed by the Department of Soil Science and Biological and Agricultural Engineering at North Carolina State University. The Division shall modify all existing permits for affected lands to include these requirements upon their next renewal after effective date, and shall include these requirements in all new permits issued after effective date. Permittees shall be required to comply with this condition upon permit issuance or renewal as applicable; and

(d) Should a local strategy not achieve its Stage I objectives within 10 years of the effective date of this Rule, operations within that local area shall face specific implementation requirements, as described under Sub-Item (5)(g) of this Rule.

(7) WATERSHED OVERSIGHT COMMITTEE. The Watershed Oversight Committee shall have the following membership, role and responsibilities:

(a) MEMBERSHIP. The Director shall be responsible for forming a Watershed Oversight Committee within two months of the effective date of this Rule. Until such time as the Commission determines that long-term maintenance of the nutrient loads is assured, the Director shall either reappoint members or replace members at least every six years. The Director shall solicit nominations for membership on this Committee to represent each of the following interests, and shall appoint one nominee to represent each interest except where a greater number is noted. The Director of the Division of Water Quality may appoint a replacement at any time for an interest in Sub-Items (7)(a)(vi) through (7)(a)(x) of this Rule upon request of representatives of that interest or by the request of the Commissioner of Agriculture:

(i) Division of Soil and Water Conservation;

(ii) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function



Quantify the nitrogen and phosphorus credits generate by such practices for the purpose of selling or buying credits. Establish criteria and a process as needed for the exchange of nitrogen credits between parties meeting the criteria of Sub-Item (4)(a)(b) or (c) of this Rule with parties subject to other nutrient strategy rules in the Falls lake watershed pursuant to the requirements of Rule .0282 of this Section. Approve eligible trades, and ensure that such practices are accounted for and tracked separately from those contributing to the objectives of this Rule.

(c) ACCOUNTING METHODS.

Success in meeting this Rule's purpose will be gauged by estimating percentage changes in nitrogen loading from agricultural lands in the Falls watershed and by evaluating broader trends in indicators of phosphorus loading from agricultural lands in the Falls watershed. The Watershed Oversight Committee shall develop accounting methods that meet the following requirements:

- (i) The nitrogen method shall estimate baseline and annual total nitrogen loading from agricultural operations in each county and for the entire Falls watershed;
- (ii) The nitrogen and phosphorus methods shall include a means of tracking implementation of BMPs, including number, type, and area affected;
- (iii) The nitrogen method shall include a means of estimating incremental nitrogen loading reductions from actual BMP implementation and of evaluating progress toward and maintenance of the nutrient objectives from changes in BMP implementation, fertilization, individual crop acres, and agricultural land use acres;

(iv) The nitrogen and phosphorus methods shall be refined as research and technical advances allow;

(v) The phosphorus method shall quantify baseline values for and annual changes in factors affecting agricultural phosphorus loading as identified by the phosphorus technical advisory committee established under Rule .0256(f)(2)(C) of this Section. The method shall provide for periodic qualitative assessment of likely trends in agricultural phosphorus loading from the Falls watershed relative to baseline conditions;

(vi) Phosphorus accounting may also include a scientifically valid, survey-based sampling of farms in the Falls watershed for the purpose of conducting field-scale phosphorus loading assessments and extrapolating phosphorus loading for the Falls watershed for the baseline period and at periodic intervals; and

(vii) Aspects of pasture-based livestock operations that potentially affect nutrient loading and are not captured by the accounting methods described above shall be accounted for in annual reporting by quantifying changes in the extent of livestock-related nutrient controlling BMPs. Progress may be judged based on percent change in the extent of implementation relative to percentage objectives identified in the objectives rule.

(8) LOCAL ADVISORY COMMITTEES. Local Advisory Committees required by Sub-Item (5)(a) of this Rule shall be formed for each county within the watershed within one year after the effective date of this Rule, and shall have the following membership, roles, and responsibilities:

- (a) MEMBERSHIP. A Local Advisory Committee shall be appointed as provided for in this Item. It shall terminate upon a finding by the Commission that it is no longer needed to fulfill the purposes of this Rule. Each Local Advisory Committee shall consist of:
  - (i) One representative of the county Soil and Water Conservation District;
  - (ii) One representative of the county office of the United States Department of Agriculture Natural Resources Conservation Service;
  - (iii) One representative of the North Carolina Department of Agriculture and Consumer Services whose regional assignment includes the county;
  - (iv) One representative of the county office of the North Carolina Cooperative Extension Service;
  - (v) One representative of the North Carolina Division of Soil and Water Conservation whose regional assignment includes the county;
  - (vi) At least two farmers who reside in the county; and
  - (vii) One representative of equine livestock interests.
- (b) APPOINTMENT OF MEMBERS. The Director of the Division of Water Quality and the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall appoint members described in Sub-Items (8)(a)(i), (8)(a)(ii), (8)(a)(iv), and (8)(a)(v) of this Rule. The Director of the Division of Water Quality, with recommendations from the Director of the Division of Soil and Water Conservation and the Commissioner of Agriculture, shall appoint the members described in Sub-Items (8)(a)(iii) and (8)(a)(vi) of this Rule from persons nominated by nongovernmental organizations whose members produce or manage agricultural commodities in each county. Members of the Local Advisory Committees shall serve at

the pleasure of their appointing authorities.

- (c) ROLE. The Local Advisory Committees shall:

- (i) Conduct a registration process for persons subject to this Rule. This registration process shall be completed within 12 months after the effective date of this Rule. The registration process shall request at a minimum the type and acreage of agricultural operations. It shall provide persons with information on requirements and options under this Rule, and on available technical assistance and cost share options;
- (ii) Develop local nutrient control strategies for agricultural operations, pursuant to Sub-Item (8)(d) of this Rule, to meet the nitrogen and phosphorus objectives of this Rule. Strategies shall be submitted to the Watershed Oversight Committee no later than 18 months after the effective date of this Rule;
- (iii) Ensure that any changes to the design of the local strategy will continue to meet the nutrient objectives of this Rule; and
- (iv) Submit reports to the Watershed Oversight Committee, pursuant to Sub-Item (8)(e) of this Rule, annually beginning two years after the effective date of this Rule until such time as the Commission determines that annual reports are no longer needed to fulfill the purposes of this Rule.

- (d) LOCAL NUTRIENT CONTROL STRATEGIES. Local Advisory Committees shall develop nutrient control strategies that meet the following requirements. If a Local Advisory Committee fails to submit a nutrient control strategy required in Sub-Item (8)(c)(ii) of this Rule, the Commission may develop one based on the accounting methods that it

approves pursuant to Sub-Item (7)(b)(i) of this Rule. Local strategies shall meet the following requirements:

(i) Local nutrient control strategies shall be designed to achieve the required nitrogen loading reduction objectives and qualitative trends in indicators of agricultural phosphorus loading within 10 years after the effective date of this Rule, and to maintain those reductions in perpetuity or until such time as this Rule is revised to modify this requirement; and

(ii) Local nutrient control strategies shall specify the numbers, acres, and types of all agricultural operations within their areas, numbers of BMPs that will be implemented by enrolled operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus loading reductions, schedule for BMP implementation, and operation and maintenance requirements.

(e) ANNUAL REPORTS. The Local Advisory Committees shall be responsible for submitting annual reports for their counties to the Watershed Oversight Committee until such time as the Commission determines that annual reports are no longer needed to fulfill the purposes of this Rule. The Watershed Oversight Committee shall determine reporting requirements to meet these objectives. Those requirements may include information on BMPs implemented by individual farms, proper BMP operation and maintenance, BMPs discontinued, changes in agricultural land use or activity, and resultant net nitrogen loading and phosphorus trend indicator changes. The annual reports in 2016 and 2026 shall address agriculture's success in complying with the load reduction requirements described in Sub-Items (5)(b) and (5)(f) of this Rule and shall include

adjustments to address deficiencies to achieve compliance.

(f) PROGRESS. In 2016 the Division of Water Quality, in consultation with the Watershed Oversight Committee, shall submit a report to the Commission gauging the extent to which reasonable progress has been achieved towards the Stage I objectives described in this Rule.

*Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486.*

**15A NCAC 02B .0281 FALLS WATER SUPPLY NUTRIENT STRATEGY: STORMWATER REQUIREMENTS FOR STATE AND FEDERAL ENTITIES**

The following is the stormwater strategy, as prefaced in Rule 02B .0275, for the activities of state and federal entities within the Falls watershed.

(1) PURPOSE. The purposes of this Rule are as follows.

(a) To achieve and maintain, on new non-road development lands, the nonpoint source nitrogen and phosphorus percentage reduction objectives established for Falls Reservoir in 15A NCAC 02B .0275 relative to the baseline period defined in that Rule, to provide the highest practicable level of treatment on new road development, and to achieve and maintain the percentage objectives on existing developed lands by reducing loading from state-maintained roadways and facilities, and from lands controlled by other state and federal entities in the Falls watershed;

(b) To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows from state-maintained roadways and facilities and from lands controlled by other state and federal entities in the Falls watershed; and

(c) To protect the water supply, aquatic life, and recreational uses of Falls Reservoir.

(2) APPLICABILITY. This Rule shall apply to all existing and new development, both as defined in 15A NCAC 02B .0276, that lies within or partially within the Falls watershed under the control of the NC Department of Transportation (NCDOT), including roadways

and facilities, and to all lands controlled by other state and federal entities in the Falls watershed.

- (3) NON-NCDOT REQUIREMENTS. With the exception of the NCDOT, all state and federal entities that control lands within the Falls watershed shall meet the following requirements:

**\*\**(Land Disturbance Threshold Option: A)\*\****

- (a) For any new development proposed within their jurisdictions that would disturb one-half acre or more, non-NCDOT state and federal entities shall develop stormwater management plans for submission to and approval by the Division. These stormwater plans shall not be approved by the Division unless the following criteria are met:

**\*\**(Land Disturbance Threshold Option: B)\*\****

- (a) For any new development proposed within their jurisdictions that would disturb 5,000 square feet or more, non-NCDOT state and federal entities shall develop stormwater management plans for submission to and approval by the Division. These stormwater plans shall not be approved unless the following criteria are met:

- (i) Nitrogen and phosphorus loads contributed by the proposed new development activity shall not exceed the unit-area mass loading rates as follows for nitrogen and phosphorus, respectively, expressed in units of pounds/acre/year: 2.2 and 0.33. The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in Sub-Item (4)(a) of 15A NCAC 02B .0277 or other equivalent method acceptable to the Division.

**\*\**(Onsite Treatment Option: A (50 percent N / 60 percent P)\*\****

- (ii) The developer shall have the option of offsetting part of their nitrogen and phosphorus loads by

implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 50 percent reduction in the post-construction nitrogen and 60 percent reduction in post-construction phosphorus loading rate on-site and shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iv) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program or a public or private seller of reduction credit contingent upon acceptance of payments by that Program. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282.

**\*\**(Onsite Treatment Option: B (60 percent N / 60 percent P)\*\****

- (ii) The developer shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 60 percent reduction in the post-construction nitrogen and 60 percent reduction in post-construction phosphorus loading rate on-site and shall meet any



requirements for engineered stormwater controls described in Sub-Item (3)(a)(iv) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program or a public or private seller of reduction credit contingent upon acceptance of payments by that Program. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282;

- (iii) Proposed new development subject to NPDES, water supply, and other state-mandated stormwater regulations shall comply with those regulations and with applicable permit limits in addition to the other requirements of this Sub-Item. Proposed new development in any water supply watershed in the Falls watershed designated WS-II, WS-III, or WS-IV shall comply with the density-based restrictions, obligations, and requirements for engineered stormwater controls, clustering options, operation and maintenance responsibilities, vegetated setbacks, land application, and landfill provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable rule among 15A NCAC 02B .0214 through .0216. Notwithstanding the allowance in water supply watershed rules for 10 percent of a jurisdiction to be developed at up to 70 percent built-upon area

without stormwater treatment, proposed new development in the Falls watershed shall not have the option to forego treatment;

- (iv) Stormwater systems shall be designed to control and treat at a minimum the runoff generated from all surfaces in the project area by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the most recent version of the *Stormwater Best Management Practices Manual* published by the Division, or other at least technically equivalent standards acceptable to the Division. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the new development shall not contribute to degradation of waters of the State. At a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event;
- (v) Proposed development that would replace or expand structures or improvements that existed as of December 2006, the end of the baseline period, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that it shall provide stormwater control at least equal to the previous development. Proposed new development that would replace or expand existing structures or improvements and would result in a net

- increase in built-upon area shall have the option either to achieve at least the percentage loading reduction objectives stated in 15A NCAC 02B .0275 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in Sub-Item (3)(a)(i). These requirements shall supersede those identified in 15A NCAC 02B .0104(q);
- (vi) New development may satisfy the requirements of this Rule by meeting the post-development hydrologic criteria set out in Chapter 2 of the *North Carolina Low Impact Development Guidebook* dated June 2009, or the hydrologic criteria in the most recent version of this guidebook;
  - (vii) Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of 15A NCAC 02B .0233 and .0242;
  - (viii) The non-NCDOT state or federal entity shall include measures to ensure maintenance of best management practices (BMPs) implemented as a result of the provisions in Sub-Item (3)(a) of this Rule for the life of the development;
  - (ix) A plan to ensure enforcement and compliance with the provisions in Sub-Item (3)(a) of this Rule for the life of the new development.
- (b) For existing development, non-NCDOT state and federal entities shall develop and implement staged load reduction programs for achieving and maintaining nutrient load reductions from existing development based on the standards set out in this Sub-Item. Such entities shall submit these load-reducing programs for approval by the Commission that include the following staged elements and meet the associated minimum standards for each stage of implementation:
- (i) In Stage I, entities subject to this rule shall implement a load reduction program that provides estimates of, and plans for offsetting within 10 years of the effective date of this Rule, nutrient loading increases from lands developed subsequent to the baseline period but prior to implementation new development stormwater programs. For these post-baseline existing developed lands, the current loading rate shall be compared to the loading rate for these lands prior to development for the acres involved, and the difference shall constitute the load reduction need in annual mass load, in pounds per year. Alternatively, a state or federal entity may assume uniform pre-development loading rates of 2.89 pounds per acre per year N and 0.63 pounds per acre per year P for these lands. The entity shall achieve this stage one load reduction within 10 years of the effective date of this Rule. This Stage I program shall meet the criteria defined in Item (4) of 15A NCAC 02B .0278.
  - (ii) Ten years after the effective date of this Rule and every five years thereafter, a state and federal entity located in the Upper Falls Watershed as defined in Item (3) of 15A NCAC 02B .0275 shall submit a Stage II load reduction program or revision designed to achieve the percent load reduction objectives from existing developed lands under its control, that includes timeframes for achieving these objectives and that

- meets the criteria defined in Item (4) of this Rule.
- (4) ELEMENTS OF NON-NC DOT LOAD REDUCTION PROGRAMS. A non-NC DOT state or federal entity load reduction program shall address the following elements:
- (a) State and federal entities in the Eno River and Little River subwatersheds shall, as part of their Stage I load reduction programs, begin and continuously implement a program to reduce loading from discharging sand filters and malfunctioning septic systems owned or used by state or federal agencies discharging into waters of the State within those subwatersheds.
  - (b) State and federal entities in any Falls subwatershed in which chlorophyll a levels have exceeded 40 ug/L in more than seventy-five percent of the monitoring events in any calendar year shall, as part of their Stage I load reduction programs, begin and continuously implement a program to reduce nutrient loading into the waters of the State within that subwatershed.
  - (c) The total amount of nutrient loading reductions in Stage I is not increased for state and federal entities by the requirements to add specific program components to address loading from malfunctioning septic systems and discharging sand filters or high nutrient loading levels pursuant to Sub-Item (4)(a) and (b) of this Rule.
  - (d) In preparation for implementation of their Stage I and Stage II load reduction programs, state and federal entities shall develop inventories and characterize load reduction potential to the extent that accounting methods allow for the following:
    - (i) Wastewater collection systems;
    - (ii) Discharging sand filter systems, including availability of or potential for central sewer connection;
    - (iii) Properly functioning and malfunctioning septic systems;
    - (iv) Restoration opportunities in utility corridors;
    - (v) Fertilizer management plans for state and federally owned lands;
  - (vi) Structural stormwater practices, including intended purpose, condition, potential for greater nutrient control; and
  - (vii) Wetlands and riparian buffers including potential for restoration opportunities.
  - (e) A state or federal entities load reduction need shall be based on the developed lands owned or used by the state or federal entity within the Falls watershed.
  - (f) Nitrogen and phosphorous loading from existing developed lands, including loading from onsite wastewater treatment systems to the extent accounting methods allow, shall be calculated by applying the accounting tool described in Item (11) and shall quantify baseline loads of nitrogen and phosphorus to surface waters from the lands under the entity's control as well as loading changes post-baseline. It shall also calculate target nitrogen and phosphorus loads and corresponding reduction needs.
  - (g) Nitrogen and phosphorus loading from existing developed lands, including loading from onsite wastewater treatment systems to the extent accounting methods allow, shall be calculated by applying the accounting too described in Item (11) of this Rule and shall quantify baseline loads of nitrogen and phosphorus to surface waters from state and federal entities as well as loading changes post-baseline. It shall calculate target nitrogen and phosphorus loads and corresponding load reduction needs.
  - (h) The Commission shall recognize reduction credit for early implementation of policies and practices implemented after January 1, 2007 and before timeframes required by this Rule, to reduce runoff and discharge of nitrogen and phosphorus per Session Law 2009-486. The load reduction program shall identify specific load-reducing practices implemented to date subsequent to the baseline period and for which the entity is seeking credit. It shall estimate load reductions for these practices and their anticipated

- duration using methods provided for in Sub-Item (8).
- (i) The plan shall include a proposed implementation schedule that includes annual implementation expectations. The load reduction program shall identify the types of activities the state of federal entity intends to implement and types of existing development affected, relative proportions or prioritization of practices, relative magnitude of reductions it expects to achieve from each, and the relative costs and efficiencies of each activity to the extent information is available. The program shall identify the duration of anticipated loading reductions, and may seek activities that provide long-term reductions.
- (j) The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps taken or planned to secure such funding.
- (k) The plan shall address the extent of load reduction opportunities intended from the following types of lands:
  - (i) Lands owned or otherwise controlled by the state or federal entity; and
  - (ii) Lands other than those on which the entity's load reduction need is based as described in this Item, including lands both within and outside its jurisdiction and third party sellers.
- (l) The plan shall address the extent of load reduction proposed from, at a minimum, the following stormwater and ecosystem restoration activities:
  - (i) Bioretention;
  - (ii) Constructed wetland;
  - (iii) Sand filter;
  - (iv) Filter Strip;
  - (v) Grassed swale;
  - (vi) Infiltration device;
  - (vii) Extended dry detention;
  - (viii) Rainwater harvesting system;
  - (ix) Treatment of Redevelopment;
  - (x) Overtreatment of new development;
  - (xi) Removal of impervious surface;
  - (xii) Retrofitting treatment into existing stormwater ponds;
- (xiii) Off-line regional treatment systems;
- (xiv) Wetland or riparian buffer restoration; and
- (xv) Reforestation with conservation easement or other protective covenant.
- (m) A state of federal entity may propose in its load reduction program the use of the following measures in addition to items listed in (l) and (n), or may propose other measures for which it can provide accounting methods acceptable to the Division:
  - (i) Redirecting runoff away from impervious surfaces;
  - (ii) Soil amendments;
  - (iii) Stream restoration;
  - (iv) Improved street sweeping; and
  - (v) Source control, such as per waste and fertilizer controls.
- (n) The plan shall evaluate the extent of load reduction proposed from the following wastewater activities:
  - (i) Creation of surplus relative to an allocation established in 15A NCAC 02B .0279;
  - (ii) Expansion of surplus allocation through regionalization;
  - (iii) Connection of discharging sand filters and malfunctioning septic systems to central sewer or replacement with permitted non-discharge alternatives;
  - (iv) Removal of illegal discharges; and
  - (v) Improvement of wastewater collection systems.
- (o) The plan shall evaluate the extent of load reduction proposed relative to the following factors:
  - (i) Extent of physical opportunities for installation;
  - (ii) Landowner acceptance;
  - (iii) Incentive and education options for improving landowner acceptance
  - (iv) Existing and potential funding sources and magnitudes; and
  - (v) Practice cost-effectiveness (e.g., cost per pound of nutrient removed);
  - (vi) Implementation rate without the use of eminent domain; and

- (vii) Need for and projected role of eminent domain.
- (5) The Commission shall approve a non-NCDOT Stage I load reduction plan if it meets the requirements of Items (3) and (4) of this Rule. The Commission shall approve a Stage II load reduction plan if it meets the requirements of Items (3) and (4) of this Rule and if it finds that the plan achieves the maximum level of reductions that is technically and economically feasible within the proposed timeframe of implementation based on plan elements identified elsewhere in this Item. Economic feasibility is determined by considering environmental impacts, capital cost of compliance, annual incremental compliance, per capita cost of stormwater programs, cost-effectiveness of available measures, and impacts on local and regional commerce. The Commission shall not require additional or alternative measures that would require a non-NCDOT state or federal entity to:
  - (a) Install a new stormwater collection system in an area of existing development unless the area is being redeveloped; or
  - (b) Reduce impervious surfaces within an area of existing development unless the area is being redeveloped.
- (6) A non-NCDOT state or federal entity shall have the option of working with the county or counties in which it falls, or with a municipality or municipalities within the same subwatershed, to jointly meet the loading targets from all lands within their combined jurisdictions within a subwatershed. The entity may utilize private or third party sellers. All reductions shall meet the requirements of 15A NCAC 02B .0282.
- (7) NCDOT REQUIREMENTS. The NCDOT shall develop a single Stormwater Management Program that will be applicable to the entire Falls watershed and submit this program for approval by the Division according to the standards set forth below. In addition, the program shall, at a minimum, comply with NCDOT's then-current stormwater permit. This program shall:
  - (a) Identify NCDOT stormwater outfalls from Interstate, US, and NC primary routes;
  - (b) Identify and eliminate illegal discharges into the NCDOT's stormwater conveyance system;
  - (c) Establish a program for post-construction stormwater runoff control for new development, including new and widening NCDOT roads and facilities. The program

shall establish a process by which the Division shall review and approve stormwater designs for new NCDOT development projects. The program shall delineate the scope of vested projects that would be considered as existing development, and shall define lower thresholds of significance for activities considered new development. In addition, the following criteria shall apply:

- (i) For new and widening roads weight stations, and replacement of existing bridges, compliance with the riparian buffer protection requirements of Rules 15A NCAC 02B .0233 and .0242 shall be deemed as compliance with the purposes of this Rule;
- (ii) New non-road development shall achieve and maintain the nitrogen and phosphorus percentage load reduction objectives established in 15A NCAC 02B .0275 relative to either area-weighted average loading rates of all developable lands as of the baseline period defined in 15A NCAC 02B .0275, or to project-specific pre-development loading rates. Values for area-weighted average loading rate targets for nitrogen and phosphorus, respectively, expressed in units of pounds per acre per year: 2.2 and 0.33. The NCDOT shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in Sub-Item (4)(a) of 15A NCAC 02B .0277 or other equivalent method acceptable to the Division. Where stormwater treatment systems are needed to meet these targets, they shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. Such systems shall be assumed to achieve the

nutrient removal efficiencies identified in the most recent version of the Stormwater Best Management Practices Manual published by the Division provided that they meet associated drawdown and other design specifications included in the same document. The NCDOT may propose to the Division nutrient removal rates for practices currently included in the BMP Toolbox required under its NPDES stormwater permit, or may propose revisions to those practices or additional practices with associated nutrient removal rates. The NCDOT may use any such practices approved by the Division to meet loading rate targets identified in this Sub-Item. New non-road development shall also control runoff flows to meet the purpose of this Rule regarding protection of the nutrient functions and integrity of receiving waters; and

**\*\* (Onsite Treatment Option: A (50 percent N / 60 percent P) \*\***

(ii) For new non-road development, the NCDOT shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 50 percent reduction in the post-construction nitrogen and 60 percent reduction in post-construction phosphorus loading rate on-site and shall meet any requirements for engineered stormwater controls described in Sub-Item (7)(c)(ii) of this Rule. Offsite offsetting measures shall achieve at least

equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (7)(c)(ii) of this Rule. The NCDOT may make offset payments to the NC Ecosystem Enhancement Program or a public or private seller of reduction credit contingent upon acceptance of payments by that Program. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282.

**\*\* (Onsite Treatment Option: B (60 percent N / 60 percent P) \*\***

(iii) For new non-road development, the NCDOT shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 60 percent reduction in the post-construction nitrogen and 60 percent reduction in post-construction phosphorus loading rate on-site and shall meet any requirements for engineered stormwater controls described in Sub-Item (7)(c)(ii) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (7)(c)(ii) of this Rule. The NCDOT may make offset payments to the NC Ecosystem Enhancement Program or a public or private seller of reduction credit contingent upon

acceptance of payments by that Program. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282.

(d) Establish a program to identify and implement load-reducing opportunities on existing development within the watershed. The long-term objective of this effort shall be for the NCDOT to achieve the nutrient load objectives in 15A NCAC 02B .0275 as applied to existing development under its control, including roads and facilities.

(i) The NCDOT may achieve the nutrient load reduction objective in 15A NCAC 02B .0275 for existing roadway and non-roadway development under its control by the development of a load reduction program that addresses both roadway and non-roadway development in the Falls watershed. As part of the accounting process described in Item (11) of this Rule, baseline nutrient loads shall be established for roadways and industrial facilities using stormwater runoff nutrient load characterization data collected through the National Pollutant Discharge Elimination System (NPDES) Research Program under NCS0000250 Permit Part II Section G.

(ii) The program shall include estimates of, and plans for offsetting, nutrient load increases from lands developed subsequent to the baseline period but prior to implementation of its new development program. It shall include a technical analysis that includes a proposed implementation rate and schedule. This schedule shall provide for proportionate annual progress toward reduction objectives as practicable throughout the proposed

compliance period. The program shall identify the types of activities NCDOT intends to implement and types of existing roadway and non-roadway development affected, relative proportions or a prioritization of practices, and the relative magnitude of reductions it expects to achieve from each.

(iii) The program to address roadway and non-roadway development may include stormwater retrofits and other load reducing activities in the watershed including: illicit discharge removal; street sweeping; source control activities such as fertilizer management at NCDOT facilities; improvement of existing stormwater structures; use of rain barrels and cisterns; stormwater capture and reuse; and purchase of nutrient reduction credits.

(iv) NCDOT may meet minimum implementation rate and schedule requirements by implementing a combination of at least six stormwater retrofits per year for existing development in the Falls watershed or some other minimum amount based on more accurate reduction estimates developed during the accounting tool development process.

(v) To the maximum extent practicable, retrofits shall be designed to treat the runoff generated from all surfaces by one inch of rainfall, and shall conform to the standards and criteria established in the most recent version of the Division-approved NCDOT BMP Toolbox required under NCDOT's NPDES stormwater permit. To establish removal rates for nutrients for individual practices described in the

Toolbox, NCDOT shall submit technical documentation on the nutrient removal performance of BMPs in the Toolbox for Division approval. Upon approval, NCDOT shall incorporate nutrient removal performance data into the BMP Toolbox. If a retrofit is proposed that is not described in the NCDOT BMP Toolbox, then to the maximum extent practicable, such retrofit shall conform to the standards and criteria set forth in the most recent version of the *Stormwater Best Management Practices Manual* published by the Division, or other technically equivalent guidance acceptable to the Division.

- (e) Initiate a "Nutrient Management Education Program" for NCDOT staff and contractors engaged in the application of fertilizers on highway rights of way. The purpose of this program shall be to contribute to the load reduction objectives established in 15A NCAC 02B .0275 through proper application of nutrients, both inorganic fertilizer and organic nutrients, to highway rights of way in the Falls watershed in keeping with the most current state-recognized technical guidance on proper nutrient management; and
- (f) Address compliance with the riparian buffer protection requirements of 15A NCAC 02B .0233 and .0242 through a Division approval process.
- (8) NON-NCDOT RULE IMPLEMENTATION. For all state and federal entities that control lands within the Falls watershed with the exception of the NCDOT, this Rule shall be implemented as follows:
  - (a) Within 30 months after the effective date of this Rule, the Division shall submit a Stage I model local program to the Commission for approval that embodies the criteria described in Items (3)(b) and (4) of this Rule. The Division shall work in cooperation with subject state and federal entities and other watershed interests in

developing this model program, which shall include the following:

- (i) Methods to quantify load reduction requirements and resulting load reduction assignments for individual entities;
  - (ii) Methods to account for discharging sand filters, malfunctioning septic systems, and leaking collection systems; and
  - (iii) Methods to account for load reduction credits from various activities.
- (b) Within six months after the Commission's approval of the Stage I model local program, subject entities shall submit load reduction programs that meet or exceed the requirements of Items (3)(a) and (4) of this Rule to the Division for review and preliminary approval and shall begin implementation and tracking of measures to reduce nutrient loads from existing developed lands owned or controlled by the responsible state or federal entity.
  - (c) Within 20 months of the Commission's approval of the Stage I model local program, the Division shall provide recommendations to the Commission on existing development load reduction programs. The Commission shall either approve the programs or require changes based on the standards set out in Item (4) of this Rule. Should the Commission require changes, the applicable state or federal entity shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions.
  - (d) Within three months after the Commission's approval of a Stage I existing development load reduction program, the affected entity shall complete adoption of and begin implementation of its existing development Stage I load reduction program.
  - (e) Upon implementation of the programs required under Item (4) of this Rule, state and federal entities subject to this Rule shall provide annual reports to the Division documenting their progress in



- implementing those requirements within three months following each anniversary of program implementation date until such time the Commission determines they are no longer needed to ensure maintenance of reductions or that standards are protected. State and federal entities shall indefinitely maintain and ensure performance of implemented load-reducing measures.
- (f) Ten years after the effective date of this Rule, and every five years thereafter until either accounting determines load reductions have been achieved, standards are meeting the lake or the Commission takes other actions per 15A NCAC 02B .0275, state and federal entities located in the upper Falls watershed as defined in Item (3) of 15A NCAC 02B .0275 shall begin implementing and shall submit a Stage II load reduction program or program revision to the Division. Within nine months after submittal, the division shall make recommendations to the Commission on approval of these programs. The Commission shall either approve the programs or require changes based on the standards set out in this Rule. Should the Commission require changes, the applicable state or federal entity shall submit revisions within two months, and the Division shall provide follow-up recommendations to the Commission within three months after receiving revisions. Upon approval, the state or federal entity shall adjust implementation based on its approved program.
- (g) A state or federal entity may, at any time after commencing implementation of its load reduction program, submit program revisions to the Division for approval based on identification of more cost-effective strategies or other factors not originally recognized.
- (h) Once either load reductions are achieved per annual reporting or water quality standards are met in the lake per 15A NCAC 02B .0275, state and federal entities shall submit plans to ensure no load increases and shall report annually per Sub-Item (8)(e) on compliance with no increases and take additional actions as necessary.
- (i) At least every five years after the effective date, the Division shall review the accounting methods stipulated under Sub-Item (8)(a) to determine the need for revisions to those methods and to loading reductions assigned using those methods. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as nutrient removal efficiencies.
- (9) NCDOT RULE IMPLEMENTATION. For the NCDOT, this Rule shall be implemented as follows:
- (a) Within 30 months of the effective date of this Rule, the NCDOT shall submit the Stormwater Management Program for the Falls watershed to the Division for approval. This Program shall meet or exceed the requirements in Item (7) of this Rule;
- (b) Within 36 months of the effective date of this Rule, the Division shall request the Commission's approval of the NCDOT Stormwater Management Program;
- (c) Within 36 months of the effective date of this Rule, the NCDOT shall implement the Commission-approved Stormwater Management Program; and
- (d) Upon implementation, the NCDOT shall submit annual reports to the Division summarizing its activities in implementing each of the requirements in Item (7) of this Rule. This annual reporting may be incorporated into annual reporting required under NCDOT's NPDES stormwater permit.
- (10) RELATIONSHIP TO OTHER REQUIREMENTS. A party may in its program submittal request that the Division accept its implementation of another stormwater program or programs, such as NPDES stormwater requirements, as satisfying one or more of the requirements set forth in Item (3) or (4) of this Rule. The Division shall provide determination on acceptability of any such alternatives prior to requesting Commission approval of programs under this Rule. The party shall include in its program submittal technical information demonstrating the adequacy of the alternative requirements.

(11) ACCOUNTING METHODS. Within 18 months after the effective date of this Rule, the Division shall submit a nutrient accounting framework to the Commission for approval. This framework shall include tools for quantifying load reduction assignments on existing development for parties subject to this Rule, load reduction credits from various activities on existing developed lands, and a tool that will allow subject parties to account for loading from new and existing development and loading changes due to BMP implementation. The Division shall work in cooperation with subject parties and other watershed interests in developing this framework. The Division shall periodically revisit these accounting methods to determine the need for revisions to both the methods and to existing development load reduction assignments made using the methods set out in this Rule. It shall do so no less frequently than every 10 years. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as BMP nutrient removal efficiencies.

*Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486.*

**15A NCAC 02B .0282 FALLS WATER SUPPLY NUTRIENT STRATEGY: OPTIONS FOR OFFSETTING NUTRIENT LOADS**

PURPOSE. This Rule provides parties subject to other rules within the Falls nutrient strategy with options for meeting rule requirements by obtaining or buying credit for nutrient load-reducing activities conducted by others (sellers). It provides the potential for parties who achieve excess load reductions under the Falls nutrient strategy to recover certain costs by selling such credits, and it provides opportunity for third parties to produce reductions and sell credits. Overall it provides the potential for more cost-effective achievement of strategy reduction objectives. Accounting is required to ensure and track the availability and use of trading credits. This accounting will be compared against compliance accounting required under other rules of the Falls nutrient strategy. This Rule furthers the adaptive management intent of the strategy to protect the water supply, aquatic life, and recreational uses of Falls Reservoir. The minimum requirements for the exchange of load reduction credits are:

(1) PREREQUISITES. The following buyers shall meet applicable criteria identified here and in rules imposing reduction requirements on

them before utilizing the option outlined in this Rule:

- (a) Agriculture Rule .0280: Agricultural producers shall receive approval from the Watershed Oversight Committee to obtain offsite credit pursuant to the conditions of Sub-Item (5)(b);
- (b) New Development Rule .0277: Developers shall meet onsite reduction requirements enumerated in Sub-Item (3)(a)(vii) before obtaining offsite credit;
- (c) Wastewater Rule .0279: New and expanding dischargers shall first make all reasonable efforts to obtain allocation from existing dischargers as stated in Sub-Items (7)(a)(ii) and (8)(a)(ii), respectively; and
- (d) State and Federal Entities Stormwater Rule .0281:
  - (i) Non-DOT entities shall meet onsite new development reduction requirements enumerated in Sub-Item (3)(a)(ii); and
  - (ii) NC DOT shall meet onsite non-road new development reduction requirements enumerated in Sub-Item (4)(c)(iii) before obtaining offsite credit.

(2) The party seeking approval to sell loading reduction credits pursuant to this Rule shall demonstrate to the Division that such reductions meet the following criteria:

- (a) Load reductions eligible for credit shall not include reductions achieved to mitigate or offset actions that increase nutrient loading under regulations other than the Falls nutrient strategy; and
- (b) The party seeking to sell credits shall define the nature of the activities that would produce reductions and define the magnitude and duration of those reductions to the Division, including addressing the following items:
  - (i) Quantify and account for the relative uncertainties in reduction need estimates and loading reduction estimates;
  - (ii) Ensure that loading reductions shall take place at the time and for the duration in which the reduction need occurs; and
  - (iii) Demonstrate means adequate for assuring the achievement and claimed

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duration of loading reduction, including the

cooperative involvement of any other involved parties.

Note: The Commission seeks public comment on the option to include land acquisition and conservation as an option for achieving nutrient reduction credit.

- (3) Geographic Restrictions. Eligibility to use loading reductions as credit is based on the following geographic criteria:
  - (a) Impacts in the upper Falls watershed as defined in Item (19) of 15A NCAC 02B. 0276 may be offset only by loading reductions achieved in the upper Falls watershed; and
  - (b) Impacts in the lower Falls watershed as defined in Item (20) of 15A NCAC 02B. 0276 may be offset only by loading reductions achieved anywhere within the Falls watershed.

Note: The Commission seeks public comment on the following options regarding geographic restrictions to nutrient trading:

- 1. A Provision to allow local governments which are located in counties that span both the upper and lower watershed to use nutrient credits generated anywhere in the county in which the local government is located.
- 2. A Provision to allow any point source that services areas in both the upper and lower watershed to use nutrient credits generated anywhere in their service area.

(4) The party seeking approval to sell loading reduction credits shall provide for accounting and tracking methods that ensure genuine, accurate, and verifiable achievement of the purposes of this Rule. The Division shall work cooperatively with interested parties at their request to develop such accounting and tracking methods to support the requirements of Item (2) of this Rule.

reduction credit shall meet the applicable requirements of Rule .0240 of this Section in addition to applicable requirements of this Rule.

*Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486.*

(5) Local governments have the option of combining their reduction needs from NPDES dischargers assigned allocations in 15A NCAC 02B .0279 and existing development as described in 15A NCAC 02B .0278, including loads from properly functioning and malfunctioning septic systems and discharging sand filters, into one reduction and allocation requirement and meet them jointly.

**15A NCAC 02B .0283 FALLS WATER SUPPLY NUTRIENT STRATEGY: FERTILIZER MANAGEMENT *\*\* (REQUEST STAKEHOLDER COMMENTS ON POTENTIAL TO BROADEN APPLICABILITY AND REFINE REQUIREMENTS FOR THIS RULE) \*\****

The following is the management strategy as prefaced in Rule .0275 of this Section, for controlling land-applied nutrients in the Falls watershed.

(6) Proposals for use of offsetting actions as described in this Rule shall become effective after determination by the Director that the proposal contains adequate scientific or engineering standards or procedures necessary to achieve and account for load reductions as required under Items (2) through (4) of this Rule, and that specific accounting tools required for these purposes in individual rules have been adequately established. In making this determination, the Director shall also evaluate the potential for loading offset elsewhere to produce localized adverse water quality impacts that contribute to impairment of classified uses of the affected waters.

(1) PURPOSE. The purpose of this Rule is to protect the water supply uses of Falls Reservoir by managing the application of nutrients, both inorganic fertilizer and organic nutrients, to lands in the Falls watershed. The requirements of this Rule are to be fully implemented within three years from the effective date as set out in Item (6) of this Rule.

(7) A party seeking to purchase nutrient offset credit from the NC Ecosystem Enhancement Program or a public or private seller of

(2) APPLICABILITY. This Rule shall apply to the application of nutrients on:  
(a) Cropland areas in the Falls watershed for commercial purposes;  
(b) Commercial ornamental and floriculture areas and greenhouse production areas in the Falls watershed;

- (c) Golf courses, public recreational lands, road or utility rights-of-way, or other commercial or institutional lands where any such land, or combination of such lands, under common management in the watershed totals at least five acres; and
- (d) Any lands in the Falls watershed where a hired applicator, as defined in 15A NCAC 02B .0202(4), who does not own or lease the lands applies nutrients to a total of at least five acres per year.
- (3) REQUIREMENTS. Application of nutrients to lands subject to this Rule shall be in accordance with the following requirements:
  - (a) Application shall be made either:
    - (i) By an applicator who has completed nutrient management training pursuant to Item (4) of this Rule; or
    - (ii) Pursuant to a nutrient management plan that meets the requirements of Item (5) of this Rule.
  - (b) With the exception of residential homeowners, a person who hires an applicator to apply nutrients to the land that they own or manage in the Falls watershed shall either:
    - (i) Ensure that the applicator they hire has attended and completed nutrient management training pursuant to Item (4) of this Rule; or
    - (ii) Ensure that the applicator they hire follows a nutrient management plan that has been developed for the land that they own or manage pursuant to Item (5) of this Rule.
- (4) NUTRIENT MANAGEMENT TRAINING. To demonstrate compliance with this Rule through the nutrient management training option, the applicator shall have a certificate indicating completion of training provided by either the Cooperative Extension Service or the Division. Training certificates shall be kept on-site or be produced within 24 hours of a request by the Division. Training shall be sufficient to provide participants with an understanding of the value and importance of proper management of nitrogen and phosphorus, and the water quality impacts of poor nutrient management, and the ability to understand and properly carry out a nutrient management plan.
- (5) NUTRIENT MANAGEMENT PLANS. Nutrient management plans developed to comply with this Rule shall meet the following requirements:
  - (a) Nutrient management plans for cropland, excluding those for application of Class A bulk, and Class B wastewater residuals, regulated under 15A NCAC 02T .1100 and septage application regulated under 15A NCAC 13B .0815 through .0829, shall meet the standards and specifications adopted by the NC Soil and Water Conservation Commission, including those found in 15A NCAC 06E .0104 and 15A NCAC 06H .0104, which are incorporated herein by reference, including any subsequent amendments and editions to such rules that are in place at the time that plans are approved by a technical specialist as required under Sub-Item (5)(e) of this Rule;
  - (b) Nutrient management plans for application of Class A bulk, and Class B, wastewater residuals regulated under 15A NCAC 02T .1100 and septage application regulated under 15A NCAC 13B .0815 through .0829 shall meet the standards and specifications adopted by the NC Soil and Water Conservation Commission in 15A NCAC 06E .0104, including any subsequent amendments and editions to such rule that are in place at the time that plans are approved by the permitting agency. This compliance includes addressing the phosphorus requirements of US Department of Agriculture Natural Resources Conservation Service Practice Standard 590 regarding Nutrient Management;
  - (c) Nutrient management plans for lands identified in Sub-Item (2)(c) of this Rule shall follow the applicable guidance contained in the most recent version of North Carolina Cooperative Extension Service publications "Water Quality and Professional Lawn Care" (NCCES publication number WQWM-155), "Water Quality and Home Lawn Care" (NCCES publication number WQWM-151), or "Water Quality for

Golf Course Superintendents and Professional Turf Managers" (NCCES publication number WQWM-156 Revised) as appropriate for the activity. The above-referenced guidelines are hereby incorporated by reference including any subsequent amendments and editions. Copies may be obtained from the Division of Water Quality, 512 North Salisbury Street, Raleigh, North Carolina 27604 at no cost. Nutrient management plans may also follow other guidance distributed by land-grant universities for turfgrass management as long as it is equivalent to or more stringent than the above-listed guidelines:

- (d) Nutrient management plans for ornamental and floriculture production shall follow the Nutrient Management section of the most recent version of the Southern Nursery Association guidelines promulgated in "Best Management Practices – A BMP Guide For Producing Container and Field Grown Plants". Copies may be obtained from the Southern Nursery Association, 1827 Powers Ferry Road SE, Suite 4-100, Atlanta, GA 30339-8422 or from [www.sna.org](http://www.sna.org). The materials related to nutrient management plans for ornamental and floriculture production are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for inspection at the Department of Environment and Natural Resources Library, 512 North Salisbury Street, Raleigh, North Carolina 27604. Nutrient management plans for ornamental and floriculture production may also follow other guidance distributed by land-grant universities for such production as long as it is equivalent or more stringent than the above-listed guidelines;

- (e) The nutrient management plan shall be approved in writing by an appropriate technical specialist, as defined in 15A NCAC 06H .0102(9), as follows:

- (i) Nutrient management plans for cropland using either inorganic or organic nutrients, except those using biosolids or septage, shall be

approved by a technical specialist designated pursuant to the process and criteria specified in rules adopted by the Soil and Water Conservation Commission for nutrient management planning, including 15A NCAC 06H .0104, excepting Sub-Item (a)(2) of that Rule; and

- (ii) Nutrient management plans for lands identified in Sub-Item (2)(c) of this Rule, ornamental and floriculture production shall be approved by a technical specialist designated by the Soil and Water Conservation Commission pursuant to the process and criteria specified in 15A NCAC 06H .0104 excepting Sub-Item (a)(2) of that Rule. If the Soil and Water Conservation Commission does not designate such technical specialists, then the Environmental Management Commission shall do so using the same process and criteria.

- (f) Persons with approved waste utilization plans that are required under state or federal animal waste regulations are deemed in compliance with this Rule as long as they are compliant with their approved waste utilization plans; and

- (g) Nutrient management plans and supporting documents must be kept on-site or be produced within 24 hours of a request by the Division.

- (6) COMPLIANCE. The following constitute the compliance requirements of this Rule:

- (a) For proposed new application of Class A bulk, and Class B, wastewater residuals pursuant to permits obtained under 15A NCAC 02T .1100 or its predecessor, and septage application pursuant to permits obtained under 15A NCAC 13B .0815 through .0829, all applications for new permits shall be made according to, and subsequent nutrient applications shall comply with, the applicable requirements of this Rule as of its effective date;

- (b) For existing, ongoing application of residuals and septage as defined in this Item, beginning one year after the effective date of this Rule, all applications for renewal of existing permits shall be made according to, and subsequent nutrient applications shall comply with, the applicable requirements of this Rule;
- (c) For all other application with the exception of the application of residuals and septage as defined in this Item, the requirements of this Rule shall become effective three years after its effective date and shall apply to all application of nutrients on lands subject to this Rule after that date; and
- (d) Persons who fail to comply with this Rule are subject to enforcement measures authorized in G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

- (5) January 1, 1982;
- (6) April 1, 1982;
- (7) December 1, 1983;
- (8) January 1, 1985;
- (9) August 1, 1985;
- (10) February 1, 1986;
- (11) May 1, 1988;
- (12) July 1, 1988;
- (13) October 1, 1988;
- (14) January 1, 1990;
- (15) August 1, 1990;
- (16) December 1, 1990;
- (17) July 1, 1991;
- (18) August 3, 1992;
- (19) April 1, 1994;
- (20) July 1, 1996;
- (21) September 1, 1996;
- (22) April 1, 1997;
- (23) August 1, 1998;
- (24) August 1, 2002;
- (25) July 1, 2004;
- (26) November 1, 2007;
- (27) January 15, 2011.

*Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486.*

**SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS**

**15A NCAC 02B .0315 NEUSE RIVER BASIN**

(a) The Neuse River Basin Schedule of Classification and Water Quality Standards may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
  - (A) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, North Carolina
  - (B) Washington Regional Office  
943 Washington Square Mall  
Washington, North Carolina
  - (C) Wilmington Regional Office  
127 Cardinal Drive  
Wilmington, North Carolina
  - (D) Division of Water Quality  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) August 9, 1981;

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
- (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III B.
- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point

and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.

- (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV B NSW.

- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III B NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries is the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as .5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(n) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

(o) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 2004 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-21, 27-21-1] from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake (former water supply intake for Burlington Mills Wake Finishing Plant) from Class C NSW to Class WS-IV NSW and from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake [Index No. 27-(20.1)] from Class C NSW to Class WS-IV NSW

CA. Fantasy Lake [Index No. 27 -57-3-1-1], a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.

(p) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective November 1, 2007 with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.

(q) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective January 15, 2011 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at Falls Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the Falls Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rules 15A NCAC 02B .0275 through .0283.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02T .1310-.1311 with changes from the proposed text noticed in the Register, Volume 23, Issue 22, pages 2173-2176.

Proposed Effective Date: January 1, 2011

Reason for Proposed Action: These proposed rules are the result of petitions for rulemaking filed in accordance with G.S. 150B-20(a) of the Administrative Procedures Act by the Waterkeeper Alliance in September and October 2007. The EMC approved the petition in May 2008, but also directed the Division of Water Quality to develop rule language utilizing the stakeholder process. After four stakeholder meetings, a proposed rule was developed. In November 2008, the Division received approval from the EMC to proceed to the public comment process. Four public hearings were held in 2009, and as a result of public comment, the hearing officers recommended changes to the proposed rules. Specifically, the hearing officers have recommended the removal of Fecal Coliform and Biochemical Oxygen Demand (BOD<sub>5</sub>) from the list of parameters to be sampled in 15A NCAC 02T .1310(b)(4), and a clarification to the visual observation requirements in 15A NCAC 02T .1310(a)(3). The EMC is interested in receiving additional comments on these proposed changes. After review of the additional comments, the hearing officers will make a final recommendation. For additional information on these proposed rules, please visit the DWQ website at <http://portal.ncdenr.org/web/wq> and select the "Event Calendar" link.

Procedure by which a person can object to the agency on a proposed rule: A person may submit written objections concerning the monitoring rules for animal operations (adoption of 15A NCAC 02T .1310-.1311) to the Aquifer Protection Section of the NCDENR-Division of Water Quality. Such

correspondence should be brought to the attention of: Mr. Keith Larick, NCDENR/DWQ-Aquifer Protection Section, 1636 Mail Service Center, Raleigh, NC 27699-1636; phone (919) 715-6697; fax (919) 715-6048; email [keith.larick@ncdenr.gov](mailto:keith.larick@ncdenr.gov).

Written comments may be submitted to: Keith Larick, NCDENR/DWQ-Aquifer Protection Section, 1636 Mail Service Center, Raleigh, NC 27699-1636; phone (919) 715-6697; fax (919) 715-0648; email [keith.larick@ncdenr.gov](mailto:keith.larick@ncdenr.gov)

Comment period ends: August 16, 2010

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

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

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT COMMISSION

SUBCHAPTER 02T - WASTE NOT DISCHARGED TO SURFACE WATERS

SECTION .1300 - ANIMAL WASTE MANAGEMENT SYSTEMS

15A NCAC 02T .1310 SURFACE WATER AND GROUND WATER MONITORING

(a) All facilities not permitted by regulation pursuant to Rule .1303 of this Section shall monitor any unpermitted waste discharge to surface waters.

(1) All runoff of waste from receiver sites or discharges from storage structures shall be sampled at least once during the event. For the purposes of this provision, an event is defined as the time from the beginning of the discharge of waste until the discharge of waste is ceased regardless of the duration of discharge. The discharge shall be sampled for the parameters in Subparagraph (a)(4) of this Rule.



- (2) Facilities with known subsurface drains shall make visual observations of subsurface drains during all land application of waste events. If visual observations indicate that waste may be present in the subsurface drain discharge, the permittee shall sample the subsurface drain discharge for the parameters in Subparagraph (a)(4) of this Rule. Additional observations and sampling may be required based on violations related to land application of waste events and known discharges from subsurface drains.
- (3) At least twice per year, facilities with known subsurface drains shall make visual observations of subsurface drain outlets within forty-eight hours after a land application event and after a rainfall event subsequent to a land application event for a minimum of two visual inspections per year for each field with subsurface drains. If visual observations indicate that waste may be present in the subsurface drain discharge, the permittee shall sample the subsurface drain discharge for the parameters in Subparagraph (a)(4) of this Rule. Additional observations and sampling may be required based on violations related to land application of waste events and known discharges from subsurface drains.
- (4) Waste discharges shall be sampled for the following parameters: 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Total Kjeldahl Nitrogen (TKN), Ammonia Nitrogen (NH<sub>3</sub>-N), Nitrate Nitrogen (NO<sub>3</sub>-N), Fecal Coliform, and Chloride.

(b) A surface water monitoring plan, for all facilities not permitted by regulation pursuant to Rule .1303 of this Section, shall be established, in accordance with the schedule provided in Rule .1311 of this Section, to track the performance of the permitted system, verify that the system is protective of surface water standards as well as document water quality parameter concentrations in adjacent surface waters, and compliance with permit discharge limitations.

- (1) The Division shall determine up to three representative sampling locations per farm site including one location that provides background conditions. The Division may consider recommendations by the permittee regarding sampling locations. Representative locations shall include waters in groundwater lowering ditches and subsurface drains when present. Representative locations shall consider soils, hydrogeology, loading rates, and application methods. Where surface water locations are not representative for the receiver sites or storage structures, monitoring ground waters adjacent to surface waters may be required. Representative surface water locations for artificially drained receiver sites include:

- (A) Groundwater lowering ditches that are collectively representative of subsurface drain discharges from receiver sites or storage structure sites if the ditch is a discernible and discrete source of groundwater from receiver sites or storage structure sites; or
- (B) Subsurface drains may be selectively sampled (i.e., one drain sampled to be representative of multiple drains in a receiver site or storage structure site) based on uniformity of application across fields (both design and actual), soil characteristics, and hydrogeologic setting.
- (2) If three surface water sampling locations cannot be identified on or adjacent to the farm site, the monitoring plan may be reduced to only those representative locations on or adjacent to the farm site such as intermittent and perennial streams, perennial waterbodies, subsurface drain outlets, groundwater lowering ditches.
- (3) The plan shall include three sampling events every calendar year, except as otherwise provided for in this Paragraph, as follows:
  - (A) One sampling event during the months of January or February;
  - (B) One sampling event after a representative land application event during the months of March or April;
  - (C) One sampling event after a representative land application event during the months of July, August, or September; and
  - (D) For any of the sampling events required by this Subparagraph, if flow at sampling locations is not present at the time of scheduled sampling, sampling shall occur when flow is present at the sampling location. If a representative land application event does not occur during the prescribed months, a sample shall be taken after the next land application event.
- (4) Samples shall be collected and analyzed for the following constituents: Ammonia Nitrogen (NH<sub>3</sub>-N), Nitrate Nitrogen (NO<sub>3</sub>-N), and Chloride.
- (5) Where there is adequate documentation of functioning best management practices, features such as storage structures meeting NRCS standards, riparian buffers, or drainage control structures in artificially drained sites, contingent on the continued proper operation and maintenance of these features, a monitoring plan may be reduced in scope and

frequency based on the effectiveness of those features.

- (6) Requests for reduction in monitoring may be submitted to the Division. Requests for reduction in frequency, including elimination of monitoring, shall be based on the consistency of historical data, time of monitoring with respect to expected pollutant time of travel, the levels of pollutants in historical data, other criteria in this Paragraph, and the priorities in Rule .1311 of this Section.
- (7) Notwithstanding the provisions in Subparagraphs (b)(1) – (b)(6) of this Rule, changes in monitoring plans established in accordance with the provisions of this Rule may be required to:
  - (A) determine the extent of detected pollutants beyond the area actively monitored based on data submitted;
  - (B) further quantify pollutants based on data submitted;
  - (C) further delineate fate of pollutants in surface water;
  - (D) document impact of an increase, or further increase, in loading rates;
  - (E) address changes in management practices;
  - (F) assess deficiencies that may increase loadings to surface waters; or
  - (G) assess deficiencies of the monitoring plan established in accordance with the provisions of this Rule.

(c) Permittees may join monitoring coalitions upon entering a Memorandum of Agreement with the Division to monitor collectively in lieu of monitoring on a permit-by-permit basis. In such cases, monitoring by the coalition shall serve in place of any monitoring required by Paragraph (b) of this Rule. If at any time a permittee terminates membership in the coalition while maintaining a permit, the permittee shall immediately notify the Division and monitor as stipulated in the permit. Monitoring by coalitions shall be based on the following criteria:

- (1) The coalition plan shall be based on the criteria in Paragraph (b) of this Rule and Rule .1311 of this Section;
- (2) Each member farm site shall have at least one representative sampling location;
- (3) Additional sampling locations not located on member farm sites may be included to document functionality or applicability of BMPs, riparian buffer efficiency, or other management practices; and
- (4) The coalition plan may consider sampling locations of other coalitions, Division ambient sampling locations, and other ambient monitoring locations where the data

is submitted to the Division or is publicly available.

(d) Establishment of a groundwater monitoring plan.

- (1) A monitoring plan shall be established to assess the facility's impact on ground waters when water supply wells on property not owned by the permittee are downgradient of ground water beneath receiver sites or waste storage structures and at least one of the following:
  - (A) the off site water supply has contamination of pollutants that are known or likely to be present in the waste applied or stored on the farm as well as water quality parameters related to those pollutants;
  - (B) violations for over application of waste; or
  - (C) documentation that waste storage structures do not meet NRCS standards.
- (2) The Division shall notify any facility that meets the criteria in Subparagraph (d)(1) of this Rule of the requirement to establish a monitoring plan as well as the requirements provided in 15A NCAC 02L.
- (3) The scope and type of monitoring plan as well as the parameters to be monitored shall be based on:
  - (A) permitted and actual application rates (both hydraulic and nutrient);
  - (B) materials, nutrients or other waste applied to receiver sites;
  - (C) adsorption and degradation of pollutants within the soil matrix;
  - (D) site-specific hydrogeology and soils;
  - (E) likelihood of secondary and cumulative impacts including vulnerability (proximity to, hydrogeologic setting, well construction) of water supply wells and groundwater classification; and
  - (F) pollutants that are known or likely to be present in the waste stream based on source of wastewater or water quality parameters related to those pollutants.
- (4) In addition, requests for reduction in monitoring may be submitted to the Division. Requests for reduction in frequency, including elimination of monitoring, shall be based on the consistency of historical data, time of monitoring with respect to expected pollutant time of travel, and the levels of pollutants in historical data, as well as the factors in Subparagraph (d)(3) of this Rule.
- (5) Notwithstanding the provisions in Subparagraphs (d)(1) – (d)(4) of this Rule, changes in monitoring plans established in

accordance with the provisions of this Rule may be required to:

- (A) determine the extent of detected pollutants beyond the area actively monitored based on data submitted;
- (B) develop and implement a corrective action plan in accordance with 15A NCAC 02L;
- (C) document impact of an increase in loading rates;
- (D) assess deficiencies that may further increase loadings to ground waters; or
- (E) assess deficiencies of the monitoring plan established in accordance with the provisions of this Rule.

(e) Results of all analyses and inspections required by this Rule shall be reported to the Division annually, except for waste discharges that require immediate notification or as otherwise required by Commission rules, on Division supplied forms or forms approved by the Division as providing the same information as required by the Division's forms.

Authority G.S. 143-215.1; 143-215.3(a); 143-215.64.

**15A NCAC 02T .1311 SURFACE WATER MONITORING IMPLEMENTATION**

(a) New and expanding facilities shall submit with the permit application a proposed monitoring plan as provided in Rule .1310 of this Section for the entire facility to be covered by the permit.

(b) For existing facilities, provisions for monitoring plans in Paragraph (a) of Rule .1310 of this Section, not previously required in permits, shall be incorporated into permits upon renewal.

(c) For existing facilities in operation prior to July 1, 2008, the Division will provide 60 days notice prior to establishing a monitoring plan that addresses the provisions of Paragraph (b) of Rule .1310 of this Section. The Division shall implement the provisions of Paragraph (b) of Rule .1310 of this Section for the following watersheds and in the following order:

- (1) Facilities in the Neuse River Basin in subbasins 03-04-05, 03-04-07, 03-04-08, 03-04-09, and 03-04-11;
- (2) All other facilities in the Neuse River Basin not included in Subparagraph (c)(1) of this Rule;
- (3) Facilities in the Tar-Pamlico Basin;
- (4) Facilities in the White Oak Basin;
- (5) Facilities in subbasin 03-06-22 in the Cape Fear River Basin;
- (6) Facilities in subbasin 03-06-19 in the Cape Fear River Basin;
- (7) Facilities in the Cape Fear River Basin not included in Subparagraphs (c)(5)-(c)(6) of this Paragraph;
- (8) Facilities in the Chowan River Basin;
- (9) Facilities in the Lumber River Basin; and

- (10) Facilities in the Roanoke, including and downstream of subbasin 03-02-08, and Pasquotank River Basins.

(d) Notwithstanding Paragraph (c) of this Rule, monitoring plans that address the provisions of Paragraph (b) of Rule .1310 of this Section may be required for the following:

- (1) For any additional watersheds where animal facilities have caused or contributed to impairments, or predicted to be a cause or contribution, as determined in Basinwide Management Plans or stream classifications pursuant to 15A NCAC 02B;
- (2) For watersheds in, but outside the order of, Paragraph (c) of this Rule where animal facilities have caused or contributed to impairments, or predicted to be a cause or contribution, as determined in Basinwide Management Plans or stream classifications pursuant to 15A NCAC 02B; and
- (3) Additional facilities based on the criteria in Rules .1310(b)(7)(D), .1310(b)(7)(E), and .1310(b)(7)(F) of this Section.

(e) Nothing in this Rule shall limit the Director in requiring ground water monitoring where water supply wells may be impacted based on the criteria in Paragraph (d) of Rule .1310 of this Section; or where non-compliance with the rules of the Commission or a permit under this Section would increase the likelihood of ground water or surface water loadings.

Authority G.S. 143-215.1; 143-215.3(a); 143-215.64.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to amend the rule cited as 15A NCAC 28 .0502.*

**Proposed Effective Date:** October 1, 2010

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Contact David Griffin, Division Director, 3125 Poplarwood Court, Suite 160, Raleigh, NC 27604; phone (919) 877-5500; fax (919) 981-5224; email david.griffin@ncaquariums.com.*

**Reason for Proposed Action:** *The amendment is needed to remove the Aquariums' requirement that bartenders have Alcohol Law Enforcement bartender training in order to serve alcoholic beverages at the Aquariums. This is not a state requirement and such a requirement could unintentionally limit the range of available caterers for Aquariums' rental events.*

**Procedure by which a person can object to the agency on a proposed rule:** *Send written objections to David Griffin, Division Director, 3125 Poplarwood Court, Suite 160, Raleigh, NC 27604; fax (919) 981-5224; email david.griffin@ncaquariums.com.*

Comments may be submitted to: David Griffin, Division Director, 3125 Poplarwood Court, Suite 160, Raleigh, NC 27604; phone (919) 877-5500; fax (919) 981-5224; email david.griffin@ncaquariums.com

Comment period ends: August 16, 2010

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

Fiscal Impact:

- State
Local
Substantial Economic Impact (≥\$3,000,000)
None

CHAPTER 28 - NORTH CAROLINA AQUARIUMS

SECTION .0500 - CONDUCT: ALCOHOLIC BEVERAGES: PETS: PROPER DRESS

15A NCAC 28 .0502 SALES OF ALCOHOL OR CONTROLLED SUBSTANCES

No person shall sell or attempt to sell controlled or illegal substances or any other intoxicating or impairing substance on Aquarium property. Beer and wine may be sold pursuant to a valid Alcohol Beverage Control permit at an event held at the Aquarium if written approval is given by the Division Director prior to the event. The Director's approval shall be given when the applicant agrees that the beverages' alcohol content will not exceed 16 percent, the alcoholic beverages will be served through an insured caterer or purchased directly from a wholesaler, alcohol will be served only by a bartender covered by insurance, bartenders will have received Alcohol Law Enforcement bartender training, and alcohol service will be discontinued at least 30 minutes prior to the conclusion of the event.

Authority G.S. 143B-289.41(a)(1b); 143B-289.41(b).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend the rules cited as 26 NCAC 03 .0101, .0103 and .0105.

Proposed Effective Date: October 1, 2010

Public Hearing:

Date: August 4, 2010

Time: 9:00 a.m.

Location: 1711 New Hope Church Road, Raleigh, NC 27609

Reason for Proposed Action: To establish by rule the procedure and filing fees for contested case hearings before the Office of Administrative Hearings pursuant to Senate Bill 202 (Appropriations Act 2009), Section 21.A.(a)(b)(c). The agency had specific authority to adopt emergency rules as provided in Senate Bill 202 (Appropriations Act 2009), Section 6.4(b). The agency adopted emergency rules effective on October 1, 2009. The emergency rules were replaced with temporary rules approved by the Rules Review Commission on November 19, 2009 and became effective December 1, 2009.

Procedure by which a person can object to the agency on a proposed rule: Written objections to the rules should be sent to Gene Cella, OAH General Counsel, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609 and received no later than August 16, 2010. The objection letter should clearly state which rule the objection is to and the reason for the objection.

Comments may be submitted to: Gene Cella, OAH General Counsel, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609; phone (919) 431-3067; fax (919) 431-3101; email gene.cella@oah.nc.gov

Comment period ends: August 16, 2010

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

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

- State
Local
Substantial Economic Impact (≥\$3,000,000)

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

None

**CHAPTER 03 - HEARINGS DIVISION**

**SECTION .0100 - HEARING PROCEDURES**

**26 NCAC 03 .0101 GENERAL**

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

(b) The Office of Administrative Hearings shall supply forms for use in contested cases. These forms shall conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.

(c) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings by facsimile (fax) or electronic mail by an attached file either in PDF format or a document that is compatible with or convertible to the most recent version of Microsoft Word. Electronic mail with attachment shall be sent by electronic transmission to: oah.clerks@oah.nc.gov. The faxed or electronic documents shall be deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed ~~document and document~~, one copy and the appropriate filing fee (if a fee is required by G.S. 150B-23.2) is received by OAH within seven business days following the faxed or electronic transmission. Other electronic transmissions, for example, electronic mail without attached file as specified in this Paragraph, shall not constitute a valid filing with the Office of Administrative Hearings.

(d) Every pleading and other documents filed with OAH shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.

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

*Authority G.S. 7A-750; 7A-751(a); 150B-23.2; 150B-40(c).*

**26 NCAC 03 .0103 COMMENCEMENT OF CONTESTED CASE: NOTICE AND FILING FEE**

(a) A contested case in the Office of Administrative Hearings is commenced by the filing of a petition as required by ~~G.S. 150B-23~~. G.S. 150B-23 and payment of the appropriate filing fee (if a fee is required by G.S. 150B-23.2).

(b) Within five days of filing a petition to commence a contested case, the Chief Administrative Law Judge shall assign an administrative law judge to the case. Within ten days of the filing of a petition commencing a contested case, the chief hearings clerk of the Office of Administrative Hearings shall serve a Notice of Contested Case Filing and Assignment upon

all who are parties to the dispute. The notice shall contain the following:

- (1) Name of case and date of filing;
- (2) Name, address, and telephone number of the administrative law judge; and
- (3) A request that the party send within 30 days a copy of the document constituting the agency action that caused the filing of the petition.

(c) In contested cases commenced by a person aggrieved involving the following causes of action, the petitioner shall pay a filing fee of one hundred twenty-five dollars (\$125.00):

- (1) Contested cases challenging certificate of need filed pursuant to G.S. 131E-188;
- (2) Contested cases challenging permit actions under G.S. 143-215.1, G.S. 143-215.10C, G.S. 143-215.15, and G.S. 143-215.108;
- (3) Contested cases where the amount in controversy is fifty thousand dollars (\$50,000) or greater.

(d) In contested cases commenced by a person aggrieved which do not involve the causes of action listed in Paragraph (c) of this Rule, the petitioner shall pay a fee of twenty dollars (\$20.00).

(e) The filing fee shall be waived in a contested case in which the petition is filed in forma pauperis and supported by such proofs as are required in G.S. 1-110. A petitioner seeking to have the filing fee waived under this Paragraph shall make the request by filing the appropriate OAH form with the chief hearings clerk prior to filing the petition for a contested case.

(f) The filing fee shall be waived in a contested case involving a mandated federal cause of action.

(g) The method of payment shall be:

- (1) cash;
- (2) money order;
- (3) certified check; or
- (4) check drawn on an attorney's trust or operating account.

*Authority G.S. 150B-23; 150B-23.2; 150B-33.*

**26 NCAC 03 .0105 DUTIES OF THE ADMINISTRATIVE LAW JUDGE**

In conjunction with the powers of administrative law judges prescribed by G.S. 150B-33 and G.S. 150B-36, the administrative law judge shall perform the following duties, consistent with law:

- (1) Hear and rule on motions;
- (2) Grant or deny continuances;
- (3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
- (4) Examine witnesses when deemed necessary to make a complete record and to aid in the full development of material facts in the case;
- (5) Make preliminary, interlocutory, or other orders as deemed appropriate;
- (6) Grant dismissal when the case or any part thereof has become moot or for other reasons;

~~and~~

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*PROPOSED RULES*

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(7) Order the State of North Carolina, when it is the losing party as determined by the presiding Administrative Law Judge, to reimburse the filing fee to the petitioner; and

~~(7)~~(8) Apply sanctions in accordance with Rule .0114 of this Section.  
*Authority G.S. 7A-751(a); 8C-1, Rule 614; 150B-23.2; 150B-33; 150B-36.*

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday, November 19, 2009 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jim R. Funderburk - 1st Vice Chair  
David Twiddy - 2nd Vice Chair  
Ralph A. Walker  
Jerry R. Crisp  
Jeffrey P. Gray

**Appointed by House**

Jennie J. Hayman - Chairman  
John B. Lewis  
Clarence E. Horton, Jr.  
Daniel F. McLawhorn  
Curtis Venable

**COMMISSION COUNSEL**

Joe Deluca (919)431-3081  
Bobby Bryan (919)431-3079

**RULES REVIEW COMMISSION MEETING DATES**

June 17, 2010                      July 15, 2010  
August 15, 2010                  September 16, 2010

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**RULES REVIEW COMMISSION**

**May 20, 2010**

**MINUTES**

The Rules Review Commission met on Thursday, May 20, 2010, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, John Lewis, Dan McLawhorn, Curtis Venable and Ralph Walker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Tammara Chalmers, Julie Edwards and Dana Vojtko.

The following people were among those attending the meeting:

Bob Hensley	DHHS/Division of Social Services
Anca Grozav	Office of State Budget and Management
Lisa Johnson	DHHS/Division of Social Services
Amy Chapman	DENR/Division of Water Quality
Sue Homewood	DENR/Division of Water Quality
Adriene Weaver	DENR/Division of Water Quality
Tammy Denning	Department of Transportation
Renee Roach	Department of Transportation
John Hoomani	Department of Labor
Christine Goebel	DOJ for DENR/Division of Coastal Management
Clint Pinyan	Board of Pharmacy
Jay Campbell	Board of Pharmacy
Nancy Pate	Department of Environment and Natural Resources
Denise Stanford	Licensing Board for General Contractors
Tom Miller	Real Estate Commission
Karissa Sluss	Real Estate Commission
Bonnie Bendell	DENR/Division of Coastal Management
Lynda Elliott	Board of Cosmetic Arts Examiners

**APPROVAL OF MINUTES**

The meeting was called to order at 9:02 a.m. with Ms. Hayman presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the April 15, 2010 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

04 NCAC 03M .0101, .0205 – Office of the Commissioner of Banks. No rewritten rules have been submitted and no action was taken.

04 NCAC 03M .0301, .0401, .0604 – Office of the Commissioner of Banks. No rewritten rules have been submitted and no action was taken.

10A NCAC 70F .0202, .0203, .0207 – Social Services Commission. The Commission approved the rewritten rules submitted by the agency.

10A NCAC 70G .0501 – Social Services Commission. The Commission approved the rewritten rule submitted by the agency.

10A NCAC 70H .0401 – Social Services Commission. The Commission approved the rewritten rule submitted by the agency.

10A NCAC 70I .0302, .0404, .0405 – Social Services Commission. The Commission approved the rewritten rules submitted by the agency.

15A NCAC 02B .0250, .0252 – Environmental Management Commission. The Commission approved the rewritten rules submitted by the agency.

15A NCAC 07H .0208, .0309 – Coastal Resources Commission. The Commission approved the rewritten rules submitted by the agency.

21 NCAC 12 .0208 – Licensing Board for General Contractors. The Commission approved the rewritten rule submitted by the agency.

**LOG OF FILINGS**

Chairman Hayman presided over the review of the log of permanent rules.

**Social Services Commission**

10A NCAC 70I .0301 – The Commission objected to the rule based on lack of statutory authority and ambiguity. In (g), it appears the agency was attempting to incorporate by reference the Department of Health and Human Services record retention policy. Since the department was the enforcer of these rules, as written this rule let the agency set the standards without going through rulemaking. There was no authority cited to do so. In addition, the website cited in the rule only applies to grants. It was not clear how this was meant to apply to all residential child care facilities. The Commission granted the Request for Waiver of Rule 26 NCAC 05 .0108(a) or (d) submitted by the Social Services Commission and approved the re-written rule.

**Department of Labor**

All permanent rules were approved unanimously.

**Department of Transportation**

The permanent rule was approved unanimously.

**Board of Chiropractic Examiners**

21 NCAC 10 .0206 - The Commission objected to the rule based on lack of statutory authority and ambiguity. In (a)(1), it is not clear what standards the Board will use in approving a course in radiologic technology. In addition, there is no authority cited to set occupational requirements for instructors. This objection applies to existing language in the rule.

**Board of Cosmetic Art Examiners**

All permanent rules were approved unanimously with the following exceptions:



21 NCAC 14F .0104 – This rule was returned to the agency at the agency's request.

21 NCAC 14I .0401 - The Commission objected to the rule based on ambiguity. In (c) it is not clear what is meant by "habitual drug or alcohol abuse." This objection applies to existing language in the rule.

21 NCAC 14N .0110 - The Commission objected to this rule based on lack of statutory authority. There is no authority cited to require a hair care teacher to take and pass an examination. While G.S. 88B-11 requires an examination for other teachers, Subsection (e) specifically does not require an examination for natural hair care teachers.

21 NCAC 14N .0113 - The Commission objected to this rule based on lack of statutory authority. Because there is no authority to give examinations to natural hair care teachers, there is no authority for (a)(5)(D) requiring extra study for those who fail the examination three times. As written there is no authority for Paragraph (b) because it requires all teacher candidates to attend a teacher training program. G.S. 88B-11 does not require a training program for those with adequate work experience. This objection applies to existing language in the rule.

12 NCAC 14N .0115 - The Commission objected to this rule based on lack of statutory authority. As written, the rule seems to require that all teachers have work experience. G.S. 88B-11 also allows a teacher to be licensed based on completion of a cosmetology, esthetician, or manicurist teacher curriculum. There is no authority to require natural hair care teachers to take an exam. This objection applies to existing language in the rule.

21 NCAC 14P .0111 - The Commission objected to this rule based on ambiguity. Paragraph (a) refers to Subchapter 14S. There is no Subchapter 14S in Chapter 14. It is not clear to what the rule is referring.

12 NCAC 14R .0101 – This rule was returned to the agency at the agency's request.

#### **Board of Pharmacy**

21 NCAC 46 .1418 - The Commission objected to this rule based on ambiguity. It is unclear what the precise roles between the pharmacy technician described in this rule and the pharmacist manager or supervisor is to be, especially as it concerns dispensing prescriptions.

The first motion to object to Rule .1418 on the basis of lack of statutory authority and ambiguity and approve Rule .2513 failed. Commissioners Crisp, Funderburk and Venable voted for the motion. Commissioners Gray, Hayman, Lewis, McLawhorn and Walker voted against the motion.

The second motion to object to Rule .1418 on the basis of ambiguity and approve Rule .2513 passed unanimously.

The Commission received more than 10 written letters of objection to this rule and if it is approved this rule will be subject to legislative review and a delayed effective date.

21 NCAC 46 .2513 was approved unanimously.

#### **Real Estate Commission**

All permanent rules were approved with the exception of 21 NCAC 58E .0602. Commissioners Crisp, Funderburk, Gray, Venable and Walker voted for the motion to object to Rule 58E .0602 and to approve the remainder of the rules from the Real Estate Commission. Commissioners Lewis and McLawhorn voted against the motion.

21 NCAC 58E .0602 - The Commission objected to this rule based on based on lack of authority and ambiguity. The agency has no authority to limit what use other people may make of Real Estate Commission developed materials that are public records. If that is not the intent of the rule, and the intent is to limit how providers of required annual review courses may use the materials, then the rule is not clear. The Real Estate Commission may limit how these materials are used by continuing education providers in offering required continuing education review courses.

#### **Building Code Council**

All permanent rules were approved unanimously.

#### **TEMPORARY RULES**

There were no temporary rules filed for review.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

There was no other business.

The meeting adjourned at 10:57 a.m.

The next scheduled meeting of the Commission is Thursday, June 17 at 9:00 a.m.

Respectfully Submitted,

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Dana Vojtko  
Publications Coordinator

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**LIST OF APPROVED PERMANENT RULES  
May 20, 2010 Meeting**

**SOCIAL SERVICES COMMISSION**

<u>Responsibilities of the Governing Body</u>	10A NCAC 70F .0202
<u>Finances, Fees and Insurance</u>	10A NCAC 70F .0203
<u>Staff</u>	10A NCAC 70F .0207
<u>Personnel</u>	10A NCAC 70G .0501
<u>Personnel</u>	10A NCAC 70H .0401
<u>Governance</u>	10A NCAC 70I .0301
<u>Responsibilities of the Governing Body</u>	10A NCAC 70I .0302
<u>Personnel Qualifications</u>	10A NCAC 70I .0404
<u>Personnel Positions</u>	10A NCAC 70I .0405

**LABOR, DEPARTMENT OF**

<u>Steel Erection</u>	13 NCAC 07F .0205
<u>Design, Construction and Testing</u>	13 NCAC 07F .0909

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Randleman Lake Water Supply Watershed: Protection and Mai...</u>	15A NCAC 02B .0250
<u>Randleman Lake Water Supply Watershed: Mitigation Program...</u>	15A NCAC 02B .0252

**COASTAL RESOURCES COMMISSION**

<u>Use Standards</u>	15A NCAC 07H .0208
<u>Use Standards for Ocean Hazard Areas: Exceptions</u>	15A NCAC 07H .0309

**TRANSPORTATION, DEPARTMENT OF**

<u>Permits-Weight, Dimensions and Limitations</u>	19A NCAC 02D .0607
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**GENERAL CONTRACTORS, LICENSING BOARD FOR**

<u>Construction Management</u>	21 NCAC 12 .0208
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**COSMETIC ART EXAMINERS, BOARD OF**

<u>License Renewal Waiver for Armed Forces</u>	21 NCAC 14A .0401
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<u>Space Requirements</u>	21	NCAC 14G .0103
<u>Equipment and Teachers</u>	21	NCAC 14G .0107
<u>Transfer of Credit</u>	21	NCAC 14I .0105
<u>Report of Enrollment</u>	21	NCAC 14I .0107
<u>Seal</u>	21	NCAC 14I .0108
<u>Recitation Room</u>	21	NCAC 14I .0301
<u>Equipment for Beginner Department</u>	21	NCAC 14J .0106
<u>Equipment in Advanced Department</u>	21	NCAC 14J .0206
<u>Live Model/Mannequin Performance Requirements</u>	21	NCAC 14J .0207
<u>Internships</u>	21	NCAC 14J .0208
<u>Supervision of Cosmetic Art Teacher Trainee</u>	21	NCAC 14L .0208
<u>Revocation of Licenses and Other Disciplinary Measures</u>	21	NCAC 14P .0108
<u>Operations of Schools of Cosmetic Art</u>	21	NCAC 14P .0113
<u>Cosmetology Curriculum</u>	21	NCAC 14P .0114

**PHARMACY, BOARD OF**

<u>Drug, Supplies and Medical Device Repository Program</u>	21	NCAC 46 .2513
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**REAL ESTATE COMMISSION**

<u>Broker-In-Charge</u>	21	NCAC 58A .0110
<u>Offers and Sales Contracts</u>	21	NCAC 58A .0112
<u>Residential Property Disclosure Statement</u>	21	NCAC 58A .0114
<u>Attendance and Participation Requirements</u>	21	NCAC 58A .1705
<u>Filing</u>	21	NCAC 58A .2001
<u>Escrow Account</u>	21	NCAC 58A .2002
<u>Applicability</u>	21	NCAC 58A .2101
<u>Postponement of Fees</u>	21	NCAC 58A .2102
<u>Postponement of Continuing Education</u>	21	NCAC 58A .2103
<u>Postponement of Postlicensing Education</u>	21	NCAC 58A .2104
<u>Proof of Eligibility</u>	21	NCAC 58A .2105
<u>Application for Approval</u>	21	NCAC 58C .0102
<u>Criteria for Approval</u>	21	NCAC 58C .0103
<u>Administration</u>	21	NCAC 58C .0206
<u>Program Structuring and Admission Requirements</u>	21	NCAC 58C .0302
<u>Criteria for Elective Course Approval</u>	21	NCAC 58E .0304
<u>Denial or Withdrawal of Approval</u>	21	NCAC 58E .0412
<u>Monitoring Attendance</u>	21	NCAC 58E .0510
<u>Purpose and Applicability</u>	21	NCAC 58E .0601
<u>Authority to Conduct Course</u>	21	NCAC 58E .0603
<u>Course Operational Requirements</u>	21	NCAC 58E .0604

**BUILDING CODE COUNCIL**

<u>NC Administrative Code - Approval Required</u>	107.3
<u>NC Building Code - Cooperative Innovative High School Pro...</u>	202
<u>NC Building Code - Business Group B Occupancies</u>	304.1
<u>NC Building Code - Educational Group E</u>	305.1

<u>NC Building Code - General</u>	3103.1
<u>NC Fire Code - Cooperative Innovative High School Program</u>	202
<u>NC Fire Code - Fire and Evacuation Drill Frequency and Pa...</u>	Table 405.2
<u>NC Plumbing Code - Identification of Nonpotable Water</u>	608.8
<u>NC Plumbing Code - Information</u>	608.8.1
<u>NC Plumbing Code - Color</u>	608.8.2
<u>NC Plumbing Code - Above-ground Sanitary Drainage and Ven...</u>	702.1
<u>NC Plumbing Code - Fittings</u>	702.4
<u>NC Plumbing Code - Inside Storm Drainage Conductors</u>	1102.2
<u>NC Plumbing Code - Fittings</u>	1102.7
<u>NC Residential Code - Maximum Slope</u>	R311.6.1
<u>NC Residential Code - Concrete and Masonry Foundation Walls</u>	R404.1

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge  
JULIAN MANN, III*

*Senior Administrative Law Judge  
FRED G. MORRISON JR.*

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
NC Alcoholic Beverage Control Commission v. Ciro Maya Maya, T/A Carolina Sports Arena	08 ABC 2411	Overby	06/29/09	
NC Alcoholic Beverage Control Commission v. Abdu Suleh Ali d/b/a Harlam Mini Mart	08 ABC 2980	Overby	01/07/10	
NC Alcoholic Beverage Control Commission v. Danny Wilson Hayes, Debra Ann Hayes, T/A Double D Sports Bar and Grill	09 ABC 0006	Gray	01/28/10	
N.C. Alcoholic Beverage Control Commission v. Du Cong Phan T/A Good Food Market	09 ABC 0565	May	05/18/09	
North Carolina Alcoholic Beverage Control Commission v. Mayra Leticia Rodriguez, T/A La Perla Del Pacifico	09 ABC 0975	Gray	07/28/09	
N.C. Alcoholic Beverage Control Commission v. Roberta White Bridges T/A Christina Restaurant and Catering	09 ABC 1899	May	07/28/09	
N.C. Alcoholic Beverage Control Commission v. Mobashar Hassan Chaudhary	09 ABC 3579	Gray	09/30/09	
N.C. Alcoholic Beverage Control Commission v. Partnership T/A El Paraiso II	09 ABC 4171	May	02/16/10	
N.C. Alcoholic Beverage Control Commission Young's Market LLC and Anjanette Young Enmyeche	09 ABC 4931	Webster	03/11/10	24:21 NCR 1910
NC Alcoholic Beverage Control Commission v. La Tienda Mexicana Corp. T/A Tienda La Unica	09 ABC 4379	Brooks	09/17/09	
NC Alcoholic Beverage Control Commission v. Jose Elias Bautista T/A Bar Mexico Lindo	09 ABC 4680	May	12/30/09	
NC Alcoholic Beverage Control Commission v. Uwem Eyo Equan, T/A Sahara Restaurant and Lounge	09 ABC 4682	May	11/13/09	
NC Alcoholic Beverage Control Commission v. KAM Properties Inc. T/A Grays Creek Superette	09 ABC 4686	Gray	10/19/09	
N.C. Alcoholic Beverage Control Commission v. Bee Nui Carson, T/A Big Boys Market	09 ABC 5209	Brooks	12/11/09	
NC Alcoholic Beverage Control Commission v. Rimal Enterprise, Inc., T/A R B FoodMarket	09 ABC 5213	Brooks	12/11/09	
NC Alcoholic Beverage Control Commission v. Alhobishi Convenience Stores & Rentals, Inc T/A Happy Mart 4	09 ABC 5293	Lassiter	01/19/10	
NC Alcoholic Beverage Control Commission v. Mike's Private Club, Inc., T/A EL Rincon Caliente	09 ABC 5423	Brooks	12/10/09	
NC Alcoholic Beverage Control Commission v. Xuan Huong Thi Le T/A Billiards and Grill	09 ABC 5424	Brooks	12/10/09	
NC Alcoholic Beverage Control Commission v. Rumba D Cache Inc, T/A Rumba D Cache	09 ABC 6277	Brooks	03/25/10	
NC Alcoholic Beverage Control Commission v. Yong Cha Kim, T/A Asian Odyssey	09 ABC 6412	Overby	02/12/10	
NC Alcoholic Beverage Control Commission v. Alive Noda, Inc, T/A Alive Noda	10 ABC 0028	Brooks	04/15/10	
<b><u>BOARD OF COSMETIC ARTS EXAMINERS</u></b>				
Douglas Van Essen v. NC State Board of Cosmetic Arts Examiners	09 BCA 2773	Webster	01/20/10	24:18 NCR 1638
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Mary D. Malone v. State of North Carolina, Department of Crime Control., Victims Compensations Services	08 CPS 2463	Gray	07/09/09	
Tony Ray Ross v. North Carolina State Highway Patrol	08 CPS 2546	Overby	10/06/09	
Ricky F. Smith v. Crime Control and Public Safety	08 CPS 2582	May	08/06/09	
Robert Melvin v. Janice Carmichael, NC Crime Victim Compensation	08 CPS 2634	Elkins	06/01/09	
B-Red Enterprises, Inc., Linda Parrish v. Secretary of Crime Control and Public Safety	08 CPS 3043	Webster	06/23/09	
Spencer's Incorporated of Mount Airy, NC d/b/a Ararat Rock Products Company and Jim Crossingham, III v. North Carolina Highway Patrol	08 CPS 3399	May	08/25/09	24:11 NCR 908

**CONTESTED CASE DECISIONS**

Apex PTO & Trailer, Inc. Morris F. Purdy v. NC Dept. of Crime Control & Public Safety, Division of State Highway Patrol, Carrier Enforcement Section	09 CPS 0010	Lassiter	08/17/09
Peggy Gulley, Gulley's Backhoe Service v. Crime Control and Public Safety	09 CPS 0085	Overby	06/04/09
Peter Thomas, Southeast Forest Works, LLC v. NC State Highway Patrol	09 CPS 1257	Gray	05/19/09
Allen Bender, AB's Gravel Driveways, LLC v. North Carolina State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1259	Gray	06/29/09
Bruce E. Tyndall v. NC Dept. of Crime Control & Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1494	Webster	07/29/09
Ramdog Enterprises, LLC v. NC Highway Patrol, Troop G, District V and Captain F.T. Stout	09 CPS 1531	Brooks	01/13/10
Cape Romain Contractors, Inc., Andrew Dupre v. North Carolina Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1599	Gray	07/02/09
John Emiliani, Jr., v. N.C. Division of Motor Vehicles	09 CPS 1604	Brooks	06/15/09
Clifton Artis v. Secretary of Crime Control and Public Safety	09 CPS 1732	Gray	10/26/09
Alexander Rybak v. NC DMV, State Highway Patrol	09 CPS 1834	Brooks	08/11/09
Shelby T. Wallace v. Motor Carrier Enforcement, NC State Highway Patrol	09 CPS 1840	Brooks	08/11/09
Wanda K. McNeill v. Crime Victims Compensation Commission	09 CPS 3873	Gray	02/05/10
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2087	Brooks	05/19/09
Covenant Trucking Company, Inc. v. NC Dept. of Crime Control & Public Safety	09 CPS 2361	Cella	08/11/09
SEKO-Charlotte, Inc. v. NC State Highway Patrol	09 CPS 2380	May	07/28/09
James Christian Laubach and the Auto Barn, Inc. v. NC State Highway Patrol	09 CPS 2385	Mann	07/28/09
Joseph Moseley v. NC State Highway Patrol	09 CPS 2390	Gray	12/22/09
George Allen Cook (Case #08-35780), v. N.C. Department of Crime Control and Public Safety, Victim Compensation Services Division	09 CPS 2391	May	07/29/09
Cynthia K. Shreve v. Victims Compensation Program	09 CPS 2404	May	06/23/09
Robert C. Bacon v. NC State Highway Patrol	09 CPS 2426	Gray	12/18/09
Allen Robinson v. NCSHP	09 CPS 2449	Overby	06/17/09
Walter D. Cochran v. NC Dept. of Crime Control and Public Safety	09 CPS 2458	Cella	08/14/09
Gregory Vett Arnold v. NC State Highway Patrol	09 CPS 2509	Gray	08/25/09
Jeffrey Andrew Kennedy v. NC State Highway Patrol, Citation and Notice of Assessment	09 CPS 2511	May	07/09/09
George M. Gause v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 2551	Webster	09/30/09
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2885	May	06/11/09
Shane D. Norman v. N.C. Crime Victims Compensation Commission	09 CPS 3112	Brooks	02/18/10
Derik Core V. NCHP	09 CPS 3500	Overby	07/29/09
Graves Construction Services Inc, Highway Patrol Motor Carrier Division	09 CPS 3537	Gray	01/29/10
Randy Stewart v. State Highway Patrol	09 CPS 3646	Brooks	10/09/09
Rachel Strickland v. NC Crime Victims Compensation Commission	09 CPS 3650	Brooks	10/06/09
D&D Auto Transport, Jimmy Donald v. NC State Highway Patrol	09 CPS 3690	Cella	10/30/09
Goodfellas Auto Transport v. NC State Highway Patrol	09 CPS 3757	Gray	01/15/10
Jennifer Elizabeth Bollinger v. NC Dept. of Crime Control & Public Safety, Division of Victims Compensation Commission	09 CPS 3765	Gray	10/07/09
CL Hill Hauling, LLC, Christopher Hill v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 3784	Gray	09/08/09
KJ Logistics, LLC v. NC State Highway Patrol	09 CPS 3876	Gray	09/08/09
Jorge Rodriguez v. Secretary of Crime Control & Public Safety	09 CPS 3921	Gray	09/10/09
TMC Transportation Inc. v. NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 3996	Lassiter	09/17/09
Douglas Harris v. NC Dept. of Crime Control and Public Safety	09 CPS 4023	Brooks	11/23/09
Antonio LeGrande v. Victim Compensation Service Division	09 CPS 4065	Lassiter	10/07/09
McIntyre Holdings Inc. D/B/A TurfMasters Sod Farms v. NC Crime Control and Public Safety, NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 4067	Cella	03/08/10
John Kevin Hartley v. Dept of Crime Control and Public Safety, Highway Patrol	09 CPS 4152	Brooks	04/01/10
Andrew S. McJunkin v. NC Victim and Justice Services	09 CPS 4206	Brooks	10/07/09
Larry Williams NOLA Bus Tours Inc. v. Crime Control and Public Safety	09 CPS 4209	Elkins	03/01/10
Shirley Wilson v. State Highway Patrol	09 CPS 4332	Gray	10/07/09
Darryl Tyrone Davis, D&G Excavating Services	09 CPS 4363	Gray	10/07/09
Ronald William Duke v. NC State Highway Patrol	09 CPS 4366	Lassiter	10/13/09
Robert D. Cooper v. NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 4434	Overby	03/01/10
Linda S. Johnson	09 CPS 4450	May	12/28/09
Triad Solutions, Inc., Gene Petty v. NC State Highway Patrol Motor Carrier Enforcement Division	09 CPS 4455	Brooks	10/20/09
Chrystal N. Clark v. NC Victims Compensation Commission v. Respondent	09 CPS 4451	Lassiter	10/15/09
Lowell Thomas Blue v. NC State Highway Patrol	09 CPS 4509	Gray	10/07/09
Lindsey Carol Bollinger v. NC Dept. of Crime Control & Public Safety, Division of Victims Compensation Services	09 CPS 4514	May	09/27/09
Larry George Willoughby v. NC Department of Crime Control and Public Safety	09 CPS 4569	Gray	12/16/09
Michelle Kyong Woods v. Victim Compensation	09 CPS 4622	Overby	01/27/10
Palmetto Sealing Co., Inc. v. NC Secretary of Crime Control and Public Safety	09 CPS 4632	Gray	11/30/09
Eddy L. Cheek v. NC Dept. of Crime Control & Public Safety, State Highway Patrol	09 CPS 4633	May	10/09/09
NOLA Bus Tours Inc, NC State Highway Patrol	09 CPS 4739	Elkins	03/01/10
Crst Malone v. NC State Highway Patrol	09 CPS 4741	Overby	01/27/10
Gary Martin Greens v. Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 4798	Gray	04/15/10
Yurry Demyanchuk v. RR Sheets, NC State Highway Patrol	09 CPS 4799	Lassiter	09/29/09
Piedmont Cheerwine Bottling Co. v. NC Dept. of Crime Control and Public Safety	09 CPS 4852	Brooks	11/09/09
Phillip J. Evans v. Highway Motor Carrier	09 CPS 4953	Overby	10/28/09

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Jesse M Staton v. NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 4997	Overby	01/21/10
Poplar Ridge Lumber Company, Blaine J. Snyder, II v. NC State Highway Patrol	09 CPS 5089	Gray	02/16/10
Atlantic Construction Services, Inc., Frederick George Lempe II v. NC Dept. of Crime Control and Public Safety	09 CPS 5161	Lassiter	12/01/09
Juan Pablo Rivera Salinas Sealy Agents Waterproofing v. NC State Highway Patrol	09 CPS 5385	Brooks	02/03/10
Boxley Block, LLC v. NC State Highway Patrol Motor Carrier Enforcement Administration	09 CPS 5445	May	02/04/10
CMT Trucking Inc. Charles M. Tyson v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 5446	Gray	12/16/09
Da Qiang Yang Hi-Tech Trucking Inc v. Crime Control and Public Safety	09 CPS 5999	Lassiter	03/29/10
Palmetto Sealing Inc v. NC Secretary Crime Control and Public Safety	09 CPS 6169	Overby	01/27/10
Michael Davis v. NC Department of Crime Control and Public Safety, State Highway Patrol	09 CPS 6190	Gray	01/27/10
Gilberto Santiago v. NC Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 6191	Gray	01/27/10
William Terry Ivey v. NC Hwy Patrol, Division of Motor Vehicles	09 CPS 6250	Elkins	02/26/10
Premier Transportation & Warehouse, Inc., Kevin Beck	09 CPS 6586	Brooks	05/10/10
Curtis Junior Miles v. NC State Highway Patrol	09 CPS 6854	Gray	03/10/10
Mack Padgett v. Crime Control and Public Safety	10 CPS 0107	Brooks	03/01/10
Stephen McNeil DBA S&L Transport Co v. Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	10 CPS 0295	Lassiter	04/06/10
KLS Trucking Inc, v. State Highway Patrol	10 CPS 0448	Overby	04/15/10
Christopher D. Beam v. Crime Victims Compensation	10 CPS 0588	May	04/19/10

A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

Henry Neese and Patricia Neese v. NC Department of Agriculture and Consumer Services	09 DAG 2899	Mann	11/25/09	24:18 NCR 1662
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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Patricia L. Tiller v. NC Dept. of Health & Human Ser., Health Care Personnel Registry Sec	07 DHR 0302	Lassiter	07/14/09	
Martha's Group Home, Inc. v. NCDHHS, Ms. Emery Milliken, General Counsel	07 DHR 1714	Gray	02/24/10	
Teresa S. Reid, Reid's Health Care v. DHHS, Division of Medical Assistance	08 DHR 0596	Elkins	01/21/10	
Ely Enterprises, Inc., D/B/A A Home Away from Home v. DHHS	08 DHR 0906	Gray	02/22/10	
Envisions of Life LLC v. Hearing Office – 05 Division of Medical Assistance	08 DHR 0967	Lassiter	07/01/09	
Cynthia Curtis v. Department of Health and Human Services, Division of Health Service Regulation	08 DHR 1485	Brooks	05/07/09	24:07 NCR 408
MedExpress Pharmacy LTD. V. NC Dept. of Health and Human Services and NC Dept. of Administration	08 DHR 1566	Elkins	11/30/09	
Lilieth P. Brown v. Office of Administrative Hearings	08 DHR 1807	Morrison	08/13/09	
Blue Ridge Healthcare Surgery Center-Morganton, LLC & Grace Hospital, Inc. v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section & Carolina Digestive Care, PLLC and HMB Properties, LLC	08 DHR 2216	Brooks	06/19/09	24:11 NCR 913
Bethlehem Center of Charlotte v. Child and Adult Care Food Program, Division of Public Health, NC Dept. of Health and Human Services	08 DHR 2284	Brooks	05/26/09	
Edward A. Patterson v. Division of Child Development	08 DHR 2364	Webster	06/02/09	
Choices Group Home Inc., Victor Vega v. N.C. Department of Health and Human Services	08 DHR 2404	Gray	07/16/09	
MJKM, LLC d/b/a Pueblo Supermarket v. NC Dept. of Health and Human Services, Division of Public Health, Women and Children's Health Section	08 DHR 2443	Gray	09/03/09	
Jasper Tyson v. Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	08 DHR 2444	May	05/21/09	
Choices Group Home Inc, Victor Vega v. Office of Administrative Hearings, Department of Health and Human Services	08 DHR 2512	Gray	07/16/09	
Tabitha Raeford v. DHHS, Division of Health Service Regulation	08 DHR 2566	Gray	03/26/10	
Pepper Dawn Kirk-McLendon Peppermint Daycare v. N.C Department of Health and Human Services, Division of Child Development	08 DHR 2571	Mann	07/07/09	24:07 NCR 416
Edward Royal, Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	08 DHR 2698	Overby	05/27/09	
C. Vann Pierce, Executive Officer, Heritage Care of Rocky Mount, Licensee, License No. Hal-033-005 v. N.C DHHS, Division of Health Service Regulation, Adult Care Licensure Section	08 DHR 2732	Lassiter	11/03/09	24:16 NCR 1435
Josephine Keke v DHHS, Division of Health Service Regulation, Health Care Personnel Registry	08 DHR 2739	Gray	02/08/10	
Abundant Life Child Care Center, Tiffany D. Monroe v. Division of Child Development, June Locklear, Brenda Faircloth	08 DHR 2954	Elkins	06/03/09	
Outreach Home v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 2981	Gray	09/17/09	
L&J Group Homes, Inc. v. NC DHHS/Div. of Health Service Regulation, Mental Health	08 DHR 3108	Lassiter	10/06/09	
Amy G. Poteat v. Health Care Personnel Registry	08 DHR 3489	May	06/03/09	
Freedom House Recovery Center, Inc. v. NC Division of Health Service Regulation	08 DHR 3674	Gray	10/13/09	
Kathy Dunning Bright v. Health Care Personnel Registry	09 DHR 0057	Overby	08/04/09	
Gaynelle Smith v. DHHS	09 DHR 0223	May	02/24/09	
Marie Jagne v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Registry Section	09 DHR 0444	Lassiter	07/27/09	
Brenda V. Patterson v. Division of Child Development	09 DHR 0667	Webster	06/02/09	
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning	09 DHR 1261	Gray	06/08/09	

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Center v. NC Dept. of Health and Human Services				
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning	09 DHR 1262	Gray	06/08/09	
Center v. NC Dept. of Health and Human Services				
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning	09 DHR 1263	Gray	06/08/09	
Center v. NC Dept. of Health and Human Services				
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning	09 DHR 1264	Gray	06/08/09	
Center v. NC Dept. of Health and Human Services				
Genesis Family Health Care Inc. c/o James Collins v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 1413	Gray	08/18/09	
Michael Parks Fresh Start Residential Services Inc. v. NC DHHS Division of Health Service Regulation Mental Health Licensure Certification	09 DHR 1474	Overby	06/17/09	
Spring House Residential Facility v. N.C. Dept. of Health and Human Services DHSR MHLIC	09 DHR 1482	May	06/19/09	
Victoria Martin v. Surry County Dept of Health and Human Services AFDC/Work First	09 DHR 1533	May	06/04/09	
Yolanda Portillo v. N.C. Department of Health and Human Services	09 DHR 1558	Webster	07/17/09	
David E. Fornes v. NC Dept. of Health and Human Services	09 DHR 1730	Overby	08/24/09	
Regina T. Jones v. N.C. Department of Health and Human Services	09 DHR 1859	Webster	06/23/09	
Sharay C. Vinson v. North Carolina Department of Health and Human Services, Division of Health Service Regulation	09 DHR 1884	Brooks	07/10/09	
Glorious Child Care, Linda T. James v. Department of Health and Human Services, Division of Child Development	09 DHR 1951	Elkins	03/05/10	
Rae'gan Smith v. NC Dept. of Health and Human Services	09 DHR 1974	Brooks	09/14/09	
Chreatha Alston v. NC Dept. of Health and Human Services	09 DHR 1980	Elkins	08/06/09	
Vickie Hovis Abernethy v. Third Party Recovery	09 DHR 1984	Brooks	08/24/09	
Jason M. Paris (petitioner, Christine O. Jacobs (representing petitioner) v. N.C. Department of Health and Human Services (DHHS)	09 DHR 2296	May	07/10/09	
Bernice Taylor v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 2297	May	08/07/09	
Gerald A .Harper v. NC Dept. of Health and Human Services	09 DHR 2349	Gray	10/07/09	
Contour Service, Inc., (MHL #090-101) v. Department of Health Services, Division of Health Service Regulation	09 DHR 2350	May	07/21/09	
Community Alternative Resources, Inc. Wayne L. Burch and Michelle M. Dolphus v. Dept. of Health and Human Services	09 DHR 2456	May	08/28/09	
Charlene M. Hatfield v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 2503	Gray	08/31/09	
Helen Webb v. Department of Health and Human Dept. of Child Dept	09 DHR 2589	Webster	07/17/09	
Lanika Ortega v. North Carolina Department of Health and Human Services	09 DHR 2637	Lassiter	07/27/09	
Ndeye Ngone Diene v. DHHS-Health Care Registry	09 DHR 2640	Webster	08/27/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 2654	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 2655	Webster	07/17/09	
Rose Boyd v. NC Dept. of Health and Human Services	09 DHR 2706	Brooks	08/17/09	
John Okoroma v. Mecklenburg County Dept. of Social Services	09 DHR 2710	May	07/24/09	
Angela Conner Tawes, Conner's Cape Hatteras Supermarket, Inc v. North Carolina Department of Health and Human Services	09 DHR 2717	Gray	06/15/09	
Melonie L. Keith, John David Keith v. Central Billing DHHS Controllers Office	09 DHR 2779	Webster	10/22/09	
Sharon M. Hill v. NC Department of Health and Human Services	09 DHR 2809	Lassiter	07/27/09	
Cipriano Mendez Chiquito v. NC Dept. of Health and Human Services, Division of Public Health	09 DHR 2824	May	08/12/09	
Trinia E. McCorkle v. North Carolina Department of Health and Human Services	09 DHR 2829	Brooks	07/10/09	
Kashina L. Davis v. North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 2832	Gray	07/01/09	
Brenda V. Patterson v. N.C. State Department of Social Services	09 DHR 2836	Webster	07/17/09	
Brenda Patterson v. Division of Child Development	09 DHR 2837	Webster	07/17/09	
Edward A. Patterson v. Division of Child Development	09 DHR 2838	Webster	07/17/09	
Brenda V. Patterson v. Division of Child Development	09 DHR 2839	Webster	07/17/09	
Edward A. Patterson v. Division of Child Development	09 DHR 2841	Webster	07/17/09	
John and Candice Danner v. NC Dept. of Health and Human Services	09 DHR 2936	Brooks	08/28/09	
Wake Radiology Services, LLC v. d/b/a Wake Radiology Northwest Raleigh Office v. DHHS Division of Health Service Regulation, CON Section and Pinnacle Health Services of North Carolina, LLC, d/b/a Raleigh Radiology at Cedarhurst	09 DHR 2976	Cella	01/29/10	24:20 NCR 1773
Rickie Annas v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 2962	Brooks	08/10/09	
Berta Spencer v. NC Dept. of Health and Human Services	09 DHR 3000	Cella	10/07/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 3002	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 3003	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 3004	Webster	07/17/09	
Mary's House, Inc., MHL #041-288, Craig Thomas, Executive Director v. Ms. Emery Milliken, General Counsel, Department of Health and Human Services, Office of Legal Affairs	09 DHR 3008	Mann	07/22/09	
Keshea Montgomery v. Randolph County Dept. of Health and Human Services	09 DHR 3012	Mann	08/27/09	
Shawanda Ann Barnes V. Cherry Hospital	09 DHR 3076	Lassiter	09/28/09	
St. Francis of Charlotte, Inc. Francis Ford Provider #83022329B and 83022329H v. NC Dept. of Health and Human Services, Div. of Medical Assistance	09 DHR 3101	Brooks	09/23/09	
Edward A. Patterson v. Division of Child Development	09 DHR 3113	Webster	07/17/09	
Brenda V. Patterson v. Division of Child Development	09 DHR 3114	Webster	07/17/09	
Matta Inc. Peaceful Dominion, Issac Matta, v. Div of Health Service Regulation, MH Licensure & Certification	09 DHR 3761	Brooks	02/26/10	



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Ernest Hines v. Cherry Hospital	09 DHR 3266	Gray	09/17/09	
Sandra Wright v. Division of Child Development	09 DHR 3434	Elkins	08/24/09	
Wake Radiology Services LLC, Wake Radiology Diagnostic Imaging Inc., Wake Radiology Consultants PA, Smithfield Radiology Inc., and Raleigh MR Imaging LP v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Pinnacle Health Services of North Carolina, LLC, d/b/a Raleigh Radiology at Cedarhurst	09 DHR 3473	Gray	02/22/10	24:21 NCR 1922
Carolyn Diane Ragin v. Health Care Personnel Registry	09 DHR 3502	Gray	08/31/09	
Edward A. Patterson v. Division of Child Development	09 DHR 3503	Webster	07/17/09	
Tamekia Cain v. Athena Foreman, HCPR Investigator, NC Dept. of Health and Human Services	09 DHR 3536	Elkins	10/01/09	
Amanda L. Brewer v. DHHS	09 DHR 3541	Elkins	08/21/09	
Kenneth and Kimberly Thomason v. NC Dept. of Health and Human Services	09 DHR 3592	Gray	10/08/09	
Tommy G. Davis v. NC Dept. of Revenue	09 DHR 3647	Gray	09/02/09	
Heather C. Briggs v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 3651	May	07/29/09	
Dr. Ann Markiewioz, Gaston Memorial Hospital v. The Carolinas Center for Medical Excellence	09 DHR 3660	Webster	09/28/09	
Julian E. Cameron, Jr. DDS v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 3663	Gray	08/12/09	
Katonia L. Davis v. Office of Administrative Hearings, Ms. Emery Edwards Milliken	09 DHR 3683	Elkins	10/08/09	
Angel's Childcare, Treva Richardson v. Division of Child Development, Dept. of Health and Human Services	09 DHR 3688	Elkins	10/08/09	
Brenda Fay Simmons v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 3752	Brooks	08/12/09	
Lloyd K. Howell v. NC Dept. of Health and Human Services	09 DHR 3756	Lassiter	09/14/09	
Pamela Ann Hedgecock v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 3763	Brooks	10/30/09	
TLC Adult Home, Sonja Hazelwood v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 3776	Gray	09/16/09	
Lesia Hammonds DBA Sampsons Family Care Home v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section	09 DHR 3872	Gray	11/13/09	
Alvester Miller, III v. NC Dept. of Health and Human Services	09 DHR 4003	Overby	10/26/09	
Omnicare of Hickory, Jackie Knight	09 DHR 4069	Brooks	10/07/09	
Charles D. Harris v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 4107	Brooks	10/29/09	
Robbie Wilson Community Service Eyvette L. Abbott v. Center Pointe Human Services	09 DHR 4169	Brooks	01/22/10	
St. Mary's Home Care Agency v. NC Dept. of Health and Human Services	09 DHR 4170	Gray	10/23/09	
Higher Development, LLC Robert Waters v. Division of Medical Assistance	09 DHR 4235	Overby	10/15/09	
Vickie Blair v. Office of Administrative Hearings	09 DHR 4236	May	09/27/09	
Leilani Michelle Adames v. Linda Waugh, RN, BSN HCPR Investigator Health Care Personnel Registry Investigations	09 DHR 4275	May	09/22/09	
Erica M. Small v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 4299	Brooks	09/11/09	
Elite Care Service, Inc. Barsheem Chapman Executive Director v. NCDHHS Division of Health Service Regulation	09 DHR 4331	Gray	10/19/09	
Labrisha Keller v. Health Care Personnel Registry	09 DHR 4336	Lassiter	02/04/10	
Rebecca Leigh Sadowski v. Dept. of Health and Human Services, Division of Health Service Registry	09 DHR 4362	May	08/26/09	
Target Pharmacy v. NC Dept. of Health and Human Services	09 DHR 4397	May	10/05/09	
Erie R. Washington v. Dept. of Health and Human Services	09 DHR 4399	May	10/01/09	
Erica Moore v. Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 4429	Brooks	10/09/09	
Vametoa L. Deal v. North Carolina Health Care Services	09 DHR 4497	Brooks	10/16/09	
Valley Hospital Medical Center v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 4548	Overby	09/14/09	
Anthony Hosea Wiseman v. Dept. of Health and Human Services	09 DHR 4567	May	09/02/09	
Roberta Latasha Wilson v. DHHS	09 DHR 4687	Overby	12/02/09	
Estate of Hattie Mae Johnson v. DHHS, Div of Medical Assistance	09 DHR 4689	May	12/08/09	
Ashley D. Bass v. Division of Health Service Regulation, DHHS, Health Care Personnel Investigations Program	09 DHR 4710	Webster	02/22/10	
Ward Life Outreach of Cape Fear v. Division of Health Service Regulation Health Care Personnel Registry	09 DHR 4711	Gray	11/18/09	
Desmond Lashawn Wooten v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 4743	Elkins	03/04/10	24:21 NCR 1940
A Positive Life, Inc. v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	09 DHR 4956	Lassiter	10/22/09	
Daphne Hall, Access Family Services, DHHS	09 DHR 5013	Brooks	04/27/10	
Shenetta Mumford v. Health Care Registry	09 DHR 5062	Gray	01/29/10	
James Phifer, Executor of the Estate of Sarah Geneva Phifer and Robert Wilford Phifer v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 5063	Brooks	12/07/09	
Sushila Shrestha v. Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 5087	Elkins	12/14/09	
Charlene Gray v. Dept. of Health and Human Services	09 DHR 5154	Overby	11/04/09	
Healthquest Pharmacy, Darin Cunningham v. DHHS	09 DHR 5226	Elkins	02/26/10	
Tiffany Marie Campbell v. Health Care Personnel Registry	09 DHR 5361	Gray	02/02/10	
Brenda Faye Simmons v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 5364	May	11/23/09	
Joloniki L. Gibbs v. Health Care Personnel Registry	09 DHR 5417	Webster	03/19/10	
Debbie L. Williams v. Surry Co, DHHS	09 DHR 5598	Mann	03/03/10	
Victoria Darnette Edwards v. Dept. of Health and Human Services, Division of Health Service	09 DHR 5623	Brooks	12/11/09	

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Cherokee Indian Hospital Pharmacy v. DMA Pharmacy Division	09 DHR 5644	Brooks	01/28/10
Stephanie Lassiter v. DHHS, Division of Child Development	09 DHR 5645	Overby	04/16/10
Devon J. Artis v. NC Dept. of Health and Human Services, Health Care Personnel Registry Section	09 DHR 5667	May	11/16/09
KT Williams Group II, Sabrina Williams v. DHHS Hearings Office	09 DHR 5700	Brooks	04/19/10
Steven N. Leviner v. Health Care Personnel Register	09 DHR 5864	May	02/22/10
People Achieving Living Skill v. Div. of Health Service Regulation	09 DHR 6090	Elkins	02/26/10
Pastor Carolyn J. Fernandez and Pastor Jesse Fernandez v. Alexis d. Underwood and The Guilford Center	09 DHR 6106	Brooks	12/07/09
AbleCare Corporation MHL#041-8855 v. Division of Health Service Regulation	09 DHR 6349	Brooks	02/16/10
Lynne Furlough Owner Kingdom Kids Christian Childcare Center, Inc	09 DHR 6602	Overby	03/12/10
Gemika Steele, First Steps Child Dev Center, DHHS, Division of Public Health Child and Adult Care Food Program	09 DHR 6694	Brooks	01/28/10
Jarvis Monte Gordon v. DHHS, Division of Health Service Regulation	09 DHR 6743	Webster	03/19/10
Gwedolyn Lee v. DHHS, HealthCare Personnel Registry	09 DHR 6801	Overby	05/07/10
Raqual Naomi Pena v. DHHS	10 DHR 0104	Lassiter	03/01/10
Roslynne White v. DHHS, Division of Health Service Regulation	10 DHR 0484	Overby	05/07/10
Victoria Darnette Edwards v. State of NC Officer of Administrative Hearings	10 DHR 0529	Lassiter	03/16/10
William P. Miller, Chapter 11 Trustee, For Debtor, Faiger M. Blackwell, HAL-0001-005 v. DHHS, Adult Care Licensure Section	10 DHR 0699	Brooks	04/12/10
William P. Miller, Chapter 11 Trustee, For Debtor, Faiger M. Blackwell, HAL-0170002 v. DHHS, Adult Care Licensure Section	10 DHR 0700	Brooks	04/12/10
Community's Child Enrichment Center, Ageline Sumter v. Div. of Child Development, DHHS	10 DHR 0827	Brooks	04/20/10

**DEPARTMENT OF ADMINISTRATION**

Meherrin Indian Tribe, a/k/a Meherrin Tribe of North Carolina and Meherrin Tribe of North Carolina, a/k/a Meherrin Indian Tribe v. NC State Commission of Indian Affairs	08 DOA 2068	Morrison	06/15/09	
Meherrin Tribe of North Carolina by and through Douglas Patterson v. North Carolina Commission of Indian Affairs	09 DOA 2367	Morrison	06/15/09	
Myers' Investigative and Security Services, Inc v. DOA	09 DOA 3931	Webster	01/28/10	24:20 NCR 1801
Battlecat Productions, Inc., D/B/A Battlecat Marine v. East Carolina University and State of NC Dept. of Purchase and Contract	09 DOA 4788	Gray	10/08/09	
NC Indian Cultural Center, Inc. v. NC State Commission of Indian Affairs	09 DOA 4809	Overby	11/19/09	

**DEPARTMENT OF CORRECTION**

Rufus Thomas Blackwell, III, v. (N.C. Department of Correction) Department of Payroll & Overpayment Manager	09 DOC 1296	Overby	07/08/09
Robert Allen Sartori v. K Dufault, C. Bray WCI Mail Staff, Department of Correction	09 DOC 3121	Gray	07/01/09
Sebastian X. Moore v. Theodis Beck (NC Dept. of Correction) et al	09 DOC 4749	Webster	11/03/09
Charles W. Johnson v. Supt. David Mitchell and Mt. View Administrative Authority	09 DOC 4883	May	11/03/09
Gary L. Johnson v. DH Officer Alston, BOB Lewis, Division of Prisons	09 DOC 5624	Elkins	02/26/10

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Danny Earl Keel v. NC Criminal Justice Education and Training Standards Commission	07 DOJ 1711	Cella	07/30/09	
Darryl Gerald v. NC Criminal Justice Education and Training Standards Commission	08 DOJ 1872	May	01/2/10	
Tamika Richardson v. North Carolina Sheriff's Education and Training Standards Commission	08 DOJ 2403	Elkins	05/07/09	24:07 NCR 437
Bruce A. White v. NC Sheriffs' Education and Training Standards Commission	08 DOJ 2490	Brooks	08/14/09	
Weston Samuels v. NC Dept. of Justice, Campus Police Program	08 DOJ 3312	Elkins	08/24/09	
Jackie Marie Daniels v. N.C. Criminal Justice Education and Training Standards Commission	09 DOJ 0218	Elkins	07/24/09	
Andrew Quincy Brown v. Sheriffs' Education and Training Standards Commission	09 DOJ 0463	Gray	12/21/09	
Darlene Fure v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 0466	Lassiter	07/22/09	
Tyrone Scott v. North Carolina Private Protective Services Board	09 DOJ 0658	Gray	05/28/09	
Ronald Wynn v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 0949	Overby	07/15/09	
Donald Koons, Jr. v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 0956	Gray	07/27/09	
Peggy Sue Shipp v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 1782	Webster	08/28/09	
Jaime Patrick Clayborne v. Department of Justice Company Police Program	09 DOJ 1949	Webster	05/27/09	
Ross Patton Gilmore v. NC Alarm Systems Licensing Board	09 DOJ 2452	Morrison	06/04/09	
William Marquis Davis v. North Carolina Private Protective Services Board	09 DOJ 2506	Morrison	06/04/09	
Ross Patton Gilmore v. North Carolina Alarm Licensing Board	09 DOJ 2452	Morrison	06/04/09	
William Marquis Davis v. NC Private Protective Services Board	09 DOJ 2506	Morrison	06/04/09	
John D. Dykes v. NC Dept. of Justice Company Police Program	09 DOJ 2639	May	06/18/09	
Jimmie Ray Edmondson, Jr. v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 2823	Lassiter	08/04/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 2840	Webster	07/17/09	
Shonda Lavette Higgins v. NC Private Protective Services Board	09 DOJ 3009	Overby	08/13/09	
Bobby Brown v. NC Private Protective Services Board	09 DOJ 3028	Webster	11/19/09	
Michelle Yvette Pollard v. Sheriffs' Education and Training Standards Commission	09 DOJ 3031	Lassiter	03/10/10	
Timothy Mark Masters v. NC Alarm Systems Licensing Board	09 DOJ 3037	Morrison	09/14/09	
George Lee Shaver, III v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 3072	Gray	03/15/10	
Nighee Von Superville v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 3073	Gray	08/10/09	
Elizabeth Marie Lancaster v. NC Private Protective Services Board	09 DOJ 3189	Webster	11/13/09	
Kenneth Gray Forcum v. NC Alarm Systems Licensing Board	09 DOJ 3300	Webster	11/12/09	
Heath Dwayne Kinney v. NC Alarm Systems Licensing Board	09 DOJ 3301	Webster	11/12/09	
Richard Lee Powers, Sr. and Richard Lee Powers, Jr. v. Private Protective Services Board	09 DOJ 3488	Morrison	12/15/09	

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Richard Lee Powers, Sr. and Richard Lee Powers, Jr. v. Private Protective Services Board	09 DOJ 3489	Morrison	12/15/09	
Cindy Smith Ojeda v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 3643	Brooks	12/07/09	
Anthony Lyle Gentry v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 3865	Gray	08/05/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 4025	Webster	08/28/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 4108	Webster	08/28/09	
Jeffrey David Elkie v. Sheriffs' Education and Training Standards Commission	09 DOJ 4125	Elkins	01/14/10	
Amanda Watson Whitaker v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 4126	Overby	10/02/09	
Walter Armand Bedard v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 4127	Lassiter	11/05/09	
Cynthia Denise Walker v. Sheriffs Education and Training Standards Commission	09 DOJ 4131	Webster	02/02/10	
Edward A. Patterson v. Attorney General's Office	09 DOJ 4146	Webster	08/28/09	
Luther Daniel Stidham v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 4219	May	10/01/09	
Antonio Garcia v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 4365	Gray	10/07/09	
Charles Eugene Parker v. Criminal Justice Education and Training Standards Commission	09 DOJ 4629	May	02/03/10	
Richard Cale Manning v. Criminal Justice Education and Training Standards Commission	09 DOJ 4630	Gray	01/04/10	
Clyde Devon Boger v. NC Sheriffs' Education and Training Standards Commission Re: Richard Squires	09 DOJ 4853	Lassiter	09/29/09	
Frank Burton Scofield v. Private Protective Service Board	09 DOJ 5064	Lassiter	03/12/10	
Melvin Downing, Triton Special Police Dept. v. Company Police Program	09 DOJ 5316	May	11/10/09	
Angelo Anthony Rinaldi v. Criminal Justice Education and Training Standards Commission	09 DOJ 5353	Gray	02/10/10	
Demarquis A. Redfern v. Private Protective Services Board	09 DOJ 5465	Morrison	05/03/10	
Dustin Matthew James v. Sheriffs' Education and Training Standards Commission	09 DOJ 6254	Gray	05/07/10	
Annette Leigh Rhem v. Private Protective Services Board	10 DOJ 0388	Webster	03/23/10	
Jay Trueblood v. Alarm Systems Licensing Board	10 DOJ 0534	Webster	03/23/10	
<b><u>DEPARTMENT OF LABOR</u></b>				
Duane J. Thomas v. NC Dept. of Labor, NC Board of Funeral Service, Forest Lawn Mortuary	09 DOL 4348	May	11/02/09	
<b><u>DEPARTMENT OF TRANSPORTATION</u></b>				
Alvin J. Smith v. NC Div of Motor Vehicles, Driver Ass't Branch	09 DOT 2616	Brooks	06/09/09	
<b><u>DEPARTMENT OF STATE TREASURER</u></b>				
Queen N. Thompson v. NC Office of State Treasurer	05 DST 0037	Brooks	12/01/09	
Donna F. Levi v. Department of State Treasurer	09 DST 0161	Gray	07/17/09	
Hilda Harris Member ID: 1725605 v. Department of State Treasurer Retirement Systems Division	09 DST 1290	Overby	05/27/09	
Queen N. Thompson v. NC Office of State Treasurer	09 DST 3682	Brooks	12/01/09	
Linda Duane Stalvey v. NC Dept. of Treasury	09 DST 4073	May	11/09/09	
Bonnie S. Tyndall v. State Treasurer Retirement Services Division	10 DST 0208	Lassiter	03/22/10	
<b><u>EDUCATION, STATE BOARD OF</u></b>				
John R. Hall v. State Board of Education Licensure	08 EDC 1750	Brooks	07/09/09	
John David Erwin v. NC Dept. of Public Instruction	08 EDC 1827	Brooks	05/27/09	
Alexa Molden v. State Board of Education	08 EDC 2371	Webster	03/11/10	
Frederick Moore v. State Board of Education, Department of Public Instruction	08 EDC 3035	May	09/30/09	24:16 NCR 1448
Michelle Sara Rodriguez v. National Board Certification Appeals Panel/Division of Talent Management and Development	08 EDC 3219	Brooks	08/21/09	
Courtney M. Sears, Petitioner v. Department of Public Instruction Licensure Section	08 EDC 3644	Morrison	06/08/09	
Jennifer Satinsky v. North Carolina State Board of Education	08 EDC 3650	Morrison	06/05/09	
Kenneth H. Leftwich v. June Atkinson, Superintendent of Public Instruction	08 EDC 3690	May	06/29/09	
Lindsey Forde-Smith v. North Carolina State Board of Education	09 EDC 1848	Gray	07/09/09	
Provisions Community Development Corporation dba Provisions Academy v. State Board of Education	09 EDC 2081	Elkins	07/27/09	24:11 NCR 969
Sandra Chesser v. State Board of Education	09 EDC 4435	May	10/01/09	
Ashley Chrisp v. NC Dept. of Public Instruction	09 EDC 5160	Brooks	10/23/09	
<b><u>DEPT. OF ENVIRONMENT AND NATURAL RESOURCES</u></b>				
Robert Taylor, Grier Fleischauer, Sue Bankes, and Carol Faley v. NC Dept. of Environment and Natural Resources, Division of Coastal Management and TP, Inc.	07 EHR 1765	Gray	06/19/09	24:11 NCR 881
The Town of Franklin Government of NC v. NC Dept. of Environment and Natural Resources, Division of Water Quality and Duke Energy Carolinas, LLC	07 EHR 2201	Brooks	09/24/09	
The Jackson County Government of NC v. NC Dept. of Environment and Natural Resources, Division of Water Quality and Duke Energy Carolinas, LLC	08 EHR 0019	Brooks	09/24/09	
Old Mill Forestry, LLC v. N.C. Department of Environment and Natural Resources, Division of Water Quality	08 EHR 1806	Lassiter	05/08/09	
Friends of the RockyRiver, Inc v. N.C. DENR, Div. of Water Quality and Town of Siler City	08 EHR 2474	Gray	09/28/09	24:16 NCR 1453
Cherokee County Health Department James Pann(managing member, Creek Ridge Holdings, LLC) v. N.C. Department of Environment and Natural Resources	08 EHR 2986	Gray	05/27/09	
Olde Beau General Partnership v. NC Dept. of Environment and Natural Resources, Division of Land Resources	09 EHR 0122	Gray	08/18/09	24:11 NCR 983
Saint Gobain Containers, Inc. v. NC Dept. of Environment and Natural Resources, Division of Air Quality	09 EHR 1616	Overby	10/23/09	
Jeff and Terry Thompkins v. DENR and Appalachian District Health Department	09 EHR 1783	Overby	04/01/10	

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John C Campbell Folk School, John M Clarke, Bldgs & Ground Mgr v. NCDENR Public Water Supply Section	09 EHR 1852	Overby	06/03/09
Doug Jernigan v. NC Dept. of Environment and Natural Resources, Division of Air Quality	09 EHR 3118	Elkins	10/16/09
Amy Jamison v. State Board of Education, Dept. of Public Instruction	09 EDC 3265	Brooks	04/27/10
Appalachian Stove Fab, Inc., James Rice v. Western North Carolina Regional Air Quality Agency	09 EHR 3785	Gray	08/06/09
Jonathan McDaniel and Cheryl Kirchner v. DENR, Division of Coastal Management	09 EHR 4153	Gray	03/15/10
Woodfield Gardens Apartments, Loretta Sims, v. NC Dept. of Environment and Natural Resources, Division of Envir Health	09 EHR 4330	May	10/09/09
Neal F. Hoffman v. DENR, Division of Environmental Health	09 EHR 4555	Overby	03/15/10
Kyle D. Page v. NC Dept. of Environment and Natural Resources	09 EHR 4623	Gray	10/07/09
Hilda Satterwhite v. Pitt County Environmental Health	09 EHR 4882	Webster	03/05/10
Town of Lilesville v. NCDENR/Public Water Supply Section	09 EHR 5286	May	12/05/09
Sidney Bruton, III v. NC Dept. of Environment and Natural Resources, Division of Air Quality	09 EHR 5351	Gray	11/05/09
Kenneth Chambers v. DENR, Division of Land Resources	09 EHR 6595	May	04/19/10

**BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS**

NC Board of Examiners for Engineers and Surveyors v. Mr. Michael J. Dykes, PE	08 ELS 2275	Webster	06/10/09
Linda R. Sharp v. NC Board of Examiners for Engineers and Surveyors	09 ELS 3268	Lassiter	09/01/09

**DEPARTMENT OF INSURANCE**

Gary L. Childers v. NC Teachers' and State Employees' Comprehensive Major Medical Plan	08 INS 2251	Brooks	06/18/09
John Randolph Ingram v. NC Teachers' and State Employees' Comprehensive Major Medical Plan	08 INS 2952	Gray	09/08/09
Elizabeth M. Bailey v. NC Teachers' and State Employees' Comprehensive Major Medical Plan	09 INS 0661	Lassiter	08/03/09
Erin Tapley v. Blue Cross Blue Shield	09 INS 2393	Gray	10/07/09
Lucy J. Lagnese v. NC State Health Plan	09 INS 2812	Brooks	08/14/09
David M. Jordan v. NC Teachers' and State Employees' Comprehensive Major Medical Plan	09 INS 3005	Cella	09/14/09
Barbara A Evans v. State Health Plan	09 INS 3067	Lassiter	07/27/09
Sandra Hunter v. BCBS of North Carolina	09 INS 3183	Lassiter	09/14/09
Patricia Sharp v. NC State Health Plan Blue Cross/Blue Shield	09 INS 3192	Gray	08/31/09
Sandra Ann Warren v. State Health Plan	09 INS 5641	Brooks	02/23/10

**MISCELLANEOUS**

Rodney Dale v. Judge Angela Hoyle	09 MIS 2704	May	06/09/09
Benjamin Pace v. Wake County Superior-District Court and Information Center	09 MIS 5188	Elkins	11/13/09

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C.W. McAdams v. NC Dept. of Transportation	05 OSP 0626	Morrison	08/14/09	
Wade Bryan Bulloch v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	05 OSP 1178	Gray	01/15/10	24:16 NCR 1394
Alvita C. Byers v. Elizabeth Cox, The office of Human Resources and The North Carolina School of the Arts	07 OSP 1514	Brooks	05/20/09	24:07 NCR 396
Edward Alan Roper v. Broughton Hospital, Dept. of Health and Human Services	07 OSP 2186	Brooks	05/18/09	
Lorraine Smith v. DENR, Zoological Park	07 OSP 2279	May	02/08/10	
Fatima Akhtar v. NC Dept of Commerce	08 OSP 0171	Gray	08/05/09	
Julie Norris Watson v. NC DPI	08 OSP 0541	Brooks	05/22/09	
Kathleen Hardiman v. NC Aquarium at Pine Knoll Shores, Jay Barnes, Director, James Lewis and Lonnie Burke	08 OSP 0868	Gray	11/10/09	
Simon Camara v. NC Central University	08 OSP 1345	Lassiter	10/07/09	
Danny Ellis v. DHHS, Health Service Regulation	08 OSP 1362	Lassiter	02/22/10	
Janice F. Stokes v. NC Dept. of Correction, Division of Community Corrections	08 OSP 2150	Gray	11/16/09	
Isaac T. Perkins v. NC Dept. of Corrections	08 OSP 2242	Overby	09/16/09	24:11 NCR 939
Sharon Annette Mercer v. N.C. Division of Motor Vehicles	08 OSP 2293	Webster	08/14/09	24:07 NCR 447
Jacqueline H. Davis v. NC Dept. of Correction	08 OSP 2342	Overby	08/19/09	
Jody Lynn Hinson v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	08 OSP 2409	Overby	06/03/09	
Tonya M. Jones v. NC Dept. of Health and Human Services	08 OSP 2418	Webster	06/12/09	24:11 NCR 955
Richard C. Foy v. NC Dept. of Insurance	08 OSP 2581	Gray	05/21/09	
Denise Vee v. Cumberland County Department of Public Health	08 OSP 2955	Elkins	07/22/09	24:07 NCR 465
Elsie Hinton v. NC DOT	08 OSP 3111	Lassiter	04/07/10	24:22 NCR 1985
Leland D. Smith v. Department of Cultural Resources	08 OSP 3217	Gray	03/19/10	24:20 NCR 1761
Darryll Williams v. NC Dept. of Health and Human Services, Murdoch Developmental Center	08 OSP 3661	Cella	09/18/09	
Jerry Lewis Monroe, Sr. v. Fayetteville State University	09 OSP 0098	Gray	09/03/09	
Annie L. Gadson v. NC A&T University	09 OSP 0261	May	09/11/09	
Bernard Westbrook v. NC A&T University, Ms. Linda McAbee, Vice Chancellor for HR	09 OSP 0461	Brooks	02/11/10	
Haresh Motiroam Advani v. ECU, Division of Finance and Administration	09 OSP 1733	Lassiter	02/11/10	
David S. Nateman v. N.C. Department of Cultural Resources	09 OSP 1903	Webster	12/07/09	24:16 NCR 1477
Timothy Strong v. Central Regional Hospital, NC DHHS	09 OSP 2401	Elkins	05/27/09	
Benjamin Hicks v. Central Regional Hospital, NC DHHS	09 OSP 2399	Elkins	05/27/09	
Felicia D. McClain v. DENR/Soil & Water Conservation	09 OSP 2550	Webster	08/12/09	
Ronald Gene Ezzell, Jr. v. NC State Highway Patrol	09 OSP 2588	Morrison	08/05/09	24:11 NCR 998
Marcie A. Elder v. Lincoln County Department of Social Services	09 OSP 2781	Brooks	02/05/10	
Thomas E. Freeman, Jr. v. NC DHHS/Central Regional Hospital And Whitaker School	09 OSP 2826	Webster	07/17/09	
Cecil L. Glaze v. UNC Charlotte	09 OSP 2884	Mann	07/29/09	

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Vicky Williams Herring, NC Employment Security Commission	09 OSP 3501	Elkins	07/30/09	
Hope C. Freeman v. Bladen County Department of, Social Services	09 OSP 3504	Elkins	07/24/09	
Tiajuana Evans v. O'Berry Neuro-Medical Treatment Center	09 OSP 3530	Lassiter	08/31/09	
Francisa Okafor v. NC Dept. of Health and Human Services	09 OSP 3533	Gray	09/30/09	24:20 NCR 1827
Charles Nathan v. Robeson Co. DSS Foster Care Unit	09 OSP 3543	Elkins	10/08/09	
Wilbert Riggin v. Scotland County Public Schools	09 OSP 3653	Elkins	10/05/09	
Marcus Lamont Hill, Sr. v. Wayne Correctional Center	09 OSP 3790	Lassiter	09/18/09	
Terryl Underwood v. O'Berry Center	09 OSP 3896	Elkins	03/16/10	
Sarah M. Brake v. State Board of Elections	09 OSP 4061	Lassiter	10/06/09	
Cynthia Bizzell v. Durham Public Schools	09 OSP 4070	Lassiter	08/24/09	
Glenn Hodge v. NC Dept. of Transportation	09 OSP 4094	Lassiter	08/18/09	
Randall S. Smith v. Carolina Copy c/o UNC at Chapel Hill	09 OSP 4109	Lassiter	08/31/09	
Clifton Cox v. Caswell Center	09 OSP 4241	Overby	10/29/09	
David T. McPhun v. State Health Plan	09 OSP 4457	Lassiter	01/26/10	
Virginia (Gin) Ivey Leggett v. Pathways LME	09 OSP 4498	Lassiter	08/31/09	
Tina McMillian v. Employment Security Commission of NC	09 OSP 4568	Gray	11/20/09	
Ruby H. Cox v. Tim Davis, Employment Security Commission	09 OSP 4774	Overby	10/05/09	
Argy R. Crowe v. Charlotte Mecklenburg Schools/UI	09 OSP 4786	Lassiter	10/20/09	
Thomas E. Freeman, Jr. v. The people associated with NC Dept. of Health and Human Services and Whitaker School	09 OSP 4795	Overby	09/18/09	
James Alan McManus v. Dept. of Secretary of State	09 OSP 5044	Elkins	05/05/10	
Harriette E. Smith v. UNC General Administration	09 OSP 5189	Elkins	10/30/09	
Linda D. Stalvey v. Division of Vocational Rehab, DHHS	09 OSP 6015	Mann	03/22/10	
Pamela Lynn Jordan v. Forsyth County Department of Social Services	09 OSP 6435	Brooks	03/05/10	
Scott Minter v. Pender County Schools Board of Education	09 OSP 6449	Morrison	04/14/10	
Janet R. Reed v. Brunswick County Dept. of Social Services	09 OSP 6718	May	05/07/10	
Marie Barton Backus v. Union County Health Dept	09 OSP 6719	Brooks	03/16/10	
Charlene Ratliff v. Department of Correction	10 OSP 0109	May	04/19/10	
Christopher D. Beam v. Dept. of Crime Victims Compensation Commission	10 CPS 0588	May	04/19/10	

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Sarah D. Larson v. N.C. Department of the Secretary of State	08 SOS 1200	Overby	06/04/09	24:07 NCR 478
Robert Lee Evans v. NC Office of Administrative Hearings	09 SOS 2300	Lassiter	06/03/09	
Asali J. Howard v. North Carolina Department of The Secretary Of State	09 SOS 2707	May	07/16/09	
Pamela Nickles v. Dept. of Secretary of NC State	09 SOS 3120	Brooks	10/16/09	
Stanley Young v. The Notary Public Section	09 SOS 4001	Brooks	09/18/09	
Jeremy Glen Blow v. NC Office of the Secretary of State	09 SOS 4245	Overby	09/14/09	
Martha C. Graybeal v. NC Dept. of the Secretary of State Certification Filing Division	09 SOS 4273	Brooks	10/07/09	
Brandi Alexis Meeker v. Dept. of the Secretary of State	09 SOS 4580	Overby	10/29/09	
Diana King Barnes v. NC Dept. of the Secretary of State	09 SOS 4906	Gray	12/02/09	

**UNC HOSPITALS**

Carlos A Perez-Sanchez v. UNC Hospitals	09 UNC 1294	Overby	06/03/09	
Bobbie Perlow v. UNC Hospitals	09 UNC 1606	Brooks	07/15/09	
Nicole Bryant v. UNC Hospitals	09 UNC 2022	Lassiter	06/16/09	
Jennifer Thompson Stewart v. UNC Hospitals	09 UNC 2147	Mann	08/07/09	
Cynthia K. Yellock v. UNC Hospitals	09 UNC 2298	Mann	07/21/09	
Jennifer Jacobs v. UNC Hospitals	09 UNC 2409	Mann	07/21/09	
Ryan Rockey v. UNC Hospitals	09 UNC 2587	May	07/15/09	
Mary Ann Strickland v. UNC Hospitals	09 UNC 2712	Overby	06/04/09	
James Tyler Utt v. UNC Hospitals	09 UNC 2892	May	09/22/09	
Alan Greene v. UNC Hospitals	09 UNC 2894	Overby	08/04/09	
Angela M. Aldridge v. UNC Hospitals	09 UNC 3338	Elkins	10/08/09	
Kathleen G. Finch v. UNC Hospitals	09 UNC 3418	Gray	08/31/09	
R. Michael Pearson v. UNC Hospitals	09 UNC 3423	Gray	08/31/09	
Darice Witherspoon v. UNC Hospitals	09 UNC 3428	Gray	07/30/09	
Timothy H. Keck v. UNC Hospitals	09 UNC 3528	Gray	08/06/09	
Marion Munn v. UNC Hospitals	09 UNC 3531	Gray	08/31/09	
Cynthia D. Baker v. UNC Hospitals	09 UNC 3680	Gray	09/02/09	
Eilene Renee Alston v. UNC Hospitals	09 UNC 3926	Gray	08/31/09	
Karen E. Current v. UNC Hospitals	09 UNC 4019	Gray	09/08/09	
John C. Presley v. UNC Hospitals	09 UNC 4020	Gray	07/21/09	
Richard F. Shoe v. UNC Hospitals	09 UNC 4396	Elkins	11/24/09	
Alberto Berri v. UNC Hospitals	09 UNC 4718	Overby	10/06/09	