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

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

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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.

FILING DEADLINES

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

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

NOTICE OF RULE-MAKING PROCEEDINGS

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of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

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

NOTICE OF TEXT

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

END OF REQUIRED COMMENT PERIOD
(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after publication or until the date of any public hearing held on the proposed rule, whichever is longer.
(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

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

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G. S. 150B-21.3, Effective date of rules.
EXECUTIVE ORDER NO. 4

CLEMENCY

WHEREAS, Article III, Section 5(6) of the Constitution of North Carolina, vests the power of clemency exclusively with the Governor.

WHEREAS, the Constitution of North Carolina empowers the Governor with sole, unrestricted, and unlimited discretion to exercise the power of clemency to pardon, commute, or grant reprieves, except in cases of impeachment.

WHEREAS, North Carolina General Statute, Section 15A-838, the Crime Victims’ Rights Act, requires, the Governor’s Clemency Office to notify certain victims, as defined by North Carolina General Statute, Section 15A - 830, when it is considering commuting the defendant's sentence or pardoning the defendant.

WHEREAS, crime victims and prosecutors should have the right to be notified, and the general public has the right to know, if the convicted perpetrator in a particular case has a petition for a reprieve, commutation, or pardon actively being considered before the Governor’s Clemency Office.

NOW THEREFORE, by the authority vested in me as Governor of the State of North Carolina. IT IS ORDERED:

Section 1. The Governor’s Clemency Office will create for public posting a listing of the names of every individual whose application for a reprieve, commutation, or pardon is actively being considered.

Section 2. The list of names will be publicly posted on a state governmental website. Additionally, the Governor’s Clemency Office will post the list of names on a bulletin board outside of its office for public inspection during normal business hours.

Section 3. In addition to the applicant's name, information related to the individual's offense, conviction date, and length of sentence should also be publicly available.

Section 4. Beyond the requirements of the Crime Victims’ Rights Act, North Carolina General Statute, Section 15A-838, the Governor’s Clemency Office will notify the relevant crime victim and prosecutor in every case where the convicted perpetrator has a petition for a reprieve, commutation, or pardon actively being considered by the Governor’s Clemency Office.

Section 5. For all petitions now actively being considered by the Governor’s Clemency Office, public posting will take effect within thirty days from the effective date of this Executive Order. All other petitions subsequently filed, and actively considered, will be posted within thirty days of filing.

Section 6. Exceptions to this Executive Order may be made in capital cases where the Office of the Attorney General ensures that the victim's family and the relevant District Attorney's office are notified as to clemency petitions, and in other special cases, such as with claims of "actual innocence", where any delay for public posting and comment would cause further unjust incarceration or record of conviction. In such cases, the Clemency Office must notify the Governor's Office of Legal Counsel immediately.

This Executive Order is effective immediately and shall remain in effect, as written, until terminated or amended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this 6th day of March 2001.

__________________________________
Michael F. Easley
Governor

ATTEST:

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

U.S. Department of Justice

Civil Rights Division

JDR:MSR:NT:jdh:par
DJ 166-012-3
2001-0043

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

February 16, 2001

Robert E. Hornik, Jr., Esq.
The Brough Law Firm
1829 East Franklin St., Suite 800-A
Chapel Hill, NC 27514

Dear Mr. Hornik:

This refers to the annexation (Ordinance No. 00-34) and its designation to Ward 4 of the Town of Tarboro in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on January 5, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Finally, we wish to take this opportunity to inform you that beginning January 29, 2001, Section 5 submissions sent to the Attorney General, other than through the United States Postal Service, should be addressed, or may be delivered to: Chief, Voting Section, Civil Rights Division, Department of Justice, 1800 G. Street, N.W., Room 7254, Washington, D.C. 20006. Our postal box address (P.O. Box 66128, Washington, D.C. 20035-6128) remains unchanged.

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section
February 23, 2001

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, NC 27835-7207

Dear Mr. Holec:

This refers to three annexations (Ordinance Nos. 00-134, 00-150, and 00-151) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on December 27, 2000 and January 10, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Finally, we wish to take this opportunity to inform you that beginning January 29, 2001, Section 5 submissions sent to the Attorney General, other than through the United States Postal Service, should be addressed, or may be delivered to: Chief, Voting Section, Civil Rights Division, Department of Justice, 1800 G. Street, N.W., Room 7254, Washington, D.C. 20006. Our postal box address (P.O. Box 66128, Washington, D.C. 20035-6128) remains unchanged.

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section
NORTH CAROLINA DEPARTMENT OF LABOR

IN REQUEST FOR DECLARATORY )
BY NORTH CAROLINA CITIZENS )
FOR BUSINESS AND INDUSTRY) 

I, Cherie K. Berry, the North Carolina Commissioner of Labor, issue this Declaratory Ruling pursuant to G.S. 150B-4, on behalf of the North Carolina Department of Labor (the "Department"). The Department issues this Ruling in response to a Petition for Declaratory Ruling dated February 19, 2001 from Thomas R. West of Poyner & Spruill L.L.P. on behalf of North Carolina Citizens for Business and Industry ("NCCBI").

This Declaratory Ruling addresses the validity of the verbatim adoption of the Federal Ergonomics Program adopted by the Department on November 14, 2000 as an amendment to 13 NCAC 07F.0101 ("State Ergonomics Rule"). For reasons explained fully below, I conclude that: (1) the State Ergonomics Rule was void ab initio because it was promulgated prior to the effective date of the federal ergonomics program which the State Ergonomics Rule adopts by reference, and (2) declaring the State Ergonomics Rule invalid and adopting a new State rule, if necessary, will resolve any doubt about the validity of the State Ergonomics Rule, which is in the best interests of both the Department and the individual and corporate citizens of North Carolina.

This Declaratory Ruling will be binding on the Department with regard to the validity of the State Ergonomics Rule, as adopted on November 14, 2000.

STATEMENT OF FACTS

On November 14, 2000, the Department purported to promulgate a State Ergonomics Rule which adopted verbatim the Federal Ergonomics Program, published that same date in the Federal Register by the federal Occupational Safety and Health Administration ("OSHA"). The Department published a "Notice of Verbatim Adoption of Federal Standards" in the North Carolina Register on December 15, 2000. This notice stated, in pertinent part, that the Occupational Safety and Health Division of the Department "has submitted a permanent rule change to 13 NCAC 07F.0101, General Industry to incorporate the verbatim adoption of the Federal Ergonomics Program found at 65 FR 68261-68870, November 14, 2000." The Department purported to adopt the new State Ergonomics Rule pursuant to G.S. 150B-21.5(c).

In accordance with G.S. 150B-21(f), the Department submitted with the Rule a "Federal Law Rule Certification" dated November 14, 2000, which stated that the new State Ergonomics Rule was required by "29 CFR 1952.23(a)(2) [sic] and G.S. 95-131(a) in order for North Carolina= s Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina= s state plan status under the federal Occupational Safety and Health Act of 1970." This certification also stated that "[the State Ergonomics Rule] will be effective November 14, 2000 pursuant to the provisions of G.S. 150B-21.3(e)."


ANALYSIS

I. THIS DECLARATORY RULING IS ISSUED IN ACCORDANCE WITH THE NORTH CAROLINA ADMINISTRATIVE PROCEDURE ACT

The North Carolina Administrative Procedure Act ("North Carolina APA") provides that upon request of a person aggrieved, an agency must issue a declaratory ruling as to the validity of a rule, except when the agency for good cause finds issuance of a declaratory ruling undesirable. G.S. 150B-4(a) (2001). A person aggrieved is "any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision." G.S. 150B-2(6) (2001).

This Declaratory Ruling is in response to such a request by NCCBI, an organization that qualifies as a person aggrieved because it is both a person (as defined by G.S. 150B-2(7)) and a group of persons that will be directly and indirectly affected substantially in property and employment by the State Ergonomics Rule. NCCBI is a nonprofit, nonpartisan trade association with more than 2,300 member companies representing approximately 1.1 million employees. NCCBI= s membership includes small and large businesses, as well as many local school systems, public and private colleges and universities, and community colleges. NCCBI

1 The Department mistakenly cited 29 CFR 1952.23(a)(2) in support of the State Ergonomics Rule. No such federal regulation does or has ever existed. The Department intended to cite 29 CFR 1953.23(a)(2).
and its member businesses will be affected substantially in their property and employment on a daily basis by the State Ergonomics Rule and the costs and significant efforts associated with compliance.

North Carolina's courts repeatedly have recognized that associations such as NCCBI can be persons aggrieved. See e.g., ACT-UP Triangle v. Comm'n for Health Serv., 345 N.C. 699, 704-05, 483 S.E.2d 388, 391 (1997) (holding that judicial review of Commission=s denial of rule-making petition was available to AIDS activist group pursuant to G.S. 150B-20(d), which provides for judicial review in accordance with Article 4 of North Carolina APA, which defines aggrieved person=s right to judicial review of agency decision, G.S. 150B-43); Save Our Rivers, Inc. v. Town of Highlands, 113 N.C. App. 716, 723, 440 S.E.2d 334, 339 (1994); rev=d on other grounds, 341 N.C. 635, 461 S.E.2d 333 (1995) (holding that non-profit environmentalist corporation composed of Macon County residents who used river qualified as person aggrieved by permit modification increasing local wastewater treatment plant=s discharge capacity issued by Division of Environmental Management); Citizens for Clean Indus. v. Lofton, 109 N.C. App. 229, 234, 427 S.E.2d 120, 123 (1993) ("There seems to be no dispute that CCI [citizens= environmentalist group] and City are aggrieved persons."). Moreover, this State=s courts have defined the term person aggrieved broadly:

The expression "person aggrieved" has no technical meaning. What it means depends on the circumstances involved. It has been variously defined: "Adversely or injuriously affected; damned, having a grievance, having suffered a loss or injury, or injured; also having cause for complaint. More specifically the word(s) may be employed meaning adversely affected in respect of legal rights, or suffering from an infringement or denial of legal rights."

In re Assessment of Sales Tax, 259 N.C. 589, 595, 131 S.E.2d 441, 446 (1963) (interpreting predecessor judicial review statute, which did not define the term) (citations omitted) (quoted in Empire Power Co. v. N.C. Dep't of Evm't, Health and Natural Resources, 337 N.C. 569, 588, 447 S.E.2d 768, 779 (1994) (interpreting G.S. 150B-23(a)).

Because NCCBI is a person aggrieved by the Department=s adoption of the State Ergonomics Rule and because sound public policy dictates that the Department issue this Declaratory Ruling, the Department is obligated, pursuant to G.S. 150B-4(a), to respond to NCCBI=s Request and issue this Declaratory Ruling regarding the validity of the State Ergonomics Rule.

II. NORTH CAROLINA=S OCCUPATIONAL SAFETY AND HEALTH PROGRAM MUST BE AS EFFECTIVE AS THE FEDERAL OSHA PROGRAM

Federal regulations require North Carolina=s Department of Labor to maintain and enforce an occupational safety and health program ("State Program") which is "at least as effective as in providing safe and healthful employment and places of employment as the standards promulgated under . . . the Act." 29 C.F.R. 1902.1(b), et seq., and 1952.154(c). North Carolina=s State Program was granted final approval by the U.S. Department of Labor effective December 10, 1996, and concurrent federal enforcement authority over our State Program was relinquished at that time. 29 C.F.R. 1952.154(a), 1952.155. Since this final approval, North Carolina has exercised independent control over the operation and enforcement of its State Program.

In order to maintain a State Program that is as effective as the Federal Program, federal regulations require that North Carolina "shall promulgate a State standard adopting such new Federal standard, . . . or an at least as effective equivalent thereof, within six months of the date of promulgation of the new Federal standard . . . ." 29 C.F.R. 1953.23(a)(2). An OSHA regulation generally is deemed to be promulgated when it is published in the Federal Register. See, e.g., Horsehead Resource Dev. Co., Inc. v. EPA, 130 F.3d 1090 (D.C. Cir. 1997); United Tech. Corp. v. OSHA, 836 F.2d 52 (2d Cir. 1987). Therefore, 29 C.F.R. 1953.23(a)(2) requires North Carolina to promulgate a State standard adopting a new federal standard within six months of the date the federal standard is published in the Federal Register. Applying this rule to the new Federal Ergonomics Program, North Carolina must promulgate a corresponding State standard on or before May 14, 2001.

The requirement that our State adopt occupational safety and health standards equally effective to federal standards is mirrored in North Carolina law, which provides that the Commissioner of Labor must adopt federal OSHA standards verbatim unless alternative state standards that are as effective as the federal standards adopted. G.S. 95-131(a). Section 95-131(a) provides that all federal OSHA standards "shall be adopted as the rules of the Commissioner [of Labor] of this State unless the Commissioner decides to adopt an alternative State rule as effective as the federal requirement . . . ." Also pursuant to this statute, the North Carolina Administrative Procedure Act ("North Carolina APA"), codified at G.S. 150B, governs the adoption of such rules by the Commissioner.

A. The Federal Ergonomics Program Was Not Effective Until January 16, 2001

The federal Administrative Procedure Act ("Federal APA") requires each agency to publish in the Federal Register substantive rules of general applicability adopted as authorized by law. 5 U.S.C. 553. Every federal substantive rule must be published at least thirty days before its effective date, with limited exceptions not applicable to the Federal Ergonomics Program. 5 U.S.C. 553 (d). The purpose of the Section 553(d) notice requirement is to inform affected persons and afford them reasonable time and opportunity to prepare for the effective date of the rule or to take any other action which issuance of the rule may prompt. Rowell v. Andrus, 631 F.2d 699, 703 (4th Cir. 1980). An agency may avoid the Section 553(d) notice requirement only "for good cause found and published with the rule." 5 U.S.C. 553(d)(3). As noted in Rowell, "[t]he required publication of the adopted rule, and the
subsequent time lapse required before its effective date, cannot be dispensed with by the agency merely because the adopted rule turns out to be the same as the proposed rule."  *Id.*  North Carolina=s citizens must be afforded no less than the same opportunity contemplated by the federal standard.

Moreover, under federal law, there is a sixty day period following publication of a final rule in the Federal Register during which the United States Congress may review the rule and repeal it through a joint resolution of disapproval.  See 5 U.S.C. 801, 802.  Accordingly, and by its own terms, the Federal Ergonomics Program final regulations were not effective until January 16, 2001, sixty days after the rules were published in the Federal Register.

B.  **The Department Cannot Adopt By Reference a Federal OSHA Rule Until that Rule Is Legally Effective**

Compliance with the procedural requirements of the Federal APA is essential to the validity of a federal administrative rule.  A federal regulation is invalid if the agency fails to follow procedures required by the Federal APA.  *E.g.*, *Buschmann v. Schweiker*, 676 F.2d 352, 355-56 (9th Cir. 1982) (citations omitted).  As noted above, Section 553(d) of the Federal APA requires the agency to publish a substantive rule in the Federal Register at least thirty days before the rule=s effective date, unless the agency finds good cause not to comply with this requirement.  A similar notice provision applies to proposed administrative rules.  5 U.S.C. 553(b).

Exceptions to the notice provisions of Section 553 are "narrowly construed and only reluctantly countenanced."  *Am. Fed'n of Gov't Employees v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981) (quoting *State of New Jersey, Dep't of Envtl. Protection v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980)); *accord Envtl. Def. Fund, Inc. v. Gorsuch*, 713 F.2d 802 (D.C. Cir. 1983).  The D.C. Circuit has stated that "use of these [good cause] exceptions by administrative agencies should be limited to emergency situations; furthermore, the grounds justifying the agency=s use of the exception should be incorporated within the published rule."  *Id.* (internal citations omitted).

Federal courts repeatedly have heeded the importance of an agency=s compliance with the notice requirements of Section 553.  *See, e.g.*, *Buschmann*, 676 F.2d at 358 (holding that interim amendment to supplemental social security income regulation was invalid due to failure to comply with notice and comment requirements of Section 553(b) until proper promulgation of final rule); *Kollett v. Harris*, 619 F.2d 134 (1st Cir. 1980) (striking down interim regulations implementing amendments to Social Security Act due to failure to comply with Section 553(b)); *State of New Jersey*, 626 F.2d 1038 (holding that agency=s request for comments after promulgation of rule was not viable substitute for Section 553(b) notice and comment procedure).  In addition to complying with the Federal APA, to have the force of law, a federal substantive rule must have an effective date.  *Gorsuch*, 713 F.2d at 817-818 (emphasis added); *accord Associated Builders & Contractors, Inc. v. Herman*, 976 F. Supp. 1, 7 (D.D.C. 1997).  Promulgation of the rule does not constitute an effective date.  "As the term is generally used, >promulgate< means >to make known< by open declaration= or >to make . . . public the terms= of a rule or law."  *United Tech. Corp.*, 836 F.2d at 54 (citing Webster=s Third New Int'l Dictionary 1816 (1981)).  The Second Circuit concluded that the rules were issued when filed in the Office of the Federal Register and promulgated when published therein.  *Id.*  In contrast, the "effective date" is defined as "][t]he date on which a statute, contract, insurance policy, or other such instrument becomes enforceable or otherwise takes effect, which sometimes differs from the date on which it was enacted or signed."  Black=s Law Dictionary 533 (7th ed. 1999).  Clearly, the promulgation of a rule is very different from its taking effect and the promulgation of the rule cannot give rise to an action pursuant thereto which predates the rule=s effective date.

With regard to the Federal Ergonomics Program, OSHA clearly did not find good cause to avoid the notice requirement of Section 553(d) because the regulations setting forth the Program expressly state that they are not effective until January 16, 2001, approximately sixty days after the rules were published in the Federal Register.  The Federal Ergonomics Program did not have the force of law prior to this effective date.  Accordingly, there was no legally effective federal OSHA standard for North Carolina=s Department of Labor to adopt by reference until January 16, 2001.

Historically, the Department=s pattern and practice with regard to adoption of federal OSHA standards by reference, has been to wait until after the OSHA rule has taken legal effect before adopting the corresponding State rule.  Since 1996 and until the purported adoption of the State Ergonomics Rule, the Department had not adopted by reference as a State rule any substantive OSHA rule before the OSHA standard was legally effective.  In each of these other instances, the Department waited to adopt the new federal OSHA standard until it was legally effective, i.e., more than sixty days after the federal rule was published in the Federal Register.

In order to continue operating and retain independent control of its occupational safety and health program in accordance with OSHA=s regulatory requirements, North Carolina must adopt a State standard that is as effective as the Federal Ergonomics Final Rule on or before May 14, 2001.  The Department purported to adopt such a standard on November 14, 2000, the very day the Federal Ergonomics Standard was published in the Federal Register.  However, this purported State Ergonomics Rule was void *ab initio* because it adopted by reference federal regulations that were not yet effective and had no legal force.  As discussed above, the Department=s own past pattern and practice indicate that the Department must wait to adopt a federal OSHA standard until the federal rule has taken legal effect.

III.  **IT IS IN NORTH CAROLINA=S BEST INTERESTS FOR THE DEPARTMENT TO ENSURE THE VALIDITY AND ENFORCEABILITY OF THE STATE ERGONOMICS STANDARD**

In its Request, NCCBI states that many of its member businesses have questioned the validity and enforceability of the State Ergonomics Rule, and that the Department may expect challenges to the State Ergonomics Rule because of the premature timing of its
IN ADDITION

purported adoption. Uncertainty as to the validity and enforceability of the State Ergonomics Rule is contrary to the interests of (1) the persons purportedly regulated by it, (2) the people who are intended to benefit from the Rule, and (3) the Department. To avoid any such uncertainty, the Department hereby declares that the State Ergonomics Rule adopted on November 14, 2000 was void *ab initio* for all of the reasons set forth above.

Federal law requires the Department to adopt a State ergonomics standard that is as at least as effective as the Federal Ergonomics Program. Therefore, if the Federal Ergonomics Program promulgated on November 14, 2000 and effective January 16, 2001 remains in force and effect, the Department must adopt the federal program by reference on or before May 14, 2001, in order to comply with federal and state law. Because State regulations which adopt verbatim federal OSHA rules are excluded from the standard rule-making procedural requirements, the Department can readily promulgate a new State Ergonomics Rule properly prior to that deadline.

CONCLUSION

For all of the reasons set forth above, I hereby rule that North Carolina=s State Ergonomics Rule adopted on November 14, 2000 was void *ab initio* and therefore, was without legal force and effect from its inception.

Issued this the 6th day of March, 2001.

NORTH CAROLINA DEPARTMENT OF LABOR

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 18 – MENTAL HEALTH: OTHER PROGRAMS

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

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 18W .0101 -.0104 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 122C-3; 122C-112; 122C-115; 122C-116; 122C-117; 122C-118; 122C-132; 143B-147

Statement of the Subject Matter: Due to several mergers of area programs in North Carolina, it is necessary to revise the rules contained in this Subchapter to reflect appropriate catchment areas.

Reason for Proposed Action: During the merger of area programs in specified catchment areas, a Request for Waiver of these Rules was necessary, since some of those programs would no longer be located in a catchment area that is reflected in these Rules. Therefore, it is now necessary to revise the rules for clarification and appropriate change in catchment areas.

Comment Procedures: Written comments should be submitted to Charlotte F. Hall, Rulemaking Coordinator, 3012 Mail Service Center, Raleigh, NC 27699-3012.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 11 – RADIATION PROTECTION

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

Citation to Existing Rule Affected by this Rule-making: 15 NCAC 11 .0100; .0300; .0500; .0700; .1300; .1400; and .1600. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 104E-2; 104E-7; 104E-9; 104E-10; 104E-11; 104E-12; 104E-14; 104E-15; 104E-18; 104E-19; 104E-20; C.F.R Chapter 1, Commission Notices, Policy Statements, Agreement States; 46 F.R. 7540

Statement of the Subject Matter: The Radiation Protection Commission is initiating rulemaking proceedings as a result of recommendations received from the Non-Ionizing Committee and its Commission members to update and improve existing regulations and make others compatible with the federal requirements of the U.S. Nuclear Regulatory Commission as required by North Carolina’s agreement with them, authorized under G.S. 104C-5, 1963.

Reason for Proposed Action: The Radiation Protection Commission is initiating rulemaking proceedings as a result of recommendations received from the Non-Ionizing Committee and its Commission members to update and improve existing regulations and make others compatible with the federal requirements of the U.S. Nuclear Regulatory Commission as required by North Carolina’s agreement with them, authorized under G.S. 104C-5, 1963.

Comment Procedures: Written comments may be submitted to Richard M. Fry, Director, Division of Radiation Protection, Dept. of Environment & Natural Resources, 3825 Barrett Drive, Raleigh, NC 27609-7221.

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CHAPTER 11 – RADIATION PROTECTION

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 11 .1100 and .1400. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 104E-9(8); 104E-19(a)
Statement of the Subject Matter: Division of Radiation Protection is initiating rule-making proceedings as a result of staff recommendations to update existing fees to more closely reflect current inspection program costs.

Reason for Proposed Action: Division of Radiation Protection is initiating rule-making proceedings as a result of staff recommendations to update existing fees to more closely reflect current inspection program costs.

Comment Procedures: Written comments may be submitted to Richard M. Fry, Director, Division of Radiation Protection, Dept. of Environment & Natural Resources, 3825 Barrett Drive, Raleigh, NC 27609-7221.
This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars ($5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Pesticide Board intends to amend the rule cited as 02 NCAC 09L .1005. Notice of Rule-making Proceedings was published in the Register on January 2, 2001.

Proposed Effective Date: July 1, 2002

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 rule by submitting a request in writing no later than April 17, 2001, to James W. Burnette, Jr., Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, P.O. Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: The Pesticide board initiated rule-making proceedings as a result of a petition for rule-making from Mr. Elbie Powers, a farmer and aerial applicator from Sampson County. His stated purpose is to allow the aerial application of pesticides within 100 feet of a residence to treat fruit and nut trees and for mosquito control.

Comment Procedures: Written comments may be submitted no later than May 2, 2001, to James W. Burnette, Jr. Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, P.O. Box 27647, Raleigh, NC 27611.

Fiscal Impact
☐ State
☐ Local
☒ Substantive (≥$5,000,000)

CHAPTER 09 – FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09L – PESTICIDE SECTION

SECTION .1000 – AERIAL APPLICATION OF PESTICIDES

02 NCAC 09L .1005 RESTRICTED AREAS

(a) No pesticide shall be applied by aircraft within the limits of any congested area except when permission is granted under F.A.R.-137.
(b) No pesticide shall be deposited by aircraft within 300 feet of the premises of schools, hospitals, nursing homes, churches, or any building (other than a residence) which is used for business or social activities if either the premises or the building is occupied by people.
(c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.
(d) No pesticide labeled toxic or harmful to aquatic life shall be deposited in or near any body of water in such a manner as to be hazardous to aquatic life unless such aquatic life is the intended target of the pesticide.
(e) No pesticide shall be deposited within 100 feet of any residence. This Paragraph shall not apply to any licensed aerial applicator when conducting aerial pest control operations (applications) providing the following conditions are met:

(1) Only approved labeled pesticide(s) whose active ingredients are also registered with USEPA for ornamental and turf pest control or public health pest control will be used (applied/deposited).

(2) After application (use), the licensed aerial applicator will have 72 hours to have on record a written description of the operation, which meets or exceeds the following standards:

(A) Showing a request for a licensed aerial applicator to apply the named pesticide(s) within 100 feet of residence;

(B) Showing that the crop manager or owner was advised of the precautionary label statements for the named pesticide(s);

(C) A statement from the owner (manager) of the building, etc., indicating all hours that anyone is on the premises (property); and

(D) A record of application information complying with Paragraphs (c) and (d) of 2 NCAC 9L .1002, General Requirements.

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

Authority G.S. 143-458.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Highways intends to amend the rule cited as 19A NCAC 02D .0607. Notice
Proposed Effective Date: August 1, 2002

Public Hearing:
Date: April 24, 2001
Time: 2:00 pm
Location: Transportation Building Auditorium, 1 South Wilmington Street, Raleigh, NC

Reason for Proposed Action: G.S. 136-18(5) authorizes DOT to promulgate rules governing the safe movement of trucks, tractors, trailers and other heavy vehicles or machinery on highways. G.S. 20-115 sets forth weights and dimensions to move loads over the highways. G.S. 20-119 authorizes DOT to issue permits to move vehicles with excessive weight or dimensions. HB 1854, ratified in 2000, changed the statute. On August 7, 2000, DOT filed temporary rules to regulate oversize/overweight vehicles. The changes increased penalties for non-compliance and enforcement criteria. Permit applications increased dramatically; the changes were effective October 1, 2000. The DOT Permit Unit issued permits far exceeding those prior to the statutory changes. Temporary rule 19A NCAC 02D .0642, effective October 19, 2000, expired December 31, 2000. An amended 19A NCAC 02D .0607 was filed as a temporary rule effective December 31, 2000 to allow the department to continue to issue blanket permits for oversize/overweight loads. The blanket permits allow the industry greater movement flexibility and decrease DOT paperwork considerably.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by May 2, 2001.

Fiscal Impact
☐ State
☐ Local
☒ Substantive (> $5,000,000)

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02D – HIGHWAY OPERATIONS

SECTION 0600 – OVERSIZE-OVERWEIGHT PERMITS

19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS
(a) Vehicle/vehicle combinations with non-divisible overload loads are limited to a maximum width of 15 feet. After review of documentation of variances, the Central Permit Office or the State Maintenance and Equipment Engineer may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D.0600 et seq. Exception: A mobile/modular unit with maximum measurements of 13’ 6” high, 16’ wide unit and a 3” gutter edge may be issued a single trip permit in agreement with permit policy. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14’ across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed to reduce the width or height may be hauled with the equipment without being considered a divisible load except as provided in 19A NCAC 02D .0607. A 14’ wide mobile/modular home unit with a roof overhang not to exceed a total of 12” may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12” of roof overhang or the total width of overhang on the appropriate side of the home. Reflective extenders of a design and color approved by the Department of Transportation equal to the width of the roof overhang or protrusion shall be attached to the front and rear of the home to clearly identify the total width of the unit while moving on North Carolina highways. A 16’ wide mobile/modular home unit shall not be allowed any protrusions beyond the maximum 3” gutter edge. Authorization to move commodities wider than 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width.
(b) A single trip permit may be issued vehicle specific not to exceed a width of 15 feet for all movements unless authorized by the Central Permit Office or the State Maintenance and Equipment Engineer. Exception: A mobile/modular unit with maximum measurements of 13’ 6” high, 16’ wide unit and a 3” gutter edge may be issued a single trip permit in agreement with permit policy. Permits for house moves may be issued as specified in G.S. 20-356 through G.S. 20-372.
(c) An annual permit shall be issued vehicle specific not to exceed a maximum width of 12’ and a maximum height of 13’ 6” for movement on all highways in North Carolina. An annual oversize/overweight permit may be issued valid for unlimited movement without the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted road and bridge limits, for vehicle/vehicle combinations with a minimum extreme wheel base of 51 feet transporting general commodities and which does not exceed: a width of 12 feet; a height of 13 feet, 6 inches; an overall length of 75 feet; gross weight of 90,000 pounds; and axle weights of 12,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for four or five axle self-propelled equipment or special mobile equipment capable of traveling at a highway speed of 45 miles per hour with a minimum wheel base of 30 feet and which does not exceed: a width of 10 feet; a height of 13 feet, 6 inches; an overall length of 45 feet with front and/or rear overhang not to exceed a total of 10 feet; gross weight of 90,000 pounds; and axle weights of 20,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement with the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted bridge and load limits, for vehicles/vehicle combinations transporting farm equipment and...
which does not exceed: a width of 14 feet; a height of 13 feet, 6 inches; and a weight as set forth in G.S. 20-118(b)(3).

Mobile/modular homes with a maximum height of 13’ 6” being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14’ unit with an allowable roof overhang not to exceed a total of 12”. These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement. An annual permit may be co-issued to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14’ unit with a total roof overhang not to exceed 12” and a height of 13’ 6”. The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

(1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

- **Steer Axle**: 12,000 lbs.
- **Single axle**: 25,000 lbs.
- **2 axle tandem**: 50,000 lbs.
- **3 or more axle group**: 60,000 lbs.
- **3 axle single vehicle**: 60,000 lbs. to 70,000 lbs. determined by extreme wheelbase measurement
- **4 axle single vehicle**: 75,000 lbs. to 90,000 lbs. determined by extreme wheelbase measurement
- **5 axle single vehicle**: 86,000 lbs. to 94,500 lbs.
- **5 axle vehicle combination minimum 51’ extreme wheelbase 112,000 lbs.**
- **6 axle single vehicle**: 100,000 lbs. to 108,000 lbs. determined by extreme wheelbase measurement
- **6 axle vehicle combination**: 120,000 lbs. minimum 51’ extreme wheelbase
- **7 axle single vehicle**: 105,000 to 122,000 lbs. minimum 35’ extreme wheelbase
- **7 axle vehicle combination**: 122,000 to 132,000 lbs. minimum 40’ extreme wheelbase
- **7 axle vehicle combination with a gross wt. exceeding 132,000 lbs. requires a Department of Transportation Engineering Study.**

(2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

- **Single axle**: 37,000 lbs.
- **Tandem axle**: 50,000 lbs.
- **2 axle single vehicle**: 65,000 to 70,000 lbs. determined by extreme wheelbase measurement
- **3 axle single vehicle**: 75,000 to 80,000 lbs. determined by extreme wheelbase measurement
- **4 axle single vehicle**: 80,000 to 90,000 lbs. determined by extreme wheelbase measurement

(3) A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit not to exceed 94,500 lbs. provided the vehicle:

(A) Is going to or from a designated seaport (to include in state and out of state) and has been or will be transported by marine shipment;

(B) Is licensed for the maximum allowable weight for a 51’ extreme wheelbase measurement specified in G.S. 20-118;

(C) Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;

(D) Is a vehicle combination with at least five axles;

(E) Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.

(1) Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of route of travel. Mobile/modular home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.

(2) Annual (blanket) permits will not be issued for lengths to exceed 75 feet. Mobile/modular home permits may be issued for a length not to exceed 105 feet.

(3) Front overhang may not exceed the length of 3’ specified in Chapter 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3’, an overlength permit may be issued.
An Overheight Permit Application for heights in excess of 14' must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. A 16' wide mobile/modular unit with a maximum 3' gutter edge shall not exceed a height of 13' 6" while traveling on North Carolina highways. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.

The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. Exception: A 16' wide mobile/modular home unit with a maximum three inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Thursday. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of 112,000 lbs. provided the permitted vehicle has no other over legal dimension of width, height or length included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with properly marked overhang (front and/or rear) not to exceed a total of 10 feet. Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.

The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs. Additional safety measures are as follows:

(1) A yellow banner measuring a total length of 7’ x 18” high bearing the legend "Oversize Load" in 10” black letters 1.5 inches wide shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10’ or greater. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize ft. Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers;

(2) Red flags measuring 18” square shall be displayed on all sides at the widest point of load for all loads in excess of 8’ 6” wide but the flags shall be so mounted as to not increase the overall width of the load;

(3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes, Motor Carrier and Housing and Urban Development (HUD) regulations.

(4) Rear view mirrors and other safety devices on towing units attached for movement of overweight loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;

(5) Flashing amber lights shall be used as determined by the issuing permit office.

The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.

No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular unit exceeding a width of 10’ shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

The Department of Transportation may require escort vehicles accompany oversize or overweight loads. The Department of Transportation shall coordinate with the proper agencies to establish an escort driver training and certification program. Once the program is established, the driver of the escort vehicle is required to be certified according to State regulations. North Carolina may reciprocate with other states that have an accredited escort certification program. Certification credentials are required to be carried in the vehicle readily available for enforcement inspection. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel shall all be considered to determine escort requirements.

Authority G.S. 20-118(f); 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978.

15:19 NORTH CAROLINA REGISTER April 2, 2001
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Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Highways intends to amend the rule cited as 19A NCAC 02D .1003. Notice of Rule-making Proceedings was published in the Register on January 2, 2001.

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501. The demand must be received within 15 days of this Notice.

Reason for Proposed Action: Proposed amendments add language to the rule to enhance the safety of DOT employees. Adoption agreement terms are lengthened from 1 year to 4 years to reduce staff and volunteer paperwork.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, NC Dot, 1501 Mail Service Center, Raleigh, NC 27699-1501 by May 2, 2001.

Fiscal Impact
☐ State
☐ Local
☐ Substantive (>$5,000,000)
☒ None

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02D – HIGHWAY OPERATIONS

SECTION .1000 – ADOPT-A-HIGHWAY PROGRAM

19A NCAC 02D .1003 PARTICIPATION IN THE PROGRAM

(a) The adoption of a section of highway is a privilege in consideration for public service that may be granted by the Department to individuals or groups who would assist the Adopt-A-Highway Program in achieving its purpose.

(b) Only individuals or groups determined by the Department to be responsible and to exhibit in good faith the willingness and the capacity to perform the responsibilities of the Program will be allowed to adopt a highway. The Department may refuse to grant a request to adopt a section of highway if, in its opinion, granting the request would jeopardize the Program, be counterproductive to its purpose or create a hazard to the safety of Department employees or the public. Highway safety is a principal concern in all decisions related to the Program. Program participants shall not be discriminated against on the basis of religion, race, national origin, sex or handicap (except where the handicap would affect the individual’s safe participation in the Program) with respect to their participation in the Program.

(c) The Division Engineer or his designee shall approve applications of individuals or groups applying to participate in the Program. A list of the newly approved participants, by division, shall be submitted to the Program Director for review on the first of each month. The approval of the Division Engineer is final unless the applications are disapproved by the Program Director by the first day of the next calendar month. If the Division Engineer has any uncertainty regarding the qualifications of the individual or group applying to the Program, the Division Engineer shall submit the application and all accompanying documents to the Program Director for final action.

(d) Initial agreements of adoption shall be for a period of four years.

(e) Each person participating in the Program shall execute a written release of the Department, its officials, employees and agents from any liability arising out of his or her participation in the Program. In the case of a minor, such release shall be executed by a parent or guardian. Physical participation in the Program shall constitute a waiver by the participant of any claim or cause of action of liability against the Department.

(f) Program participants are encouraged to recycle material collected from the adopted section when it is feasible to do so.

Authority G.S. 143B-350.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0404-.0405. Notice of Rule-making Proceedings was published in the Register on November 15, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:
Date: May 17, 2001
Time: 1:00 p.m.
Location: North Carolina Board of Nursing Office, 3724 National Dr., Suite 201, Raleigh, NC

Reason for Proposed Action:
21 NCAC 36 .0404 – Revision to the Rule will allow high school students or others prior to completion of a GED or high school diploma to enter a NA II training program.

21 NCAC 36 .0405 – Revision to the Rule will require a GED/high school diploma prior to listing on the NA II Registry.

Comment Procedures: Comments regarding this action should be directed to Jean Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129 by May 17, 2001.

Fiscal Impact
☐ State
SECTION .0400 - UNLICENSED PERSONNEL: NURSE AIDES

21 NCAC 36 .0404 LISTING AND RENEWAL

(a) All nurse aide II's, as defined in Rule .0403(b) of this Section, regardless of working title, employed or assigned in a service agency or facility for the purpose of providing nursing care activities shall be listed on the Board of Nursing Nurse Aide II Registry and shall meet the following requirements:

1. successful completion of a nurse aide II program or its Board approved equivalent;
2. listed as a Level I nurse aide on the DFS Nurse Aide Registry with no substantiated findings of abuse, neglect, or misappropriation of property; and
3. submission of an application to the Board of Nursing for placement on the Board of Nursing Nurse Aide II Registry prior to working as a nurse aide II.

The application shall be submitted with the required fee within 30 days of completion of the nurse aide II program. Application for initial listing received in the Board office between April and June shall show an expiration day of June 30 of the following year.

(b) Nursing students currently enrolled in Board of Nursing approved nursing programs desiring listing as a nurse aide II shall submit:

1. An application fee; and
2. A listing form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours to that required for a nurse aide II.

(c) Registered nurses and licensed practical nurses who hold current, unrestricted licenses to practice in North Carolina, and registered nurses and licensed practical nurses in the discipline process by the Board of Nursing who have been granted approval by the Board of Nursing or its designee may make application as a nurse aide II.

(d) An individual previously enrolled in a Board approved nursing program leading to licensure as RN or LPN may list with no additional testing provided the student withdrew from school in good standing within the last 24 months and completed the equivalent content and clinical hours. Such individual shall submit listing form as described in Paragraph (b)(2) of this Rule. If the student was in good standing upon withdrawal from the school and withdrew from the school in excess of 24 months, the student must complete an entire nurse aide II program.

(e) Individuals who have completed a training course equivalent in content and clinical hours to the nurse aide II program, may submit documentation of same to the Board of Nursing for review. If training is equivalent, the individual may submit the application with required fee and be listed on the Board of Nursing Nurse Aide Registry as a nurse aide II.

(f) An employing agency or facility may choose up to four nurse aide II tasks to be performed by nurse aide I personnel without the nurse aide I completing the entire nurse aide II program. These tasks are individual activities which may be performed after the nurse aide has received the approved training and competency evaluation as defined in Rule .0403(b) of this Section.

1. The agency may obtain the selected tasks curriculum model from the nearest Community College or the Board of Nursing or may submit a self generated curriculum to the Board for approval. Board approval must be obtained prior to teaching the nurse aide II tasks.
2. Once approval has been obtained, the Board of Nursing must be notified of the nurse aide II task(s) that will be performed by nurse aide I personnel in the agency and for which all Board stipulations have been met. The notification of nurse aide II task(s) form which may be requested from the Board office shall be used. Each agency shall receive a verification letter once the Board has been appropriately notified.
3. Documentation of the training and competency evaluation must be maintained for each nurse aide I who is approved to perform nurse aide II task(s) within the agency.

(g) Each nurse aide II shall renew listing with the Board of Nursing biennially on forms provided by the Board. The renewal application shall be accompanied by the required fee.

1. To be eligible for renewal, the nurse aide II must have worked at least eight hours for compensation during the past 24 months performing nursing care activities under the supervision of a Registered Nurse.
2. Any nurse aide II who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation but who has performed patient care activities for monetary compensation during the past 24 months must have worked at least eight hours for compensation during the past 24 months.
3. A nurse aide II who has performed no nursing care or patient care activities for monetary compensation within the past 24 months must successfully complete a nurse aide II program prior to submitting the application for renewal.
4. A nurse aide II who has substantiated findings of abuse, neglect, or misappropriation of funds on the DFS Nurse Aide Registry shall not be eligible for renewal as a nurse aide II.

(a) The Board of Nursing shall accept those programs approved by DFS to prepare the nurse aide I.

(b) The North Carolina Board of Nursing shall approve nurse aide II programs. Nurse aide II programs may be offered by an individual, agency, or educational institution after the program is approved by the Board.

1. Each entity desiring to offer a nurse aide II program shall submit a program approval application at least 60 days prior to offering the program. It shall include documentation of the following standards:

   (A) Policy established which provides for supervised clinical experience with faculty/student ratio not to exceed 1:10;

   (B) Board of Nursing approval of each clinical facility for student use as defined in 21 NCAC 36 .0322(b);

   (C) A written contract between the program and clinical facility prior to admitting students to the facility for clinical experience;

   (D) Admission requirements which include:

      (i) Successful completion of nurse aide I training program or Board of Nursing established equivalent and current nurse aide I listing on DFS Registry; and

      (ii) GED or high school diploma; and

      (ii) Other admission requirements as identified by the program; and

   (E) Policy regarding the processing and disposition of program and student complaints.

2. Level II nurse aide programs shall include a minimum of 80 hours of theory and 80 hours of supervised clinical instruction consistent with the legal scope of practice as defined by the Board of Nursing in Rule .0403(b) of this Section. Changes made by the Board of Nursing in content hours or scope of practice in the nurse aide II program shall be published in the Bulletin. Requests by the programs to modify the nurse aide II course content shall be directed to the Board office.

3. The Board shall identify and publish minimum competency and qualifications for faculty for the nurse aide Level II programs. These are:

   (A) Hold a current unrestricted license to practice as a registered nurse in North Carolina;

   (B) Have had at least two years of direct patient care experiences as an R.N.; and

   (C) Have experience teaching adult learners.

(c) An annual program report shall be submitted by the Program Director to the Board of Nursing on Board form by March 15 of each year. Failure to submit annual report shall result in administrative action affecting approval status as described in 21 NCAC 36. 0405(5)(d) and (e). Complaints regarding nurse aide II programs may result in an on site survey by the North Carolina Board of Nursing.

(d) Approval status shall be determined by the Board of Nursing using the annual program report, survey report and other data submitted by the program, agencies, or students. The determination shall result in full approval or approval with stipulations.

(e) If stipulations have not been met as specified by the Board of Nursing, a hearing shall be held by the Board of Nursing regarding program approval status. A program may continue to operate while awaiting the hearing before the Board.

EXCEPTION: In the case of summary suspension of approval as authorized by G.S. 150B(3)(c), the program must immediately cease operation.

1. When a hearing is scheduled, the Board shall cause notice to be served on the program and shall specify a date for the hearing to be held not less than 20 days from the date on which notice is given.

2. If the Board determines from evidence presented at hearing that the program is complying with the Law and all rules, the Board shall assign the program Full Approval status.

3. If the Board, following a hearing, finds that the program is not complying with the Law and all rules, the Board shall withdraw approval.

   (A) This action constitutes discontinuance of the program; and

   (B) The parent institution shall present a plan to the Board for transfer of students to approved programs or fully refund tuition paid by the student. Closure shall take place after the transfer of students to approved programs within a time frame established by the Board; and

   (C) The parent institution shall notify the Board of the arrangements for storage of permanent records.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

Rule-making Agency: State Board of Education

Rule Citation: 16 NCAC 06G .0305

Effective Date: March 5, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 115C-12(9)c4

Reason for Proposed Action: The U.S. Dept. of Education, including the Office for Civil Rights, has indicated that the current State testing program does not comply with the requirements of federal laws such as Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title I of the Elementary and Secondary Education Act, and the Individuals with Disabilities Education Act. To comply, the State Board must require much broader participation of limited English proficient students and students with disabilities in the State testing program and accountability program. Our continued receipt of federal funding is contingent upon our making these changes.

Comment Procedures: Questions or written comments regarding this matter may be directed to Harry E. Wilson, Rule-making Coordinator, 2086 Education Building, 301 N. Wilmington St., Raleigh, NC 27601-2825; telephone (919) 807-3406, fax (919) 807-3407.

CHAPTER 06 – ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06G – EDUCATION AGENCY RELATIONS

SECTION .0300 – SCHOOL-BASED MANAGEMENT AND ACCOUNTABILITY PROGRAM

16 NCAC 06G .0305 ANNUAL PERFORMANCE STANDARDS, GRADES K-12

(a) For purposes of this Section, the following definitions shall apply to kindergarten through twelfth grade:

(1) “Accountability measures” are SBE-adopted tests designed to gauge student performance and achievement.

(2) “b0” means the state average rate of growth used in the regression formula for the respective grades and content areas (reading and mathematics) in grades 3 through 8 and grade 10; or the state average performance used in the prediction formula for respective high school end-of-course tests. The values for b0 shall be as follows:

(A) for reading:

(i) 6.2 for grade 3;
(ii) 5.2 for grade 4;
(iii) 4.6 for grade 5;
(iv) 3.0 for grade 6;
(v) 3.3 for grade 7;
(vi) 2.7 for grade 8; and
(vii) 2.3 for grade 10.

(B) for mathematics:

(i) 12.8 for grade 3;
(ii) 7.3 for grade 4;
(iii) 7.4 for grade 5;
(iv) 7.1 for grade 6;
(v) 6.5 for grade 7;
(vi) 4.9 for grade 8; and
(vii) 2.3 for grade 10.

(C) for EOC courses:

(i) 60.4 for Algebra I;
(ii) 55.2 for Biology;
(iii) 54.0 for ELPS (Economic, Legal, and Political Systems);
(iv) 53.3 for English I;
(v) 56.0 for U.S. History;
(vi) 59.3 for Algebra II;
(vii) 56.9 for Chemistry;
(viii) 58.5 for Geometry;
(ix) 53.8 for Physical Science;
and
(x) 56.1 for Physics.

(3) “b1” means the value used to estimate true proficiency in the regression formulas for grades 3 through 8 and grade 10. The values for b1 shall be as follows:

(A) for reading:

(i) 0.46 for grade 3;
(ii) 0.22 for grades 4 through 8; and
(iii) 0.24 for grade 8 to 10.

(B) for mathematics:

(i) 0.30 for grade 3;
(ii) 0.26 for grades 4 through 8; and
(iii) 0.28 for grade 8 to 10.
(4) "b₂" means the value used to estimate regression to the mean in the regression formula for grades 3 through 8 and 10. The values for b₂ shall as follows:

(A) for reading:
   (i) -0.91 for grade 3;
   (ii) -0.60 for grades 4 through 8; and
   (iii) -0.52 for grades 8 to 10.

(B) for mathematics:
   (i) -0.47 for grade 3;
   (ii) -0.58 for grades 4 through 8; and
   (iii) -0.43 for grades 8 to 10.

(5) "bᵦᵩ" means the value used to estimate the effect of the school's average reading proficiency on the predicted average EOC test score. The values for bᵦᵩ shall as follows:

(A) 0.71 for Biology;
(B) 0.88 for ELPS;
(C) 1.01 for English I;
(D) 0.68 for U.S. History;
(E) 0.43 for Algebra II;
(F) 0.42 for Geometry; and
(G) 0.58 for Physical Science.

(6) "bᵦᵠ" means the value used to estimate the effect of the school's average math proficiency on the predicted average EOC test score. The values for bᵦᵠ shall as follows:

(A) 0.88 for Algebra I;
(B) 0.318 for Biology;
(C) 0.88 for ELPS;
(D) 0.15 for U.S. History;
(E) 0.39 for Geometry;
(F) 0.34 for Physical Science; and
(G) 0.58 for Physics.

(7) "bᵦᵡ" means the value used to estimate the effect of the school's average Algebra I proficiency on the predicted average EOC test score. The values for bᵦᵡ shall as follows:

(A) 0.89 for Algebra II;
(B) 0.18 for Chemistry; and
(C) 0.43 for Geometry.

(8) "bᵦᵢ" means the value used to estimate the effect of the school's average Biology proficiency on the predicted average EOC test score. The values for bᵦᵢ shall be 0.51 for Chemistry and 0.66 for Physics.

(9) "bᵦᵣ" means the value used to estimate the effect of the school's average English I proficiency on the predicted average EOC test score. The values for bᵦᵣ shall be 0.27 for Chemistry and 0.32 for Physics.

(10) "Compliance commission" means that group of 22 persons selected by the SBE to advise the SBE on testing and other issues related to school accountability and improvement. The commission shall be composed of two members from each of the eight educational districts: five teachers, five principals, four central office staff representatives, two local school board representatives; and five at-large members who represent parents, business (two members), and the community.

"Composite score" means a summary of student performance in a school. A composite score may include reading, writing, and mathematics in grades 3 through 8 and in Algebra I & II, Biology, ELPS, English I, English II (Writing), Geometry, Chemistry, Physics, Physical Science, and U.S. History in a school where one or more of these EOC tests are administered, as well as student performance on the NC High School Comprehensive Test, the NC Computer Skills Test, competency passing rate, dropout rates, and percent diploma recipients who satisfy the requirements for College Prep/College Tech Prep courses of study in grades 9 through 12 to the extent that any apply in a given school.

"Eligible students" means the total number of students in membership minus the number of students excluded from participation in a statewide assessment.

"Expected growth" means the amount of growth in student performance that is projected through use of the regression formula in grades 3 through 8 and grade 10 in reading and mathematics.

"Exemplary growth" means the amount of growth in student performance in grades 3 through 8 and grade 10 in reading and mathematics that is projected through use of the regression formula that includes the state average rate of growth adjusted by an additional ten percent (10%).

"Growth standards" are the benchmarks set annually by the SBE to measure a school's progress.

"IRM" is the index for regression to the mean used in the regression formula. The SBE shall compute the IRM for reading by subtracting the North Carolina average reading scale score from the local school average reading scale score. The SBE shall compute the IRM for mathematics by subtracting the North Carolina average reading scale score from the local school average mathematics scale score. The SBE shall base the state average on data from the 1994-95 school year.

"ITP" is the index for true proficiency used in the regression formula. The SBE shall compute the ITP by adding the North Carolina average reading scale scores in reading and mathematics and subtracting that sum from the addition of the local school average scale scores in reading and mathematics. The SBE shall base the state average on data from the 1994-95 school year.
(18) "IRP" is the index of reading proficiency used in the prediction formula. The SBE shall compute the "IRP" by calculating the average reading scale score for students in the school and subtracting the average reading scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.

(19) "IMP" is the index of mathematics proficiency used in the prediction formula. The SBE shall compute the "IMP" by calculating the average mathematics scale score for students in the school and subtracting the average mathematics scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.

(20) "IAP" is the index of Algebra I proficiency used in the prediction formula. The SBE shall compute the "IAP" by calculating the average Algebra I scale score for students in the school and subtracting the average Algebra I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.

(21) "IBP" is the index of Biology proficiency used in the prediction formula. The SBE shall compute the "IBP" by calculating the average Biology scale score for students in the school and subtracting the average Biology scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.

(22) "IEP" is the index of English I proficiency used in the prediction formula. The SBE shall compute the "IEP" by calculating the average English I scale score for students in the school and subtracting the average English I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.

(23) "Performance Composite" is the percent of scores of students in a school who are at or above Level III or IV in the prediction formula. The SBE shall determine the number of scores that are at Level III or IV in reading, mathematics, or writing across grades 3 through 8 and 10, or on all EOC tests administered as a part of the statewide testing program; add the number of scores that are at a passing level on the NC Computer Skills Test or Computer Skills in-accross grades 3 through 8 and 10; or determine the number of student scores on all EOC tests administered as part of the statewide testing program; add the number of student scores on the N.C. Computer Skills Test (students in eighth grade only); add the number of student scores on the Alternate Assessment Portfolio; and use this number as the numerator.

(24) "Predicted EOC mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula.

(25) "Predicted EOC exemplary mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula that includes the state average adjusted by an additional five percent (5%).

(26) "Prediction formula" means a regression formula used in predicting a school's EOC test mean for one school year.

(27) "Regression formula" means a formula that defines one variable in terms of one or more other variables for the purpose of making a prediction or constructing a model.

(28) "Standard deviation" is a statistic that indicates how much a set of scores vary. Standard deviation values used for the growth standards are as follows:

(A) for reading in grades K-8:
   (i) 1.7 for grade 3;
   (ii) 1.3 for grade 4;
   (iii) 1.2 for grade 5;
   (iv) 1.3 for grade 6;
   (v) 1.1 for grade 7;
   (vi) 1.2 for grade 8; and
   (vii) 1.6 for grade 10.

(B) for mathematics in grades K-8:
   (i) 2.6 for grade 3;
   (ii) 2.1 for grade 4;
   (iii) 2.0 for grade 5;
   (iv) 2.1 for grade 6;
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(v) 2.0 for grade 7;
(vi) 1.7 for grade 8; and
(vii) 2.0 for grade 10.

(C) for courses with an EOC test:
(i) 3.3 for Algebra I;
(ii) 2.6 for Biology;
(iii) 3.1 for ELPS;
(iv) 1.8 for English I;
(v) 7.6 for English II (expected gain);
(vi) 7.5 for English II (exemplary gain);
(vii) 2.2 for U.S. History;
(viii) 2.9 for Algebra II;
(ix) 2.5 for Chemistry;
(x) 2.5 for Geometry;
(xi) 2.5 for Physical Science;
(xii) 3.3 for Physics;
(xiii) 10.0 for College Prep/College Tech Prep (CP/CTP);
(xiv) 12.8 for Competency Passing Rate; and
(xv) Dropout Rate will be determined based upon data from the 2000-01 school year.

(29) "Weight" means the number of students used in the calculation of the amount of growth/gain for a subject or content area.

(b) In carrying out its duty under G.S. 115C-105.35 to establish annual performance goals for each school, the SBE shall use both growth standards and performance standards.

(1) The SBE shall calculate the expected growth rate for grades 3 through 8 and grade 10 in an individual school by using the regression formula "Expected Growth = b0 + (b1 x ITP) + (b2 x IRM)."

(2) The SBE shall calculate the predicted EOC expected mean for courses in which end-of-course tests are administered by using the prediction formulas that follow.

(A) "Predicted Algebra I Mean Score = b0 + (bIMP x IMP)," where b0 is the North Carolina average of school means and (bIMP x IMP) is the impact of Mathematics Proficiency.

(B) "Predicted Biology Mean Score = b0 + (bIRP x IRP) + (bIMP x IMP) + (bIMP² x IMP²)," where b0 is the North Carolina average of school means and (bIRP x IRP) is the impact of Reading Proficiency, and (bIMP x IMP) is the impact of Mathematics Proficiency.

(C) "Predicted ELPS Mean Score = b0 + (bIRP x IRP)," where b0 is the North Carolina average of school means and (bIRP x IRP) is the impact of Reading Proficiency.

(D) "Predicted English I Mean Score = b0 + (bIRP x IRP)," where b0 is the North Carolina average of school means and (bIRP x IRP) is the impact of Reading Proficiency.

(E) "Predicted U.S. History Mean Score = b0 + (bIRP x IRP) + (bIMP x IMP) + (bIMP² x IMP²)," where b0 is the North Carolina average of school means and (bIRP x IRP) is the impact of Reading Proficiency, (bIMP x IMP) is the impact of Mathematics Proficiency.

(F) "Predicted Algebra II Mean Score = b0 + (bIRP x IRP) + (bIAP x IAP)," where b0 is the North Carolina average of school means and (bIRP x IRP) is the impact of Reading Proficiency, and (bIAP x IAP) is the impact of Algebra Proficiency.

(G) "Predicted Chemistry Mean Score = b0 + (bIAP x IAP) + (bIRP x IBP) + (bIRP x IEP)," where b0 is the North Carolina average of school means and (bIAP x IAP) is the impact of Algebra Proficiency, (bIRP x IBP) is the impact of Biology Proficiency, and (bIRP x IEP) is the impact of English I Proficiency.

(H) "Predicted Geometry Mean Score = b0 + (bIRP x IRP) + (bIAP x IMP) + (bIAP x IEP)," where b0 is the North Carolina average of school means and (bIRP x IRP) is the impact of Reading Proficiency, (bIAP x IMP) is the impact of Mathematics Proficiency, and (bIAP x IEP) is the impact of Algebra I Proficiency.

(I) "Predicted Physical Science Mean Score = b0 + (bIRP x IRP) + (bIRP x IMP)," where b0 is the North Carolina average of school means and (bIRP x IRP) is the impact of Reading Proficiency, and (bIRP x IMP) is the impact of Mathematics Proficiency.

(J) "Predicted Physics Mean Score = b0 + (bIAP x IAP) + (bIRP x IBP) + (bIEP x IEP)," where b0 is the North Carolina average of school means and (bIRP x IBP) is the impact of Biology Proficiency, (bIAP x IAP) is the impact of Algebra I Proficiency, (bIAP x IEP) is the impact of Mathematics Proficiency, and (bIEP x IEP) is the impact of English I Proficiency.

(c) Schools shall be accountable for student performance and achievement.

(1) To be included in accountability measures for the growth standard, a student in grade three through grade eight must:

(A) have a pre-test score and a post-test score in reading and mathematics.
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Students in grades four or seven with writing scores shall also be included; and

(b) have been in membership more than one-half of the instructional period (91 of 180 days).

(2) Students in grades 9-12 shall be included in the performance composite:

(A) if they have reading, mathematics, writing, Computer Skills, or EOC scores without reference to pretest scores or length of membership;

(B) if they have been in membership 160 of 180 days; and

(C) if they have scores for all tests used in the prediction formula.

(d) The SBE shall include in the accountability system on the same basis as all other public schools each alternative school with an identification number assigned by the Department. Test scores for students who attend programs or classes in a facility that does not have a separate school number shall be reported to and included in the students' home schools.

(e) Each K-8 school shall test at least 98 percent of its eligible students. If a school fails to test at least 98 percent of its eligible students for two consecutive school years, the SBE may designate the school as low-performing and may target the school for assistance and intervention. Each school shall make public the percent of eligible students that the school tests.

(f) High schools shall test at least 95 percent of enrolled students who are subject to EOC tests and the NC Comprehensive Test, regardless of exclusions. High schools that test fewer than 95 percent of enrolled students for two consecutive years may be designated as low-performing by the SBE.

(g) All students who are following the standard course of study and who are not eligible for exclusion as set out in paragraph (g) of this Rule shall take the SBE-adopted tests. Every student, including those students who are excluded from testing, shall complete or have completed an answer document (except in writing). Both the school and the LEA shall maintain records on the exclusions of students from testing. The Department may audit these records.

(h) Individual students may be excluded from SBE-adopted tests as follows:

(1) Limited English proficient students may be excluded for up to two years—one year beginning with the time of enrollment in the LEA if the student's English language proficiency has been assessed as novice/low to intermediate/low in listening, reading, and writing. A student whose English language proficiency has been assessed as intermediate/high or advanced may be excluded from tests in which the student writes responses for up to two years. Twelve months after a limited English proficient student has enrolled in the LEA, the student must be reassessed on the same language proficiency test that was used as a part of the identification of the student for inclusion in the limited

English proficiency program in that LEA. A student assessed as novice/low to intermediate/low after 12 months may be excluded for an additional 12 months. A student assessed as intermediate/high or above must participate in the state testing program. After two years from the time of initial enrollment in the LEA, all limited English proficiency students must participate in the state testing program. LEAs shall report results of the initial language proficiency test and the results on the same test 12 months after enrollment in the LEA to the Department.

LEAs shall use other assessment methods for excluded students to demonstrate that these students are progressing in English and other subject areas.

Students with disabilities may be excluded on an individual basis if the exclusion is stated in the student's IEP and if the student is following a functional curriculum as defined by 16 NCAC 6D .0501(3). If a student with disabilities is excluded from participation in a statewide assessment in one subject but is included in testing for the remaining subjects, that student shall be included in the school's percent tested requirement. The parent or guardian, or the student if over age 18, shall sign a written consent for test exclusion that certifies that the parent, guardian, or student understands that the exclusion for the eighth grade tests may cause the student not to be eligible to receive a high school diploma. All students with disabilities including those identified under Section 504 shall be included in the statewide testing program through the use of state tests with appropriate accommodations or through the use of other state assessments designed for these students. The student's IEP team shall determine whether a testing accommodation is appropriate for that student's disability or whether the student should be assessed using another state assessment designed for that student's disability.

(i) LEAs shall administer alternative assessments to students who are excluded from participation in a regular statewide assessment to demonstrate mastery of course or specific curriculum content. Students in grades 3-8 and 10 with IEPs and serious cognitive deficits and whose program of study focuses on functional/life skills shall participate in the North Carolina Alternate Assessment Portfolio as an alternative.

(j) The SBE shall calculate a school's expected growth/gain composite in student performance using the following process:

(1) Calculate the indices for writing in grades 4 and 7 (separately) for the three most current years for achievement levels as defined by 16 NCAC 6C .0103(a)(1) as follows:

(A) Multiply the percent of students at level IV by 3.
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(B) Multiply the percent of students at level III by 2.
(C) Determine the percent of students at level II.
(D) Add the three numbers together and divide by three.
(E) Determine the difference in scores that is greatest by subtracting the index two years ago from the most recent index and then by subtracting the index for the prior school year from the most recent index. Multiply the resulting difference by one half.
(F) Subtract 0.1 from the difference.
(G) Divide by the associated standard deviation. The result is the standard gain for writing.

(2) Review expected and exemplary growth standards for all grades and subjects, and review the predicted EOC mean for expected standard gain and the exemplary standard gain for EOC courses.

(3) Determine the actual growth in reading and mathematics at each grade level included in the state testing program, using data on groups of students, and determine the actual EOC mean for EOC tests using data on the same groups of students from one point in time to another point in time.

(4) Subtract the expected growth from the actual growth in reading and mathematics at grades 3 through 8 and grade 10; then subtract the predicted EOC mean from the actual EOC mean for EOC tests.

(5) Divide the differences for reading, writing, and mathematics by the standard deviations of the respective differences in growth/gain at each grade level and for each EOC to determine the standard growth score.

(6) The SBE shall calculate a school’s gain composite in college prep/college tech prep using the following process:
(A) Compute the percent of graduates who receive diplomas who completed either course of study in the current accountability year. Students shall be counted only once if they complete more than one course of study.
(B) Find the baseline, which is the average of the two prior school years’ percent of graduates who received diplomas and who completed a course of study.
(C) Subtract the baseline from the current year’s percentage.
(D) Subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero.
(E) Divide by the associated standard deviation. The result is the standard gain for college prep/college tech prep.

(7) The SBE shall calculate a school’s expected gain composite in the competency passing rate by comparing the grade 10 competency passing rate on a matched set of students to the grade 8 passing rate for the same group of students.
(A) Subtract the grade 8 rate from the grade 10 rate.
(B) Subtract 0.1.
(C) Divide by the standard deviation. The result is the standard gain in competency passing rate.

(8) Determine the composite expected gain in English II for a high school as follows:
(A) Compute the English II index for the current year and for the two previous years by multiplying the percentage of students at level IV by 3, the percentage of students at level III by 2, and the percentage of students at level II by 1. Add the products and divide by 3 to obtain the EOC index.
(B) Compute the EOC indices for the same three years.
(C) Determine the baseline by adding Year One and Year Two and dividing by 2.
(D) Subtract the baseline from the current year’s index.
(E) Subtract 0.1 from the difference.
(F) Divide the result by the associated standard deviation of change. This is the standard expected gain for English II.

(9) The SBE shall calculate a school's expected growth/gain composite by adding the following process:
(A) Compute the English II index for the current year and for the two previous years;
(B) Compute the EOC indices for the same three years;
(C) Determine the baseline by adding Year One and Year Two and dividing by 2;
(D) Subtract the baseline from the current year’s index;
(E) Subtract 0.1 from the difference;
(F) Divide the result by the associated standard deviation of change. This is the standard expected gain for English II.

(10) The SBE shall compute exemplary growth using the exemplary growth standard (b_x \times 1.10) in the accountability formula for grades 3 through 8 and 10, EOC gain, writing at grades 4 and 7, gain in competency passing rate, gain in college prep/college tech prep, change in dropout rate, and English II gain by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has made the expected growth standard.

(11) To determine the composite score for exemplary standards:
(A) Subtract the exemplary growth/gain from the actual growth/gain standard in reading and mathematics at grades 3 through 8 and 10; subtract the predicted exemplary EOC mean from the actual EOC mean for each EOC test. In writing, one tenth (.1) must be subtracted from the greater of the two writing differences.

(B) Divide the difference in growth/gain by the standard deviations of the respective differences in growth/gain to determine the standard growth/gain score.

(C) Add Multiply the exemplary standard growth/gain scores for reading and mathematics at each grade level from grade 3 to 8 and 10, EOC gain, expected standard gain in writing at grades 4 and 7, Competency Passing Rate, Dropout Rate, and for College Prep/College Tech Prep, and exemplary standard gain in English II by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has met the exemplary growth standard.

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


SECTION .0600 – MASSAGE AND BODYWORK THERAPY SCHOOLS

21 NCAC 30 .0602 APPROVAL STANDARDS

(a) The following definitions shall apply to this Section:

(1) Program. - A course of study or curriculum consisting of a specified number hours of instruction consistent with the standards set forth in Paragraph (m) of this Rule, which is intended to teach adults the skills and knowledge necessary for the professional practice of massage and bodywork therapy, as defined in G.S. 90-622(3). Each program of a specified number of instructional hours shall be considered a separate program for the purposes of Board approval, and shall require a separate application for approval.

(2) Massage and bodywork therapy school. - Any educational institution that conducts a program, as defined above, for a tuition charge. Such institutions may be organized as proprietary schools, which are privately owned and operated by a sole proprietor, partnership, corporation, association, or other entity; or may be post-secondary colleges or universities, whether publicly or privately owned.

(3) Instructor. - A person who meets the qualifications set forth in Subparagraph (e)(1) or (e)(2) of this Rule, who is responsible for delivering course content according to curricula established by the school, and who is responsible for managing the classroom environment.

(4) Teaching assistant. - A person who meets the qualifications set forth in Subparagraph (e)(3) or (e)(4) of this Rule, who is in the classroom to support the role of the instructor, and who may only provide instruction to students under the direct supervision of the instructor.

(5) One classroom hour of supervised instruction. - At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of a member of the school's instructional staff.

(b) Authority to operate.
(1) A proprietary school shall provide documentation that it is licensed or approved by the educational regulatory authority in the state, territory or country in which it operates; or shall be exempt from licensure or approval by statute.

(2) A regionally accredited post-secondary institution within the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval to conduct such program from the State Board of Community Colleges or the University of North Carolina.

(3) A regionally accredited post-secondary institution outside the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval from the regulatory authority in the state, territory or country in which it operates.

(c) Program director. One person shall be designated as the program director, and shall be qualified in accordance with the requirements listed in Subparagraph (d)(2) of this Rule. This person may be titled as director, or in the case of programs at post-secondary institutions, department chair or program coordinator. The director is the person directly responsible for all facets of the program's operation, including: curriculum, methods of instruction, employment, training and evaluation of administrative and instructional staff, maintenance of proper administrative records, financial management, recruitment of students, and maintenance of school plant and equipment.

(d) Administrative staff and qualifications.

1. The school shall have administrative staff to support the number of students enrolled.

2. The program director or department chair shall have the following qualifications:

   A. Be a graduate of a regionally accredited college or university and hold a baccalaureate degree, or have at least five years of professional experience in the field of massage and bodywork therapy; and

   B. Have at least two years experience as an instructor in one or more of the major courses which are presented in the schools curriculum, or have at least two years experience in education administration.

Persons who possess qualifications which are equivalent to the requirements prescribed in Paragraphs (a) and (b) of this Rule may be approved individually by the Board.

3. Other administrative staff who oversee such areas as operations, education, admissions, financial aid, or student services, shall have the following qualifications:

   A. Be a high school graduate or its equivalent; and

   B. Have at least one year of professional experience in their area of their job responsibility, or have received training from the school sufficient to perform their defined job responsibilities.

(e) Instructional staff qualifications. The requirements herein shall apply to instructors and teaching assistants who provide more than six instructional hours in the program. Instruction is provided by persons with appropriate education and experience as follows:

1. Instructors who teach courses related to the theory and practice of massage and bodywork therapy shall have the following qualifications:

   A. Have a minimum of two years of professional practice experience in, and have received training and certification in the subject area they teach; and

   B. Have received training in teaching methods, which shall include:

      i. Presentation skills;

      ii. Development and implementation of lesson plans;

      iii. Dynamics of the teacher/student relationship;

      iv. Management of the classroom environment;

      v. Evaluation of student performance;

      vi. Orientation to the school's administrative policies and procedures; and

   C. Have one of the following credentials:

      i. Be licensed under the Practice Act; or

      ii. For schools and instructors outside the State, hold a similar credential in massage and bodywork therapy; if no such credential is available, hold a valid certification from a certifying agency which is approved by the National Commission of Certifying Agencies; or

      iii. Be a licensed physician, dentist, chiropractor, osteopath, registered nurse, physical therapist, occupational therapist, or acupuncturist.

2. Instructors in all other courses in the curriculum shall have received training in teaching methods as defined in Subparagraph (e)(1)(B) of this Rule, and shall have one of the following qualifications:

   A. Have a minimum of two years of professional practice experience in, or have received training and
certification in the subject area they teach; or
(B) Have a minimum of 12 semester credit hours of academic course work in the subject area they teach from a regionally accredited post-secondary institution.

(3) Teaching assistants in courses related to the theory and practice of massage and bodywork therapy shall have one of the credentials listed in Subparagraph (e)(1)(C) of this Rule.

(4) Teaching assistants in all other courses in the curriculum shall have one of the following qualifications:
(A) Have a minimum of one year of professional practice experience in, or have received training and certification in the subject area they teach; or
(B) Have a minimum of six semester credit hours of academic course work in the subject area they teach from a regionally accredited post-secondary institution.

(f) Job descriptions and contracts.

(1) The school shall have written job descriptions with performance standards for each administrative and instructional position on its staff.

(2) The school shall execute an employment agreement with each staff member, whether such staff member works in a full-time or part-time capacity, or is an employee or an independent contractor.

(g) School plant and equipment.

(1) The school plant, premises, and facilities shall be safe and sanitary and shall be in compliance with the statutory provisions and the rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation. Classrooms shall have sufficient lighting, ventilation, and temperature control to provide a comfortable environment for students.

(2) The equipment, supplies, and instructional materials of the school shall be adequate in type, quality, and amount for each course offered by the school. These shall also meet all requirements of statutory provisions, and rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation.

(3) The school shall have an annual inspection from the city or county agencies which determine compliance with requirements for fire, safety, health, and sanitation in its jurisdiction.

(4) For classes conducted in the practice of massage and bodywork therapy, the school shall provide a minimum of 70 square feet of classroom space per treatment table, exclusive of fixed items in the classroom. There shall be one therapy treatment table, adjustable in height, for every two students in such classes.

(h) Financial management systems and economic stability.

(1) Schools shall maintain financial management systems which assure safety, accountability and effective use of financial resources, and which provide accurate information for assessing the financial condition of the institution. This includes regular profit and loss statements, balance sheets, and an annual budget. The following standards shall be met:
(A) Generally accepted accounting principles are followed in the preparation of financial statements; and
(B) Accuracy and security of records is maintained.

(2) Schools shall be financed to ensure long term stability. The following standards shall be met:
(A) Income and reserves are sufficient to complete instruction of currently enrolled students while still meeting all requirements for Board approval; and
(B) A ratio of assets to liabilities of at least 1:1 is maintained; and
(C) An annual independent review or audit of the school's financial statements is conducted by a Certified Public Accountant.

(3) The Board may request a credit report on a school.

(4) The school shall maintain professional liability insurance to guarantee the fiscal viability of the school in the case of a claim of malpractice related to massage and bodywork therapy performed as a part of the school's instructional program.

(i) Admissions.

(1) The school shall maintain admission policies and procedures which are fully disclosed and which are administered consistently.

(2) Admissions standards are designed to ensure that only those students who have the ability to successfully complete the program will be admitted.

(3) The school shall maintain written documentation of the basis for admission of the student. Such records shall include copies of high school diploma or transcripts, proof of age, and other specific admission requirements of the school.

(4) Documentation is maintained, for a minimum of three years, of the reasons for the denial of admission of any student.

(5) A school is not precluded from enrolling students in individual courses not leading to a credential.

(j) Tuition, refunds and financial aid.
(1) The school shall fully and clearly disclose tuition and all related program costs to prospective students.

(2) Tuition policies shall be published in the school catalog or bulletin. Such policies shall address adjustment of charges in the case of:
   (A) Cancellation of enrollment within 72 hours of signing an student enrollment agreement;
   (B) Student withdrawal before the program start date;
   (C) Student withdrawal after the program start date;
   (D) Student dismissal; and
   (E) Cancellation of program by the school.

(3) All students who enroll in the same program shall be charged the same amount for tuition. This does not preclude the school from raising tuition, from granting scholarships, from granting cash discounts to students for advance payment of tuition, or in the case of public institutions, from charging differential rates to residents and non-residents.

(4) The school shall maintain a refund policy as follows:
   (A) Proprietary schools shall base refunds on a percentage of the program actually completed by the student. At a minimum, such policy shall grant refunds up to and including the 25 percent point of the program. Refunds shall be calculated from the last date of attendance and made within 30 days of the date of termination or dismissal.
   (B) Programs offered by post-secondary colleges or universities shall follow the refund policy set forth by their program's governing body or regulatory agency.

(5) The school catalog or bulletin shall accurately describe any financial aid programs in which the school participates, and shall distinguish in meaning between the terms "scholarship," "grant," "loan," and "financial aid." Schools which administer Title IV funds shall also include in its catalog and all advertising an eligibility phrase such as, "Financial aid available for those who qualify." Schools that do not administer Title IV funds shall not use the term "financial aid."

(k) Student records and academic progress.

(1) The school shall maintain current, complete, and accurate records on each student. Such records shall show attendance, academic progress, grades, date entered, dates attended, courses studied, program completed, and date of graduation.

(2) Records shall be maintained in perpetuity, shall be stored in such a manner as to ensure their confidentiality, and shall be safe from theft, fire, or other possible loss.

(3) Students and graduates shall be allowed access to their records. Transcripts shall be released upon written request from students and graduates.

(4) All school policies, including those relating to satisfactory attendance, academic progress, and conduct shall be enforced. Students shall be notified when completion standards are not being met.

(l) Educational credential issued to graduates; reporting of graduates' pass rate on national certification examination.

(1) Upon completion of the program, the student is given a certificate, diploma, or degree stating that the educational requirements have been met and the program has been satisfactorily completed.

(2) Such credentials are only granted to students who have completed the entire program for which the student enrolled.

(3) The school shall authorize agencies which conduct national certification examinations which are accepted by the Board as meeting the requirement of G.S. 90-629(5) to report directly to the Board the pass rate of the school's graduates on such examinations.

(m) Pursuant to G.S. 90-631(1), programs shall meet the following standards:

(1) The school shall develop a set of educational objectives which describe the intended skills, knowledge, and attitudes which the program is designed to develop in the student by the completion of such program.

(2) The school shall offer a program consisting of a minimum of 500 classroom hours of supervised instruction. Such program shall contain the following hours of specific course work which are consistent with the school's mission and educational objectives:
   (A) 200 hours in the fundamental theory and practice of massage and bodywork therapy, which shall include a minimum of 100 hours in application of hands-on methods; the balance of such hours shall include client assessment skills, indications and contraindications for treatment, body mechanics, draping procedures, standard practices for hygiene and control of infectious diseases, and the history of massage and bodywork therapy;
   (B) 100 hours in anatomy and physiology, which shall include the structure and function of the human body and common pathologies; and
   (C) 50 hours in the following areas:
(i) 15 hours in professional ethics, and North Carolina laws and rules for the practice of massage and bodywork therapy;

(ii) 15 hours in business practices related to the field of massage and bodywork therapy; and

(iii) 20 hours in somatic psychology, including dynamics of the therapist/client relationship, communication skills, and boundary functions;

(D) 150 hours in other courses related to the practice of massage and bodywork therapy; such courses may include additional hands-on techniques, specific applications, adjunctive modalities, in-depth anatomy and physiology, kinesiology, psychology, movement education, or supervised clinical practice. First Aid or CPR may not be included in this category.

(3) For programs which include a student clinic or fieldwork experiential component, such hours do not exceed 100 hours of the minimum requirement set forth in Subparagraph (m)(2)(D) of this Rule. All such work is directly supervised and evaluated by an instructional staff member.

(4) For programs which include an externship component, such hours shall not be included in the minimum requirements set forth in Subparagraph (m)(2) of this Rule, and shall not comprise more than 20 percent of the total program hours. All such work is supervised by a designated person at the externship site, and is evaluated by the school.

(5) Programs shall consist of a series of courses which are organized in a logical sequence, and which are consistent with the educational objectives. Sequential organization means that within a course, each class prepares students for the next class; overall, each course gives students the skills and knowledge necessary for the next course. Material is not presented unless students have the necessary skills and knowledge to utilize that material safely and effectively.

(6) Course titles match the content of the course; published course descriptions accurately reflect the specific learning objectives of each course; sufficient hours are allotted to each course to allow students to gain competence in the subject areas covered.

(7) A course curriculum is developed for each course, which shows the basic content of each individual class in the course, in the sequence presented.

(8) Course requirements and competencies are consistent from instructor to instructor. Teaching materials, including detailed lesson plans, are developed and maintained for each course to ensure such consistency. Teaching methods are appropriate to course content, and to diverse learning styles.

(9) Programs shall be a minimum of six months in length, with no more than nine instructional hours in one day. There shall be no more than two hours of instruction without a break. There shall be no more than four hours of instruction without a meal break.

(10) For a student to receive credit in a course, the school shall require students to attend no less than 75 percent of the instructional hours, and to make up all missed instructional hours according to the procedures established by the school.

(11) A syllabus is developed for each course, and provided to students prior to the beginning of instruction. The syllabus shall include the following elements: course title, course description, learning objectives, total number of instructional hours, meeting dates and class times, assignments, textbooks, evaluation methods, quiz and examination dates, and performance standards.

(12) For post-secondary institutions, courses which fulfill the minimum requirements set forth in Subparagraph (m)(2) of this Rule, shall support the program in massage and bodywork therapy. Courses in addition to the minimum requirements may include courses from other departments or programs which are directly relevant to the practice of massage and bodywork therapy.

(n) Student to instructor ratios.

(1) For classes which involve hands-on practice, the student to instructor ratio shall not exceed 16 to 1.

(2) Both instructors and teaching assistants, as defined in Paragraph (a) of this Rule, shall be considered in calculating these ratios.

(o) Learning resources. The school shall provide sufficient learning resources to students and instructional staff to support the educational objectives of the program as follows:

(1) The school shall maintain a library or resource center which contains books, periodicals, and other informational materials in the field of massage and bodywork therapy. As an alternative, the school may have a contractual agreement with another facility to provide access to such resources.

(2) All other resources, such as charts, models, or videotapes, shall be maintained in good condition.

(p) Standards of professional behavior.
(1) Educational programs and services offered shall be the primary emphasis of all
advertisements, catalogs, promotional
literature, and recruitment activities, whether
distributed to prospective students or the
general public.

(2) All statements and representations made shall be clearly worded, factually accurate, and
current. Supporting information shall be kept
on file and available for review. All
advertising and promotional materials shall
include the correct name and location of the
school.

(3) The school shall not falsely represent its
facilities in photographs, illustrations, or
through other means.

(4) The school catalog or bulletin shall contain all
information required in Paragraph (v) of this
Rule.

(5) All advertising and promotional activities shall
clearly indicate that massage and bodywork
training and not employment is being offered.
No overt or implied claim of individual
employment shall be made. No false or
deceptive statements regarding employment
opportunities or earning potential in the field
of massage and bodywork as a result of the
completion of the course of study shall be used
to solicit students.

(6) Letters of endorsement, commendation, or
recommendation in favor of a school shall be
used for advertising or promotion only with
the written consent of the author without any
offer of financial compensation, and only
when such letters portray current conditions or
facts. Letters shall contain the date they were
received, shall be kept on file and be subject to
inspection.

(7) Programs that use placement information in
advertisements, catalogs or other printed
documentation shall corroborate the data.

(8) School literature and advertisements shall not
quote “high top” or “up to” salaries unless they
also indicate the normal range or starting
salaries for graduates.

(9) Schools offering programs which are not
approved by the Board shall clearly identify
which programs are Board approved.

(10) Schools shall accurately describe requirements
for state licensure.

(11) The school shall not defame competitors by
falsely imputing to them dishonorable conduct,
inability to perform on contracts, or by the
false disparagement of the character, nature,
quality, values, or scope of their educational
services, or in any other material respect.

(u) The school shall execute a Student Enrollment Agreement
for training with every student. A copy of the executed
agreement shall be provided to the student. At a minimum, such
agreement shall contain the following:

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(1) Name and telephone number of the school; location of where the student will attend classes.

(2) Student’s name, address, telephone number, social security number.

(3) Name of the program in which student is enrolling; number of clock or credit hours of the program; beginning and ending dates; length of program in weeks or months; expected graduation date.

(4) Program tuition and all related costs, including application and registration fees, estimated cost of books and supplies.

(5) Refund and cancellation policies, including buyer's right to cancel.

(6) Payment methods, including cash, installment payment plans, or financial aid (as applicable); interest charged; methods used to collect delinquent tuition.

(7) Placement guarantee disclaimer.

(8) Grounds for dismissal from the school.

(9) Statement referencing the school catalog and student handbook as a legal part of the enrollment agreement.

(10) Statement certifying that student has read and understands all terms of the enrollment agreement.

(11) Signature lines for school official and student.

(v) The school shall publish a catalog or bulletin which is certified by an authorized official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:

(1) School name, location address, phone number.

(2) Volume number and date of publication.

(3) Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions.

(4) Names and titles of all instructional and key administrative staff.

(5) Statement of school mission, philosophy, and educational program objectives.

(6) School history and identification of all licenses, approvals or accreditations which the school maintains.

(7) Definition of measurement of program, whether in clock hours or credit hours.

(8) Detailed course descriptions, including number of hours for each course.

(9) Graduation requirements, including type of credential issued upon graduation.

(10) Requirements for licensure, certification or registration of therapists in the state in which the school operates.

(11) Standards for admission and description of the school’s admissions process.

(12) School calendar, including beginning and ending dates of all programs, all holidays and days off.

(13) Length of time required for completion of the program.

(14) Program tuition and all associated costs, including textbooks, supplies, and other expenses.

(15) Refund policy.

(16) Description of facilities and learning resources.

(17) Student services.

(18) Academic policies, including the following:

(A) Grading system;

(B) Standards of satisfactory academic progress;

(C) Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance for students dismissed for unsatisfactory academic progress;

(D) Transfer of credit from other institutions;

(E) Attendance requirements, make-up work, tardiness, leave of absence;

(F) Standards of conduct, including a sexual harassment policy; and

(G) Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when institutional process does not bring resolution.

(w) Notification of changes. An approved school shall notify the Board in writing within 30 days of any changes in administration, facilities, instructional staff, curriculum, or other changes that may effect the programs offered.

(x) Board approval not transferable.

(1) In the event of the change of ownership of a school, the approval already granted to the original owner or operator thereof shall not be transferable to the new ownership or operators. Provided, however, the Board may issue temporary operating approval for a period of 90 days to a school upon its change of ownership if the school held a valid, current approval prior to the change, and if the Board finds that the school is likely to qualify after the change of ownership for approval under this Section.

(2) For the purposes of this Paragraph, "change of ownership" is defined as, but not limited to the following situations:

(A) Sale of the school;

(B) Transfer of controlling interest of stock of the school or its parent corporation;

(C) Merger of two or more schools;

(D) Transfer of controlling interest of stock to parent corporation;
(E) Transfer of assets or liabilities of school to parent corporation or owners; or

(F) Change from profit to non-profit status.

(y) Initial application for Board approval. The school shall submit an application for approval on a form provided by the Board, which shall be accompanied by the following:

1. A certified check for the application fee set forth in 21 NCAC 30.0606, made payable to the Board.
2. Completed personnel qualification forms on the school director, administrative staff, instructors, and teaching assistants, with photocopies of academic transcripts, degrees, diplomas, and professional licenses and certifications for each person.
3. Job descriptions for school director, administrative staff, instructors, and teaching assistants.
4. Examples of contracts for administrative and instruction staff.
5. Detail of ownership structure of the school, and organizational chart.
6. Facility plan, including detailed floor plans with dimensions and fixtures, uses of each room, specifications on lighting, ventilation, and temperature control.
7. Equipment list, including furniture, office equipment, and instructional equipment for classroom.
8. Copy of deed if school owns its facility, or copy of lease if school does not own its facility.
9. Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval.
10. Statement of Financial Affirmation; copies of the school’s financial statements for the previous fiscal year; letter from a Certified Public Accountant affirming that the school is in compliance with the requirements of this Rule.
11. Copy of the application for admission which is submitted by prospective students; copies of materials used to document the admission process with applicants.
12. Copies of the forms used for documentation of attendance, missed class make-up work, student academic progress, grades earned, notification of unsatisfactory progress and notification of disciplinary action.
13. Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.
14. Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.
15. List of student to instructor ratios for each course offered.
16. List of learning resources provided by the school, including numbers of books, periodicals, and other informational materials in the school library.
17. Copies of all advertisements and promotional materials from the previous year, including website addresses and tapes of broadcast advertisements.
18. Copy of the Student Enrollment Agreement issued by the school.
19. Catalog Certification Form; copy of the current school catalog or bulletin, with accompanying student handbook (if applicable).
20. As applicable, copy of state license or approval to operate school, or citation of statutory exemption; copy of certificate of accreditation (if applicable).

(z) Application for Board approval of additional programs. An approved school shall submit an application for approval of an additional program on a form provided by the Board, which shall be accompanied by the following:

1. A certified check for the application fee set forth in 21 NCAC 30.0606, made payable to the Board.
2. Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.
3. List of student to instructor ratios for each course offered.
4. Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.
5. Copy of the school catalog or bulletin which describes the additional program.
6. Complete documentation of any other requirement set forth in Paragraph (y) of this Rule, which is different than what the school documented in its initial application for approval, or what has been documented in its most recent application for renewal of approval.

**History Note:**
Authority G.S. 90-631;
Temporary Adoption Eff. February 15, 2000;

**21 NCAC 30.0605 SCHOOL INSPECTIONS**
In order to verify that a school is in compliance with the minimum requirements for approval set forth in this Section, the Board may inspect a school during the application process, or at any time after approval has been granted. Such inspection may include the school’s physical facilities, equipment, learning materials, and records. Such inspection may also include interviews with members of the school’s administrative staff, instructional staff, or student body.
TERM OF SCHOOL APPROVAL; FEES

(a) School approvals are granted for a one year term, beginning on July 1 and ending on June 30.

(b) The Board shall charge fees for a request for an application approval package, initial application for school approval, application for additional program approval, and annual renewal of approval. The fees collected under this Section are to be applied to the administrative costs of the approval program. No fee for approval application or renewal shall be refunded in the event the application is rejected or the approval suspended or revoked.

(c) Fees for schools within the State are as follows:

<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Fee</th>
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<tbody>
<tr>
<td>Request for Approval Application Package</td>
<td>$20.00</td>
</tr>
<tr>
<td>Fee for initial application for Board approval</td>
<td>1500.00</td>
</tr>
<tr>
<td>Fee for application for Board approval of additional programs</td>
<td>750.00</td>
</tr>
<tr>
<td>Fee for annual renewal of Board approval (one program)</td>
<td>1000.00</td>
</tr>
<tr>
<td>Fee for annual renewal of Board approval (each additional program)</td>
<td>500.00</td>
</tr>
</tbody>
</table>

(d) Fees for schools outside the State which are licensed are approved by the educational regulatory authority in the state in which it operates.

<table>
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<td>200.00</td>
</tr>
<tr>
<td>Fee for annual renewal of Board approval (each additional program)</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Reason for Proposed Action: We are moving into a severe shortage of licensed nurses (both Registered Nurses and Licensed Practical Nurses) in our state. The Board believes that we could better serve the public's health by allowing those nurses who are not being charged with egregious violations of the Nursing Practice Act to remain in licensed positions with appropriate restrictions to enhance their knowledge, skills or ability to provide safe nursing care. Many of the nurses who come through our disciplinary process could be maintained in licensed nurse positions while completing disciplinary sanctions such as remedial education, monitored practice, or other specified restrictions appropriate to the allegations in the case under these proposed changes. Offering a voluntary surrender without any other mechanism for remediation simply removes the nurse from the workforce and, we believe, is contrary to public interest at this time.

Comment Procedures: Written comments should be submitted to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129.
(5) failure to make available to another health care professional any client information crucial to the safety of the client's health care;
(6) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
(7) practicing or offering to practice beyond the scope permitted by law;
(8) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
(9) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
(10) abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuation of such care;
(11) harassing, abusing, or intimidating a client either physically or verbally;
(12) failure to maintain an accurate record for each client which records all pertinent health care information as defined in Rule .0224(f)(2) or .0225(f)(2);
(13) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
(14) exercising undue influence on the client, including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;
(15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;
(16) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
(17) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law;
(18) guaranteeing that a cure will result from the performance of professional services;
(19) altering a license by changing the expiration date, certification number, or any other information appearing on the license;
(20) using a license which has been altered;
(21) permitting or allowing another person to use his or her license for the purpose of nursing;
(22) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure;
(23) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
(24) accepting responsibility for client care while impaired by alcohol or other pharmacological agents;
(25) falsifying a client's record or the controlled substance records of the agency; or
(26) inappropriately kissing, fondling, touching or engaging in any other activities of a sexual nature with a client while responsible for the care of that individual.

(d) When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction’s action. The licensee may request a hearing. At the hearing the issues will be limited to:

(1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
(2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice Act; and
(3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(e) Before the North Carolina Board of Nursing makes a final decision in any contested case, the person, applicant or licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of G.S.150B, Article 3A.

The Paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for the North Carolina Board of Nursing.

The following general statutes, rules, and procedures apply and are adopted by reference within this Rule according to G.S. 150B-21.6, unless another specific statute or rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36 .0224 - .0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for Superior and District Court.

Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or his attorney who prepares the document and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed nurse the nursing license certificate
TEMPORARY RULES

number shall appear on all correspondence with the Board of Nursing.

(f) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive Director of the Board pursuant to G.S. 90-171.23(b)(3). Such a finding shall be incorporated with the order of the Board of Nursing and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced in a timely manner.

(g) The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation, by authorized Board staff, of a written or verbal complaint and review with legal counsel or prosecuting attorney or Executive Director.

(1) Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on behalf of the Board of Nursing to the licensee who is the subject of the complaint.

(A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(B) The Letter of Charges serves as the Board's formal notification to the licensee that an allegation of possible violation(s) of the Nursing Practice Act has been initiated.

(C) The Letter of Charges does not in and of itself constitute a contested case.

(2) The Letter of Charges shall include the following:

(A) a short and plain statement of the factual allegations;

(B) a citation of the relevant sections of the statutes or rules involved;

(C) notification that a settlement conference shall be scheduled upon request;

(D) explanation of the procedure used to govern the settlement conference;

(E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, an administrative hearing shall be scheduled; and

(F) if applicable, and in any sanction or remediation in accordance with Board-adopted policy, an offer of voluntary surrender or reprimand also policy may be included, included in specified types of alleged violations of the Nursing Practice Act.

(3) A case becomes a contested case after the licensee, person, or applicant disputes the allegations contained in the Letter of Charges, requests an administrative hearing, or refuses to accept a settlement offer extended by the Board of Nursing.

(h) No Board member shall discuss with any party the merits of any case pending before the Board of Nursing. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself from any participation with the majority of the Board of Nursing hearing the case.

(i) A settlement conference, if requested by the licensee, is held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.

(1) The conference shall be held in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all involved parties.

(2) All parties shall attend or be represented at the settlement conference. The parties shall be prepared to discuss the alleged violations and the incidents on which these are based.

(3) Prior to the commencement of the settlement conference, a form shall be signed by the licensee which invalidates all previous offers made to the licensee by the Board.

(4) At the conclusion of the day during which the settlement conference is held, a form shall be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:

(A) if a settlement is reached, the Board of Nursing shall forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or

(B) if a settlement cannot be reached, the case shall proceed to a formal administrative hearing.

(j) Disposition may be made of any contested case or an issue in a contested case by stipulation, agreement, or consent order at any time prior to or during the hearing of a contested case.

(k) The Board of Nursing shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The notice shall include:

(1) Acknowledgment of service, or attempted service, of the Letter of Charges in compliance with Paragraph (f) of this Rule;

(2) Date, time, and place of the hearing;

(3) Notification of the right of a party to represent himself or to be represented by an attorney;

(4) A statement that, pursuant to Paragraph (m) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;

(5) A statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing;
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<td>(6)</td>
<td>A statement advising the licensee that a list of all witnesses for the licensee should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and</td>
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<td>(7)</td>
<td>A statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.</td>
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<td>(l)</td>
<td>Pre-hearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to testimony or exhibits, to obtain stipulations of agreement on non-disputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.</td>
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<tr>
<td>(1)</td>
<td>The pre-hearing conference shall be conducted in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all parties.</td>
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<td>(2)</td>
<td>The pre-hearing conference shall be an informal proceeding and shall be conducted by a Board-designated administrative law counsel.</td>
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<tr>
<td>(3)</td>
<td>All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.</td>
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<td>(m)</td>
<td>Pre-hearing conferences or administrative hearings conducted before a majority of Board members shall be held in Wake County or, by mutual consent in another location when a majority of the Board has convened in that location for the purpose of conducting business. For those proceedings conducted by an Administrative Law Judge the venue shall be determined in accordance with G.S. 150B-38(e). All hearings conducted by the Board of Nursing shall be open to the public.</td>
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<tr>
<td>(n)</td>
<td>The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case.</td>
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<tr>
<td>(1)</td>
<td>Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.</td>
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<tr>
<td>(2)</td>
<td>Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall include the following:</td>
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<tr>
<td>(A)</td>
<td>the full name and home or business address of all persons to be subpoenaed; and</td>
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<tr>
<td>(B)</td>
<td>the identification, with specificity, of any documents or information being sought.</td>
</tr>
<tr>
<td>(3)</td>
<td>Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.</td>
</tr>
<tr>
<td>(4)</td>
<td>Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.</td>
</tr>
<tr>
<td>(o)</td>
<td>All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the contested case hearing prior to the commencement of testimony. The designated administrative law counsel shall hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.</td>
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<td>(p)</td>
<td>Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance must be in writing and received in the office of the Board of Nursing no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the Hearing Officer of the Board. All other motions for continuance shall be ruled on by the majority of the Board members or Administrative Law Judge sitting at hearing.</td>
</tr>
<tr>
<td>(q)</td>
<td>All hearings by the Board of Nursing shall be conducted by a majority of members of the Board of Nursing, except as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at the hearing. The Board of Nursing shall designate an administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.</td>
</tr>
<tr>
<td>(1)</td>
<td>When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of G.S. 150B, Article 3A and 21 NCAC 36 .0217 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.</td>
</tr>
<tr>
<td>(2)</td>
<td>In the event that any party or attorney or other representative of a party engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show</td>
</tr>
</tbody>
</table>
cause why the person(s) should not be held in contempt of the Board and its processes.

(3) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Board of Nursing and the designated administrative law counsel shall receive the additional testimony. In the event that new members of the Board or a different administrative law counsel must participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt of the additional testimony.

(r) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. 8C shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

(1) Sworn affidavits may be introduced by mutual agreement from all parties.

(2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.

(s) Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are available upon request from the Board of Nursing and shall be supplied at a reasonable cost.

**RULEMAKING AGENCY**

**Rule Citation:** 21 NCAC 36 .0231

**Effective Date:** April 15, 2001

**Findings Reviewed and Approved by:** Beecher R. Gray

**Authority for the rulemaking:** G.S. 90-6; 90-171.43; 90-171.51; 90-178.3(a); 90-640(a)-(d)

**Reason for Proposed Action:** Law passed in 1999 with full implementation date of October 1, 2001 (Session Law 1999-320, Senate Bill 951 – An Act to Protect Patient’s Rights by Requiring Name Badges or other identification for Health Care Practitioners.)

**Comment Procedures:** Written comments should be submitted to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129.

**SECTION .0200 – LICENSURE**

21 NCAC 36 .0231 EXCEPTIONS TO HEALTH CARE PRACTITIONERS IDENTIFICATION REQUIREMENTS

(a) The licensed nurse or nurse aide II is not required to wear a readily visible badge or other form of identification in the following direct patient care situations:

(1) procedures requiring full sterile dress; or

(2) procedures requiring other protective clothing or covering.

(b) Identification of the licensed nurse or nurse aide may be limited to first name only and level of licensure or listing status when the full name identification may:

(1) place the personal safety of the nurse or nurse aide II in jeopardy; or

(2) interfere with the therapeutic relationship between the nurse or nurse aide and client(s).

(c) In all other situations involving the direct provision of health care to clients, the licensed nurse or nurse aide II shall wear or display a readily visible form of identification to include:

(1) the individual's first and last name; and

(2) the license, approval to practice title or listing title as required by law, or standard abbreviations for such title.

(d) There shall be written agency policy outlining any exceptions to the requirements consistent with Paragraph (b) of this Rule.

**History Note:** Authority G.S. 90-6; 90-171.43; 90-171.51; 90-171.83(a); 90-178.3; 90-640(a)-(d); Temporary Adoption Eff. April 15, 2001.
This Section contains the agenda for the next meeting of the Rules Review Commission on Wednesday, April 19, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Tuesday, April 13, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Paul Powell - Chairman
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House
John Arrowood - 1st Vice Chairman
Jennie J. Hayman 2nd Vice Chairman
Walter Futch
Jeffrey P. Gray
George Robinson

RULES REVIEW COMMISSION MEETING DATES

April 19, 2001
May 17, 2001        June 14, 2001
July 19, 2001       August 16, 2001

Log of Filings (Log #174)
February 21, 2001 through March 20, 2001

DHHS/DIVISION OF MEDICAL ASSISTANCE
Personal Care Services 10 NCAC 26H .0506 Amend

DHHS/SOCIAL SERVICES COMMISSION
Licensing Process 10 NCAC 41S .0102 Amend
Definitions 10 NCAC 41S .0201 Amend
Responsibility to Division of Social Services 10 NCAC 41S .0202 Amend
Licensure Procedures 10 NCAC 41S .0204 Amend
Recordkeeping and Reporting 10 NCAC 41S .0305 Amend
Client Rights 10 NCAC 41S .0306 Amend
Personnel Deployment 10 NCAC 41S .0402 Amend
Personnel Positions 10 NCAC 41S .0405 Amend
Admission Agreement 10 NCAC 41S .0503 Amend
Client Records 10 NCAC 41S .0506 Amend
Work 10 NCAC 41S .0612 Amend
Incident Reports 10 NCAC 41S .0614 Amend
Fire and Building Safety 10 NCAC 41S .0704 Amend
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**Chief Administrative Law Judge**

JULIAN MANN, III

**Senior Administrative Law Judge**

FRED G. MORRISON JR.

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