

NORTH CAROLINA

IN THIS ISSUE



REGISTER

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Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Linda Dupree, Editorial Assistant
Dana Sholes, Editorial Assistant
Rhonda Wright, Editorial Assistant

I. EXECUTIVE ORDER	
Executive Order No. 26	463
II. IN ADDITION	
Revenue – Tax Review Board Nos. 386-390.....	464 - 471
ENR – Notice of Intent to Redevelop a Brownfields Property - City of Charlotte.....	472
III. RULE-MAKING PROCEEDINGS	
Environment and Natural Resources	
Health Services, Commission for	473 - 474
Justice	
Private Protective Services	473
IV. PROPOSED RULES	
Administrative Hearings, Office of	
Rules Division.....	534 - 537
Correction	
Private Correctional Service Providers	475 - 477
Environment and Natural Resources	
Parks and Recreation Authority	477 - 479
Licensing Boards	
Appraisal Board	520 - 526
CPA Examiners.....	479 - 497
Dental Examiners, Board of	501 - 505
General Contractors, Licensing Board	497 - 501
Pharmacy, Board of.....	505 - 516
Plumbing, Heating & Fire Sprinkler Contractors, Board of Examiners	516 - 520
Real Estate Commission.....	526 - 530
Substance Abuse Professionals, Certification Board for.....	530 - 534
V. TEMPORARY RULES	
Environment and Natural Resources	
Well Contractor Certification Commission	549 - 551
Wildlife Resources Commission.....	538
Health and Human Services	
Health Services, Commission for	538 - 549
VI. RULES REVIEW COMMISSION.....	552 - 553
VII. CONTESTED CASE DECISIONS	
Index to ALJ Decisions.....	554 - 556
Text of Selected Decisions	
01 EHR 1885	557 - 562
02 APB 0130.....	563 - 570
02 UNC 0458	571 - 573
VIII. CUMULATIVE INDEX	1 - 71

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Locksmith Licensing Board	29
*21	Occupational Licensing Boards	Massage & Bodywork Therapy	30
22	Administrative Procedures (Repealed)	Marital and Family Therapy	31
23	Community Colleges	Medical Examiners	32
24	Independent Agencies	Midwifery Joint Committee	33
25	State Personnel	Mortuary Science	34
26	Administrative Hearings	Nursing	36
27	NC State Bar	Nursing Home Administrators	37
28	Juvenile Justice and Delinquency Prevention	Occupational Therapists	38
		Opticians	40
		Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Respiratory Care Board	61
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2002 – December 2002

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/28/02	03/04/02	03/20/02	05/28/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/28/02	03/18/02	03/20/02	05/28/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/28/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/28/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
16:19	04/01/02	03/08/02	06/03/02	04/16/02	05/01/02	05/20/02	01/29/03	05/31/02	06/20/02	01/29/03	12/27/02
16:20	04/15/02	03/22/02	06/17/02	04/30/02	05/15/02	05/20/02	01/29/03	06/14/02	06/20/02	01/29/03	01/10/03
16:21	05/01/02	04/10/02	07/01/02	05/16/02	05/31/02	06/20/02	01/29/03	07/01/02	07/22/02	01/29/03	01/26/03
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16:23	06/03/02	05/10/02	08/15/02	06/18/02	07/03/02	07/22/02	01/29/03	08/02/02	08/20/02	01/29/03	02/28/03
16:24	06/17/02	05/24/02	09/03/02	07/02/02	07/17/02	07/22/02	01/29/03	08/16/02	08/20/02	01/29/03	03/14/03
17:01	07/01/02	06/10/02	09/03/02	07/16/02	07/31/02	08/20/02	01/29/03	08/30/02	09/20/02	01/29/03	03/28/03
17:02	07/15/02	06/21/02	09/16/02	07/30/02	08/14/02	08/20/02	01/29/03	09/13/02	09/20/02	01/29/03	04/11/03
17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
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17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
17:06	09/16/02	08/30/02	11/15/02	10/01/02	10/16/02	10/21/02	01/29/03	11/15/02	11/20/02	01/29/03	06/13/03
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17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

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

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

NOTICE OF RULE-MAKING PROCEEDINGS

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

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

NOTICE OF TEXT

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

END OF REQUIRED COMMENT PERIOD

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

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

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

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

**EXECUTIVE ORDER NO. 26
WATER SYSTEM PROTECTION**

In light of the continuing drought and the obvious necessity of protecting North Carolina's water supply for all necessary individual and industrial uses, and under the legal authority vested in me as Governor by provisions including, but not limited to, Article III of the Constitution of North Carolina, N.C.G.S. § 143-341(8) and N.C.G.S. § 147-12, I hereby ORDER that:

(1) All state government agencies discontinue "non-essential" water use until further notice; and, (2) All such agencies immediately develop and begin implementing long term, financially feasible conservation measures.

Furthermore, I hereby REQUEST that all other state-sponsored institutions comply with the above directives.

In addition, I hereby ESTABLISH a Water System Protection Team chaired by the Secretaries of Crime Control and Public Safety, and Environment and Natural Resources. The team may include representatives of the state Departments of Administration, Agriculture, and Commerce, and shall work closely with the League of Municipalities, the Association of County Commissioners, and other local leaders.

The team's principal duties will include:

- providing guidelines to assist state agencies and state-sponsored institutions in complying with this Executive Order and monitoring compliance;
- assisting drought-stricken communities in enhancing conservation efforts and assessing water supply capacity, and;
- providing technical assistance, expedited permits, and other support.

The team will also work closely with, and act upon the recommendations of, the Drought Monitoring Council and will assist ongoing efforts to secure adequate federal assistance.

This Executive Order is effective August 15, 2002.

Done in the Capital City of Raleigh, North Carolina, this 15th day of August 2002.

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.

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:)
The Proposed Assessment of Additional)
Income Tax for the Taxable Year 1996)
by the Secretary of Revenue)
vs.)
John H. and Helena L. Rhinehart,)
Taxpayers)

ADMINISTRATIVE DECISION
NUMBER: 386

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by John H. and Helena L. Rhinehart (hereinafter "Taxpayers") regarding the final decision of Michael A. Hannah, Assistant Secretary of Revenue (hereinafter "Assistant Secretary"), entered on November 27, 2000, sustaining the proposed assessment of additional income tax for taxable year 1996.

Pursuant to G.S. 105-241.1, the Department of Revenue mailed the Taxpayers a Notice of Individual Income Tax Assessment dated March 26, 2000, assessing tax, and accrued interest totaling \$2,581.23 for the taxable year 1996. The Taxpayers objected to the assessment and filed a request for hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a final decision on November 27, 2000, sustaining the proposed assessment. Pursuant to G.S. 105-241.2, the Taxpayers filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, and the records and documents transmitted by the Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayers' petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly deemed by the Courts to be lacking in legal merit. Thus, the Board concludes that Taxpayers' petition is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUGED AND DECREED that Taxpayers' petition for review be and is hereby Dismissed.

Made and entered into the 10th day of July 2002.

TAX REVIEW BOARD

Signature Richard H. Moore, Chairman
State Treasurer

Signature Jo Anne Sanford, Member
Chair, Utilities Commission

Signature Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:)
The Proposed Assessment of Additional)
Income Tax for the Taxable Year 1994,)
1995, and 1996 by the Secretary of Revenue)
)
vs.)
)
Christopher J. DuHaime,)
Taxpayers)

ADMINISTRATIVE DECISION
NUMBER: 387

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by Christopher J. DuHaime (hereinafter "Taxpayers") regarding the final decision of Marilyn R. Mudge, then Acting Assistant Secretary of Revenue (hereinafter "Assistant Secretary"), entered on July 9, 2001, sustaining the proposed assessment of additional income tax for taxable years 1994, 1995 and 1996.

Pursuant to G.S. 105-241.1, the Department of Revenue mailed the Taxpayer Notices of Individual Income Tax Assessments dated May 6, 2000, assessing tax, penalties and accrued interest for the taxable years 1994, 1995, 1996. The Taxpayer objected to the assessments and filed a request for hearing. After conducting a hearing, the Acting Assistant Secretary of Revenue entered a final decision on July 9, 2001, sustaining the proposed assessments. Pursuant to G.S. 105-241.2, the Taxpayer filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, and the records and documents transmitted by the Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayer's petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly deemed by the Courts to be lacking in legal merit. Thus, the Board concludes that Taxpayer's petition is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUGED AND DECREED that Taxpayer's petition for review be and is hereby **Dismissed**.

Made and entered into the 10th day of July 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:)
The Proposed Assessment of Additional)
Income Tax for the Taxable Year 1999)
by the Secretary of Revenue)
)
vs.)
)
James B. and Melanie A. Dunham,)
Taxpayers)

ADMINISTRATIVE DECISION
NUMBER: 388

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by James B. and Melanie A. Dunham (hereinafter "Taxpayers") regarding the final decision of Marilyn R. Mudge, then Acting Assistant Secretary of Revenue (hereinafter "Assistant Secretary"), entered on May 3, 2001, sustaining the proposed assessment of additional income tax for tax year 1999.

Pursuant to G.S. 105-241.1, the Department of Revenue mailed the Taxpayers a Notice of Individual Income Tax Assessment dated August 23, 2000, assessing tax, a twenty-five percent negligence penalty and accrued interest totaling \$1,852.72 for the tax year 1999. The Taxpayers objected to the assessment and filed a request for hearing. After conducting a hearing, the Acting Assistant Secretary of Revenue entered a final decision on May 3, 2001, sustaining the proposed assessment. Pursuant to G.S. 105-241.2, the Taxpayer filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, and the records and documents transmitted by the Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayers' petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly deemed by the Courts to be lacking in legal merit. Thus, the Board concludes that Taxpayers' petition is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUGED AND DECREED that Taxpayer's petition for review be and is hereby **Dismissed**.

Made and entered into the 10th day of July 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:)
The Proposed Assessment of Sales and Use)
Tax for the period of October 1, 1992 through)
September 30, 1998 by the Secretary of)
Revenue)
vs.)
Capital Area Soccer League, Inc.)

ADMINISTRATIVE DECISION
NUMBER: 389

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer on April 16, 2002, upon a petition filed by Capital Area Soccer League, Inc., formerly Raleigh Soccer League, Inc., (hereinafter "Taxpayer") for administrative review of the Final Decision of the Secretary of Revenue entered on July 9, 2001, sustaining the proposed assessment of sales and use tax for the period of October 1, 1992 through September 31, 1998.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating. Robert V. Bode, Attorney at Law, represented the Taxpayer at the hearing. Kay Linn Miller Hobart, Assistant Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

On October 30, 1998, the Department of Revenue completed a sales and use tax audit of the Taxpayer's records and proposed to assess additional tax, penalties and interest because Taxpayer failed to remit use tax on taxable purchases from out-of-state vendors. Taxpayer objected to the assessment on the basis that it would be eligible for a refund of sales and use tax under G.S. 105-164.14(b). Even though the hearing before the Secretary was a direct result of the audit assessment, the primary issue considered by the Secretary was whether the Taxpayer is eligible for a refund of sales and use tax paid pursuant to N.C.G.S. 105-164.14(b).

Pursuant to G.S. 105-241.2, the Taxpayer appeals from an adverse decision of the Secretary of Revenue sustaining an assessment of use tax on Taxpayer's purchases of tangible personal property from vendors who did not collect sales tax. The Taxpayer is a nonprofit organization that sponsors and participates in a number of activities, which promote the sport of soccer in the Raleigh area. The Taxpayer made purchases of various equipment and supplies for use by the organization from out-of-state retailers who did not collect the North Carolina sales or use tax.

ISSUES

The issues considered by the Assistant Secretary of Revenue in rendering the final decision in this matter are stated as follows:

- 1. Is the Taxpayer liable for use tax on its purchases of tangible personal property for storage, use, or consumption?
2. Is the Taxpayer eligible for a refund of sales and use tax paid pursuant to N.C.G.S. 105-164.14(b)?

EVIDENCE

The evidence presented at the hearing before the Secretary of Revenue and included in the record for the Board's review is stated as follows:

- 1. Copy of memorandum dated March 13, 2001 from the Secretary of Revenue to the Acting Assistant Secretary of Administrative Hearings, designated Exhibit E-1.
2. Copy of face sheet of auditor's report and comments dated October 30, 1998, designated Exhibit E-2.
3. Copy of letter dated November 30, 1998, with attachments, from the Taxpayer's CPA to the Sales and Use Tax Division, designated Exhibit E-3.
4. Copy of letter dated January 15, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-4.
5. Copy of letter dated February 24, 1999 from the Taxpayer's CPA to the Sales and Use Tax Division, designated Exhibit E-5.
6. Copy of letter dated March 16, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-6.
7. Copy of letter dated April 28, 1999 and Constitution and Bylaws from the Taxpayer's CPA to the Sales and Use Tax Division, designated Exhibit E-7.

IN ADDITION

8. Copy of letter dated April 29, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-8.
9. Copy of letter dated June 3, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-9.
10. Copy of letter dated October 14, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-10.
11. Copy of letter dated October 14, 1999 from the Assistant Secretary of Revenue to the Taxpayer's CPA, designated Exhibit E-11.
12. Copy of letter dated November 4, 1999 from the Assistant Secretary of Revenue to the Taxpayer's Attorney, designated Exhibit E-12.
13. Schedule of refund claims submitted to the Department with letters denying claims, designated Exhibit E-13.
14. Copies of Articles of Incorporation and Bylaws submitted by the Taxpayer, designated Exhibit E-14.
15. Copy of Return of Organization Exempt from Income Tax, designated Exhibit E-15.
16. Copy of document entitled "CASL Community Services Information," designated Exhibit E-16.
17. Copy of letter dated February 16, 2000 from the Taxpayer's CPA to the Department, designated Exhibit E-17.
18. Copy of letter dated March 3, 2000 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-18.
19. Copy of letter dated June 5, 2000 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-19.
20. Copy of letter dated September 24, 2000 from the Taxpayer's CPA to the Sales and Use Tax Division, designated Exhibit E-20.
21. Copy of letter dated October 3, 2000 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-21.
22. Copy of letter dated October 6, 2000 from the Assistant Secretary to the Taxpayer's CPA, designated Exhibit E-22.
23. Copy of letter dated October 13, 2000 from the Taxpayer's CPA to the Assistant Secretary, designated Exhibit E-23.
24. Copy of letter dated November 9, 2000 from the Assistant Secretary to the Taxpayer's CPA, designated Exhibit E-24.
25. Copy of letter dated December 27, 2000 from the Assistant Secretary to the Taxpayer's CPA, designated Exhibit E-25.
26. Copy of letter dated March 5, 2001 from the Acting Assistant Secretary of Revenue to the Taxpayer's CPA, designated Exhibit E-26.
27. Brochure entitled 2000-2001 Community Services Information, designated Exhibit TP-1.
28. Excerpts from newsletter, designated Exhibit TP-2.
29. Copy of letter from Michael A. Kanters, Ph.D., designated Exhibit TP-3.
30. Copy of letter dated September 21, 2000 from Deborah S. Maffeo, CPA, to the Taxpayer.

FINDINGS OF FACT

The Board reviewed the following findings of fact made by the Assistant Secretary of Revenue in the final decision issued in this matter:

1. Capital Area Soccer League, Inc., (formerly Capital Area Classic Soccer Association) (hereinafter, the Taxpayer) is a nonprofit corporation that coordinates soccer leagues in the Raleigh area. The corporation is recognized as a 501(c)(3) corporation by the Internal Revenue Service.
2. The Taxpayer generates receipts primarily from dues and fees paid by its approximately 23,000 members. The amount of dues and fees paid by each member varies based on the type of league in which the member is participating. Secondary sources of revenue include advertising and donations.
3. The Taxpayer's articles of incorporation set out the purposes for which the corporation is organized as follows: "To foster, promote, and advance the cause of youth soccer within the territory of the jurisdiction of the Capital Area Classic Soccer Association and to guard the interest of the teams in the Capital Area Classic Soccer Association [and] [t]o foster local, state, national, and international amateur sports competition in the best interest of those players participating."
4. In addition to coordinating league play for children and adults, the Taxpayer provides the following: financial aid to approximately 250 children who could not otherwise participate in soccer leagues; an annual college scholarship valued at \$2,500.00; allowing other organizations to use its fields; and maintenance of fields owned by local governments and schools in exchange for use of the fields by the Taxpayer. The Taxpayer conducts free clinics providing instruction and training related to the sport of soccer for coaches and players.
5. The Taxpayer was not registered for sales and use tax purposes at the time the audit began.
6. The Taxpayer made purchases of supplies, equipment, clothing, and similar items from out-of-state retailers who did not collect the North Carolina sales or use tax; the Taxpayer makes no retail sales.
7. The Taxpayer did not accrue and remit to the Department the applicable use tax on out-of-state purchases.

IN ADDITION

8. The auditor assessed use tax, penalties, and interest for the audit period.
9. The Taxpayer does not contest its liability for payment of the use tax or object to the amount of use tax assessed.
10. The Taxpayer had previously filed refund claims under N.C.G.S. 105-164.14(b) for sales and use tax paid on property purchased for use; the claims were denied.
11. The Taxpayer timely requested a hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

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

1. The Taxpayer is liable for use tax on purchases from out-of-state retailers who did not collect the North Carolina tax.
2. The Notice of Proposed Assessment for the period was properly issued pursuant to N.C.G.S. 105-241.1.
3. The Taxpayer is an amateur sports organization that coordinates the play of soccer for its members and promotes the sport of soccer.
4. The Taxpayer is not an educational institution or charitable organization within the meaning of N.C.G.S. 105-164.14(b).
5. The Taxpayer is not eligible for a refund of sales and use tax paid on its purchases of tangible personal property for use.
6. The Taxpayer's requests for refunds were properly denied.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part: "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

On administrative review to this Board, the Taxpayer is seeking reversal of the Assistant Secretary's final decision and is objecting to the proposed assessment on the basis that it would be eligible for a refund of sales and use tax under G.S. 105-164.14(b). In the petition, the Taxpayer asserts that there is sufficient evidence in the record to show that the Taxpayer conducts charitable and educational activities which benefit the area youth and children and serves an educational and charitable function that would otherwise have to be performed by the school system or other governmental entity.

The Board, having conducted a hearing in this matter and having considered the petition, the briefs, the arguments of counsel, the final decision and the record of the proceeding before the Assistant Secretary, determines that there is sufficient evidence in the record to find that the Taxpayer is an educational institution and/or charitable organization within the meaning of N.C.G.S. 105-164.14(b). Thus, the Taxpayer is not liable for use tax on its purchases of tangible personal property for use and is eligible for a refund of sales and use tax paid pursuant to N.C.G.S. 105-164.14(b).

IT IS THEREFORE ORDERED that the Secretary of Revenue's final decision be and is hereby **Reversed**.

Made and entered into the 10th day of July 2002.

TAX REVIEW BOARD

Signature _____

Richard H. Moore, Chairman
State Treasurer

Signature _____

Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:)
The Proposed Assessment of Unauthorized)
Substance Tax dated July 6, 2001 by the)
Secretary of Revenue of North Carolina)
)
vs.)
)
Arnold Bertram Deshong)
Taxpayer)

ADMINISTRATIVE DECISION
NUMBER: 390

This Matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina on Thursday, April 16, 2002, upon Arnold Bertram Deshong's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on November 27, 2001, sustaining the assessment of unauthorized substance tax for the period of July 6, 2001.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating. Attorney Joseph A. Williams appeared at the hearing on Taxpayer's behalf. David J. Adinolfi, II, Associate Attorney General, represented the Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer on July 6, 2001 by Enforcement Agent Tony Staley of the Unauthorized Substance Tax Division, assessing \$1,513,778.00 tax, \$605,511.20 penalty and \$9,755.46 interest, for a total liability of \$2,129,044.66. The assessment alleged that on June 10, 2001, the Taxpayer was in unauthorized possession of 953.50 pounds of marijuana. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. On October 24, 2001, Eugene J. Cella, Assistant Secretary conducted a hearing upon Taxpayer's timely application and objection to the proposed assessment. The Assistant Secretary issued a final decision sustaining the proposed assessment against the Taxpayer. Thereafter, the Taxpayer timely filed a petition for administrative review of the final decision with the Board.

ISSUES

The issues considered by the Board upon administrative review of this matter are stated as follows:

- 1. Did the Taxpayer have actual and/or constructive possession of marijuana?
- 1. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

FINDINGS OF FACT

The Board reviewed the following findings of fact in the Assistant Secretary's decision in this matter:

- 1. Assessment of Unauthorized Substance Tax was made against the Taxpayer on July 6, 2001, in the sum of \$1,513,778.00 tax, \$605,511.20 penalty and \$9,755.46 interest, for a total liability of \$2,129,044.66, based on possession of 432,507.6 grams of marijuana.
- 2. The Taxpayer made a timely objection and application for a hearing.
- 3. Neither the Taxpayer nor anyone representing the Taxpayer appeared at the hearing to offer arguments or evidence in support of the objection to the assessment.
- 4. On June 10, 2001, the Taxpayer possessed 432,507.6 grams of marijuana.
- 5. No tax stamps were purchased for or affixed to the marijuana as required by law.

CONCLUSIONS OF LAW

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

- 1. An assessment of tax is presumed to be correct.
- 2. The burden is upon the Taxpayer who objects to an assessment to overcome that presumption and that burden was not met.
- 3. The Taxpayer possessed 432,507.6 grams of marijuana on June 10, 2001 and was therefore a dealer as that term is defined in G.S. 105-113.106(3).

4. The Taxpayer is liable for \$1,513,778.00 tax, \$605,511.20 penalty and interest until date of full payment.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part: "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

On June 10, 2001, Sergeant T. L. Cardwell, of the North Carolina State Highway Patrol, stopped a tractor-trailer, driven by Harold Edward Massey, for speeding on I-40 in Greensboro, NC. Sergeant Cardwell requested to review the logbook and bill of lading and found that the documents confirmed the travels and cargo contained in the vehicle. Sergeant Cardwell issued a warning ticket to Mr. Massey and requested permission to search the vehicle. The Taxpayer, who did not own the vehicle but was the main driver, consented to the search of the vehicle. Upon searching the vehicle, Sergeant Cardwell discovered several large cardboard boxes containing marijuana. Thereafter, the Taxpayer was arrested and charged with trafficking 953.5 pounds of marijuana. At the time of the search, the Taxpayer denied knowledge of the marijuana that was found in the tractor-trailer.

In the petition for review, the Taxpayer contends that the Assistant Secretary's decision should be reversed because he was unaware of the presence of the marijuana in the tractor-trailer and because the criminal charges against him were dismissed. In fact, the District Attorney entered an order of dismissal on February 2, 2002, after an eight-month investigation, because there was insufficient evidence to show that the Taxpayer had knowledge of the existence of the controlled substance in the tractor-trailer.

The Board having conducted a hearing in this matter and having considered the petition, the brief, the final decision and the documents of record, remands this matter back to the Assistant Secretary for a further proceeding to consider all matters of record. In particular, the Assistant Secretary should determine if there were any defects to the bill of lading since the record implies that the trailer was under seal. The Assistant Secretary should also consider the District Attorney's dismissal of the charges against the Taxpayer since there was insufficient evidence to show that he had knowledge of the existence of the marijuana in the trailer.

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

Made and entered into the 10th day of July 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

City of Charlotte

Pursuant to N.C.G.S. 130A-310.34, the City of Charlotte has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of approximately 6 acres, and is located at the southwest corner of South Cedar Street and West Fourth Street near the practice fields of the National Football League's Carolina Panthers. Environmental contamination exists on the Property in groundwater. The City of Charlotte has committed itself to allow no use of the Property, initially by Johnson & Wales University, other than for dormitories, apartments, offices, classrooms, recreational facilities, open space, entertainment venues, retail businesses and parking. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and the City of Charlotte, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the offices of the City of Charlotte, 600 East Fourth Street, Seventh Floor, Charlotte, NC 28208 by contacting the City Clerk at that address or at (704) 336-2248; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days after the summary of the Notice of Intent is published in the North Carolina Register or in a newspaper of general circulation serving the area in which the Brownfields Property is located, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the public comment period begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Head, Special Remediation Branch
Superfund Section
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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 12 – DEPARTMENT OF JUSTICE

CHAPTER 07 - PRIVATE PROTECTIVE SERVICES

Notice of Rule-making Proceedings is hereby given by NC Private Protective Services Board 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: 12 NCAC 07D .0202, .0702, .0802, .0903 and any rules involving fees for licenses, permits, or certifications. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 74C-5; 74C-9

Statement of the Subject Matter: The above-referenced rules impose specific fees for licenses, permits, and certifications.

Reason for Proposed Action: The Board will be considering the possibility of raising fees for licenses, permits, and certifications.

Comment Procedures: Written comments should be sent to W. Wayne Woodard, 1631 Midtown Place, Raleigh, NC 27609. Telephone (919) 875-3611.

CHAPTER 07 - PRIVATE PROTECTIVE SERVICES

Notice of Rule-making Proceedings is hereby given by NC Private Protective Services Board 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: 12 NCAC 07D .1200. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 74C-3(a)(4); 74C-5

Statement of the Subject Matter: Licensing requirements for those engaged in the courier profession in North Carolina.

Reason for Proposed Action: No rules exist to set forth the specific licensing and registration requirements for those individuals engaged in the courier profession in North Carolina,

and the Board believes that such regulations should be considered for adoption as rules.

Comment Procedures: Written comments should be sent to W. Wayne Woodard, 1631 Midtown Place, Raleigh, NC 27609. Telephone (919) 875-3611.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 13 - SOLID WASTE MANAGEMENT

Notice of Rule-making Proceedings is hereby given by DENR Commission for Health 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: 15A NCAC 13A .0101, .0109, .0113. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 130A-294(c); 150B-21.6

Statement of the Subject Matter:

15A NCAC 13A .0101 – General – Establishes the State agency which will administer the hazardous waste management program, makes State substitutions for federal agencies and incorporates into the rules certain publications.

15A NCAC 13A .0109 – Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities – Part 264 establishes standards for owners and/or operators of hazardous waste facilities (treatment, storage or disposal facilities).

15A NCAC 13A .0113 – The Hazardous Waste Permit Program – Part 270 – Establishes permit application information requirements and permit procedures.

Reason for Proposed Action:

15A NCAC 13A .0101 – To update the cost of the rule book to \$32.00 to cover mailing and printing.

15A NCAC 13A .0109 – Paragraph(s) expanded to include 40 CFR 264.550, 264.551 and 264.555. The title for Part 264 Subpart S "Corrective Action for Solid Waste Management Units," is revised to read "Special Provisions for Cleanup."

15A NCAC 13A .0113 – 40 CFR 270.235, Subpart I, "Integration with Maximum Achievable Control Technology (MACT) Standards", is being added to provide options for incinerators and cement and lightweight aggregate kilns to minimize emissions from startup.

Comment Procedures: *Written comments may be submitted to Jill Pafford, Chief, Hazardous Waste Section, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646.*

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 05 – DEPARTMENT OF CORRECTION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Correction intends to adopt the rules cited as 05 NCAC 06 .0101-.0102, .0201, .0301, .0401. Notice of Rule-making Proceedings was published in the Register on March 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 16, 2002

Time: 9:00 a.m.

Location: Randall Building, 1st Floor Conference Room, 831 W. Morgan St., Raleigh, NC

Reason for Proposed Action: *These Rules are submitted pursuant to S.L. 2001-378 Senate Bill 137 Section 4 which states, "The Department of Correction shall adopt rules to implement provisions of this act." A copy of the act and the rules are attached for review.*

Comment Procedures: *Comments from the public shall be directed to Dennis Rowland, 4620 Mail Service Center, Raleigh, NC 27699-4260. Comments will be accepted through October 16, 2002.*

Fiscal Impact

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

CHAPTER 06 - PRIVATE CORRECTIONAL SERVICE PROVIDERS

SECTION .0100 – GENERAL

05 NCAC 06 .0101 APPLICATION

The following standards apply to the hiring and training of private correctional service providers.

Authority S.L. 2001-378.

05 NCAC 06 .0102 PURPOSE

The purpose of these Rules is to establish the relevant and essential hiring and training standards, methods to verify compliance with the standards and the method of monitoring the standards by the Department of Correction for officers and security supervisors employed by private correctional service providers operating within the State.

Authority S.L. 2001-378.

SECTION .0200 – HIRING

05 NCAC 06 .0201 HIRING STANDARDS

Private correctional service providers are required to meet the same relevant and essential minimum pre-employment standards for their correctional officers and security supervisors as have been established for officers and supervisors for the Department of Correction.

- (1) Future applicants for employment as private correctional officers or security supervisors:
 - (a) Must be a high school graduate or have GED certificate;
 - (b) Must be at least 20 years of age;
 - (c) Must be a U.S. Citizen;
 - (d) Must pass a physical examination to determine fitness for duty;
 - (e) Must pass a urinalysis performed by qualified physician using a lab that protects the chain of custody;
 - (f) Must pass a local, state and national criminal background check through the National Crime Information Center (NCIC) and cleared through the FBI fingerprinting clearance process;
 - (g) Must have a completed background investigation that consists of verification of age, education, and employment;
 - (h) Must be personally interviewed by the Department Head or designee;
 - (i) Must have no felony conviction for 10 years;
 - (j) Must have no conviction of a misdemeanor as defined in 12 NCAC 09G.0102(10) for three years;
 - (k) Must have an evaluation and suitability for employment certified and documented by a state licensed psychologist; and
 - (l) Must be truthful in providing all required information as prescribed by the application process.
- (2) With respect to private correctional officers or security supervisors already employed as of the effective date of these Rules, the Department of Correction shall verify that correctional officers and security supervisors working for private correctional service providers have met the essential hiring standards. To accomplish this the department will:

- (a) Require the private correctional service providers to submit a "Verification of Employment Standards" checklist for each correctional officer and security supervisor to the department. In addition to the applicant's name, social security number, position title and effective date of employment, the checklist will, at a minimum, verify that all essential employment standards as described in Item (1) of this Rule have been completed. The verification of employment form will contain an authorizing signature line and a space to record the date;
- (b) Upon receipt of the Verification of Employment Standards checklist by the Department of Correction, departmental staff will review the checklist and respond in a memorandum to the private correctional service provider as to whether the individual applicant meets or does not meet the minimum essential employment standards;
- (c) To verify if a correctional officer or security supervisor who pleads no contest to, pleads guilty to or is found guilty of a felony or misdemeanor criminal offense is eligible for employment or continued employment, the private correctional service provider will submit a "Notification Form for Criminal Convictions" to the Department of Correction for review. This form will include at a minimum the employee's name, social security number, and position title. The form will also include the date of arrest, nature of the offense (including the general statute number), court of jurisdiction, the specific plea, date of disposition and a description of the disposition. The form will be signed and dated by an authorized private correctional service provider representative and forwarded to the Department of Correction for review. The form will contain space for Department of Correction personnel to verify if the employee meets or continues to meet the essential employment standards;
- (d) Upon receipt of the Notification Form or Criminal Convictions by the Department of Correction, departmental staff will review the form and note if in the Department's opinion the employee meets or continues to meet the minimum

essential employment standards. The form will then be signed and dated by an authorized NCDOC representative and returned to the private correctional service provider; and

- (e) Should a correctional officer or security supervisor previously designated as meeting the minimum essential employment standards be separated from employment the private correctional service provider will submit a "Report of Separation" form to the Department of Correction Personnel Office. This form will contain at a minimum the separated employee's name, social security number, position title and date of separation. The form will be signed and dated by an authorized representative of the private correctional service provider.

Authority S.L. 2001-378.

SECTION .0300 – TRAINING

05 NCAC 06 .0301 TRAINING STANDARDS

Correctional officers and security supervisors employed by a private correctional service provider must successfully complete a training curriculum that meets or exceeds the standards required by the Criminal Justice Education and Training Standards Commission. In order to accomplish this the private correctional service provider will:

- (1) Submit its training curriculum and all relevant documents related to training to the North Carolina Department of Correction;
- (2) The North Carolina Department of Correction will review the training curriculum and related information and will certify in writing to the private correctional service provider that it meets or does not meet the standards of the Criminal Justice Education and Training Standards Commission. Should the Department determine that the curriculum fails to meet the standards, it will provide direction related to the problem areas and allow the private provider to resubmit only those portions in question;
- (3) The Department of Correction shall verify that correctional officers and security supervisors working for private correctional service providers have met the essential training standards. To accomplish this the department will require the private correctional service providers to submit a "Verification of Training Standards" checklist for each correctional officer and security supervisor to the department. In addition to the applicant's name, social security number, position title and effective date of employment, the checklist will, at a minimum, verify that all

essential training standards contained within the approved curriculum have been completed. The verification of training form will contain an authorizing signature line and a space to record the date;

- (4) Upon receipt of the Verification of Training Standards checklist by the Department of Correction, departmental staff will review the checklist and respond in a memorandum to the private correctional service provider as to whether the individual applicant meets or does not meet the training standards; and
- (5) Once approved, future changes to the training curriculum that could substantially affect its approval will be submitted to the Department of Correction for additional review.

Authority S.L. 2001-378.

SECTION .0400 – COMPLIANCE

05 NCAC 06 .0401 REVIEW OF COMPLIANCE

The Department of Correction may monitor and audit private correctional service provider's records related to the essential hiring and training standards. To facilitate this function the private correctional service provider is required to maintain individual personnel files and training records for each correctional officer and security supervisor. These files and records will:

- (1) Contain all necessary documentation required to verify that an individual correctional officer or security supervisor meets the minimum relevant hiring standards;
- (2) Contain all necessary documentation required to verify that an individual correctional officer or security supervisor has completed the approved training standards; and
- (3) Be accessible upon request to Department of Correction personnel for review and audit. Should the Department of Correction have concerns or require additional information related to the hiring and/or training standards of any individual correctional officer or security supervisor, they may request additional information be provided.

Authority S.L. 2001-378.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources / Parks and Recreation Authority intends to amend the rules cited as 15A NCAC 12K .0102-.0103, .0106-.0108. Notice of Rule-making Proceedings was published in the Register on April 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 3, 2002

Time: 2:00 p.m. – 3:00 p.m.

Location: Archdale Building Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action: Recently approved legislation states that public authorities as defined by G.S. 159-7 are eligible to apply for PARTF grants to local governments. Legislation also states that the approved value of donated land can be used as local matching funds.

Comment Procedures: Comments will be accepted through October 16, 2002. Letters must be legible and signed. Include a phone number. Please send comments to Mr. Bayard Alcorn, NC Division of Parks and Recreation, MSC 1615, Raleigh, NC 27699-1615. If you have questions, please call Mr. Alcorn at (919) 715-2659 or Email (bayard.alcorn@ncmail.net).

Fiscal Impact

- State** 15A NCAC 12K .0106
- Local**
- Substantive** (≥\$5,000,000)
- None** 15A NCAC 12K .0102-.0103, .0107-.0108

CHAPTER 12 - PARKS AND RECREATION AREA RULES

SUBCHAPTER 12K - PARKS AND RECREATION TRUST FUND GRANTS FOR LOCAL GOVERNMENT

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 12K .0102 ELIGIBLE APPLICANTS

All county governments and incorporated municipalities of the State of North Carolina are eligible to submit applications. Eligible applicants also include public authorities, as defined by G.S. 159-7, that are authorized to acquire land and/ or develop facilities for public recreation purposes.

- (1) ~~Multiple municipalities and counties~~ Eligible applicants may apply jointly for a project.
- (2) School administrative units may submit a joint application with an ~~incorporated municipality or county~~ eligible applicant for funding of facilities.

Authority G.S. 113-44.15.

15A NCAC 12K .0103 FUNDING CYCLE

Annual funding schedule dates shall be the following:

- (1) An announcement letter describing the funding schedule and how to apply shall be mailed to all eligible applicants by September 30. This information shall be made available to other interested parties who contact the Department of Environment and Natural Resources (Department) at: NC Division of Parks and Recreation, PO Box 27687, Raleigh, North Carolina 27611-7687.
- (2) ~~Local governments~~ Applicants may request a maximum of two hundred fifty thousand

PROPOSED RULES

dollars (\$250,000) in PARTF assistance with each application.

- (3) Applications shall be received by the Department or its designee by 5:00 p.m. on January 31. If the deadline falls on a weekend or holiday, applications are due by 5:00 p.m. on the following business day.
- (4) The Authority shall meet within 120 days of the application deadline to select projects for funding. The Authority will meet within 30 days after the end of the fiscal year to select projects for funding using revenues credited to PARTF during the fourth quarter

Authority G.S. 113-44.15.

15A NCAC 12K .0106 GRANT AGREEMENT

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

Authority G.S. 113-44.15.

15A NCAC 12K .0107 MATCHING REQUIREMENTS

The ~~local governmental unit~~ applicant shall match PARTF funds on a dollar-for-dollar basis. The approved value of land that is donated to the applicant may be applied to the matching requirement of the applicant.

Authority G.S. 113-44.15.

15A NCAC 12K .0108 ELIGIBLE PROJECTS AND COSTS

(a) PARTF grants are awarded to grantees for projects that are for the sole purpose of providing local park and recreation opportunities to the public. ~~Applicants-Grantees~~ may request receive funds for the following types of projects:

- (1) Acquisition. Fee simple acquisition of real property for the following: future recreational development and to protect areas with outstanding natural or scenic resources.
 - (A) ~~Applicants-Grantees~~ acquiring property for recreation development have up to five years from when the Authority and the applicant sign the grant agreement to begin developing recreation facilities.
 - (B) ~~Applicants-Grantees~~ acquiring property to protect areas with outstanding natural or scenic resources must open these areas to the general public to the extent that the resources will not be seriously impaired.
- (2) Development. Projects for the construction, expansion, and renovation/repair of the following:
 - (A) Primary facilities including outdoor and indoor recreation facilities. Examples include camping facilities, picnic facilities, sports and playfields, trails, swimming facilities, boating/fishing facilities, spectator facilities, gymnasiums, etc.
 - (B) Support facilities and improvements such as roads, parking areas, accessibility features, utilities, landscaping, and other infrastructure projects, that would have little or no recreational value without the primary recreation facilities.
- (b) Other criteria for determining eligible projects and costs include:
 - (1) Only development on or acquisition of a single project site is eligible for PARTF assistance.
 - (2) Utility lines developed with PARTF assistance shall be placed underground.
 - (3) Certain incidental project costs shall be eligible for PARTF assistance including appraisals, architectural and engineering fees, pre-agreement planning costs and contingency fees as follows:
 - (A) Pre-agreement costs such as site planning, preliminary designs, preparation of cost estimates,

PROPOSED RULES

construction drawings and specifications may not exceed 15 percent of the total development costs and must be incurred within one year of the application submission date.

- (B) Incidental appraisal costs such as appraisals, title work, surveys and attorney fees may not exceed five percent of the appraised fair market value of the property.
 - (C) Architectural and engineering fees may not exceed 10 percent of the total development cost of the proposed project.
 - (D) A contingency amount may be included in the development cost estimates, but may not exceed five percent of total development costs.
- (4) PARTF-assisted facilities on school property shall not be recreational facilities generally provided by the school for the use of their students.

Authority G.S. 113-44.15.

rnbrooks@bellsouth.net. Comments will be accepted through October 18, 2002.

Fiscal Impact

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

SUBCHAPTER 08A - DEPARTMENTAL RULES

SECTION .0200 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21 NCAC 08A .0201 ELECTION OF OFFICERS

The Board shall annually, prior to ~~August 31~~ March 31 of each year, elect a President, Vice-President and Secretary-Treasurer. ~~However, in any year when appointments to the Board anticipated under the provisions of G.S. 93-12 have not been made prior to August 31, the election shall be made at the next meeting subsequent to the actual appointments. The current officers, even though their term be expired, shall serve until their successors are elected and qualified.~~

Authority G.S. 93-12.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 08 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of CPA Examiners intends to adopt the rules cited as 21 NCAC 08H .0106; 08M .0105-.0107; amend the rules cited as 21 NCAC 08A .0201, .0301; 08F .0101, .0103, .0105, .0110-.0111, .0113, .0504; 08G .0401, .0403-.0404, .0406, .0409; 08H .0101; 08J .0108, .0110-.0111; 08N .0202-.0203, .0205, .0208, .0211, .0302, .0305, .0402 and repeal the rules cited as 21 NCAC 08A .0315; 08M .0101-.0104, .0201-.0202, .0204, .0206-.0207, .0301-.0306, .0401-.0403. Notice of Rule-making Proceedings was published in the Register on June 17, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 18, 2002

Time: 10:00 a.m.

Location: North Carolina State Board of CPA Examiners, 1101 Oberlin Rd., Raleigh, NC

Reason for Proposed Action: *To adopt, amend, and repeal language resulting from legislation, changes in the Uniform Accountancy Act, changes in the administration of peer review and changes for the computer-based Uniform CPA Examination.*

Comment Procedures: *Comments from the public shall be directed to Robert N. Brooks, NC State Board of CPA Examiners, PO Box 12827, Raleigh, NC 27605-2827, phone (919)733-1425, fax (919)733-4209, email*

SECTION .0300 - DEFINITIONS

21 NCAC 08A .0301 DEFINITIONS

(a) The definitions set out in G.S. 93-1(a) shall apply when those defined terms are used in 21 NCAC 8.

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other definitions in this Section apply when these terms are used in 21 NCAC 8:

- (1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted "Retired," "Inactive," or "Conditional" status;
- (2) "Agreed upon procedure" means a client has engaged a CPA to issue a report of findings based on specific procedures performed on specific subject matter of specified elements, accounts, or accounting information that is part of but significantly less than a financial statement;
- (3) "AICPA" means the American Institute of Certified Public Accountants;
- (4) "Applicant" means a person who has applied to take the CPA examination;
- (5) "Attest service" means:
 - (A) any audit;
 - (B) any review of a financial statement;
 - (C) any compilation of a financial statement when the CPA expects, or reasonably might expect, that a third party will use the compilation and the CPA does not disclose a lack of independence;
 - (D) any examination of prospective financial information; and

PROPOSED RULES

- (E) any agreed upon procedure;
- (6) "Audit" means an examination of financial statements of a person by a CPA, conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;
- (7) "Board" means the North Carolina State Board of Certified Public Accountant Examiners;
- (8) "Calendar year" means the 12 months beginning January 1 and ending December 31;
- (9) "Candidate" means a person whose application to take the CPA examination has been accepted and who may sit for the CPA examination;
- (10) "Client" means a person who orally or in writing agrees with a licensee to receive any professional services;
- (11) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;
- (12) "Compilation of a financial statement" means presenting in the form of a financial statement information that is the representation of any other person without the CPA's undertaking to express any assurance on the statement;
- (13) "Conditional," when used to refer to the status of a person, describes a person who holds a North Carolina certificate of qualification under certain conditions as imposed by the Board, such as additional requirements for failure to complete the required CPE hours in a calendar year;
- (14) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;
- (15) "CPA" means certified public accountant;
- (16) "CPA firm" means a sole proprietorship, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership which uses "certified public accountant(s)" or "CPA(s)" in or with its name or offers to or renders any attest services in the public practice of accountancy;
- (17) "CPE" means continuing professional education;
- (18) "Disciplinary action" means revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;
- (19) "Examination of prospective financial information" means an evaluation by a CPA of:
- (A) a forecast or projection,
- (B) the support underlying the assumptions in the forecast or projection,
- (C) whether the presentation of the forecast or projection is in conformity with AICPA presentation guidelines, and
- (D) whether the assumptions in the forecast or projection provide a reasonable basis for the forecast or projection;
- (20) "FASB" means the Financial Accounting Standards Board;
- (21) "Forecast" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take;
- (22) "GASB" means the Governmental Accounting Standards Board;
- (23) "Inactive," when used to refer to the status of a person, describes one who has requested inactive status and been approved by the Board and who does not use the title "certified public accountant" nor does he or she allow anyone to refer to him or her as a "certified public accountant," and neither he or she nor anyone else refers to him or her in any representation as described in 21 NCAC 08A .0308(b).
- (24) "IRS" means the Internal Revenue Service;
- (25) "Jurisdiction" means any state or territory of the United States or the District of Columbia;
- (26) "License year" means the 12 months beginning July 1 and ending June 30;
- (27) "Member of a CPA firm" means any CPA who has an equity ownership interest in a CPA firm;
- (28) "NASBA" means the National Association of State Boards of Accountancy;
- (29) "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (30) "North Carolina office" means any office physically located in North Carolina;
- ~~(31) "Participating CPA firm" means a CPA firm participating in the SQR program. It does not include CPA firms exempt by reason of 21 NCAC 8M .0102(a) or deemed in compliance pursuant to 21 NCAC 8M .0104;~~
- ~~(32)~~(31) "Person" means any natural person, corporation, partnership, professional limited liability company, registered limited liability

- partnership, unincorporated association, or other entity;
- ~~(33)~~(32) "Professional" means arising out of or related to the particular knowledge or skills associated with CPAs;
- ~~(34)~~(33) "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;
- ~~(35)~~(34) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;
- ~~(36)~~(35) "Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who verifies to the Board that the applicant does not receive or intend to receive in the future any earned compensation for current personal services in any job whatsoever and will not return to active status. However, retired status does not preclude volunteer services for which the retired CPA receives no direct nor indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA;
- ~~(37)~~(36) "Revenue Department" means the North Carolina Department of Revenue;
- ~~(38)~~(37) "Review" means to perform an inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;
- ~~(39)~~ "SQR Advisory Committee" means the State Quality Review Advisory Committee to the Board;
- ~~(40)~~ "SQR Program" means the State Quality Review Program of the North Carolina State Board of Certified Public Accountant Examiners;
- ~~(41)~~ "SQR Review team" means that team of CPAs which reviews a CPA firm pursuant to the requirements of Subchapter 8M. A review team may be comprised of one or more members;
- ~~(42)~~ "SQR Review team captain" means that member of a review team who is responsible for the review and supervises the other members of the team;

- ~~(43)~~(38) "SQR Reviewer"-"Reviewer" means a member of a review team including the review team captain;
- ~~(44)~~(39) "Suspension" means a revocation for a specified period of time. A CPA may be reinstated after a specific period of time if the CPA has met all conditions imposed by the Board at the time of suspension; and
- ~~(45)~~(40) "Trade name" means a name used to designate a business enterprise.

Authority G.S. 93-1; 93-12(8c).

21 NCAC 08A .0315 NEW CPA FIRM, ONGOING CPA FIRM

- ~~(a) When the members of a CPA firm elect to divide the CPA firm such that two or more CPA firms are created, one CPA firm may be the ongoing CPA firm and the other CPA firms may be new CPA firms, or all may be new CPA firms. The ongoing CPA firm, if any, is the CPA firm the members of which own more than 50 percent of the ownership of the predecessor CPA firm prior to the division.~~
- ~~(b) When two or more CPA firms merge, the resulting CPA firm may be an ongoing CPA firm (successor to one of the predecessor CPA firms) or it may be a new CPA firm. The resulting CPA firm is an ongoing CPA firm if any percentage of ownership greater than 50 percent of one of the predecessor CPA firms end up owning a percentage of the resulting CPA firm greater than 50 percent.~~
- ~~(c) For purposes of this Rule, "percentage of ownership" refers to the percentage of the CPA firm owned aggregately by the group of CPA firm members in question. Percentage of ownership is determined based upon the number of shares held by the group if the CPA firm is a professional corporation or a professional limited liability company, or, if the CPA firm is a partnership or registered limited liability partnership, the percentage of capital owned by the group.~~
- ~~(d) A change in an entity's form (for example, incorporation of what was a partnership) does not create a new CPA firm.~~
- ~~(e) A new CPA firm is not created by the addition of a member(s) not acquiring a percentage of ownership greater than 50 percent. Neither is a new CPA firm created by the loss of a member(s) by retirement or death, provided the remaining members have purchased or are purchasing the retired or deceased members' ownership, regardless of whether the retired or deceased member(s) owned more than 50 percent of the CPA firm.~~

Authority G.S. 93-1; 93-12(8c).

SUBCHAPTER 08F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 08F .0101 TIME AND PLACE OF CPA EXAMINATIONS

- (a) The Board shall hold the CPA examination twice a year.
- (b) Ordinarily the CPA examination shall be held in May and November; however, the place or places in North Carolina

where it is to be held and the exact dates of it shall be designated by the Board.

(c) The Board shall announce the time and place for holding each CPA examination at least 60 days prior to the date thereof.

(d) Effective with the administration of the computer-based CPA Examination, the CPA Examination will be available at sites, dates and times designated by the Board.

Authority G.S. 93-12(3); 93-12(4).

21 NCAC 08F .0103 FILING OF EXAMINATION APPLICATIONS AND FEES

(a) All applications for CPA examinations shall be filed with the Board, accompanied by the examination fee. The Board sets the fee for each examination at the amount that enables the Board to recover its costs in administering the examination. If a check or credit card authorization fails to clear the bank, the application shall be deemed incomplete and returned.

(b) Completed initial applications shall be postmarked with proper postage not later than the last day of January for the spring examination and not later than the last day of July for the fall examination. Completed re-exam applications shall be postmarked with proper postage not later than the last day of February for the spring examination and not later than the last day of August for the fall examination. If one of those dates falls on a weekend or federal holiday, the application shall be postmarked or received in the Board office on the next business day. Only a U.S. Postal Service cancellation shall be considered as the postmark. If an application is sent to the Board office via a private delivery service, the date the package is received by the delivery service shall be considered as the postmark.

(c) The initial application filed to take the examination shall include supporting documentation demonstrating that all legal requirements have been met, such as:

- (1) minimum legal age;
- (2) education;
- (3) experience, if required in order to qualify for the examination; and
- (4) good moral character.
- (5) Any person born outside the United States shall furnish to the Board office evidence of citizenship; evidence of resident alien status; or
 - (A) other bona fide evidence that the applicant is legally allowed to remain in the United States for the purposes of becoming a U.S. citizen; or
 - (B) a notarized affidavit of intention to become a U.S. citizen; or
 - (C) evidence that the applicant is a citizen of a foreign jurisdiction which extends to citizens of this state like or similar privileges to be examined.

(d) Official transcripts (originals – not photocopies) signed by the college registrar and bearing the college seal are required to prove education and degree requirements. A letter from the college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and posted to the transcript. However, no examination grades shall be released until an official transcript is filed confirming the information supplied in

the college registrar's letter. All applicants submitting transcripts from foreign schools for consideration of degree and of meeting accountancy course requirements shall have had the transcript(s) evaluated by Foreign Academic Credential Service, Inc. (FACS) or a comparable educational evaluation service. Applicants shall determine that their transcripts contain all information required by these Rules.

(e) If experience is required to qualify for examination, affidavits shall be prepared and signed by employers on forms supplied by the Board.

(f) In order to document good moral character as required by Subparagraph (c)(4) of this Rule, three certificates of good moral character signed by persons not related by blood or marriage to the applicant shall accompany the application.

~~(g) All applications for re-examination shall be accompanied by three new certificates of moral character.~~ No additional statements and affidavits regarding experience and education shall be required for applications for re-examination.

(h) An applicant shall include as part of any application for the CPA examination a statement of explanation and a certified copy of court records if the applicant has been convicted or found guilty of or pleaded *nolo contendere* to any felony, or to any other criminal offense of which an essential element is:

- (1) dishonesty, deceit, or fraud;
- (2) violation of a federal or state tax law; or
- (3) commission of any act or conduct discreditable to the accountancy profession in violation of the Rules of Professional Ethics and Conduct for Certified Public Accountants, unless such information has been furnished in a previous application filed with the Board.

(i) If an applicant has been denied any license by any state or federal agency, the applicant shall include as part of the application for the CPA examination a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has been registered with or licensed by a state or federal agency and has been disciplined by that agency.

(j) Two recent identical photographs shall accompany the application for the CPA examination. These photographs shall have been taken within the last six months. The photographs shall be of the applicant alone, 2x2 inches in size, with an image size from the bottom of the chin to the top of the head, including hair, of between 1 and 1-3/8 inches. Photographs shall be clear, front view, full face, taken in normal street attire without a hat or dark glasses, and printed on thin paper with a plain light background. They shall be capable of withstanding a mounting temperature of 225 degrees Fahrenheit (107 degrees Celsius). They may be in black and white or in color. Snapshots, most vending-machine prints, and magazine or full-length photographs are unacceptable. Photographs retouched so that the applicant's appearance is changed are unacceptable. Applicants shall write their names on the back of their photos.

(k) If an applicant's name has legally changed and is different from the name on any transcript or other document supplied to the Board, the applicant shall furnish copies of the documents legally authorizing the name change.

(l) Effective with the administration of the computer-based CPA Examination, candidates shall file initial and re-exam applications to sit for the CPA Examination.

(m) Effective with the administration of the computer-based CPA Examination, examination fees will be valid for a six-month period from the date of the notice to schedule.

Authority G.S. 93-12(3); 93-12(4); 93-12(5).

**21 NCAC 08F .0105 CONDITIONING
REQUIREMENTS**

(a) Passing Grades. A candidate shall be required to pass all sections of the examination with a grade of 75 or higher.

(b) Conditional Credit. If a candidate does not pass all of the sections in one sitting, conditional credit may be retained for passed sections subject to the following:

- (1) No conditional credit may be retained until the candidate has first passed at least two sections in one sitting;
- (2) To receive conditional credit for any section the candidate must sit for and make a grade of at least 50 on all unpassed sections; and
- (3) The conditional credit is good through the six succeeding times the exam is offered by the Board.

(c) Military Service. A candidate who was or is in active military service after receiving conditional credit shall have only those exams for which that candidate applied and was approved during active military service counted as succeeding examinations.

(d) A candidate who has conditional credit prior to January 1, 1997, may continue to apply to sit for the examination as long as the conditional credit is valid. A candidate who no longer has valid conditional credit after January 1, 1997, shall be required to meet all education requirements in effect at the time of their subsequent application.

(e) Effective with the administration of the computer-based CPA Examination, a candidate is subject to the following requirements:

- (1) A candidate shall be required to obtain a minimum score on each section designated as passing by the AICPA and the Board;
- (2) A candidate may sit for any section of the examination individually;
- (3) A candidate may sit for any section of the examination up to four times during a one-year period but not more than one time in a three-month period;
- (4) A candidate shall receive conditional credit on the passage of his or her first section(s) of the examination; such credit(s) shall be valid for an 18-month period which begins on the date the first section(s) passed is taken; and
- (5) A candidate having earned conditional credits on the paper-and-pencil CPA Examination has until October 31, 2005, or 18 months after administration of the last paper-and-pencil examination to pass the remaining section(s) before the credits earned under the paper-and-pencil examination expire.

Authority G.S. 93-12(3); 93-12(5).

21 NCAC 08F .0110 PROCTORING OTHER

JURISDICTIONS' CANDIDATES

(a) As a courtesy to other ~~state accountancy jurisdiction~~ boards, and on their behalf, this Board shall proctor, in North Carolina, candidates taking the CPA examination. The following procedures shall be followed by persons desiring to be proctored in this state.

(b) A request for proctoring shall be on a form provided by the Board and shall contain evidence from the home ~~state accountancy jurisdiction~~ board that it has approved the candidate's examination application and the proctoring request.

(c) The request for proctoring form shall be delivered to the Board office not later than April 1 for the May CPA examination and not later than October 1 for the November CPA examination.

(d) The approval of the proctoring request shall be at the discretion of the Board and is not promised to any applicant. Factors considered in the decision shall include, but not be limited to, space availability, reasons for the proctoring request, date the application was received, reasons for any previous proctoring requests, and any special circumstances requested by the home ~~state accountancy jurisdiction~~ board or applicant.

(e) Effective with the administration of the computer-based CPA Examination, the Board shall have the discretion to limit other jurisdictions' candidates from testing in any testing center in North Carolina.

Authority G.S. 93-12.

**21 NCAC 08F .0111 INELIGIBILITY DUE TO
VIOLATION OF ACCOUNTANCY ACT**

(a) A person may not be eligible to take the CPA examination or receive the North Carolina certificate of qualification as a CPA if the Board determines that the person has engaged in conduct that would constitute a violation of G.S. 93 or the Rules of Professional Ethics and Conduct.

(b) Any individual found to have engaged in conduct which subverts, or attempts to subvert the CPA Examination process may, at the discretion of the Board, have his or her scores on the examination withheld and/or declared invalid, be disqualified from holding the CPA certification and may be subject to the imposition of other appropriate sanctions.

(c) Conduct which subverts or attempts to subvert the examination process includes but is not limited to:

- (1) conduct which violates the standard of the test administration such as communicating with any other examinee during the administration of the examination;
- (2) having in one's possession during the administration of the examination any books, notes, written or printed material, or data of any other kind, other than the distributed examination materials;
- (3) failure to cooperate with testing officials;
- (4) conduct which violates the credentialing process, such as falsifying or misrepresenting educational credentials or other information required for admission to the examination, impersonating an examinee, or having an impersonator take the examination on another's behalf;

- (5) ~~conduct which violates the nondisclosure prohibitions of the examination or aiding or abetting another in doing so; and~~
- (6) ~~retaking or attempting to retake an examination section by an individual holding a valid CPA certificate in this State or a candidate who has unexpired credit for having already passed the same examination section unless directed to do so by the Board.~~

Authority G.S. 93-12(5); 93-12(9).

21 NCAC 08F .0113 CANDIDATE'S REQUEST TO REVIEW CPA EXAMINATION

The Board shall allow a North Carolina candidate ~~the privilege to review the Uniform his or her CPA Examination. Examination within 60 days after the release of the grades in question. The request for a review must be made no later than sixty (60) days after the uniform national grade release date of the examination in question.~~

Authority G.S. 93-12.

SECTION .0500 - APPLICATIONS FOR CERTIFICATES

21 NCAC 08F .0504 CANDIDATES' ACCOUNTANCY LAW COURSE REQUIREMENT

(a) Within one year prior to applying for certification, all candidates for original or reciprocal certification must pass an open book examination on the North Carolina Accountancy Statutes and Rules, including the Rules of Professional Ethics and Conduct contained therein.

(b) In lieu of taking the examination, a candidate may complete an eight-hour CPE course on the subject of the examination within one year prior to applying for the CPA certificate. Such course or examination must meet the requirements of 21 NCAC 08G .0404(a). This course may count toward the candidate's annual CPE requirement.

~~(c) A non-resident candidate for a reciprocal application must comply with Paragraph (a) or (b) of this Rule within 120 days of receiving his or her CPA certificate or the certificate shall expire and the individual shall reinstate the certificate pursuant to 21 NCAC 8J .0106.~~

Authority G.S. 93-12(8a).

SUBCHAPTER 08G - CONTINUING PROFESSIONAL EDUCATION (CPE)

SECTION .0400 - CPE REQUIREMENTS

21 NCAC 08G .0401 CPE REQUIREMENTS FOR CPAS

- (a) In order for a CPA to receive CPE credit for a course:
 - (1) the CPA must attend or complete the course;
 - (2) the course must meet the requirements set out in 21 NCAC 08G .0404(a) or ~~(d); (c);~~ and
 - (3) the course must increase the professional competency of the CPA.
- (b) The Board approves registers sponsors of CPE courses, and ~~not particular courses.~~ A CPE course provided by ~~an approved a~~

registered sponsor is presumed to meet the CPE requirements set forth in 21 NCAC 8G .0404(a) if the sponsor has indicated that the course meets those requirements. However, it is up to the individual CPAs attending the course and desiring to claim CPE credit for it to assess whether it increases their professional competency.

(c) A course that increases the professional competency of a CPA is a course in an area of accounting in which the CPA practices or is planning to practice in the near future, or in the area of professional ethics or an area related to the profession, and is taught at a level which challenges the CPA.

(d) Because of differences in the education and experience of CPAs, a course may contribute to the professional competence of one CPA but not another. Each CPA must therefore exercise judgment in selecting courses for which CPE credit is claimed and choose only those that contribute to that CPA's professional competence.

(e) Active CPAs must complete 40 CPE hours, computed in accordance with 21 NCAC 08G .0409 by December 31 of each year, except as follows:

- (1) CPAs having certificate applications approved by the Board in April-June must complete 30 CPE hours during the same calendar year.
- (2) CPAs having certificate applications approved by the Board in July-September must complete 20 CPE hours during the same calendar year.
- (3) CPAs having certificate applications approved by the Board in October-December must complete 10 CPE hours during the same calendar year.

(f) There are no CPE requirements for retired or inactive CPAs.

(g) Any CPE hours completed during the calendar year in which the certificate is approved may be used for that year's requirement even if the hours were completed before the certificate was granted. When a CPA has completed more than the required number of hours of CPE in any one calendar year, the extra hours, not in excess of 20 hours, may be carried forward and treated as hours earned in the following year. A CPA may not claim CPE credit for courses taken in any year prior to the year of certification.

(h) Any CPE hours used to satisfy the requirements for change of status as set forth in 21 NCAC 08J .0105, for reinstatement as set forth in 21 NCAC 08J .0106, or for application for a new certificate as set forth in 21 NCAC 08I .0104 may also be used to satisfy the annual CPE requirement set forth in Paragraph (e) of this Rule.

(i) It is the CPA's responsibility to maintain records substantiating the CPE credits claimed for the current year and for each of the four calendar years prior to the current year.

Authority G.S. 93-12(8b).

21 NCAC 08G .0403 QUALIFICATION OF CPE SPONSORS

(a) The Board approves registers sponsors of CPE courses and not ~~particular~~ courses. The Board will maintain a list of sponsors which have agreed to conduct programs in accordance with the standards for CPE set forth in 21 NCAC 08G .0404. Such sponsors shall indicate their agreement by signing a CPE program sponsor agreement form provided by the Board. These sponsors are ~~approved registered~~ sponsors.

PROPOSED RULES

(b) Notwithstanding Paragraph (a) of this Rule, sponsors of continuing education programs which are listed in good standing on the National Registry of CPE Sponsors maintained by the NASBA are ~~also approved~~ considered to be registered CPE sponsors sponsors with the Board. These sponsors, ~~however, do not have to~~ are not required to sign a CPE program sponsor agreement form with this Board.

~~(c) The CPE Advisory Committee to the Board may give its opinion to an approved sponsor of whether a particular course would contribute to the professional competence of some, if not all, CPAs or the course meets the requirements of 21 NCAC 8G .0404(a). If the sponsor disagrees with the committee's opinion, the sponsor may request a declaratory ruling from the Board. The committee's opinion is advisory only and is not binding on the Board.~~

~~(d)~~(c) In the CPE program sponsor agreement with the Board, the ~~approved~~ registered sponsor will agree to:

- (1) allow the Board to audit courses offered by the sponsor in order to determine if the sponsor is complying with the terms of the ~~agreement;~~ agreement and shall refund the registration fee if requested;
- (2) have an individual who did not prepare the course review each course to be sure it meets the standards in this Rule;
- (3) state the following in every brochure or other publication or announcement concerning a course:
 - (A) the general content of the course and the specific knowledge or skill taught in the course;
 - (B) any prerequisites for the course and any advance ~~preparation;~~ preparation required for the course and if none, that should be stated;
 - (C) the level of the course, such as basic, intermediate, or advanced;
 - (D) the teaching methods to be used in the course;
 - (E) the amount of recommended CPE credit a CPA who takes the course could claim; and
 - (F) the date the course is offered, if the course is offered only on a certain date, and, if applicable, the location;
- (4) ensure that the instructors or presenters of the course are qualified to teach the subject matter of the course and to apply the instructional techniques used in the course;
- (5) evaluate the performance of an instructor or presenter of a course to determine whether the instructor or presenter is suited to serve as an instructor or presenter in the future;
- (6) encourage participation in a course only by those who have the appropriate education and experience;
- (7) distribute course materials to participants in a timely manner;
- (8) use physical facilities for conducting the course that are consistent with the instructional techniques used;

- (9) assign accurately the number of CPE credits each participant may be eligible to receive by either:
 - (A) monitoring attendance at a group course; or
 - (B) testing in order to determine if the participant has appropriately learned the material presented;
- (10) provide, before the course's conclusion, an opportunity for the attendees to evaluate the quality of the course by questionnaires, oral feedback, or other means, in order to determine whether the course's objectives have been met, its prerequisites were necessary or desirable, the facilities used were satisfactory, and the course content was appropriate for the level of the course;
- (11) inform instructors and presenters of the results of the evaluation of their performance;
- (12) systematically review the evaluation process to ensure its effectiveness;
- (13) retain for five years from the date of the course presentation or completion:
 - (A) a record of participants completing course credit requirements;
 - (B) an outline of the course (or equivalent);
 - (C) the date and location of presentation;
 - (D) the participant evaluations or summaries of evaluations;
 - (E) the documentation of the instructor's qualifications; and
 - (F) the number of contact hours recommended for each participant;
- (14) have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPE programs and has the responsibility and is accountable for assuring and demonstrating compliance with these rules by the sponsor or by any other organization working with the sponsor for the development, distribution and/or presentation of CPE courses;
- (15) develop and promulgate policies and procedures for the management of grievances including, but not limited to, tuition and fee refunds;
- (16) possess a budget and resources that are adequate for the activities undertaken and their continued improvement; and
- (17) provide persons completing course requirements with written proof of completion indicating the participant's name, the name of the course, the date the course was held or completed, the sponsor's name and address, and the number of CPE hours calculated and recommended in accordance with 21 NCAC 08G .0409.

~~(e)~~(d) Failure of ~~an approved~~ a registered sponsor to comply with the terms of the CPE program sponsor agreement shall be grounds for the Board to terminate the agreement, to remove the

~~approved-registered~~ sponsor's name from the list of ~~approved-registered~~ sponsors and to notify the public of this action.

Authority G.S. 93-12(8b).

21 NCAC 08G .0404 REQUIREMENTS FOR CPE CREDIT

(a) A CPA shall not be granted CPE credit for a course unless the course:

- (1) is in one of the six fields of study recognized by the Board and set forth in Paragraph (b) of this Rule;
- (2) is actually developed by an individual who has education and work experience in the subject matter of the course; and
- (3) uses instructional techniques and materials that are current and accurate.

(b) The six fields of study recognized by the Board are ~~based on the subject areas that are set forth in the AICPA National CPE Curriculum. The six fields are~~ accounting and auditing, consulting services, management, personal development, specialized knowledge and applications, and taxation.

- (1) The accounting and auditing field of study includes accounting and financial reporting subjects, the body of knowledge dealing with recent pronouncements of authoritative accounting principles issued by the standard-setting bodies, and any other related subject generally classified within the accounting discipline. It also includes auditing subjects related to the examination of financial statements, operations systems, and programs; the review of internal and management controls; and the reporting on the results of audit findings, compilation, and review.
- (2) The consulting services field of study deals with all consulting services provided by professional accountants—management, business, personal, and other. It includes management consulting services and personal financial planning services. This field also covers an organization's various systems, the services provided by consultant practitioners, and the engagement management techniques that are typically used. An organization's systems include those dealing with planning, organizing, and controlling any phase of individual financial activity and business activity. Services provided encompass those for management, such as designing, implementing, and evaluating operating systems for organizations, as well as business consulting services and personal financial planning.
- (3) The management field of study considers the management needs of individuals primarily in public practice, industry, and government. Some subjects concentrate on the practice management area of the public practitioner, such as organizational structures, marketing services, human resource management, and

administrative practices. For individuals in industry, there are subjects dealing with the financial management of the organization, including information systems, budgeting, and asset management, as well as items covering management planning, buying and selling businesses, contracting for goods and services, and foreign operations. For CPAs in government, this curriculum embraces budgeting, cost analysis, human resource management, and financial management in state and local governmental entities. In general, the emphasis in this field is on the specific management needs of CPAs and not on general management skills.

(4) The personal development field of study includes becoming a competent people manager, which covers such skills as communications, managing the group process, and dealing effectively with others in interviewing, counseling, and career planning. Public relations and professional ethics are also treated.

(5) The specialized knowledge and applications field of study treats subjects related to specialized industries, such as not-for-profit organizations, health care, and oil and gas. An industry is defined as specialized if it has unusual:

- (A) forms of organization;
- (B) economic structure;
- (C) sources of financing;
- (D) statutory or regulatory requirements;
- (E) marketing or distribution;
- (F) terminology;
- (G) technology;
- (H) accounting principles and practices;
- (I) tax problems;
- (J) consulting services required; or
- (K) audit issues.

(6) The taxation field of study includes subjects dealing with tax compliance and tax planning. Compliance covers tax return preparation and review and IRS examinations, ruling requests, and protests. Tax planning focuses on applying tax rules to prospective transactions and understanding the tax implications of unusual or complex transactions. Recognizing alternative tax treatments and advising the client on tax saving opportunities are also part of tax planning.

(c) ~~In addition to courses sponsored by approved sponsors, the~~ The following may qualify as acceptable types of continuing education programs, provided the programs comply with the requirements set forth in Paragraph (a) of this Rule:

- (1) professional development programs of national and state accounting organizations;
- (2) technical sessions at meetings of national and state accounting organizations and their chapters;

- (3) courses taken at regionally accredited colleges and universities;
- (4) educational programs that are designed and intended for continuing professional education activity conducted within an association of accounting firms; and
- (5) correspondence courses that are designed and intended for continuing professional education activity. A CPA may claim credit for a course offered by a non-~~approved~~ ~~registered~~ sponsor provided that the course meets the requirements of 21 NCAC 08G .0403 ~~(d)(c)~~, 08G .0404, and 21 NCAC 08G .0409. The CPA shall maintain documentation proving that the course met these standards.

(d) Notwithstanding Paragraph (a) of this Rule, CPE credit may be granted for teaching a CPE course or authoring a publication as long as the preparation to teach or write increased the CPA's professional competency and was in one of the six fields of study recognized by the Board and set forth in Paragraph (b) of this Rule.

(e) CPE credit shall not be granted for a self-study course if the material that the CPA must study to take the examination is not designed for CPE purposes. This includes periodicals, guides, magazines, subscription services, books, reference manuals and supplements which contain an examination to test the comprehension of the material read.

Authority G.S. 93-12(8b).

21 NCAC 08G .0406 COMPLIANCE WITH CPE REQUIREMENTS

(a) All active CPAs shall file with the Board a completed CPE reporting form by the July 1 renewal date of each year.

(b) If a CPA fails to complete the CPE requirements prior to the end of the previous calendar year but the CPA has completed them by June 30, the Board may, in its discretion:

- (1) change the CPA's status from active to conditional, require the payment of a civil penalty of one hundred dollars (\$100.00) and may impose any conditions that the Board considers appropriate in the circumstances, as a penalty for the first such failure within a five calendar year period;
- (2) place the CPA on conditional status again and require the payment of a civil penalty of ~~one~~ two hundred ~~fifty~~ dollars ~~(\$100.00)~~ (\$250.00) for the second such failure within a five calendar year period; and
- (3) deny the renewal of the CPA's certificate for a period of not less than 30 days and until the CPA meets the reinstatement requirements set forth in 21 NCAC 08J .0106 for the third such failure within a five calendar year period.

Authority G.S. 93-12(8b); 93-12(9)(e).

21 NCAC 08G .0409 COMPUTATION OF CPE CREDITS

(a) Group Courses: Non-College. CPE credit for a group course that is not part of a college curriculum shall be given based on

contact hours. A contact hour shall be 50 minutes of instruction. One-half credits shall be equal to 25 minutes after the first credit hour has been earned in a formal learning activity. Credit shall be granted only for full contact hours. For example, a group course lasting 100 minutes shall be two contact hours and thus two CPE ~~credits, and a credits.~~ A group course lasting between 50 and 100-75 minutes shall be only one and one-half contact hour hours and thus only one and one-half CPE credit, credits. When individual segments of a group course shall be less than 50 minutes, the sum of the individual segments shall be added to determine the number of contact hours. For example, five 30-minute presentations shall be 150 minutes, which shall be three contact hours and three CPE credits. No credit shall be allowed for a segment unless the participant completes the entire segment.

(b) Completing a College Course. CPE credit for completing a college course in the college curriculum shall be granted based on the number of credit hours the college gives the CPA for completing the course. One semester hour of college credit shall be 15 CPE credits; one quarter hour of college credit shall be ten CPE credits; and one continuing education unit (CEU) shall be ten CPE credits. ~~If a college course does not carry credit, CPE credit for the course shall be based on the number of contact hours of the course using the formula set out in Paragraph (a) of this Rule.~~ However, under no circumstances shall CPE credit be given to a CPA who audits a college course.

(c) Self Study. CPE credit for a self-study course shall be given based on the average number of contact hours needed to complete the course. ~~One-half of the~~ The average completion time shall be allowed for CPE credit. A sponsor must determine, on the basis of pre-tests, the average number of contact hours it takes to complete a course. CPE credit for self-study courses shall be limited to no more than 50 percent of a CPA's required CPE credits for a year.

(d) Instructing a CPE Course. CPE credit for teaching or presenting a CPE course for CPAs shall be given based on the number of contact hours spent in preparing and presenting the course. No more than 50 percent of the CPE credits required for a year shall be credits for preparing for and presenting a course. CPE credit for preparing for and presenting a course shall be allowed only once a year for a course presented more than once in the same year by the same CPA.

(e) Authoring a Publication. CPE credit for published articles and books shall be given based on the number of contact hours the CPA spent writing the article or book. No more than 25 percent of a CPA's required CPE credits for a year shall be credits for published articles or books.

(f) Instructing a College Course. CPE credit for instructing a graduate level college course shall be given based on the number of credit hours the college gives a student for successfully completing the course, using the calculation set forth in Paragraph (b) of this Rule. Credit shall not be given for instructing an undergraduate level course. In addition, no more than 50 percent of the CPE credits required for a year shall be credits for instructing a college course and, if CPE credit shall also be claimed under Paragraph (d) of this Rule, no more than 50 percent of the CPE credits required for a year shall be credits claimed under Paragraph (d) and this Paragraph. CPE credit for instructing a college course shall be allowed only once for a course presented more than once in the same year by the same CPA.

~~(g) Interactive Self Study. CPE credit for interactive self study shall be based on a program designed to use interactive learning methodologies that simulate a classroom learning process by employing computer software, other course material, or administrative systems that provide significant ongoing, interactive feedback to the learner regarding their learning progress. The sponsor must determine the CPE credit to be allowed based on the average number of contact hours needed to complete the course.~~

Authority G.S. 93-12(8b).

SUBCHAPTER 08H – RECIPROCITY

21 NCAC 08H .0101 RECIPROCAL CERTIFICATES

(a) A person from another jurisdiction who desires to offer or render professional services as a CPA to his or her employer or a client in this state shall meet all the requirements imposed on an applicant under G.S. 93-12(5) or the requirements of G.S. 93-12(6).

(b) The fee for a reciprocal certificate shall be the maximum amount allowed by G.S. 93-12(7a).

(c) An applicant for a reciprocal certificate shall meet the following requirements:

- (1) The applicant has the legal authority to use the CPA title and to practice public accountancy in a jurisdiction.
- (2) The applicant has received a passing score of at least 75 on each part of the Uniform CPA Examination.

(d) An applicant applying for a reciprocal certificate under G.S. 93-12(6) must meet the following requirements which the Board considers to be substantially equivalent to those of G.S. 93-12(5):

- (1) The applicant shall have 150 semester hours of college or university education including a bachelors or higher degree with a concentration in accounting and other courses that the Board may require from a college or university that is acceptable to the Board and one year of experience in the field of accounting verified by a certified public accountant who was the applicant's direct supervisor; or
- (2) The applicant:
 - (A) within 10 years immediately preceding the filing date of the application, has had ~~four~~two years of experience in the field of accounting under the direct supervision of a CPA who held a valid license during the period of direct supervision in any state or territory of the United States or the District of Columbia; or
 - (B) has ~~40~~eight years of experience in the field of accounting, or ~~40~~eight years of experience teaching accounting as defined and calculated in 21 NCAC 08F .0409, or any combination of such experience earned within the 12 years

immediately preceding the filing date of the application; and

- (3) During the two years preceding the applicant's filing date for a reciprocal certificate, the applicant has completed 80 hours of CPE in courses meeting the requirements of 21 NCAC 08G .0401(a). However, an applicant who received his or her initial CPA license within four years from the filing date of the application for a reciprocal certificate is exempt from this CPE requirement.

(e) An applicant for change in status, reissuance, or reinstatement of a reciprocal certificate that was inactive, forfeited, or retired more than 10 years before the date of reapplication, must comply with all current requirements for a reciprocal certificate.

Authority G.S. 93-12(6); 93-12(7a).

21 NCAC 08H .0106 NON-RESIDENT NOTIFICATION

(a) An individual whose principal place of business is outside this State must notify the Board that he or she intends to perform or offers to perform services in this State as a CPA and such notification shall be made on a form supplied by the Board no later than 30 days after the intent to perform or offer to perform services.

(b) Notification to the Board will be valid until December 31 of each year at which time the individual must renew his or her notification within 30 days or his or her privilege to perform or offer to perform services in this state as a CPA is terminated.

Authority G.S. 93-10.

SUBCHAPTER 08J - RENEWALS AND REGISTRATIONS

21 NCAC 08J .0108 CPA FIRM REGISTRATION

(a) All CPA firms shall register with the Board within 30 days after opening a North Carolina office or beginning a new CPA firm unless they are a professional corporation, professional limited liability company, or registered limited liability partnership, in which case they shall register prior to formation pursuant to 21 NCAC 08K .0104 and .0301.

(b) In addition to the initial registration required by Paragraph (a) of this Rule, all CPA firms shall register annually by January 31 with the Board upon forms provided by the Board.

(c) The information provided by the registration shall include:

- (1) Either an application for exemption from ~~SQR, peer review~~, a request to be deemed in compliance with ~~SQR—peer review~~ or registration for ~~SQR, peer review~~, pursuant to 21 NCAC 08M ~~.0102 and .0104; .0105;~~
- (2) For all CPA firms not exempt from the ~~SQR peer review~~ program, with the registration immediately following its review, the ~~affidavit information~~ required by 21 NCAC 08M ~~.0102(d); .0106(a);~~
- (3) For all North Carolina offices, an office registration form indicating the name of the

office supervisor, the location of the office and its telephone number;

- (4) For all partnerships or registered limited liability partnerships, a list of all resident and nonresident partners of the partnership;
- (5) For all professional limited liability companies, the information set forth in 21 NCAC 08K .0104(d);
- (6) For all incorporated CPA firms, the information set forth in 21 NCAC 08K .0104(d);
- (7) For all CPA firms, the appropriate registration fees as set forth in 21 NCAC 08J .0110; and
- (8) For all new CPA firms, the percentage of ownership held individually by each owner who has five percent or more of ownership:
 - (A) in the new CPA firm; and
 - (B) at the year-end in each CPA firm in which that owner was an owner during the preceding two years.
- (9) For all changes in ownership of a CPA firm, the percentage of ownership held individually by each owner who has five percent or more of ownership.

(d) All information provided for registration with the Board shall pertain to events of and action taken during the year preceding the year of registration. The last day of the preceding calendar year is the "year-end".

(e) With regard to Paragraph (c)(3) of this Rule, one representative of a CPA firm may file all documents with the Board on behalf of the CPA firm's offices in North Carolina. However, responsibility for compliance with this Rule shall remain with each office supervisor.

(f) With regard to Paragraph (c)(4) or (c)(5) of this Rule, one annual listing by a representative of the partnership, registered limited liability partnership, or professional limited liability company shall satisfy the requirement for all owners of the CPA firm. However, each owner shall remain responsible for compliance with this Rule. The absence of a filing under Paragraph (c)(4) or (c)(5) of this Rule shall be construed to mean that no partnership, registered limited liability partnership, or professional limited liability company exists.

(g) Notice that a CPA firm has dissolved or any change in the information required by Paragraph (c)(3) of this Rule shall be delivered to the Board's office within 30 days after the change or dissolution occurs. A professional corporation or professional limited liability company which is dissolving shall deliver the Articles of Dissolution to the Board's office within 30 days of filing with the Office of the Secretary of State.

(h) Upon written petition by a CPA firm, the Board may, in its discretion, grant the CPA firm a conditional registration for a period of 60 days or less, if the CPA firm shows that circumstances beyond its control prohibited it from registering with the Board, completing a quality review or notifying the Board of change or dissolution pursuant to Paragraphs (a), (b), (c), and (g) of this Rule. The Board may grant a second extension under continued extenuating circumstances.

(i) A complete registration, as required by 21 NCAC 08J .0108(b) and (c), shall be postmarked with proper postage not later than the last day of January unless that date falls on a weekend or federal holiday, in which case the registration shall

be postmarked or received in the Board office on the next business day. Only a U.S. Postal Service cancellation shall be considered as the postmark. If a registration is sent to the Board office via a private delivery service, the date the package is received by the delivery service shall be considered as the postmark.

Authority G.S. 55B-10; 55B-12; 57C-1; 57C-2; 59-84.2.

21 NCAC 08J .0110 REGISTRATION FEES

The annual registration fees shall be as follows:

- ~~(1)~~ ~~For participation within SQR or for a request to be deemed in compliance with SQR, seventy-five dollars (\$75.00) plus five dollars (\$5.00) for each additional North Carolina office of the CPA firm not excused from SQR by 21 NCAC 8M .0204;~~
- ~~(2)~~(1) For all professional corporations or professional limited liability companies, twenty-five dollars (\$25.00); and
- ~~(3)~~(2) For all non-incorporated CPA firms which have offices both within and outside the state of North Carolina, whether sole proprietorships, partnerships, or registered limited liability partnerships, an amount equal to two thousand five hundred dollars (\$2,500.00) or the number of CPA members of the CPA firm multiplied by ten dollars (\$10.00), whichever is less.

Authority G.S. 55B-11; 55B-12; 57C-1; 57C-2; 59-84.2.

21 NCAC 08J .0111 COMPLIANCE WITH CPA FIRM REGISTRATION

If a CPA firm fails to comply with any part of 21 NCAC 08J .0108, or 08J .0110, ~~or 8M .0102,~~ the Board may take disciplinary action against the CPA firm's members. Such discipline may include:

- (1) a conditional license upon such conditions as the Board may deem appropriate for non-compliance of less than 60 days;
- (2) a conditional license and one hundred dollar (\$100.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days;
- (3) a suspension of each member's CPA certificate for a period of not less than 30 days for non-compliance in excess of 120 days.

Authority G.S. 55B-12; 57C-1; 57C-2; 59-84.2.

SUBCHAPTER 08M - STATE QUALITY REVIEW PROGRAM

SECTION .0100 - GENERAL SQR REQUIREMENTS

21 NCAC 08M .0101 PURPOSE

~~The Board has adopted a state quality review (SQR) program to help CPA professionals in the public practice of accountancy maintain the quality of their audits, reviews, compilations, and agreed-upon procedures.~~

Authority G.S. 93-12(8c).

21 NCAC 08M .0102 REGISTRATION REQUIREMENTS

(a) A CPA firm which has not performed any audits, reviews, compilations, or agreed upon procedures during the 12 months prior to the year end of the registration required by 21 NCAC 8J .0108(a) and (b) shall be exempt from the SQR program for the 12 months following the year end but not from registering with the Board.

(b) Unless exempt under Paragraph (a) of this Rule, each ongoing CPA firm shall complete an SQR within 24 months following the year end of each registration unless it has completed an SQR within 24 months prior to the year end.

(c) Unless exempt under Paragraph (a) of this Rule, a new CPA firm shall complete its initial SQR within 24 months of the date of its initial registration pursuant to 21 NCAC 8J .0108(a).

(d) Every CPA firm not exempt from SQR by Paragraph (a) of this Rule, after completion of a quality review, shall procure a statement signed by the review team captain, a statement signed by a member of the CPA firm being reviewed, or letter of acceptance from an approved review program, stating that the CPA firm has completed an SQR or one of the review programs listed or referred to in 21 NCAC 8M .0104. The CPA firm shall submit the statement or documentation with the annual registration following the review as set forth in 21 NCAC 8J .0108(e)(2).

(e) For purposes of this Rule, an SQR is complete when the review team has delivered its report required by 21 NCAC 8M .0306 to the reviewed CPA firm. Any quality review other than SQR is complete when the review team has delivered its final report to the reviewed CPA firm. If mailed, a report shall be deemed delivered when postmarked.

Authority G.S. 93-12(7b); 93-12(8c).

21 NCAC 08M .0103 PROHIBITION OF ABUSE

CPA firms shall not rearrange their structure or act in any other manner with the intent to avoid participation in SQR.

Authority G.S. 93-12(8c).

21 NCAC 08M .0104 CPA FIRMS DEEMED IN COMPLIANCE

(a) CPA firms which have participated in one of the review programs set forth in either Paragraph (b) of this Rule or the list referred to in Paragraph (c) of this Rule, rather than SQR, within the applicable time period prescribed by 21 NCAC 8M .0102(b) and (c) are deemed to be in compliance with the SQR program.

(b) The following quality review programs are found by the Board to be of the type required by the Board in its SQR program:

- (1) AICPA Division for CPA Firms SEC Practice Section, and
- (2) AICPA Peer Review Program.

(c) Other quality review programs may be of the type required by the Board in its SQR program, which is equivalent to the guidelines of the AICPA Peer Review Program. A list of such programs will be maintained at the Board offices and mailed to any CPA firm upon request.

(d) Pursuant to G.S. 93-12(8c), a CPA firm which contemplates undergoing a quality review program other than the SQR program or those listed or referred to in Paragraphs (b) and (c) of this Rule may request a determination from the Board whether the quality review program is of the type required by the Board in the SQR program, which is equivalent to the guidelines of the AICPA Peer Review Program. The CPA firm shall supply all information requested of it by the Board and, within two months of the month all information requested has been received by the Board, the Board shall make its determination and notify the CPA firm.

Authority G.S. 93-12(8c)(e).

21 NCAC 08M .0105 PEER REVIEW REQUIREMENTS

(a) A CPA or CPA firm providing any of the following services to the public shall participate in an approved peer review program:

- (1) Audits;
- (2) Reviews of financial statements;
- (3) Compilations of financial statements;
- (4) Examinations of prospective financial statements;
- (5) Compilations of prospective financial statements;
- (6) Agreed-upon procedures of prospective financial statements;
- (7) Examination of written assertions; and
- (8) Agreed-upon procedures of written assertions.

(b) A CPA or CPA firm not providing any of the services listed in Paragraph (a) of this Rule is exempt from peer review until the issuance of the first report provided to a client.

(c) A CPA, a new CPA firm or a CPA firm exempt from peer review now providing any of the services in Paragraph (a) of this Rule shall furnish to the peer review program their first peer review report, the letter of comments, the letter of response, and any work papers required for the peer review program within 24 months of the issuance of the first report provided to a client.

(d) Participation in and completion of one of the following peer review programs is required:

- (1) AICPA Division for CPA Firms SEC Practice Section;
- (2) AICPA Peer Review Program;
- (3) NCACPA Peer Review Program; and
- (4) Any other peer review program approved in advance by the Board.

(e) CPA firms shall not rearrange their structure or act in any manner with the intent to avoid participation in peer review.

(f) A CPA firm which does not have offices in North Carolina and which has not provided any services as listed in Paragraph (a) of this Rule to North Carolina clients is not required to participate in a peer review program.

(g) Subsequent peer reviews of a CPA firm are due three years and six months from the year end of the 12 month period of the first peer review unless granted an extension by the peer review program and this Board.

Authority G.S. 93-12(7b); 93-12(8c).

21 NCAC 08M .0106 COMPLIANCE

(a) A CPA firm registered for peer review shall provide to the Board the following:

- (1) Peer review due date;
- (2) Year end date;
- (3) Final Letter of Acceptance from peer review program within 60 days of the date of the letter; and
- (4) A package to include the Peer Review Report, Letter of Comments, Letter of Response and Final Letter of Acceptance for all modified and adverse reports issued by a peer review program within 60 days of the date of the Final Letter of Acceptance.

(b) A peer review is not complete until the Final Letter of Acceptance is issued by the peer review program with the new due date.

(c) If a CPA firm fails to comply with 21 NCAC 08M .0105(c)(d)(g), the Board may take disciplinary action against the CPA firm's members which may include:

- (1) a conditional license and one hundred dollars (\$100.00) civil penalty upon conditions as the Board may deem appropriate for non-compliance of less than 60 days;
- (2) a conditional license and two hundred fifty dollars (\$250.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days; and
- (3) a suspension of each member's CPA certificate for a period of not less than 30 days and a civil penalty of five hundred dollars (\$500.00) for non-compliance in excess of 120 days.

Authority G.S. 93-12(7b); 93-12(8c).

21 NCAC 08M .0107 ETHICAL DUTIES OF REVIEWER

(a) A reviewer shall be independent with respect to the reviewed CPA firm.

(b) Independence is impaired if a reviewer:

- (1) performs a peer review of a CPA firm which performed the most recent peer review of the reviewer's CPA firm;
- (2) performs a peer review of a CPA firm an employee or member of which performed or participated in the performance of the most recent peer review of the reviewer's CPA firm; or
- (3) has any direct or indirect financial interest in a reviewed CPA firm's client and reviews engagements performed for that client.

(c) Paragraph (b) of this Rule does not include all instances where a reviewer's independence would be impaired. In considering whether independence is impaired, the reviewer shall consider the effect of family and other relationships and the possible appearance of loss of independence as a result of those relationships.

(d) A reviewer shall not have a conflict of interest with respect to the reviewed CPA firm or the clients whose engagements are selected for review.

(e) A reviewer shall avoid contacts with the reviewed CPA firm's clients or personnel that could be asserted to be evidence of a conflict of interest.

(f) Information concerning the participating CPA firm or its clients or personnel that is obtained as a consequence of the review is confidential and must not be disclosed to anyone not involved in the peer review process.

Authority G.S. 93-12(7b); 93-12(8c).

SECTION .0200 - DUTIES OF THE REVIEWED FIRM

21 NCAC 08M .0201 SELECTION OF ENGAGEMENTS TO BE REVIEWED

~~(a) Each office of the reviewed CPA firm not excused under 21 NCAC 8M .0204 shall select a set of engagements to be submitted for review as required by the programs listed in 21 NCAC 8M .0104(b)(1) and (2).~~

~~(b) A set of engagements for review shall include the accountant's report and financial statements for one audit, one review, one compilation, and one agreed upon procedure, if these levels of service have been performed by the office within the 12 months preceding the year-end. If one or more levels of service have not been performed, the office shall select reports of the next highest level of service for reports required to be submitted. If, of the levels of service, only compilations have been performed by the office, the set of engagements shall include at least one compilation report on a complete set of financial statements which includes disclosures and one compilation report on a financial statement where management has elected to omit substantially all of the disclosures normally required by generally accepted accounting principles set forth in 21 NCAC 8N .0209, if both types of compilations are performed.~~

~~(c) The set of engagements, if possible, shall include clients operating in different industries. For example, submission of one governmental audit, one manufacturing review and one contractor compilation would satisfy this requirement.~~

~~(d) If a CPA firm to be reviewed does a governmental audit, at least one shall be included in the set of engagements.~~

~~(e) An office of the reviewed CPA firm not participating in the programs listed in 21 NCAC 8M .0104(b)(1) and (2) shall select a set of engagements to be submitted for review as required by the applicable AICPA Peer Review Program.~~

Authority G.S. 93-12(8c).

21 NCAC 08M .0202 NOTICE TO CLIENTS

~~The participating CPA firm may advise its clients that it will participate in a quality review required by the Board and that the client's accounting or auditing work may be part of the review process.~~

Authority G.S. 93-12(8c).

21 NCAC 08M .0204 CERTAIN OFFICES EXCUSED

~~The following offices of participating CPA firms are not required to participate in the SQR program:~~

- ~~(1) offices which are not North Carolina offices, and which have not performed any audits,~~

~~reviews, compilations, or agreed upon procedures for clients in North Carolina; and~~
 (2) ~~North Carolina offices which have not performed any audits, reviews, compilations, or agreed upon procedures for the 12 months prior to the year-end set forth in 21 NCAC 8J .0108.~~

~~(3) must be a manager (or the equivalent) within his/her CPA firm; and~~
 (4) ~~must have day to day involvement in auditing and accounting procedures which is sufficiently comprehensive to enable him/her to perform and oversee the SQR with professional expertise.~~

Authority G.S. 93-12(8c).

Authority G.S. 93-12(8c).

21 NCAC 08M .0206 SELECTION OF A REVIEW TEAM

~~(a) A participating CPA firm shall select the review team which will perform the CPA firm's SQR.~~
 (b) ~~The participating CPA firm shall see that the review team is qualified under 21 NCAC 8M .0301 and engaged to perform the review in accordance with the standards for the performance of SQR set forth in 21 NCAC 8M .0302B.0306.~~

Authority G.S. 93-12(8c).

21 NCAC 08M .0302 INDEPENDENCE FROM A REVIEWED CPA FIRM

~~(a) A reviewer shall be independent with respect to the reviewed CPA firm.~~
 (b) ~~Independence is impaired if a reviewer:~~
 (1) ~~performs an SQR of a CPA firm which performed the most recent quality review of the reviewer's CPA firm;~~
 (2) ~~performs an SQR of a CPA firm an employee or member of which performed or participated in the performance of the most recent quality review of the reviewer's CPA firm; or~~
 (3) ~~has any direct or indirect financial interest in a reviewed CPA firm's client and reviews engagements performed for that client.~~

~~(c) Paragraph (b) of this Rule does not include all instances where a reviewer's independence would be impaired. In considering whether independence is impaired, the reviewer shall consider the effect of family and other relationships and the possible appearance of loss of independence as a result of those relationships.~~

Authority G.S. 93-12(8c).

21 NCAC 08M .0207 DUTY TO RESPOND TO QUESTIONS

~~(a) The participating CPA firm shall respond promptly to questions raised during the review process by any member of the review team, whether oral or written.~~
 (b) ~~The participating CPA firm shall respond in writing to questions raised by the SQR report required by 21 NCAC 8M .0306 within 30 days from the date the report is delivered to it. The letter of response shall be addressed to the SQR Committee and a copy sent to the review team captain.~~

Authority G.S. 93-12(8c).

SECTION .0300 - REVIEW TEAM: QUALIFICATIONS AND DUTIES

21 NCAC 08M .0301 QUALIFICATIONS OF REVIEWERS AND TEAM CAPTAINS

~~(a) A reviewer must be a CPA on active status licensed in any state of the United States, be in good standing with the CPA boards by which (s)he is licensed to practice public accounting, possess current knowledge of the code of professional ethics and conduct, and possess current knowledge of the accounting and auditing standards applicable to the engagements to be reviewed by him/her. However, (s)he need not possess knowledge of the applicable accounting and auditing standards with regard to every engagement involved in the review, unless (s)he is the only member of a review team.~~
 (b) ~~A reviewer shall not have been disciplined for violation of 21 NCAC 8N .0202 or .0408 within the five years preceding the date the review engagement is entered.~~
 (c) ~~The review team captain:~~
 (1) ~~must have five years' experience or more as a CPA in the accounting and auditing function;~~
 (2) ~~must be a member or employee of a CPA firm which has completed an SQR or other quality review listed or referred to in 21 NCAC 8M .0104 within the last three years but which has not received an adverse report on its most recent quality review;~~

21 NCAC 08M .0303 CONFLICT OF INTEREST

~~(a) A reviewer shall not have a conflict of interest with respect to the reviewed CPA firm or the clients whose engagements are selected for review.~~
 (b) ~~A reviewer shall avoid contacts with the reviewed CPA firm's clients or personnel that could be asserted to be evidence of a conflict of interest.~~

Authority G.S. 93-12(8c).

21 NCAC 08M .0304 PERFORMING THE REVIEW - REVIEWER'S DUTIES

~~(a) The objective of the review shall be to determine that the financial statements and related accountant's report on the audit, review or compilation engagements submitted for review do not depart in a material respect from the requirements of professional standards set forth in 21 NCAC 8N .0209B.0211, .0304, and .0403B.0406.~~
 (b) ~~The review team shall read the financial statements submitted by the participating CPA firm and the accountant's audit, review or compilation report thereon.~~
 (c) ~~The review team must determine whether each of the accountant's report and financial statements conform with the applicable professional standards set forth in 21 NCAC 8N .0209B.0211, .0304, and .0403B.0406.~~
 (d) ~~Before issuing its SQR report pursuant to 21 NCAC 8M .0306, the review team may raise questions with the participating~~

~~CPA firm either orally or in written form to resolve questions which come to their attention during a review.~~

~~(e) The review team shall document the work performed using programs and checklists which provide a reasonable basis for their SQR report.~~

~~(f) A review team shall not issue an SQR report, pursuant to 21 NCAC 8M .0306, unless it has complied with the applicable review standards and requirements.~~

Authority G.S. 93-12(8c).

21 NCAC 08M .0305 CONFIDENTIALITY

~~Information concerning the participating CPA firm or its clients or personnel that is obtained as a consequence of the review is confidential and must not be disclosed to anyone not involved in the SQR process.~~

Authority G.S. 93-12(8c).

21 NCAC 08M .0306 REPORTING REQUIREMENTS

~~(a) The review team shall deliver an SQR report and the statement required by 21 NCAC 8M .0102(d) to the participating CPA firm within 60 days after all of the engagements which are to be reviewed have been delivered to it. Beginning January 1, 1996, the review team shall also deliver its SQR report to the SQR Advisory Committee by the same date.~~

~~(b) The SQR report and a letter of comment, if any, shall be written and issued on the letterhead of the team captain's CPA firm and shall either be unmodified, modified, or adverse.~~

~~(c) It is suggested that a letter of comment be issued if the report is modified or adverse. A letter of comment, if issued, shall provide reasonably detailed recommendations for remedial, corrective actions by the participating CPA firm so that the SQR Committee can evaluate whether the CPA firm's response to significant deficiencies noted in the review is a positive one, consistent with the objectives of the SQR program, and whether the actions taken or planned by the participating CPA firm appear appropriate in the circumstances.~~

~~(d) The SQR report shall describe the limited scope of the review and shall not express an opinion or any form of assurance about the reviewed CPA firm's quality control policies and procedures for its accounting practice. It shall state whether anything came to the attention of the review team which caused them to believe that any of the engagements submitted for review did not conform with the requirements of professional standards in all material respects and, if applicable, describe the general nature of significant departures from those standards.~~

~~(e) An unmodified report includes the review team's conclusion that nothing came to its attention that caused its members to believe that the engagements submitted for review did not conform with the requirements of professional standards in all material respects.~~

~~(f) A modified report includes the review team's conclusion that nothing came to its attention that caused its members to believe that the engagements submitted for review did not conform with the requirements of professional standards in all material respects with the exception of certain reservations which are noted in the report.~~

~~(g) An adverse report includes the review team's conclusion that the participating CPA firm did not have reasonable assurance of~~

~~conforming with professional standards in the conduct of its accounting practice during the year under review.~~

Authority G.S. 93-12(8c).

SECTION .0400 - SQR ADVISORY COMMITTEE

21 NCAC 08M .0401 SQR ADVISORY COMMITTEE - MEMBERS AND DUTIES

~~(a) The SQR Advisory Committee shall consist of six CPAs appointed by the Board and one Board member appointed by the Board's President.~~

~~(b) The SQR Committee shall:~~

- ~~(1) beginning January 1, 1996, review all modified and adverse SQR reports and letters of comments, if any, submitted by review team captains under the SQR program;~~
- ~~(2) consider all objections filed pursuant to 21 NCAC 8M .0402(a); and~~
- ~~(3) make recommendations to the Board consistent with these Rules concerning each of Subparagraphs (b)(1) and (2) of this Rule.~~

~~(c) Prior to making any recommendations to the Board, the Committee shall give notice of its proposed recommendation to the CPA firm to which the recommendation pertains.~~

~~(d) The Committee shall also recommend remedial action to participating CPA firms receiving modified or adverse reports which, if followed, could increase the participating CPA firm's ability to perform quality services in the public practice of accounting.~~

~~(e) The Committee shall report at least annually to the Board on its activities and, further, at any time the Board requests a special report.~~

Authority G.S. 93-12(2); 93-12(8c).

21 NCAC 08M .0402 OBJECTIONS TO SQR ADVISORY COMMITTEE

~~(a) A participating CPA firm may file an objection with the SQR Advisory Committee with regard to an SQR report within 30 days from the date the report is delivered pursuant to 21 NCAC 8M .0306(a). In any other matter before the Committee, a CPA firm to which a proposed recommendation pertains may file an objection within 30 days from notice of the Committee's recommendation.~~

~~(b) All objections shall be in writing and shall be addressed to the Committee at the Board's address set forth in 21 NCAC 8A .0102. Objections are filed when received by the Board.~~

~~(c) An objection concerning an SQR report shall contain:~~

- ~~(1) the name of the reviewed CPA firm;~~
- ~~(2) the name of the review team captain;~~
- ~~(3) the date the review was completed;~~
- ~~(4) the conclusions made in the report to which the participating CPA firm objects; and~~
- ~~(5) in sufficient detail, the participating CPA firm's reasons for objecting to the report's conclusions.~~

~~(d) Objections to proposed recommendations of the Committee shall identify the proposed recommendation and shall state the CPA firm's reasons for disagreeing with the Committee's proposed recommendation in sufficient detail.~~

Authority G.S. 93-12(2); 93-12(8c).

21 NCAC 08M .0403 REVIEW OF PROTEST

~~(a) Within 60 days of receiving an objection from a CPA firm, the SQR Advisory Committee shall render its determination in response to the objection. It may, in its discretion, propose to recommend to the Board that the SQR report be amended or alter the recommendation it has proposed to make to the Board.~~
~~(b) During its review of any matter raised by an objection, the SQR Advisory Committee may gather information (including any review team's work papers, checklists, and all other information submitted to a review team by a participating CPA firm) and conduct interviews, including interviews of members of a review team or the objecting CPA firm.~~
~~(c) If the CPA firm and the Committee are unable to resolve the matter informally, the Committee shall submit its recommendation to the Board with notice to the objecting CPA firm. The objecting CPA firm then has 30 days from such notice to object to such recommendation by filing an objection with the Board. The objection shall comply with the requirements of 21 NCAC 8M .0402(d) and is filed when received by the Board.~~
~~(d) The Board shall review the recommendation of the Committee and the objection and then, if the matter is not resolved informally, the Board or the CPA firm may set the matter for hearing pursuant to Article 3A of G.S. 150B.~~

Authority G.S. 93-12(2); 93-12(8c); 150B-2(2); 150B-41(c).

SUBCHAPTER 08N - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0200 - RULES APPLICABLE TO ALL CPAS

21 NCAC 08N .0202 DECEPTIVE CONDUCT PROHIBITED

(a) Deception Defined. A CPA shall not engage in deceptive conduct. Deception includes fraud or misrepresentation and representations or omissions which a CPA either knows or should know have a capacity or tendency to deceive. Deceptive conduct is prohibited whether or not anyone has been actually deceived. Deception includes not only deceptive statements but also includes the knowing failure to disclose material facts.
 (b) Prohibited Deception. Prohibited conduct under this Section includes but is not limited to deception in:

- (1) obtaining or maintaining employment;
- (2) obtaining or keeping clients;
- (3) obtaining or maintaining certification, retired status, or exemption from SQR; peer review;
- (4) reporting CPE credits;
- (5) certifying the character or experience of exam or certificate applicants;
- (6) implying abilities not supported by valid education, professional attainments, or licensing recognition;
- (7) asserting that services or products sold in connection with use of the CPA title are of a particular quality or standard when they are not;
- (8) creating false or unjustified expectations of favorable results;

- (9) using or permitting another to use the CPA title in a form of business not permitted by the accountancy laws or rules;
- (10) permitting anyone not certified in this state (including one licensed in another state) to unlawfully use the CPA title in this state or to unlawfully operate as a CPA firm in this state; or
- (11) falsifying a review, report, or any required program or checklist of any quality/peer review program.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0203 DISCREDITABLE CONDUCT PROHIBITED

(a) Discreditable Conduct. A CPA shall not engage in conduct discreditable to the accounting profession.
 (b) Prohibited Discreditable Conduct. Discreditable conduct includes but is not limited to:

- (1) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA in other respects;
- (2) stating or implying an ability to improperly influence a governmental agency or official; ~~or~~
- (3) failing to comply with any order issued by the Board; Board; or
- (4) failing to fulfill the terms of a peer review engagement contract.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0205 CONFIDENTIALITY

(a) Nondisclosure. A CPA shall not disclose any confidential information obtained in the course of employment or a professional engagement except with the consent of the employer or client.
 (b) Exceptions. This Rule shall not be construed:

- (1) to relieve a CPA of any report obligations pertaining to Section .0400 of this Subchapter; or
- (2) to affect in any way the CPA's compliance with a validly issued subpoena or summons enforceable by this Board or by order of a court; or
- (3) to preclude the CPA from responding to any inquiry made by the AICPA Ethics Division or Trial Board, by a duly constituted investigative or disciplinary body of a state CPA society, or under state statutes; or
- (4) to preclude the disclosure of to disclose confidential client information necessary for the SQR-peer review process or for any quality review program program; or
- (5) to preclude the CPA from assisting the Board in enforcing the accountancy statutes and rules.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0208 REPORTING CONVICTIONS, JUDGMENTS, AND DISCIPLINARY ACTIONS

(a) Criminal Actions. A CPA shall notify the Board within 30 days of any conviction or finding of guilt of, or pleading of *nolo contendere* to:

- (1) a felony; or
- (2) any crime an essential element of which is dishonesty, deceit, fraud, a violation of federal or state tax law, or a violation of the rules of Professional Ethics and Conduct contained in this Subchapter.

(b) Civil Actions. A CPA shall notify the Board within 30 days of any judgment or settlement in a civil suit, bankruptcy action, administrative proceeding, or binding arbitration, the basis of which is grounded upon an allegation of professional negligence, gross negligence, dishonesty, fraud, misrepresentation, incompetence, or violation of any federal or state tax law and which was brought against either the CPA or a North Carolina office of a CPA firm of which the CPA was a managing partner.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0211 RESPONSIBILITIES IN TAX PRACTICE

(a) Standards for Tax Services. A CPA shall not render services in the area of taxation unless the CPA has complied with the standards for tax services.

(b) Statements on Responsibilities-Standards for Tax Services. The Statements on Responsibilities in Tax Practice-Standards for Tax Services issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for tax services for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them.

(d) Copies of Standards. Copies of the Statements of Responsibilities in Tax Practice-on Standards for Tax Services may be inspected in the offices of the Board, as described in 21 NCAC 8A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty-eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

SECTION .0300 - RULES APPLICABLE TO ALL CPAS WHO USE THE CPA TITLE IN OFFERING OR RENDERING PRODUCTS OR SERVICES TO CLIENTS

21 NCAC 08N .0302 FORMS OF PRACTICE

(a) Authorized Forms of Practice. A CPA who uses CPA in or with the name of the business or offers or renders attest services in the public practice of accountancy to clients shall do so only through a duly authorized sole proprietorship, partnership, Professional Corporation, Professional Limited Liability Company, or Registered Limited Liability Partnership.

(b) Authorized Ownership. A CPA firm may have a minority ownership of up to 49 percent owned by non-CPAs, non-CPAs with the exception of Professional Corporations organized under G.S. 55B or Professional Limited Liability Companies organized under G.S. 57C which shall not have any non-CPA ownership. A CPA firm shall have majority ownership of at least 51 percent and be controlled in law and fact by holders of valid CPA certificates who have the unrestricted privilege to use the CPA title and to practice public accountancy in a jurisdiction and at least one whom shall be licensed by this Board.

(c) CPA Firm Registration Required. A CPA shall not offer or render professional services through a CPA firm which is in violation of the registration requirements of 21 NCAC 08J .0108, 08J .0110, or 08M ~~.0102~~, .0101.

(d) Supervision of CPA Firms. Every North Carolina office of a CPA firm registered in North Carolina shall be actively and locally supervised by a designated actively licensed North Carolina CPA whose primary responsibility and a corresponding amount of time shall be work performed in that office.

(e) CPA Firm Requirements for Non-CPA Ownership. A CPA firm and its designated supervising CPA partner shall be held accountable for the following in regard to a non-CPA owner:

- (1) a non-CPA owner shall be a natural person or a general partnership or limited liability partnership directly owned by natural persons;
- (2) a non-CPA owner shall actively participate in the business of the firm or an affiliated entity as his or her principal occupation;
- (3) a non-CPA owner shall comply with all applicable accountancy statutes and the administrative code;
- (4) a non-CPA owner shall be of good moral character and shall be dismissed and disqualified from ownership for any conduct that, if committed by a licensee, would result in a discipline pursuant to G.S. 93-12(9);
- (5) a non-CPA owner shall report his or her name, home address, home phone number, and social security number on the CPA firm's registration; and
- (6) a non-CPA owner's name may not be used in the name of the CPA firm or held out to clients or the public that implies the non-CPA owner is a CPA.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

21 NCAC 08N .0305 RETENTION OF CLIENT RECORDS

(a) Return upon Demand. A CPA must return client records in his or her possession to the client after a demand is made for their return. If the client is a partnership, records shall be returned upon request to any of its general partners. If the client is a limited partnership or a registered limited liability partnership, records shall be returned upon request to the general partner(s) and the managing partner or his or her designated individual respectively. If the client is a corporation, records shall be returned upon request to its president. If the client is a limited liability company, records shall be returned upon request to the manager. Joint records shall be returned upon request to any party. The records must be returned immediately upon

demand unless circumstances make some delay reasonable in order to retrieve a closed file or to extract the CPA's work papers described in Paragraph (e) of this Rule. If the records cannot be returned immediately upon demand, the CPA shall immediately notify the client of the date the records will be returned. Nothing in this Rule shall be interpreted to require a CPA to pay delivery costs when the records are returned to the client and the business does not sell or serve to the CPAs.

(b) Return of Original Records. If a CPA is engaged to perform certain work for a client, the CPA is only required to return or furnish copies of those records originally given to the CPA by the client if one of the following occurs:

- (1) the engagement is terminated prior to the completion of such work, or
- (2) the CPA's work product has neither been received nor paid for by the client.

(c) Retention to Force Payment. A CPA shall not retain a client's records in order to force payment of any kind.

(d) Work Papers Included in Client Records. Work papers are usually the CPA's property and need not be surrendered to the client. However, in some instances work papers will contain data which should properly be reflected in the client's books and records but for convenience have not been duplicated therein with the result that the client's records are incomplete. In such instances, the portion of the work papers containing such data constitutes part of the client's records, and copies shall be given to the client along with the rest of the client's records. Work papers considered part of the client's records include but are not limited to:

- (1) Worksheets in lieu of original entry (e.g., listings and distributions of cash receipts or cash disbursements on columnar work paper);
- (2) Worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar types of depreciation records;
- (3) All adjusting and closing journal entries and supporting details not fully set forth in the journal entry; and
- (4) Consolidating or combining journal entries and worksheets and supporting detail used in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(e) Work Papers Belonging to the CPA. Work papers developed by the CPA incident to the performance of an engagement which do not result in changes to the client's records, or are not in themselves part of the records ordinarily maintained by such clients, are solely the CPA's work papers and are not the property of the client. For example, the CPA may make extensive analyses of inventory or other accounts as part of the selective audit procedures. These analyses are considered to be a part of the CPA's work papers, even if the analyses have been prepared by client personnel at the request of the CPA. Only to the extent these analyses result in changes to the client's records would the CPA be required to furnish the details from the work papers in support of the journal entries recording the changes, unless the journal entries themselves contain all necessary details.

(f) Reasonable Fees for Copies. Nothing in this Rule shall be construed to require the CPA to furnish a client with copies of

the client's records already in the client's possession. However, if the client asserts that such records have been lost, or are otherwise not in the client's possession, the CPA shall furnish copies of the records within a reasonable time for a fee.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

**SECTION .0400 - RULES APPLICABLE TO CPAS
PERFORMING ATTEST SERVICES**

21 NCAC 08N .0402 INDEPENDENCE

(a) A CPA, or the CPA's firm, who is performing an engagement in which the CPA, or the CPA's firm, will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) must be independent with respect to the client in fact and appearance.

(b) Independence ~~is shall be considered to be~~ impaired if, ~~for example,~~ during the period of the professional engagement, ~~or at the time of issuing the report, the CPA or the CPA's firm:~~ a covered individual:

- (1) had or was committed to acquire any direct or material indirect financial interest in the client;
- (2) was a trustee of any trust or executor or administrator of any estate that had or was committed to acquire any direct or material indirect financial interest in the ~~client;~~ client; and
 - (A) The covered individual had the authority to make investment decisions for the trust or estate; or
 - (B) The trust or estate owned more than 10 percent of the client's outstanding equity securities or other ownership interests or the value of the trust's or estate's holdings in the client exceeded ten percent of the total assets of the trust or estate;
- (3) had a joint or closely held ~~business investment with the client or any officer, director, or principal stockholder thereof which that~~ was material ~~in relation to the net worth of the client, the CPA, or the CPA's firm;~~ or covered individual; or
- (4) had any loan to or from the client or any officer, director, ~~or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:~~ of the client, or any individual owning 10 percent or more of the client's outstanding equity securities or other ownership interests.
 - (A) ~~loans obtained by the CPA or the CPA's firm which are not material in relation to the net worth of the borrower;~~
 - (B) ~~home mortgages; and~~
 - (C) ~~other secured loans, except those secured solely by a guarantee of the CPA or the CPA's firm.~~

(c) Independence shall be considered to be impaired if during the period of the professional engagement, a shareholder, a

PROPOSED RULES

member, a partner or professional employee of the firm, his or her immediate family, or any group of such persons acting together owned more than five percent of a client's outstanding equity securities or other ownership interests.

(e)(d) Independence will also shall be considered to be impaired if, during the period covered by the financial statements, or during the period of the professional engagement, or at the time of issuing the report, the CPA: a shareholder, a member, a partner or professional employee of the firm was simultaneously associated with the client as a(n):

- (1) was connected with the client as a promoter, underwriter, voting trustee, director, Director, officer, employee, or in any capacity equivalent to that of a member of management; management or of an employee; or;
(2) Promoter, underwriter, or voting trustee; or
(2)(3) was a trustee Trustee for any person pension or profit-sharing trust of the client.

(e) "Covered person" is:

- (1) A person on the attest engagement team;
(2) A person in a position to influence the attest engagement;
(3) A partner or manager who provides nonattest services to the attest client beginning once he or she provides 10 hours of nonattest services to the client within any fiscal year and ending on the later of the date:
(A) the firm signs the report on the financial statements for the fiscal year during which those services were provided; or
(B) he or she no longer expects to provide 10 or more hours of nonattest services to the attest client on a recurring basis;
(4) A partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement;
(5) The firm, including the firm's employee benefit plans; or
(6) An entity whose operating, financial, or accounting policies can be controlled (as defined by generally accepted accounting principles (GAAP) for consolidation purposes) by any of the individuals or entities described in Paragraphs (a) through (e) of this Rule or by two or more such individuals or entities if they act together;

(d)(f) The examples in this Rule are not intended to be all-inclusive.

Authority G.S. 55B-12; 57C-2-01; 93-12(9).

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Licensing Board for General Contractors

intends to amend the rules cited as 21 NCAC 12 .0202, .0503, .0701, .0703. Notice of Rule-making Proceedings was published in the Register on July 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 9, 2002

Time: 2:00 p.m.

Location: Glenwood Place, 3739 National Dr., Cumberland Building, Suite 225, Raleigh, NC

Reason for Proposed Action: To amend licensure classification to require an audited financial statement with a classified balance sheet for renewal while licensee is in bankruptcy; to amend notice requirements for charges of improper practice once a charge is referred to the review committee; and to clarify that when a license renewal fee is paid by a check which is subsequently returned because of insufficient funds, license renewal is treated as never having been renewed.

Comment Procedures: Comments from the public shall be directed to Mark D. Selph, North Carolina Licensing Board for General Contractors, PO Box 17187, Raleigh, NC 27619. Comments will be accepted through October 16, 2002.

Fiscal Impact

- State 21 NCAC 12 .0701
Local
Substantive (>=\$5,000,000)
None 21 NCAC 12 .0202, .0503, .0703

SECTION .0200 - LICENSING REQUIREMENTS

21 NCAC 12 .0202 CLASSIFICATION

(a) A general contractor must be certified in one of five classifications. These classifications are:

- (1) Building Contractor. This classification covers all types of building construction activity including but not limited to: commercial, industrial, institutional, and all types of residential building construction; covers parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, curbs, gutters, and septic-water and wastewater systems which are ancillary to the aforementioned types of construction; structures and improvements; and covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), and S(Swimming Pools).
(2) Residential Contractor. This classification covers all types of construction activity pertaining to the construction of residential units which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; covers all site work, driveways, sidewalks, and septic-water and wastewater

- systems ancillary to the aforementioned construction; structures and improvements and covers the work done as part of such residential units under the specialty classifications of S(Insulation), S(Masonry Construction), S(Roofing), and S(Swimming Pools).
- (3) Highway Contractor. This classification covers all types of highway construction activity including but not limited to: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. Includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of signage, runway lighting and marking; and covers work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction) and S(Railroad Construction). If the contractor limits his activity to grading and does no other work described herein, upon proper qualification the classification of H(Grading and Excavating) may be granted.
- (4) Public Utilities Contractor. This classification includes those whose operations are the performance of construction work on septic water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(3) for which the contractor qualifies. Within appropriate subclassification, a public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), and S(Swimming Pools).
- (5) Specialty Contractor. This classification shall embrace that type of construction operation and performance of contract work outlined as follows:
- (A) H(Grading and Excavating). Covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. Covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. Also includes clearing and grubbing, and erosion control activities.
- (B) S(Boring and Tunneling). Covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. Includes preparation of the ground surfaces at points of ingress and egress.
- (C) PU(Communications). Covers the installation of the following:
- (i) All types of pole lines, and aerial and underground distribution cable for telephone systems;
 - (ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;
 - (iii) Underground conduit and communication cable including fiber optic cable; and
 - (iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.
- (D) S(Concrete Construction). Covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots and highways.
- (E) PU(Electrical-Ahead of Point of Delivery). Covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of

PROPOSED RULES

- furnishing electrical services to one or more customers.
- (F) PU(Fuel Distribution). Covers the construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals and slurries through pipeline from one station to another. Includes all excavating, trenching and backfilling in connection therewith. Covers the installation, replacement and removal of above ground and below ground fuel storage tanks.
- (G) PU(Water Lines and Sewer Lines). Covers construction work on water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. Includes pavement patching, backfill and erosion control as part of such construction.
- (H) PU(Water Purification and Sewage Disposal). Covers the performance of construction work on septic-water and wastewater systems, water and wastewater treatment facilities and ~~covers~~ all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. Covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of such work on water and wastewater treatment facilities.
- (I) S(Insulation). Covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. Does not include the insulation of mechanical equipment and ancillary lines and piping.
- (J) S(Interior Construction). Covers the installation of acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. Includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine Construction). Covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. Does not include structures required on docks, slips and piers.
- (L) S(Masonry Construction). Covers the installation, with or without the use of mortar or adhesives, of the following:
- (i) Brick, concrete block, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry;
 - (ii) Installation of fire clay products and refractory construction; and
 - (iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). Covers the building, construction and repair of railroad lines including:
- (i) The clearing and filling of rights-of-way;
 - (ii) Shaping, compacting, setting and stabilizing of road beds;
 - (iii) Setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and
 - (iv) Construction and repair of tool sheds and platforms.
- (N) S(Roofing). Covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" shall be defined for purposes of this Subparagraph to include, among other things, cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single

ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.

- (O) S(Metal Erection). Covers:
 - (i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and
 - (ii) The layout, assembly and erection by welding, bolting or riveting such metal products as, but not limited to, curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.
- (P) S(Swimming Pools). Covers the construction, service and repair of all swimming pools. Includes:
 - (i) Excavation and grading;
 - (ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
 - (iii) Installation of all equipment including pumps, filters and chemical feeders. Does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.
- (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or

institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities.

- (b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified."

Authority G.S. 87-1; 87-10.

SECTION .0500 - LICENSE

21 NCAC 12 .0503 RENEWAL OF LICENSE

- (a) Form. An application for renewal requires the holder of a valid license to set forth whether there were any changes made in the status of the licensee's business during the preceding year and also requires the holder to give a financial statement for the business in question. The financial statement need not be prepared by a certified public accountant or by a qualified independent accountant but may be completed by the holder of a license on the form itself. However, the Board may require a license holder to submit an audited financial statement if there is any evidence indicating that the license holder may be unable to meet his financial obligations. Except as provided herein, evidence of financial responsibility shall be subject to approval by the Board in accordance with the requirements of Rule .0204 of this Chapter. A licensee may be required to provide evidence of continued financial responsibility satisfactory to the Board should circumstances render such evidence necessary, and shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing. A licensee in bankruptcy shall provide to the Board an audited financial statement with a classified balance sheet as part of any application for renewal.
- (b) Display. The certificate of renewal of license granted by the Board, containing the signatures of the Chairman and the Secretary-Treasurer, must be displayed at all times by the licensee at his place of business.

Authority G.S. 87-1; 87-10.

SECTION .0700 - BOARD DISCIPLINARY PROCEDURES

21 NCAC 12 .0701 IMPROPER PRACTICE

- (a) Preferring Charges. Any person who believes that any licensed general contractor is in violation of the provisions of G.S. 87-11 may prefer charges against that person or corporation by setting forth in writing those charges and swearing to their authenticity. The charges are to be filed with the Secretary-Treasurer of the Board at the Board's address in Rule .0101 of this Chapter.
- (b) Preliminary or Threshold Determination.
 - (1) A charge, properly filed, is initially referred to the review committee.
 - (2) The review committee is a committee made up of the following individuals:

PROPOSED RULES

- (A) one member of the Board; and
(B) the legal counsel of the Board; and
(C) the Secretary-Treasurer.
(3) The review committee is specifically delegated the responsibility of determining, prior to a full-scale hearing, whether or not a charge is unfounded or trivial. The decision of the review committee is final.
(4) Once a charge is referred to the review committee, a written notice of and detailed explanation of the charge is forwarded to the person or corporation against whom the charge is made and a response is requested of the person or corporation so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by registered mail, return receipt requested, by first class mail to the last known address of the person or corporation.
(5) If the respondent denies the charge brought against him, then, in the sole discretion of the review committee, a field investigation may be performed by an investigator retained by the Board.
(6) After all preliminary evidence has been received by the review committee, it makes a threshold determination of the charges brought. From the evidence, it recommends to the Board that:
(A) The charge be dismissed as unfounded or trivial;
(B) When the charge is admitted as true by the respondent, the Board accept the respondent's admission of guilt and order the respondent not to commit in the future the specific act or acts admitted by him to have been violated and, also, not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or
(C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11.
(7) Notice of the threshold determination of the review committee shall be given to the party against whom the charges have been brought and the party preferring the charge within ten days of the review committee's decision. Though it is not forbidden to do so, the review committee is not required to notify the parties of the reasons of the review committee in making its threshold determination.

(c) Board Determination. The Board, in its discretion, may choose to hold a hearing on the merits of any disputed charge. After a hearing, in accordance with the hearing requirements of Section .0800 of this Chapter, the Board shall make a determination of the charge in light of the requirements of G.S. 87- 11.

Authority G.S. 87-11; 150B-3; 150B-38.

21 NCAC 12 .0703 FEE FOR SUBMITTAL OF BAD CHECK

- (a) In addition to making the check good, any person, firm or corporation submitting to the Board a check which is subsequently returned to the Board because of insufficient funds at or no account in a bank will be charged any penalty-fee allowed by statute for processing the check.
(b) Until such time as the payor of the bad check has made the check good and paid the prescribed penalty fee, the payor will not be eligible to take an examination, review an examination, obtain a license or have his license renewed.
(c) Any license which has been issued or renewed based on the payment of a check which is subsequently returned to the Board for reasons stated in Paragraph (a) of this Rule will be declared invalid until such time as the payor has made the check good and paid the prescribed fee. The invalidity shall commence from the date of issuance of the license or renewal.
(d) Payment to the Board for making good such bad check and for the prescribed fee shall be made in the form of a cashier's check or money order.
(e) All examination, license and license renewal applications provided by the Board shall contain information in a conspicuous place thereon clearly advising the applicant of the applicable bad check penalty- fee.

Authority G.S. 87-10; 25-3-506.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16L .0104; 16R .0101-.0102 and amend the rules cited as 21 NCAC 16B .0304-.0305, .0315; 16C .0202-.0203, .0305; 16E .0101; 16I .0101-.0102, .01060.0107; 16M .0101-.0102; 16P .0105; 16R .0103-.0107. Notice of Rule-making Proceedings was published in the Register on July 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 11, 2002

Time: 8:00 a.m.

Location: 15100 Weston Parkway, Suite 101, Cary, NC

Reason for Proposed Action: To revise and clarify requirements for application for dental licensure and for renewal of dental license; to revise and clarify requirements for application for dental hygienist licensure and renewal of dental hygienist license; to revise and clarify requirements for

reexamination for dentists and dental hygienist licensure; to revise and clarify eligibility requirements for dental hygienist provisional licensure; to revise and clarify continuing education requirements for dentists and dental hygienist; to revise rules for advertisement of dental services as a specialist; to increase certain fees for dentists and dental hygienists; and to adopt rule governing the election of Board members.

Comment Procedures: *Comments from the public shall be directed to Lisa Thompson, NC State Board of Dental Examiners, 15100 Weston Pkwy, Suite 101, Cary, NC 27513. Comments will be received through October 16, 2002.*

Fiscal Impact

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

**SUBCHAPTER 16B - LICENSURE EXAMINATION:
DENTISTS**

SECTION .0300 – APPLICATION

21 NCAC 16B .0304 OTHER REQUIREMENTS

Applicants who are licensed in other states shall furnish verification of licensure from the secretary of the dental board of each state in which they are licensed. ~~Letters of recommendation must be received in the Board's office before the application is considered complete.~~ A photograph, taken within six months prior to the date of the application, must be affixed to the application. A second photograph, not over two inches in height, must be paper-clipped to the application to be used as part of the identification badge.

Authority G.S. 90-28; 90-30; 90-48.

21 NCAC 16B .0305 TIME FOR FILING

The completed application, fee, photographs, and undergraduate college and dental school transcripts must be postmarked or received in the Board's office at least 90 days prior to the date of examination. Dental school transcripts for those still in dental school must be sent in upon graduation and before the examination date. All data received by the Board concerning the applicant shall be part of the application and shall be retained as part of the record.

Authority G.S. 90-28; 90-30; 90-48.

21 NCAC 16B .0315 REEXAMINATION

- (a) A complete application, except for school transcripts and National Board scores, is required in case of reexamination.
- (b) Any applicant who has failed both the written and clinical portions of the examination three times or who has failed the clinical portion of the examination three times, regardless of having passed the written portion of the examination, shall successfully complete an additional course of study in clinical dentistry encompassing at least one academic year, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination examination and shall provide additional experience and expertise in clinical

dentistry for the applicant. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

(c) Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination may retake the written portion of the examination two additional times during a one year period from the date of the initial examination and need not retake the clinical portion of the examination. If the applicant does not pass the written portion of the examination within the one year period, the applicant must retake both the written and clinical portions of the examination upon reexamination subsequent to the one year period. Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination three times shall successfully complete an additional course of study, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

(d) Any applicant who has passed the written portion of the examination but has failed the clinical portion of the examination need not retake the written portion of the examination upon subsequent reexamination during that calendar year.

Authority G.S. 90-28; 90-30; 90-48.

**SUBCHAPTER 16C - LICENSURE EXAMINATION:
DENTAL HYGIENIST**

SECTION .0200 - QUALIFICATIONS

21 NCAC 16C .0202 QUALIFICATION FOR APPLICATION

An applicant for licensure as a dental hygienist must be a graduate of and have a diploma from a reputable university or college accredited by the Commission on Dental Accreditation (CDA) of the American Dental Association. Dental hygienist applications will be accepted from students currently enrolled in schools of dental hygiene who expect to graduate prior to the examination. Such applications will automatically be denied if the applicant should fail to complete the required course of study satisfactorily.

Authority G.S. 90-223; 90-224.

21 NCAC 16C .0203 TRANSCRIPTS REQUIRED

Applicants shall furnish transcripts of dental hygiene school or college credits. a high school transcript or high school equivalency certificate or other verification of high school graduation, and dental hygiene school or college transcripts. These transcripts are to accompany the application, or may be mailed to the Board's office from the record department of each school attended. Transcripts must be postmarked or received in the Board office by the application deadline date.

Authority G.S. 90-223; 90-224.

SECTION .0300 - APPLICATION

21 NCAC 16C .0305 TIME FOR FILING

The completed application, fee, photographs, ~~and~~ high school transcripts or high school equivalency certificate or other verification of high school graduation, and dental hygiene school or college transcripts, must be postmarked or received in the Board's office at least 90 days prior to the date of the examination. Dental hygiene school transcripts for those still in dental hygiene school must be sent in before the examination date. All data received by the Board concerning the applicant shall become a part of the required application and shall be retained as part of the record.

Authority G.S. 90-223; 90-224.

**SUBCHAPTER 16E - PROVISIONAL LICENSURE:
DENTAL HYGIENIST**

21 NCAC 16E .0101 ELIGIBILITY REQUIREMENTS

(a) No person shall be eligible for provisional licensure under the provisions of G.S. 90-226 who has not been licensed to practice dental hygiene in another jurisdiction for a period of not less than two years preceding the date of application for provisional licensure.

(b) An applicant for provisional licensure must present to the Board satisfactory documentary evidence ~~satisfactory to the Board that he is in of~~ good standing with the dental licensing agency-agency(s) of the ~~jurisdiction-jurisdiction(s)~~ wherein ~~he the applicant~~ is then currently or has ever been licensed to practice dental hygiene.

(c) No person shall be eligible for provisional licensure who has been censured, disciplined, or punished by any dental licensing agency or dental organization for violation of professional ethics or the laws of any jurisdiction.

(d) No person shall be eligible for provisional licensure without having successfully completed the Dental Hygiene National Board Examination.

Authority G.S. 90-226.

**SUBCHAPTER 16I - ANNUAL RENEWAL OF DENTAL
HYGIENIST LICENSE**

21 NCAC 16I .0101 APPLICATIONS

An application form for a dental hygiene renewal certificate shall be adopted from time to time by the Board and shall be designed to obtain information that the Board deems necessary and requisite as required by law. A renewal application must be submitted to postmarked or received in the Board's office ~~on or~~ before January 1-January 31 of each ~~year~~ year for renewal without penalty. All applications submitted to the Board must be completed in full.

Authority G.S. 90-227.

**21 NCAC 16I .0102 CONTINUING EDUCATION
REQUIRED**

(a) As a condition of license renewal, each dental hygienist must complete a minimum of ~~six-nine~~ clock hours of continuing education each calendar year. ~~Two-Three~~ of the ~~six nine~~ clock hours may be acquired through ~~home study courses-self-study courses offered by approved sponsors as set out in Rule 0103, Paragraph (b) of this Section.~~ The Board shall approve those

courses which provide comprehensive information and training necessary to the practice of dental hygiene. For ~~home study self-study~~ courses to be ~~counted towards~~ applied to this continuing education requirement, the hygienist must successfully complete a test following the course and obtain a certificate of completion. Current certification in CPR is required in addition to the mandatory continuing education hours.

(b) A dental hygienist who can demonstrate a disabling condition may request a variance in required continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the hygienist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny such requests on a case by case basis. In considering the request, the Board may require additional documentation substantiating any specified disability.

Authority G.S. 90-225.1.

21 NCAC 16I .0106 FEE FOR LATE FILING

If the application for a renewal certificate, accompanied by the fee required, is not postmarked nor received ~~by the Board in the Board's office~~ before January 31 of each year, an additional fee of fifty dollars (\$50.00) shall be charged for the renewal certificate. A fee of twenty-five dollars (\$25.00) shall be charged for each duplicate of any license or certificate issued by the Board.

Authority G.S. 90-227; 150B-19(5).

**21 NCAC 16I .0107 LICENSE VOID UPON FAILURE
TO RENEW**

If an application for a renewal certificate accompanied by the renewal fee, plus the additional late filing fee, is not postmarked nor received ~~by the Board in the Board's office~~ before March 31 of each year, the license becomes void. Should the license become void due to failure to timely renew, the applicant must apply for reinstatement.

Authority G.S. 90-277.

SUBCHAPTER 16L - BOARD OF DENTAL ELECTIONS

21 NCAC 16L .0104 SOLICITATIONS FOR VOTES

Solicitations for votes shall not:

- (1) be false and misleading or imply endorsement by the Board;
- (2) contain a material misrepresentation of fact;
- (3) misrepresent credentials, degrees, education, or experience of the candidate;
- (4) include false or misleading testimonials or endorsements;
- (5) mislead or deceive because only partial disclosure of relevant facts are made;
- (6) contain representations or implications that the solicitation materials were generated by the Board; or
- (7) use or refer to the Board's name or any variation of the Board's name on the candidate's letterhead, envelopes, postcards or other printed or electronic media.

Authority G.S. 90-22; 90-48.

SUBCHAPTER 16M - FEES PAYABLE

21 NCAC 16M .0101 DENTISTS

(a) The following fees shall be payable to the Board:~~~~

- (1) Application for general dentistry examination \$500.00
- (2) Application for instructor's license or renewal thereof \$140.00
- (3) Application for provisional license \$100.00
- (4) Application for intern permit or renewal thereof ~~\$100.00~~ \$150.00
- (5) Certificate of license to a resident dentist desiring to change to another state or territory \$ 25.00
- (6) Duplicate license \$ 25.00
- (7) Reinstatement of license after retirement from practice in this State \$225.00
- (8) Penalty fee for late renewal of any license or permit \$ 50.00

(b) Each dentist renewing his license to practice dentistry in North Carolina shall be assessed a fee of ~~twenty-five dollars (\$25.00)~~ forty dollars (\$40.00) in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

Authority G.S. 90-28; 90-39; 90-48.

21 NCAC 16M .0102 DENTAL HYGIENISTS

(a) The following fees shall be payable to the Board:

- (1) Application for examination \$125.00
- (2) Reinstatement of license after retirement from practice in this State \$ 60.00
- (3) Application for provisional licensure \$ 60.00
- (4) Certificate to a resident dental hygienist desiring to change to another state or territory \$ 25.00

(b) Each dental hygienist renewing his or her license to practice dental hygiene in North Carolina shall be assessed a fee of ~~fifteen dollars (\$15.00)~~ twenty-five dollars (\$25.00), in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

Authority G.S. 90-232.

SUBCHAPTER 16P - ADVERTISEMENT OF DENTAL SERVICES

21 NCAC 16P .0105 ADVERTISING AS A SPECIALIST

Only dentists who have successfully completed a postdoctoral course approved by the American Dental Association Commission on Accreditation in a specialty area recognized by the ADA, have announced a limitation of practice prior to 1967, ADA or have been approved by one of the specialty examining Boards recognized by the ADA and have in fact restricted their practices to such specialty may announce a specialty practice

and advertise as a specialist. Nothing in this Section shall be construed to prohibit a dentist who does not qualify as a specialist under the preceding paragraph from restricting his practice to one or more specific areas of dentistry or from advertising the availability of his services. Such advertisements may not, however, include the terms "specialist," "specialty," or "specializing," or "limited to," and must state that the services advertised are to be provided by a general dentist.

Authority G.S. 90-41(a)(16),(17),(18); 90-48.

SUBCHAPTER 16R - CONTINUING EDUCATION REQUIREMENTS: DENTIS TS

21 NCAC 16R .0101 APPLICATIONS

An application form for a dental license renewal certificate shall be adopted from time to time by the Board and shall be designed to obtain information that the Board deems necessary and requisite as required by law. A renewal application must be postmarked or received in the Board's office before January 31 of each year for renewal without penalty. All applications submitted to the Board must be completed in full.

Authority G.S. 90-31.

21 NCAC 16R .0102 FEE FOR LATE FILING

If the application for a renewal certificate, accompanied by the fee required, is not postmarked nor received in the Board's office before January 31 of each year, an additional fee of fifty dollars (\$50.00) shall be charged for the renewal certificate.

Authority G.S. 90-31.

21 NCAC 16R .0101 .0103 CONTINUING EDUCATION REQUIRED

As a condition of license renewal, every dentist must complete a minimum of 45 18 clock hours of continuing education each calendar year. Three-Seven of the 45 18 clock hours may be acquired through home study courses self-study courses offered by approved sponsors as set out in Rule .0104 Paragraph (b) of this Section. The Board shall approve those courses which provide comprehensive information and training necessary to the practice of dentistry. For home study self-study courses to be counted towards applied to this continuing education requirement, the dentist must successfully complete a test following the course and obtain a certificate of completion. Current certification in CPR is required in addition to the mandatory continuing education hours.

Authority G.S. 90-31.1.

21 NCAC 16R .0102 .0104 APPROVED COURSES AND SPONSORS

(a) Courses allowed to satisfy the continuing education requirement must be directly related to clinical patient care. Hours spent reviewing dental journals, publications or videos shall not count toward fulfilling the continuing education requirement, with the exception of home study self-study courses as described in Rule .0101 of this Subchapter. Rule .0103 of this Section.

(b) Approved continuing education course sponsors include:

- (1) those recognized by the Continuing Education Recognition Program Of the American Dental Association;
- (2) the Academy of General Dentistry;
- (3) North Carolina Area Health Education Centers;
- (4) educational institutions with dental, dental hygiene or dental assisting schools or departments;
- (5) national, state or local societies or associations; and
- (6) local, state or federal governmental entities.

Authority G.S. 90-31.1.

21 NCAC 16R .0103 .0105 REPORTING OF CONTINUING EDUCATION

(a) The number of hours completed shall be indicated on the renewal application form submitted to the Board and confirmed by the dentist. Upon request by the Board or its authorized agent, the dentist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

- (1) the title;
- (2) the number of hours of instruction;
- (3) the date of the course attended;
- (4) the name(s) of the course instructor(s); and
- (5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education hours must be maintained by the licensee for at least two years and shall be produced upon request of the Board or its authorized agent. Evidence of service or affiliation with an agency or institution as specified in 21 NCAC 16R-0104 Rule .0106 of this Section shall be in the form of verification of affiliation or employment which is documented by a director or an official acting in a supervisory capacity.

Authority G.S. 90-31.1.

21 NCAC 16R .0104 .0106 EXEMPTION FROM AND CREDIT FOR CONTINUING EDUCATION

(a) Dentists may request exemption from continuing education requirements by submitting evidence in writing to the Board of retirement or semi-retirement from the practice of dentistry. A retired dentist is a dentist who never practices dentistry. A semi-retired dentist is a dentist who practices on an occasional basis not to exceed 100 clock hours in a calendar year. A dentist who can demonstrate a disabling condition may request a variance in continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the dentist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny such requests on a case by case basis. In considering the request, the Board may require additional documentation substantiating any specified disability.

(b) In those instances where continuing education is waived and the exempt individual wishes to resume practice, the Board shall require continuing education courses in accordance with 21 NCAC 16R-0104 Rule .0103 of this Section when reclassifying

the licensee. The Board may require those licensees who have not practiced dentistry for a year or more to undergo a bench test prior to allowing the licensee to resume practice.

(c) Dentists shall receive 10 hours credit per year for continuing education when engaged in any of the following:

- (1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
- (2) affiliation with a federal, state or county government agency whose operation is directly related to dentistry or dental auxiliaries.
- (3) Verification of credit hours shall be maintained in the manner specified in 21 NCAC 16R-0103- Rule .0105 of this Section.

Authority G.S. 90-31.1; 90-38.

21 NCAC 16R .0105 .0107 PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours for the current year as required by 21 NCAC 16R-0101 and .0103 of this Subchapter, Rules .0103 and .0105 of this Section, the Board may refuse to issue a renewal certificate for the year for which renewal is sought, until such time as the licensee completes the required hours of education for the current year and meets all other qualifications for renewal. Should the applicant fail to meet the qualifications for renewal, including completing the required hours of continuing education, by March 31st, the license becomes void and must be reinstated. If the applicant applies for credit for or exemption from continuing education hours and fails to provide the required documentation upon request, the Board shall refuse to issue a certificate of renewal until such time as the applicant meets the qualifications for exemption or credit. Should the applicant fail to provide the required documentation by March 31st, then the license becomes void and must be reinstated.

Authority G.S. 90-31.1.

CHAPTER 46 – BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Pharmacy intends to adopt the rules cited as 21 NCAC 46 .2507, .3301 and amend the rules cited as 21 NCAC 46 .1414, .1505, .1601-.1602, .1606, .1801, .1808, .2107, .2109, .2502, .2504, .2801, .2803-.2805, .2808. Notice of Rule-making Proceedings was published in the Register on July 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 2, 2002

Time: 1:00 p.m.

Location: Catawba Valley Community College, Auditorium (Main Campus), 2550 Hwy. 70 SE, Hickory, NC

Date: October 8, 2002

Time: 10:00 a.m.

Location: The Monroe AHEC Conference Center, (Small Dining Room), 2000 Venture Tower Dr., Greenville, NC

Date: October 9, 2002

Time: 11:30 a.m.

Location: Sheraton Greensboro Hotel at Four Seasons, Auditorium II, 3121 High Point Rd., Greensboro, NC

Reason for Proposed Action: *To revise requirements for pharmacist-managers; to revise requirements for drug distribution and control in hospitals and other health care facilities; to clarify requirements for casting and counting ballots; to specify when a pharmacist may or shall refuse to fill or refill a prescription order; to set out requirements prior to issuance of a license when certain deficiencies are demonstrated on the examination for licensure; to revise requirements for pharmacy permit applicants and pharmacy permit holders; to revise requirements for applicants for license by reciprocity; to revise requirements for patient counseling; to revise requirements for repackaged pharmaceuticals; to delete term "parenteral" from "sterile parenteral pharmaceuticals"; to revise requirements for permit holders dispensing sterile pharmaceuticals; to set out requirements for administration of immunization by pharmacists; to set out requirements for election of representatives to the Device and Medical Equipment Subcommittee; to set out requirements for registration of pharmacy technicians; to revise requirement of personal appearance; and to revise requirements for requesting changes in prescription orders.*

Comment Procedures: *Comments from the public shall be directed to David R. Work, NC Board of Pharmacy, PO Box 459, Carrboro, NC 27510-0459. Comments shall be received through October 16, 2002.*

Fiscal Impact

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

SECTION .1400 - HOSPITALS; OTHER HEALTH FACILITIES

21 NCAC 46 .1414 DRUG DISTRIBUTION AND CONTROL

(a) MEDICATION ORDERS.

- (1) Medications shall be dispensed from a health care facility pharmacy only upon receipt of a medication order. A mechanism shall be in place to verify the authenticity of the medication order. Oral orders shall be put in writing immediately and signed within the time frame established by regulatory agencies and health care facility policies and procedures.
- (2) All medication orders shall be received and reviewed by a pharmacist and, at a minimum, shall contain the:

- (A) patient's name, location and other necessary identifying information such as history or medical records number;
 - (B) medication name, strength, dosage form, route of and directions for administration. In the absence of a facility policy on interpretation of routes of administration, the route of administration must be specified;
 - (C) date the order was written; and
 - (D) prescriber's signature (may include electronic signature or verification).
- (3) Medication orders for patients requiring continuous drug therapy shall be entered into a patient medication profile, either manual or automated. The medication profile shall, at a minimum, contain the:
- (A) patient's name, location and important clinical data such as age, height, weight, sex, and allergies;
 - (B) medication name, strength, dosage form, route of and directions for administration;
 - (C) medication start date;
 - (D) medication discontinuance date; and
 - (E) identification of pharmacist responsible for or verifying technician entry of the medication order.
- (4) Abbreviations used in medication orders shall be agreed to, jointly adopted, and published by the medical, nursing, pharmacy, and medical records staff of the health care facility.
- (5) Medication orders shall be reviewed and discontinued or suspended, if appropriate, when the patient is transferred to the delivery room, operating room, or is admitted from another facility. A method to protect the patient from indefinite, open-ended drug orders must be provided. The prescriber shall be notified in a timely manner that the order shall be stopped before such action takes place by one or more of the following:
- (A) the routine monitoring of patient's drug therapy by a pharmacist;
 - (B) a health care facility-approved, drug class-specific, automatic stop order policy covering those drug orders not specifying a number of doses or duration of therapy; or
 - (C) a health care facility-approved automatic cancellation of all drug orders after a predetermined time interval unless rewritten by the prescriber.
- (6) Health care facilities which credential practitioners' for prescribing privileges within the facility shall provide the health care facility pharmacy with credentialing information annually or immediately upon

discharge or when privileges are suspended or terminated.

(b) **DEVICES.** Devices shall be dispensed in accordance with Section .2600 of this Chapter.

(c) **DISPENSING.** In health care facilities with 24 hour pharmacy services, all dispensing shall be done by a pharmacist. In health care facilities without 24 hour pharmacy services, Rule .1413 of this Section shall apply in the absence of a pharmacist.

(d) **LABELING.**

- (1) All drugs dispensed from within a health care facility pharmacy shall be labeled and identified up to the point of administration;
- (2) Whenever a drug is added to a parenteral admixture, it shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, expiration date, and expiration time, if applicable. For admixtures prepared outside the pharmacy, the pharmacist-manager shall develop policies and procedures for preparation and labeling.

(e) **PARENTERAL MEDICATIONS.** The dispensing of parenteral medications shall be done in accordance with Section .2800 of this Chapter--Sterile Parenteral Pharmaceuticals.

(f) **PATIENT CARE UNIT MEDICATION INVENTORIES.** This Paragraph does not apply to nursing facilities, assisted living facilities, and adult care homes.

- (1) Non-controlled drugs may be stocked in quantities limited to not more than five dosage units per drug on a health care facility patient care unit when immediate availability is deemed essential to the patient's health and well-being. The pharmacist-manager shall develop an approved drug list for each health care facility location. Drugs shall be stored in a manner that prevents unauthorized access and shall only be administered to a patient of the health care facility pursuant to a medication order.
- (2) All controlled substances stocked within a health care facility that are not located within the facility's pharmacy or automated dispensing device must be accompanied by a disposition form issued from the pharmacy. This document shall at a minimum contain:
 - (A) the product name, strength, dosage form, and quantity supplied;
 - (B) the date transferred to the patient care unit by the pharmacy;
 - (C) the name of the pharmacy representative supplying, and the patient care unit representative receiving the drug;
 - (D) the date, time, and amount of the drug removed from the patient care unit stock for administration; and
 - (E) the patient name and identification of the person acquiring the product.
- (3) Exceptions to this Paragraph shall be made for use of automated dispensing devices provided that these devices meet all applicable rules for controlled substances contained therein.

- (4) When a dose of a controlled substance has been prepared for a patient but not used (i.e., refused, order canceled, or contaminated), it may be destroyed at the patient care unit. The destruction must be witnessed by a health care provider, such as a pharmacist, registered nurse, or licensed practical nurse. Details of the event, along with the identification of the two who affected the destruction, shall be documented. If such record is separate from the disposition form, it shall be maintained uniformly with the corresponding disposition form.

(g) **ANCILLARY DRUG CABINET INVENTORIES.** (This Paragraph does not apply to nursing facilities, assisted living facilities, and adult care homes.) Drugs that are routinely prescribed by the medical staff in a health care facility shall be maintained in establishing and maintaining quantities limited to not more than five dosage units per drug as a supplementary inventory for use only when the pharmacy is closed. The pharmacist-manager shall, in connection with the appropriate committee of the health care facility, develop listings of those drugs to be included in such inventories. The pharmacist-manager shall, at a minimum, assure that:

- (1) access to such drug inventories is by locked cabinet(s) or other enclosure(s) constructed and secured to deny access to unauthorized persons;
- (2) only authorized personnel, as indicated by written policies and procedures, shall obtain access to the drug inventories;
- (3) only pre-packaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements. Drugs shall be properly labeled, with drug name, strength, lot number and expiration date. Whenever access to such inventory is gained, a copy of the record of withdrawal and a copy of the written order for new drug orders shall be provided to the pharmacy. The record of withdrawal shall contain the following:
 - (A) the date of removal of the drug;
 - (B) the name, strength, dosage form, and quantity of drug removed;
 - (C) the name of the patient for whom the drug was ordered;
 - (D) the name or identification code of the authorized personnel removing the drug from inventory;
- (4) all drugs are reviewed no less often than quarterly to ensure their purity, potency, and integrity; and
- (5) written policies and procedures are established to implement the requirements of this Rule.

(h) **AUTOMATED DISPENSING OR DRUG SUPPLY DEVICES.** Automated Dispensing or Drug Supply Devices such as but not limited to Pyxis machines may be utilized in health care facility pharmacies and where a pharmacy permit exists provided that the pharmacist-manager has developed procedures to assure safe and effective use of medications in accordance with 21 NCAC 46 .1814.

(i) EMERGENCY KITS. (This Paragraph does not apply to adult care homes or assisted living facilities) Drugs and devices may be provided in emergency kits for use by authorized personnel provided that:

- (1) the pharmacist-manager, or designee, and the medical staff of the health care facility jointly determine the drugs and devices, by identity and quantity, to be included in the kit. The kit shall contain no more than 75 line items. Drugs and devices included in the kit shall be limited to those for emergency use only and are not to be used for any other purpose. The pharmacist-manager shall, in conjunction with the medical staff of the health care facility, develop and implement written policies and procedures to ensure compliance with the provisions of this Section;
- (2) the emergency kit contains those drugs and devices which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent prolonged discomfort or risk of harm to patients;
- (3) the emergency kit shall be stored in a secure, readily available location under the supervision of the nursing staff and sealed with a non-reusable, easily removable seal to prevent unauthorized access, and to ensure a proper environment for preservation of the drugs and devices within them. Policies and procedures shall be established to ensure the integrity of the kit at all times;
- (4) the exterior of the emergency kit shall be labeled so as to clearly and unmistakably indicate that it is an emergency drug kit and is for use in emergencies only. In addition, a listing of the drugs and devices contained therein, including name, strength, and quantity of each drug or device shall be attached. Each emergency kit shall be inspected by a pharmacist or his designee every 30 days (90 days for long-term care facilities) to check for expiration dates and the integrity of the seal;
- (5) all drugs and devices contained within the emergency kit shall be labeled, if applicable, with, at a minimum, the name, strength, lot number, manufacturer, and expiration date;
- (6) drugs and devices shall be removed from the emergency kit for administration to a patient only pursuant to a valid physician's order, by personnel authorized by the facility;
- (7) whenever an emergency kit is opened, the pharmacy shall be notified. The pharmacist-manager or designee shall re-stock, re-seal, and return the kit to the unit within a reasonable length of time in order to prevent risk of harm to patients. The emergency drug kits shall be checked by an authorized person in accordance with written policies and procedures of the health care facility. In the

event the kit is opened in an unauthorized manner, the pharmacy and other personnel designated by the pharmacist-manager of the facility shall be notified; and

- (8) CONTROLLED DRUG EMERGENCY KITS. Emergency drugs that are controlled substances must be stored in compliance with 10 NCAC 45G .0410.

(j) RECORDS.

- (1) The pharmacist-manager shall, in addition to the requirements for preserving prescription orders as set forth in G.S. 90-85.26, develop a system of daily accountability for medication compounding and dispensing that shall permit the identification of the responsible ~~pharmacist~~ pharmacists and pharmacy technicians. Readily retrievable records of accountability shall be maintained for at least 30 days. At a minimum, this system shall identify all personnel who perform these activities and the pharmacist responsible for:
 - (A) interpretation and appropriateness of new medication orders;
 - (B) profile entry of new medication orders;
 - (C) dispensing of new medication orders including stat doses;
 - (D) daily cart fills;
 - (E) intravenous admixtures;
 - (F) compounded medications; and
 - (G) periodically assessing the quality of pharmacy procedures for preparation and release of drugs and devices for replenishment of floor stock, ancillary drug supplies, and automated dispensing devices in locations outside the pharmacy.
- (2) Medication errors resulting from the administration of an incorrect medication or dose shall be documented and reported to the pharmacist-manager. Documentation shall include pertinent chronological information and appropriate health care facility ~~forms including the identity of individual(s) responsible.~~ forms. These documents shall be archived in a readily retrievable manner, open for inspection, for a period of three years.
- (3) Upon notification of information that reasonably suggests that there is a probability a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient (see 21 NCAC 46 .2502(k) RESPONSIBILITY OF PHARMACIST-MANAGER), the pharmacist-manager shall retain all documents, labels, vial, supplies, substances and internal investigative reports relating to the event. All such items shall be maintained by the health care facility, accessible to the pharmacist-manager, and open to the Board of Pharmacy.

- (4) The pharmacist-manager shall maintain records of ordering, receiving, dispensing or transfer of controlled substances. These records shall include, but are not limited to the following:
- (A) Invoices or other such documents verifying the ordering and receipt of controlled substances;
 - (B) Perpetual inventories of controlled substances transferred to patient care units and other sites as allowed by this Rule (i.e., automated dispensing devices, emergency kits, etc.). These inventories shall record the transfer date; location transferred to; the identity of the drug; strength, dosage form, and quantity transferred; transferring pharmacist's name;
 - (C) Disposition records required by Paragraph (f)(4) of this Rule;
 - (D) A record of controlled substances dispensed directly to the patient to include the patient's name; date dispensed; dispensing pharmacist's name; name, strength, dosage form, and quantity of the drug dispensed. The records shall also document drugs returned and credited; and
 - (E) A perpetual inventory shall be maintained on all controlled substances awaiting destruction or return to a vendor.
- (5) Automated systems may be used to collect and store information required by Subparagraph (j)(4) of this Rule provided such system allows for the immediate retrieval (via CRT display and hard-copy printout) of original medication order information and dispensing history consistent with criteria cited in 21 CFR .1306 and 10 NCAC 46 .2304.
- (6) With the exception of Subparagraph (j)(1) of this Rule, all records required by this Section shall be maintained for a period of three years. Such records shall be archived in a uniform manner, retrievable to the pharmacy within 48 hours, and open for review, copying, or seizure by a member or designated employee of the Board.

Authority G.S. 90-85.6; 90-85.21; 90-85.32; 90-85.33.

SECTION .1500 - ADMISSION REQUIREMENTS: EXAMINATIONS

21 NCAC 46 .1505 EXAMINATION

- (a) The examination shall consist of testing in the following areas:
- (1) theoretical examination including pharmacology, pharmacy, chemistry, mathematics and practice of pharmacy which

- (2) may be reported separately or combined as one score.
- (2) practical pharmacy examination which may be reported separately or combined as one score including: prescription reading and interpretation, drug identifications, determination of errors and omissions, pharmaceutical jurisprudence, patient counseling, drug utilization review, and such other reasonable tests of the applicant's ability to translate professional knowledge into terms of actual practice as the Board may see fit.

(b) For the purpose of grading or rating, the answers, which shall be legible, shall be valued by marks or points based on their importance, as determined by the judgment of the examiners.

(c) In order to pass, an over-all average of 75 is required on both the practical and the theoretical sections. Candidates who obtain a 75 on the practical pharmacy section or a 75 average on the theoretical section are deemed to have passed the respective section provided that the candidate obtains a passing score on the remaining section in North Carolina within the next following two calendar years. A candidate who fails to pass both sections of the examination in the two calendar year period must retake and pass both sections of the examination.

(d) At the time of the examination, the Board may designate certain questions which, if missed, would cause the candidate to obtain continuing education. The continuing education required will be specified by the Board and must be obtained by the candidate prior to issuance of a pharmacist license.

Authority G.S. 90-85.15; 90-85.16.

SECTION .1600 - LICENSES AND PERMITS

21 NCAC 46 .1601 PHARMACY PERMITS

(a) Applications for pharmacy permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal pharmacy permit until the Board is satisfied that:

- (1) The pharmacist-manager is sure that at all times adequate qualified personnel has been secured by the management of the store to properly render pharmaceutical service in the manner prescribed by law.

~~(2) Any and all unlicensed personnel have been instructed that they may perform functions constituting dispensing only as an aid to and under the immediate supervision of a registered pharmacist. No more than two unlicensed personnel who spend a majority of their time performing functions constituting dispensing shall be on duty in the pharmacy per pharmacist on duty.~~

(3)(2) The pharmacy posts in a location conspicuous to the public the specific hours that a pharmacist is on duty in the pharmacy. This requirement does not apply to hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter.

- ~~(4) The following minimum technical equipment is maintained:~~
- ~~(A) Graduates. Capable of accurately measuring volumes from 1 ml to at least 500 ml;~~
 - ~~(B) Mortars and pestles:

 - ~~(i) one glass;~~
 - ~~(ii) one "Wedgwood";~~~~
 - ~~(C) Stirring Rods. Two different sizes made of glass or rubber;~~
 - ~~(D) Ointment slab or suitable substitute;~~
 - ~~(E) Class A prescription or electronic balances and appropriate weights, suitable for all required weighings, at least one of which must be sensitive to six mg;~~
 - ~~(F) Suitable facilities for recording and filing prescriptions as required by G.S. 90-85.26;~~
 - ~~(G) Spatulas:

 - ~~(i) stainless steel, at least three assorted sizes;~~
 - ~~(ii) non-metallic, one of any size;~~~~
 - ~~(H) Useable Supplies. Equipped with safety closures where required:

 - ~~(i) prescription bottles, 1 to 32 fluid ounces;~~
 - ~~(ii) dropper bottles, 1/2 to 2 fluid ounces;~~
 - ~~(iii) assorted pill and tablet containers;~~
 - ~~(iv) empty capsules, No. 00 to No. 3;~~
 - ~~(v) powder papers;~~
 - ~~(vi) ointment jars, assorted;~~
 - ~~(vii) prescription labels;~~
 - ~~(viii) all appropriate auxiliary labels;~~~~
 - ~~(I) Heating apparatus;~~
 - ~~(J) Refrigerator;~~
 - ~~(K) Reference library, as follows:

 - ~~(i) the latest edition of the United States Pharmacopoeia (USP) and National Formulary and supplements thereto or a standard commentary thereon;~~
 - ~~(ii) a copy of the pharmacy laws of North Carolina, including the North Carolina Controlled Substances Act and the rules adopted pursuant thereto, and the North Carolina Pharmacy Practice Act and the rules of the Board;~~
 - ~~(iii) a copy of the Federal Controlled Substances Act~~~~

and the regulations adopted pursuant thereto;

- ~~(iv) a Schedule V controlled substances register (where these preparations are sold other than on prescriptions);~~
- ~~(v) a medical dictionary;~~
- ~~(vi) current editions of generally accepted reference books on the following subjects:

 - ~~(I) drug interactions;~~
 - ~~(II) clinical pharmacology;~~
 - ~~(III) USP Dispensing Information or its equivalent, and~~
 - ~~(IV) if IV admixture services are provided, a reference on Parenteral Incompatibilities.~~~~

(3) The pharmacist-manager shall be responsible for obtaining and maintaining equipment in the pharmacy adequate to meet the pharmaceutical care needs of the pharmacy's patients. The pharmacy's reference library shall include a medical dictionary and current additions of generally accepted reference books on drug interactions, clinical pharmacology, USP Dispensing Information or its equivalent, and if IV admixture services are provided, a reference on Parenteral Incompatibilities.

(5)(4) The pharmacy is equipped with sanitary appliances including lavatory facilities with hot and cold running water; is adequately lighted; and is kept in a clean, orderly, and sanitary condition.

(6)(5) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.

(b) In addition to the requirements for issuance and renewal of a pharmacy permit imposed by a statute and by other rules of the Board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are compounded or dispensed and distributed when such distribution is effected by mail and the practitioner-pharmacist-patient relationship does not exist, until the Board is satisfied that:

- (1) The pharmacy maintains records of prescriptions compounded or dispensed and distributed in manner that is readily retrievable;
- (2) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of forty hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;

- (3) The pharmacy complies with all lawful orders, directions, and requests for information from the Boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;
- (4) The pharmacy complies with all USP and FDA requirements regarding the storage, packaging, and shipping of prescription medications. The pharmacist-manager and all other pharmacists employed in the pharmacies permitted pursuant to this Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including, but not limited to, 21 NCAC 46 .1801 and .1805 and 21 CFR 1306.01, 1306.05, and 1306.21.

(c) The Board shall not issue an original or renewal permit to any person to operate a drugstore or pharmacy as a department in or a part of any other business serving the general public (except hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter) unless such pharmacy facility:

- (1) is physically separated from such other business;
- (2) is separately identified to the public both as to name and any advertising;
- (3) completes all transactions relative to such pharmacy within the registered facility; and
- (4) meets the same requirements for registration as all other pharmacies.

(d) Permits to operate pharmacies, whether original or renewal, shall be issued to the pharmacist-manager of such pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of said pharmacy. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit.

(e) Upon application, the Board may issue and renew separate permits for pharmacies operating at one location. Records for each permitted pharmacy must be maintained separately. Prior to issuance of an original permit, each pharmacy shall submit a plan to the Board that shall assure accountability for the actions of each pharmacy at the location.

Authority G.S. 90-85.6; 90-85.21.

21 NCAC 46 .1602 LICENSE BY RECIPROCITY

- (a) An applicant for licensure without examination, must have:
 - (1) Originally been licensed as a pharmacist by an examination equivalent to the North Carolina examination specified in Rule .1505(a)(1) of this Chapter;
 - (2) Achieved scores on an equivalent examination, such as the NABPLEX examination, which

would qualify for licensure in this state at the time of examination; and

- (3) Been licensed by a state which deems licensees from this state to be equivalent to the extent that they are suitable for licensure in that state without further substantial ~~examination; and examination.~~
- (4) ~~Passed an examination equivalent to the North Carolina examination specified in Rule .1505(a)(2) of this Chapter or, in lieu of such an examination, have practiced pharmacy for at least one year, provided that the one year of pharmacy practice is determined by the Board to be the substantial equivalent to passing the practical section of the North Carolina examination.~~

(b) Negative determination of any of the criteria in this Rule would preclude licensure under G.S. 90-85.20.

Authority G.S. 90-85.6; 90-85.20.

21 NCAC 46 .1606 REQUIREMENT OF PERSONAL APPEARANCE

Prior to issuance of any original permit or device and medical equipment permit, ~~or prior to approval for dispensing by a nurse practitioner or physician's assistant,~~ the following persons must appear personally at the Board office on the first Monday of the month, the Monday before the monthly Board meeting, or such other time as scheduled with the Board's staff:

- (1) the pharmacist-manager for the applicant pharmacy; and
- (2) the person in charge of the facility applying for the device and medical equipment permit.

Authority G.S. 90-18.1; 90-18.2; 90-85.3(a),(r).

SECTION .1800 - PRESCRIPTIONS

21 NCAC 46 .1801 RIGHT TO REFUSE A PRESCRIPTION

~~(a) A pharmacist or device and medical equipment dispenser has the right and responsibility to may refuse to fill or refill a prescription order if, in his professional judgment, it would be harmful to the recipient, is not in the recipient's best interest or if there is a question as to its validity. The pharmacist or device and medical equipment dispenser shall report such incident to the licensing board having jurisdiction over the prescriber.~~

~~(b) A pharmacist shall not fill or refill a prescription order if the pharmacist knows that the order was issued without a physical examination of the patient and in the absence of a prior prescriber-patient relationship.~~

Authority G.S. 90-85.6; 90-85.32.

21 NCAC 46 .1808 REPACKAGED PHARMACEUTICALS

~~A drug product which is manufactured and sold by a manufacturer as a generic drug product shall be considered a generic drug product, though subsequently repackaged and given a brand name. Drugs or devices which have been dispensed~~

previously may be relabeled or repackaged only by the original dispensing pharmacy.

Authority G.S. 90-85.6(a); 90-85.32.

21 NCAC 46 .1812 CHANGES IN PRESCRIPTION ORDERS

A permit holder or registrant requesting a change from the prescription drug originally prescribed to a different prescription drug shall disclose to the prescriber and patient at the time of the request the specific nature of any business relationship between the permit holder or registrant and the manufacturer of the requested prescription drug. If the permit holder or registrant is receiving any form of compensation from the manufacturer of the requested prescription drug, this information must be disclosed also to the prescriber and patient at the time of the request.

Authority G.S. 90-85.6; 90-85.32.

SECTION .2100 - ELECTIONS

21 NCAC 46 .2107 BALLOTS: CASTING AND COUNTING

A ballot shall be mailed, with return envelope, to all eligible voters in April of each year. A brief description of a nominee's qualifications, provided by the nominee and edited, if necessary, by the secretary, shall accompany each ballot. Secret ballots shall be cast in the envelope provided by mail or delivered to the Board office in the envelope provided before May 15. Ballots received shall be counted and certified by the Board of Pharmacy Elections at the regularly scheduled May Board meeting. The Board of Pharmacy Elections shall determine the validity of any challenged ballot and mechanical devices may be used in compiling election results. No Board member running for re-election may participate in the counting and certification of ballots for the election involving the Board member. The secretary-treasurer shall convey the certified election results to the Governor.

Authority G.S. 90-85.7.

21 NCAC 46 .2109 DEVICE AND MEDICAL EQUIPMENT SUBCOMMITTEE REPRESENTATIVES

(a) The device and medical equipment subcommittee shall consist of the following:

- (1) a representative of the medical equipment suppliers;
- (2) a representative of the medical oxygen suppliers;
- (3) a representative of the rehabilitation technology suppliers; and
- (4) ~~a Board member~~ two Board members appointed by the President of the ~~Board~~; and Board.
- (5) ~~the Board member representing the public.~~

(b) All device and medical equipment permit holders are eligible to vote for one representative in each category specified in Subparagraphs (a)(1) - (3) of this Rule. The representative must practice in the particular area for which he or she is nominated, but need not practice exclusively in that area.

(c) The representatives specified in Subparagraphs (a)(1)-(3) of this Rule shall be elected to terms of five years, and may not serve more than two consecutive five-year terms. The subcommittee may establish a staggered schedule for the elections. In case of death, resignation or removal from the subcommittee, the remaining members of the subcommittee shall elect a representative who meets the criteria for the position.

Authority G.S. 90-85.6; 90-85.22.

SECTION .2500 - MISCELLANEOUS PROVISIONS

21 NCAC 46 .2502 RESPONSIBILITIES OF PHARMACIST-MANAGER

(a) The pharmacist-manager shall assure that prescription legend drugs and controlled substances are safe and secure within the pharmacy.

(b) The pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but shall be present for at least one-half the hours the pharmacy is open or 32 hours a week, whichever is less. 20 hours on average per week. A pharmacist employee not meeting this requirement may serve as pharmacist-manager of the permit holder temporarily for a period not to exceed 90 days.

(c) Whenever a change of ownership or change of pharmacist-manager occurs, the successor pharmacist-manager shall complete an inventory of all controlled substances in the pharmacy within 10 days. A written record of such inventory, signed and dated by the successor pharmacist-manager, shall be maintained in the pharmacy with other controlled substances records for a period of three years.

(d) The pharmacist-manager shall develop and implement a system of inventory record-keeping and control which will enable that pharmacist-manager to detect any shortage or discrepancy in the inventories of controlled substances at that pharmacy at the earliest practicable time.

(e) The pharmacist-manager shall maintain complete authority and control over ~~any and all keys to access to the dispensing area~~ of the pharmacy and shall be responsible for the ultimate security of the pharmacy. Only personnel authorized by the pharmacist-manager shall have access to the dispensing area of the pharmacy. A The dispensing area of a pharmacy shall be secured by a physical barrier to prohibit unauthorized entry if no pharmacist will be present in the pharmacy for a period of 90 minutes or more when unattended by authorized personnel.

(f) These duties are in addition to the specific duties of pharmacist-managers at institutional pharmacies and pharmacies in health departments as set forth in the Rules in this Chapter.

(g) A person shall not serve as pharmacist-manager at more than one pharmacy at any one time except for limited service pharmacies.

(h) When a pharmacy is to be closed permanently, the pharmacist-manager shall inform the Board and the United States Drug Enforcement Administration of the closing, arrange for the proper disposition of the pharmaceuticals and return the pharmacy permit to the Board's offices within 10 days of the closing date. Notice of the closing shall be given to the public by posted notice at the pharmacy at least 30 days prior to the closing date and, if possible, 15 days after the closing date. Such notice shall notify the public that prescription files may be

transferred to a pharmacy of the patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request. Absent specific instructions from the patient or customer, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy for maintenance of patient therapy and shall inform the public of such transfer by posted notice at the pharmacy for 15 days after the closing date, if possible. Controlled substance records shall be retained for the period of time required by law.

(i) The pharmacist-manager shall ensure that notice of the temporary closing of any pharmacy for more than 14 consecutive days is given to the public by posted notice at the pharmacy at least 30 days prior to the closing date, and, if possible, 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request.

(j) The pharmacist-manager shall prepare a plan to safeguard prescription records and pharmaceuticals and minimize the interruption of pharmaceutical services in the event of a natural disaster such as hurricane or flood.

(k) The pharmacist-manager shall separate from the dispensing stock all drug products more than six months out of date.

(l) The pharmacist-manager shall report to the Board of Pharmacy information that reasonably suggests that there is a probability that a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient or customer. This report shall be filed in writing on a form provided by the Board within 14 days of the owner representative or pharmacist-manager's becoming aware of the event. The pharmacist-manager shall retain all documents, labels, vials, supplies, substances and internal investigative reports relating to the event. All such items shall be made available to the Board upon request.

(m) The Board shall not disclose the identity of a pharmacist-manager who makes a report under Paragraph (l) of this Rule, except as required by law. All reports made under Paragraph (l) of this Rule shall not be released except as required by law.

(n) Dispensing errors which are not detected and corrected prior to the patient receiving the medication shall be documented and reported to the pharmacist-manager. Documentation shall include pertinent chronological information and appropriate forms including the identity of individual(s) responsible. These documents, including action taken as part of a quality assurance plan, shall be archived in a readily retrievable manner and open for review, copying or seizure by the Board or its designated employees within 48 hours of a request for inspection for a period of three years. These documents shall be released only to the Board or its designated employees pursuant to an investigation and shall not otherwise be released except as required by law. Upon request by the Board or its designated employees, these

documents shall be transmitted by the pharmacist-manager to an office of the Board.

(o) In any Board proceeding, the Board shall consider compliance with Paragraphs (l) and (n) of this Rule as a mitigating factor and noncompliance with Paragraphs (l) and (n) of this Rule as an aggravating factor.

(p) The pharmacist-manager shall develop and maintain a system of accountability for medication compounding and dispensing that permits the identification of the pharmacists and technicians responsible for dispensing each medication. Records generated pursuant to this Paragraph shall be maintained and readily retrievable for a period of three years.

Authority G.S. 90-85.6; 90-85.21; 90-85.25; 90-85.26; 90-85.32.

21 NCAC 46 .2504 PATIENT COUNSELING

(a) "Patient Counseling" shall mean the effective communication of information, as defined in this Rule, to the patient or representative in order to improve therapeutic outcomes by maximizing proper use of prescription medications, devices, and medical equipment. This Rule shall apply to pharmacists and registrants under G.S. 90-85.21. All provisions of this Rule shall apply to device and medical equipment permit holders, except Subparagraph (a)(8) of this Rule and except where otherwise noted. Specific areas of patient counseling include, but are not limited to, those matters listed in this Rule that in the exercise of the pharmacist's or registrant's professional judgment are considered significant:

- (1) name, description, and purpose of the medication;
- (2) route, dosage, administration, and continuity of therapy;
- (3) special directions for use by the patient;
- (4) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (5) techniques for self-monitoring drug therapy;
- (6) proper storage;
- (7) prescription refill information; and
- (8) action to be taken in the event of a missed dose.

(b) An offer to counsel shall be made on new or transfer prescriptions at the time the prescription is dispensed or delivered to the patient or representative. Ancillary personnel may make the offer to counsel, but the pharmacist or registrant must personally conduct counseling if the offer is accepted. Counseling by device and medical equipment permit holders must be conducted by personnel proficient in explaining and demonstrating the safe and proper use of devices and equipment. The person in charge shall be responsible for ensuring that all personnel conducting counseling are proficient in explaining and demonstrating the safe and proper use of devices and equipment and for documenting the demonstration of such proficiency. The offer shall be made orally and in person, whenever practicable, or through when delivery occurs at the pharmacy. When delivery occurs outside of the pharmacy, whether by mail, vehicular delivery or other means, the offer shall be made either orally and in person, or by telephone from the pharmacy to the patient. If delivery occurs outside of the pharmacy, the

pharmacy shall provide the patient with access to a telephone service that is toll-free for long-distance calls. A ~~pharmacist or registrant—pharmacy~~ whose primary patient population is accessible through a local measured or toll-free exchange need not be required to offer toll-free service. Professional judgment shall be exercised in determining whether or not to offer counseling for prescription refills. An offer to counsel shall be communicated in a positive manner to encourage acceptance.

(c) In order to counsel patients effectively, a reasonable effort shall be made to obtain, record, and maintain, if significant, patient information, including, but not limited to:

- (1) name, address, telephone number;
- (2) date of birth (age), gender;
- (3) medical history:
 - (A) disease state(s);
 - (B) allergies/drug reactions;
 - (C) current list of non-prescription and prescription medications, devices, and medical equipment.
- (4) pharmacist, registrant, or permit holder comments relevant to the individual's drug therapy. A "reasonable effort" shall mean a good faith effort to obtain from the patient or representative the foregoing patient information. Ancillary personnel may collect, record, and obtain patient profile information, but the pharmacist, registrant, or person in charge of the facility holding the device and medical equipment permit must review and interpret patient profile information and clarify confusing or conflicting information. Professional judgment shall be exercised as to whether and when individual patient history information should be sought from other health care providers.

(d) Once patient information is obtained, this information shall be reviewed and updated by the pharmacist, registrant, or person in charge of the facility holding the device and medical equipment permit before each prescription is filled or delivered, typically at the point-of-sale or point of distribution to screen for potential drug therapy problems due to:

- (1) therapeutic duplication;
- (2) drug-disease contraindication;
- (3) drug-drug interactions, including serious interactions with prescription or over-the-counter drugs;
- (4) incorrect drug dosage or duration of drug treatment;
- (5) drug-allergy interactions; and
- (6) clinical abuse/misuse.

(e) Unless refused by the patient or representative, patient counseling shall be provided as follows:

- (1) counseling shall be "face to face" by the pharmacist, registrant, or personnel of a device and medical equipment permit holder when possible or appropriate;
- (2) alternative forms of patient information may be used to supplement patient counseling;
- (3) patient counseling, as described in this Rule, shall also be required for outpatient and discharge patients of hospitals, health

maintenance organizations, health departments, and other institutions; however, compliance with this Rule in locations in which non-pharmacists are authorized by law or regulation to dispense may be accomplished by such authorized non-pharmacists; and patient counseling, as described in this Rule, shall not be required for inpatients of hospitals or other institutions where a nurse or other licensed health care professional administers the medication(s).

(4)

(f) Pharmacies that distribute prescription medication by mail, and where the practitioner-pharmacist-patient relationship does not exist, shall provide counseling services for recipients of such medication in accordance with this Rule.

(g) Records resulting from compliance with this Rule, including documentation of refusals to receive counseling, shall be maintained for three years in accordance with Section .2300 of this Chapter.

(h) Personnel of device and medical equipment permit holders shall give written notice of warranty, if any, regarding service after the sale. The permit holder shall maintain documentation demonstrating that the written notice of warranty was given to the patient.

(i) Offers to counsel and patient counseling for inmates need not be "face to face," but rather, may be conducted through a correctional or law enforcement officer or through printed material. A pharmacist, registrant or a device and medical equipment permit holder dispensing drugs or devices or delivering medical equipment to inmates need not comply with Paragraph (c) of this Rule. However, once such patient information is obtained, the requirements of Paragraph (d) of this Rule shall be followed.

Authority G.S. 90-85.6; 90-85.21; 90-85.22; 90-85.32; 42 U.S.C. 1396r-8(g).

21 NCAC 46 .2507 ADMINISTRATION OF IMMUNIZATIONS BY PHARMACISTS

A pharmacist who has successfully completed a course of training approved by the Board, the North Carolina Medical Board, and the North Carolina Board of Nursing may administer immunizations.

Authority G.S. 90-85.3; 90-85.6.

SECTION .2800 - STERILE PARENTERAL PHARMACEUTICALS

21 NCAC 46 .2801 SCOPE AND PURPOSE

The purpose of this Section is to provide standards for the preparation, labeling, and distribution of sterile ~~parenteral~~ products by licensed pharmacists, pursuant to an order or prescription. These standards are intended to apply to all sterile ~~parenteral~~ products, notwithstanding the location of the patient (e.g., home, hospital, nursing home, hospice, doctor's office).

Authority G.S. 90-85.6.

21 NCAC 46 .2803 REQ/PHARMACIES DISPENSING STERILE PHARMACEUTICALS

All locations holding a pharmacy permit where sterile pharmaceuticals are routinely compounded for dispensing must meet the following requirements:

- (1) The location shall have a designated area with entry restricted to designated personnel for preparing compounded sterile ~~parenteral~~ products. This area shall be structurally isolated from other areas, with restricted entry or access, and must be designed to avoid unnecessary traffic and airflow disturbances from activity within the controlled facility. It shall be used only for the preparation of these specialty products. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.
- (2) The permit-holder preparing sterile parenteral products shall have the following equipment in addition to that required by Board Rule .1601 of this Chapter:
 - (a) Appropriate environmental control devices capable of maintaining at least Class 100 conditions in the work place where critical objects are exposed and critical activities are performed;
 - (b) Sink with hot and cold running water that is convenient to the compounding area for the purpose of hand scrubs prior to compounding;
 - (c) Appropriate disposal containers for used needles, syringes, etc., and if applicable cytotoxic waste from the preparation of chemotherapy agents and infectious wastes from patients' homes;
 - (d) When cytotoxic drug products are prepared, appropriate environmental control devices also include appropriate biohazard cabinetry;
 - (e) Refrigerator-freezer with a thermometer;
 - (f) Temperature controlled delivery containers; and
 - (g) Infusion devices, if appropriate.
- (3) The permit-holder dispensing sterile pharmaceuticals shall maintain inventories of the following supplies: Disposable needles, syringes, and other supplies need for aseptic admixture; disinfectant cleaning solution; handwashing agents with bactericidal action; disposable, lint-free towels or wipes; appropriate filters and filtration equipment; oncology drug spill kit; and disposable masks, caps, gowns, and gloves.
- (4) In addition to the requirements of Rule .1601(a)(4) ~~(K)~~ of this Chapter, a permit-holder dispensing sterile pharmaceuticals shall have in its reference library the following reference

materials: Handbook on Injectable Drugs (ASHP); King's Guide to Parenteral Admixtures; American Hospital Formulary Service; and Procedure for Handling Cytotoxic Drugs (ASHP).

Authority G.S. 90-85.6.

21 NCAC 46 .2804 RESPONSIBILITIES OF PHARMACIST-MANAGER

The pharmacist-manager of a permit-holder where sterile ~~parenteral~~-pharmaceuticals are prepared or dispensed must be knowledgeable in the specialized functions of preparing and dispensing compounded, sterile ~~parenteral~~-pharmaceuticals, including the principles of aseptic technique and quality assurance. The pharmacist-manager shall be responsible for the development and continuing review of all policies and procedures, training manuals, and quality assurance programs. Additionally, the pharmacist-manager is responsible for assuring that there is a system for disposal of infectious waste within the pharmacy in a manner so as not to endanger the public health.

Authority G.S. 90-85.6.

21 NCAC 46 .2805 LABELING

In addition to the standard labeling requirements, containers of sterile ~~parenteral~~-pharmaceuticals dispensed to patients shall be labeled with instructions for storage to maintain sterility and, for anti-neoplastic drugs, appropriate warning labels.

Authority G.S. 90-85.6.

21 NCAC 46 .2808 QUALITY ASSURANCE

There shall be a documented, ongoing quality assurance control program that monitors personnel performance, equipment and facilities. Appropriate samples of finished products shall be examined with such frequency as will assure that the pharmacy is capable of consistently preparing sterile ~~parenteral~~-products meeting specifications. Such examination shall include testing for microbial contamination. Quality assurance procedures shall include: recall procedures; storage and dating of products; maintenance of a log of the temperature of the refrigerator and/or freezer; routine maintenance and report of laminar flow hood certification; replacement on a regular basis of the pre-filters for the clean air source with documentation of the replacement dates; testing, with written documentation, of the end-product for microbial contamination; maintenance of written justification, or reference to published standards, for the chosen expiration date for compounded products; and regular quality assurance audits, including infection control and sterile technique audits.

Authority G.S. 90-85.6.

SECTION .3300 – REGISTRATION OF A PHARMACY TECHNICIAN

21 NCAC 46 .3301 REGISTRATION

(a) Following initial registration with the Board, registration of a pharmacy technician shall be renewed annually and shall expire on December 31. It shall be unlawful to work as a pharmacy

PROPOSED RULES

technician more than 60 days after expiration of the registration without renewing the registration.
(b) The current registration of a pharmacy technician shall be conspicuously posted in the pharmacy and must be readily available for inspection by agents of the Board.
(c) The training program described in G.S. 90-85.15A(b) is not required for students enrolled in a community college pharmacy technician program.
(d) Volunteer pharmacy technicians providing services at a facility which has a pharmacy permit designated as a free clinic shall complete the training program described in G.S. 90-85.15A(b) but need not register with the Board.

None

Authority G.S. 90-85.6; 90-85.15A.

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors intends to amend the rules cited as 21 NCAC 50 .0301, .0306, .0505-.0506, .1101-.1102, .1401-.1405, .1408-.1409. Notice of Rule-making Proceedings was published in the Register on July 15, 2002.

Proposed Effective Date: March 15, 2003

Public Hearing:

Date: October 9, 2002

Time: 10:00 a.m.

Location: Office of the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Ct., Raleigh, NC

Reason for Proposed Action: The Board proposes to modify continuing education requirements to meet needs and concerns expressed by licensees and course providers. Also, the Board wishes to receive public comment to evaluate wisdom of creating new classes of limited license related to residential fire sprinkler systems, inspection and testing of fire sprinkler systems generally, and installation of hot water heaters or other components of plumbing or heating systems, all in response to comments and inquiries from industry. Reduction in license fees and increases in examination fees is being considered.

Comment Procedures: Comments may be submitted in writing to the Board addressed to the Rulemaking Coordinator at the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Ct., Raleigh, NC 27609 with a copy to Board Counsel addressed to John N. Fountain, Young Moore and Henderson, PO Box 31627, Raleigh, NC 27622. Comments must be received by 5:00 p.m. on October 16, 2002.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)

SECTION .0300 – EXAMINATIONS

21 NCAC 50 .0301 QUALIFICATIONS DETERMINED BY EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide an examination in writing or by computer in the following categories:

- Plumbing Contracting, Class I
Plumbing Contracting, Class II
Plumbing Contracting, Limited Water Heater and Service
Heating, Group No. 1 - Contracting, Class I
Heating, Group No. 1 - Contracting, Class II
Heating, Group No. 2 - Contracting, Class I
Heating, Group No. 3 - Contracting, Class I
Heating, Group No. 3 - Contracting, Class II
Fuel Piping
Fire Sprinkler, Limited Maintenance

(b) Each applicant shall be required to read, interpret and provide answers to all parts of the examinations required by G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor, unlimited classification, must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for licensure. Current certification by NICET is in lieu of separate examination conducted by the Board.

(d) Effective July 1, 2003, the Board issues Limited Residential Fire Sprinkler license for use by persons who wish to contract or install fire sprinkler systems only in single family detached residential structures. NICET, Level II certification is required for license limited to residential systems. Current certification by NICET is in lieu of separate examination conducted by the Board.

(e) Effective July 1, 2003, the Board issues Limited Fire Sprinkler Maintenance license for use by persons who wish to carry out periodic testing, resetting and maintenance of previously installed fire sprinkler systems, consistent with NFPA 25.

(f) Effective July 1, 2003, the Board issues Limited Plumbing Contracting Water Heater and Service license for use by persons who wish to engage in contracting or installation of replacement water heaters or minor additions to previously installed plumbing, heating or air conditioning systems in residential structures.

Authority G.S. 87-18; 87-21(a); 87-21(b).

21 NCAC 50 .0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for examinations shall file an application in the Board office on a form provided by the Board.

(b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish the equivalent of two years on-site full-time experience in the design and installation of plumbing or heating systems related to the category for which license is

sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience shall directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Service, maintenance or repair activity work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board, work as a field representative of this Board or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may be used as evidence of one-half the practical experience required; provided that Board members and employees may not sit for examination during their tenure with the Board. After review, the Board may request additional evidence. ~~No more than Up to~~ one-half the experience may be in academic or technical ~~training~~ training, maintenance service or repair directly related to the field of endeavor for which examination is requested. The Board shall pro rate part-time work of less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours or work which involves the kinds of work set out hereafter only part of the time.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors shall meet experience requirements in accordance with NICET examination criteria.

(e) Applicants for examination in the Limited Residential Fire Sprinkler classification must submit evidence of 4000 hours experience in plans, specifications, layout, materials, components, water supply and installation of fire sprinkler systems.

(f) Applicants for examination in the Limited Fire Sprinkler Maintenance classification must submit evidence of 4000 hours experience as a full-time employee of a licensed fire sprinkler contractor holding unlimited license, or as a full-time maintenance employee in facility maintenance with substantial exposure to periodic testing, resetting and maintenance of previously installed fire sprinkler systems which is pro-rated to equal 4000 hours.

(g) Applicants for examination in the Limited Water Heater and Service classification must submit evidence of 4000 hours experience as a full-time employee of a licensed plumbing or heating contractor or 4000 hours experience in the service and minor repair of plumbing heating or air conditioning systems.

Authority G.S. 87-18; 87-21(b).

SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES

21 NCAC 50 .0505 GENERAL SUPERVISION AND STANDARD OF COMPETENCE

(a) The general supervision required by G.S. 87-26 is that degree of supervision which is necessary and sufficient to ensure that the contract is performed in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules.

General supervision requires that review of the work done pursuant to the license be performed while the work is in progress.

(b) The Board recognizes the provisions of the North Carolina Building Code, including the provisions of codes and standards incorporated by reference, to the extent adopted by the Building Code Council of North Carolina from time to time as the minimum standard of competence applicable to contractors licensed by the Board. Licensees are required to design and install systems which meet or exceed the minimum standards of the North Carolina State Building Code, Manufacturer's specifications and installation instructions and accepted standards prevailing in the industry.

(c) Limited Fire Sprinkler Maintenance licensees are required to be present in person at all times the system is being tripped, reset or maintained.

21 NCAC 50 .0506 MINOR REPAIRS AND ALTERATIONS

(a) The connection of a factory installed and inspected mobile home drainage system to an existing approved premises sewer system, which premises sewer system extends from the septic tank or municipal sewer system, constitutes a minor repair or replacement. The connection of a factory installed mobile home water system to an existing approved potable water supply on the premises constitutes a minor repair or replacement.

(b) The initial installation or the subsequent replacement of a hot water heater in any structure requires a license in plumbing ~~contracting. contracting, except that the replacement of a hot water heater, with no change in fuel or energy source, energy use rate, routing or sizing of venting or piping, constitutes a minor replacement within the meaning of G.S. 87-21(c).~~

(c) The installation of a water purification system which interrupts the potable water supply does not constitute a minor repair or replacement within the meaning of G.S. 87-21(c).

(d) Any connection, repair, or alteration which requires interruption of the potable water supply and if poorly performed creates substantial risk of contamination of the potable water supply is not a minor repair, replacement or alteration.

(e) Any connection, repair or alteration which if poorly performed creates substantial risk of fire or exposure to carbon monoxide, open sewage or other gases is not a minor repair, replacement or alteration.

(f) The failure to enumerate above any specific type of repair, replacement or alteration shall not be construed in itself to render said repair, replacement or alteration as minor within the meaning of G.S. 87-21(c).

Authority G.S. 87-18; 87-21(a)(1); 87-21(a)(5); 87-21(c).

SECTION .1100 - FEES

21 NCAC 50 .1101 EXAMINATION FEES

(a) An application to reissue or transfer license to a different corporation, partnership or individual name requires a fee of twenty-five dollars (\$25.00), consistent with G.S. 87-26.

(b) An application to issue or transfer license to the license of an existing licensee requires a fee of twenty-five dollars (\$25.00), consistent with G.S. 87-26.

(c) Application for license ~~License~~ by examination requires a an ~~application-fee of one hundred dollars (\$100.00), twenty dollars~~

~~(\$20.00) consisting of and an application fee of twenty-five dollars (\$25.00) and an examination fee of seventy-five dollars (\$75.00), sixty dollars (\$60.00), which is nonrefundable. Upon passage of the examination, the license fee set forth in 21 NCAC 50 .1102 or this Rule must be paid to obtain the license within 45 days of notification of the result of the examination, except that anyone passing the examination after November 1 of any year may elect to obtain license for the following year rather than the year in which the exam was passed.~~

Authority G.S. 87-18; 87-22.1; 87-22; 87-26.

21 NCAC 50 .1102 LICENSE FEES

(a) Except as set out in this Rule, the annual license fee for statewide licenses by this Board is one hundred dollars (\$100.00).

(b) The annual license fee for a licensed individual who is not actively engaged in business requiring license by reason of full-time employment as a local government plumbing, heating or mechanical inspector and who holds qualifications from the Code Officials Qualification Board is fifteen dollars (\$15.00).

(c) The initial application fee for license as a fire sprinkler contractor is one hundred dollars (\$100.00). ~~seventy-five dollars (\$75.00)~~. The annual license fee for statewide licenses issued to a fire sprinkler contractor in the name of an individual, corporation, partnership or business with a trade name is one hundred dollars (\$100.00). ~~two hundred seventy-five dollars (\$275.00)~~.

(d) The annual license fee for an individual whose qualifications are listed as the second or subsequent individual on a corporation, partnership, or business with a trade name under Paragraphs (a), (b) or (d) of this Rule is ten dollars (\$10.00).

Authority G.S. 87-18; 87-21; 87-22.

SECTION .1400 – CONTINUING EDUCATION

21 NCAC 50 .1401 CONTINUING EDUCATION REQUIREMENTS

(a) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Plumbing, Heating or Fuel Piping license, must have completed six hours of approved continuing education during the preceding calendar year as a condition of license renewal.

(b) Courses must be in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of: the analysis of plans and specifications, estimating costs, fundamentals of installation and design, equipment, duct and pipe sizing, codes, code requirements, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. No more than two hours annually may be dedicated to business ethics, taxation, payroll, cash management, bid and contract preparation preparation, customer relations or similar subjects as related to plumbing or heating contracting.

(c) At least once every three calendar years, each applicant for license renewal, other than fire sprinkler licensees, must complete a minimum of four hour hours block of instruction devoted entirely to N. C. ~~and local~~ building codes including recent changes or amendments to those ~~codes, codes~~, a minimum of two hours instruction in system design, a minimum of two

hours instruction in system installation and a minimum of two hours instruction in business courses such as business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects as related to plumbing or heating contracting. These minimums are part of and not in addition to the requirements set out in Paragraph (a) of this Rule. This four hour block may be counted towards the required six hours for the calendar year in which the block is taken.

(d) Persons holding multiple qualifications from the Board must complete at least two hours in each qualification, totaling at least six hours annually, but are not required to take hours each year in each qualification. Licensees with multiple qualifications are expected to take instruction so as to remain current in all areas of contracting work in which actively engaged, provided that the four hour block described in Paragraph (c) of this Rule shall take priority and no PH 12&3 contractor shall be required to complete more than 6 hours annually under this Rule.

(e) Licenses may not be renewed without documentation of course attendance, course name, course number, content and teacher in the form required by the Board. Falsification or misstatement of continuing education information shall be grounds for failure to renew licenses and disciplinary action, including revocation or suspension of licenses.

(f) Continuing Education shall not be required of holders of Fire Sprinkler Contractor's licenses, licensed pursuant to the minimum requirements of certification for Level II or III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET), provided such persons submit evidence of continued remain in compliance with the continuing education requirements of NICET.

(g) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Fire Sprinkler Contractor's license not current on the continuing education requirements of NICET must complete six hours of approved continuing education in areas related to fire sprinkler contracting during the preceding calendar year as a condition of license renewal.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1402 EXEMPTIONS AND CREDITS

(a) Continuing Education courses taken in 1999, 2000, 2001, or 2002 may be applied to the six hour annual requirement for 2003 renewals. Thereafter, licensees may not carry over hours from one calendar year to the next.

(b) Newly licensed individuals will have no continuing education requirements for the calendar year in which they first become licensed.

(c) Licensees who are unable to fulfill the required number of hours as the result of illness as certified by an attending physician may petition the Board in writing for an exemption or request approval of an individualized plan tailored to their physical limitations. Such requests will be dealt with on a case by case basis by the Board without undue delay, consistent with the requirements applicable to all licensees.

(d) Licensees who are over the age of 65, and who will not be engaged in bidding supervising or other activities for which license is required during the coming year, except as an employee of another licensee, may apply to the Board and obtain

an exemption. If exemption is granted and the licensee thereafter wishes to engage in activity requiring license, the continuing education must be completed and satisfactory proof provided to the Board before any activity requiring license is undertaken.

(e) Instructors in Board-approved courses shall ~~receive-be continuing education given~~ credit for lecture hours ~~spent educating other licensees~~ in approved courses.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1403 COMPUTATION OF CONTINUING EDUCATION HOURS

(a) To obtain one hour of continuing education credit a licensee and a course ~~provider sponsor~~ must certify the licensee's completion of one hour of actual instruction in a sponsored course. Except with prior approval by the Board, a licensee will receive no credit for a course for which the licensee has previously received credit in the current or two preceding calendar years. Approval will be granted only for courses on building code content and changes therein.

(b) Actual instruction does not include introductory remarks, breaks, business meetings, marketing of equipment, advertisements or time spent on non-approved subjects. Each hour of actual instruction may include one break of 10 minutes duration.

Authority G.S. 87-21(b)(3); 87-2.

21 NCAC 50 .1404 COURSE REQUIREMENTS AND LIMITATIONS

(a) In order for course credit to be obtained, the course must be approved and consist of instruction in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of: the analysis of plans and specifications, estimating costs, fundamentals of installation and design, ~~equipment, duct and pipe sizing, codes, code requirements,~~ fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. Business ethics, taxation, payroll, cash management, ~~bid and contract preparation preparation,~~ customer relations or similar subjects ~~as-substantially~~ related to plumbing or heating contracting will also be approved.

(b) In order for course credit to be obtained, the course must be taught by the instructor or alternate listed when the course was approved by the Board.

(c) Courses shall have a minimum of two hours ~~one hour~~ of actual instruction and a maximum of six hours of actual instruction, per day.

(d) Courses shall be held in facilities conducive to learning. Such facilities include community colleges, technical schools, or community centers.

(e) Courses shall be open to all interested licensees that the host facility can reasonably accommodate and for audit by Board representatives; courses may not be restricted to employees, dealers or members of a particular firm or group.

(f) Once listed on the six-month course roster, a course may not be cancelled during that six month period.

(g) Though courses may have commercial sponsors, the courses shall not include promotion of products or services of a particular firm or manufacturer.

(h) Correspondence, home study, license exam preparation (cram) courses shall not be approved.

(i) For the information of all licenses, the Board shall maintain a calendar of all courses available during a six-month period.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1405 APPROVAL OF COURSES

(a) To obtain approval of a course ~~a an applicant provider or proposed provider~~ must submit a written application to the board on or before the first day of September of each year for courses to be offered the following January through June and on or before the first day of March each year for courses to be offered the following July through December. ~~at least 45 days before the proposed course date which~~ The application must include:

- (1) two substantially complete sets of written course materials and a detailed course outline; and
- (2) an application cover sheet on a form supplied by the Board identifying the applicant, the name, training and experience of all speakers, the proposed date(s) of the course, the host facility, the place where applications for enrollment should be sent, the cost, and the total continuing education hours being offered. ~~offered, and any hours dedicated to the block course on code.~~

(b) Preliminary review of course applications shall be carried out by a committee appointed by the Board, which will include some providers of approved courses. Committee recommendations will be presented to the Board for final approval.

(c) As a condition of course approval, providers shall agree to submit to the board, in the form provided by the Board, and within 30 days of the course date set out on the application, an alphabetical listing of all licensees who attended and completed the course and a copy of any course materials distributed to participants together with certification that the course was provided consistent with the application.

(d) Providers who fail to provide the information set forth in Paragraph (c) of this Rule shall not thereafter be approved to conduct a course.

(e) Licensees may select courses other than those offered by pre-approved ~~providers, while attending out of state educational functions.~~ In order to obtain approval, the licensee must submit a written application for approval on a form obtained from the Board upon completion of each such course. In lieu of such form, an advertising brochure may be submitted, provided the brochure includes the topic, content of lecture material, date, time, location, name and qualifications of speaker and the number of contact hours received upon completion of the program. The licensee must also provide independent verification of attendance. Board evaluation of courses not pre-approved may result in disapproval.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1408 ADVERTISEMENTS BY COURSE PROVIDERS OR INSTRUCTORS

Providers Sponsors of approved courses shall provide an advance copy of any brochure or marketing material for review

10 days before use and shall include in brochures and course descriptions a statement substantially as follows:

This course has been approved by the North Carolina State Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors for continuing education credit toward license renewal in the amount of ___ hours, of which ___ hours will count towards the four hour block on state and local building codes. This course is not sponsored by the Board.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1409 TERMINATION OF COURSE OR PROVIDER APPROVAL

The Board may suspend or terminate approval of any course or all courses offered by a provider if the Board finds a failure to comply with the Board's rules, the course outline, incompetence or misconduct of faculty or for misstatements as to content or participation, and may specify the conditions under which future applications would be favorably considered.

Authority G.S. 87-21(b)(3); 87-22.

CHAPTER 57 - REAL ESTATE APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Appraisal Board intends to amend the rules cited as 21 NCAC 57A .0204, .0210, .0401, .0403, .0405; 57B .0101-.0103, .0210, .0306, .0603, .0607; 57C .0101-.0102. Notice of Rule-making Proceedings was published in the Register on July 15, 2002.

Proposed Effective Date: July 1, 2003

Public Hearing:

Date: October 14, 2002

Time: 9:00 a.m.

Location: 3900 Barrett Dr., Raleigh, NC

Reason for Proposed Action: Several clerical changes are necessary. The rule amendments will address confusion in the sequence of prelicensing courses, and will require trainees to have the same continuing education requirements as other licensees.

Comment Procedures: Comments from the public shall be directed to Roberta Ouellette, PO Box 20500, Raleigh, NC 27619, phone (919)420-7920, fax (919)420-7925, email ncab@ncab.org. Comment period ends October 16, 2002.

Fiscal Impact

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

SUBCHAPTER 57A - REGISTRATION, LICENSING, CERTIFICATION AND PRACTICE

SECTION .0200 - APPRAISER LICENSING AND CERTIFICATION

21 NCAC 57A .0204 CONTINUING EDUCATION

(a) All registered trainees, real estate appraiser licensees and certificate holders shall, upon the second renewal of their registration, license or certificate following their initial registration, licensure or certification by the Board, and upon each subsequent renewal, and all registered trainees shall, upon the third successive renewal of their registration following their initial registration by the Board, present evidence satisfactory to the Board of having obtained continuing education as required by this Section.

(b) Within the immediately preceding licensing/certification period for which renewal licensure/certification is sought, continuing education consisting of at least fourteen classroom hours of instruction must be taken. Beginning July 1, 2003, each trainee, licensee and certificate holder who is required to complete continuing education pursuant to .0204(a) must, within the immediately preceding licensing/certification period for which renewal licensure/certification is sought, complete 28 hours of continuing education prior to June 30, 2005 and prior to June 30 of every odd numbered year thereafter. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, state-licensed and state-certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of licensed residential, certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification may not be applied toward the annual continuing education requirement.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; and similar topics. The trainee, license or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Beginning July 1, 2003, each trainee, licensee and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule must, as part of the 28 hours of continuing education required in Paragraph (b) of this Rule, complete the seven hour Uniform Standards of Professional Appraisal Practice (USPAP) update course, as required by the Appraiser Qualification Board of the Appraisal Foundation, or its equivalent, prior to June 30, 2005 and prior to June 30 of every odd numbered year thereafter.

(e) A licensee who elects to take approved continuing education courses in excess of the minimum requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a prescribed certificate of course completion to each trainee, licensee and certificate holder satisfactorily completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 30 of each year. In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having satisfied the continuing education requirement is not provided, the registration, license or certificate will expire and the trainee, licensee or certificate holder will be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course will be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. The awarding of credit for such activities is wholly discretionary on the part of the Board. Licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit will be deemed to have taken an equivalent course and will not be subject to the fifty (\$50.00) fee, provided they submit verification satisfactory to the Board of having taught the course(s). A licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every three years, regardless of how often he teaches the course.

(h) A trainee, state-licensed or state-certified real estate appraiser may receive continuing education credit by taking any of the ~~residential~~ Board-approved prelicensing ~~courses~~ or precertification courses or their approved equivalents. ~~The prelicensing-These~~ courses cannot be used for both continuing education credit and for credit for licensing purposes. Trainees, licensees and certificate holders who wish to use a prelicensing course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A trainee, licensee or certificate holder may request in writing and be granted an extension of time to satisfy the continuing education requirements if he provides evidence satisfactory to the Board that he was unable to obtain the necessary education due to an incapacitating illness, military assignment outside the 50 states, or similar condition. If an extension of time is granted, the trainee, licensee or certificate holder will be permitted to renew or reinstate, as appropriate, his registration, license or certificate for that period of time for

which the extension was granted. The granting of such request and the length of any extension of time granted are wholly discretionary on the part of the Board.

Authority G.S. 93E-1-7(a) and (b); 93E-1-8(a); 93E-1-10.

21 NCAC 57A .0210 TEMPORARY PRACTICE

(a) A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in such state may apply for registration to receive temporary appraiser licensing or certification privileges in this State by filing a notarized application with the Board.

(b) Upon filing a properly completed application accompanied by a fee of one hundred fifty dollars (\$150.00) and otherwise satisfying the Appraisal Board as to his or her qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. As part of the examination for moral fitness, the Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other state, and may consider all other information outlined in Rule .0202(c) of this Section.

(c) Privileges granted under the provisions of this Rule shall expire upon the expiration date set forth in the temporary practice permit. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's diligent attention to the appraisal assignment, additional time is needed to complete the assignment, the Board shall extend the temporary practice privileges granted under the permittee's temporary practice permit to afford him additional time to complete the appraisal assignment.

(d) Persons granted temporary practice privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina registered trainee or state-licensed or state-certified appraiser.

(e) A trainee may apply for a temporary practice permit and the provisions of Paragraphs (a), (b) and (c) of this Rule shall apply. The supervising appraiser for the trainee must be a North Carolina state-licensed or state-certified appraiser. If not, the supervising appraiser must be licensed or certified as a real estate appraiser in another state and must also receive a temporary practice permit for the same assignment as the trainee. The term "trainee" shall include apprentices and others who are licensed-credentialed and regulated by a state agency to perform real estate appraisals under the supervision of a licensed or certified appraiser.

(f) An applicant for a temporary practice permit may not begin performing any appraisal work in this State until the temporary practice permit has been issued by the Board.

Authority G.S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a).

SECTION .0400 - GENERAL APPRAISAL PRACTICE

21 NCAC 57A .0401 USE OF TITLES

(a) A trainee shall utilize the term "registered trainee" or "trainee real estate appraiser" when performing an appraisal of real estate or any interest therein, and when referring to himself as a trainee.

(b) A state-licensed residential real estate appraiser shall utilize the term "state-licensed residential real estate appraiser" and a state-certified residential real estate appraiser shall utilize the term "state-certified residential real estate appraiser" when performing an appraisal of real estate or any interest therein, and when referring to himself as an appraiser. A state-certified general real estate appraiser shall utilize either the term "state-certified general real estate appraiser" or "state-certified residential/general real estate appraiser" when performing appraisals of all types of real estate or any interest therein, and when referring to himself as an appraiser.

(c) Trainee registration, licensure or certification as a real estate appraiser is granted only to persons and does not extend to a business entity operated by a trainee, state-licensed or state-certified real estate appraiser.

Authority G.S. 93E-1-10.

21 NCAC 57A .0403 ADVERTISING

(a) When advertising or otherwise holding himself out as a trainee or real estate appraiser, a trainee shall identify himself as a "registered ~~trainee~~, trainee" or a "trainee real estate appraiser", a state-licensed residential real estate appraiser shall identify himself as a "state-licensed residential real estate appraiser", a state-certified residential real estate appraiser shall identify himself as a "state-certified residential real estate appraiser", and a state-certified general real estate appraiser shall identify himself as either a "state-certified general real estate appraiser" or a "state-certified residential/general real estate appraiser".

(b) A registered trainee, state-licensed or state-certified real estate appraiser doing business as a partnership, association, corporation or other business entity shall not represent in any manner to the public that the partnership, association, corporation or other business entity is registered, licensed or certified by the State of North Carolina to engage in the business of real estate appraising.

(c) In the event that any trainee, licensee or certificate holder shall advertise in any manner using a firm name, corporate name, or an assumed name which does not set forth the surname of the trainee, licensee or certificate holder, he shall first notify the Board in writing of such name and furnish the Board with a copy of each registration of assumed name certificate filed with the office of the county register of deeds in compliance with G.S. 66-68.

Authority G.S. 93E-1-10.

21 NCAC 57A .0405 APPRAISAL REPORTS

(a) Each written appraisal report prepared by or under the supervision of a state-licensed or state-certified real estate appraiser shall bear the signature of the state-licensed or state-certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "state-licensed residential real estate appraiser", "state-certified residential real estate appraiser", or the designation "state-certified general real estate appraiser", or "state-certified residential/general real estate

appraiser", as applicable. Each such appraisal report shall also indicate whether or not the state-licensed or state-certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

(b) Every state-licensed and state-certified real estate appraiser shall affix or stamp to all appraisal reports a seal which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "state-licensed residential real estate appraiser", a "state-certified residential real estate appraiser", or as a "state-certified general real estate appraiser" or "state-certified residential/general real estate appraiser", as applicable. Registered trainees are prohibited from using a seal on appraisal reports.

(c) A state-licensed or state-certified real estate appraiser who signs an appraisal report prepared by another person, in any capacity, shall be fully responsible for the content and conclusions of the report.

(d) A written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

Authority G.S. 93E-1-10.

SUBCHAPTER 57B - REAL ESTATE APPRAISAL EDUCATION

SECTION .0100 - COURSES REQUIRED FOR REGISTRATION, LICENSURE OR CERTIFICATION

21 NCAC 57B .0101 REGISTERED TRAINEE, AND LICENSED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) ~~Each applicant for registration as a trainee or licensure as a state-licensed residential real estate appraiser shall complete ninety (90) hours of prelicensing education, consisting of the following;~~

- ~~(1) A minimum of 30 hours in Introduction to Real Estate Appraisal (R-1);~~
- ~~(2) A minimum of 30 hours in Valuation Principles and Procedures (R-2); and~~
- ~~(3) A minimum of 30 hours in Applied Residential Property Valuation (R-3).~~

~~(b) Effective January 1, 2003, each~~ Each applicant for registration as a trainee or licensure as a state-licensed residential real estate appraiser shall complete 90 hours of prelicensing education, consisting of the following;

- (1) A minimum of 30 hours in Introduction to Real Estate Appraisal (R-1);
- (2) A minimum of 30 hours in Valuation Principles and Procedures (R-2);
- (3) A minimum of 15 hours in Applied Residential Property Valuation (R-3); and
- (4) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP)

~~(c)~~(b) Credit for these courses must be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with these rules. These courses must be ~~commenced and~~ completed

~~sequentially in the order listed and~~ within the five-year period immediately preceding the date when application for registration, licensure or certification is made to the Board.

(c) Introduction to Real Estate Appraisal (R-1) shall be a prerequisite to taking Valuation Principles and Procedures (R-2), and Valuation Principles and Procedures (R-2) shall be a prerequisite to taking Applied Residential Property Valuation (R-3).

Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0102 CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) In addition to the courses specified in Rule .0101 of this Section, an applicant for certification as a state-certified residential real estate appraiser is required to complete ~~the following precertification course involving a minimum of 30 classroom hours: a minimum of 30 hours in~~ Introduction to Income Property Appraisal (G-1). This course must be taken after the applicant's successful completion of the prelicensing courses specified in Rule .0101 of this Section. Credit for this course must be earned from a Board-approved course sponsor or ~~school, and all courses must be completed sequentially in the order listed school.~~

(b) An applicant who is not currently registered as a trainee or currently licensed as a state-licensed residential real estate appraiser must have completed all required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is currently registered as a trainee or currently licensed as a state-licensed residential real estate appraiser must have completed the required ~~30 classroom hour~~ course in Introduction to Income Property Appraisal (G-1) within the five-year period immediately preceding the date application is made to the Board.

Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0103 CERTIFIED GENERAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) In addition to the courses specified in Rules .0101 and .0102 of this Section, an application for certification as a state-certified general real estate appraiser is required to complete the following precertification courses, each involving a minimum of 30 classroom hours:

- (1) Advanced Income Capitalization (G-2); and
- (2) Applied Income Property Valuation (G-3).

These courses must be commenced and completed ~~sequentially in the order listed~~ after the applicant's successful completion of the courses specified in Rules .0101 and .0102 of this Section.

Income Property Appraisal (G-1) shall be a prerequisite for Advanced Income Capitalization (G-2), and Advanced Income Capitalization (G-2), shall be a prerequisite to Applied Income property Valuation (G-3). Credit for all courses must be earned from a Board-approved course sponsor or school, and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter.

(b) An applicant who is not currently registered as a ~~trainee~~ trainee, or currently licensed as a state-licensed ~~or real estate appraiser, or currently certified as a~~ state-certified residential real estate appraiser must have completed all the required

courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is a currently registered as a ~~trainee~~ trainee, or currently licensed as a state-licensed ~~or real estate appraiser, or currently certified as a~~ state-certified residential real estate appraiser must have ~~commenced and~~ completed all courses required beyond those required for his current licensure or certification within the five-year period immediately preceding the date application is made to the Board.

Authority G.S. 93E-1-6(c); 93E-1-8(a); 93E-1-10.

SECTION .0200 – COURSE SPONSOR STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0210 COURSE RECORDS

Schools and course sponsors must:

- (1) retain on file for five years copies of all grade and attendance records for each approved course and must make such records available to the Board upon request;
- (2) retain on file for two years a master copy of each final course examination, and such file copy shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be made available to the Board upon request;
- (3) within 15 days of course completion, but not later than June 30 of each year, submit to the Board a roster of all ~~students North Carolina trainees and state-licensed and state-certified appraisers~~ who satisfactorily completed the course, and
- (4) participate in the Board's course and instructor evaluation program.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0300 - COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal prelicensing and precertification courses or courses deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 120 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and either two years' full-time experience as a residential real estate appraiser within the previous five years

or three years full time experience as a general real estate appraiser within the previous five years, with at least one-half of such experience being in residential property appraising. Instructors must also be either state-certified residential or state-certified general real estate appraisers.

- (2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-third of such experience being in income property appraising. Instructors must also be state-certified general real estate appraisers.
- (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area he is teaching.

(c) Instructors shall conduct themselves in a professional and courteous manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates a thorough knowledge of the subject matter being taught and mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary.
- (2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate and to respond appropriately to questions from students;
- (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques.
- (4) The ability to effectively utilize instructional aids to enhance learning;
- (5) The ability to effectively maintain an effective learning environment and effective control of a class;
- (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape in a manner and format which depicts the instructor teaching portions of a prelicensing course specified by the Board and which

demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.

(e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act.

(f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a reprimand, suspension (whether active or inactive) or a revocation.

(g) Upon request of the Board, instructors who are appraisers must supply the Board with copies of sample appraisal reports.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0600 - CONTINUING EDUCATION COURSES

21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction must be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (3) The course instructor(s) must:
 - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification; and
 - (b) either:
 - (i) two years' full-time experience that is directly related to the subject matter to be taught;
 - (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught;
 - (iii) two years' full-time experience teaching the subject matter to be taught; or
 - (iv) an equivalent combination of such education and experience.

- (4) If two or more instructors will be utilized to teach a course during the approval period and the course will be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.
- (5) The course must be one involving a qualified instructor who, except as noted in Item ~~(5)~~(6) of this Rule, shall be physically present in the classroom at all times and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons shall not be considered to be the official course instructor and the official course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation.
- (6) Effective for courses attended on or after the effective date of this rule, a trainee or appraiser may receive up to seven hours of credit per renewal period for participation in a course on a computer disk or on-line via the Internet. A sponsor seeking approval of a computer-based education course must submit a complete copy of the course on the medium that is to be utilized and, must make available at the sponsor's expense, all hardware and software necessary for the Board to review the submitted course. In the case of an internet-based course, the Board must be provided access to the course via the internet at a date and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, a computer-based continuing education course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The

- sponsor of a course on a computer disk must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may periodically log on and off of a computer-based continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. A course completion certificate must be forwarded to the student as stated in Rule .0607 of this Section, and a course roster must be sent to the Appraisal Board in accordance with Rule .0608 of this Section.
- (7) The course must be an educational program intended to improve the knowledge, skill and competence of trainees, state-licensed and state-certified real estate appraisers. Activities not eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, or similar activities.
- (8) The course sponsor must certify that the course will be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0607 CERTIFICATION OF COURSE COMPLETION

Course sponsors must issue a certificate of course completion within 15 days of completion of the course to all students who satisfactorily complete an approved course. If the course sponsor is located in North Carolina, the certificate, which the student must retain for a period of five years, ~~and~~ must bear the signature or signature stamp which must be in a color of ink other than black of a person designated by the course sponsor to sign such certificate. The North Carolina-based course sponsor must notify the Board in advance of the person(s) designated to sign certificates of course completion for courses conducted in North Carolina. If the course sponsor is not located in North Carolina, the certificate ~~provided for submission to the Board of~~ course completion must show the name of the course sponsor, the name of the course, the number of classroom hours, the course dates, the state or city where the course was conducted, and the full name of the student.

Authority G.S. 93E-1-8(c); 93E-1-10.

SUBCHAPTER 57C - ADMINISTRATIVE LAW PROCEDURES

SECTION .0100 - APPRAISAL BOARD HEARINGS

21 NCAC 57C .0101 FORM OF COMPLAINTS AND OTHER PLEADINGS

(a) There shall be no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the respondent trainee or licensed or certified appraiser and shall

reasonably apprise the Board of the facts which form the basis of the complaint.

(b) When investigating a complaint, the scope of the investigation shall not be limited to the persons or transactions described or alleged in the complaint.

(c) Persons who make complaints are not parties to contested cases heard by the Board, but may be witnesses in the cases.

(d) There shall be no specific form required for answers, motions or other pleadings relating to contested cases before the Board, except they shall be in writing. To be sufficient, the document must identify the case to which it refers and reasonably apprise the Board of the matters it alleges, answers, or requests. In lieu of submission in writing, motions, requests and other pleadings may be made on the record during the course of the hearing before the Board.

(e) During the course of an investigation of a licensee, the Board, through its legal counsel or staff, may send a trainee or appraiser one or more Letters of Inquiry requesting the trainee or appraiser to respond. The initial Letter of Inquiry, or attachments thereto, shall set forth the subject matter being investigated. Upon receipt of a Letter of Inquiry, the trainee or appraiser shall respond within 14 calendar days. Trainees and appraisers shall include with their written response copies of all documents requested in a Letter of Inquiry.

~~(e)~~(f) Hearings in contested cases before the Board shall be governed by the provisions of G.S. 150B, Article 3A.

Authority G.S. 93E-1-10.

21 NCAC 57C .0102 PRESIDING OFFICER

(a) The Appraisal Board may designate any of its members to preside over the hearing in a contested case. When no designation is made, the Chairman of the Board shall preside, or, in his absence, the Vice Chairman shall preside. The presiding officer shall rule on motions or other requests made in a contested case prior to the conduct of the hearing in that case except when the ruling on the motion would be dispositive of the case. When the ruling on a motion or request would be dispositive of the case, the presiding officer shall make no ruling and the motion or request shall be determined by a majority of the Board.

(b) The Chairman of the Board may allow the Board's Executive Director to grant the first request for a continuance of a hearing. Any subsequent requests for continuance shall be granted ~~only~~ by ~~a majority of the Board.~~ the Chairman of the Board. The granting of a continuance is wholly discretionary.

Authority G.S. 93E-1-10.

CHAPTER 58 – REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Real Estate Commission intends to amend the rules cited as 21 NCAC 58A .0107, .0113, .0302, .0502; 58E .0203 and repeal the rule cited as 21 NCAC 58A .0501. Notice of Rule-making Proceedings was published in the Register on July 15, 2002.

Proposed Effective Date: July 1, 2003

Public Hearing:

Date: October 16, 2002

Time: 9:00 a.m.

Location: 1313 Navaho Drive, Raleigh, NC

Reason for Proposed Action: *The Commission is attempting to clarify its application processes, record-keeping requirements, and principal broker accountability standard.*

Comment Procedures: *Written comments should be submitted to Pamela Millward, 1313 Navaho Drive, Raleigh, NC 27609. Phone (919) 875-3700 or email to pamela@ncrec.state.nc.us. Comments will be accepted through October 16, 2002.*

Fiscal Impact

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

SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS

(a) All monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesperson shall be delivered immediately to the broker by whom he or she is employed.

(b) In the event monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the broker having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include but not be limited to:

- (1) bank statements.
- (2) canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. When a check is used to disburse funds for more than one sales transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check.
- (3) deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket.
- (4) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the

amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate.

- (5) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and an appropriate reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account.
- (6) copies of contracts, leases and management agreements.
- (7) closing statements and property management statements.
- (8) any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create a clear audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

- (f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.
- (g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition and or until disbursement is ordered by a court of competent jurisdiction. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds.
- (h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement

date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained or disbursed by a licensee, are trust monies and shall be treated as such in the manner required by this Rule.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger ~~sheet~~ sheets to the corresponding property or property owner ledger sheet. In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format previously described herein for vacation rental tenant security deposit monies and vacation rental advance payments.

Authority G.S. 93A-3(c).

21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS

Any broker or salesperson who is convicted of any felony or misdemeanor or who has disciplinary action taken against him or her in connection with any other ~~professional~~ occupational license shall file with the Commission a written report of such conviction or disciplinary action within 60 days of the final judgment or final order in the case. A form for this report is available from the Commission.

Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2).

21 NCAC 58A .0302 FILING AND FEES

(a) All applications for a real estate license must be properly completed and must be submitted to the Commission's office accompanied by the appropriate application fee. Examination scheduling of qualified applicants who are required to pass the real estate licensing examination shall be accomplished in accordance with Rule .0401 of this Subchapter. An applicant for a real estate salesperson license shall not make application for a broker license while the salesperson application is pending unless the applicant first withdraws the salesperson application.

(b) The license application fee shall be thirty dollars (\$30.00). Applicants electing to take the licensing examination by

computer must pay, in addition to the license application fee, the examination fee charged by the Commission's authorized testing service.

(c) An applicant shall update information provided in connection with an application or submit a newly completed application form without request by the Commission to assure that the information provided in the application is current and accurate. Failure to submit updated information prior to the issuance of a license may result in disciplinary action against a licensee in accordance with G.S. 93A-6(b)(1). In the event that the Commission requests an applicant to submit updated information or to provide additional information necessary to complete the application and the applicant fails to submit such information within 90 days following the Commission's request, the Commission shall cancel the applicant's application. An applicant whose license application has been canceled and who wishes to obtain a real estate license must start the licensing process over by submitting a written application to the Commission upon a prescribed form and paying all required fees.

Authority G.S. 93A-4(a),(d).

21 NCAC 58A .0501 CHARACTER

~~(a) At a meeting of the Commission following each licensing examination, the applicants who have passed the examination shall be considered for licensing. When the moral character of an applicant is in question, action by the Commission will be deferred until the applicant has affirmatively demonstrated that he or she possesses the requisite truthfulness, honesty and integrity.~~

~~(b) When the moral character of an applicant is in question, the Commission shall notify the applicant and the applicant shall be entitled to demonstrate his or her character and fitness for licensure at a hearing before the Commission according to the provisions of G.S. 150B.~~

~~(c) Notice to the applicant that his or her moral character is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Commission. Failure to request a hearing within this time shall constitute a waiver of the applicant's right to a hearing on his or her application for licensing, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for licensure.~~

Authority G.S. 93A-4(b),(d).

21 NCAC 58A .0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity which changes its business form shall be required to submit a new application immediately upon making the change and to obtain a new license. Incomplete applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available upon request to the Commission and shall set forth the name of the entity, the name under which the entity will do

business, the address of its principal office, and a list of all brokers and salespersons associated with the entity.

(b) The application of any partnership, including a general partnership, limited partnership and limited liability partnership, shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners; a copy of any Certificate of Limited Partnership as may be required by law; past conviction of criminal offenses of any general or limited partner; past revocation, suspension, or denial of a business or professional license of any general or limited partner; and the name and residence address of each general and limited partner.

(c) The application of a limited liability company shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its Articles of Organization evidencing its authority to engage in the business of real estate brokerage; past conviction of criminal offenses of any manager or member; past revocation, suspension, or denial of a business or professional license of any manager or member; and the name and residence address of each manager or member.

(d) The application of a corporation shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its Articles of Incorporation evidencing its authority to engage in the business of real estate brokerage; past conviction of criminal offenses of any corporate director, officer, employee or shareholder who owns ten percent or more of the outstanding shares of any class; past revocation, suspension, or denial of a business or professional license to any director, officer, employee or shareholder who owns 10 percent or more of the outstanding shares of any class; the name and residence address of each director and officer of the corporation; and the name and address of each person, partnership, corporation, or other entity owning 10 percent or more of the outstanding shares of any class.

(e) The application of any other business entity shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage; past conviction of criminal offenses of any principal in the company; past revocation, suspension or denial of a business or professional license of any principal; and the name and residence address of each principal. For purposes of this Paragraph, the term "principal" shall mean any person or entity who owns the business entity to any extent, or who is an officer, director, manager, member, partner or who holds any other comparable position.

(f) A foreign business entity shall further qualify by filing with its application for license a copy of any certificate of authority to transact business in this state issued by the North Carolina Secretary of State which may be required by law and a consent to service of process and pleadings which shall be accompanied by a duly certified copy of the resolution of the general partners, managers or board of directors authorizing the proper partner, manager or officer to execute said consent.

(g) After filing a written application with the Commission and upon a showing that at least one principal of said business entity holds a broker license on active status and in good standing and will serve as principal broker of the entity, the entity shall be

licensed provided it appears that the applicant entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. The principal broker of a partnership of any kind must be a general partner of the partnership, the principal broker of a limited liability company must be a manager of the company, and the principal broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the principal broker of another licensed business entity if the principal broker-entity has as its principal broker a natural person who is himself licensed as a broker. The natural person who is principal broker shall assure the performance of the principal broker's duties with regard to both entities.

(h) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(i) The principal broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity at which real estate brokerage activities are conducted;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use; ~~and~~
- (5) notifying the Commission in writing of any change of his or her status as principal broker within 10 days following the ~~change-change;~~
- (6) personally reviewing the firm's transaction and trust account records whenever there is a change of broker-in-charge at the firm or any office thereof and, if the records are inadequate or incomplete, or if the trust account records are out-of- balance, notifying the Commission;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as principal broker until a new principal broker has been designated with the Commission or, if no new principal broker is designated, for the period of time for which said records are required to be retained by Rule .0108 of this Subchapter; and
- (8) notifying the Commission if, upon the termination of his status as principal broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out-of-balance or have not been reconciled as required by Rule .0107(e) of this Subchapter.

(j) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.

Authority G.S. 93A-3(c); 93A-4(a),(b),(d).

21 NCAC 58E .0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor must make application on a form prescribed by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) The applicant must be truthful, honest and of high integrity. (c) The applicant must be qualified under one of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of real estate.
(2) Possession of a current North Carolina real estate broker license, three years active full-time experience in real estate brokerage within the previous ten years, and 30 classroom hours of real estate education, excluding prelicensing education, within the past three years, such education covering topics which are acceptable under Commission rules for continuing education credit.
(3) Possession of a current North Carolina real estate broker license and experience teaching at least ten real estate prelicensing courses within the previous five years.
(4) Possession of a license to practice law in North Carolina and three years experience in law practice within the previous 10 years, with a substantial emphasis on real estate practice.
(5) Possession of qualifications found by the Commission to be equivalent to one or more of the above standards, provided that the requirement for a current North Carolina real estate broker license shall be waived only for applicants who qualify under Subparagraph (c)(1) or (4) of this Rule.

(d) The applicant must possess good teaching skills as demonstrated on a videotape portraying the instructor teaching a live audience. The applicant must submit for Commission review a videotape in VHS format. The videotape must be 45-60 minutes in length and must depict a continuous block of instruction on a single real estate or directly related topic. The videotape must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The

videotape must have been made within the previous ~~three~~ years-one year. The videotape must demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he possesses a current North Carolina real estate broker license and a current designation as a Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

Authority G.S. 93A-3(c); 93A-4A.

CHAPTER 68 - CERTIFICATION BOARD FOR SUBSTANCE ABUSE PROFESSIONALS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Substance Abuse Professional Certification Board intends to adopt the rule cited as 21 NCAC 68 .0512, and amend the rules cited as 21 NCAC 68 .0101, .0202, .0208, .0306, .0406, .0606. Notice of Rule-making Proceedings was published in the Register on July 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 16, 2002

Time: 11:00 a.m.

Location: NC Council of Community MH/DD/SA Programs, 1318 Dale Street, Suite 120, Raleigh, NC

Reason for Proposed Action: To clarify rules describing Registration, Certification, and Educational Requirements.

Comment Procedures: Written comments should be submitted to Jim Scarborough, PO Box 10126, Raleigh, NC 27605 or email to eac@ipass.net. Comments should be submitted by October 16, 2002.

Fiscal Impact

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

SECTION .0100 - GENERAL

21 NCAC 68 .0101 DEFINITIONS

As used in the General Statutes or this Chapter, the following terms have the following meaning:

- (1) "Applicant" means a person who submits documentation seeking Board status for registration or certification.
(2) "Application packet" means a set of instructions and forms required by the Board for registration.
(3) "Approved Supervisor" means a supervisor as set out in G.S. 90-113.31. This is a person who fulfills or is in the process of fulfilling the requirements for this Board designation

PROPOSED RULES

- pursuant to Rule .0211 of this Chapter by completing its academic, didactic and experiential requirements.
- ~~(3)~~(4) "Assessment" means identifying and evaluating an individual's strengths, weaknesses, problems and needs for the development of a treatment or service plan for alcohol, tobacco and drug abuse.
- (5) "Clinical Supervision Specific Training" means education that directly covers the aspects of clinical supervision of a substance abuse professional or any of the 12 core functions in their clinical application and which is provided by a professional whose expertise may or may not be in the field of substance abuse.
- ~~(4)~~(6) "Complainant" means a person who has filed a complaint pursuant to these Rules.
- ~~(5)~~(7) "Consultation" means a meeting for discussion, decision-making and planning with other service providers for the purpose of providing substance abuse services.
- ~~(6)~~(8) "Crisis" means a decisive, crucial event either directly or indirectly related to alcohol or drug use, in the course of treatment that threatens to compromise or destroy the rehabilitation effort.
- ~~(7)~~(9) "Deemed Status Group" means those persons who are credentialed as a clinical addictions specialist because of their membership in a deemed status discipline.
- ~~(8)~~(10) "Education" means a service which is designed to inform and teach various groups; including clients, families, schools, businesses, churches, industries, civic and other community groups about the nature of substance abuse disorders and about available community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life's problems.
- ~~(9)~~(11) "Full Time" means 2,000 hours per year.
- (12) "General Skill Building" means education provided to enhance general skills of a substance abuse professional provided by an individual who may or may not be a substance abuse professional.
- ~~(10)~~(13) "Impairment" means a mental illness, substance abuse or chemical dependency, physical illness, or aging problem.
- ~~(11)~~(14) "Letter of Reference" means a letter that recommends a person for certification.
- ~~(12)~~(15) "Membership In Good Standing" means a member's certification is not in a state of revocation, lapse, or suspension. However, an individual whose certification is suspended and the suspension is stayed is a member in good standing during the period of the stay.
- ~~(13)~~(16) "Passing score" means the score set by the entity administering the exam.
- ~~(14)~~(17) "President" means the President of the Board.
- ~~(15)~~(18) "Prevention Consultation" means a service provided to other mental health, human service, and community planning/development organizations or to individual practitioners in other organizations to assist in the development of insights and skills of the practitioner necessary for prevention.
- ~~(16)~~(19) "Prevention performance domains" means areas of professional activities to include:
- ~~(a)~~ planning and ~~evaluations,~~ evaluations;
 - ~~(b)~~ education and skill—~~development,~~ development;
 - ~~(c)~~ community ~~organization,~~ organization;
 - ~~(d)~~ public and organizational ~~policy,~~ policy; and
 - ~~(e)~~ professional growth and responsibility.
- ~~(17)~~(20) "Referral" means identifying the needs of an individual that cannot be met by the counselor or agency and assisting the individual ~~to utilize~~ in utilizing the support systems and community resources available.
- ~~(18)~~(21) "Rehabilitation" means re-establishing the functioning needed for professional competency.
- ~~(19)~~(22) "Reinstatement" means an action where the Board restores certification or registration to an applicant after the applicant completes the requirements imposed by the Board.
- ~~(20)~~(23) "Relapse" means the return to the pattern of substance abuse as well as the process during which indicators appear prior to the person's resumption of substance abuse or a re-appearance or exacerbation of physical, psychological or emotional symptoms of impairment.
- ~~(21)~~(24) "Renewal" means an action by the Board granting a substance abuse professional a consecutive certification or registration based upon the completion of requirements for renewal as prescribed by the Board.
- ~~(22)~~(25) "Revival" means an action by the Board granting a substance abuse professional a certification or registration following a lapse of certification or registration wherein the professional must also meet the requirements for renewal as prescribed by the Board.
- ~~(23)~~(26) "Reprimand" means a written warning from the Board to a person making application for certification by the Board or certified by the Board.
- ~~(24)~~(27) "Respondent" means a person who is making application for certification by the Board or is certified by the Board against whom a complaint has been filed.
- ~~(25)~~(28) "Sexual activity" means:
- (a) Contact between the penis and the vulva or the penis and the anus;

- (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or
- (c) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

~~(26)~~(29) "Sexual Contact" means the intentional touching, either directly or indirectly, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

~~(27)~~(30) "Substance Abuse Counseling Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the 12 core functions (Rule .0204 of this Chapter) as documented by a job description and supervisors evaluation.

~~(28)~~(31) "Substance Abuse Prevention Consultant Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the prevention domains referenced by Rule .0206 of this Chapter and as documented by a job description and supervisor's evaluation.

(32) "Substance Abuse Specific" means education which directly addresses content focused upon alcohol and other drugs and the substance abusing population and is provided for a substance abuse professional by one whose expertise is in the field of alcohol and other drugs.

~~(29)~~(33) "Supervised Practice" means supervision of the applicant in the knowledge and skills related to substance abuse professionals.

~~(30)~~(34) "Suspension" means a loss of certification or the privilege of making application for certification.

Authority G.S. 90-113.30; 90-113.33; 90-113.40; 90-113.41; 90-113.41A.

SECTION .0200 - CERTIFICATION

21 NCAC 68 .0202 REGISTRATION PROCESS FOR BOARD CERTIFICATION

(a) Individuals may register with the Board at the beginning of their entry into the field. This allows the Board to review the applicant's materials including education, training, experience and supervision contracts and provide the ~~registrant~~ applicant with a clear understanding of his or her standing in the certification process.

(b) Although early registration is not required, it will provide better direction through the process. To register, the applicant shall send the following to the Board:

- (1) Completed registration form provided by the Board;

(2) Documentation of required high school graduation or completion of GED, as well as documentation of any baccalaureate or advanced degree the applicant may have completed;

(3) A signed supervision contract provided by the Board documenting the proposed supervision process by an approved supervisor;

(4) A signed form attesting to the applicant's commitment to adhere to the ethical standards of the Board;

(5) Documentation of three hours of educational training in ethics; and

(6) A check or money order in the amount of one hundred fifty dollars (\$150.00) that is non-refundable and made payable to the Board.

(c) Once the materials are determined by the Board to be in order the applicant shall be granted registration status.

(d) If a ~~registrant~~ Registrant performs services as a counselor, in order for this experience to be considered toward certification at a later date, the ~~registrant~~ Registrant shall receive supervision from an approved supervisor at a ratio of one hour of supervision for every ten hours of practice.

(e) Registration with the Board shall be for a period of no more than five years unless the Registrant resubmits the documents and pays the fees set forth in this Rule.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40.

21 NCAC 68 .0208 CONTINUING EDUCATION REQUIRED FOR COUNSELOR AND PREVENTION CONSULTANT RECERTIFICATION

(a) Each certified Counselor and Prevention Consultant shall receive 60 hours of Board approved education during the current certification period which shall be documented. A minimum of 30 hours shall be substance abuse specific (SAS) and no more than 25 percent or 15 hours can be inservice education. The education may include a combination of hours including attending workshops, receiving clinical supervision and providing workshops.

(b) Recertification educational guidelines as a Substance Abuse Professional require:

(1) No more than 25 percent or 15 hours may be inservice education, received within your organization by staff of the same employment.

(2) No more than 25 percent or 15 hours of workshop presentation with one hour of presentation translating to one hour of education. Workshop presentation shall be a part of an event pre-approved by the Board.

(3) No more that 25 percent or 15 hours of Alcohol/Drug Education Traffic School (ADETS) and Drug Education School (DES) events.

(4) An applicant shall include documentation of each event submitted.

(5) All applicants shall include six hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education and three hours of

professional ethics training and education for each recertification.

- (6) No more than ~~25~~ 50 percent self study, pre-approved by the Board pursuant to Rule .0213 of this Section.

(c) To be recertified, a certified professional must submit the following:

- (1) A completed application form with continuing education documented; and
- (2) A non-refundable one hundred twenty-five dollar (\$125.00) recertification fee.

Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.38.

SECTION .0300 - CLINICAL ADDICTIONS SPECIALIST

21 NCAC 68 .0306 RENEWAL OF INDIVIDUAL CERTIFICATION AS CLINICAL ADDICTIONS SPECIALIST

(a) An applicant who is in the deemed status group shall submit the following every two years:

- (1) A completed application form and copy of current substance abuse certification from the applicant's deemed status professional discipline.
- (2) A non-refundable recertification fee of thirty-five dollars (\$35.00).

(b) All other individual applicants shall:

- (1) Renew certification as classified by the criteria for their original certification every two years.
- (2) Document completing 40 hours of education pursuant to Section .0400 of this Chapter, during the current certification period. A minimum of 30 hours shall be substance abuse specific. This education may include a combination of hours including attending workshops, receiving clinical supervision and providing workshops.
- (3) Meet recertification educational guidelines as a substance abuse professional as follows:

- (A) No more that 25 percent or 10 hours may be inservice education, received within the applicant's organization by staff of the same employment.
- (B) No more that 25 percent or 10 hours receiving supervision with two hours of supervision translating to one hour of education.
- (C) No more than 25 percent or 10 hours of workshop presentation with ~~two hours~~ one hour of presentation translating to one hour of education. Workshop presentation shall be pursuant to Rule .0213 of this Chapter.
- (D) No more than 25 percent of 10 hours of Alcohol/Drug Education Traffic School (ADETS) and Drug Education School (DES) events.
- (E) All applicants shall include six hours of HIV/AIDS STDS/TB/Bloodborne

pathogens training and education and three hours of professional ethics training and education for each certification.

(F) No more than 50 percent self study, preapproved by the Board pursuant to Rule .0213 of this Section.

- (4) A completed application form with continuing education documented.
- (5) A non-refundable one hundred twenty-five dollar (125.00) recertification fee.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.41A; 90-113.43.

SECTION .0400 - EDUCATION

21 NCAC 68 .0406 PROCEDURES FOR APPROVAL OF SELF-STUDY COURSES

(a) Self-study courses may be submitted for approval for ~~certification and recertification—hours only and shall be submitted by the vendor.~~ hours.

(b) A copy of all documents including test and documentation of completion shall be submitted with the application.

~~(c) At the end of the year for which the course is approved, a list of all North Carolina applicants enrolling for the training with completion outcome shall be submitted to the Certification Board.~~

~~(d)(c)~~ No more than ~~25%- 50%~~ of hours ~~for recertification~~ may be completed through self-study programs.

~~(e)(d)~~ Self-study courses may not be repeated for credit.

~~(f)(e)~~ A fee of one hundred fifty dollars (\$150.00) shall be submitted for each ~~course~~ course by the vendor for pre-approval by the Board. Approval is for one year from the date the Certification Board approves the application. ~~A fee of twenty five dollars (\$25.00) shall be submitted for renewal.~~

~~(g)(f)~~ Self study approved by IC&RC/AODA, Inc. member boards and organizations granted deemed status shall be accepted with documentation of completion.

Authority G.S. 90-113.30; 90-113.37; 90-113.38; 90-113.40.

SECTION .0500 - ETHICAL PRINCIPLES OF CONDUCT

21 NCAC 68 .0512 RESPONSIBILITY OF SUPERVISOR TO SUPERVISEE

A certified professional serving as a clinical supervisor shall:

- (1) Be aware of his or her influential position with respect to students, employees, and supervisees, and therefore avoid exploiting the trust and dependency of such persons.
- (2) Avoid dual relationships that could impair professional judgment, increase the risk of exploitation, or potentially cause harm to the supervisee. To implement this standard the supervisor shall not:
 - (A) Accept family members who are related by blood or marriage or a member of the supervisor's household as students or supervisees;

- (B) Provide therapy or therapeutic counseling to students, employees, or supervisees; or
- (C) Solicit or engage in sexual activity or contact with students or supervisees while providing supervision.
- (3) Be trained in and knowledgeable about supervision methods and techniques.
- (4) Shall supervise or consult only within his or her knowledge, training, and competency.
- (5) Guide his or her supervisee to perform services responsibly, competently, and ethically. The supervisor shall assign to his or her employees, supervisees, and students only those tasks or duties that these individuals can be expected to perform competently, based on the supervisee's education, experience, or training, either independently or with the level of supervision being provided.
- (6) Not disclose the confidential information provided by a supervisee except:
 - (A) As mandated by law;
 - (B) To prevent harm to a client, an organization, or other persons involved with the supervision;
 - (C) Where the supervisee is a respondent or defendant in a civil, criminal, or disciplinary action;
 - (D) In educational or training settings where there are multiple supervisors, and then only to other professional colleagues who share responsibility for the performance or training of the supervisee; or
 - (E) If consent is obtained in writing, and then such information may be revealed only:
 - (i) In accordance with the terms of the consent; and
 - (ii) After being clear to the supervisee regarding the limits to confidentiality within the supervisory relationship, and pursuant to 21 NCAC 68 .0508 of the North Carolina Administrative Code.
- (7) Establish and facilitate a fair and respectful process for providing evaluation of performance and feedback to a supervisee. To implement this process the supervisee shall be informed of the timing of evaluations, methods, and levels of competency expected.
- (8) Not endorse students or supervisees for certification, licensure, employment, or completion of an academic training program if they believe the supervisees are not qualified for the endorsement. Supervisors shall develop a plan to assist supervisees who are not qualified for endorsement to become qualified.

- (9) Make financial arrangements for any remuneration with supervisees and organizations only if these arrangements are clear and conform to customary local standards as to amount. All fees shall be disclosed to the supervisee prior to the beginning of supervision if practicable.

Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40.

SECTION .0600 - GROUNDS FOR DISCIPLINE AND DISCIPLINARY PROCEDURES

21 NCAC 68 .0606 EFFECT OF ACTIONS OF COURT OF OTHER PROFESSIONAL GROUPS

(a) If a person certified or applying for certification by the Board has been disciplined by another professional organization or convicted of a felony or a misdemeanor and that discipline or conviction relates to his qualifications or functions as a substance abuse professional, the Ethics Committee or the Board may take this prior record into consideration when imposing disciplinary sanctions.

(b) When such prior discipline or conviction is discovered, it shall be referred to the Ethics Committee and shall be treated by the Ethics Committee in the same manner as a complaint.

(c) Such prior discipline or conviction as described in Paragraph (a) of this Rule shall be presumed to be correct and appropriate. In order to overcome this presumption, the respondent must prove to the Committee's or the Board's satisfaction at least one of the following:

- (1) The process was so flawed that the finding of the organization or board is without basis; or
- (2) The disciplinary action by the organization or board does not bear a reasonable relation to the conduct complained of resulting in undue punishment.

(d) Registrants and certified professionals shall notify the Board within 30 days from the date of any conviction or finding of guilt, or pleading of nolo contendere for all criminal convictions. This reporting shall include DWI convictions but exclude traffic infractions.

(e) Failure to report these criminal convictions shall be considered a violation of the Ethical Principles of Conduct.

Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.41A; 90-113.43.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to adopt the rules cited as 26 NCAC 02C .0112-.0113, amend the rules cited as 26 NCAC 02C .0104, .0109, .0303, .0305-.0306, .0401-.0403, .0502-.0503 and repeal the rule cited as 26 NCAC 02C .0410. Notice of Rule-making Proceedings was published in the Register on July 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: *October 18, 2002*

Time: *10:00 a.m.*

Location: *422 N. Blount St., Raleigh, NC*

Reason for Proposed Action: *To clarify who is authorized to sign forms, to allow more to be done electronically versus print copies, to update information to citing authorities, availability of the Register and Code, to require a copy of supporting documentation for review with temporary rules, and make other clarifying changes.*

Comment Procedures: *Comments from the public shall be directed to Molly Masich, 6714 Mail Service Center, Raleigh, NC 27699-6714 or email Molly.Masich@ncmail.net. Comments will be received through October 18, 2002.*

Fiscal Impact

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

CHAPTER 02 – RULES DIVISION

SUBCHAPTER 02C - SUBMISSION PROCEDURES FOR RULES AND OTHER DOCUMENTS TO BE PUBLISHED IN THE NORTH CAROLINA REGISTER AND THE NORTH CAROLINA ADMINISTRATIVE CODE

SECTION .0100 - GENERAL

26 NCAC 02C .0104 RETURN COPY

If an agency desires a returned copy of any document submitted to OAH, the agency shall submit an additional copy permanently marked as the agency's return copy-copy and a self addressed envelope with postage affixed or an envelope prepared for state government interoffice delivery.

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0109 CITATION TO AUTHORITIES

(a) The agency shall cite authorities according to the most current edition of the rules of citation contained in "A Uniform System of Citation" except as listed in Paragraph (b) of this Rule. "A Uniform System of Citation" is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained from the Harvard Law Review Association, Gannett House, 1511 Massachusetts Ave., Cambridge, Massachusetts 02138 at a cost of seven dollars and fifty cents (\$7.50)- sixteen dollars (\$16.00).

(b) The agency shall cite the following authorities as:

- (1) the General Statutes of North Carolina as "G.S. #";
- (2) the Session Laws of North Carolina as "S.L. 19xx, c. x, s. x"; "S.L. 20xx-xxx, s. x";
- (3) an Executive Order issued by the Governor as "E.O. #, (Governor's name), (year)";
- (4) the North Carolina Administrative Code as "(Title #) NCAC (Chapter or Subchapter #) (####)"; and

- (5) the North Carolina Register as "(Vol. #) NCR (Issue #), (page #)".

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0112 AGENCY FINAL COPY

(a) OAH shall send a final draft of an adopted temporary or permanent rule to the agency's rule-making coordinator after the rule is filed with OAH.

(b) If within 10 working days of receipt by the agency OAH receives written notification from the agency of any typographical errors made by OAH, OAH shall correct the errors.

(c) OAH shall send final drafts electronically to the rule-making coordinator unless electronic transmission is not available.

Authority G.S. 150B-21.5; 150B-21.20.

26 NCAC 02C .0113 AUTHORIZATION FOR SIGNATURE

The head of a principal state department may delegate the authority to sign forms to another pursuant to G.S. 143B-10(a). If the head of a principal state department has delegated this authority, then the agency shall submit a copy of such delegation with rule filings. It is necessary to submit only one copy of such delegation with all rules filed by an agency for a single month's review by the Commission.

Note: An agency head may not delegate the function of signing forms to another person except the head of a principal State department may assign or reassign this function under the authority provided in G.S. 143B-10(a). That delegation authorization does not apply to all agency, boards or commission heads. The following is a listing of principal state department heads that may delegate the function of signing forms for the agency head:

- (1) Department of Cultural Resources
- (2) Department of Health and Human Services
- (3) Department of Revenue
- (4) Department of Crime Control and Public Safety
- (5) Department of Correction
- (6) Department of Environment and Natural Resources
- (7) Department of Transportation
- (8) Department of Administration
- (9) Department of Commerce
- (10) Department of Juvenile Justice and Delinquency Prevention.

Authority G.S. 150B-21.19.

SECTION .0300 - THE NORTH CAROLINA REGISTER

26 NCAC 02C .0303 AVAILABILITY OF THE NORTH CAROLINA REGISTER

(a) An annual A print subscription to the Register Register, available in hardcopy, 3 1/2 inch diskette, or email, shall be one hundred and ninety-five dollars (\$195.00) annually plus NC sales tax if applicable.

(b) Individual issues-print issues, if available, shall be ten dollars (\$10.00) plus N.C. sales tax if applicable.

(c) A person requesting a subscription shall direct the request to:

Office of Administrative Hearings
 6714 Mail Service Center
 Raleigh, NC 27699-6714
 phone: 919.733.2678
 fax: 919.733.3462

email: postmaster@oah.state.nc.us

(d) The Register is available, at no charge, on the OAH website: <http://www.oah.state.nc.us>.

Authority G.S. 150B-21.25.

26 NCAC 02C .0305 PUBLICATION OF RULE-MAKING AGENDA

~~(a)~~ If an agency publishes a rule-making agenda, the agency shall submit the agenda, the submission form, and an electronic version of the agenda.

~~(b) OAH shall return to the agency an edited copy of the agenda and the filed diskette.~~

Authority G.S. 150B-21.17.

26 NCAC 02C .0306 PUBLICATION OF NOTICE OF TEXT

(a) The agency shall submit its Notice of Text on an OAH Notice of Text form. If the information contained in the notice exceeds the space provided on the form, the agency shall also submit an electronic version of the information.

(b) All rules submitted for publication by an agency at the same time, with the same proposed effective date, and with the same public hearing date and location if a hearing is scheduled, shall be listed on a single form.

(c) The agency shall submit the text of the proposed rule and an electronic version. ~~OAH shall return to the agency an edited copy of the rule and the filed diskette.~~

(d) A rule proposed to be adopted or amended shall meet the following requirements:

(1) The rule shall contain an introductory statement immediately preceding the text. The statement shall contain the rule citation and the action proposed to be taken.

(2) Following the introductory statement, the rule number, name, text and history note shall be in the form specified in Rule 26 NCAC 02C .0108:

(A) any text to be deleted from an existing rule shall be indicated by strikeout marks;

(B) any new or added text shall be underlined; and

(C) punctuation shall be considered a part of the previous word, such as:

(i) when the previous word is deleted, the punctuation shall also be struck through with the previous word; and

(ii) when punctuation is added after an existing word, the existing word shall be struck through and followed by the word and punctuation underlined.

The smallest unit of text to be struck through or underlined shall be an entire word or block of characters separated from other text by spaces.

(e) A rule proposed to be repealed shall meet the following requirements:

(1) The rule shall contain an introductory statement. The statement shall contain the rule citation and the action proposed to be taken.

(2) Following the introductory statement, the rule shall contain the number and rule name of the rule proposed to be repealed.

(3) A history note shall follow the rule number and name.

Authority G.S. 150B-21.17.

SECTION .0400 - NORTH CAROLINA ADMINISTRATIVE CODE

26 NCAC 02C .0401 SCOPE AND AVAILABILITY

(a) The rules in this Section set forth the requirements for submitting rules for inclusion in the Code. The agency shall also comply with the requirements in Sections .0100 - .0200 of this Subchapter.

(b) These Rules apply to agencies subject to G.S. 150B, Article 2A, as well as those agencies subject to G.S. 150B-21.21(a) and (b).

~~(c) The Official North Carolina Administrative Code is available by subscription from WestGroup and may be ordered directly from West by calling 1-800-762-5272, ordering from the online store at <http://www.westgroup.com> or by writing to WestGroup, 610 Opperman Drive, Eagan, MN 55123.~~

~~(d) The North Carolina Administrative Code is available, at no charge, on the OAH website: <http://www.oah.state.nc.us>.~~

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0402 PUBLICATION OF A PERMANENT RULE

The agency shall submit a permanent rule for publication in the Code with the following:

(1) An original submission form and copy (Rule .0403 of this Section).

~~(2) If applicable, a letter authorizing the signature on the submission form (Rule .0113 of this Subchapter).~~

~~(2)(3)~~ An original and copies of the permanent rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter containing:

(a) an introductory statement (Rule .0404 of this Section);

(b) the body of the rule (Rule .0405 of this Section);

(c) any changes in the rule (Rule .0405 of this Section);

(d) the history note (Rule .0406 of this Section).

~~(3)(4)~~ A return copy, if desired (Rule .0104 of this Subchapter).

~~(4)(5)~~ An electronic version of the rule prepared in accordance with Rule .0105 of this Subchapter if the rule differs from the proposed text published in the Register or if the rule was not published in the Register.

Authority G.S. 150B-21.19.

26 NCAC 02C .0403 SUBMISSION FOR PERMANENT RULE FORM

(a) The agency shall submit a completed typed Submission for Permanent Rule form for each rule submitted for publication in the Code, except that the agency shall submit a single Submission for Permanent Rule form for all repealed rules that are codified within the same chapter.

(b) The agency head or rule-making coordinator shall sign the Submission for Permanent Rule form. ~~If the agency head has designated its authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such designation. It is only necessary to submit one copy of such designation with all rules filed by an agency for a single month's review by the Commission.~~

Authority G.S. 150B-21.19.

26 NCAC 02C .0410 AGENCY FINAL COPY OF PERMANENT RULES

~~(a) OAH shall send a final draft of a permanent rule to the agency's rule-making coordinator after the rule is filed with OAH.~~

~~(b) If within 30 days of the date appearing on the final draft OAH receives written notification from the agency of any typographical errors made by OAH in entering the rule into the Code, OAH shall correct the errors.~~

Authority G.S. 150B-21.5; 150B-21.20.

SECTION .0500 - TEMPORARY RULES

26 NCAC 02C .0502 PUBLICATION OF A TEMPORARY RULE

The agency shall submit a temporary rule for review by OAH and publication in the Code with the following:

- (1) An original Temporary Rule Certification form and copy (Rule .0503 of this Section).

(2) If applicable, a letter authorizing the signature on the submission form (Rule .0113 of this Subchapter).

~~(2)(3)~~ An original and copies of the temporary rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:

- (a) an introductory statement (Rule .0404 of this Subchapter);
- (b) the body of the rule (Rule .0405 of this Subchapter);
- (c) the history note (Rule .0406 of this Subchapter).

~~(3)(4)~~ A return copy, if desired (Rule .0104 of this Subchapter).

~~(4)(5)~~ An original Notice of Text or Notice of Text and Hearing form with copy if publication in the Register shall serve as Notice of Text.

(6) A copy of any legislation, statute, federal regulation, or other document supporting the grounds for the temporary rule pursuant to G.S. 150B-21.1(a). The agency shall highlight the information in the document that is pertinent to the need for the temporary rule.

Authority G.S. 150B-21.19.

26 NCAC 02C .0503 TEMPORARY RULE CERTIFICATION FORM

(a) The agency shall submit a completed typed Temporary Rule Certification form for a rule to be submitted for publication in the Code. The agency shall submit a single Temporary Rule Certification form for temporary rules when:

- (1) the rules are codified within the same chapter in the Code;
- (2) the finding for the action is the same;
- (3) the proposed effective date is the same; and
- (4) the rules are submitted at the same time for review by the Codifier of Rules.

(b) The agency head shall sign the Temporary Rule Certification form. ~~If the agency head has designated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such designation.~~

Authority G.S. 150B-21.19.

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: North Carolina Wildlife Resources Commission

Rule Citation: 15A NCAC 10C .0211

Effective Date: September 1, 2002

Findings Reviewed and Approved by: Julian Mann, III

Authority for the rulemaking: G.S. 113-134; 113-292

Reason for Proposed Action: Threat of invasive species being introduced into waters of the state. A permanent rule will be filed for this temporary rule.

Comment Procedures: Written comments may be addressed to Joan. B. Troy, 1701 Mail Service Center, Raleigh, NC 27699-1701.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

15A NCAC 10C .0211 POSSESSION OF CERTAIN FISHES

It is unlawful to transport, purchase, possess, or sell any species live individuals of piranha, "walking catfish" (Clarias batrachus), snakehead fish (from the Family Channidae, formerly Ophiocephalidae), black carp (Mylopharyngodon piceus) or white amur or "grass carp" (Ctenopharyngodon idellus), or to stock any of them in the public or private waters of North Carolina, except that the triploid grass carp certified to be sterile by genetic testing at a federal, state, or university laboratory may be bought, possessed and stocked locally for control of aquatic vegetation under a permit issued by the Executive Director and containing such conditions and limitations as he may deem necessary or advisable under the circumstances.

History Note: Authority G.S. 113-134; 113-292; Eff. February 1, 1976; Amended Eff. September 1, 1984; Temporary Amendment Eff. July 1, 2001; Amended Eff. July 18, 2002; Temporary Amendment Eff. September 1, 2002.

Rule-making Agency: Commission for Health Services

Rule Citation: 15A NCAC 19A .0101

Effective Date: October 1, 2002

Findings Reviewed and Approved by: Julian Mann

Authority for the rulemaking: G.S. 130A-134; 130A-135; 130A-139; and 130A-141

Reason for Proposed Action: This addition expands the list of reportable diseases to include a serious disease condition previously not required to be reported to the Division of Public Health. Expansion of the list of reportable diseases to include this disease is important if it is to be identified in a timely manner and subsequently controlled in an effective manner as state resources permit.

Comment Procedures: Written comments should be sent to Chris G. Hoke, JD, 2001 MSC, Raleigh, NC 27699-2001. Telephone (919) 715-4168; email: chris.hoke@ncmail.net.

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

NOTE: The plain underlined and struck-thru text was a temporary amendment effective February 18, 2002. The text in bold are the changes to be amended in this temporary rule.

15A NCAC 19A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 7 days;
(2) anthrax - 24 hours;
(3) botulism - 24 hours;
(4) brucellosis - 7 days;
(5) campylobacter infection - 24 hours;
(6) chancroid - 24 hours;
(7) chlamydial infection (laboratory confirmed) - 7 days;
(8) cholera - 24 hours;
(9) Creutzfeldt-Jakob disease - 7 days;
(9)(10) cryptosporidiosis - 24 hours;
(10)(11) cyclosporiasis - 24 hours;
(11)(12) dengue - 7 days;
(12)(13) diphtheria - 24 hours;

TEMPORARY RULES

- ~~(13)~~(14) E. coli O157:H7 infection—Escherichia coli, shiga toxin-producing - 24 hours;
- ~~(14)~~(15) ehrlichiosis - 7 days;
- ~~(15)~~(16) encephalitis, arboviral - 7 days;
- ~~(16)~~(17) enterococci, vancomycin-resistant, from normally sterile site - 7 days;
- ~~(17)~~(18) foodborne disease, including but not limited to Clostridium perfringens, staphylococcal, and Bacillus cereus - 24 hours;
- ~~(18)~~(19) gonorrhea - 24 hours;
- ~~(19)~~(20) granuloma inguinale - 24 hours;
- ~~(20)~~(21) Haemophilus influenzae, invasive disease - 24 hours;
- (22) Hantavirus infection – 7 days;
- ~~(21)~~(23) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura - 24 hours;
- ~~(22)~~(24) Hemorrhagic fever virus infection – 24 hours;
- ~~(22)~~(25) hepatitis A - 24 hours;
- ~~(23)~~(26) hepatitis B - 24 hours;
- ~~(24)~~(27) hepatitis B carriage - 7 days;
- ~~(25)~~(28) hepatitis C, acute - 7 days;
- ~~(26)~~(29) human immunodeficiency virus (HIV) infection confirmed - 7 days;
- ~~(27)~~(30) legionellosis - 7 days;
- ~~(28)~~(31) leptospirosis - 7 days;
- (32) listeriosis – 24 hours;
- ~~(29)~~(33) Lyme disease - 7 days;
- ~~(30)~~(34) lymphogranuloma venereum - 7 days;
- ~~(31)~~(35) malaria - 7 days;
- ~~(32)~~(36) measles (rubeola) - 24 hours;
- ~~(33)~~(37) meningitis, pneumococcal - 7 days;
- ~~(34)~~(38) meningococcal disease - 24 hours;
- ~~(35)~~(39) mumps - 7 days;
- ~~(36)~~(40) nongonococcal urethritis - 7 days;
- ~~(37)~~(41) plague - 24 hours;
- ~~(38)~~(42) paralytic poliomyelitis - 24 hours;
- ~~(39)~~(43) psittacosis - 7 days;
- ~~(40)~~(44) Q fever - 7 days;
- ~~(41)~~(45) rabies, human - 24 hours;
- ~~(42)~~(46) Rocky Mountain spotted fever - 7 days;
- ~~(43)~~(47) rubella - 24 hours;
- ~~(44)~~(48) rubella congenital syndrome - 7 days;
- ~~(45)~~(49) salmonellosis - 24 hours;
- ~~(46)~~(50) shigellosis - 24 hours;
- ~~(47)~~(51) smallpox– 24 hours;
- ~~(48)~~(52) streptococcal infection, Group A, invasive disease - 7 days;
- ~~(49)~~(53) syphilis - 24 hours;
- ~~(50)~~(54) tetanus - 7 days;
- ~~(51)~~(55) toxic shock syndrome - 7 days;
- ~~(52)~~(56) toxoplasmosis, congenital - 7 days;
- ~~(53)~~(57) trichinosis - 7 days;
- ~~(54)~~(58) tuberculosis - 24 hours;
- ~~(55)~~(59) tularemia - 24 hours;
- ~~(56)~~(60) typhoid - 24 hours;
- ~~(57)~~(61) typhoid carriage (Salmonella typhi) - 7 days;
- ~~(58)~~(62) typhus, epidemic (louse-borne) - 7 days;
- ~~(59)~~(63) vibrio infection (other than cholera) - 24 hours;
- ~~(60)~~(64) whooping cough - 24 hours;

(65) yellow fever - 7 days.

(b) For purposes of reporting; confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture; repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test; positive polymerase chain reaction (PCR) test; or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of State and Territorial Public Health Laboratory Directors. Laboratories.

(c) In addition to the laboratory reports for Mycobacterium tuberculosis, Neisseria gonorrhoeae, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
 - (A) Any hantavirus or hemorrhagic fever virus.
 - (B) Arthropod-borne virus (any type).
 - ~~(B)~~(C) Bacillus anthracis, the cause of anthrax.
 - ~~(C)~~(D) Bordetella pertussis, the cause of whooping cough (pertussis).
 - (E) Borrelia burgdorferi, the cause of Lyme disease (confirmed tests).
 - ~~(D)~~(F) Brucella spp., the causes of brucellosis.
 - ~~(E)~~(G) Campylobacter spp., the causes of campylobacteriosis.
 - (H) Chlamydia trachomatis, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - ~~(F)~~(I) Clostridium botulinum, a cause of botulism.
 - ~~(G)~~(J) Clostridium tetani, the cause of tetanus.
 - ~~(H)~~(K) Corynebacterium diphtheriae, the cause of diphtheria.
 - ~~(I)~~(L) Coxiella burnetii, the cause of Q fever.
 - ~~(J)~~(M) Cryptosporidium parvum, the cause of human cryptosporidiosis.
 - ~~(K)~~(N) Cyclospora cayentanesis, the cause of cyclosporiasis.
 - ~~(L)~~(O) Ehrlichia spp., the causes of ehrlichiosis.
 - ~~(M)~~(P) Escherichia coli O157:H7, a Shiga toxin-producing Escherichia coli, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
 - ~~(N)~~(Q) Francisella tularensis, the cause of tularemia.

TEMPORARY RULES

- ~~(Q)~~(R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
 - ~~(P)~~(S) Human Immunodeficiency Virus, the virus associated with cause of AIDS.
 - ~~(Q)~~(T) Legionella spp., the causes of legionellosis.
 - ~~(R)~~(U) Leptospira spp., the causes of leptospirosis.
 - ~~(V)~~ Listeria monocytogenes, the cause of listeriosis.
 - ~~(W)~~ Plasmodium falciparum, P. malariae, P. ovale, and P. vivax, the causes of malaria in humans.
 - ~~(X)~~ Poliovirus (any), the cause of poliomyelitis.
 - ~~(S)~~(Y) Rabies virus.
 - ~~(F)~~(Z) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
 - ~~(AA)~~ Rubella virus.
 - ~~(U)~~(BB) Salmonella spp., the causes of salmonellosis.
 - ~~(V)~~(CC) Shigella spp., the causes of shigellosis.
 - ~~(DD)~~ Smallpox virus, the cause of smallpox.
 - ~~(W)~~(EE) Trichinella spiralis, the cause of trichinosis.
 - ~~(X)~~(FF) Vibrio spp., the causes of cholera and other vibrioses.
 - ~~(GG)~~ Yellow fever virus.
 - ~~(Y)~~(HH) Yersinia pestis, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
- (A) Group A Streptococcus pyogenes (group A streptococci).
 - (B) Haemophilus influenzae, serotype b.
 - (C) Neisseria meningitidis, the cause of meningococcal disease.
 - (D) Vancomycin-resistant Enterococcus spp.
- (3) Positive serologic test results, as specified, for the following infections:
- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
 - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
 - (ii) Any hantavirus or hemorrhagic fever virus.
 - (iii) Chlamydia psittaci, the cause of psittacosis.
 - (iv) Coxiella burnetii, the cause of Q fever.
 - (v) Dengue virus.
 - (vi) Ehrlichia spp., the causes of ehrlichiosis.
 - (vii) Measles (rubeola) virus.
 - (viii) Mumps virus.

- (ix) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
 - (x) Rubella virus.
 - (xi) Yellow fever virus.
- (B) The presence of IgM serum antibodies to:
- ~~(i)~~ Chlamydia psittaci
 - ~~(ii)~~ Hepatitis A virus.
 - ~~(iii)~~ Hepatitis B virus core antigen.
 - ~~(iv)~~ Rubella virus.
 - ~~(v)~~ Rubeola (measles) virus.
 - ~~(vi)~~ Yellow fever virus.

History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141; Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. October 1, 1994; February 1, 1990; Temporary Amendment Eff. July 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. October 1, 2002; February 18, 2002; June 1, 2001.

Rule-making Agency: *Commission for Health Services*

Rule Citation: *15A NCAC 21D .0706*

Effective Date: *September 1, 2002*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 130A-361*

Reason for Proposed Action: *This rule change is necessary to immediately ensure the availability of special nutrition formulas for WIC participants. Vendors will be paid in the same manner prior to the implementation of the temporary rule which became effective July 1, 2002.*

Comment Procedures: *Written comments should be submitted to Chris Hoke, Division of Health Services, 1915 Mail Service Center, Raleigh, NC 27699-1915.*

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21D - WIC/NUTRITION

SECTION .0700 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM

15A NCAC 21D .0706 AUTHORIZED WIC VENDORS

- (a) Vendor applicants and authorized vendors will be placed into peer groups as follows:
 - (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores,

stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, will be placed into peer groups based on the number of cash registers in the store until annual WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:

- Peer Group I - - zero to two cash registers;
- Peer Group II - - three to five cash registers; and
- Peer Group III - - six or more cash registers;

- (2) Authorized vendors for which annual WIC supplemental food sales is available, and chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, will be placed into peer groups as follows, except as provided in Subparagraph (a)(6) of this Rule.

- Peer Group I - - two thousand dollars (\$2,000) to one hundred thousand dollars (\$100,000) annually in WIC supplemental food sales at the store;
- Peer Group II - - greater than one hundred thousand dollars (\$100,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;
- Peer Group III - - greater than three hundred thousand dollars (\$300,000) but not exceeding five hundred thousand dollars (\$500,000) annually in WIC supplemental food sales at the store;
- Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement) and stores exceeding five hundred thousand dollars (\$500,000) annually in WIC supplemental food sales;
- Peer Group V - - military commissaries; and
- Peer Group VI - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement;

- (3) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.
- (4) In determining a vendor's peer group designation based on annual WIC supplemental food sales, the state agency will look at the most recent 12-month period for which sales data is available. If the most recent available 12-month period of WIC sales data ends more than one year prior to the time

of designation, the peer group designation will be based on the number of cash registers in the store.

- (5) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

- (6) A vendor applicant that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification from the WIC Program will be placed into the peer group the store was in at the time of the nonrenewal, termination or disqualification, provided that no more than one year has passed since the nonrenewal, termination or disqualification. All other vendor applicants will be placed into peer groups in accordance with Subparagraphs (a)(1) and (a)(2) of this Rule.

(b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) Accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant must submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List;
- (2) At the time of application and throughout the term of authorization, submit all completed forms to the local WIC program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store;
- (3) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(3)(B) of this Rule;
 - (A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group will be used to determine the maximum price for each supplemental food. The maximum price will be based on the average of the current highest shelf price for each supplemental food within a vendor peer group, plus a factor to reflect fluctuations in

- wholesale prices. The state agency will reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency will use the WIC Price Lists which must be submitted by all vendors by January 1 and July 1 each year in accordance with Subparagraph (c)(31) of this Rule. The other two price assessments will be based on WIC Price Lists requested from a sample of vendors within each peer group in March and September of each year;
- (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant will be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant will be deemed to have met the requirements of Subparagraph (b)(3) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application will be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization;
- (4) Pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(24) of this Rule. A vendor applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application;
- (5) Attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements;
- (6) Mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case at all times;
- (7) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer;
- (8) The store shall be open throughout the year for business with the public at least six days a week for a minimum of 40 hours per week between 8:00 a.m. and 11:00 p.m.;
- (9) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local agency;
- (10) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business;
- (11) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, but not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice;
- (12) A vendor applicant shall not be authorized if it is currently disqualified from the Food Stamp Program or it has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired;
- (13) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
- (A) a Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had

- a penalty not been paid, is continuing;
or
- (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of Subparagraph (b)(13) shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of Subparagraph (b)(13) shall not be met even if such transfer or conveyance of financial interest in a Food Stamp vendor under Subparagraph (b)(13)(A) prematurely ends the disqualification period applicable to that Food Stamp vendor. The requirements of this Subparagraph will apply until the time the Food Stamp vendor disqualification otherwise would have expired;

- (14) A vendor applicant, excluding free-standing pharmacies, must have Food Stamp Program authorization for the store as a prerequisite for WIC vendor authorization and must provide its Food Stamp Program authorization number to the state agency; and
- (15) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.

(c) By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;
- (2) Accept WIC program food instruments in exchange for WIC supplemental foods; Supplemental foods are those foods which satisfy the requirements of 15A NCAC 21D .0501. The foods, specifications and product identification are described in the WIC Vendor Manual;
- (3) Provide only the authorized supplemental foods listed on the food instrument, accurately determine the charges to the WIC program, and clearly complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature of the WIC customer; The WIC customer is not required to get all of the

- supplemental foods listed on the food instrument;
- (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument will be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(3)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price will be invalid and returned to the vendor. The vendor may receive a replacement food instrument through the local agency for up to the maximum price set by the state agency for that food instrument;
- (7) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(3)(A) of this Rule for each supplemental food within the vendor's peer group;
- ~~(8) For exempt infant formulas and WIC-eligible medical foods, excluding the exempt pediatric formulas referenced in this Subparagraph (c)(8), accept payment from the state WIC Program only up to the maximum price established by the state agency using the Medicaid Durable Medical Equipment Fee Schedule published by the North Carolina Division of Medical Assistance. For exempt pediatric formulas for high risk infants and children with medical conditions associated with prematurity and low birth weight, accept payment from the state WIC Program only up to the maximum price established by the state agency. The maximum price for each formula will be the most recently published manufacturer's highest wholesale price plus the food cost inflation rate adopted by USDA which is incorporated by reference with all subsequent amendments and editions. A copy of the food cost inflation rate is available at no cost from the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 1914 Mail Service Center, Raleigh, North Carolina;~~
- (8) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC

TEMPORARY RULES

- Program only up to the maximum price established for contract brand infant formulas under Part (b)(3)(A) of this Rule for the vendor's peer group;
- ~~(10)~~(9) For free-standing pharmacies, provide only infant formula and WIC-eligible medical foods;
- ~~(11)~~(10) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- ~~(12)~~(11) Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;
- ~~(13)~~(12) Prior to obtaining the countersignature, enter in the "Date Transacted" box the month, day and year the WIC food instrument is exchanged for supplemental food;
- ~~(14)~~(13) Ensure that the food instrument is countersigned in the presence of the cashier;
- ~~(15)~~(14) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
- ~~(16)~~(15) Not transact food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;
- ~~(17)~~(16) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact

- brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- ~~(18)~~(17) Clearly imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument;
- ~~(19)~~(18) Clearly imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
- ~~(20)~~(19) Promptly deposit WIC program food instruments in the vendor's bank. All North Carolina WIC program food instruments must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;
- ~~(21)~~(20) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;
- ~~(22)~~(21) Maintain secure storage for the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
- ~~(23)~~(22) Notify the local agency of misuse (attempted or actual) of the WIC program food instrument(s);
- ~~(24)~~(23) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) and vendors in Peer Groups I through V of Subparagraph (a)(2) of this Rule:

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	Total of 6 gallons fluid milk
	-and-	
	Skim/lowfat fluid: gallon	
	Nonfat dry: quart package	Total of 5 quarts when reconstituted
	-or-	
	Evaporated: 12 oz. can	5 cans
Cheese	2 varieties in 8 or 16 oz. package	Total of 6 pounds
Cereals	4 types (minimum package size 12 oz.)	Total of 12 packages
Eggs	Grade A, large or extra-large: white or brown: one dozen size carton	6 dozen
Juices	Frozen: 11.5-12 oz. container	10 containers

TEMPORARY RULES

	Single strength: 46oz container Orange juice must be available in frozen and single strength. A second flavor must be available in frozen or single strength.	10 containers
Dried Peas and Beans	2 varieties: one pound package or	3 packages
Peanut Butter	Plain (smooth, crunchy, or whipped; No reduced fat): 18 oz. container	3 containers
Infant Cereal	Plain-no fruit added: 2 cereal grains (one must be rice); 8-oz. box; brand specified in Vendor Agreement	6 boxes
Infant Formula	milk and soy-based as specified in Vendor Agreement; 13 oz. concentrate	62 can combination
Tuna	Chunk light in water: 6-6.5 oz. can	4 cans
Carrots	Raw, canned or frozen 14.5-16 oz. size	2 packages/cans

All vendors in Peer Groups I through III of Subparagraph (a)(1) and in Peer Groups I through VI of Subparagraph (a)(2) of this Rule shall supply milk, soy based, or lactose-free infant formula in 32 oz. ready-to-feed or powder within 48 hours of request by the state or local agency;

- ~~(25)~~(24) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- ~~(26)~~(25) Permit the purchase of supplemental food without requiring other purchases;
- ~~(27)~~(26) Attend, or cause a manager or other authorized store representative to attend, annual vendor training class upon notification of class by the local agency;
- ~~(28)~~(27) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- ~~(29)~~(28) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- ~~(30)~~(29) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with this agreement and state and federal WIC Program rules, regulations and law. This includes, but shall not be limited to, allowance of access to all WIC food instruments at the store and vendor records pertinent to the purchase of WIC supplemental foods, vendor records of all deductions and exemptions allowed by law or claimed in filing sales and use tax returns, and vendor records of all WIC supplemental foods purchased by the vendor, including invoices, copies of purchase orders, and any other

proofs of purchase. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records, or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;

- ~~(31)~~(30) Submit a current accurately completed WIC Price List when signing this agreement, and by January 1 and July 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
- ~~(32)~~(31) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the authorized WIC vendor stamp. The state agency has the authority to deny payment or assess a claim in the amount of the full purchase price of each food instrument affected by the vendor violation. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor will

TEMPORARY RULES

also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);

- ~~(33)~~ **(32)** Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments not paid or partially paid by the state agency. Additionally, the vendor may not charge the WIC customer for authorized supplemental foods obtained with food instruments;
- ~~(34)~~ **(33)** Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
- ~~(35)~~ **(34)** Notify the local agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- ~~(36)~~ **(35)** Return the authorized WIC vendor stamp to the local agency upon termination of this agreement or disqualification from the WIC Program;
- ~~(37)~~ **(36)** Offer WIC customers the same courtesies as offered to other customers;
- ~~(38)~~ **(37)** The WIC Vendor Agreement does not constitute a license or a property interest. A vendor must reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant will be subject to the vendor selection criteria of Paragraph (b) of this Rule; and
- ~~(39)~~ **(38)** Comply with all the requirements for vendor applicants of Subparagraphs (b)(3) and (b)(6) through (b)(14) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(3), (b)(7), (b)(8), (b)(10), (b)(11) or (b)(13) during the vendor's period of authorization, and sanction and/or terminate the Agreement of any vendor that fails to comply with Subparagraphs (b)(6),

(b)(9), (b)(12) or (b)(14) during the vendor's period of authorization.

(d) By signing the WIC Vendor Agreement, the local agency agrees to the following:

- (1) Provide at a minimum annual vendor training classes on WIC procedures and regulations;
- (2) Monitor the vendor's performance under this agreement in a reasonable manner to ensure compliance with the agreement, state and federal WIC program rules, regulations and policies, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a state fiscal year (July 1 through June 30) and all vendors shall be monitored at least once within three consecutive state fiscal years. Any vendor shall be monitored within one week of written request by the state agency;
- (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
- (4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
- (5) Keep records of the transactions between the parties under this agreement pursuant to 15A NCAC 21D .0206.

(e) In order for a food retailer or free-standing pharmacy to participate in the WIC Program a current WIC Vendor Agreement must have been signed by the vendor, the local WIC agency, and the state agency.

(f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

(g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions.

- (1) In accordance with 7 CFR 246.12(l)(1)(i), the State agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified.
- (2) A pattern, as referenced in 7 C.F.R. 246.12(l)(1)(iii)(B) through (F) and 246.12(1)(2)(iv), shall be established as follows:
 - (A) claiming reimbursement for the sale of an amount of a specific supplemental food item over a 60-day period which exceeds the store's documented inventory of that supplemental food item by 10 percent or more. Failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;

TEMPORARY RULES

- (B) two occurrences of vendor overcharging within a 12-month period;
- (C) two occurrences of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person within a 12-month period;
- (D) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
- (E) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or
- (F) three occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.

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

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

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

required by Subparagraph (c)(31) of this Rule.

- (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:
 - (A) 2.5 points for stocking WIC supplemental foods outside of the manufacturer's expiration date.
 - (B) 5 points for:
 - (i) failure to attend annual vendor training;
 - (ii) failure to stock minimum inventory; or
 - (iii) failure to mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case.
 - (C) 7.5 points for:
 - (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.); or
 - (ii) contacting a WIC customer in an attempt to recoup funds for food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments.
 - (D) 15 points for:
 - (i) failure to allow monitoring of a store by WIC staff when required;
 - (ii) failure to provide WIC food instrument(s) for review when requested;
 - (iii) failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(30) and Part (g)(2)(A) of this Rule for failure or inability to provide records for an inventory audit;
 - (iv) nonpayment of a claim made by the State agency; or
 - (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms), except as provided in Subparagraph (c)(30) and Part (g)(2)(A) of this Rule for providing false records for an inventory audit.

TEMPORARY RULES

- (3) For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (h)(2), are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points of the worst offense multiplied by 18 days. 18 days shall be added to the disqualification period for each point over 15 points.
- (i) For investigations pursuant to this Section, a single investigation is:
- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
- (A) buying or selling food instruments for cash (trafficking);
 - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;
 - (D) vendor overcharging;
 - (E) receiving, transacting, and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;
 - (F) charging for supplemental food not received by the WIC customer;
 - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;
 - (I) failure to properly transact a WIC food instrument;
 - (J) requiring a cash purchase to transact a WIC food instrument; or
 - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available;
- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
- (A) failure to stock minimum inventory;
 - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
 - (C) failure to allow monitoring of a store by WIC staff when required;
 - (D) failure to provide WIC food instrument(s) for review when requested;
 - (E) failure to provide store inventory records when requested by WIC staff; or
 - (F) failure to mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case;
- (3) Any other method used by the State or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
 - (B) failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule;
 - (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
 - (D) contacting a WIC customer in an attempt to recoup funds or food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
 - (E) nonpayment of a claim made by the State agency;
 - (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms); or
 - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit.
- (j) The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.
- (k) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Subparagraphs (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

TEMPORARY RULES

(l) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:

- (1) The civil money penalty formula in 07 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
- (2) The State agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of this Rule when the State agency determines that disqualification of a vendor would result in undue participant hardship in accordance with Subparagraph (l)(3) of this Rule.
- (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of undue hardship, are found to exist:
 - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
 - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
 - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.
- (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.

(m) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.

(n) The provision in 7 C.F.R. 246.12(l)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.

(o) The state agency reserves the right to set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(32) of this Rule.

(p) In accordance with 7 C.F.R. 246.12(l)(7) and 246.12(u)(5), North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace

any criminal or civil sanctions or other remedies that may be applicable under any federal and state law.

(q) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments accepted thereafter.

(r) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 15A NCAC 21D .0800.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990; Temporary Amendment Eff. May 17, 2000; Temporary Amendment Eff. June 23, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. September 1, 2002; July 1, 2002.

Rule-making Agency: Well Contractor Certification Commission

Rule Citation: 15A NCAC 27.0301

Effective Date: September 12, 2002

Findings Objected to on July 12, 2002 by: Beecher R. Gray

Authority for the rulemaking: G.S. 87-98.6; 87-98.9; 143B-301.11; S.L. 2001-440

Reason for Proposed Action: *The passage of Senate Bill 312 (Session Law 2001-440) by the General Assembly amended certain statutes governing Well Contractor Certification. Among the changes specified in this bill, were amendments to continuing education requirements. Over the last few months the Well Contractor Certification Commission has examined legislative changes in Session Law 2001-440. As a result of this effort, the Commission proposes to change the criteria for demonstrating that a well contractor has adequate experience to conduct well contractor activities. The Commission believes that requiring well contractors to have two years or 24 months of experience is burdensome. This time frame is reduced from twenty-four months to eighteen (18) months. Under this Rule,*

letters from businesses, suppliers, and government agencies attesting to a well contractor performance will no longer be considered as proof that a well contractor meets the experience requirement. Acceptable proof may also include an affidavit showing that the well contractor has been working in the trade for six months as shown in this Rule if the applicant can furnish information showing that he has completed either a Commission approved course of study through the NC Community College system, an apprenticeship program approved by the Department of Labor, or a similar course or apprenticeship approved by the Well Contractor Certification Commission. No other changes are being made to these Rules through temporary rulemaking.

A Notice of Intent to Adopt a Temporary Rule pursuant to Section 1.5 of Senate Bill 3312 or Session Law 2001-440 was published in June 3, 2002.

A 30 days Notice of Intent was required by statute to adopt a temporary rule. No comments were received that required changes to the language of the rule given in the notice published on June 3, 2002.

Comment Procedures: Comments, data, statements and other information about this rulemaking may be submitted in writing to David A. Hance, DENR, Division of Water Quality, Groundwater Section, 1636 Mail Service Center, Raleigh, NC 27699-1636. The Well Contractor Certification Commission will accept comments on this temporary rule through October 16, 2002. Written comments may also be submitted to Mr. Hance by facsimile transmission at 919-715-0588 or by email to david.hance@ncmail.net.

CHAPTER 27 - WELL CONTRACTOR CERTIFICATION RULES

SECTION .0300 - CERTIFICATION OF WELL CONTRACTORS

15A NCAC 27 .0301 APPLICATION REQUIREMENTS FOR CERTIFICATION

(a) The Commission shall accept applications and renewal requests for certification as a well contractor from any person who is at least 18 years of age and whose application meets all the following conditions:

- (1) Each application shall be submitted on forms provided by the Commission, which are designed for requesting certification as a well contractor by way of reexamination, certification without examination, or temporary certification and just be properly and accurately completed and submitted with an appropriate fee to the office of the chairman of the Commission.
- (2) Each application has been determined as complete. Incomplete applications and applications not accompanied by an appropriate fee and attachments cannot be processed and shall be returned to the applicant.
- (3) Each application shall contain proof of experience as provided in Paragraph (f) of this Rule.

(4) Each application shall include a request for the well contractor examination or include documentation that the applicant meets the requirement for certification without examination as provided in Section .0500 of this Chapter.

(b) Applicants who have intentionally supplied false information must wait 12 months before resubmitting an application for certification.

(c) The Commission shall not schedule an applicant to take the required examination until his application has been reviewed and the applicant has met all other conditions for certification. The applicant must pass the examination within three attempts or within a one year period of time after application submittal or a new application shall be required. An applicant who has failed the examination after three consecutive attempts shall be required to obtain eight PDH units prior to resubmittal of an application for certification.

(d) A certification shall not be issued until the applicant successfully passes the required examination or meets the requirements for certification without examination.

(e) A certification issued by the Commission shall be valid in every county in the state.

(f) Proof of two years-18 months experience in well contractor activities shall be demonstrated by providing one of the following:

(1) A list of at least 25 wells, together with their locations, major use and approximate depth and diameter, for which the applicant has supervised or assisted in the construction, repair or abandonment process. This list shall provide the name and address of the owner or owners of each well, and the approximate date the construction of each well was completed. A copy of the completion report for each well shall accompany the list. Completion dates of the 25 wells shall be distributed over a consecutive 24 18 month period.

~~(2) Letters from three persons in a business related to well contractor activities (such as, state or local government well inspectors, employing well contractors, competitors, and well materials suppliers) who attest that the applicant has been working in a well contractor activity for a minimum of 24 months.~~

~~(3)~~(2) A letter from at least one currently certified well contractor attesting that the applicant has been working in a well contractor activity for a minimum of 24 18 months.

~~(4)~~(3) Any other proof of working in well contractor activities for a minimum of 2418 months may be presented to the Commission and may be accepted on an individual basis.

~~(4)~~ An affidavit from at least one currently certified well contractor attesting that the applicant has been working for the certified well contractor in well construction for a minimum of six months may be accepted, if the applicant also furnishes proof of completion of one of the following:

TEMPORARY RULES

(A) Completion of a course of study in well construction techniques approved by the Well Contractor's Certification Commission and offered by a community college within the N.C. Department of Community Colleges with a passing grade; or

(B) Completion of an apprenticeship program approved by the Well Contractor's Certification Commission and approved by the N.C. Department of Labor in well construction; or

(C) Completion of a similar course of study or apprenticeship program as approved by the Well Contractor's Certification Commission.

History Note: Authority G.S. 87-98.6; 87-98.9; 143B-301.11; S.L. 2001-440;

Temporary Adoption Eff. December 15, 1998;

Eff. August 1, 2000;

Codifier determined that findings did not meet criteria for temporary rule on July 12, 2002;

Temporary Adoption Eff. September 12, 2002.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, September 19, 2002, 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 by Friday, September 13, 2002 to the RRC staff, the agency, and the individual Commissioners. 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
Thomas Hilliard, III
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House
Paul Powell - Chairman
Jennie J. Hayman Vice - Chairman
Dr. Walter Futch
Jeffrey P. Gray
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

September 19, 2002

Commission Review/Administrative Rules
Log of Filings (Log #189)
July 20, 2002 through August 20, 2002

DHHS/DIVISION OF MEDICAL ASSISTANCE

Optional 10 NCAC 50B .0102 Amend

DEPARTMENT OF INSURANCE/HOME INSPECTOR LICENSURE BOARD

Definitions 11 NCAC 08 .1101 Amend
Purpose and Scope 11 NCAC 08 .1103 Amend
General Exclusions 11 NCAC 08 .1105 Amend
Air Conditioning 11 NCAC 08 .1112 Amend
Interiors 11 NCAC 08 .1113 Amend
Insulation and Ventilation 11 NCAC 08 .1114 Amend

DEPARTMENT OF LABOR

Elevator, Escalator, Dumbwaiter, and Special Equip 13 NCAC 15 .0701 Adopt
Elevator, Escalator, Dumbwaiter, and Special Equip 13 NCAC 15 .0702 Adopt
Amusement Device Inspection Fee Schedule 13 NCAC 15 .0703 Adopt
Amusement Device Follow Up Inspection Fee 13 NCAC 15 .0704 Adopt

DENR/COASTAL RESOURCES COMMISSION

Definition of 404 Wetlands 15 NCAC 07B .0702 Amend
Permit Eligibility Changes 15 NCAC 07H .1101 Amend
Permit Eligibility Changes 15 NCAC 07H .1201 Amend
Specific Conditions 15 NCAC 07H .1205 Amend
Permit Eligibility Changes 15 NCAC 07H .1301 Amend
Permit Eligibility Changes 15 NCAC 07H .1401 Amend
Permit Eligibility Changes 15 NCAC 07H .2001 Amend
Permit Eligibility Changes 15 NCAC 07H .2101 Amend
Permit Eligibility Changes 15 NCAC 07H .2201 Amend
Permit Eligibility Changes 15 NCAC 07H .2401 Amend

DEPARTMENT OF ADMINISTRATION/STATE PERSONNEL COMMISSION

Periods of Entitlement for all Reserve Components 25 NCAC 01E .0804 Amend

AGENDA
RULES REVIEW COMMISSION
September 19, 2002

RULES REVIEW COMMISSION

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Administration -.0104; .0105; .0106; .0206; .0207; .0208 Continued 08/15/02 (DeLuca)
 - B. DENR/Environmental Management Commission – 15A NCAC 2H .0103; .0106; .1301; .1302; .1303; .1305 Objection 08/15/02 (Bryan)
 - C. DENR/Environmental Management Commission – 15A NCAC 2H .1304 Technical Change Not Made 08/15/02 (Bryan)
 - D. DENR/Environmental Management Commission – 15A NCAC 2I .0501; .0502 Technical Change Not Made 08/15/02 (DeLuca)
 - E. DENR/Environmental Management Commission – 15A NCAC 2I .0503 Objection 08/15/02 (DeLuca)
 - F. Marine Fisheries Commission - 15A NCAC 3K .0104 Objection 08/15/02 (Bryan)
 - G. DENR/Soil and Water Conservation Commission – 15A NCAC 6H .0101; .0102; .0103; .0104; .0105 Objection 08/15/02 (Bryan)
 - H. NC Nursing Board – 21 NCAC 36 .0211; .0218 Objection 08/15/02 (Bryan)
 - I. State Board of Community Colleges – 23 NCAC 2C .0305 Objection 08/15/02 (Bryan)
 - J. State Board of Community Colleges – 23 NCAC 2D .0319 Objection 08/15/02 (Bryan)
 - K. State Board of Community Colleges – 23 NCAC 2E .0402; .0403 Objection 08/15/02 (Bryan)
- IV. Commission Business
- V. Next meeting: tentatively scheduled for October 17, 2002

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry	01 ABC 1325	Chess	05/21/02	
Randall Ralph Casey T/A Maynards Entertainment v. NC ABC Comm.	01 ABC 1396	Wade	06/26/02	
NC ABC Commission v. Headlights, Inc. T/A Headlights	01 ABC 1473	Wade	06/28/02	
NC ABC Commission v. WDB, Inc. T/A Twin Peeks	02 ABC 0517	Conner	07/15/02	
<u>APPRAISAL BOARD</u>				
NC Appraisal Board v. Thomas G. Hildebrandt, Jr.	02 APB 0130	Chess	08/20/02	17:06 NCR 563
<u>UTILITIES COMMISSION</u>				
Tracy Woody v. State of NC Utilities Commission	02 COM 1004	Morrison	08/26/02	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Hattie Holt v. NC Crime Victims Compensation Commission	00 CPS 1067	Conner	05/30/02	
Linda Hawley v. NC Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
Lial McKoy v. NC Crime Victims Compensation Commission	02 CPS 0394	Chess	07/26/02	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Evelia Williams v. NC DHHS	01 DHR 1750	Conner	07/15/02	
Kathy Mumford v. DHHS, Div. of Facility Services	01 DHR 2253	Chess	07/26/02	
James Bell v. NC DHHS, Div. of Facility Services	01 DHR 2340	Elkins	06/27/02	
Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center	01 DHR 2352	Conner	06/21/02	
Effie M. Williams v. NC Department of Health and Human Services	02 DHR 0001	Gray	08/08/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
Albemarle Home Care & Ginger Parrish, PhD v. NC DHHS, Div. of Medical Assistance	02 DHR 0142	Conner	07/22/02	
Birgit James v. NC Dept. of Health & Human Services	02 DHR 0255	Connor	07/01/02	
Geraldine Rountree Cooper v. DHHS, Div. of Facility Services	02 DHR 0267	Elkins	07/15/02	
Unieca Richardson v. NC DHHS, Division of Facility Services	02 DHR 0286	Chess	06/17/02	
Greg McKinney & Virgie Elaine McKinney v. DHHS	02 DHR 0301	Mann	08/01/02	
Donna R Anderson v. NC DHHS, Broughton Hospital	02 DHR 0340	Gray	08/01/02	
Notisha Utley v. NC DHHS, Division of Facility Services	02 DHR 0379	Conner	07/26/02	
Isa Spaine v. NC Department of Health & Human Services	02 DHR 0403	Chess	06/24/02	
Mooresville Hospital Management Associates, Inc. d/b/a Lake Norman Regional Medical Center v. DHHS, Div. of Facility Services, Cert. of Need Section	02 DHR 0541	Chess	08/07/02	
Eli Maxwell v. NC DHHS, Div. of Facility Services, Health Care Registry	02 DHR 0556	Lassiter	08/08/02	
Robin Lee Arnold v. DHHS, Div. of Facility Services	02 DHR 0558	Conner	08/15/02	
Evelyn Denise Humphrey v. NC DHHS, Div. of Facility Services	02 DHR 0624	Morrison	08/08/02	
James Parks v. NC Dept. of Health and Human Services	02 DHR 0680	Morrison	08/07/02	
Lisa Murphy v. DHHS< Division of Facility Services	02 DHR 0694	Mann	07/26/02	
Mary's Family Care #2, Beulah Spivey v. OAH	02 DHR 0735	Morrison	08/27/02	
Hazel Chea v. Department of Health & Human Services	02 DHR 0795	Mann	06/11/02	

CONTESTED CASE DECISIONS

Carmelita T. England v. Ms. Lisa Moor, Chief Advocate, Black Mtn Ctr.	02 DHR 1033	Chess	08/15/02	
Gloria Dean Gaston v. Office of Administrative Hearings	02 DHR 1081	Morrison	07/26/02	
<u>ADMINISTRATION</u>				
San Antoni Equipment Co. v. NC Department of Administration	02 DOA 0430	Chess	06/26/02	
<u>JUSTICE</u>				
Sara E Parker v. Consumer Protection [sic] & Rosemary D. Revis	02 DOJ 1038	Gray	08/08/02	
<i>Alarm Systems Licensing Board</i>				
Seth Paul Barham v. Alarm System Licensing Board	02 DOJ 0552	Gray	06/12/02	
Christopher Michael McVicker v. Alarm Systems Licensing Board	02 DOJ 0731	Gray	06/07/02	
Jeffery Lee Garrett v. Alarm Systems Licensing Board	02 DOJ 0908	Morrison	08/06/02	
<i>Private Protective Services Board</i>				
Anthony Davon Webster v. Private Protective Services Board	01 DOJ 1857	Gray	06/07/02	
Benita Lee Luckey v. Private Protective Services Board	02 DOJ 0530	Elkins	07/12/02	
Orlando Carmichael Wall v. Private Protective Services Board	02 DOJ 0729	Gray	06/18/02	
Randall G. Bryson v. Private Protective Services Board	02 DOJ 0730	Gray	06/07/02	
Barry Snadon, Sr. v. Private Protective Services Board	02 DOJ 0907	Elkins	07/12/02	
Gregory Darnell Martin v. Private Protective Services Board	02 DOJ 0916	Morrison	08/06/02	
Marvin Ray Johnson v. Private Protective Services Board	02 DOJ 0945	Morrison	08/06/02	
Quincey Adam Morning v. Private Protective Services Board	02 DOJ 1084	Morrison	08/06/02	
<i>Sheriffs' Education & Training Standards Commission</i>				
Kevin Warren Jackson v. Sheriffs' Education & Training Stds. Comm.	01 DOJ 1587	Chess	07/16/02	
Jonathan P. Steppe v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0004	Mann	06/28/02	
Jeffrey Beckwith v. Criminal Justice & Training Stds. Comm.	02 DOJ 0057	Gray	07/15/02	
Thomas B. Jernigan v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0089	Conner	06/25/02	
Katrina L. Moore v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0304	Reilly	07/17/02	
Wallace A. Hough, Jr. v. Criminal Justice & Training Stds. Comm.	02 DOJ 0474	Morrison	08/08/02	
Keith E. Kilby, Sr. v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0609	Lassiter	08/07/02	
John R. Tucker v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0632	Morrison	06/26/02	
Eddie Kurt Newkirk v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0870	Gray	08/28/02	
Joseph Ray Johnson v. Criminal Justice & Training Stds. Comm.	02 DOJ 1420	Wade	06/27/02	
Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm.	02 DOJ 0171	Mann	06/04/02	
<u>ENVIRONMENT AND NATURAL RESOURCES</u>				
Town of Belville v. NC DENR, Div. of Coastal Management	96 EHR 0598	Gray	07/29/02	
Stoneville Furniture Co., Inc. v. NC DENR, Div. of Air Quality	01 EHR 0976	Chess	07/16/02	
Town of Ocean Isle Beach v. NC DENR	01 EHR 1885	Chess	07/31/02	17:06 NCR 557
Helen Smith v. NC DENR	02 EHR 0152	Morrison	08/09/02	
Helen R. Bass v. County of Durham	02 EHR 0191	Gray	06/26/02	
Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management	02 EHR 0244	Gray	06/05/02	
J.B. Hooper v. NC DENR	02 EHR 0285	Conner	08/21/02	
J.L. Hope & wife, Ruth B. Hope v. NC DENR	02 EHR 0395	Mann	06/10/02	
Linda L. Hamrick v. NC DENR	02 EHR 0600	Conner	07/23/02	
Mitchell Oil Company Larry Furr v. DENR	02 EHR 0676	Lassiter	08/07/02	
County of Hertford Producer's Gin, Inc. v. NC DENR, Div. of Air Quality	02 EHR 0690	Chess	06/17/02	
Olivia Freeman POA for Bobby C. Freeman v. Trng. Stds. Comm.	02 EHR 0777	Wade	07/11/02	
<u>ENGINEERS AND LAND SURVEYORS</u>				
NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner	01 ELS 0078	Lewis	06/05/02	
<u>OFFICE OF STATE PERSONNEL</u>				
Robin Heavner Franklin v. Lincoln Co. Dept. of Social Services	98 OSP 1239	Conner	08/28/02	
Laura C. Seamons v. NC DHS/Murdoch Center	00 OSP 0522	Wade	06/28/02	
James Edward Robinson v. Off. of Juvenile Justice, 7 th Jud. Dist.	00 OSP 0722	Wade	06/28/02	
Andre Foster v. Winston-Salem State University	00 OSP 1216 ¹	Mann	06/03/02	17:01 NCR 93
Berry Eugene Porter v. NC Department of Transportation	01 OSP 0019	Gray	07/03/02	
Linda R. Walker v. Craven County Health Department	01 OSP 0309	Gray	07/12/02	
J Louise Roseborough v. Wm F. Scarlett, Dir. of Cumberland County Department of Social Services	01 OSP 0734	Morgan	06/06/02	
Dennis Covington v. NC Ag. & Tech. State University	01 OSP 1045	Wade	06/28/02	
Reginald Ross v. NC Department of Correction	01 OSP 1122/23	Wade	06/28/02	
Andre Foster v. Winston-Salem State University	01 OSP 1388 ¹	Mann	06/03/02	17:01 NCR 93
Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2	01 OSP 1405	Wade	06/28/02	
Demetrius J. Trahan v. EEO/Title VII, Dir. Cheryl C. Fellers, DOC	01 OSP 1559	Gray	08/13/02	
Wade Elms v. NC Department of Correction	01 OSP 1594	Gray	06/27/02	
Wayne G. Whisemant v. Foothills Area Authority	01 OSP 1612	Elkins	05/30/02	17:01 NCR 103
Linwood Dunn v. NC Emergency Management	01 OSP 1691	Lassiter	08/21/02	
Gladys Faye Walden v. NC Department of Correction	01 OSP 1741	Mann	07/12/02	
Joy Reep Shuford v. NC Department of Correction	01 OSP 2179	Overby	06/25/02	
Joseph Kevin McKenzie v. NC DOC, Lavee Hamer (Gen. Counsel to the Section)	01 OSP 2241	Mann	06/05/02	
Bryan Aaron Yonish v. UNC at Greensboro	01 OSP 2274	Conner	06/25/02	
Theresa Truner v. Albemarle Mental Health Center	01 OSP 2331	Gray	07/11/02	
Mark Wayne Faircloth v. NC Forest Service	01 OSP 2374	Conner	06/20/02	

1 Combined Cases

CONTESTED CASE DECISIONS

Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	01 OSP 2385 ²	Elkins	08/07/02	
Lashaundon Smith v. Neuse Correctional Institution	02 OSP 0064	Elkins	07/03/02	17:03 NCR 329
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	01 OSP 0110 ²	Elkins	08/07/02	
Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways"	02 OSP 0140	Conner	06/06/02	
Mark P. Gibbons v. NC Department of Transportation	02 OSP 0147	Conner	06/14/02	
Jana S. Rayne v. Onslow Co. Behavioral Health Care	02 OSP 0184	Morrison	08/01/02	
Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02	
Doris J. Berry v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02	
William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02	
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02	
Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02	
Michael Forrester Peeler v. NC Department of Transportation	02 OSP 0478	Conner	07/01/02	
Shirley J. Davis v. NC Department of Correction	02 OSP 0486	Elkins	07/11/02	
Alber L. Scott v. UNC General Administration	02 OSP 0498	Elkins	06/10/02	
Harold Phillips v. Durham Co. Dept. of Social Services	02 OSP 0503	Chess	07/30/02	
Michelle G. Minstrell v. NC State University	02 OSP 0568	Chess	06/26/02	
Janet Watson v. Nash Co. DSS, Carl Daughtry, Director	02 OSP 0702	Chess	08/13/02	
Patricia Anthony v. NC Dept. of Correction (Pamlico CI)	02 OSP 0797	Lassiter	08/07/02	
Jerry J Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	08/09/02	
Walter Anthony Martin, Jr. v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1002	Morrison	07/30/02	
JoAnn A Sexton v. City of Wilson	02 OSP 1041	Morrison	07/25/02	
Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1060	Morrison	08/09/02	
Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education	02 OSP 1136	Morrison	07/29/02	
James J. Lewis v. Department of Correction	02 OSP 1158	Mann	08/20/02	
<u>SUBSTANCE ABUSE PROFESSIONAL BOARD</u>				
NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02	
<u>UNIVERSITY OF NORTH CAROLINA</u>				
Patsy R. Hill v. UNC Hospitals	02 UNC 0458	Conner	08/21/02	17:06 NCR 571

² Combined Cases

CONTESTED CASE DECISIONS

4. For many years, there has been erosion within the Town of Ocean Isle Beach along the oceanfront to the west of Shallotte Inlet. (Stipulations of the Parties, Fact No. 1. Respondent's Exhibits 5A - F show the progression of erosion along the oceanfront.)
5. In 1981, the Department of Transportation ceased maintaining East First Street (said street running parallel to the Atlantic Ocean) from Winston-Salem Street eastward toward Shallotte Inlet. (Stipulation 2.)
6. The Town assumed the maintenance of this segment of East First Street. (The legal description of the subject property is Block 40 of Section A of Ocean Isle Beach pursuant to a map of same that is recorded in the Office of the Register of Deeds of Brunswick County at Map Book 3, Pages 178-178A. However, the property is referred to as the "401-419 Block of East First Street" for the purposes of this hearing.) (Stipulation 3.)
7. This block of odd-numbered lots (401-419) runs between High Point and Lumberton Streets and is within the segment of East First Street which the Town began maintaining in 1981. (Stipulation 4.)
8. As a result of storms and hurricanes, the Town has repaired or replaced several blocks of East First Street over the years. The Town has also replaced the paved roadbed with a graveled roadbed on a block-by-block basis. (Stipulation 5.)
9. In 1989, Hurricane Hugo badly damaged East First Street, specifically that area in front of the lots denominated for address purposes as lots 421 through 429 as well as many homes on the oceanward side of East First Street starting at lot 402 and continuing eastwardly. (Stipulation 6.)
10. By 1993, the oceanfront lots and utility lines in the 421 through 429 block of East First Street had eroded away. (Stipulation 7.)
11. In 1993, the road serving the 401-419 block of East First Street was still paved, but the road serving the 421-429 block was no longer passable and the maintenance of said road area has not been continued. (Stipulation 8.)
12. In 1996, the paved road serving the 401-419 block of East First Street was badly damaged by Hurricane Bertha. (Stipulation 9.)
13. Hurricane Fran also caused some damage in 1996. (Stipulation 10.)
14. The Town rebuilt this section of the road after these storms, but it was graveled instead of paved. (Stipulation 11.)
15. In 1999, Hurricane Floyd destroyed the road serving lots 390-419 on East First Street. (Stipulation 12.)
16. Respondent's Exhibit 6 was taken shortly after Hurricane Floyd, and it shows where East First St. was washed away in the 401-419 block.
17. In early 2000, after all the storm debris had been cleared away, the Town pushed up an emergency sand berm system within the road right-of-way. (Stipulation 13.)
18. Following the storm, the sand berm system was located immediately seaward of the first line of vegetation on lots 401-419. (Stipulation 14.)
19. The Town in conjunction with the Department of Transportation replaced the section of road from lot 390 to the intersection of High Point and East First Streets with gravel, put in new utilities, and built a sand covered sand bag berm along this area. (Stipulation 15.)
20. During the winter of 2001-02, the beach at Ocean Isle Beach was renourished using public funds. The 400 block of East First Street is in the transition zone. (Stipulation 16.)
21. A beach renourishment project involves the pumping of sand onto the beach to widen it by raising the elevation and changing the profile. (Russell, Transcript at Page 28.)
22. The renourishment project was completed in the winter of 2001, and Respondent's Exhibit 7 shows the renourished beach on February 12, 2002. (Russell, Tr. pp. 28-29.)
23. The beach has been widened significantly by the renourishment project and will be renourished on a three-year cycle. (Stipulation 17.)

24. Because of the widening of the beach, the normal high tide line has moved further seaward, but it will begin to move back towards the land as the renourished beach begins to erode. (Russell, Tr. pp. 66-69.)
25. In a major storm, the high tide line will likely move landward. (Russell, Tr. pp. 66-69.)
26. Despite the widened beach, the high tides have come up to the base of the sand berm system, and the tide was at the base of the berm system some three weeks before the hearing on April 8, 2002. (Cook, Tr. pp. 88-99.)
27. Some photographs taken by the Respondent during a site visit on March 28, 2002, show a rack or tide line at the base on the sand berm system from the high tide two weeks previously. (Respondent's Exhibits 8-D and E. Cook, Tr. p. 94. Russell, Tr. p. 64.)
28. In 2001, the Town of Ocean Isle Beach proposed replacing the washed away graveled road in the 401-419 block of East First Street. (Stipulation 18.)
29. The approximately 16 foot wide by 450 foot long graveled road would be located within what remained of the right-of-way between High Point and Lumberton Streets. (Stipulation 19.)
30. Respondent's Exhibits 8-B, D, and E show the berm on which the road would be rebuilt.
31. The road would be located seaward of the first line of stable natural vegetation that pre-existed the beach nourishment project. (Stipulation 20.)
32. The top of the existing berm system would be graded level to accommodate the road. The excess sand would be used to supplement the berm system seaward of the road. (Stipulation 21.)
33. The seaward toe of the berm system would be moved some 16 feet closer to the ocean. (Russell, Tr. pp. 40-41)
34. The graveled road would be located within an area defined by the CAMA rules as the Ocean Erodible and High Hazard Flood area of environmental concern (AECs). (Stipulation 22.)
35. The long-term annual erosion rate at this location is two feet per year. (Stipulation 23.)
36. The rebuilding of the road would be "development" under NCGS §113A-1-3(5)(a) since it would involve filling, excavation, and alteration of the shoreline, and roads fall within the definition of a "structure" as defined in Rule 15A NCAC 7H .0106(3). (Russell, Tr. pp. 60-62.)
37. The road is considered a large structure (greater than 5,000 sq. ft. in size) under the rules of the Coastal Resources Commission, and pursuant to those rules, it must be located 120 feet or more landward of the first line of stable natural vegetation. (Stipulation 24.)
38. The vegetation line runs landward of and parallel to the road right-of-way. (Stipulation 25.) along some sand fencing as shown on Respondent's Exhibit 5-B. (Russell, Tr. p. 38.)
39. The normal 60 foot erosion setback runs along the rear of 401 to 419 East First St. (Stipulation 25), but the 120 foot erosion setback for large structures is located further landward almost to East Second St. (Russell, Tr. p. 39.)
40. The DCM denied the Town's permit application under N.C. Gen. Stat. (NCGS) §113A-120(a)(8) of the CAMA because the project was inconsistent with the rules of the CRC and the Town's land use plan. (Stipulation 26. Respondent's Exhibit 4.)
41. The basic problem is that the road would not be setback 120 feet or more landward of the first line of stable natural vegetation. Instead, it would be located seaward of the vegetation line from which the setback is measured. (Stipulation 27.)
42. The DCM determined that the public's investment in the road would be jeopardized by erosion during storms. In addition, it determined that the road would interfere with the public's use of the beach as the shoreline erodes. (Stipulation 28.)
43. The DCM was also concerned that a safety problem would be created if the rebuilt road was damaged by erosion because of the height of the erosion escarpment which would be created and the debris which would be left on the public beach. (Russell, Tr. p. 44.)

44. Finally, the DCM was concerned that moving the berm seaward some 16 feet would increase the chances of it being washed away. (Russell, Tr. p. 41.)
45. The Town applied to the CRC for a variance from its rules. (Stipulation 29.)
46. The Town also timely filed a contested case petition with the Office of Administrative Hearings to contest the denial of its permit application. (Stipulation 30.)
47. The Town alleged that the DCM acted improperly because vehicular access to certain properties will be restricted. (Stipulation 31.)
48. John Atkins, the owner of property within the affected block, specifically Lot 4, Block 40, Section A, with a mailing address of 413 East First Street, moved to intervene claiming he would be deprived of property because his access to East First Street would be denied, but his petition has been dismissed. (Stipulation 32.)
49. Charles Jones, Assistant Director, DCM, testified about the possibility of using Hatteras type ramps to gain access over the beach to the 401-419 block of East First St. if the Town could not replace the road. (Jones, Tr. pp. 72-76. Respondent's Exhibits 14-A and B.)
50. Using 4-wheel drive vehicles, the landowners could gain access to the beach via Hatteras ramps over the sand berm at the end of Lumberton and High Point Streets, drive down the beach, and then gain access to their lots via ramps over the berm in front of their lots. (Id.)
51. The DCM has permitted a number of Hatteras ramps along the coast but not as far seaward of the vegetation line as would be required here. (Id.)
52. A variance would be required from the CRC to allow Hatteras ramps to serve the 401-419 block of East First St., and in at least one instance, the CRC has allowed a Hatteras ramp to give an owner vehicular access to his lot from the beach across the vegetation line because there was no road access to the lot. (Id.)
53. Mr. Jones believed the DCM would support a variance subject to the normal conditions for Hatteras ramps in order to provide access to the 401-419 block of East First Street if no other access were available. (Id.)
54. Since Hurricane Floyd, the owners of the lots abutting the destroyed section of road have been gaining access over the lots to their rear and at the ends of the block. (Stipulation 33.)
55. In addition, the owners of seven of the ten lots between High Point and Lumberton Streets have constructed walkways over the pushed up sand berm within the road right-of-way in order to improve the access between their lots and the beach. These walkways were constructed over the road right-of-way. (Stipulation 34.)
56. Mr. Atkins has filed suit against the Town of Ocean Isle Beach seeking a mandatory injunction to keep the road in proper repair and open for travel as required by NCGS §160A-296, a statute of which the Judge may take judicial notice. On information and belief, the Town feels that Mr. Atkins is the only lot owner who still wants the Town to rebuild the road. (Stipulation 35.)
57. The lot owned by Mr. Atkins is accessed from East First Street. His property is bordered on each side and to the rear by other improved properties. (Stipulation 36.)
58. NCGS §136-66.1 provides that the Town shall be responsible for the maintenance, construction and reconstruction of all streets within municipalities that are within its street system. (Stipulation 37.)
59. Chauncey Cook, who is in the business of renting vacation homes, owns two lots which run from East Second St. to the closed portion of East First St. These lots are known as 410 East Second St. (Cook, Tr. pp. 79-80.)
60. Mr. Cook testified on his own behalf and that of six other lot owners who are opposed to replacing the closed portion of East First St. (Cook, Tr. pp. 80-81.)
61. The owners of the other six lots had sent him letters indicating their opposition to replacing East First St. (Respondent's Exhibit 10.)

62. He also said that nine of the owners of 401 to 419 East First Street, including Mr. Aikens, had constructed private walkovers running from their lots to the public beach over whatever remains of the right-of-way for East First St. (Cook, Tr. pp. 84-86. Respondent's Exhibit 9.)

63. In addition, he testified that all of the owners in the 401 to 419 block of East First Street, including Mr. Aikens, have obtained access to their lots running from the nearby streets and in some cases over neighboring lots. (Cook, Tr. pp. 82-84. Respondent's Exhibit 10.)

64. Mr. Cook further testified that, even after the beach renourishment project, the high tide line has come all the way up to the base of the pushed up sand berm during northeasters and spring tides, including during a high tide some three weeks prior to the hearing. (Cook, Tr. pp. 88- 99. Russell, Tr. p. 64.)

65. Respondent's exhibits 16 – 21 are photographs taken shortly before the beach renourishment project and running through September, 2001, which show the beach and high tide lines. (Respondent's Exhibits 16-21.)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter.

2. The contested case petition by the Town of Ocean Isle Beach was timely filed.

3. Rule 15A NCAC 7H .0306(a)(1) of the CRC requires that all development on this segment of the Ocean Isle oceanfront shall be located landward of the erosion setback line as measured from the first line of stable natural vegetation.

4. Because the segment of East First St. which the Town wants to rebuild is considered a large structure under the rules of the CRC, the applicable erosion setback is 120 feet measured landward from the vegetation line. Rule 15A NCAC 7H .0306(a)(4).

5. The first line of stable natural vegetation is located along a sand fence at the rear of the sand berm which was pushed up in what remains of the right-of-way for East First St., and this is the point from which the erosion setback should be measured.

6. Measuring landward from the vegetation line, the 120 foot erosion setback would run across the lots which front on East Second St. a short distance seaward of that street.

7. The Town proposes rebuilding East First St. along an alignment which is seaward of the point from which the erosion setback would be measured, and the road would be located more or less on the public beach.

8. The renourished public beach would not provide any reliable long-term protection to the road since the renourished beach will retreat and accrete between the cycles of renourishment and erosion.

9. Replacing the road at the proposed location will expose it to a high threat of erosion, jeopardize the public's investment in it, and interfere with the use of the public beach and create a safety hazard as the shoreline erodes.

10. The Town's land use plan provides for the "use of a variety of methods, including CAMA setback requirements and a Flood Prevention Ordinance, to discourage the development of property that can reasonably be foreseen as potentially hazardous." Town of Ocean Isle Land use Plan, Section 6.7.2.

11. The proposed location of the rebuilt road is one which can reasonably be foreseen as potentially hazardous.

12. The Division of Coastal Management properly denied the Town's CAMA permit application upon finding under NCGS §113A-126(a)(8) that the proposed development would be inconsistent with the rules of the CRC and Town's land use plan.

13. Subject to a variance from the CRC, lot owners in the 401 to 419 block of East First St. could access the beach with 4-wheel drive vehicles via Hatteras type ramps located at the ends of Highpoint and Lumberton St., drive across the beach, and access their lots via Hatteras type ramps over whatever remains of the right-of-way for East First St.

14. The CRC has granted at least one variance to allow a landowner to gain vehicular access across the beach to an otherwise inaccessible lot via a Hatteras type ramp.

15. The CAMA and rules of the CRC do not necessarily preclude the owners of lots in the 401 to 419 block of East First St. from gaining vehicular access to their property..

16. Except for Mr. Akins, seven of the other property owners in the 401 to 419 block of East First St. do not want the road reopened.

17. All of the property owners in the 401 to 419 block of East First St., including Mr. Akins, have acquired access to their lot from Highpoint, East Second, or Lumberton St., and sometimes also across their neighbor's lots, thus negating the need to replace East First St..

18. Nine of the ten property owners in the 401 to 419 block, including Mr. Akins, have constructed private walkovers from their lots to the beach over whatever remains of the right-of-way for East First St., thus acquiescing in the Town's abandonment of East First St.

DECISION

That the decision by the Division of Coastal Management to deny the application by the Town of Ocean Isle Beach for a CAMA development permit to replace part of East First Street be UPHELD.

ORDER

It is hereby ordered that the agency serve a copy of its final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699 in accordance with NCGS §150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. NCGS §150B-36(b).

The agency is required by NCGS §150B-36(b) to serve a copy of the final decision on all parties and the Office of Administrative Hearings.

This the 31 day of July, 2002.

Sammie Chess, Jr.
Administrative Law Judge

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
02 APB 0130

COUNTY OF GUILFORD

N.C. APPRAISAL BOARD
Petitioner,

v.

THOMAS G. HILDEBRANDT JR.,
Respondent.

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DECISION

THIS MATTER coming on for hearing and being heard before the Office of Administrative Hearings, the Honorable Sammie Chess Jr., Administrative Law Judge presiding, on April 17-18 and April 25, 2002, in High Point, Guilford County, North Carolina;

AND at the call of the case, the staff of the N.C. Appraisal Board, the Petitioner herein, and its counsel, Roberta A. Ouellette, and Thomas G. Hildebrandt Jr., the Respondent herein, and his counsel, Vance C. Kinlaw, were present and ready to proceed;

AND the issues to be resolved are:

- Whether the Petitioner, the N.C. Appraisal Board, has exceed its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously or failed to act as required by law or rule in pursuing disciplinary sanctions against Respondent, in violation of G.S. 150B-23?
- Whether Respondent, Thomas G. Hildebrandt Jr., failed to comply with G.S. 93E-1-12(a)(9) and Rule 21 NCAC 57A.0501(a) in performing an appraisal for his client, Philip G. Kirk, Attorney at Law, for use in the condemnation action known as *Piedmont Triad International Airport v. Sims*, Guilford County Superior Court case no. 98 CVS 9085?

AND at the close of the hearing, the Court instructed counsel to submit proposed decisions for the Court's consideration.

AND after considering the evidence, the arguments of counsel, and the proposed decisions of the parties, the Court makes the following:

FINDINGS OF FACT

1. The North Carolina Appraisal Board ("NCAB") is a duly constituted occupational licensing board charged with the responsibility of enforcing the statutes and rules governing the practice of real estate appraisal in this State.
2. Thomas G. Hildebrandt Jr. is a real estate appraiser, duly licensed by the NCAB, and maintaining an office and place of business in Greensboro, Guilford County, North Carolina.
3. This matter is a disciplinary complaint brought by the staff of the NCAB alleging that Mr. Hildebrandt, in the performance of the appraisal assignment described herein, violated several of the profession standards adopted by the NCAB.
4. On September 10, 1998, the Piedmont Triad Airport Authority (the "Airport") exercised its statutory right of eminent domain and instituted a condemnation action in Guilford County Superior Court to determine the value of a 49-acre parcel of vacant land immediately adjacent to the Airport and owned until the date of taking by Dr. Charles Sims (the "landowner"). Dr. Sims was represented in this action by Attorney Philip G. Kirk. In April 1999, Mr. Kirk retained Mr. Hildebrandt to perform an appraisal of the condemned property and render an opinion of fair market value for possible use in the litigation.
5. The Airport retained Michael S. Clapp, a licensed appraiser with an office in Winston-Salem, North Carolina, to perform a similar appraisal.
6. On November 29, 1999, Mr. Hildebrandt submitted an appraisal report to Mr. Kirk which expressed a value opinion for the subject property of \$88,500 per acre, or \$4,240,000 (later changed to \$4,360,000 when an updated survey slightly increased the acreage.)

7. In mid-April, 2000, Mr. Kirk asked Mr. Hildebrandt to submit a revised appraisal based on two conditions, lack of direct access to Airport runways and lack of assemblage of a 2.2 acre parcel on the eastern boundary of the subject property. As a result of discovery and court-ordered mediation in the condemnation suit, Mr. Kirk had become concerned that a pre-trial order might be entered limiting testimony on these issues, and he believed it prudent to have a fall-back position.

8. Mr. Hildebrandt accepted the changes requested by Mr. Kirk as hypothetical conditions, and on April 24, 2000, submitted an amended appraisal report expressing a value opinion of \$68,000 per acre, or \$3,350,000.

9. The trial of the condemnation action took place before a jury in early June, 2000, and lasted one week. Mr. Hildebrandt was called as a witness for the landowner and testified in conformity with his amended appraisal. Mr. Clapp was called as a witness for the Airport and testified that in his opinion the subject property was worth \$1,150,000, or approximately \$23,300 per acre. Neither Mr. Clapp's nor Mr. Hildebrandt's appraisal reports were submitted into evidence or seen by the jury.

10. The jury returned a verdict that the subject property was worth \$53,000 per acre, or \$2.61 million. This verdict was accepted by the trial judge and entered as the judgment of the court. The Airport did not appeal and promptly paid the landowner.

11. Immediately after the trial ended, Mr. Clapp sent a letter of complaint to the NCAB requesting that it investigate Mr. Hildebrandt's appraisal reports for possible violations of the Uniform Standards of Professional Appraisal Practice ("USPAP").

12. In August 2000, the NCAB staff presented a probable cause summary to the NCAB requesting a finding of probable cause that Mr. Hildebrandt had violated certain provisions of USPAP standards 1 and 2. Probable cause was found.

13. On October 13, 2000, legal counsel for the NCAB issued a formal notice of hearing under the contested case provisions of Chapter 150B of the North Carolina General Statutes. Mr. Hildebrandt filed with the NCAB a motion to transfer this matter to the Office of Administrative Hearings. The motion was allowed and the case was assigned in due course to the undersigned Administrative Law Judge.

14. The following witnesses testified in this disciplinary hearing for the NCAB staff: Donald Rogers, an investigator with the NCAB; Michael S. Clapp, a licensed real estate appraiser; Donald S. Johnson, a licensed real estate appraiser; and Philip Humphries, a deputy director with the NCAB. The following witnesses testified for the Respondent: Philip G. Kirk, a licensed attorney; William F. Mitchell, a licensed civil engineer; David C. Johnson, a licensed real estate appraiser; and the Respondent.

Respondent's Treatment of Topographic Issues

15. A creek known as Brush Creek bisects the northern third of the subject property, and a portion of the property slopes down to the creek and falls within the 100-year flood plain. In the condemnation action, the Airport and the landowner vigorously disputed how much of this low-lying acreage would actually be unusable. The jury heard conflicting expert testimony. The expert witness for the landowner was Dr. Barrett Kays.

16. Prior to hiring Mr. Hildebrandt, Mr. Kirk had hired Dr. Kays, a soil scientist, to develop a land use plan for the subject property, including a topographical analysis. Dr. Kays found that the amount of true wetlands was less than two acres and that the areas in the flood plain were not significant because they could be used for buffers, parking lots and natural areas. Dr. Kays prepared a written draft of his findings which was made available to Mr. Hildebrandt and became a part of Mr. Hildebrandt's workfile.

17. Mr. Hildebrandt also had as part of his workfile a survey prepared for the Airport on February 4, 1998 by Regional Land Surveyors, Inc. This survey indicated that approximately 16.2 acres were within the 100-year flood plain that adjoins Brush Creek. Mr. Hildebrandt did not consider this figure reliable because it was not based on an actual field survey but rather on topographic records that predated the construction of Bryan Boulevard and the relocation of Old Oak Ridge Road, two public roads that had provided access to the property prior to 1996.

18. Faced with conflicting information as to the amount of unusable land, Mr. Hildebrandt developed his own estimate by multiplying the length of the stream by a buffer of two, then three hundred feet. This produced an estimate of five to eight acres that would be difficult to develop without significant expense, an area which Mr. Hildebrandt refers to in his appraisal report as "floodway."

19. In his appraisal report, Mr. Hildebrandt states that the topographic characteristics of the property, particularly the 5-8 acres of floodway within the 15-17 acres of flood plain surrounding Brush Creek, pose some problems for site development. He acknowledges that if the site were considered for local market users of industrial sites, such as standard warehouse distribution, these topographical characteristics would result in the site being valued for the land outside the floodway plus a diminished amount for the area in the flood plain. However, he states that the utility of these areas would not be diminished if they were used to develop the maximum viability of the site by serving as highway intersections, retention ponds, routes for water and sewer line, buffers, greenspace and

parking areas. Mr. Hildebrandt further states that a significant portion of the site is above airport grade. Since grading would be required to level the upper portions of the site, the dirt above grade could be used to raise a portion of the flood plain to the site grade.

20. Based on the foregoing factors, Mr. Hildebrandt makes what he characterizes as “modest” negative adjustments for the subject property’s topographic deficiencies, -10% for comparable sale no. 1 and -5% for comparable sale no. 2.

21. The NCAB staff alleges that Mr. Hildebrandt did not give adequate weight to the topographical deficiencies of the subject property.

22. At this disciplinary hearing, the only witness for the staff who had appraised the subject property was Mr. Clapp. In developing his value opinion, Mr. Clapp relied on civil engineers retained by the Airport to provide him with an estimate of the acreage within the flood plain. He was compelled to increase his value opinion when the Airport’s engineers reduced their flood plain estimate from 16.2 to 14.6 acres. In his amended report, he reserved the right to change his value opinion again if the flood plain estimate were further revised.

23. Mr. Clapp and Mr. Humphries acknowledged that any appraiser must rely on the conclusions of a civil engineer or soil scientist when flood plain, floodway or wetlands are topographical characteristics of the property being appraised.

24. The NCAB staff did not offer any expert testimony from a civil engineer or soil scientist to establish the true amount of unusable acreage within the subject property. The staff relied on the hearsay recitation by Mr. Clapp of the Airport engineers’ figure of 14.6 acres of flood *plain*, which was repeated on Exhibit 22, the engineers’ final survey. However, this survey was not introduced in the condemnation action because it misstates the overall acreage of the subject property. No witness for the staff testified as to the amount of floodway within the subject property, although both Mr. Clapp and Mr. Humphries acknowledged that the floodway would be smaller than the flood plain.

25. Under applicable development and land use ordinances in Guilford County, developers are permitted to fill, pave and build on flood plain. Floodway can be filled, paved and built upon if the developer obtains F.E.M.A. approval and disturbed buffers are mitigated. Both floodway and flood plain may be used to satisfy density requirements. Therefore, even that portion of the subject property which could not be inexpensively developed contributed to the overall value of the parcel.

26. Mr. Hildebrandt tendered a licensed civil engineer, William F. Mitchell, as an expert witness to give opinion testimony regarding the true amount of acreage within the subject property that could not be developed. Mr. Mitchell was duly qualified, and testified that he had twice visited the site to observe its topographical features and look for any common indicators of wetlands, such as dead trees or cattails. He saw none, and expressed the opinion that there would be little if any true wetlands on the property. He further stated that it would not be difficult or expensive to fill in the flood plain area with soil obtained on-site by grading the higher elevations. He expressed the opinion that if a developer elected not to go to the expense of piping Brush Creek, all but six to eight acres of the 49-acre parcel could lawfully be developed. If a developer chose to pipe and mitigate, the entire tract could lawfully be developed.

27. Mr. Mitchell’s methodology for obtaining his estimate of land that could not be developed without great expense was to multiple the length of the stream, 1,160 feet, by its width of approximately 30 feet from bank to bank plus a 200-foot buffer, which yields a figure on the low side of about six acres. A second calculation, assuming a 300-foot buffer, yields a figure on the high side of about eight acres.

28. Both Mr. Mitchell’s methodology and his conclusions were entirely consistent with the methodology and conclusions of Mr. Hildebrandt.

29. Mr. Mitchell’s conclusion that there were none or only minimal true wetlands was consistent with the findings of Dr. Kays.

30. Based on the documented information supplied to him by Dr. Kays, his own observations of the subject property and his familiarity with local land use regulations, Mr. Hildebrandt’s conclusion that five to eight acres of the subject property could not be easily developed, rather than 14.6 acres, is well-founded and not erroneous.

Respondent’s Analysis of Highest and Best Use

31. The subject property is almost 48 acres in size. Its single most valuable feature is that it is located immediately adjacent to the Airport, sharing a common boundary over 2000 feet long.

32. In his original appraisal report of November 29, 1999, Mr. Hildebrandt notes that the site is suitable for “industrial or commercial applications which would typically be located adjacent to or located on a regional/international airport.” Mr. Hildebrandt assumes that a 2.2 acre parcel carved out of the site’s eastern border and given by Dr. Sims to a family member could be assembled to

make the site more adaptable for such uses. He also assumes that direct access to the Airport's runways and taxiways could be obtained. Based on these assumptions, he concludes that the highest and best use of the property would be an air cargo distribution facility.

33. At the request of Mr. Kirk, Mr. Hildebrandt amended his appraisal report by accepting as hypothetical conditions that neither assemblage of the 2.2 acre parcel nor direct access to runways and taxiways could be obtained. In a letter to Mr. Kirk dated April 24, 2000, Mr. Hildebrandt states that "still remaining on the list of available uses would be hotels/motels, rental car facilities and an office facility... Among the single users that utilize the entire acreage would be research and development firms participating in the Triad's growth in high technology fields or distribution/service facilities desiring a high visibility campus."

34. The NCAB staff alleges that in his original appraisal report, Mr. Hildebrandt erred in several respects by concluding that the subject property's highest and best use would be an air cargo distribution facility. First, the staff contends that N.C.G.S. 40A-65 prohibits such a conclusion because the purpose of the taking was to build the Federal Express hub, itself an air cargo distribution facility. Second, the staff contends that Mr. Hildebrandt's assumption that direct access to Airport runways and taxiways could be obtained was unsupported and that, in fact, such access would be denied. Third, the staff contends that the property was too small, even with assemblage, to conceivably be developed into an air cargo distribution facility.

35. Mr. Hildebrandt relies on a Notice of Intent letter from the Airport's attorney to the landowner dated April 2, 1998 as a satisfactory statement of the scope of the project. This letter, appended to the report, states:

"The purpose for which the property is being condemned is to enable the Authority to properly maintain, improve, operate, and develop the facilities of the Piedmont Triad International Airport, which is owned by the Authority, by permitting the Authority to have property available for the expansion and enlargement of airport facilities, including, but not limited to, the cargo handling facilities, and permitting the Authority to better utilize its existing properties for aviation purposes."

36. The reference to "cargo handling facilities" caught the attention of the landowner, who suspected that the airport was abusing its power of eminent domain by denying him the opportunity to sell his land directly to Federal Express. He answered the Airport's condemnation action by alleging that the taking was not for a legitimate public purpose, expansion and enlargement of airport facilities, but rather for the benefit of a private company, Federal Express. In depositions taken in the early stages of the litigation, the executive director of the airport and several members of the Airport's governing board denied that Federal Express played any part in the taking and affirmed that the Airport had intended to acquire the property for future expansion many years before Federal Express came on the scene.

37. Federal Express first announced its intention to construct an air cargo distribution facility at the Airport in late 1997 or early 1998. In developing his appraisal, Mr. Hildebrandt obtained a significant amount of evidence indicating that the Airport had decided to acquire the subject property as early as 1980, long before the announcement by Federal Express. Among the items of evidence he collected and documented in his workfile were the following:

a) In 1996, the airport purchased from Dr. Sims a 8.2 acre parcel that was contiguous with the subject property and formed a part of his original tract of approximately 60 acres. The Airport paid about \$50,000 per acre for this parcel.

b) In 1990 and 1994, the Airport's Master Plan identified the subject property as land to be acquired by the Airport and allocated funding to make the acquisition. The 1990 Master Plan states by implication that the subject property, because of its location, is suitable for aviation-related development. The 1994 Master Plan states that *the Airport's own* air cargo handling facilities should be doubled in capacity within 10 years. This comment is consistent with the reference to "cargo handling facilities" in the condemnation notice and lends credibility to the Airport officials' contention that the proposed Federal Express hub was not the purpose of the taking.

38. Mr. Clapp's understanding of the purpose of the taking was based on the statement of an employee of the Airport who deals with real estate, Lisa Elmore. At the time she retained Mr. Clapp, Ms. Elmore told him that the acquisition was in connection with the Federal Express facility. This assignment was Mr. Clapp's first for the Airport, and he had no knowledge of any prior dealings between the Airport and Dr. Sims. In particular, he was not aware at the time he was hired, and never made himself aware during the course of his employment, that the Airport had purchased a portion of Dr. Sims' land in 1996.

39. No representative of the airport testified at this disciplinary hearing. However, David C. Johnson, a licensed appraiser who prepared a Standard 3 review of Mr. Hildebrandt's appraisal and who testified in Mr. Hildebrandt's behalf, contacted the Executive Director of the Airport by telephone as part of the research for his review. The Executive Director, Mr. Ted Johnson, confirmed that the scope of the project was "long-range airport expansion as opposed to the FedEx hub."

40. Based on the information he had obtained and placed in his workfile concerning the history of the Airport's announced interest in acquiring the subject property, Mr. Hildebrandt's conclusion that the purpose of the taking was to enable the airport to carry out its long-term expansion plans and not for the purpose of constructing the Federal Express hub is well-founded and not erroneous.
41. By virtue of its contiguous boundary, the subject property has direct physical access to Airport property. However, the subject property has no right of access to airport land by operation of law. Whether to grant or deny access to the public landing area by aircraft based on land adjacent to, but not part of, the airport property ("through-the-fence" access) is within the control and discretion of the Airport.
42. For purposes of the condemnation action, the Airport took the position that it would not grant aircraft based on the subject property access to its runways, taxiways and aprons. This posture was self-serving in that by denying through-the-fence access, the Airport unilaterally diminished the market value of the subject property by undermining its potential use as an air cargo handling facility.
43. The Airport is obligated to follow the orders and regulations of the Federal Aviation Administration. Mr. Hildebrandt obtained and placed in his workfile the relevant FAA publication, "Airport Compliance Requirements." In pertinent part, this publication states:
- "As a general principle, FAA will recommend that airport owners refrain from entering into any agreement which grants access to the public landing area by aircraft normally stored and serviced on adjacent property. Exceptions can be granted on a case-by-case basis where operating restrictions ensure safety and equitable compensation for use of the airport. Examples include: . . .(2)Where an individual or corporation, actually residing or doing business on an adjacent tract of land, proposes to gain access to the landing area solely for aircraft use incidental to such residence or business without offering any aeronautical services to the public."
- Based on the FAA's published policy, it appears that the Airport, if it so chose, could apply for and receive FAA approval to grant through-the-fence access for a privately-owned air cargo handling facility located on the subject property.
44. As part of his research, Mr. Hildebrandt contacted J. D. Eaton, MAI, a nationally recognized authority on condemnation litigation and author of a standard reference work, *Real Estate Valuation in Litigation*. Mr. Eaton advised him that a similar situation had arisen in Arizona, wherein the United States Department of Justice filed suit against a local airport authority to compel the authority to grant through-the-fence access. Mr. Hildebrandt telephoned the appraiser for the Justice Department in Arizona and confirmed this information.
45. Airports throughout the country have granted through-the-fence access when it was in their economic interest to do so. Mr. Donald Johnson, a witness for the NCAB staff, testified of his own knowledge that the international airport in Tampa has granted through-the-fence access to a food service facility.
46. Based on the information he obtained and placed in his workfile, Mr. Hildebrandt's conclusion that through-the-fence access would have been granted by the Airport if the Airport had decided that it was economically advantageous to do so is well-founded and not erroneous.
47. Mr. Clapp testified that in his opinion the subject property was too small to serve as an air cargo handling facility. He gave no factual basis for this opinion, and admitted that his knowledge of air freight distribution centers was limited to what he had read in the newspaper about the proposed Federal Express facility.
48. Mr. Donald Johnson, a witness for the NCAB staff, testified that it was probably true that air cargo facilities can be of different sizes, with different volumes of cargo passing through. He admitted that it would be possible to put a small air cargo distribution facility on the subject property.
49. In his original appraisal report, Mr. Hildebrandt acknowledged that in order for the property to be put to its highest and best use, assemblage of a 2.2 acre parcel given by the landowner to a family member would be required, bringing the total site size to approximately 50 acres. Although the 2.2 acre parcel had been subsequently acquired by the Airport from the family member, Mr. Hildebrandt was obligated by G.S. 40A-65 to consider it as though the family member still owned it. His research, which included conversations with the landowner, indicated that the family member had always been amenable to assemblage.
50. Mr. Hildebrandt's conclusion that the subject property was of sufficient size to serve as an air cargo distribution facility is well-founded and not erroneous.

Respondent's Value Opinion: Condemnation Blight

51. Condemnation blight is a decrease in the market value of a property attributable to pending condemnation action. It most often occurs when a public project is announced years before property acquisition begins.

52. Mr. Clapp and the NCAB staff contend (1) that the purpose for which the subject property was taken is to construct the Federal Express facility ; (2) that the Federal Express project was publicly announced in late 1997; (3) that the property was taken on September 10, 1998; and (4) that because the interval between the announcement of the project and the date of the taking was less than one year, no condemnation blight occurred.

53. Mr. Hildebrandt contends (1) that the purpose for which the subject property was taken is expansion and enlargement of airport facilities; (2) that the Airport's intention to acquire the property became public knowledge as early as 1980 and was conclusively confirmed in the Airport Master Plan of 1990; (3) that the property was taken on September 10, 1998; and (4) that because at least eight and possibly as many as eighteen or more years elapsed between public awareness of the project and the date of taking, there was ample opportunity for condemnation blight to occur.

54. Mr. Clapp found no evidence of condemnation blight.

55. Mr. Hildebrandt found and documented in his workfile the following evidence of condemnation blight:

a) The long-standing policy of the City of Greensboro is that when a developer extends sewer to his property, the sewer line must be extended to the boundary of the adjoining property. If the Airport had adhered to this policy in 1980, when it extended the sewer line to serve its new passenger terminal and ancillary hotel, the subject property would have had inexpensive access to city sewer. But the Airport elected not to extend the sewer beyond the terminal, thus precluding sewer service to the subject property.

b) Prior to 1996, the subject property had frontage at grade level on Old Oak Ridge Road and an interchange with Bryan Boulevard. However, as part of the implementation of its 1990 Master Plan for expansion, the Airport requested and obtained from the Department of Transportation a relocation of the Bryan Boulevard interchange to Inman Road and the elevation of Old Oak Ridge Road over Bryan Boulevard, thus depriving the subject property of valuable road access and one of its existing interchanges.

c) In the early 1980's, the Airport acquired a parcel of land which was mostly consumed by the widening of Airport Parkway to Bryan Boulevard, but a residual strip thirty to fifty feet wide of wooded, unproductive land remained. Situated between the northern boundary of the subject property and Airport Parkway, this uneconomic remnant impairs the subject property's visibility. In typical practice, the Airport would have sold this remnant to the adjoining landowner. However, Airport officials elected to retain it, knowing that they would eventually be acquiring the subject property.

d) The zoning ordinances for both the City of Greensboro and Guilford County permit the Airport to control the zoning of any parcel that has been identified for acquisition in the Airport's Master Plan. Because a prospective purchaser of the subject property would be required to apply to the Airport for re-zoning, the Airport would know of any purchase offers and could exert its influence to prevent any use of the property that was incompatible with its expansion plans.

56. It is logical to infer that the Airport's professed refusal to grant through-the-fence access to the subject property is another instance of condemnation blight, similar in character to its refusal to extend its sewer line.

57. When condemnation blight is present, an appraiser is required by G.S. 40A-65 to evaluate the property as though the various elements of blight were not present, which in the case of the subject property meant to evaluate the property as though it had ready access to sewer, access to roads that formerly served it, good visibility and the potential for sale and re-zoning free of the Airport's influence.

58. Mr. Hildebrandt's opinion as to the fair market value of the subject property takes into account condemnation blight; Mr. Clapp's does not. This is the predominant reason why their respective value opinions differ significantly.

59. Based on the information that he obtained and placed in his workfile concerning the economic damage sustained by the subject property as the result of the Airport's implementation of its expansion plans over a period of years prior to the taking, Mr. Hildebrandt's conclusion that the property was afflicted by condemnation blight was well-founded and not erroneous.

60. In his original report, but not his revised report, Mr. Hildebrandt applied a 96% adjustment to all four of his comparable sales based on the fact that the subject property was immediately adjacent to the Airport (and with assumed runway access) while the comparable parcels were some distance away, the closest being on the other side of a road and slightly diagonal to the Airport.

61. The NCAB staff acknowledged that some proximity adjustment would be appropriate but contends that 96% is excessive and not supported by research.

62. Mr. Hildebrandt derived his proximity adjustment from data he obtained on a three-day site visit to Boise, Idaho. In Boise, an air cargo company had purchased a 32-acre tract for future development as a distribution facility. At the time of Mr. Hildebrandt's visit, the property was one-half mile from the airport boundaries, but it would be contiguous if and when a planned runway were completed. Mr. Hildebrandt talked to the sellers of the property and the manager of the Boise airport and obtained data on the airport's demographics, lease rates and capitalization rates. After satisfying himself that the airports and Boise and Greensboro were comparable, he was able to calculate that values for offsite property having airport access in Boise would range from an additional 74 to 118 percent of the Greensboro market. Mr. Hildebrandt selected the midpoint of the calculated range, 96%.

63. The adjustment methodology used by Mr. Hildebrandt was necessary due to the lack of other comparable market indicators, a function of the uniqueness of the subject property. His methodology is supported by the research documented in his workfile, is consistent with appraisal literature and appears reasonable and not excessive.

USPAP Standard 2 Reporting Issues

64. In his original appraisal report of November 29, 1999, Mr. Hildebrandt notes that the report is in summary format, a notation that indicates "a full narrative discussion of all data, analysis or assumptions may not be contained within the report."

65. Mr. Hildebrandt identifies the intended users of the report as Philip G. Kirk, attorney for the landowner, and any consultants Mr. Kirk may retain.

66. Mr. Hildebrandt states that the function and objective of the appraisal being reported is to provide an opinion of the market value of the subject property for use as the basis for expert testimony in the condemnation action.

67. Mr. Hildebrandt states that "some departure from [current appraisal] standards may be required under jurisdictional exception. . . One such hypothetical condition imposed is that the value opinion must not reflect any increase or decrease in value that is caused by the project, the likelihood of acquisition of the property for the project or the condemnation proceeding itself." This statement is a concise and accurate paraphrase of N.C.G.S. 40A-65, which is entitled "Effect of condemnation procedure on value" and is located in a chapter of the General Statutes entitled "Eminent Domain." Mr. Hildebrandt's statement is merely a formal recitation, in statutory parlance, of the concept of condemnation blight/project enhancement.

68. The person to whom this recitation was addressed, Mr. Kirk, is an attorney with great experience in condemnation litigation and a thorough command of Chapter 40A. The recitation was intended to alert Mr. Kirk to the fact that Mr. Hildebrandt's appraisal assumes the presence of condemnation blight in various forms and that existing condemnation blight is a factor informing his value opinion. Mr. Kirk fully understood what Mr. Hildebrandt was saying and, by virtue of his own expertise, required no further explanation to avoid being misled.

69. The NCAB staff alleges that in his appraisal reports, Mr. Hildebrandt failed to state all the assumptions and hypothetical conditions that affected his analysis and opinions and failed to explain some of the methods he employed in calculating adjustments and correlating sales data. As a result of these failings, his reports were, according to the staff, misleading and lacking in sufficient information to enable the intended users to understand the report properly.

70. There was no evidence that any consultant retained by Mr. Kirk read, utilized or in any way relied on Mr. Hildebrandt's reports; the only intended user who testified in the disciplinary hearing was Mr. Kirk.

71. In Mr. Kirk's opinion, Mr. Hildebrandt's reports were thorough, complete and credible documents, free of any substantial errors of omission or commission and in no way misleading to him.

72. In terms of USPAP standard 2 requirements, Mr. Hildebrandt owed no duty to the Airport's attorneys or appraisers or any other third-party readers. The Airport's attorneys obtained copies of Mr. Hildebrandt's reports through a right of discovery arising from the condemnation action. They deposed him twice prior to trial, using a critique of his work product supplied by Mr. Clapp and a Standard 3 review supplied by Mr. Donald Johnson. Any confusion that might have existed in the minds of the Airport's attorneys or appraisers, not a possibility with which Mr. Hildebrandt was required to concern himself in any event, was cured through depositions.

BASED ON THE FOREGOING Findings of Fact, this Court enters the following:

CONCLUSIONS OF LAW

CONTESTED CASE DECISIONS

1. The standards of real estate appraisal practice that govern this case are USPAP Standards 1, USPAP Standard 2 and N.C.G.S. 40A-65.
2. USPAP Standard 1 requires an appraiser to identify the problem to be solved and the scope of the work necessary to solve the problem, and to correctly complete the research and analysis necessary to produce a credible appraisal.
3. USPAP Standard 2 requires an appraiser, when reporting the results of his appraisal, to communicate his analysis, opinions and conclusions in a manner that is not misleading.
4. N.C.G.S. 40A-65 imposes a legal rule of valuation for condemned property that requires an appraiser to disregard any increase or decrease in the property's value caused by the proposed project for which the property is taken, the reasonable likelihood that the property would be taken for that project, or the condemnation proceeding in which the property is taken. The statute is the codification of the equitable principle that, on the one hand, the government should not be required to pay for additions to a property's value brought about the condemnation "process" (broadly defined), but on the other, the owner should not be forced to absorb any reduction in the property's value brought about by that same condemnation process.
5. Having alleged that Mr. Hildebrandt violated USPAP Standards 1 and 2 and N.C.G.S. 40A-65, the burden of proof is on the NCAB staff to show, by the greater weight of the evidence, that any of the alleged violations occurred.
6. After consideration of all the evidence of record, it appears, and the undersigned so holds, that the NCAB staff has failed to show by the greater weight of the evidence that Mr. Hildebrandt violated any applicable standard in the performance and reporting of the appraisal under scrutiny.

DECISION

Respondent did not violate applicable statutes or rules in performing an appraisal for his client, Philip G. Kirk, attorney at law, for use in the condemnation action known as *Piedmont Triad International Airport v. Simms*, Guilford County Superior Court case no. 98 CVS 9085. Therefore, the N.C. Appraisal Board should not impose any disciplinary sanctions against Respondent as a result of the appraisal in question.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b),(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the N.C. Appraisal Board.

This the 20th day of August, 2002.

Sammie Chess, Jr.
Administrative Law Judge

CONTESTED CASE DECISIONS

5. In contrast to its failure to make even a single follow-up to the insurance company, Respondent sent Ms. Hill bill after bill after bill, then, having received no response, sent her account to a collection agency, then, having received no response to that effort, sent her account to the Department of Revenue for collection under the Setoff Debt Collection Act. (T pp. 28-29).

6. The problem with all this activity in trying to collect from Ms. Hill is that Respondent sent the bills to old addresses. Ms. Hill did move several times during the pendency of the collection effort. However, she reported a new address to the Respondent when she went in for surgery later in 1999, and either the admissions department failed to report that address to the billing and collections department(s) or the address otherwise did not make it to the collections department records, and no bill was ever sent to that address. (T pp 41-42; 50-51)

7. Respondent and/or other State agencies took Ms. Hill's tax refund check for 2000 in the amount of \$858.55, and applied \$535.55 of this amount to her air ambulance bill on February 18, 2001. (T pp 29-30).

8. Respondent and/or other State agencies took Ms. Hill's tax refund check for 2001 in the amount of \$887.45, and applied all of it to her air ambulance bill, which paid the bill in full. (T pp 17-18). It is this collection action that is the subject of this contested case.

9. Ms. Hill never received a bill for the ambulance services from Respondent until 2002. (T pp 60-62).

10. Ms. Hill did not receive actual notice of the ambulance bill until 2002, when her tax refund was taken by the State, and she was able to reach someone at the North Carolina Department of Revenue (DOR) who explained the reason the refund was taken. Though she did receive the notice of tax set off in 2001, her tax preparer was unable to tell her the reason for it and she was unable to reach anyone at the DOR. (T pp 56-57; 61-62).

11. Ms. Hill works at Womack Army Medical Hospital, dealing with insurance claims, and has a good understanding of health insurance policies. She testified that her insurance policy would have covered the ambulance transportation 100 per cent had Respondent properly billed the insurance company. Ms. Hill contacted the insurance company after she discovered the situation with this bill in 2002, and the insurance company informed her that they could no longer cover the charges because of the passage of time.

12. Both witnesses were credible.

13. Respondent undertook to obtain payment from Ms. Hill's insurance policy. Ms. Hill relied in good faith upon Respondent's efforts, knowing that Respondent's bill would be covered 100 per cent. Respondent acted negligently in failing to make any follow-up whatsoever with the insurance company, despite being put on notice—by the silence of the insurance company—that the insurance company had not registered the claim. Having undertaken to act, and having acted negligently to the detriment of Ms. Hill, Respondent cannot now force Ms. Hill to pay for Respondent's negligence.

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapter 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.

3. Respondent undertook to obtain payment from Ms. Hill's insurance policy. Ms. Hill relied in good faith upon Respondent's efforts, knowing that Respondent's bill would be covered 100 per cent. Respondent acted negligently in failing to any follow-up whatsoever with the insurance company, despite being put on notice—by the silence of the insurance company—that the insurance company had not registered the claim. Having undertaken to act, and having acted negligently to the detriment of Ms. Hill, Respondent cannot now force Ms. Hill to pay for Respondent's negligence.

4. Respondent exceeded its authority and jurisdiction, acted erroneously, acted arbitrarily and capriciously, and failed to act as required by law or rule when it submitted Petitioner's bill for collection under the Setoff Debt Collection Act. Respondent is not entitled to Petitioner's State income tax refund.

DECISION

The Respondent shall return to Ms. Hill the entire portion of her State income tax refund that was withheld under the Setoff Debt Collection Act (\$887.45), and shall treat Ms. Hill's bill for services rendered on June 29, 1999 as paid in full.

CONTESTED CASE DECISIONS

ORDER

It is hereby ordered that the agency serve a copy of the FINAL DECISION on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services, Division of Facility Services.

This the 21st day of August, 2002.

James L. Conner, II
Administrative Law Judge