

NORTH CAROLINA

REGISTER



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For the **CUMULATIVE INDEX** to the NC Register go to:
<http://ncoah.com/rules/register/ci.shtml>

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterator	
19A	TRANSPORTATION	26 Landscape Architects	
20	TREASURER	28 Landscape Contractors	
21*	OCCUPATIONAL LICENSING BOARDS	29 Locksmith Licensing	
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		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2004 – December 2004

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
18:20	04/15/04	03/24/04	04/30/04	06/14/04	06/21/04	08/01/04	01/26/05	01/10/05
18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
19:03	08/02/04	07/12/04	08/17/04	10/01/04	10/20/04	12/01/04	01/26/05	04/29/05
19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
19:08	10/15/04	09/24/04	10/30/04	12/14/04	12/20/04	02/01/05	05/00/06	07/12/05
19:09	11/01/04	10/11/04	11/16/04	12/31/04	01/20/05	03/01/05	05/00/06	07/29/05
19:10	11/15/04	10/22/04	11/30/04	01/14/05	01/20/05	03/01/05	05/00/06	08/12/05
19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

Note from the Codifier: This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

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

Town of Scotland Neck

Pursuant to N.C.G.S. § 130A-310.34, the Town of Scotland Neck has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Scotland Neck, Halifax County, North Carolina. The Property consists of 19.91 acres and is located at 500 East Seventh Street. Environmental contamination exists on the Property in groundwater and surface water, and is undergoing remediation by the Moore Company d/b/a/ Fulflex of North Carolina, Inc. under the oversight of DENR's Aquifer Protection Section. (The relevant incident number is 86348.) The Town of Scotland Neck has committed itself to redevelopment of the Property for no uses other than industrial, office and storage purposes.

The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and the Town of Scotland Neck, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (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 Scotland Neck Memorial Library, 1600 Main Street, Scotland Neck, NC 27874, by contacting Marty Leach at (252) 826-5578; or at 401 Oberlin Rd., Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later.

Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

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

U.S. Department of Justice

Civil Rights Division

JDR:MSR:TGL:maf
DJ 166-012-3
2004-2967
2004-3891
2004-4094

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

October 29, 2004

George A. Weaver, Esq
113 East Nash Street, Suite 404
Wilson, NC 27893

Dear Mr. Weaver:

This refers to six annexations (adopted 06/03/86, 10/03/89 and two on 7/02/97; and Ordinance Nos. 98.1 and 98.2 (2204)) to the Town of Black Creek in Wilson County, NC, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on September 13 and September 27, 2004.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

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

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

TITLE 10A– DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rule cited as 10A NCAC 06T .0201.

Proposed Effective Date: April 1, 2005

Public Hearing:

Date: February 2, 2005

Time: 10:00 a.m.

Location: 325 N. Salisbury St. Albemarle Building Conference Rm. 832, Raleigh, NC

Reason for Proposed Action: Legislation enacted in the 2004 General Assembly, S.L. 2004-124, Section 5.1(a) provides funding to increase the daily rate funded by the State Adult Day Care Fund for Adult Day Care and Adult Day Health Care services by \$5.00. These rules are being proposed for amendment as a result of this appropriation. The proposed changes and addition will ensure that rules governing adult day care reimbursement rates are in compliance with recent State statutory changes. Please note Rule 06Q .0201, Maximum Reimbursement Rates, the daily rate for adult day healthcare was not originally referenced, although it is referenced in Rule 06T .0201 (Nature and Purpose of State Adult Day Care Fund). It has therefore been added to this rule for consistency and clarification. Furthermore, this rule was not revised to reflect both daily and transportation rate increases enacted in the 1997 General Assembly.(S.L. 1997-443). Therefore, it appears the rate is increasing by seven dollars per day and the transportation rate is increasing. However, the current rate for adult day care is \$23.07 (not \$21.07), and the current rate for transportation is \$30.00 per day per client (not \$2.08).

Procedure by which a person can object to the agency on a proposed rule: Written or verbal comments can be made to: Shannon Crane, Division of Aging and Adult Services, 2101 Mail Service Center, Raleigh, NC 27699-2101, (919)733-0440 ext. 210, shannon.crane@ncmail.net.

Written comments may be submitted to: Shannon Crane, Division of Aging and Adult Services, 2101 Mail Service Center, Raleigh, NC 27699-2101, phone (919)733-0440 ext. 210, fax (919)715-0868, email shannon.crane@ncmail.net.

Comment period ends: January 31, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of

the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

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

SUBCHAPTER 06T – STATE ADULT DAY CARE FUNDING

SECTION .0200 - STATE ADULT DAY CARE FUND

10A NCAC 06T .0201 NATURE AND PURPOSE OF STATE ADULT DAY CARE FUND

(a) The State Adult Day Care Fund shall be used for adult day care and adult day health services provided through county departments of social services for the purpose of enabling people to remain in or return to their own homes.

(b) The fund shall be used to increase state financial participation in the costs of this service.

(c) The maximum rate for the purchase of adult day care services under a vendor agreement shall not exceed ~~five~~ six hundred ~~sixty-five~~ seventy-three dollars (~~\$565.00~~) (673.00) per month, of which ~~five~~ six hundred ~~eight~~ dollars (~~\$500.00~~) (\$608.00) shall be for the purchase of daily care and sixty-five dollars (\$65.00) shall be for transportation. The maximum rate for the purchase of adult day health services under a vendor agreement shall not exceed ~~seven~~ eight hundred ~~fifteen~~ twenty-three dollars (~~\$715.00~~) (\$823.00) per month, of which ~~six~~ seven hundred ~~fifty~~ fifty-eight dollars (~~\$650.00~~) (\$758.00) shall be for the purchase of daily care and sixty-five dollars (\$65.00) shall be for transportation. Adult day health services may only be purchased for an individual following a preadmission health assessment as specified in 10A NCAC 06S .0204(b)(2)(A) and a determination that the individual needs one or more services delineated in 10A NCAC 06S .0402(a)(1) through (3).

Authority G.S. 143B-153; 1993 S.L., c. 591, s. 2(a);

PROPOSED RULES

S.L. 1997-443; S.L. 2004-124, s. 5.1(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rule cited as 10A NCAC 71U .0216.

Proposed Effective Date: April 1, 2005

Public Hearing:

Date: February 2, 2005

Time: 10:00 a.m.

Location: Albemarle Building, Room 832, North Salisbury Street, Raleigh, NC

Reason for Proposed Action: *The Medicare Prescription Drug, Improvement and Modernization Act (MMA), was signed on December 8, 2003. The law provides Medicare beneficiaries with a prescription drug discount card that provides them with negotiated prices that should be lower than the regular price of prescription drugs. To prevent households from experiencing any reduction in their food stamp benefits as a result of receiving the discount drug card, the U.S. Department of Agriculture (USDA) is requiring that the discounts and subsidy a household receives through the drug discount card be treated as standard medical expenses, to be used in determining the household's medical expense deduction. In this way, households using the drug discount card will continue to receive a medical deduction for the money they were spending on prescription drugs prior to receiving the card. These standard monthly expenses will be added to any other medical expenses the household incurs during the month, including co-payments paid by the cardholder, in determining the households' medical expense deduction.*

Procedure by which a person can object to the agency on a proposed rule: *Written or verbal comments can be made to: Rhonda McLamb, Food Assistance and Energy Program Coordinator, 325 North Salisbury Street, Raleigh, NC 27603, Phone (919)733-7831 ext. 316, email Rhonda.mclamb@ncmail.net.*

Written comments may be submitted to: *Rhonda McLamb, Food Assistance and Energy Program Coordinator, 325 North Salisbury Street, Raleigh, NC 27603, Phone (919)733-7831 ext. 316, email Rhonda.mclamb@ncmail.net.*

Comment period ends: January 31, 2005

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

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

Fiscal Impact

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

CHAPTER 71 - ADULT AND FAMILY SUPPORT

SUBCHAPTER 71U – FOOD ASSISTANCE

SECTION .0200 - MANUAL

10A NCAC 71U .0216 MEDICAL DEDUCTIONS FOR MEDICARE PRESCRIPTION DRUG CARD BENEFITS

The county department shall allow a monthly medical deduction of twenty-three dollars (\$23.00) as a standard medical expense for all individuals who own an approved Medicare Prescription Drug Card. The county department shall also allow a medical deduction of six hundred dollars (\$600.00) annually for individuals who own an approved Medicare Prescription Drug Card and qualify for the six hundred dollars (\$600.00) subsidy because the individual's income does not exceed 135% of the federal poverty level. The subsidy shall be averaged monthly for calendar year 2005. Any subsidy received in 2004 shall also be averaged monthly during calendar year 2005.

Authority G.S. 108A-51; 143B-153; P.L. 108-173.

TITLE 15A – DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to adopt the rules cited as 15A NCAC 07H .2701-.2705.

Proposed Effective Date: April 1, 2005

Public Hearing:

Date: January 27, 2005

Time: 5:00 p.m.

Location: Blockade-Runner Beach Resort, 275 Waynick Blvd, Wrightsville Beach, NC

Reason for Proposed Action: *During the 2003 legislative session, the NC General Assembly approved a bill authorizing the Coastal Resources Commission (CRC) to adopt both temporary and permanent rules to establish a general permit for the construction of riprap sills for the protection of existing, created or restored wetlands. Permits for riprap sills are currently available through the Major Permit process. DCM is allowed a total of 150 days to review a Major Permit application. It currently takes DCM staff an average of 90 days to complete a major permit review. DCM staff takes an average*

PROPOSED RULES

of two days to complete a general permit review. Adoption of a General Permit for riprap sills will streamline the process for these types of projects.

Procedure by which a person can object to the agency on a proposed rule: Any objection(s) to the proposed rules, please forward a typed or handwritten letter indicating your specific reason(s) for your objection(s) to the following address: Charles S. Jones, DENR, Coastal Management, 151-B Hwy 24, Hestron Plaza II, Morehead City, NC 28557; phone 252-808-2808; email charles.s.jones@ncmail.net.

Written comments may be submitted to: Charles S. Jones, DENR, Coastal Management, 151-B Hwy 24, Hestron Plaza II, Morehead City, NC 28557

Comment period ends: January 31, 2005

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

Fiscal Impact

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

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND ENHANCEMENT IN ESTUARINE AND PUBLIC TRUST WATERS

15A NCAC 07H .2701 PURPOSE

A general permit pursuant to this Section shall allow for the construction of riprap sills for wetland enhancement in estuarine and public trust waters according to the authority provided in Subchapter 07J .1100 and according to the rules in this Section.

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2702 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and applicant name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection.

(c) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit.

(d) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representative. Written authorization to proceed with the proposed development shall be issued by the Division of Coastal Management. Construction of the project shall start within 90 days of the issuance date of this permit or the general authorization expires and it shall be necessary to re-examine the proposed development to determine if the general authorization can be reissued.

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2703 PERMIT FEE

The applicant shall pay a permit fee of one hundred dollars (\$100.00). This fee shall be paid by check or money order made payable to the Department.

Authority G.S. 113A-107; 113A-118.1; 113A-119.1.

15A NCAC 07H .2704 GENERAL CONDITIONS

(a) Structures authorized by a permit issued pursuant to this Section shall be riprap or stone sills conforming to the standards in this Rule.

(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources (DENR) to make periodic inspections at any time deemed necessary in order to insure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in this Rule.

(c) The placement of riprap or stone sills authorized in this Rule shall not interfere with the established or traditional rights of navigation of the waters by the public.

(d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions

concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2705 SPECIFIC CONDITIONS

(a) A general permit issued pursuant to this Section shall only be applicable for the construction of riprap or stone sill structures built in conjunction with existing, created or restored wetlands.

(b) This general permit shall not apply within the Ocean Hazard System Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

(c) On shorelines where no fill is proposed, the landward edge of the sill shall be positioned no more than five feet waterward of the waterward depth contour of locally growing wetlands or to mid-tide depth contour, whichever is greater. Where no wetlands exist, in no case shall the landward edge on the sill be positioned greater than 30 feet waterward of the mean high water or normal high water line.

(d) On shorelines where fill is proposed, the landward edge of the sill shall be positioned no more than 30 feet waterward of the existing mean high water or normal high water line.

(e) The permittee shall maintain the authorized sill and existing or planted wetlands in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification from the Division of Coastal Management.

(f) The height of sills shall not exceed six inches above mean high water, normal water level, or the height of the adjacent wetland substrate, whichever is greater.

(g) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.

(h) Sills shall be porous to allow water circulation through the structure.

(i) The sills shall have at least one five-foot drop-down or opening every 100 feet and may be staggered, overlapped or left open as long as the five-foot drop-down or separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet. Deviation from these drop-down requirements shall be allowable following coordination with the N.C. Division of Marine Fisheries and the National Marine Fisheries Service.

(j) The riprap structure shall not exceed slope of a one foot rise over a two foot horizontal distance and a minimum slope of a one and a half foot rise over a one foot horizontal distance. The width of the structure on the bottom shall be no wider than 15 feet.

(k) For the purpose of protection of public trust rights, fill waterward of the existing mean high water line shall not be placed higher than the mean high water elevation.

(l) The permittee shall not claim title to any lands raised above the mean high or normal water levels as a result of filling or accretion.

(m) For water bodies more narrow than 150 feet, the structures shall not be positioned offshore more than one sixth (1/6) the width of the waterbody.

(n) The sill shall not be within a navigation channel marked or maintained by a state or federal agency.

(o) The sill shall not interfere with leases or franchises for shellfish culture.

(p) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owners riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the mean high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the waters edge.

(q) The sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.

(r) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above mean high water level.

(s) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the riprap structure.

(t) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.

(u) No excavation or filling of any native submerged aquatic vegetation is authorized by this general permit.

(v) No excavation of the shallow water bottom or any wetland is authorized by this general permit.

(w) No more than 100 square feet of wetlands may be filled as a result of the authorized activity.

(x) Backfilling of sill structures may only be utilized for the purpose of creating a suitable substrate for the establishment or reestablishment of wetlands. Only clean sand fill material may be utilized.

(y) The riprap material shall consist of clean rock or masonry materials such as granite or broken concrete. Riprap material shall be free of loose sediment or any pollutant. The structures shall be of sufficient size and slope to prevent its movement from the site by wave or current action.

(z) If one or more contiguous acre of property is to be graded, excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Land Resources, Land Quality Section, or appropriate government having jurisdiction. The plan must be approved prior to commencing the land-disturbing activity.

PROPOSED RULES

(aa) In order to ensure that no adverse impacts occur to important fisheries resources, the Division of Marine Fisheries shall review and concur with the location and design of the proposed project prior to the issuance of this general permit.
(bb) Prior to the issuance of this general permit, Division staff shall coordinate with the Department of Administration's State Property Office to determine whether or not an easement will be required for the proposed activity.
(cc) Following issuance of this general permit, the permittee shall contact the N.C. Division of Water Quality and the U.S. Army Corps of Engineers to determine any additional permit requirements. Any such required permits, or a certification from the appropriate agency(s) that no additional permits are required, shall be obtained and copies provided to the Division of Coastal Management prior to the initiation of any development activities authorized by this permit.

Authority G.S. 113A-107; 113A-118.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 15A NCAC 18A .2601, .2606, .2609, .2612, .2617, .2621.

Proposed Effective Date: April 1, 2005

Public Hearing:

Date: January 19, 2005

Time: 2:00-3:00 p.m.

Location: G1 A&B Conference Room, 1330 St. Mary's St., Raleigh, NC

Reason for Proposed Action: To promote consistency with the Shellfish Rules 15A NCAC 18A .0100-.0900 and to promote consistency with FDA food code.

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

Written comments may be submitted to: Susan Grayson, Branch Head, DENR Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0926, fax (919) 715-4739, and email sue.grayson@ncmail.net.

Comment period ends: January 31, 2005

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

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

Fiscal Impact

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

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 – THE SANITATION OF FOOD SERVICE ESTABLISHMENTS

15A NCAC 18A .2601 DEFINITIONS

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

- (1) "Approved" means procedures and equipment determined by the Department to be in compliance with this Section. ~~Food service equipment which meets and is installed in accordance with National Sanitation Foundation Standards or equal shall be approved.~~ Food equipment that is certified for sanitation by an American National Standards Institute (ANSI) – accredited program shall be approved. ~~National Sanitation Foundation ANSI standards are incorporated by reference including subsequent amendments and editions. These standards may be obtained from ANSI, 1819 L Street, NW, 6th Floor, Washington, DC 20036. the National Sanitation Foundation, P.O. Box 130140, Ann Arbor, Michigan 48113 0140 and are also available for inspection at the Division of Environmental Health.~~
- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the rules of the N.C. Department of Human Resources, Division of Aging.
- (3) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.
- (4) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department. For purposes of any notices required pursuant to the rules of this Section, notice shall be

PROPOSED RULES

- mailed to "Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources," 1632 Mail Service Center, Raleigh, NC 27699-1632.
- (5) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
- (6) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating, cooking, or processing utensils or equipment, or who is employed at any time in a room in which food or drink is prepared or served.
- (7) "Environmental Health Specialist" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (8) "Equipment" means refrigeration, including racks and shelving used in refrigeration, utensil cleaning and culinary sinks and drainboards, warewashing and dishwashing machines, food preparation tables, counters, stoves, ovens, and other food preparation and holding appliances.
- (9) "Food" means any raw, cooked, or processed edible substance including meat, meat food products, poultry, poultry products, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (10) "Food service establishment" means any establishment or operation where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- (11) "Food stand" means a food service establishment which prepares or serves foods and which does not provide seating facilities for customers to use while eating or drinking.
- (12) "Good repair" means that the item in question can be kept clean and used for its intended purpose.
- (13) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- (14) "Highly susceptible population" means persons who are more likely than other persons in the general population to experience foodborne disease because they are:
(a) immunocompromised, preschool age children or older adults; and
- (b) obtaining food at a facility that provides services such as custodial care, health care or assisted living, such as an adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.
- ~~(14)~~(15) "Limited food service establishment" means a food service establishment as described in G.S. 130A-247(7).
- ~~(15)~~(16) "Local health director" means the administrative head of a local health department or his authorized representative.
- ~~(16)~~(17) "Meat" or "meat food products" means meat and meat food products as defined in G.S. 106-549.15(14).
- ~~(17)~~(18) "Meat market" means those food service establishments as defined in 130A-247 (1)(v).
- ~~(18)~~(19) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- ~~(19)~~(20) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- ~~(20)~~(21) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- ~~(21)~~(22) "Poultry" or "poultry products" means poultry and poultry products as defined in G.S. 106-549.51(25) and (26).
- ~~(22)~~(23) "Private club" means a private club as defined in G.S. 130A-247(2).
- ~~(23)~~(24) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.
- ~~(24)~~(25) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- ~~(25)~~(26) "Restaurant" means a food service establishment which prepares or serves food and which provides seating.
- ~~(26)~~(27) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- ~~(27)~~(28) "Sewage" means the liquid and solid human body waste and liquid waste generated by

water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.

~~(28)~~(29) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.

~~(29)~~(30) "Substantially similar" means similar in importance, degree, amount, placement or extent.

~~(30)~~(31) "Temporary food establishment" means those food or drink establishments which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.

~~(31)~~(32) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers and similar items with which food or drink comes in contact during storage, preparation, or serving.

Authority G.S. 130A-248.

15A NCAC 18A .2606 GRADING

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

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

- (5) Violation of Rule .2609 of this Section related to accurate thermometer availability shall equal no more than 3 percent.
- (6) Violation of Rule .2610 of this Section related to written notice to customers about use of clean plates for return trips to buffet shall equal no more than 1 percent.
- (7) Violation of Rule .2610 of this Section related to properly labeling or storage of dry food shall equal no more than 2 percent.
- (8) Violation of Rule .2616 of this Section related to personnel with infections or communicable diseases restricted shall equal no more than 5 percent.
- (9) Violation of Rule .2609 of this Section related to proper handwashing or good hygienic practices shall equal no more than 5 percent.
- (10) Violation of Rule .2616 of this Section related to clean clothes or hair restraints shall equal no more than 1 percent.
- (11) Violation of Rules .2618 or .2619 of this Section related to food contact surfaces cleaned or sanitized by approved methods, sanitizing solution required shall equal no more than 5 percent.
- (12) Violation of Rules .2618, or .2619 of this Section related to approved utensil-washing facilities of sufficient size, with accurate thermometers or test methods available or used shall equal no more than 3 percent.
- (13) Violation of Rules .2617, .2618, or .2622, of this Section related to food contact surfaces shall equal no more than 3 percent.
- (14) Violation of Rules .2601, .2608, .2617 or .2621 of this Section related to food service equipment NSF or equal or approved utensils shall equal no more than 2 percent.
- (15) Violation Rule .2618 of this Section related to air-drying clean equipment or utensils shall equal no more than 3 percent.
- (16) Violation of Rule .2620 of this Section related to the storage of single service utensils shall equal no more than 2 percent.
- (17) Violation of Rules .2617 or .2622 of this Section related to non-food contact surfaces clean or in good repair shall equal no more than 2 percent.
- (18) Violation of Rules .2618 or .2623 of this Section related to source of water supply, hot or cold water under pressure, or meets water temperature requirements shall equal no more than 5 percent.
- (19) Violation of Rule .2623 of this Section related to cross connections or other potential sources of contamination shall equal no more than 5 percent.
- (20) Violation of Rules .2624, or .2625 of this Section related to lavatory or toilet facilities approved, accessible, or in good repair shall equal no more than 4 percent.

PROPOSED RULES

- (21) Violation of Rules .2609, .2624, or .2625 of this Section related to lavatory facilities or toilet facilities with self-closing doors, fixtures or rooms clean, mixing faucet, soap, towels, dryer, or sign shall equal no more than 2 percent.
- (22) Violation of Rules .2612, .2613, or .2626 of this Section related to wastewater discharged into approved, properly operating wastewater treatment and disposal system: other by-products disposed of properly shall equal no more than 5 percent.
- (23) Violation of Rule .2626 of this Section related to garbage cans, containerized systems properly maintained, cleaning facilities provided or contract maintained for cleaning shall equal no more than 2 percent.
- (24) Violation of Rule .2633 of this Section related to animal or pest presence shall equal no more than 4 percent.
- (25) Violation of Rule .2633 of this Section related to self-closing doors or screened windows shall equal no more than 2 percent.
- (26) Violation of Rule .2633 of this Section related to pest breeding places or rodent harborages shall equal no more than 1 percent.
- (27) Violation of Rules .2613, .2624, .2627, or .2628 of this Section related to floors, walls, or ceilings properly constructed shall equal no more than 2 percent.
- (28) Violation of Rules .2613, .2624, .2627, or .2628 of this Section related to floors, walls, or ceilings clean or in good repair shall equal no more than 1 percent.
- (29) Violation of Rule .2630 of this Section related to lighting or ventilation that meets illumination or shield requirements shall equal no more than 1 percent.
- (30) Violation of Rule .2631 of this Section related to ventilation clean or in good repair shall equal no more than 1 percent.
- (31) Violation of Rule .2633 of this Section related to storage or labeling of toxic substances shall equal no more than 5 percent.
- (32) Violation of Rules .2620, 2632, or .2633 of this Section related to outside premise clean, storage spaces clean, or storage above the floor shall equal no more than 1 percent.
- (33) Violation of Rule .2633 of this Section related to storage space not used for domestic purpose shall equal no more than 1 percent.
- (34) Violation of Rule .2633 of this Section related to work clothing and linen properly handled or stored and proper storage of mops, brooms and hoses shall equal no more than 1 percent.

One half of the percent value may be assessed for any rule violation in this Section based on the severity or recurring nature of the violation.

(b) The grading of restaurants, food stands, drink stands and meat markets shall be based on the standards of operation and

construction as set forth in Rules .2607 through .2644 of this Section. An establishment shall receive a credit of two points on its score for each inspection if a manager or other employee responsible for operation of that establishment and who is employed full time in that particular establishment has successfully completed in the past three years a food service sanitation program approved by the Department. ~~An approved food service sanitation program shall be equivalent to the ServSafe Manager Certification course of the National Restaurant Association.~~ Request for approval of food service sanitation programs shall be submitted in writing to the Division of Environmental Health. The course shall include a minimum of 12 contact hours— hours and provide instruction in the following subject areas:

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

Instructors shall meet the criteria established by the Department. The participant must pass a food service manager's certification examination approved by the Department. Evidence that a person has completed such a program shall be maintained at the establishment and provided to the Environmental Health Specialist upon request. An establishment shall score at least 70 percent on an inspection in order to be eligible for this credit.

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

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

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

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

Authority G.S. 130A-248.

15A NCAC 18A .2609 REFRIGERATION: THAWING: AND PREPARATION OF FOOD

(a) All potentially hazardous foods requiring refrigeration shall be kept at or below 45° F (7° C), except when being prepared or served. An air temperature thermometer accurate to 3° F (1.5° C) shall be provided in all refrigerators.

~~(b) Refrigeration and freezer space shall be provided to accommodate the volume of food handled.~~

PROPOSED RULES

(b) Refrigeration and freezer capacity shall be sufficient to maintain required temperatures on all potentially hazardous foods.

(c) Potentially hazardous foods shall be thawed:

- (1) in refrigerated units at a temperature not to exceed 45° F (7° C);
- (2) under potable running water of a temperature of 70° F (21° C), or below, with sufficient water velocity to agitate and float off loose food particles into the overflow;
- (3) as a part of the conventional cooking process; or
- (4) in a microwave oven only when the food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven.

(d) Employees preparing food shall have used antibacterial soap, dips or hand sanitizers immediately prior to food preparation or shall use clean, plastic disposable gloves or sanitized utensils during food preparation. This requirement is in addition to all handwashing requirements in Section .2600 of these Rules. Food shall be prepared with the least possible manual contact, with utensils and on preparation surfaces that have been cleaned and rinsed prior to use. Preparation surfaces which come in contact with potentially hazardous foods shall be sanitized as provided in Rule .2618(c) of this Section. Raw fruits and raw vegetables shall be washed with potable water to remove soil and other contaminants before being cooked or served.

(e) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140° F (60° C) except as follows:

- (1) poultry, poultry stuffings, stuffed meats, and stuffings containing meat shall be cooked to heat all parts of the food to at least 165° F (74° C) with no interruption of the cooking process, and
- (2) pork and any food containing pork shall be cooked to heat all parts of the food to at least 150° F (66° C), and
- (3) ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C), and
- (4) rare roast beef shall be cooked to an internal temperature of at least 130° F (54° C), and
- (5) rare beef steak shall be cooked to a temperature of 130° F (54° C) unless otherwise ordered by the immediate consumer.

(f) Liquid eggs, or uncooked frozen eggs, dry eggs and egg products shall be used only for cooking and baking purposes. This Paragraph does not apply to pasteurized products.

(g) Potentially hazardous foods that have been cooked and then refrigerated shall be reheated to 165° F (74° C) or higher throughout before being served or before being placed in a hot food storage facility except that, food in intact packages from processing plants that are regulated by the food regulatory agency that has jurisdiction over the plants may initially be

reheated to 140° F (60° C). Reheating time shall not exceed two hours.

(h) All potentially hazardous foods shall be stored at temperatures of 140° F (60° C) or above; or 45° F (7° C) or below except during necessary periods of preparation and serving. However, rare roast beef shall be stored at a temperature of at least 130° F (54° C) or above; or 45° F (7° C) or below.

(i) Time only, rather than the temperature requirements set forth in Paragraph (h) of this Rule, may be used ~~in connection with~~ as the public health control for a working supply of potentially hazardous foods food before cooking, or for ready-to-eat potentially hazardous food that are is displayed or held for service for immediate consumption if:

- (1) ~~The the food is labeled- marked or otherwise identified to indicate the time that is four hours past the point in time with the time of completion of the cooking process or the point in time when the food was otherwise is removed from temperature control;~~
- (2) ~~The the food is cooked and served, served if ready-to-eat, or discarded, within four hours from the point in time served to the public within two hours of the time of completion of the cooking process or when the food was otherwise is removed from required temperature control; and~~
- (3) ~~food in unmarked containers or packages or, marked to exceed a four hour limit, shall be discarded; and~~
- (4)(3) ~~The the establishment maintains in the food establishment written procedures approved by the Department for the handling of food from the time of completion of the cooking process or when the food is otherwise removed from required temperature control.~~

These procedures shall be made available to the regulatory authority upon request.

(j) Time only, rather than temperature requirements as set forth in Paragraph (h) of this Rule, may be used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for customer take-out, if:

- (1) the food is marked or otherwise identified to indicate the time that is two hours past the point in time when the food is removed from temperature control;
- (2) the food is cooked and served, served if ready-to-eat, or discarded, within two hours from the point in time when the food is removed from required temperature control;
- (3) food in unmarked containers or packages or, marked to exceed a two hour limit, shall be discarded; and
- (4) the establishment maintains in the food establishment written procedures approved by the Department for the handling of food from the time of completion of the cooking process or when the food was otherwise removed from required temperature control.

These procedures shall be made available to the regulatory authority upon request.

~~(j) Potentially hazardous food that is displayed or held for service for immediate consumption shall not be served to the public unless it has been maintained at the temperature required in Paragraph (h) of this Rule; or~~

~~(1) it is marked with the time of completion of the cooking process or when it was otherwise removed from required temperature control; and~~

~~(2) the two hour period referenced in Subparagraph (i)(2) of this Rule has not expired.~~

(k) In a food establishment that serves a highly susceptible population, time only, rather than temperature, may not be used as the public health control for raw eggs.

~~(k)(l) All potentially hazardous food that is transported must be maintained at temperatures as noted in Paragraph (h) of this Rule.~~

~~(H)(m) A metal stem-type thermometer accurate to 2°F (1° C) shall be available to check food temperatures.~~

Authority G.S. 130A-248.

15A NCAC 18A .2612 SHELLFISH

(a) All shellfish and crustacea meat shall be obtained from sources in compliance with the Department's rules on shellfish and crustacea. Copies of 15A NCAC 18A ~~.0300~~ .0100 through .0900 may be obtained from the Department. If the source of clams, oysters, or mussels is outside the state, the shipper's name shall appear on the "Interstate Certified Shellfish Shippers List" as published monthly by the Shellfish Sanitation Branch, Food and Drug Administration. ~~If the source of cooked crustacea meat is outside the state, it shall be certified by the regulatory authority of the state or territory of origin, attested by the presence of an official permit number on the container. If the source of the cooked crustacea meat is within the United States, the processor's name, address, and certificate number with State abbreviation shall appear on the container. If the source of the cooked crustacea meat is outside the United States, containers must meet Federal labeling requirements including the indication of country of origin on the label.~~

(b) All shucked shellfish and all cooked crustacea meat shall be stored in the original container. Each original container shall be clearly identified with the name and address of the ~~packer, repacker, packer or repacker, and the certification number,~~ and the abbreviated name of the state or territory. Shucked shellfish unit containers shall be dated in accordance with 15A NCAC 18A .0600.

(c) All shellstock shall be stored in the containers in which packed at the source. Each original container shall be clearly identified with a uniform tag or label bearing the name and address of the shipper, the certificate number issued by the state or territory regulatory authority, the abbreviated name of the state, the name of the waters from which the shellfish were ~~taken,~~ taken, the date of harvest, the kind and quantity of the shellstock in the container, and the name and address of the consignee.

(d) Shellstock shall be stored under mechanical refrigeration and in a manner to prevent cross-contamination to or from the

shellstock. The re-use of single-service shipping containers and the storage of shucked shellfish in other containers are not allowed.

(e) After each container of shellstock has been emptied, the management shall remove ~~the stub of the tag~~ and retain it for a period of at least 90 days.

(f) With the exception of opening shellfish for immediate consumption on the premises, no shellfish shucking shall be performed unless the establishment holds a valid shellfish shucking permit.

(g) Shellstock washing facilities shall consist of an approved mechanical shellfish washer, or a sink or slab with catch basin, indirectly drained into an approved sewage collection, treatment, and disposal system. The washing shall be done in a clean area, protected from contamination. A can wash facility shall not be used for the washing of shellstock or other foods.

(h) The cooking of shellfish shall be accomplished in an area meeting the requirements of the rules of this Section.

(i) Re-use of shells for the serving of food is prohibited. It shall not be considered reuse to remove a shellfish from its shell and return it to that same shell for service to the public. Shells shall be stored in a manner to prevent flies, insects, rodents, and odors.

(j) All establishments that prepare, serve, or sell raw shellfish shall post in a conspicuous place where it may be readily observed by the public prior to consumption of shellfish, the following consumer advisory:

"Consumer Advisory
Eating raw oysters, clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor immediately."

(k) Cooked crustacea meat held cold shall be held at 40° F or less for fresh crustacea meat and 36° F for pasteurized crustacea meat.

Authority G.S. 130A-248.

15A NCAC 18A .2617 UTENSILS AND EQUIPMENT

(a) All eating, drinking, and cooking utensils, tables, sinks, cabinets, hoods, shelves, equipment, fixtures, and other items used in connection with the preparation of food shall be kept clean and in good repair.

(b) All surfaces with which food or drink comes in contact shall consist of smooth, not readily corrodible, non-toxic materials in which there are no open cracks or joints that will collect food particles and slime, and be kept clean.

(c) Shelves, tables, and counters shall not be covered with paper, cardboard, oil cloth, or other absorbent material, and shall be free of crevices. Dining table linen or similar dining table coverings, if used, shall be kept clean and in good repair.

(d) Equipment shall meet ~~National Sanitation Foundation~~ ANSI standards. If equipment is not listed by ANSI accredited education service program, ~~does not meet National Sanitation~~

PROPOSED RULES

~~Foundation standards~~ the owner or operator shall submit documentation to the Department that demonstrates that the equipment shall be equivalent to ANSI standards. ~~is at least equivalent to National Sanitation Foundation standards.~~ The Department shall determine if the equipment is equivalent to ANSI standards. ~~at least equivalent to National Sanitation Foundation standards.~~ In doing so, if the components of the equipment are the same as those meeting ANSI standards. ~~National Sanitation Foundation standards,~~ then the Department shall deem the equipment equivalent. For purposes of these Rules, toasters, mixers, microwave ovens, hot water heaters and hoods shall not be considered to be equipment and shall not be required to meet ~~National Sanitation Foundation~~ ANSI standards.

(e) Beverage dispensers installed or replaced after August 1, 1998 shall be designed to avoid activation by the lip of a cup or glass when these dispensers are used to refill customer cups or glasses.

Authority G.S. 130A-248.

15A NCAC 18A .2621 DRINKING WATER FOUNTAINS
If drinking fountains are provided, they shall meet ~~National Sanitation Foundation~~ ANSI standards, be of approved angle-jet type and be kept clean. This Rule shall not be interpreted as prohibiting the pitcher service of ice water or the service of bottled water.

Authority G.S. 130A-248.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to amend the rules cited as 21 NCAC 32F .0103 and 32S .0105, .0117.

Proposed Effective Date: April 1, 2005

Public Hearing:

Date: December 16, 2004

Time: 10:00 a.m.

Location: North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609

Reason for Proposed Action: *To increase the application fee and annual registration fee, to adopt a registration late fee for PA and to bring 21 NCAC 32F .0103 into conformity with G.S. 90-15.1. These fees have not increased since 1999. Increases are necessary to provide additional revenue to the North Carolina Medical Board to help offset processing costs and to balance annual revenues with expenditures.*

Procedure by which a person can object to the agency on a proposed rule: *Objections may be submitted via e-mail to Brian Blankenship and at the public hearing.*

Written comments may be submitted to: *Brian L. Blankenship, 1203 Front Street, Raleigh, NC 27609, email brian.blankenship@ncmedboard.org.*

Comment period ends: January 31, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal Impact

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

SUBCHAPTER 32F - ANNUAL REGISTRATION

21 NCAC 32F .0103 FEE

Each physician shall pay an annual registration fee of ~~one hundred dollars (\$100.00)~~ to the Board every year in accordance with G.S. 90-15.1; ~~except, each physician holding a resident's training license shall pay an annual registration fee of fifteen dollars (\$15.00), and every physician who holds a special volunteer license shall pay an annual registration fee of ten dollars (\$10.00), and~~ except that every physician who holds a limited volunteer license shall pay no fee; an annual registration fee of twenty five dollars (\$25.00).

Authority G.S. 90-12; 90-15.1.

SUBCHAPTER 32S - PHYSICIAN ASSISTANT REGULATIONS

21 NCAC 32S .0105 ANNUAL REGISTRATION

(a) Each person who holds a license as a physician assistant in this state shall register his or her Physician Assistant license each year no later than 30 days after his or her birthday by:

- (1) completing the Board's registration form;
- (2) submitting the fee required in Rule .0117 of this Section.

(b) A physician assistant who fails to register as required by this Section shall pay an additional fee of twenty dollars (\$20.00) to the Board. The license of any physician assistant who fails to register and who remains unregistered for a period of 30 days after certified notice of the failure is automatically inactive.

Authority G.S. 90-15; 90-18(13); 90-18.1.

21 NCAC 32S .0117 FEES

The Board requires the following fees:

- (1) Physician Assistant License Fee - ~~one hundred and fifty dollars (\$150.00)~~; two hundred dollars (\$200.00), except that an applicant for a physician assistant limited volunteer license need not submit an application fee.
- (2) Annual Registration Fee - ~~seventy five dollars (\$75.00)~~; one hundred dollars (\$100.00), except that any physician assistant who holds a

limited volunteer license or who submits a statement to the Board confirming that the physician assistant is currently exclusively engaged in volunteer practice and has engaged exclusively in volunteer practice during the preceding year shall submit a reduced registration fee of twenty-five dollars (\$25.00).

Authority G.S. 90-12.1; 90-15; 90-18(13); 90-18.1.

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

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

Rule-making Agency: *NC Board of Pharmacy*

Rule Citation: *21 NCAC 46 .2507 – Administration of Vaccines by Pharmacies*

Date Approved by the Rules Review Commission: *October 21, 2004*

CHAPTER 46 - BOARD OF PHARMACY

SECTION .2500 - MISCELLANEOUS PROVISIONS

21 NCAC 46.2507 ADMINISTRATION OF VACCINES BY PHARMACISTS

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

(a) Purpose. The purpose of this Section is to provide standards for pharmacists engaged in the administration of influenza vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Section, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
 - (B) the patient at the direction of a practitioner.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
- (5) "Board" means the North Carolina Board of Pharmacy.
- (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a

pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.

- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means the North Carolina Medical Practice Act.
- (9) "Physician" means a currently licensed M.D. or D.O. in good standing with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.
- (12) Written Protocol-A physician's order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
 - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
 - (B) the name of the individual pharmacist authorized to administer vaccines;
 - (C) the immunizations or vaccinations that may be administered by the pharmacist;
 - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
 - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
 - (F) locations at which the pharmacist may administer immunizations or vaccinations; and
 - (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate influenza vaccine information to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to them, the information provided and has had their questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer influenza vaccines to patients under 18 years of age.

(d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer influenza vaccines shall:

- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
- (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
- (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
 - (C) current certification specified in Subparagraph (1) of this Paragraph;
 - (D) original written physician protocol;
 - (E) annual review and revision of original written protocol with physician;
 - (F) any problems or complications reported; and
 - (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Pharmacists who administer influenza vaccines shall enter into a written protocol with a supervising physician who agrees to meet the following requirements:

- (1) be responsible for the formulation or approval and periodic review of the physician's order,

standing medical order, standing delegation order, or other order or written protocol and periodically reviews the order or protocol and the services provided to a patient under the order or protocol;

- (2) be accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide adequate back-up coverage;
- (3) review written protocol with pharmacist at least annually and revise if necessary; and
- (4) receive, as appropriate, a periodic status report on the patient, including any problem or complication encountered.

(f) Drugs. The following requirements pertain to drugs administered by a pharmacist:

- (1) Drugs administered by a pharmacist under the provisions of this Section shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Pharmacists while actively engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
- (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(g) Record Keeping and Reporting

- (1) A pharmacist who administers any influenza vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) route of administration of the vaccine;

TEMPORARY RULES

- (E) The name, manufacturer, lot number, and expiration date of the vaccine;
- (F) Dose administered;
- (G) The name and address of the patient's primary health care provider, as identified by the patient; and
- (H) The name or identifiable initials of the administering pharmacist.

- (2) A pharmacist who administers influenza vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(h) Confidentiality.

- (1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance

Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.

- (2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.
- (3) Violations of these Rules by a pharmacist shall constitute grounds by the Board to initiate disciplinary action against the pharmacist.

*History Note: Authority G.S. 90-85.3; 90-85.6;
Eff. April 1, 2003;
Emergency Amendment Eff. May 11, 2004;
Temporary Amendment approved by RRC October 21, 2004.*

APPROVED RULES

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting October 21, 2004, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules have been entered into the North Carolina Administrative Code.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
01	NCAC	30D	.0302	19:01 NCR
10A	NCAC	13B	.3401-.3404	18:20 NCR
10A	NCAC	13B	.3405*	18:20 NCR
10A	NCAC	13B	.6204	18:20 NCR
12	NCAC	09B	.0203*	19:02 NCR
12	NCAC	09B	.0241*	19:02 NCR
12	NCAC	09B	.0305*	n/a G.S. 150B-21.5 Eff. December 1, 2004
12	NCAC	09G	.0504-.0505*	n/a G.S. 150B-21.5 Eff. December 1, 2004
14A	NCAC	12	.0106*	n/a G.S. 150B-21.5 Eff. November 1, 2004
14A	NCAC	12	.0108*	n/a G.S. 150B-21.5 Eff. November 1, 2004
14A	NCAC	12	.0110-.0112*	n/a G.S. 150B-21.5 Eff. November 1, 2004
15A	NCAC	02B	.0311*	18:07 NCR
15A	NCAC	03S	.0102-.0103*	18:21 NCR
15A	NCAC	07H	.0306*	18:19 NCR
15A	NCAC	10A	.1101*	18:18 NCR
16	NCAC	06C	.0202*	19:01 NCR
21	NCAC	08G	.0410*	18:22 NCR
21	NCAC	34B	.0103	18:24 NCR
21	NCAC	34B	.0105-.0107*	18:24 NCR
21	NCAC	34B	.0110*	18:24 NCR
21	NCAC	34B	.0111	18:24 NCR
21	NCAC	34B	.0120-.0121*	18:24 NCR
21	NCAC	34B	.0203-.0205*	18:24 NCR
21	NCAC	34B	.0208	18:24 NCR
21	NCAC	34B	.0210-.0211	18:24 NCR
21	NCAC	34B	.0302-.0305*	18:24 NCR
21	NCAC	34B	.0309*	18:24 NCR
21	NCAC	34B	.0401	18:24 NCR
21	NCAC	34B	.0404-.0407*	18:24 NCR
21	NCAC	34B	.0410*	18:24 NCR
21	NCAC	34B	.0502*	18:24 NCR
21	NCAC	34B	.0508*	18:24 NCR
21	NCAC	34B	.0510*	18:24 NCR
21	NCAC	34B	.0612*	18:24 NCR
21	NCAC	34B	.0615*	18:24 NCR
21	NCAC	34D	.0104	18:24 NCR
21	NCAC	34D	.0301	18:24 NCR
21	NCAC	34D	.0303	18:24 NCR
21	NCAC	34D	.0402-.0403	18:24 NCR
21	NCAC	46	.2507*	19:01 NCR
21	NCAC	48E	.0110*	19:02 NCR
21	NCAC	61	.0201*	19:02 NCR
21	NCAC	61	.0302*	19:02 NCR
25	NCAC	01E	.0203*	18:16 NCR
25	NCAC	01E	.0301*	18:16 NCR
25	NCAC	01E	.1004*	18:16 NCR

25	NCAC	01E	.1007-.1008	18:16 NCR
25	NCAC	01L	.0302-.0303*	18:21 NCR
25	NCAC	01L	.0307	18:21 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

21	NCAC	25	.0101*	18:24 NCR
21	NCAC	25	.0206-.0208*	18:24 NCR
23	NCAC	02D	.0202*	17:21 NCR

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

**10A NCAC 13B .3405 DESIGNATED CRITICAL
ACCESS HOSPITALS**

The requirements of 10A NCAC 13B shall apply to Critical Access Hospitals with the following modifications:

- (1) Autopsy facilities required in Rule .4907 of this Subchapter are not required provided that the facility has in effect a written agreement with another facility meeting Rule .4907 of this Subchapter for providing autopsy services.
- (2) Radiological services required in Section .4800 and Rule .6210 of this Subchapter are not required provided that the facility has a written agreement with another licensed facility meeting the requirements of Section .4800 and Rule .6210 of this Subchapter which makes radiological service available.
- (3) Emergency services required in Rules .4102-.4110 of this Subchapter are not required. Emergency response capability set forth in Rule .4101 of this Subchapter shall be provided. Medical staff shall require that facility personnel are capable of initiating life-saving measures at a first-aid level of response for any patient or person in need of such services. This shall include:
 - (a) Establishing protocols or agreements with any facility providing emergency services;
 - (b) Initiating basic cardio-pulmonary resuscitation according to the American Red Cross or American Heart Association standards;
 - (c) Availability of intravenous fluids and supplies required to establish intravenous access; and
 - (d) Availability of first-line emergency drugs as specified by the medical staff.
- (4) Anesthesia services required in Section .4600 of this Subchapter are not required in hospitals not offering outpatient surgery services.
- (5) Food services required in Section .4700 of this Subchapter shall be provided for inpatients

- (6) directly or made available through contractual arrangements.
"Observation bed" as defined in Rule .3001(32) of this Subchapter does not apply. For purposes of this Section, "Observation bed" means a bed used for no more than 48-hours, to evaluate and determine the condition and disposition of a patient and is not considered a part of the hospital's licensed bed capacity.

*History Note: Authority G.S. 131E-79;
Eff. January 1, 1996;
Amended Eff. November 1, 2004.*

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0203 ADMISSION OF TRAINEES

- (a) The school director shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.
- (b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment as long as the individual turns 20 years of age prior to the date of the State Comprehensive Examination for the course.
- (c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.
- (d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302(1) of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.
- (e) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Basic Law Enforcement Training Course. The specific type of test instrument shall be determined by the School Director and shall be administered no later than by the end of the first two weeks of a presentation of the Basic Law Enforcement Training Course.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided to the School Director a medical examination report, properly completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division may grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to timely receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual is a high school graduate or has passed the General Educational Development Test indicating high school equivalency. High school diplomas earned through correspondence enrollment are not recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided the certified School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check will satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony; or
- (2) a crime for which the punishment could have been imprisonment for more than two years; or
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of application for employment unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission; or
- (4) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction; or
- (5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction occurred more than two years prior to the date of enrollment; or
- (6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes as specified in Paragraph (i) of this Rule, and such offenses were dismissed or the person was found not guilty, may be admitted into the Basic Law Enforcement Training Course but completion of the Basic Law

Enforcement Training Course will not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses which the trainee is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of, and notify the School Director of all Domestic Violence Orders (G.S. 50B) which are issued by a judicial official that provide an opportunity for both parties to be present. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or less. Other offenses under G.S. 20 (Motor Vehicles) or other similar laws of other jurisdictions which shall be reported to the School Director expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), the final disposition, and the date thereof. The notifications required under this Paragraph must be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph shall be applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. December 1, 2004; July 1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

12 NCAC 09B .0241 DJJD SPECIALIZED INSTRUCTOR TRAINING – RESTRAINT, CONTROL AND DEFENSE TECHNIQUES

(a) The instructor training course requirement for the Department of Juvenile Justice and Delinquency Prevention (DJJD) specialized Restraint, Control and Defense Techniques Instructor certification shall consist of at least 70 hours of instruction presented during a continuous period of two weeks.

(b) Each DJJD specialized Restraint, Control and Defense Techniques Instructor training course shall be designed to

provide the trainee with the skills and knowledge to perform the function of a criminal justice Restraint, Control and Defense Techniques Instructor in the "Basic Training for Juvenile Justice Officers" course and the "Basic Training for Juvenile and Chief Court Counselors" courses, as well as in-service training courses for juvenile justice officers and juvenile and chief court counselors.

(c) Each applicant for specialized Restraint, Control and Defense Techniques Instructor training shall:

- (1) Have completed the criminal justice general instructor training course; and
- (2) Possess a valid CPR certification that includes cognitive and skills testing.

(d) Each DJJDP specialized Restraint, Control and Defense Techniques Instructor training course shall include the following identified topical areas and minimum instructional hours for each area:

- | | | |
|------|--|----------|
| (1) | Orientation | 1 Hour |
| (2) | Skills Pre-Test | 1 Hour |
| (3) | Physical Assessment | 4 Hours |
| (4) | Safety Guidelines | 2 Hours |
| (5) | Physical Fitness and Conducting Safe Warm-Up Exercises | 12 Hours |
| (6) | Fundamentals of Professional Liability for Criminal Justice Instructors | 4 Hours |
| (7) | Restraint, Control and Defense Techniques Instructor Guidelines | 2 Hours |
| (8) | Restraint, Control and Defense Techniques Practical Skills and Instructional Methods | 28 Hours |
| (9) | Practical Skills Enhancement | 4 Hours |
| (10) | RCDT Instructional Practicum | 4 Hours |
| (11) | Practical Skills Evaluation | 4 Hours |
| (12) | Comprehensive Examination/ Course Closing | 2 Hours |

(e) Commission-certified schools that are certified to offer the DJJDP "Specialized Restraint, Control and Defense Techniques Instructor" course are: The Staff Development and Training Unit of the North Carolina Department of Juvenile Justice and Delinquency Prevention.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Eff. December 1, 2004.

12 NCAC 09B .0305 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to run concurrently with the existing General Instructor Certification, except as set out in Paragraph (d) of this Rule. The applicant must apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.

(b) The terms of certification as a specialized instructor shall be determined by the expiration date of the existing General

Instructor Certification. The following requirements shall apply during the initial period of certification:

- (1) where certification for both general probationary instructor and Specialized Instructor Certification is issued on the same date, the instructor shall be required to satisfy the teaching requirement for only the general probationary instructor certification. The instructor may satisfy the teaching requirement for the general probationary instructor certification by teaching any specialized topic for which certification has been issued;
- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or full general status, the specialized instructor may satisfy the teaching requirement for the general certification by teaching the specialized subject for which certification has been issued;
- (3) where Specialized Instructor Certification becomes concurrent with an existing 24 month period of General Instructor Certification, the instructor must teach eight hours for each specialized topic for which certification has been issued.

(c) The term of certification as a specialized instructor shall not exceed the 24 month period of full General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the two-year period preceding application for renewal, instructed at least eight hours in each of the topics for which Specialized Instructor Certification was granted and such instruction must be in a Commission-accredited training course or a Commission-recognized in-service training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors and written certification from a School Director; and
- (2) proof that the applicant has, within the two-year period preceding application for renewal, attended and successfully completed any instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or copies of certificates of completion issued by the institution which provided the instructor updates; and
- (3) either:
 - (A) a favorable written recommendation from a School Director accompanied by certification on a Commission

Instructor Evaluation Form that the instructor successfully taught at least eight hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-accredited training course or a Commission-recognized in-service training course during the two-year period of Specialized Instructor Certification; or

- (B) a favorable evaluation by a commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited training course or a Commission-recognized in-service training course, during the two-year period of Specialized Instructor Certification. Such evaluation will be certified on a Commission Instructor Evaluation Form. In addition, instructors evaluated by a Commission or staff member must also teach at least eight hours in each of the topics for which Specialized Instructor Certification was granted.

Upon submission of the required documentation for renewal the Commission staff shall renew the certification as a Specialized Instructor. Such renewal shall occur at the time of renewal of the General Instructor certification.

(d) Certification as a specialized instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section, specifically those certifications not based upon General Instructor Certification, shall remain in effect for 24 months from the date of issuance. During the 24 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for specialized instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas must be maintained.

(e) All instructors shall remain active during their period of certification. If an instructor does not teach at least eight hours in each of the topic areas for which certification is granted, the certification shall not be renewed for those topics in which the instructor failed to teach. Any specialized instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not teach at least eight hours in each of the specialized topics during the two-year period of which certification was granted. Upon application for re-certification, such applicants shall be required to meet the minimum requirements of Rule .0304 of this Section.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" is permissible. However, such

guest participants are subject to the direct on-site supervision of a Commission-certified instructor and must be authorized by the School Director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. December 1, 2004; August 1, 2004; August 1, 2000; July 1, 1991; July 1, 1989; December 1, 1987; February 1, 1987.

12 NCAC 09G .0504 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke the certification of a correctional officer, probation/parole officer, or probation/parole officer-intermediate when the Commission finds that the officer has committed or been convicted of a felony offense.

(b) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;
- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Correction for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) commission or conviction of any other offense involving moral turpitude;
- (5) has been discharged by the North Carolina Department of Correction because the officer lacks the mental or physical capabilities to fulfill the responsibilities of a corrections officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;

- (8) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training, or certification from the Commission;
- (9) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) has refused to submit to an applicant drug screen as required by 12 NCAC 09G .0206;
- (12) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206(3), where the positive result cannot be explained to the Commission's satisfaction; or
- (13) has been denied certification or had such certification suspended or revoked by the North Carolina Sheriffs' Education and Training Standards Commission if such certification was denied, suspended or revoked based on grounds that would constitute a violation of Subchapter 09G.

(c) Following suspension, revocation, or denial of the person's certification, the person shall not remain employed or appointed as a corrections officer and the person shall not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. December 1, 2004; August 1, 2004.

12 NCAC 09G .0505 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL

(a) When the Commission revokes or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of the sanction shall be 10 years where the cause of sanction is:

- (1) commission or conviction of a felony offense; or
- (2) the second suspension of an officer's certification for any of the causes requiring a three year period of suspension; or
- (3) revocation or denial of certification by the North Carolina Sheriffs' Education and Training Standards Commission based on grounds that would constitute a violation of Section 09G of these Rules.

(b) When the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the

period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a misdemeanor as defined in 12 NCAC 09G .0102;
- (2) discharge by the North Carolina Department of Correction pursuant to 12 NCAC 09G .0504(b)(4) and (b)(5) of this Section;
- (3) refusal to submit to the applicant drug screen required by the Rules in this Subchapter;
- (4) production of a positive result on a drug screen reported to the Commission under 12 NCAC 09G .0206(3), where the positive result cannot be explained to the Commission's satisfaction;
- (5) material misrepresentation of any information required for certification or accreditation;
- (6) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempt to obtain credit, training or certification by any means of false pretense, deception, defraudation, misrepresentation or cheating;
- (7) failure to make either of the notifications as required by 12 NCAC 09G .0302;
- (8) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
- (9) certification revoked or denied by the North Carolina Sheriffs' Education and Training Standards Commission, if such certification was revoked or denied based on grounds that would constitute a violation of Section 09G of these Rules.

(c) When the Commission suspends or denies the certification of a corrections officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy relevant basic training requirements; or
- (2) failure to meet or maintain the minimum standards for certification; or
- (3) discharge from the North Carolina Department of Correction for impairment of physical or mental capabilities.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. December 1, 2004.

TITLE 14A – DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

14A NCAC 12 .0106 EQUIPMENT--BOXING

(a) Boxing Gloves--All contestants shall wear thumb attached boxing gloves. Boxing gloves weighing a minimum of 8 ounces

shall be worn by contestants weighing 160 lbs. or less. Boxing gloves weighing a minimum of 10 ounces shall be worn by contestants weighing 160 lbs. or more. Spare boxing gloves, in good condition, must be kept on hand by the promoter. All gloves must pass the inspection of the referee or the Division director or his designee, and the Division may require a brand new set of gloves for any event.

(b) Bandages and handwraps shall meet the following requirements:

- (1) In all weight classes except light heavyweight, cruiserweight and heavyweight, all bandages and handwraps applied to each hand of a contestant shall be restricted to soft cloth, not more than 10 yards in length and two inches in width, held in place by not more than 4 feet of surgical tape.
- (2) In the light heavyweight, cruiserweight and heavyweight weight classes, all bandages and handwraps applied to each hand of a contestant shall be restricted to soft cloth, not more than 12 yards in length and two inches in width, held in place by not more than 8 feet of surgical tape.
- (3) The use of six inches of adhesive tape, not more than one inch in width, shall be permitted across the back of each hand before bandaging or wrapping the hands, provided however, that the tape shall not be applied across the knuckles.
- (4) All bandages and handwraps shall be applied and adjusted in the dressing room in the presence of the inspector. The inspector shall initial or in some other manner mark the bandage or handwrap on each hand so as to be able to determine at the conclusion of the match whether or not the bandage or handwrap was tampered with after the inspector initially examined the bandage or handwrap.

(c) Each contestant's apparel and appearance shall meet the following requirements:

- (1) Each contestant shall wear boxing trunks, the belt of which shall not extend above the waistline;
- (2) Each contestant shall wear a protective cup, which shall be firmly adjusted before entering the ring;
- (3) An individually fitted mouthpiece, shall be in the contestant's mouth at all times during the fight period of each round as provided by these Rules;
- (4) Each contestant shall wear shoes made of soft material as is standard for the type of event in which the contestant is to engage, and not fitted with spikes, cleats, hard soles or hard heels;
- (5) Each contestant shall wear an abdominal guard of standard type which provides sufficient protection to withstand any low blow;

- (6) Although not required, female contestants may wear a protective pelvic girdle to cover the pubic area, coccyx and sides of the hips;
- (7) Female contestants must wear a breast protector;
- (8) All contestants shall be clean and present a neat appearance. This also applies to the contestants' ring apparel. If the Division director or his designee determines the hair on the contestant's head or face presents any potential hazard to the safety of the contestant, his opponent or will interfere with the supervision of the match he shall notify the contestant of such determination at the time of the weigh-in. If, at the time the inspector makes the final inspection of the contestant before the match begins, the contestant has not made the necessary corrections, he shall not be permitted to fight and shall be disqualified.

Any contestant who fails to comply with these requirements shall not be allowed to participate in a match and such failure to comply with these requirements shall be grounds for suspension of the contestant's license.

(d) A boxing ring shall meet the following requirements:

- (1) The ring shall be not less than 16 feet square nor more than 24 feet square within the ropes. The ring floor shall extend at least 18 inches beyond the ropes. The ring floor shall be padded to a thickness of at least 1 inch, and shall be padded with insulate or another similar closed-cell foam. Padding shall extend beyond the ring ropes and over the edge of the platform, with a top covering of canvas, duck or similar material tightly stretched and laced to the ring platform. Material that tends to gather in lumps or ridges shall not be used.
- (2) The ring platform shall not be more than five feet above the floor of the building, and shall be provided with steps for use by contestants and ring officials.
- (3) Ring posts shall be of a metal not less than three inches in diameter, extending from the floor of the building to a height of 58 inches above the ring floor. Ring posts shall be at least 18 inches away from the ropes.
- (4) There shall be four ring ropes, not less than one inch in diameter and wrapped in soft material. The ring ropes shall extend in parallel lines 18, 30, 42, and 54 inches in height above the ring floor.
- (5) The floor plan and apron seating arrangements shall be approved by the Division director or his designee. An isle shall be left clear from the contestant's dressing room to the ring. Clear access to the ring shall also be available for emergency medical personnel. Only match officials shall be allowed to sit at ringside. Alcoholic beverages shall not be permitted at ringside.

*History Note: Authority G.S. 143-652.1;
 Temporary Adoption Eff. January 1, 1996;
 Recodified from 18 NCAC 9 .0104(k)-(n) Eff. April 1, 1996;
 Eff. April 1, 1996;
 Transferred and recodified from 18 NCAC 9 effective
 November 8, 2002;
 Amended Eff. November 1, 2004.*

14A NCAC 12 .0108 FOULS--BOXING

(a) Except in the case of punching while the opponent is down, a foul, whether intentional or unintentional, may result in a deduction of a point, as determined by the referee. The first offense of punching while down shall result in the deduction of two points from the score of the contestant who punches his opponent while his opponent is down, unless the first offense is determined by the referee to be a blatant and clear disregard of the rule. If such determination is made by the referee, the contestant committing the foul shall be immediately disqualified and his opponent shall be declared the winner by disqualification. The second offense of punching while down shall result in the disqualification of the contestant committing the offense and his opponent shall be declared the winner by disqualification. In the case of all other fouls, the referee shall determine whether or not a point is to be deducted, using as his criteria the severity of the foul and its effect upon the opponent. When the referee determines that he shall deduct a point from a contestant, he shall immediately advise the contestant and judges of such action. The referee shall not tolerate continual and repeated commission of fouls by a contestant. The referee shall give warning to a contestant who continually and repeatedly commits fouls and when, in the opinion of the referee, the contestant has displayed persistent disregard for the rule governing the commission of fouls, the referee shall disqualify the contestant, terminate the match and provide such findings to the Division director or his designee for appropriate action. Points for fouls shall only be deducted in the round in which the fouls occurred. A contestant shall not be penalized in a subsequent round for fouls that occurred in a previous round. The following actions are considered to be fouls, the committing of which may result in a deduction of points:

- (1) Major fouls consist of the following:
 - (A) Punching below the belt;
 - (B) Punching an opponent who is down or is getting up after being down;
 - (C) Holding an opponent with one hand and punching with the other;
 - (D) Holding or deliberately maintaining a clinch after several warnings;
 - (E) Wrestling or kicking;
 - (F) Striking an opponent who is helpless as a result of punches received and so supported by the ropes that he does not fall;
 - (G) Butting with the head or shoulder or using the knee;
 - (H) Punching with an open glove, or with the butt of the hand, the wrist or elbow and all backhand punches;

- (I) Purposely going down without being punched;
 - (J) Striking deliberately at that part of the back near the spine and over the kidneys;
 - (K) The deliberate use of the pivot punch or rabbit punch or any punch struck at the back of the neck near the base of the skull and which is not the result of the opponent turning his head to avoid a punch;
 - (L) Jabbing the opponent's eyes with the thumb of the glove;
 - (M) The use of abusive language in the ring;
 - (N) Any unsportsmanlike trick or action causing injury to an opponent;
 - (O) Punching on the break;
 - (P) Punching after the bell has sounded ending the round;
 - (Q) Roughing at the ropes;
 - (R) Pushing an opponent around the ring or into the ropes;
 - (S) Tripping; or
 - (T) Intentional spitting out of the mouthpiece or allowing the mouthpiece to fall out of the mouth.
- (2) Minor fouls include:
- (A) Punching or flicking with the open glove; and
 - (B) Clinching after warning has been given.

(b) Points for aggressiveness shall be awarded to the contestant who sustains the actions of a round by the greatest number of skillful attacks.

(c) A contestant shall be awarded points for sportsmanlike conduct, close adherence to the rules and refraining from taking technical advantage of situations which are unfair to his opponent. Points shall be deducted from a contestant for unsportsmanlike conduct, disregard of the rules and taking technical advantage of situations which are unfair to his opponent.

(d) Points shall be given for clever defensive work such as avoiding or blocking a punch.

(e) Points shall be awarded where ring generalship is conspicuous. Ring generalship includes the ability to:

- (1) Quickly recognize and take advantage of every opportunity presented;
- (2) Cope with a diversity of situations;
- (3) Anticipate and neutralize an opponent's form of attack; and
- (4) Force an opponent to adopt a style of boxing at which he is not particularly skillful.

(f) Points shall be deducted when a contestant persistently delays the action of a match by clinching, holding or lack of aggressiveness.

(g) The following rules apply to the determination of a win or draw:

- (1) A contestant who knocks out his opponent shall be declared the winner of the match.
- (2) If both contestants are knocked down at the same time and both contestants remain down until the count of 10, the match shall be considered a technical draw.
- (3) A contestant who is awarded a technical knockout shall be declared the winner of the match.
- (4) A contestant who is knocked down three times in any one round shall be considered to have lost the match by a technical knockout. If requested by a sanctioning body, this Rule shall be waived for a championship fight.
- (5) When the winner of a match is to be determined by the number of points awarded or deducted or by the number of rounds awarded to each contestant, the scores for all rounds shall be compiled for each judge and the following criteria shall be used:
 - (A) Three wins shall be declared a win;
 - (B) Two wins and one draw shall be declared a win;
 - (C) Two wins and one loss shall be declared a win;
 - (D) One win and two draws shall be declared a draw;
 - (E) One win, one draw and one loss shall be declared a draw;
 - (F) One win and two losses shall be declared a loss;
 - (G) Three draws shall be declared a draw;
 - (H) Two draws and one loss shall be declared a draw;
 - (I) One draw and two losses shall be declared a loss; and
 - (J) Three losses shall be declared a loss.
- (6) A contestant shall not be declared the winner of a match on a claim of low blow foul and a contestant shall not lose a match by reason of a low blow foul.
- (7) No contestant shall be awarded a match based on an unintentional foul unless the foul was unintentional butting. If a match is temporarily halted because of an unintentional foul, the referee shall determine whether the contestant who has been fouled can continue. If the referee determines that the contestant can continue, the referee shall order the match to be continued. If the referee determines that the contestant is unable to continue the match as a result of an unintentional foul other than for butting, the match shall be terminated but no decision shall be rendered by the referee, who shall order the purses of both contestants withheld. The Division director or his designee shall then rule as to the disposition of the purses based on the prior contractual agreement between the promoter and the contestants. If no such contractual provision exists, then the purses shall be disposed of as follows: If the unintentional foul occurs in any round during the first half of the match, the purses shall revert back to the promoter. If the unintentional foul occurs in any round during the second half of the match, the Division director or his designee shall award the purses in accordance with the determination of win, loss or draw based upon the score cards of the judges. If a contestant is unintentionally butted in a match so that he cannot continue, the referee shall declare the result of the match using the following criteria:
 - (A) If the unintentional butt occurs prior to the scoring of the third round and the fouled contestant is unable to continue, the result shall be a technical draw.
 - (B) During a four or six round match, if the unintentional butt occurs in any round subsequent to the scoring of the third round or occurs prior to the scoring of third round but the contestant is not determined to be unable to continue until after the scoring of the third round, the determination of win, loss or draw shall be based upon the score cards of the judges.
 - (C) During an eight round match, if the unintentional butt occurs in any round subsequent to the scoring of the fourth round or occurs prior to the scoring of fourth round but the contestant is not determined to be unable to continue until after the scoring of the fourth round, the determination of win, loss or draw shall be based upon the score cards of the judges.
 - (D) During a ten round match, if the unintentional butt occurs in any round subsequent to the scoring of the fifth round or occurs prior to the scoring of fifth round but the contestant is not determined to be unable to continue until after the scoring of the fifth round, the determination of win, loss or draw shall be based upon the score cards of the judges.
 - (E) During a twelve round match, if the unintentional butt occurs in any round subsequent to the scoring of the sixth round or occurs prior to the scoring of sixth round but the contestant is not determined to be unable to continue until after the scoring of the sixth round, the determination of win, loss

or draw shall be based upon the score cards of the judges.

- (8) When an injury is produced by a fair punch but because of the severity of the injury the match cannot continue, the injured contestant shall be declared the loser by a technical knockout.

(h) If a contestant refuses to continue a match while physically able to do so, the referee shall disqualify him, and award the match to his opponent. The referee shall provide a written report to the Division. If the Division determines that the contestant refused to continue a match while physically able to do so, the Division shall impose a period of suspension for a period not less than six months and may impose a civil penalty.

(i) In any case where the referee determines that both contestants are not honestly competing, that a knockdown is intentional and predetermined by both parties or a foul has been prearranged so as to cause the match to be terminated, he shall not finish the knockdown count or disqualify either contestant for fouling or render a decision, but shall instead terminate the match not later than the end of the round and order the promoter to surrender the purses of both contestants to the Division director or his designee pending an investigation of the alleged violation. The announcer or referee shall inform the audience that no decision has been rendered.

(j) If, in the opinion of the physician, the referee or a judge has received an injury, or has become ill the seriousness of which prevents him from continuing to officiate, time out shall be called and another official shall be immediately assigned by the Division director or his designee to replace the incapacitated person.

(k) A decision rendered at the conclusion or termination of any match is final and shall not be changed unless it is determined that any of the following occurred:

- (1) There was collusion affecting the result of any match;
- (2) The compilation of the round or match score cards of the referee and judges shows an error which indicates that the decision was awarded to the wrong contestant;
- (3) There was a violation of these Rules, relating to drugs or foreign substances; or
- (4) There was a violation of G.S. 143, Article 68 or the rules set forth in this Chapter which violation affected the result of the match.

If it is determined that any of the above occurred, the decision rendered shall be changed in an equitable manner as directed by the Division.

(l) As a result of injuries or suspected injuries sustained or suspected to have been sustained in any match, the Division director or his designee shall, based upon the recommendation of the physician, order a medical examination to be given to any contestant or referee at any time if he has cause to believe that the health or safety of the contestant or referee is in jeopardy.

(m) When it shall appear to a physician, for whatever reason and regardless of how the injury was sustained, that a contestant or referee is no longer able to safely continue to compete or officiate, the physician shall report such findings, in writing, to the Division director or his designee. If the physician has so

recommended, the contestant or referee shall not be permitted to participate until such time as he is certified as fit to participate by the physician.

(n) A participant, losing by knockout or having been rendered a decision of technical draw as a result of being counted out in any jurisdiction, shall be automatically suspended for a period of time to be determined by the Division director or his designee based upon the recommendation of the physician, or 60 calendar days from the date of the knockout or technical draw, whichever is longer. A contestant shall not engage in any match, contact exhibition or contact sparring for training purposes during the suspension period. After the suspension period and prior to engaging in any match, contact exhibition or contact sparring for training purposes he shall be examined by a physician. The contestant shall advise the physician of the previous knockout or technical draw and shall provide medical records or his permission for the physician to consult with the physician who treated him at the time of the previous knockout or technical draw. The results of this examination shall be filed with the Division prior to any further matches being approved for the contestant.

(o) A contestant losing by technical knockout shall be automatically suspended for a period of time to be determined by the Division director or his designee based upon the recommendation of the physician, or 30 calendar days from the date of the technical knockout, whichever is longer. A contestant shall not engage in any match, contact exhibition or contact sparring for training purposes during the suspension period without the approval of the physician.

(p) Any contestant who has lost six consecutive matches shall be automatically suspended and not be reinstated unless he has been examined and pronounced fit by a physician. In the case of repeated knockouts and severe beatings, the license of the contestant shall be revoked and shall not be reissued or renewed.

History Note: Authority G.S. 143-652.1; Temporary Adoption Eff. January 1, 1996; Recodified from 18 NCAC 9 .0104(p)(4)-(z) Eff. April 1, 1996; Eff. April 1, 1996; Transferred and recodified from 18 NCAC 9 effective November 8, 2002; Amended Eff. November 1, 2004.

14A NCAC 12 .0110 PERMITS

(a) No promoter shall be given tentative approval for or issued a permit if such person has an unpaid fine or any delinquent indebtedness outstanding to the Division.

(b) Each application for a permit shall be in writing, verified by the applicant, complete, and be accompanied by the required fee. The application for permit shall be on file with the Division at least seven calendar days prior to the scheduled program of matches.

(c) Upon receipt of the application for permit, the Division director or his designee shall review the application and, if the application is in compliance with the requirements of G.S. 143, Article 68 and the rules set forth in this Chapter, he shall give tentative approval to the promoter for the proposed date of the program. If the Division director or his designee determines that the application for permit is not in compliance with Article 68 or

the rules as set forth in this Chapter, he shall immediately advise the promoter that the application for permit has been disapproved and shall state the reasons that the application is not in compliance. The Division director or his designee shall deny an application for permit if another program of matches has previously been scheduled for the same date, and he has determined that adequate staff would not be available to properly supervise both programs of matches.

(d) The promoter shall provide the proposed fight card not later than seven calendar days prior to the proposed date of the program. The promoter may advise the Division director or his designee verbally of the names of the proposed contestants. The Division director or his designee shall review the proposed fight card and, if he determines that all the proposed matches meet the requirements of Article 68, and the rules set forth in this Chapter, he shall approve the proposed fight card. If the Division director or his designee determines that the proposed fight card is not in compliance with Article 68 or the rules set forth in this Chapter, he shall not approve the proposed fight card and shall immediately advise the promoter that the proposed fight card has been disapproved and the reasons for the disapproval.

(e) All other pre-match requirements of the promoter described in Article 68 and the rules set forth in this Chapter shall be accomplished before final approval is given and the permit issued. The final approval of the permit shall not be given unless the Division director or his designee has observed that all requirements related to facilities, equipment, personnel, licensing and approvals, and procurement of insurance have been met by the promoter. Immediately upon determining that the promoter has met all the requirements as set forth in this Chapter, the Division director or his designee shall issue the permit. If the Division director or his designee determines that the promoter is not in compliance with the requirements set forth in this Rule, the Division director or his designee shall rescind the tentative approval of the permit and the program of matches shall be canceled. If the program of matches is canceled, all tickets shall be refunded in accordance with the refund provisions set forth in these Rules.

(f) A permit shall only be valid for the program of matches for which it was issued. A new permit shall be required for each program of matches. If, after the payment of the permit fee to the Division a program of matches is canceled for any reason, whether by the promoter or the Division, the permit fee shall not be refunded, provided however, that the fee shall be refunded if the cancellation by the Division was the result of an error made by the Division and which was through no fault of the promoter.

(g) A non-refundable permit fee shall be submitted with the application for permit and shall be based on the seating capacity of the premises to be utilized to present the program of matches. The following fee structure shall be utilized to determine the permit fee:

- (1) Seating capacity is less than 2000--Fee=\$ 100.00
- (2) Seating capacity is 2000 or more but no greater than 5000--Fee=\$ 200.00
- (3) Seating capacity exceeds 5000--Fee=\$ 300.00

History Note: Authority G.S. 143-652.1;

*Temporary Adoption Eff. January 1, 1996;
Recodified from 18 NCAC 9.0105 Eff. April 1, 1996;
Eff. April 1, 1996;
Transferred and recodified from 18 NCAC 9 effective
November 8, 2002;
Amended Eff. November 1, 2004.*

14A NCAC 12 .0111 LICENSING REQUIREMENTS AND DUTIES OF LICENSEES

(a) No person shall be issued a license if such person has an unpaid fine or any delinquent indebtedness outstanding to the Division.

(b) No person shall be issued a license who, in any jurisdiction, has been convicted of any act which would constitute a violation of G.S. 143, Article 68 or the rules set forth in this Chapter; or which would constitute any of the grounds set forth in G.S. 143, Article 68 for suspension or revocation of a license; or against whom such charges are pending before any regulatory body.

(c) No person shall be issued a license who has been named in an administrative action or indictment for any act which would constitute a violation of G.S. 143, Article 68 or the rules set forth in this Chapter, or which act would constitute a ground for suspension or revocation of a license.

(d) No person shall transfer or attempt to transfer, including by the use of a power of attorney, any rights, privileges, responsibilities, duties, obligations or liabilities which by their nature are entitled to or encumbered by only those individuals holding a license to perform and be responsible for such activities.

(e) For the purposes of these Rules, the requirements and responsibilities of a foreign copromoter shall be the same as that of a promoter, and wherever the term promoter is used it is deemed to include the term foreign copromoter.

(f) All applications for a license shall be in writing on a form provided by the Boxing Authority Section of the Division, verified by the applicant, complete, and accompanied by the required fee.

(g) Upon receipt of an application for a license, the Division director or his designee shall review the application and, if the application is in compliance with the requirements of G.S. 143, Article 68 and the rules set forth in this Chapter, he shall issue the license. If the Division director or his designee determines that the application is not in compliance, he shall notify the applicant and set forth the reasons for his finding that the application is not in compliance.

(h) A license issued pursuant to G.S. 143, Article 68 and these Rules shall be valid from the date of issuance until December 31 of the year in which the license was effective. An application for the renewal of a license shall be submitted on the same forms as referenced in this Rule and all of the requirements, standards, and criteria used to approve or disapprove an application for a new or initial license shall be used to approve or disapprove the application for the renewal of a license.

(i) The following requirements shall apply to the licensing and duties of contestants:

- (1) No contestant shall also be licensed as a judge, promoter or referee nor shall he act as judge, promoter or referee.

- (2) No contestant shall have any financial or pecuniary interest in his opponent.
- (3) No person shall be licensed as a contestant and the license of any contestant shall be suspended or revoked if such person:
 - (A) Is under 18 years of age;
 - (B) Has had cardiac surgery;
 - (C) Has not received a ophthalmic examination within the immediate 12 month period prior to the date of the scheduled match and the results of the examination filed with the Division;
 - (D) Is found to have any blindness or whose vision is so poor as to cause a health hazard or impairment to his ability to effectively participate in a match;
 - (E) Has suffered cerebral hemorrhage or any other serious head injury. The Division director or his designee shall, if he has cause to believe that a contestant may have suffered neurological injury, direct the contestant to undergo an EKG or CAT scan, and the interpretation and diagnosis shall be filed with the Division; or
 - (F) Is no longer able to competently perform based on his win/lose/draw record, his previous opponents and the results of such matches, his proposed opponent and the results of the matches between his proposed opponent and others, and his physical condition.
- (4) No contestant whose most recent match was eight rounds or more in duration, shall engage in a match with less than seven calendar days between matches. No contestant whose most recent match was less than eight rounds in duration, shall engage in a match with less than 48 hours between matches.
- (5) Any contestant who fails to appear at a match or fails to appear timely at a match for which he or his manager has contracted and does not provide a valid reason or, in the case of physical disability, furnish a physician's certificate, shall be suspended for a period to be determined by the Division. A valid reason for failure to appear or to appear timely at a match includes an unforeseen travel delay or other circumstance beyond the contestant's control. In making a determination as to the period of suspension, the Division shall consider the following factors:
 - (A) The relative importance of the match;
 - (B) The contestant's past record of punctuality and tardiness; and
 - (C) The reason or reasons for his failure to appear or appear timely.
- (j) The following requirements shall apply to the licensing and duties of promoters and matchmakers:
 - (1) No licensed promoter or matchmaker shall act as a promoter or matchmaker for any boxing or kickboxing match in this State unless the match is held in accordance with the rules in this Chapter.
 - (2) Any person licensed as an individual shall have sole ownership of such license and such license shall not be transferable or assignable to another. If such person is no longer in business, the license shall become void.
 - (3) Any license issued to and in the name of a corporation shall not be transferable or assignable to another. If such corporation is no longer in business or no longer operates as the corporation, the license shall become void. If any officer of the corporation is added or deleted, the licensee shall, within 10 calendar days, notify the Division of such addition or deletion. A newly added officer shall be required to submit an Application For Promoter Or Foreign Copromoter License.
 - (4) Any license issued to a partnership shall not be transferable or assignable to another. If the partnership is no longer in business or no longer operates as the partnership, the license shall become void, provided however that if the business continues to operate but does not operate as a partnership and the sole remaining person was one of the licensed partners and all other previous licensed partners have, in writing, authorized such sole remaining person to have control and use of the licensed name, than the license may remain in force and effective until its expiration date, at which time the person shall apply as an individual.
 - (5) No promoter shall also be licensed as a judge or referee.
 - (6) An applicant for a promoter's license shall satisfy the following bonding requirements:
 - (A) An applicant for a promoter license shall deposit with the Division a bond or other security in the amount of five thousand dollars (\$5,000) prior to being issued a promoter license. If, at any time and for whatever reason, the bond or other security is not maintained in full force and effect, the license shall be automatically void.
 - (B) If it is determined that the projected liability for a match may exceed five thousand dollars (\$5,000), the Division director or his designee shall require an additional bond or additional security for the match.

- The additional bond or additional security shall be required and used only for the designated match and shall be released or returned 90 calendar days after the date of the match unless, as a result of violations or suspected violations, the Division director or his designee determines that the additional bond or additional security shall be retained by the Division for a longer period.
- (C) The bond and other security, or additional bond and additional security shall be filed with the Division for the purpose of providing surety that the promoter will and does faithfully perform and fulfill his obligations as described in Article 68, and the rules set forth in this Chapter. Any fault, negligence, error or omission, failure to fulfill contractual obligations, violation of any rules of the Division or any other act or failure to act shall result in a claim for recovery from the bond and recovery from the other security. When the amount of recovery cannot be determined by the Division due to the failure of the promoter to perform as required by G.S. 143, Article 68 or the rules set forth in this Chapter, the Division shall recover the face value of the bond and other security and the additional bond and additional security, as appropriate provided however that the recovery shall not be greater than the amount of the bond and other security required to be deposited with the Division.
- (D) A bond or additional bond shall be acceptable if the following conditions are met:
- (i) The bond or additional bond shall have attached a power of attorney, which power of attorney shall not have an expiration date;
 - (ii) The bond and additional bond shall provide surety in an amount equal to the face amount of the bond and additional bond and the aggregate annual liability shall be for the face amount of the bond and additional bond;
 - (iii) The bond and additional bond shall be made out in the name of the Division of Alcohol Law Enforcement, Boxing Authority Section and shall be negotiable on the authority of the Division director or his designee;
- (iv) The bond and additional bond may not be canceled, for any reason, unless the following conditions have been met, provided however, when an additional bond is required, as referenced in this Subparagraph, Subpart (II) in this Rule shall not apply:
- (I) The surety company has provided the Division at least a 60 calendar-day written notice of intent to cancel; and
 - (II) The promoter's license has expired or the license has been returned to the Division with a request to cancel such license and canceled by the Division and the promoter has not filed an application for renewal of the license; and
 - (III) A period of 90 calendar days has elapsed since the most recent match of the promoter.
- (E) Other security may be provided in lieu of the bond or additional bond provided the following conditions are met:
- (i) The security must be in the form of cash, a certified check or direct obligations of the United States or this state;
 - (ii) The certified check shall be made payable to the Division of Alcohol Law Enforcement, Boxing Authority Section and, the certified check and the direct obligations of the United States or this state shall be negotiable on the authority

- (iii) of the Division director or his designee;
 - (iii) The Division shall not pay interest or other charges or fees to the promoter;
 - (iv) The security may not be canceled or requested to be returned, for any reason, unless the following conditions have been met, provided however, when an additional security is required, as referenced in this Subparagraph, Subparts (II) and (IV) of this Rule shall not apply:
 - (I) The promoter has provided the Division at least a 60-calendar day written notice of request for return or release of the security; and
 - (II) The promoter's license has expired or the license has been returned to the Division with a request for cancellation and canceled by the Division and the promoter has not filed an application for renewal of the license, or the promoter has substituted a bond for the security and such bond indicates on its face that it shall retroactively cover the promoter for all times and for all obligations of the promoter covered by the security for which the bond is being substituted. In the event of substitution of a bond for the security on deposit with the Division, (III) and (IV) in this Rule shall not apply; and
 - (III) A period of 90 calendar days has elapsed since the most recent match of the promoter; and
 - (IV) A period of 1 year has elapsed since the security was deposited with the Division.
- (7) More than one promoter may be involved in the promotion of a single program of matches. The promoter to whom the permit is issued shall be considered as the promoter of record and such promoter shall ensure that all the requirements and responsibilities of the promoter are accomplished as set forth in this Chapter, provided however that the bonds or other securities deposited with the Division of all promoters involved in the promotion of the program of matches shall be liable and used as surety against any claim or obligation involving the program of matches.
 - (8) A matchmaker shall make matches in which the contestants are of similar ability and skill.
 - (9) A matchmaker or promoter shall not contract with or negotiate with managers or contestants who are under suspension or whose license has been revoked in North Carolina or any other state.
 - (10) Contracts between contestants and the promoter shall be filed with the Division no later than at the time of weigh-in.
 - (11) After the application for a permit has been tentatively approved and a proposed match has been approved, the promoter may provide the names of the contestants for the approved match to the media. Under no circumstances shall a promoter advertise, sell or cause to be sold any tickets, distribute or cause to be distributed any complimentary tickets, enter into any contracts or in any way make any obligations, commitments or announcements relative to a match or program of matches unless the match or program of matches has been approved and the permit has been tentatively approved.
 - (12) The promoter shall, in the case of a substitution in a main event, post in a conspicuous place in front of the arena or directly over the cashier windows, notice of the substitution, and if time permits, shall advertise the substitution by radio and in a newspaper expected to have the widest circulation for the intended audience.
 - (13) No promoter may pay, lend, or give a contestant an advance against his purse before a contest.

- (14) The promoter shall ensure that each contestant scheduled to be engaged in a match shall have received an ophthalmic examination, which examination shall have been performed within the immediate past 12-month period. The results of the examination shall be filed with the Division prior to the match.
- (15) The Division director or his designee shall, if he has cause to believe that a contestant may have suffered cardiac or neurological injury, direct the contestant to undergo a EKG, EEG, or CAT scan. The interpretation and diagnosis shall be filed with the Division. The promoter shall ensure that this requirement is satisfied.
- (16) The promoter shall acquire insurance as described in the insurance section of these Rules.
- (17) The promoter shall advise all managers and contestants under contract for a match or program of matches of the time and place of the weigh-in as designated by the Division director or his designee and of the time and place of their appearance for the match or program of matches.
- (18) The promoter shall provide the proper arena equipment, seating, services, facilities, personnel, ushers, ticket sellers, security and other equipment or services necessary to provide for the correct handling of the boxing or kickboxing program.
- (19) The promoter shall contract with and compensate the officials required to be present and rendering services during a program of matches. Included are an announcer, a timekeeper, two referees, three judges, plus two kick count judges for kickboxing and a ringside physician. A physician shall be present at the weigh-in.
- (20) The promoter shall ensure that all tickets shall have printed on them the admission price and no ticket shall be sold for a price higher than the price shown on its face. Each complimentary ticket shall have printed on its face the face value of the ticket and in no case shall the dollar value shown on the face of the ticket be \$ 0.00. Each complimentary ticket shall be either marked "COMPLIMENTARY" in large letters on its face or shall be marked or punched in such a manner as to make it clear that the ticket is complimentary.
- (21) No promoter shall sell or issue, or cause to be sold or issued more tickets of admission for any match or program of matches than can be accommodated by the seating capacity of the premises where the match or program of matches is to be held.
- (22) The following criteria and procedure shall be used for the refunding of the purchase price of tickets:
 - (A) The promoter shall refund the full purchase price of a ticket for a match or program of matches if:
 - (i) The match or program of matches is postponed; or
 - (ii) The main event or the entire program of matches is canceled; and
 - (iii) The person presenting the ticket for refund has presented such ticket within 30 calendar days after the scheduled date of the match or program of matches.
 - (B) Within 10 calendar days after the expiration of the 30-calendar day period, the promoter shall pay all unclaimed ticket receipts to the Division. The Division shall hold the funds in the State Boxing Division Revenue Account for one year and make refunds during such time to any person presenting a valid ticket for a refund.
 - (C) Failure to comply with this provision shall result in the forfeiture of the bond or other security and additional bond or additional security and revocation of the license of the promoter or foreign copromoter.
- (23) The promoter shall retain all records necessary to justify and support the information submitted on any reports required by the Division for a period of two years following the date of the match or program of matches.
- (24) The promoter shall provide the following:
 - (A) A licensed physician;
 - (B) A portable resuscitator with all additional equipment necessary for its operation;
 - (C) An ambulance with two attendants;
 - (D) A clean stretcher and clean blanket which shall be in place at all times throughout the program of matches;

No match shall begin or continue unless such equipment and personnel are on the premises, in a state of readiness and in a pre-designated readily assessable location known to the referee, physicians and the Commission representative.
- (25) It shall be the responsibility of the promoter to have available at all times during the progress of a program of matches a person or persons capable of making emergency repairs, corrections and adjustments to the ring, lights and other necessary fixtures.
- (26) The promoter shall supply the following items which shall be in good working order and available for use as needed:

- (A) A public address system;
 - (B) Chairs, properly located in accordance with the floor plan;
 - (C) A bell, positioned in a neutral location designated by the Division director or his designee, for use by the timekeeper;
 - (D) Two stools, a clean water bucket and a clean water container for drinking purposes for each contestant's corner; and
 - (E) A complete set of numbered round cards, which shall be of such size as to make them legible from all parts of the arena.
- (27) The promoter for the match shall acquire the insurance coverage described in this Chapter and file with the Division written evidence of insurance no later than 72 hours prior to the date of the match. Such evidence of insurance shall specify the name of the insurance company, the insurance policy number, the effective date of the coverage and evidence that each contestant is covered by the insurance. Any deductible associated with the insurance policy shall be paid by the promoter. If the promoter fails to provide evidence of insurance as required in this Chapter the permit shall not be issued or, if issued, shall be suspended and the program of matches shall be canceled. Each contestant in a match held in North Carolina shall be covered by insurance for medical, surgical and hospital care for injuries sustained while engaged in a match. Said coverage shall be for an amount not less than two thousand five hundred dollars (\$2,500) for each contestant.
- (k) The following requirements shall apply to the licensing and duties of managers:
- (1) No person shall act as a manager for any contestant without having first obtained a manager license.
 - (2) No manager shall also be licensed as a judge, or referee and nor shall he act as a judge or referee.
 - (3) No manager shall have financial or pecuniary interest in an opponent of his contestant.
 - (4) No licensed manager shall act as a manager in any boxing or kickboxing match in this state which match is not sanctioned by the Division.
 - (5) No manager shall attempt to select or insist upon the selection of any referee or judge in a match in which a contestant under his management is to appear, nor shall he have the name of any such referee or judge written into the contract governing such match.
 - (6) No manager shall pay or contribute to the pay of any referee or judge.
- (7) A manager shall not coach or in any way assist a contestant during a match, or by word or action attempt to heckle or annoy his opponent. A manager shall not enter the corner or the ring at any time during the match. If any manager enters the corner or the ring during any match, he shall be immediately ejected by the referee, and the referee shall order the match to continue. However, a manager may be designated as a second for his contestant and, if so designated, shall comply with the requirements set forth for seconds in these Rules.
 - (8) The manager shall furnish to his contestant a statement of distribution of the purse together with the contestant's share of the purse no later than 24 hours after the manager receives the purse and promoter's statement from the promoter. The manager shall retain a copy of his statement of distribution of the purse, certified by him to be correct, with receipted vouchers for all expenditures and deductions for a period of six months following the date of the match and shall present such copy to the Division for inspection if requested to do so.
 - (l) The following requirements shall apply to the licensing and duties of referees:
 - (1) If, during the course of a match, the referee receives an injury or is unable to continue acting in his capacity as referee, the Division director or his designee shall:
 - (A) Select another qualified person to act as referee for the remainder of the match and program of matches; or
 - (B) If no qualified person is available, cancel the remainder of the match and program of matches.
 - (2) No person who has financial or pecuniary interest in any contestant shall be granted a referee license.
 - (3) No referee shall also be licensed as a promoter, manager, matchmaker, or contestant, nor shall he act as a promoter, manager, matchmaker or, contestant.
 - (4) No licensed referee shall act as a referee at any boxing or kickboxing match in this State unless the match is held in accordance with the Rules in this Chapter.
 - (5) A referee, in addition to being examined by a physician prior to officiating, shall submit to an annual physical examination to establish his physical fitness. The result of this examination shall be filed with the Division.
 - (6) Prior to the beginning of each match, and periodically for the duration of the match, the referee shall examine the contestants' gloves, equipment, and person to ensure that no unsafe or improper conditions exists. Before allowing a match to continue after a contestant

- has been knocked down, the referee shall wipe clean the surface of the gloves of the contestant who was knocked down.
- (7) When a contestant receives an injury which the referee believes may incapacitate the contestant, the referee shall call time out and consult with the physician as to the advisability of allowing the match to continue. No person shall attempt to render aid to a contestant who has been counted out during the course of a match before the physician has examined the contestant. However, the referee may remove the contestant's mouthpiece.
- (8) The referee may:
- (A) Terminate a match at any time when he considers that one of the contestants has such superior skills or ability as to make such match unreasonably dangerous to the other contestant;
 - (B) Disqualify a contestant who commits an intentional foul and award the decision to the opponent;
 - (C) Terminate a match and disqualify either or both contestants if he considers that either or both contestants are not competing in earnest;
 - (D) Terminate a match if either contestant has been injured and is in such condition that to continue the match might subject him to a more serious injury;
 - (E) Temporarily or permanently halt a match if he believes that a health hazard exists, which hazard could reasonably be anticipated to create a hazard to the contestants or the public; and
 - (F) Enforce discipline and the rules, as set forth in this Chapter, pertaining to the conduct and behavior of contestants, managers and seconds.
- (9) The referee shall not touch the contestants, except for the failure of either or both contestants to obey the break command.
- (10) The referee's remarks shall be limited to instructions to the contestants and to the chief seconds.
- (m) The following requirements shall apply to the licensing and duties of judges:
- (1) A judge shall not also be licensed as a promoter, manager, matchmaker, or contestant.
 - (2) No judge shall have a financial or pecuniary interest in any contestant.
 - (3) No licensed judge shall act as a judge at any boxing or kickboxing match in this State unless the match is held in accordance with the rules in this Chapter.
 - (4) Three scoring judges and two kick count judges (if applicable) shall be assigned to officiate in each match. If five judges are not available, the Division director or his designee may appoint a referee to act in the capacity of judge.
 - (5) The judges shall be located in seats designated for them by the Division director or his designee.
 - (6) No match shall begin or continue unless all judges are in their designated seats.
 - (7) Judges shall, if requested by the referee, assist in deciding whether fouls have been committed, and may bring other points to the attention of the referee at the end of a round.
 - (8) Each Judge shall:
 - (A) Be fully informed of and conversant with the rules, regulations, standards, guidelines and policies of G.S. 143, Article 68 and the rules set forth in this Chapter;
 - (B) Observe at all times during the match the performance of the contestants;
 - (C) Appraise such performance fairly, accurately and expertly using G.S. 143, Article 68, and the rules set forth in this Chapter;
 - (D) Inscribe the result of such appraisal after each round on the round score card or match score card, whichever is appropriate, according to the scoring system adopted in this Chapter; and
 - (E) Complete and sign the match score card and deliver it to the referee at the conclusion of the match.
 - (9) Judges shall utilize forms provided by the Division for scoring.
- (n) The following requirements shall apply to the licensing and duties of "announcers":
- (1) No person shall act as an announcer at any match held in North Carolina without first having obtained an announcer license.
 - (2) No licensed announcer shall act as an announcer at any boxing or kickboxing match in this State unless the match is held in accordance with the rules in this Chapter.
 - (3) The announcer shall make all announcements in the English language. He may also announce the match in another language after he has first made all announcements in the English language.
 - (4) The announcer shall be at all times, subject and responsible to the Division director or his designee in the discharge of his duties and shall accept directions only from the Division director or his designee.

- (5) Announcers shall not make announcements or introductions of persons other than the contestants and officials unless authorized to do so by the promoter with the consent of the Division director or his designee. Under no circumstances shall an individual be introduced if his license has been revoked or is currently under suspension.
 - (6) After both contestants and their chief seconds are in the ring, the announcer shall announce the name of each contestant, his weight as determined at the weigh-in, and such other announcements as directed by the Division director or his designee.
 - (7) An announcer shall display impartiality in word and action while performing his duties.
 - (8) The number of the round shall be announced or displayed at the 1-minute interval between rounds.
 - (9) At the conclusion of each match, the announcer shall make the announcement of the win or draw in the manner and at such time as directed by the Division director or his designee.
 - (10) In the event of a knockout or a technical knockout, the announcer shall obtain the result and the official time of the termination of the match from the Division director or his designee and shall announce the result, the time and the round in which the knockout or technical knockout occurred.
 - (11) At the conclusion of each match and immediately after the announcements have been made, the announcer shall submit to the Division director or his designee any match score cards used by the judges and the referee that he may have in his possession.
- (o) The following requirements shall apply to the licensing and duties of timekeepers and knockdown timekeepers:
- (1) No licensed timekeeper shall act as a timekeeper at any boxing or kickboxing match in this State unless the match is held in accordance with the rules in this Chapter.
 - (2) The timekeeper shall have with him during the performance of his duties a whistle, a 3-minute stopwatch, and a hammer or wooden mallet.
 - (3) The timekeeper shall be located within his arm length of the bell in a seat designated by the Division director or his designee. No match shall begin or continue unless the timekeeper is in his designated seat.
 - (4) The timekeeper shall not use the whistle, bell, or other instrument during the progress of a round except in the manner and at the time authorized in this Chapter.
 - (5) Ten seconds before the beginning of each round, the timekeeper shall give warning to the seconds of each contestant by blowing the whistle. Ten seconds before the end of each round, the timekeeper shall give warning by pounding twice on the ring floor.
- (6) If directed by the referee, the timekeeper shall take time out.
 - (7) The timekeeper shall strike the bell to signify the beginning and ending of each round.
 - (8) If a match ends before the scheduled number of rounds, the timekeeper shall inform the referee and the Division director or his designee of the exact duration of the match.
 - (9) The timekeeper shall be familiar with and perform such other duties as set forth these Rules.
 - (10) In the event that an automatic timekeeping machine is available, it may be used, provided however, that manual timekeeping is maintained in the event of equipment failure.
 - (11) The knockdown timekeeper shall have with him during the performance of his duties a knockdown watch which shall be examined and checked as to accuracy for each match by the Division director or his designee.
 - (12) The knockdown timekeeper shall be located adjacent to the timekeeper in a seat designated by the Division director or his designee. No match shall begin or continue unless the knockdown timekeeper is in his designated seat.
 - (13) The knockdown timekeeper shall count each second for knockdowns by striking the floor of the ring or a wooden striking-board with a hammer or wooden mallet and, by stating in a loud voice, the elapse of each second.
 - (14) The knockdown timekeeper shall be familiar with and perform such other duties as set forth in these Rules.
- (p) The following requirements shall apply to the licensing and duties of seconds:
- (1) No licensed second shall act as a second at any boxing or kickboxing match in this State unless the match is held in accordance with the rules of this Chapter.
 - (2) No second shall have any financial or pecuniary interest in the opponent of his contestant.
 - (3) Each contestant shall be allowed no more than three seconds, one of whom shall be designated the chief second. The chief second shall be in charge of the participant's corner and be responsible for the conduct of all seconds, and shall be held responsible for any violation committed by any second.
 - (4) The chief second of any contestant shall have with him at the ringside the following articles:
 - (A) One stool;
 - (B) One pair of scissors;
 - (C) One towel;
 - (D) One clean water bucket;
 - (E) One container of drinking water;

- (F) Tape and bandages; and
 - (G) Caustic to stop bleeding of minor cuts and lacerations.
- (5) First aid and other ring equipment of a second shall in all cases and at all times before, during, and after use, be available for inspection by the physician and the Division director or his designee whose decision shall be final as to the propriety of its use.
 - (6) Seconds shall not coach or in any way assist a contestant during a round, or by word or action attempt to heckle or annoy his contestant's opponent. Seconds shall remain seated in place and silent during the fight period of any round and shall not knock or pound on the ring floor.
 - (7) No second shall attempt to render aid to a contestant who has been counted out during the course of a match before the physician has examined the contestant.
 - (8) If any second enters the ring during any fight period of any match, he shall be immediately ejected by the referee, and the referee shall order the match to continue.
 - (9) The spraying of water on any fighter between rounds is prohibited.
 - (10) Only one second shall be allowed in the ring. No second shall enter the ring until the bell indicates the end of a round. He shall leave the ring at the sound of the timekeeper's whistle indicating the beginning of the next round is imminent. Prior to the beginning of each round, the entire ring platform and ropes shall be cleared of all obstructions, including buckets, stools, towels, and other articles; and none of these articles shall again be placed on the ring platform until the bell has sounded indicating the end of the round.
- (q) The following requirements shall apply to the duties of trainers:
- (1) The trainer shall prepare the contestant for the match in which he is to engage and shall provide information and direction so as to ensure that the contestant is in good physical condition and is prepared to utilize and display his skills to the best of his ability.
 - (2) A trainer shall not coach or in any way assist a contestant during a match, or by word or action attempt to heckle or annoy his participant's opponent.
 - (3) A trainer shall not enter the corner or the ring at any time during the match and shall remain seated and silent during the match.
 - (4) If any trainer enters the corner or the ring during any match, he shall be immediately ejected by the referee, and the referee shall order the match to continue.
- (r) The following requirements shall apply to the duties of physicians:
- (1) No physician shall have a financial or pecuniary interest in any contestant participating in a match at which the physician is acting as a ringside physician.
 - (2) At least one physician shall be present at each match and render service and assistance as provided for in these Rules. A physician shall be located near each contestant's corner in a designated seat for the duration of each match. No match shall be allowed to begin or continue unless at least one physician is in his designated seat.
 - (3) The physician shall provide medical assistance for any illness or injury sustained by any person under the jurisdiction of the Division.
 - (4) If, at any time during the match, the physician is of the opinion that a contestant has received severe punishment or injury, or that to continue the match would pose the threat of unreasonable harm or injury to a contestant, the physician shall advise the referee that the match should be terminated.
 - (5) If, in the opinion of the physician, the referee has received an injury, the seriousness of which prevents him from continuing to officiate, the physician shall notify the Division director or his designee who shall temporarily halt the match. The injured referee shall be attended by the physician until he is no longer in danger or has been transferred to the care of another physician or emergency medical personnel.
 - (6) In the event of injury to or illness of any person under the jurisdiction of the Boxing Authority Section of the Division and while located on the premises where a program of matches is being conducted, the physician shall have complete charge of such person and shall be accorded the full cooperation of the Division director or his designee and all licensees present.
 - (7) Whenever a knockout occurs in any match, the physician shall examine the contestant knocked out immediately after the match. In the event of a knockout or other injury, the physician shall remain on the premises to provide medical attention as needed. When the physician is satisfied that the injured or knocked out contestant has recovered to the extent that the physician releases the contestant from his care, he shall, prior to releasing him, instruct him as to the danger signs of which the contestant should be aware and which would indicate the need to seek immediate medical attention.
 - (8) The physician shall not leave the premises until after the decision in the final match has been rendered and he is satisfied that his services are no longer necessary.

History Note: Authority G.S. 143-652.1; 143-655; Temporary Adoption Eff. January 1, 1996; Recodified from 18 NCAC 9.0106 Eff. April 1, 1996; Eff. April 1, 1996; Transferred and recodified from 18 NCAC 9 effective November 8, 2002; Amended Eff. November 1, 2004.

14A NCAC 12 .0112 CONTRACTS AND FINANCIAL ARRANGEMENTS

- (a) A promoter or matchmaker shall not contract with or negotiate with managers or contestants who are under suspension or whose license has been revoked in North Carolina or any other state.
- (b) All contracts shall be in writing and shall be filed with the Division within seven days after execution. The Division shall be notified immediately of any changes in contractual status, which change shall be in writing, signed by all parties of the contract and filed with the Division within seven calendar days after execution. Contracts between contestants and the promoter shall be filed with the Division no later than at the time of the weigh-in.
- (c) Except as provided in G.S. 143-651(13)(a), only a licensed manager may negotiate or contract for or on behalf of any contestant with any promoter or matchmaker under the jurisdiction of the Division. Any contract or negotiation entered into by any other person shall be unenforceable.
- (d) No manager shall negotiate, obligate or contract for matches for a contestant not under contract to him.
- (e) Managers shall file changes in contractual status filed with the Division no later than at the time of the weigh-in.
- (f) No contract shall be entered into which entitles a manager or group of managers to a total fee in excess of 33 1/3% of the gross earnings of the contestants, and no contract containing such a provision shall be valid or binding.
- (g) Release of a contestant from a contestant or manager contract shall be in writing and filed with the Division.
- (h) No manager of a contestant shall sell, assign, transfer any interest, or in any way encumber, or attempt to sell, assign, transfer any interest or in any way encumber in whole or in part, any interest which he holds in any contract for services of such contestant without notice to such contestant and without notice to the Division.
- (i) No person shall sign a contract with a contestant as a promoter, manager, or matchmaker, unless such person has first applied for and been granted the appropriate license, or such a contract shall not be valid.
- (j) Each contract between a manager and a contestant shall contain provisions governing its duration, division of the contestant's purse, and any minimum sum guaranteed to the contestant by the manager. Each contract shall provide and if not included, shall be deemed to include, that it is automatically terminated if the license of either party is revoked by the Division or if the manager fails to renew his license before its expiration date. If the license of either party is suspended, the contract is not binding upon the other party during the period of suspension, provided however that if the manager's license is

- revoked or suspended for a period of greater than sixty days, the contract shall be automatically terminated.
- (k) The Division may withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of the purse until such dispute is resolved. If the Division deems it appropriate, the Division may impel interested parties over any disputed funds into the appropriate court for resolution of the dispute prior to release of all or any part of the funds.
- (l) No manager shall attempt to select or insist upon the selection of any referee or judge in a match in which a contestant under his management is to appear, nor shall he have the name of any such referee or judge written into the contract governing such match.
- (m) No manager shall pay or contribute to the pay of any referee, judge, or timekeeper.
- (n) For accounting purposes, a promoter may make checks payable to contestants but shall immediately cash such checks. In no case shall a contestant be required to accept a payment by check in lieu of cash. The promoter shall retain receipted vouchers for all expenditures and deductions, for a period of six months, during which time the promoter shall provide to the Division upon demand such copy.
- (o) The manager shall furnish to the contestant he manages a statement of distribution, together with the contestant's share of the purse, no later than 24 hours after the manager receives the purse and a statement from the promoter. The manager shall retain receipted vouchers for all expenditures and deductions, for one year following the expiration date of the contract between manager and contestant, during which time the manager shall provide to the Division upon demand such copy.

History Note: Authority G.S. 143-652.1; Temporary Adoption Eff. January 1, 1996; Recodified from 18 NCAC 9 .0107 Eff. April 1, 1996; Eff. April 1, 1996; Transferred and recodified from 18 NCAC 9 effective November 8, 2002; Amended Eff. November 1, 2004.

TITLE 15A - DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

15A NCAC 02B .0311 CAPE FEAR RIVER BASIN

- (a) Places where the schedules may be inspected:
 - (1) Clerk of Court:
 - Alamance County
 - Bladen County
 - Brunswick County
 - Caswell County
 - Chatham County
 - Columbus County
 - Cumberland County
 - Duplin County
 - Durham County
 - Forsyth County
 - Guilford County
 - Harnett County

Hoke County
 Lee County
 Montgomery County
 Moore County
 New Hanover County
 Onslow County
 Orange County
 Pender County
 Randolph County
 Rockingham County
 Sampson County
 Wake County
 Wayne County

(2) North Carolina Department of Environment and Natural Resources:

- (A) Winston-Salem Regional Office
 585 Waughtown Street
 Winston-Salem, North Carolina
- (B) Fayetteville Regional Office
 Systel Building
 225 Green Street
 Suite 714
 Fayetteville, North Carolina
- (C) Raleigh Regional Office
 3800 Barrett Drive
 Raleigh, North Carolina
- (D) Washington Regional Office
 943 Washington Square Mall
 Washington, North Carolina
- (E) Wilmington Regional Office
 127 Cardinal Drive Extension
 Wilmington, North Carolina

(b) The Cape Fear River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) December 14, 1980;
- (4) August 9, 1981;
- (5) April 1, 1982;
- (6) December 1, 1983;
- (7) January 1, 1985;
- (8) August 1, 1985;
- (9) December 1, 1985;
- (10) February 1, 1986;
- (11) July 1, 1987;
- (12) October 1, 1987;
- (13) March 1, 1988;
- (14) June 1, 1988;
- (15) July 1, 1988;
- (16) January 1, 1990;
- (17) August 1, 1990;
- (18) August 3, 1992;
- (19) September 1, 1994;
- (20) August 1, 1998;
- (21) April 1, 1999;
- (22) August 1, 2002;
- (23) November 1, 2004.

(c) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective June 1, 1988 as follows:

- (1) Cane Creek [Index No. 16-21-(1)] from source to a point 0.5 mile north of N.C. Hwy. 54 (Cane Reservoir Dam) including the Cane Creek Reservoir and all tributaries has been reclassified from Class WS-III to WS-I.
- (2) Morgan Creek [Index No. 16-41-1-(1)] to the University Lake dam including University Lake and all tributaries has been reclassified from Class WS-III to WS-I.

(d) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective July 1, 1988 by the reclassification of Crane Creek (Crains Creek) [Index No. 18-23-16-(1)] from source to mouth of Beaver Creek including all tributaries from C to WS-III.

(e) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows:

- (1) Intracoastal Waterway (Index No. 18-87) from southern edge of White Oak River Basin to western end of Permuda Island (a line from Morris Landing to Atlantic Ocean), from the eastern mouth of Old Topsail Creek to the southwestern shore of Howe Creek and from the southwest mouth of Shinn Creek to channel marker No. 153 including all tributaries except the King Creek Restricted Area, Hardison Creek, Old Topsail Creek, Mill Creek, Futch Creek and Pages Creek were reclassified from Class SA to Class SA ORW.
- (2) Topsail Sound and Middle Sound ORW Area which includes all waters between the Barrier Islands and the Intracoastal Waterway located between a line running from the western most shore of Mason Inlet to the southwestern shore of Howe Creek and a line running from the western shore of New Topsail Inlet to the eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.
- (3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach Inlet was reclassified from Class SA to Class SA ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows: Big Alamance Creek [Index No. 16-19-(1)] from source to Lake Mackintosh Dam including all tributaries has been reclassified from Class WS-III NSW to Class WS-II NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective

August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective June 1, 1994 as follows:

- (1) The Black River from its source to the Cape Fear River [Index Nos. 18-68-(0.5), 18-68-(3.5) and 18-65-(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
- (2) The South River from Big Swamp to the Black River [Index Nos. 18-68-12-(0.5) and 18-68-12(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
- (3) Six Runs Creek from Quewhiffle Swamp to the Black River [Index No. 18-68-2] was reclassified from Class C Sw to Class C Sw ORW.

(i) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective September 1, 1994 with the reclassification of the Deep River [Index No. 17-(36.5)] from the Town of Gulf-Goldston water supply intake to US highway 421 including associated tributaries from Class C to Classes C, WS-IV and WS-IV CA.

(j) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 1998 with the revision to the primary classification for portions of the Deep River [Index No. 17-(28.5)] from Class WS-IV to Class WS-V, Deep River [Index No. 17-(41.5)] from Class WS-IV to Class C, and the Cape Fear River [Index 18-(10.5)] from Class WS-IV to Class WS-V.

(k) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of Buckhorn Creek (Harris Lake)[Index No. 18-7-(3)] from the backwaters of Harris Lake to the Dam at Harris Lake from Class C to Class WS-V.

(l) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of the Deep River [Index No. 17-(4)] from the dam at Oakdale-Cotton Mills, Inc. to the dam at Randleman Reservoir (located 1.6 mile upstream of U.S. Hwy 220 Business), and including tributaries from Class C and Class B to Class WS-IV and Class WS-IV & B. Streams within the Randleman Reservoir Critical Area have been reclassified to WS-IV CA. The Critical Area for a WS-IV reservoir is defined as 0.5 mile and draining to the normal pool elevation of the reservoir. All waters within the Randleman Reservoir Water Supply Watershed are within a designated Critical Water Supply

Watershed and are subject to a special management strategy specified in 15A NCAC 02B .0248.

(m) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 2002 as follows:

- (1) Mill Creek [Index Nos. 18-23-11-(1), 18-23-11-(2), 18-23-11-3, 18-23-11-(5)] from its source to the Little River, including all tributaries was reclassified from Class WS-III NSW and Class WS III&B NSW to Class WS-III NSW HQW@ and Class WS-III&B NSW HQW@.
- (2) McDeed's Creek [Index Nos. 18-23-11-4, 18-23-11-4-1] from its source to Mill Creek, including all tributaries was reclassified from Class WS III NSW and Class WS III&B NSW to Class WS-III NSW HQW@ and Class WS-III&B NSW HQW@.
- (3) The "@" symbol as used in Paragraph (m) of this Rule means that if the governing municipality has deemed that a development is covered under a "5/70 provision" as described in Rule 15A NCAC 02B .0215(3)(b)(i)(E) (Fresh Surface Water Quality Standards for Class WS-III Waters), then that development is not subject to the stormwater requirements as described in rule 15A NCAC 02H .1006 (Stormwater Requirements: High Quality Waters).

(n) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective November 1, 2004 as follows:

- (1) A portion of Rocky River [Index Number 17-43-(1)] from a point approximately 0.3 mile upstream of Town of Siler City upper reservoir dam to a point approximately 0.3 mile downstream of Lacy Creek from WS-III to WS-III CA.
- (2) A portion of Rocky River [Index Number 17-43-(8)] from dam at lower water supply reservoir for Town of Siler City to a point approximately 65 feet below dam (site of proposed dam) from C to WS-III CA.
- (3) A portion of Mud Lick Creek (Index No. 17-43-6) from a point approximately 0.4 mile upstream of Chatham County SR 1355 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.
- (4) A portion of Lacy Creek (17-43-7) from a point approximately 0.6 mile downstream of Chatham County SR 1362 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. November 1, 2004; August 1, 2002; April 1, 1999; August 1, 1998; September 1, 1994; June 1, 1994;

August 3, 1992; August 1, 1990.

15A NCAC 03S .0102 GRANTS TO COMMERCIAL SHRIMPING INDUSTRY FOR ECONOMIC LOSSES DUE TO FOREIGN IMPORTED SHRIMP

(a) Eligibility

- (1) Only commercial fishing vessel owners whose vessels landed Penaeid shrimp (white, pink, or brown) in North Carolina during calendar year 2002 and who held a valid, current Commercial Fishing Vessel Registration (CFVR) during that year are eligible for compensation to offset economic losses due to the importation of foreign shrimp. For the purposes of this section, vessel owner is defined as a person holding a valid, current North Carolina CFVR for a specific vessel reporting shrimp landings in North Carolina.
- (2) The Division of Marine Fisheries shall determine which commercial fishing vessels are eligible for economic assistance based upon verified shrimp landings in the state in 2002 as reported on North Carolina Trip Tickets. For the purposes of this Section, verified landings are those legally made in North Carolina as recorded by North Carolina Trip Tickets which correspond to a specific vessel and reported landing dates.
- (3) Where ownership of a vessel was transferred in 2002, each CFVR holder shall be credited with landings based upon registration of the transferred vessel at the start of the day in which the landings were reported.

(b) Process

- (1) Each vessel owner determined by the Division of Marine Fisheries to be eligible for economic assistance shall be notified by certified mail, return receipt requested, of his eligibility and of the total verified shrimp landings credited to him for the purpose of this program.
- (2) Any vessel owner claiming shrimp landings who does not receive an eligibility notification letter shall contact the Morehead City office of the Division of Marine Fisheries within 30 days after the published legal notice authorizing the economic assistance award.
- (3) Each eligible vessel owner shall have 14 calendar days from the date of receipt of the certified letter indicated in Subparagraph (b)(1) of this Rule to return the form that is attached to the eligibility notification letter to the Division of Marine Fisheries completed and signed, indicating a decision whether or not to participate in the program.
- (4) Failure to return a completed and signed response form to the Division of Marine Fisheries within 14 calendar days of receipt shall be considered a decision by the eligible

- (5) vessel owner to forego participation in the economic assistance program. If a vessel owner claims additional shrimp landings, beyond those identified by the Division of Marine Fisheries, upon which to base his level of economic assistance, he must provide copies of North Carolina trip tickets with the signed response form to document his claim. The Division of Marine Fisheries shall evaluate such claims, and the vessel owner's landings will be adjusted accordingly if the claims are deemed valid.
- (6) The amount of the economic assistance each commercial fishing vessel owner is eligible for shall be calculated by the Division of Marine Fisheries based upon each vessel owner's proportional contribution, in percentage, to the total weight of landed shrimp reported in 2002 on North Carolina Trip Tickets.
- (7) No funds shall be disbursed until all landings disputes submitted in this program are resolved by the Division of Marine Fisheries, in order to ensure that all funds available for economic assistance are disbursed to eligible program participants. The total amount of funds designated for individual economic assistance shall be divided proportionally among eligible commercial fishing vessel owners who elect to participate in the program in a manner that will exhaust all funds for this purpose.
- (8) The Grants to Commercial Shrimping Industry for Economic Losses Due to Foreign Imported Shrimp Program shall terminate upon depletion of funds appropriated by the United States Congress to North Carolina for this purpose.
- (9) Twelve percent of the total funds shall be set aside for use by the Division of Marine Fisheries in settling appeals of the final decision on economic assistance awards. Any unused funds appropriated for this program which may be held in reserve by the Division of Marine Fisheries for appeals resolution or administrative purposes shall, at the conclusion of the economic assistance portion of the program, be transferred to the North Carolina Department of Agriculture for use, in addition to any other funds transferred for this purpose, for marketing of domestically harvested shrimp.

History Note: Authority G.S. 113-226; 143B-289.52(d); Temporary Adoption Eff. July 1, 2003; Temporary Rule Expired March 27, 2004; Eff. November 1, 2004.

15A NCAC 03S .0103 GRANTS TO COMMERCIAL BLUE CRABBING INDUSTRY

(a) Economic assistance from grants to the commercial blue crabbing industry is available for the following:

- (1) Fishermen: Fishermen who landed blue crab (*Callinectes spp.*) using crab pots, peeler pots, crab trawls, crab dredges, and trotlines, as defined by the North Carolina Division of Marine Fisheries Trip Ticket Program, in North Carolina during calendar years 2000, 2001 or 2002 and who held a valid Standard (SCFL) or Retired Standard Commercial Fishing License (RSCFL) at the time of landing for at least one of those years.
- (2) Fish Dealers: Fish dealers who reported blue crab (*Callinectes spp.*) landings from crab pots, peeler pots, crab trawls, crab dredges, and trotlines, as defined by the North Carolina Division of Marine Fisheries Trip Ticket Program, during calendar years 2000, 2001 or 2002 and who held a valid North Carolina Fish Dealer License at the time of transaction for at least one of those three years.
- (3) Crab Processors: Blue crab processors who held a valid certification as a Department of Environment and Natural Resources, Division of Environmental Health certified crustacean meat processor, and employed persons who processed domestic blue crab meat during calendar years 2000, 2001 or 2002. For the purposes of this Section, processing means any of the following operations when carried out in conjunction with the cooking of crustacea or crustacea meat: receiving, refrigerating, air-cooling, picking, packing, repacking, thermal processing, or pasteurizing.

(b) The Division of Marine Fisheries shall identify which fishermen and fish dealers are eligible for economic assistance under this program based upon blue crabs landed in North Carolina and reported on North Carolina trip tickets at the time of landing or transaction and submitted in accordance with 15A NCAC 031 .0114. Where assignment of a license occurred, the SCFL holder who assigned the SCFL shall be credited with landings under this program. Where a SCFL or RSCFL was transferred during 2000, 2001 or 2002, each SCFL or RSCFL holder shall be credited with landings under this program based upon issuance of the transferred license at the start of the day in which the landings were reported.

(c) The Division shall identify eligible crab processors by using Division of Environment Health certification and inspection records to verify processing activities. Eligible crab processors shall be determined by the name listed on the Permit and Certificate of Compliance document or permit application provided by the Division of Environmental Health. Where ownership of a crab processor was transferred during 2000, 2001 or 2002, each owner's eligibility for his period of ownership shall be determined by the criteria in Subparagraph (a)(3) of this Rule.

(d) Funds from the grant to the commercial blue crabbing industry shall be utilized as follows:

- (1) Five percent of the total funds shall be used for administration of the program.
- (2) Twelve percent of the total funds shall be set aside for use by the Division of Marine Fisheries to resolve economic assistance disputes, with the remainder of the funds being provided to the N.C. Department of Agriculture for a North Carolina blue crab marketing program.
- (3) The remaining funds shall be divided equally among blue crab fishermen, fish dealers and crab processors as follows:
 - (A) One third of the remaining funds shall be awarded to eligible fishermen based upon each fisherman's proportional contribution, in percentage, to the total weight of landed blue crabs reported on North Carolina Trip Tickets for the calendar years 2000, 2001 and 2002 except that fishermen with recorded cumulative landings less than 10,000 pounds shall receive economic assistance in the amount of fifty dollars (\$50.00).
 - (B) One third of the remaining funds shall be awarded to eligible fish dealer's based upon each fish dealer's proportional contribution, in percentage, to the total weight of landed blue crabs reported on North Carolina trip tickets for the calendar years 2000, 2001 and 2002 except that fish dealer's with recorded cumulative landings less than 10,000 pounds shall receive economic assistance in the amount of fifty dollars (\$50.00).
 - (C) One third of the remaining funds shall be awarded to eligible crab processors based upon each processors proportional contribution, in percentage, to the highest annual employment of employees processing blue crabs, as reported by the Division of Environmental Health during the calendar years of 2000, 2001, or 2002.

(e) Notification and distribution of assistance:

- (1) Each fisherman, fish dealer and crab processor determined by the Division of Marine Fisheries to be eligible for economic assistance under this program shall be notified by certified mail, return receipt requested of their eligibility. Notification of eligibility shall include the total verified blue crab landings for fishermen or fish dealers, the reported employment levels for crab processors,

- credited to each person for the purpose of this program.
- (2) Any fisherman, fish dealer or processor claiming blue crab landings who does not receive an eligibility notification letter shall contact the Morehead City Office of the Division of Marine Fisheries within 30 days after the published legal notice authorizing the economic assistance determination period.
 - (3) Each eligible fisherman, fish dealer or processor shall have 14 calendar days from the date of receipt of the certified letter indicated in Subparagraph (e)(1) of this Rule to return the form that is attached to the eligibility notification letter to the Division of Marine Fisheries completed and signed, indicating a decision whether or not to participate in the program.
 - (4) Failure to return a completed and signed response form to the Division of Marine Fisheries within 14 calendar days of receipt shall be considered a decision by the eligible person to forego participation in the economic assistance program.
 - (5) If a fisherman or dealer claims additional blue crab landings, beyond those identified by the Division of Marine Fisheries upon which to base the level of economic assistance, that person must provide copies of North Carolina trip tickets that were completed at the time of landing with the signed response form to document the claim within 20 days of receipt of the notification letter and economic assistance check. The Division of Marine Fisheries shall evaluate such claims, and the fisherman or dealer landings shall be adjusted accordingly if the claims are deemed valid. If a crab processor disputes the number of employees involved in blue crab processing, as reported to the Division of Environmental Health, that person must provide the Division of Marine Fisheries with documentation that substantiates blue crab processing employment, and blue crab production reports for the years 2000, 2001 and 2002 to document the claim.
 - (6) No funds shall be disbursed until all landings disputes submitted in this program are resolved by the Division of Marine Fisheries, in order to ensure that all funds available for economic assistance are disbursed to eligible program participants. The total amount of funds designated for individual economic assistance shall be divided proportionally among eligible fishermen who elect to participate in the program in a manner that shall exhaust all funds for this purpose.
 - (7) The Grants to Commercial Blue Crabbing Industry for Economic Losses Program shall

terminate upon depletion of funds appropriated by the United States Congress to North Carolina for this purpose.

History Note: Authority G.S. 113-226; 143B-289.52(d); Emergency Adoption Eff. October 14, 2003; Emergency Adoption Expired January 2, 2004; Eff. November 1, 2004.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in these Rules shall be located according to whichever of the following rules is applicable.

- (1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than two feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.
- (2) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located seaward of the primary dune. In such cases, the development shall be located landward of the long-term erosion setback line and shall not be located on or in front of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (3) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable.
- (4) Because large structures located immediately along the Atlantic Ocean present increased risk

of loss of life and property, increased potential for eventual loss or damage to the public beach area and other important natural features along the oceanfront, increased potential for higher public costs for federal flood insurance, erosion control, storm protection, disaster relief and provision of public services such as water and sewer, and increased difficulty and expense of relocation in the event of future shoreline loss, a greater oceanfront setback is required for these structures than is the case with smaller structures. Therefore, in addition to meeting the criteria in this Rule for setback landward of the primary or frontal dune or both the primary and frontal dunes, for all multi-family residential structures (including motels, hotels, condominiums and moteliminiums) of more than 5,000 square feet total floor area, and for any non-residential structure with a total area of more than 5,000 square feet, the erosion setback line shall be twice the erosion setback as established in Subparagraph (a)(1) of this Rule, provided that in no case shall this distance be less than 120 feet. In areas where the rate is more than 3.5 feet per year, this setback line shall be set at a distance of 30 times the long-term annual erosion rate plus 105 feet.

- (5) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the principal structure and both shall meet the setback requirements established in Paragraph (a) of this Rule and Rule .0309(a) of this Section. The enclosure of existing roof covered porches shall be exempt from this requirement if the footprint is not expanded, modifications to existing foundations are not required and the existing porch is located landward of the vegetation line or measurement line which ever is applicable. New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (6) Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable, and any disturbance of any

other dunes shall be allowed only to the extent allowed by Rule .0308(b) of this Section.

(c) In order to avoid public expenditures for maintaining public safety, construction or placement of growth-inducing public facilities to be supported by public funds shall be permitted in the ocean hazard area only when such facilities:

- (1) are of public benefit,
- (2) shall not increase existing hazards or damage natural buffers,
- (3) shall be safe from flood and erosion-related damage,
- (4) shall not promote growth and development in ocean hazard areas.

Such growth inducing facilities include sewers, waterlines, roads, and bridges.

(d) Development shall not cause irreversible damage to documented historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources.

(e) Development shall comply with minimum lot size and set back requirements established by local regulations.

(f) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(g) Development shall comply with general management objective for ocean hazard areas set forth in Rule .0303 of this Section.

(h) Development shall not interfere with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

(i) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action,
- (2) restore the affected environment, or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(j) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(k) All relocation of structures shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located seaward of the primary structure. In these cases, all other applicable local and state rules shall be met.

(l) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened

by changes in shoreline configuration as defined in Rule .0308(2)(B) of this Section. The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under Rule .0308(a)(2) of this Section.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124; Eff. September 9, 1977; Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985; RRC Objection due to ambiguity Eff. January 24, 1992; Amended Eff. March 1, 1992; RRC Objection due to ambiguity Eff. May 21, 1992; Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992; RRC Objection due to ambiguity Eff. May 18, 1995; Amended Eff. November 1, 2004; June 27, 1995.

15A NCAC 10A .1101 WAIVER

(a) The executive director or his designee shall waive rule provisions listed in Paragraph (b) of this Rule and subsequent Paragraphs under specified conditions and according to the following standards:

- (1) The applicant has complied with the laws of North Carolina and with rules promulgated by the Wildlife Resources Commission;
- (2) The Commission is able to safeguard the interests of the resource while granting the waiver; and
- (3) The applicant is able to meet the conditions of the waiver.

(b) The executive director or his designee shall waive the rule banning intrastate transfer of cervids and to issue a transportation permit to an applicant for such a waiver provided that:

- (1) The executive director or his designee determines that the applicant is eligible for a waiver according to standards listed in Paragraph (a) of this Rule;
- (2) The eligible applicant shall first notify the Commission of the following:
 - (A) the tag number(s) assigned to the cervid;
 - (B) the facility of origination;
 - (C) the facility of destination;
 - (D) the date(s) upon which the transfer is to take place; and
 - (E) the means by which the cervid is to be transported; and

- (3) The executive director or his designee confirms receipt of the information requested in Subparagraph (b)(2) of this Rule.

Transportation of cervids between facilities that are licensed to the same individual shall be permitted upon the condition that the licensed applicant log the information required by Subparagraph (b)(2) of this Rule rather than submit a separate application for each transportation.

(c) The executive director or his designee shall waive the rule against cervid facility expansion and to amend a license to permit expansion to an applicant for such a waiver provided that:

- (1) The executive director or his designee confirms the applicant's eligibility for a waiver according to standards listed in Paragraph (a) of this Rule;
- (2) The eligible applicant shall first notify Commission of the following:
 - (A) the location of the facility for which expansion is desired;
 - (B) the number of cervids held at that facility;
 - (C) the number of births or purchases of cervids expected within a year of the application; and
 - (D) the proposed capacity for which expansion is desired; and
- (3) The executive director or his designee confirms receipt of the information requested in Subparagraph (c)(2) of this Rule.

History Note: Authority G.S. 113-134; 113-274; 150B-19(6); Temporary Adoption Eff. May 21, 2003; Temporary Adoption Expired March 12, 2004. Eff. November 1, 2004.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

16 NCAC 06C .0202 APPLICATION FOR APPROVAL; CRITERIA

- (a) Each IHE that seeks approval for any teacher education program must file with the department a preliminary application.
- (b) The IHE shall engage in self-study in accordance with the existing National Council for Accreditation of Teacher Education (NCATE)/state or the Teacher Education Accreditation Council (TEAC)/state protocol agreement.
- (c) When the IHE has completed all preparation phases of the self-study, the department shall send a visitation committee to verify the reports for all specialty areas for which approval is sought.
- (d) The SBE shall notify IHEs that are denied approval of the reasons for denial. The IHE may reapply after it has corrected the conditions that led to the denial of approval.
- (e) Each approved IHE shall continually review its programs. The SBE shall annually monitor student performance based upon required examinations and progression toward continuing licensure. The IHE may request or the SBE may conduct a re-evaluation at any time.

(f) During the final year of the current approval period, the IHE shall arrange for a re-approval committee visit.
(g) The SBE must approve any revisions to approved programs.
(h) The SBE must approve each teacher education program before an IHE may recommend its graduates for licensure. In making recommendations to the SBE and in determining the approval status of an IHE teacher education program and its specialty area program, such as mathematics or science, the state evaluation committee and the SBE, respectively, shall weigh the following criteria:

- (1) SACS accreditation of the IHE;
- (2) either:
 - (A) full accreditation or accreditation with stipulations of the professional education unit by the NCATE at the basic and advanced levels, as appropriate; or
 - (B) full accreditation or provisional accreditation of the program(s) by TEAC;
- (3) all IHE specialty area program reports at the undergraduate and graduate levels;
- (4) evidence that the IHE requires at least a 2.50 grade point average on a 4.00 scale for formal admission into teacher education;
- (5) evidence that during the two preceding consecutive years, 70% of the graduates of the IHE have passed the NTE/PRAXIS exams administered by the Educational Testing Service to measure an applicant's academic and professional preparation and required for licensure;
- (6) evidence that during the two preceding consecutive years, 95% of the graduates of the IHE employed by public schools in the State have earned a continuing license as provided by Rule .0304 of this Subchapter; and
- (7) evidence that faculty members assigned by the IHE to teach undergraduate or graduate methods courses or to supervise field experiences for prospective teachers hold valid North Carolina teachers' licenses in the area(s) of their assigned responsibilities.

History Note: Authority G.S. 115C-12(9)a.; 115C-296(b); N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. December 1, 2004; August 1, 2000; July 1, 1993; December 1, 1992; March 1, 1990.

As part of the annual CPE requirement, all active CPAs shall complete CPE on professional ethics and conduct as set out in 21 NCAC 08N. They shall complete either two hours in a group study format or four hours in a self-study format. These courses shall be approved by the Board pursuant to 21 NCAC 08G .0400. This CPE shall be offered by a CPE sponsor registered with the Board pursuant to 21 NCAC 08G .0403(a) or (b).

History Note: Authority G.S. 93-12(8b); Eff. January 1, 2005.

**CHAPTER 25 – INTERPRETER AND
TRANSLITERATOR LICENSING BOARD**

21 NCAC 25 .0101 DEFINITIONS

(a) The definitions in G.S. 90D-3 apply to the rules in this Chapter.
(b) The following definitions also apply to the rules in this Chapter:

- (1) "Applicant" means any person applying to the Board for any license under Chapter 90D of the North Carolina General Statutes.
- (2) "Consumer" means any person who retains or uses the services of an interpreter or transliterator.
- (3) "Continuing Education" means post-licensure education that maintains or enhances the knowledge and skills of interpreters and transliterators and enables them to continue to render competent professional services.
- (4) "Continuing Education Unit" means the unit of measurement of the continuing education completed by a licensee during a licensure year. In the case of workshops and conferences, 10 clock hours of training equal one continuing education unit ("CEU"). In the case of college class work, one hour of college credit in the quarter system equals one CEU and one hour of college credit in the semester system equals 1.5 CEUs.
- (5) "Convicted" or "Conviction" means and includes the entry of:
 - (A) a plea of no contest, nolo contendere, or the equivalent;
 - (B) a plea of guilty; or
 - (C) a verdict or finding of guilt by a jury, judge, or magistrate;
 in any duly constituted, established, and recognized civilian or military adjudicating body, court, or tribunal in this State or any other state or nation;
- (6) "Felony" means any offense classified as a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred or, absent any such classification, any offense for which the maximum punishment under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

**CHAPTER 8 - BOARD OF CERTIFIED PUBLIC
ACCOUNTANT EXAMINERS**

**21 NCAC 08G .0410 PROFESSIONAL ETHICS AND
CONDUCT CPE**

- imprisonment for a term of more than two years.
- (7) "Full license" means a license issued pursuant to G.S. 90D-7 or S.L. 2002-182, s. 7 (as amended by S.L. 2003-56) that is not currently suspended for disciplinary reasons. A license that has been suspended is not a full license even if the suspension has been stayed.
- (8) "General Studies" means those studies of the arts, sciences, and humanities that are not directly related to interpreting and transliterating.
- (9) "Initial license" means the license issued to an applicant under G.S. 90D-7 or S.L. 2002-182, s. 7 (as amended by S.L. 2003-56) or the license issued to an applicant under G.S. 90D-7 or S.L. 2002-182, s. 7 (as amended by S.L. 2003-56) after a lapse in licensure.
- (10) "Initial provisional license" means the provisional license issued to an applicant under G.S. 90D-8(a). A licensee shall acquire only one initial provisional license during his or her lifetime.
- (11) "Misdemeanor" means any criminal offense not classified as a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred or, absent any such classification, any offense for which the maximum allowable punishment under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of no more than two years. No traffic offense in any foreign jurisdiction shall be considered a misdemeanor if the offense has been de-criminalized under the motor vehicle laws of North Carolina.
- (12) "Professional Studies" means those studies that directly enhance a licensee's ability to interpret or transliterate. Professional studies are divided into:
- (A) Linguistic and Cultural Studies, which include the study of languages and linguistic systems and the study of specific cultures;
- (B) Theoretical and Experiential Studies, which include the study of the process of interpreting, the study of transliterating theory, and participation in skill-building activities; and
- (C) Specialization Studies, which include the study of the issues and problems unique to interpreting and transliterating for the legal, medical, mental health, and substance abuse recovery professions.

History Note: Authority G.S. 90D-6; Eff. April 1, 2005.

21 NCAC 25 .0206 RECIPROCITY

- (a) Applicant shall not be eligible for a license by reciprocity, pursuant to G.S. 90D-9, if any interpreter's or transliterator's license issued to the applicant by any state:
- (1) has been revoked, suspended, or otherwise restricted or reduced from full licensure status within the twelve months next preceding the date on which the applicant applies for a license by reciprocity; or
- (2) remains suspended or otherwise restricted or reduced from full licensure status as of the date on which the applicant applies for a license by reciprocity.
- (b) A license issued by reciprocity shall be revoked if the underlying foreign license is revoked, suspended, or otherwise restricted or reduced from full licensure status, or is surrendered in order to avoid being revoked, suspended, or otherwise restricted or reduced.

History Note: Authority G.S. 90D-6; 90D-9; Eff. April 1, 2005.

21 NCAC 25 .0207 MENTORING AND TRAINING EXEMPTION

- (a) A mentoring or training program is approved by the Board if it meets each of the following criteria:
- (1) The program is operated by a school accredited by the Southern Association of Colleges and Schools, or any other accrediting agency recognized by the U.S. Department of Education;
- (2) Each mentor or trainer used by the program:
- (A) Holds a valid National Association of the Deaf ("NAD") level 4 or 5 certification; or
- (B) Is nationally certified by the Registry of Interpreters for the Deaf, Inc. ("RID"); or
- (C) Has a national certification recognized by the National Cued Speech Association ("NCSA"); or
- (D) Holds a quality assurance North Carolina Interpreter Classification System ("NCICS") level A or B classification in effect on January 1, 2000;
- (3) Each mentor or trainer used by the program has five years of professional experience as an interpreter or transliterator following graduation from an accredited Interpreter Training Program or following the date on which the mentor or trainer received the certification or classification specified in Subparagraph (b)(2) of this Rule; provided that, until July 1, 2008, a deaf person who is certified as an interpreter by RID may serve as a mentor or trainer without five years of professional experience;

- (4) Each mentor or trainer used by the program is currently licensed by the Board; and
- (5) The students being mentored or trained always work under the supervision of a mentor or trainer who meets the qualifications set out in Subparagraphs (a)(2) through (a)(4) of this Rule.

(b) A student in a mentoring or training program approved by the Board must obtain a license from the Board before the person provides interpreting or transliterating services for a fee or other consideration outside of the approved mentoring or training program.

(c) As used in Subparagraph (a)(3) of this Rule, the phrase "has five years of professional experience as an interpreter or transliterator" means that the mentor or trainer has provided interpreter or transliterator services for persons other than family members and friends, for a fee or other consideration, for a total of 60 consecutive or nonconsecutive months. Each full month of full-time or part-time employment as an interpreter or transliterator --- or as a teacher of interpreting or transliterating -- shall be counted toward the required 60 months of experience.

(d) As used in Subparagraph (a)(5) of this Rule, the phrase "always work[s] under the supervision of a mentor or trainer" means that a mentor or trainer is routinely available to observe and critique the student's performance, to answer questions, and to demonstrate proper technique. It does not mean that the student is always accompanied by the mentor or trainer.

History Note: Authority G.S. 90D-4(b)(2); 90D-6; Eff. April 1, 2005.

21 NCAC 25 .0208 GROUNDS FOR SUSPENSION OR REVOCATION OF A LICENSE

In addition to any other grounds provided by G.S. 90D-12, the Board may suspend or revoke an existing license if the licensee:

- (1) Fails to report being charged with any crime in any state within 30 days after the charge is filed, unless the licensee is prevented from making the report because he or she is incarcerated;
- (2) Fails to report being convicted of any crime in any state within 30 days after the conviction is entered, unless the licensee is prevented from making the report because he or she is incarcerated;
- (3) Fails to report being sued in any court in any state for malpractice or negligence, incompetence, or misconduct in performing interpreter or transliterator services within 30 days after being served with a civil summons or complaint;
- (4) Fails to report a judgment against the licensee in any court in any state for malpractice or negligence, incompetence, or misconduct in performing interpreter or transliterator services within 30 days after judgment is entered, whether or not the licensee intends to appeal the judgment;

- (5) Fails to report that a complaint has been made against the licensee to any interpreter and transliterator licensing board or agency in any other State, within 30 days after the licensee receives notice of the complaint;
- (6) Fails to report that a complaint has been made against the licensee to any local, regional or national certifying agency, such as NAD, RID, and NCSA, within 30 days after the licensee receives notice of the complaint; or
- (7) Violates the Code Of Ethics adopted in 21 NCAC 25 .0301.

History Note: Authority G.S. 90D-6; 90D-7(a)(2); Eff. April 1, 2005.

CHAPTER 34 - BOARD OF FUNERAL SERVICE

21 NCAC 34B .0105 FUNERAL DIRECTOR TRAINEE APPLICATION FORM

Applications for a funeral director resident trainee shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address and biographical data; education; employment history; criminal convictions; verification by the applicant; an affidavit of a licensee that the trainee is serving under him or her; and any other information the Board deems necessary as required by law. A transcript of the applicant's high school record must accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. November 1, 2004.

21 NCAC 34B .0106 EMBALMER TRAINEE APPLICATION FORM

Applications for an embalmer resident trainee shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address and biographical data; education; employment history; criminal convictions; verification by the applicant; an affidavit of a licensee that the trainee is serving under him or her; and any other information the Board deems necessary as required by law. A transcript of the applicant's high school record must accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. November 1, 2004.

21 NCAC 34B .0107 FUNERAL SERVICE TRAINEE APPLICATION FORM

Applications for a funeral service resident trainee shall be made on applications provided by the Board. The form shall require the applicant to furnish the applicant's photograph, name, address and biographical data; education; employment history; criminal convictions; verification by the applicant; an affidavit

of a licensee that the trainee is serving under him or her; and any other information the Board deems necessary as required by law. A transcript of the applicant's high school record must accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4); Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Eff. November 1, 2004.

21 NCAC 34B .0110 REPORTS ON WORK

The resident trainee shall submit a report to the Board every month on a form provided by the Board. The resident trainee shall furnish the name of the trainee; the reporting period for the work report; the name and address of the funeral establishment where the resident trainee is serving; a description of the work performed during the preceding month; and any other information the Board deems necessary as required by law. The form shall be signed by the resident trainee and must be certified as correct by the licensee under whom the trainee served during the period and by the manager of the funeral establishment. The names of the deceased persons, and the names of the purchasers of preneed funeral contracts, on whose cases the trainee assisted and reported during traineeship must be retained by the trainee until his traineeship requirement has been fulfilled, and during such time such information shall be subject to inspection by the Board or its authorized agent. Such reports must be filed in the office of the Board not later than the 10th day of the calendar month which immediately follows the completion of each one month period of resident traineeship. Failure to submit such reports when due shall be sufficient cause for suspension or revocation of the certificate of resident traineeship.

History Note: Authority G.S. 90-210.23(a),(d),(f); 90-210.25(a)(4)e.,(4)g; 90-210.67(a); 90-210.69(a); Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; June 1, 1994; August 1, 1988; September 1, 1979.

21 NCAC 34B .0120 TRAINEE FINAL AFFIDAVIT FORM

Upon the conclusion of a resident traineeship with a licensed supervisor, the supervisor shall submit an affidavit to certify that the trainee has served and performed certain work under him as required by G.S. 90-210.25(a)(4). The affidavit shall be submitted on forms provided by the Board and require the affiant to furnish the names of the licensee and the trainee; dates and place of service; the number of funerals, preneed funeral contracts and embalmings that the trainee has assisted in during traineeship; and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a),(d),(f); 90-210.25(a)(4)f.; 90-210.67(a); 90-210.69(a); Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; June 1, 1994; August 1, 1988; September 1, 1979.

21 NCAC 34B .0121 EXPIRATION NOTICE

Prior to expiration of a resident trainee certificate, the Board may notify the resident trainee that if eligible, the traineeship may be renewed or may be certified as completed. The notice shall notify the trainee of the date of expiration, a recital of the renewal fee and late renewal penalty, the date the fee must be received, and a recital that the affidavit form is available to have the traineeship certified as completed, if applicable.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4)d; Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0203 APPLICATION FORM FOR FUNERAL DIRECTOR'S LICENSE

Applications for the examination for a funeral director's license shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address, biographical data, education, employment history, criminal convictions, verification, and any other information the Board deems necessary as required by law. A certified transcript of the applicant's mortuary science college record must be mailed directly to the Board from the mortuary science college. Three affidavits of the moral character of the applicant submitted by three persons, in compliance with G.S. 90-210.26, must also accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1); Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; July 1, 1991; September 1, 1979.

21 NCAC 34B .0204 APPLICATION FORM FOR EMBALMER'S LICENSE

Applications for the examination for an embalmer's license shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address, biographical data, education, employment history, criminal convictions, verification, and any other information the Board deems necessary as required by law. A certified transcript of the applicant's mortuary science college record must be mailed to the Board directly from the mortuary science college. Three affidavits of the moral character of the applicant submitted by three persons, in compliance with G.S. 90-210.26, must also accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(2); Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0205 APPLICATION FORM FOR FUNERAL SERVICE LICENSE

Applications for the examination for a funeral service license shall be made on forms provided by the Board. The applicant

shall furnish the applicant's photograph, name, address, biographical data, education, employment history, criminal convictions, verification, and any other information the Board deems necessary as required by law. A certified transcript of the applicant's mortuary science college record must be mailed to the Board directly from the mortuary science. Three affidavits of the moral character of the applicant submitted by three persons, in compliance with G.S. 90-210.26, must also accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(3);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0302 LICENSE CERTIFICATE FOR PRACTICE OF FUNERAL DIRECTING

Upon issuing a license to practice funeral directing, the Board shall send the licensee a certificate containing the name of the licensee, signatures of the Board members, and the date of issuance.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
150B-11(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; August 1, 1988.

21 NCAC 34B .0303 LICENSE CERTIFICATE FOR PRACTICE OF EMBALMING

Upon issuing a license to practice embalming, the Board shall send the licensee a certificate containing the name of the licensee, signatures of the Board members, and the date of issuance.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; August 1, 1988.

21 NCAC 34B .0304 LICENSE CERTIFICATE FOR PRACTICE OF FUNERAL SERVICE

Upon issuing a license to practice funeral service, the Board shall send the licensee a certificate containing the name of the licensee, signatures of the Board members, and the date of issuance.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; August 1, 1988.

21 NCAC 34B .0305 CHANGE OF LICENSE REQUEST

A holder of both a license for funeral directing and a license for embalming, may request a license for the practice of funeral service. The request shall be submitted in writing on forms provided by the Board and shall require the licensee to furnish the applicant's name and license numbers, a request for the

change, the signature of the licensee, and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004.

21 NCAC 34B .0309 LICENSE RENEWAL FORM

To renew a funeral director, funeral service, or embalmer's license, the licensee annually shall submit a form provided by the Board. The licensee shall designate whether the licensee is on active or inactive status pursuant to G.S. 90-210.25(a). A licensee designating active status shall furnish the licensee's current place of employment, work address and telephone number, any new criminal convictions since the licensee was licensed, continuing education hours, the signature of the licensee, and any information the Board deems necessary as required by law. A licensee designating inactive status also shall furnish the licensee's name, address and telephone number, any new criminal convictions since the licensee was licensed, the signature of the licensee, and any other information the Board deems necessary as required by law. The renewal form shall inform all licensees that licenses will be forfeited if not renewed by February 1.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004.

21 NCAC 34B .0404 CONTINUING EDUCATION CARD

All licensees shall complete a card provided by the Board to certify that the licensee has taken continuing education courses. The form shall require the licensee to furnish the name of the licensee, "in time" and "out time" at the course, the license number, total hours, date, attestation by an authorized official who may be an official of the entity sponsoring the course or a member of the Board or its designated agent, and any other information the Board deems necessary as required by law. The form must be filed with the Board no later than the time when evidence of having taken such courses is required for license renewal or reinstatement.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0405 APPLICATION FORM FOR APPROVAL OF COURSE

Applications for approval of a course of continuing education shall be made on forms provided by the Board. The applicant shall furnish the date, name of the organization or person making the application, description of the course, name and credentials of the instructor, and a statement by the applicant of how the course will aid the licensee in serving the public. The form must

be filed with the Board, when making application, at least 30 days prior to the date of enrollment established for the course.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. September 1, 1979; Amended Eff. November 1, 2004; November 1, 1994.

21 NCAC 34B .0406 APPLICATION FORM FOR APPROVAL OF SPONSOR

Applications for approval of a sponsor of continuing education shall be made on forms provided by the Board. The applicant shall furnish the date, name of the organization or person making the application, description of the sponsor and the types of courses it offers as well as its requirements to be an instructor for its courses, and a statement by the applicant of how its courses will aid the licensee in serving the public. The form must be filed with the Board, when making application, at least 90 days prior to the first course the sponsor intends to offer for CE credit.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. July 1, 2005.

21 NCAC 34B .0407 DEFINITIONS

For purposes of Section .0400, the following definitions shall apply:

- (1) "Accredited sponsor" shall mean an organization whose entire continuing education program has been accredited by the Board.
- (2) "Approved activity" shall mean a specific, individual continuing education activity presented by an accredited sponsor or presented by other than an accredited sponsor if such activity is approved as a continuing education activity under the Rules in this Section by the Continuing Education Committee of the Board.
- (3) "Continuing education" or "CE" is any educational activity accredited by the Board. CE includes educational activities designed principally to maintain or advance the professional competence of licensees or to expand an appreciation and understanding of the professional responsibilities of licensees.
- (4) "Continuing Education Committee" shall mean the Continuing Education Committee of the North Carolina Board of Funeral Service.
- (5) "Credit hour" means an increment of time of 50 minutes which may be divided into segments of 25 minutes, but no smaller.
- (6) "Inactive licensee" shall mean a licensee of the North Carolina State Board of Funeral Service who is on inactive status.
- (7) "Licensee" shall include any person who is licensed by the Board to practice funeral directing, embalming, or funeral service in the state of North Carolina and whose license is currently active.

- (8) "Participatory CE" shall mean courses or segments of courses that encourage the participation of attendees in the educational experience through, for example, the analysis of hypothetical situations, role playing, mock trials, roundtable discussions, or debates.
- (9) "Self-study" shall mean the reading of professional articles, journals, magazines, and books or the watching of programs on the topics of funeral directing, embalming and funeral services that will increase the licensee's professional competence and proficiency as a licensee.
- (10) "Sponsor" is any person or entity presenting or offering to present one or more continuing education programs, whether or not an accredited sponsor.
- (11) "Year" shall mean calendar year.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. July 1, 2005.

21 NCAC 34B .0410 ACCREDITATION OF SPONSORS AND PROGRAMS

(a) Accreditation of Sponsors. An organization desiring accreditation as an accredited sponsor of courses, programs, or other continuing education activities may apply for accredited sponsor status to the Board. The Board shall approve a sponsor as an accredited sponsor if it is satisfied that the sponsor's programs have met the standards set forth in 21 NCAC 34B .0409.

(b) Presumptive Approval for Accredited Sponsors.

- (1) Once an organization is approved as an accredited sponsor, the continuing education programs sponsored by that organization are presumptively approved for credit and no application must be made to the Board for approval. The Board may at any time revoke the accreditation of an accredited sponsor for failure to satisfy the Rules in this Section.
- (2) The Board may evaluate a program presented by an accredited sponsor and, upon a determination that the program does not satisfy the requirements of 21 NCAC 34B .0409, notify the accredited sponsor that any presentation of the same program, the date for which was not included in the announcement required by 21 NCAC 34B .0411(e) below, is not approved for credit. Such notice shall be sent by the Board to the accredited sponsor within 30 days after the receipt of the announcement. The accredited sponsor may request reconsideration of such a decision by submitting a letter of appeal to the Board within 15 days of receipt of the notice of disapproval. The decision by the Board on an appeal is final.

(c) Unaccredited Sponsor Request for Program Approval. Any organization not accredited as an accredited sponsor that desires approval of a course or program shall apply to the Board. The Board shall administer the accreditation of such programs consistent with the provisions of 21 NCAC 34B .0409. Applicants denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the Board within 15 days of receipt of the notice of disapproval. The decision by the Board on an appeal is final.

(d) Licensee Request for Program Approval. An active licensee desiring approval of a course or program that has not otherwise been approved shall apply to the Board. Applicants denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the Board within 15 days of the receipt of the notice of disapproval. The decision by the Board on an appeal is final.

(e) Program Announcements of Accredited Sponsors. At least 30 days prior to the presentation of a program, an accredited sponsor shall file an announcement, on a form prescribed by the Board, notifying the Board of the dates and locations of presentations of the program, the sponsor's calculation of the CE credit hours for the program, and the cost of the program to attendees.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. July 1, 2005.

21 NCAC 34B .0502 APPLICATION FORM FOR LICENSE BY OUT-OF STATE LICENSEES

Applications by an out-of-state licensee for a North Carolina license pursuant to G.S. 90-210.25(b)(1) shall be made on forms provided by the Board. The form shall require the applicant to furnish the applicant's photograph, name, address, and biographical data; license applied for; name of the jurisdiction where licensed and the kinds of licenses held; length of continuous practice in the other jurisdiction where the applicant is licensed; verification by the applicant; and any other information the Board deems necessary as required by law. The form shall require the licensing board of the other jurisdiction to certify that the applicant is licensed and in good standing in that jurisdiction and to furnish the Board with the name of the applicant, licenses held and dates granted, the name and address of the Board in such other jurisdiction, verification by the Secretary or other official of such other board, and any other information the Board deems necessary as required by law. An affidavit that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding an application for a North Carolina license shall be required. The affiant shall be personally acquainted with the applicant and shall furnish the name and address of the affiant, the name of the applicant, the length of time the affiant has known the applicant, the length of the applicant's continuous practice, verification, and any other information the Board deems necessary as required by law. Information pertaining to the applicant's length of practice is not required if the applicant is licensed in a jurisdiction having licensing requirements substantially similar to those of North Carolina. Three affidavits of the moral character of the applicant

submitted by three persons, in compliance with G.S. 90-210.26, must accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(1); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0508 APPLICATION FORM FOR COURTESY CARD

Applications for a courtesy card shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address, and biographical data; courtesy card applied for, by license category; name and address of the licensing board where the applicant is licensed; the kind, license number, expiration date of licenses presently held; an agreement that the applicant will obey North Carolina statutes and rules governing funeral service; verification by the applicant; certification by the Secretary or other official of the licensing board of the other jurisdiction that the information concerning the applicant's licensure is correct; and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(3); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. November 1, 2004; August 1, 1988; September 1, 1979.

21 NCAC 34B .0510 COURTESY CARD RENEWAL FORM

Applications for annual renewal of a courtesy card shall be made on forms provided by the Board. The form shall require the applicant to furnish the type of license privileges sought, changes to the applicant's name, address, telephone, place of employment, license expiration date, the signature of the applicant, affirmation that the applicant will abide by North Carolina law, verification, and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(3); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0612 PART-TIME AND INDEPENDENT CONTRACTORS AFFIDAVIT

Upon request of the Board, part-time employees and independent contractors shall submit an affidavit certifying to the Board, as provided in Rule .0611 of this Section, that the person signing it is performing services for one or more funeral establishments. The affiant shall file the affidavit on forms provided by the Board and shall furnish the names and locations of the establishments, a certification of the licensee that he will notify the Board when he ceases to perform such services, the signature of the licensee, verification, and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.25(d);
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977;
 Amended Eff. November 1, 2004; July 1, 1991; August 1, 1988.

21 NCAC 34B .0615 FUNERAL ESTABLISHMENT INSPECTION FORM

The findings of all funeral establishment inspections shall be recorded and filed on report forms provided by the Board. The funeral establishment shall furnish the name and address of the establishment; names of the owner, manager, licensees and resident trainees; verification by the funeral establishment that any violations have been corrected, the date of the verification, and other information the Board deems necessary as required by law. Verifications by the crematory licensee that any violations have been corrected must be received by the Board no later than seven days after the date for compliance.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.24;
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977;
 Amended Eff. November 1, 2004.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .2507 ADMINISTRATION OF VACCINES BY PHARMACISTS

(a) Purpose. The purpose of this Section is to provide standards for pharmacists engaged in the administration of influenza vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Section, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
 - (B) the patient at the direction of a practitioner.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
- (5) "Board" means the North Carolina Board of Pharmacy.

- (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means the North Carolina Medical Practice Act.
- (9) "Physician" means a currently licensed M.D. or D.O. in good standing with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.
- (12) Written Protocol—A physician's order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
 - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
 - (B) the name of the individual pharmacist authorized to administer vaccines;
 - (C) the immunizations or vaccinations that may be administered by the pharmacist;
 - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
 - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
 - (F) locations at which the pharmacist may administer immunizations or vaccinations; and
 - (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures.

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza vaccines and the treatment of severe adverse events following administration.

- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate influenza vaccine information to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to them, the information provided and has had their questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer influenza vaccines to patients under 18 years of age.

(d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer influenza vaccines shall:

- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
- (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
- (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
 - (C) current certification specified in Subparagraph (1) of this Paragraph;
 - (D) original written physician protocol;
 - (E) annual review and revision of original written protocol with physician;
 - (F) any problems or complications reported; and
 - (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Pharmacists who administer influenza vaccines shall enter into a written protocol with a supervising physician who agrees to meet the following requirements:

- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically reviews the order or protocol and the services provided to a patient under the order or protocol;

- (2) be accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide adequate back-up coverage;
- (3) review written protocol with pharmacist at least annually and revise if necessary; and
- (4) receive, as appropriate, a periodic status report on the patient, including any problem or complication encountered.

(f) Drugs. The following requirements pertain to drugs administered by a pharmacist:

- (1) Drugs administered by a pharmacist under the provisions of this section shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Pharmacists while actively engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol to treat adverse reactions; and
- (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(g) Record Keeping and Reporting.

- (1) A pharmacist who administers any influenza vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
 - (A) The name, address, and date of birth of the patient;
 - (B) The date of the administration;
 - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) route of administration of the vaccine;
 - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) Dose administered;
 - (G) The name and address of the patient's primary health care provider, as identified by the patient; and

(H) The name or identifiable initials of the administering pharmacist.

(2) A pharmacist who administers influenza vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(h) Confidentiality.

(1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.

(2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.

(3) Violations of these Rules by a pharmacist shall constitute grounds by the Board to initiate disciplinary action against the pharmacist.

History Note: Authority G.S. 90-85.3; 90-85.6; Eff. April 1, 2003; Emergency Amendment Eff. May 11, 2004; Temporary Amendment approved by RRC October 21, 2004; Amended Eff. November 1, 2004.

CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS

21 NCAC 48E .0110 FOREIGN-TRAINED PHYSICAL THERAPISTS

(a) A foreign-trained physical therapist is one who has graduated from a program located outside the United States which has not been accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE).

(b) English Translations. All application forms and supporting documents shall be in English or accompanied by an English translation.

(c) Supporting Documents. In addition to the other requirements of this Section and G.S. 90-270.30, each foreign-trained applicant shall submit the following:

(1) If the applicant has graduated from a physical therapy educational program, a certification of physical therapy education shall be submitted directly to the Board.

(2) If the applicant does not meet the requirements of G.S. 90-270.29(2), the Board shall examine the applicant's educational background to determine if the general and professional education is substantially equivalent to that received by a graduate of a CAPTE approved program.

(A) For candidates graduating prior to December 31, 2002, a minimum of 120 semester hours of college education at the freshman through senior level is required, which includes a minimum of 60 semester hours of professional curriculum, including basic health sciences,

clinical sciences and clinical education, and a minimum of 42 semester hours of general education. Up to 21 hours may be substituted for actual course work by obtaining a passing score on College Level Examination Program (CLEP) examinations.

(B) For candidates graduating after December 31, 2002, the applicant's educational background must be substantially equivalent to a Post-Baccalaureate degree from a CAPTE approved physical therapy educational program. In order for a foreign-trained applicant's educational background to be determined substantially equivalent to a post-baccalaureate degree from a CAPTE approved program, the general and professional education must satisfy the requirements for the first professional degree as determined by the course work evaluation tool utilized by the FCCPT (Foreign Credentialing Commission on Physical Therapy, Inc.), or its successor organization. Up to one-half of the general education credit hours may be substituted for actual course work by obtaining a passing score on CLEP examinations.

(3) The applicant shall make arrangements to have the credentials evaluated by a credentialing service which must have a physical therapist consultant on its staff. The credentialing service must be acceptable to the Board pursuant to these Rules. The Board recognizes the FCCPT, or a service determined by the Board to be equivalent. The Board shall make its own review of applicant's educational program and is not bound by the findings of the credentialing service.

(4) Proof acceptable to the Board shall be provided that:

(A) For examinations administered prior to August 1, 1998, the required minimum score of 210 on the TSE (Test of Spoken English) or the SPEAK (Speaking Proficiency English Assessment Kit) examination was obtained;

(B) For examinations administered on or after August 1, 1998, the required minimum score of 50 on the TSE examination or the SPEAK examination was obtained, the required minimum score of the Test of Written English (TWE) of 4.5, and

- the Test of English as a Foreign Language (TOEFL) of 560; or
- (C) English is the applicant's primary language.

- (2) evidence of 10 hours of continuing education, that meet the requirements of 21 NCAC 61 .0401, for each full year of inactivity; and for applicants who have not practiced respiratory care for a period of time greater than five years, the applicant must provide evidence from the National Board for Respiratory Care (NBRC) of successful completion of the Certified Respiratory Therapist (CRT) examination taken as an assessment examination within the 90-day period before receipt of the application for licensure.

History Note: Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31; Eff. December 30, 1985; Amended Eff. November 1, 1991; August 1, 1991; Temporary Amendment Eff. July 21, 1995, for a period of 180 days or until the permanent Rule becomes effective, whichever is sooner; Amended Eff. November 1, 2004; August 1, 2002; August 1, 1998; February 1, 1996; October 1, 1995.

CHAPTER 61 - THE NORTH CAROLINA RESPIRATORY CARE BOARD

21 NCAC 61 .0201 APPLICATION PROCESS

(a) Each applicant for a respiratory care practitioner license shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) one recent head and shoulders passport type photograph of the applicant of acceptable quality for identification, two inches by two inches in size;
- (2) the fee established in Rule .0204 of this Chapter;
- (3) evidence, verified by oath, that the applicant has successfully completed the minimum requirements of a respiratory care education program approved by the Commission for Accreditation of Allied Health Educational Programs or the Canadian Council on Accreditation for Respiratory Therapy Education;
- (4) evidence, verified by oath, that the applicant has successfully completed the requirements for certification in Basic Life Support which includes Adult, Child and Infant Cardiopulmonary Resuscitation (CPR), the Heimlich Maneuver, and Automatic External Defibrillator (AED) use by the American Heart Association, the American Red Cross or the American Safety and Health Institute; and
- (5) evidence from the National Board for Respiratory Care (NBRC) of successful completion of the Certified Respiratory Therapist (CRT) examination administered by it.

(b) Applicants for initial licensure in North Carolina, who have been inactive and who have not practiced respiratory care for a period of time greater than one year, must complete the following requirements in addition to the requirements in Paragraph (a) of this Rule:

- (1) for applicants who have not practiced respiratory care for a period of time greater than one year, the applicant must provide

History Note: Authority G.S. 90-652 (1),(2) and (13); 90-653(a); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002; Amended Eff. November 1, 2004; March 1, 2004.

21 NCAC 61 .0302 LICENSE RENEWAL

- (a) Any licensee desiring the renewal of a license shall apply for renewal and shall submit the fee established in this Chapter.
- (b) Any person whose license is lapsed or expired and who engages in the practice of respiratory care as defined in G.S. 90-648(10) will be subject to the penalties prescribed in G.S. 90-659.
- (c) Each applicant for renewal shall provide proof of completion of continuing education requirements as established in this Chapter.
- (d) Each applicant for renewal shall provide a copy of current certification in Basic Life Support (BLS) which includes Adult, Child and Infant Cardiopulmonary Resuscitation (CPR), the Heimlich Maneuver, and Automatic External Defibrillator (AED) use by the American Heart Association, the American Red Cross or the American Safety and Health Institute. The board shall accept a copy of the applicant's BLS Instructor certificate or Advanced Cardiac Life Support (ACLS) certificate in lieu of the BLS certificate.
- (e) Licenses lapsed in excess of 24 months shall not be renewable. Persons whose licenses have been lapsed in excess of 24 months and who desire to be licensed shall apply for a new license and shall meet all the requirements then existing.

History Note: Authority G.S. 90-652(1),(2),(4) and (13); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002; Amended Eff. November 1, 2004.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

23 NCAC 02D .0202 TUITION AND FEES FOR CURRICULUM PROGRAMS

- (a) Tuition:
 - (1) Student Residence Classification. The classification of students for tuition purposes

- shall be made pursuant to G.S. 115B-2, 115D-39, 116-143.1, 116-143.3, and 116-143.5.
- (2) Tuition Rates In-State:
 - (A) A general and uniform tuition rate is established by the State Board as set by the Legislature for full-time curriculum students per semester or term for North Carolina residents.
 - (B) A North Carolina resident who is a part-time student shall pay a per credit hour rate for curriculum instruction, as established by the State Board, for any semester or term as set by the Legislature.
 - (3) Learning Laboratory. No tuition fees charged.
 - (4) Tuition Creditable Upon Transfer of Student. When a student has paid the required tuition at a college and is given permission to transfer to another college within the system during the academic semester for which the tuition was paid, the college from which the student transfers shall issue to him a statement certifying the amounts of tuition that have been paid, and the college to which he is transferring shall accept such certificate in lieu of requiring payment again. [Also, see 23 NCAC 02D .0323 (b)(2) which provides information regarding reporting student hours in membership.]
 - (5) Tuition Student Enrolled in More Than One College. Where a student desires to enroll for the same semester at two or more colleges of the system, the total amount of tuition and fees may be paid to the student's "home" college. "Home" college is defined as the college which the student initially registers for classes. The "home" college shall, in that case, assume responsibility for arranging with the other college or colleges for enrolling the student in appropriate classes without further charge. Such arrangement shall be made by exchange of letters between the colleges involved. Student membership hours for instruction received shall, in any event, be reported by the college in which the respective instruction occurred.
 - (6) Tuition Rates Out-of-State:
 - (A) Any full-time curriculum student who is an out-of-state resident shall pay tuition fees as established by the State Board for each semester or term as set by the Legislature.
 - (B) An out-of-state resident who is a part-time student shall pay a per credit hour rate for curriculum instruction as established by the State Board as set by the Legislature.
 - (7) Tuition Waivers:
 - (A) Individuals in the categories set forth in G.S. 115D-5(b) shall be exempt from tuition for specialized training courses only, unless otherwise permitted under this Rule.
 - (B) College Staff Members. Full-time college staff members employed for a 9, 10, 11, or 12 month term may enroll in one curriculum or extension course per semester, as well as the summer term, in the system without payment of tuition or registration fee.
 - (C) Basic Law Enforcement Training Program (BLET) for law enforcement officers. All law enforcement officers employed by a municipal, county, state, or federal law enforcement agency when taking courses in a state-mandated BLET training program, are exempt from tuition payment. Also, trainees shall be exempt from BLET class tuition if a letter of sponsorship from a state, county, or municipal law enforcement agency is on file at the college.
 - (D) Individuals meeting the criteria set forth in G.S. 115B-2 shall not be charged tuition.
 - (E) High school students taking courses pursuant to Paragraph (c) (concurrent enrollment) and Paragraph (e) (cooperative high school programs) of 23 NCAC 02C .0305 of this Chapter shall not be charged tuition.
 - (F) Patients in state alcoholic rehabilitation centers shall not be charged tuition.
 - (G) Juveniles committed to the Department of Juvenile Justice and Delinquency Prevention shall not be charged tuition.
 - (H) Prison inmates shall not be charged tuition.
- (b) Pre-Enrollment Deposit. The local board of trustees may establish a pre-enrollment deposit up to a maximum of fifteen dollars (\$15.00). The pre-enrollment deposit, if established, shall be required only when a prospective student has made application for admission and has been accepted. This advance payment is not refundable unless the class(es) fails to materialize or a refund is required by the death of the student. This advance payment shall be deposited to the State Treasurer and credited against the full tuition due from the student during the regular registration period. For the purposes of this Rule, any tuition refund granted shall not include the pre-enrollment deposit of the student unless a refund is granted when a class fails to materialize or because of the student's death.
- (c) Late Enrollment Fee. A late enrollment fee up to five dollars (\$5.00) may be charged curriculum students registering

after the specific closing date of registration, with such fees becoming state funds.

(d) Tuition Refunds.

- (1) A refund shall not be made except under the following circumstances:
 - (A) A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) of the academic semester or term as noted in the college calendar. Also, a student is eligible for a 100 percent refund if the class in which the student is officially registered is cancelled due to insufficient enrollment.
 - (B) A 75 percent refund shall be made if the student officially withdraws from the class(es) prior to or on the official 10 percent point of the semester.
 - (C) For classes beginning at times other than the first week (seven calendar days) of the semester a 100 percent refund shall be made if the student officially withdraws from the class prior to the first class meeting. A 75 percent refund shall be made if the student officially withdraws from the class prior to or on the 10 percent point of the class.
 - (D) A 100 percent refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75 percent refund shall be made if the student officially withdraws from a contact hour class on or before the tenth calendar day of the class.
- (2) To comply with applicable federal regulations regarding refunds, federal regulations supersede the state refund regulations stated in this Rule.
- (3) Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester may be refunded to the estate of the deceased.
- (4) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt local refund policies.

(e) Military Tuition Refund. Upon request of the student, each college shall:

- (1) Grant a full refund of tuition and fees to military reserve and National Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations

then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and
 Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

History Note: Authority G.S. 115D-5; 115D-39; 116-143.1; P.L. 93-508; S.L. 1995, c. 625; Eff. February 1, 1976; Amended Eff. September 1, 1993; December 1, 1984; Temporary Amendment Eff. November 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. June 1, 1994; Temporary Amendment Eff. June 1, 1997; Amended Eff. April 1, 2005; August 1, 2002; August 1, 1998; July 1, 1998.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01E .0203 VACATION LEAVE CREDITS

Vacation leave credits shall be provided for a full-time or prorated for a part-time (half-time or over) employee with a permanent, trainee, time-limited or probationary appointment who is in pay status for one-half of the regularly scheduled workdays and holidays in a pay period. The rate shall be based on G.S. 126, the length of total state service as defined in 25 NCAC 01D .0112, and the leave practices of the State's competitors. Competitors shall include State governments, local governments, non-profit organizations, and private industry. The rate may be adjusted to maintain competitiveness, taking into consideration the State's total compensation package and the average of the State's major competitors, but shall not be less than the following:

Years of Total State Service	Hours Granted Each Month	Hours Granted Each Year	Days Granted Each Year
Less than 2	7 hrs. 50 mins.	94	11 3/4
2 but less than 5	9 hrs. 10 mins	110	13 3/4
5 but less than 10	11 hrs. 10 mins	134	16 3/4
10 but less than 15	13 hrs. 10 mins.	158	19 3/4
15 but less than 20	15 hrs. 10 mins.	182	22 3/4
20 years or more	17 hrs. 10 mins.	206	25 3/4

History Note: Authority G.S. 126-4; 126-8; Eff. February 1, 1976; Amended Eff. July 1, 1983; January 1, 1983; Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire June 29, 1989; Amended Eff. November 1, 2004; July 1, 1995; March 1, 1989.

25 NCAC 01E .0301 SICK LEAVE CREDITS

Sick leave credits shall be provided for a full-time or prorated for a part-time (half-time or over) employee with a permanent, trainee, probationary or time-limited appointment who is in pay status for one-half of the regularly scheduled workdays and holidays in a pay period. The rate shall be based on the requirements of G.S. 126, and the leave practices of the State's competitors. Competitors shall include State governments, local governments, non-profit organizations, and private industry. The rate may be adjusted to maintain competitiveness, taking into consideration the State's total compensation package and the average rate of the State's major competitors, but shall not be less than eight hours per month for a full-time employee.

*History Note: Authority G.S. 126-4; 126-8;
Eff. February 1, 1976;
Amended Eff. June 1, 1983;
Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire June 29, 1989;
Amended Eff. November 1, 2004; July 1, 1995;
December 1, 1993; March 1, 1989.*

25 NCAC 01E .1004 LEAVE: EMPLOYEE TRANSFER

(a) When the transfer of an employee is made to a new duty station 35 miles or more away from the existing residence, the employee becomes eligible for consideration for reimbursement of moving expenses if there is a change in the place of residence. Leave with pay may be granted to the employee for a reasonable amount of time required to locate a new residence and to accomplish the relocation to that residence. The following guidelines shall be used:

- (1) Up to three trips of three days each to locate a new residence.
- (2) Two days to move household and personal goods.

(b) The agency may grant additional days of leave with pay if the distance between the old and new duty station, or other factors beyond the employee's control, require a longer period of time.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. January 1, 2005, December 1, 1988; June 1, 1985;
December 1, 1978.*

25 NCAC 01L .0302 PARTICIPATION AND PURPOSE

Supervisors and managers hired, promoted or appointed on or after July 1, 1991 shall participate in the EEOI. Supervisors and managers appointed before July 1, 1991 are encouraged to participate in the EEOI. Agencies, departments and universities shall not be authorized to conduct or contract for substitute training to replace EEOI. The purpose of the EEOI is to:

- (1) address and discuss the history and evolution of equal employment opportunity concepts and principles;
- (2) assist managers and supervisors in incorporating their equal employment opportunity responsibilities with other management responsibilities;
- (3) expose managers and supervisors to workplace equity and fairness issues; and
- (4) review and discuss accepted management practices for valuing and managing diversity in the workplace.

*History Note: Authority G.S. 126-16.1;
Eff. January 1, 1992;
Amended Eff. November 1, 2004.*

25 NCAC 01L .0303 RESPONSIBILITIES: AGENCIES

(a) It is the responsibility of each state agency, department, and university (hereafter named agency) to enroll each supervisor or manager appointed on or after July 1, 1991 in the EEOI. The enrollment shall be within one year of initial appointment.

(b) Each agency shall be responsible for providing its prorata share of the cost for supplies and resource materials.

(c) Agencies shall be responsible for verifying candidate eligibility reports.

(d) Agencies may enroll incumbent managers and supervisors to participate in the EEOI when space is available.

(e) Agencies may incorporate in their new employee orientation program a module of instruction designed to familiarize new employees with the agency's commitment to equal employment opportunity.

*History Note: Authority G.S. 126-16.1;
Eff. January 1, 1992;
Amended Eff. November 1, 2004.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, October 21, 2004, 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 Monday, November 15, 2004 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

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Lee Settle
Dana E. Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

November 18, 2004	December 16, 2004
January 20, 2005	February 17, 2005
March 17, 2005	April 21, 2005

LIST OF APPROVED PERMANENT RULES
October 21, 2004 Meeting

BUILDING COMMISSION

Pre-Selection 01 NCAC 30D .0302

MEDICAL CARE COMMISSION

Supplemental Rules 10A NCAC 13B .3401
Definitions 10A NCAC 13B .3402
Licensure Application 10A NCAC 13B .3403
Federally Certified Primary Care Hospital 10A NCAC 13B .3404
Designated Critical Access 10A NCAC 13B .3405
Neonatal Level II and Level IV Nursery 10A NCAC 13B .6204

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Admission of Trainees 12 NCAC 09B .0203
DJJDP Specialized Instructor Training-Restraints, Control... 12 NCAC 09B .0241
Terms and Conditions of Specialized Instructor Certification 12 NCAC 09B .0305

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Suspension: Revocation: or Denial of Certification 12 NCAC 09G .0504
Suspension: Revocation: or Denial of Certification 12 NCAC 09G .0505

CRIME CONTROL & PUBLIC SAFETY, DEPARTMENT OF

Equipment-Boxing	14A NCAC 12 .0106
Fouls-Boxing	14A NCAC 12 .0108
Permits	14A NCAC 12 .0110
Licensing Requirements and Duties of Licensees	14A NCAC 12 .0111
Contacts and Financial Arrangements	14A NCAC 12 .0112

ENVIRONMENTAL MANAGEMENT COMMISSION

Cape Fear River Basin	15A NCAC 02B .0311
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MARINE FISHERIES COMMISSION

Grants to Commercial Shrimping Industry for Economic	15A NCAC 03S .0102
Grants to Commercial Blue Crabbing Industry	15A NCAC 03S .0103

COASTAL RESOURCES COMMISSION

General Use Standards for Ocean Hazard Areas	15A NCAC 07H .0306
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WILDLIFE RESOURCES COMMISSION

Waiver	15A NCAC 10A .1101
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EDUCATION, STATE BOARD OF

Application for Approval: Criteria	16 NCAC 06C .0202
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REVENUE, DEPARTMENT OF

Free Distribution by Manufacturer	17 NCAC 04C .0802
Attribution/Expenses/Nontaxable Income	17 NCAC 05C .0304
Preliminary Statement	17 NCAC 05C .0601
Division of Income in General	17 NCAC 05C .0701
Proration of Deductions	17 NCAC 05C .0704
In General	17 NCAC 05C .0801
Property Used for the Production of Business Income	17 NCAC 05C .0802
Denominator of Payroll Factor	17 NCAC 05C .0906
Numerator of Payroll Factor	17 NCAC 05C .0907
Sales Incidental to General Business Operations	17 NCAC 05C .1002
Corporations Allocating Their Net Income	17 NCAC 05C .1506
Business Income or Nonbusiness Income	17 NCAC 05C .1702
Dividends Received from Disc	17 NCAC 05C .2404

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

Professional Ethics and Conduct CPE	21 NCAC 08G .0410
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INTERPRETER AND TRANSLITERATOR LICENSING BOARD

Definitions	21 NCAC 25 .0101
Reciprocity	21 NCAC 25 .0206
Mentoring and Training Exemption	21 NCAC 25 .0207

Grounds for Suspension or Revocation of a License 21 NCAC 25 .0208

FUNERAL SERVICE, BOARD OF

Authorized Practice: Supervision 21 NCAC 34B .0103
 Funeral Director Trainee Application Form 21 NCAC 34B .0105
 Embalmer Trainee Application Form 21 NCAC 34B .0106
 Funeral Service Trainee Application Form 21 NCAC 34B .0107
 Reports on Work 21 NCAC 34B .0110
 Work Report Form 21 NCAC 34B .0111
 Trainee Final Affidavit Form 21 NCAC 34B .0120
 Expiration Notice 21 NCAC 34B .0121
 Application form for Funeral Director's License 21 NCAC 34B .0203
 Application Form for Embalmer's License 21 NCAC 34B .0204
 Application Form for Funeral Service License 21 NCAC 34B .0205
 Passing Score 21 NCAC 34B .0208
 Request for Review of Examination 21 NCAC 34B .0210
 National Board Certificate 21 NCAC 34B .0211
 License Certificate for Practice of Funeral Directing 21 NCAC 34B .0302
 License Certificate for Practice of Embalming 21 NCAC 34B .0303
 License Certificate for Practice of Funeral Service 21 NCAC 34B .0304
 Change of License Request 21 NCAC 34B .0305
 License Renewal Form 21 NCAC 34B .0309
 Establishment and Approval of Courses 21 NCAC 34B .0401
 Continuing Education Card 21 NCAC 34B .0404
 Application Form for Approval of Course 21 NCAC 34B .0405
 Application Form for Approval of Sponsor 21 NCAC 34B .0406
 Purpose and Definitions 21 NCAC 34B .0407
 Accreditation of Sponsors and Programs 21 NCAC 34B .0410
 Application Form for License by Out-of-State Licensees 21 NCAC 34B .0502
 Application Form for Courtesy Card 21 NCAC 34B .0508
 Courtesy Card Renewal Form 21 NCAC 34B .0510
 Part-Time and Independent Contractors Affidavit 21 NCAC 34B .0612
 Funeral Establishment Inspection Form 21 NCAC 34B .0615
 Indication of Approval of Forms 21 NCAC 34D .0104
 Record and Bookkeeping Requirements 21 NCAC 34D .0301
 Certificate of Performance 21 NCAC 34D .0303
 Application for Reimbursement 21 NCAC 34D .0402
 Processing Applications 21 NCAC 34D .0403

PHARMACY, BOARD OF

Administration of Vaccines by Pharmacists 21 NCAC 46 .2507

PHYSICAL THERAPY EXAMINERS, BOARD OF

Foreign-Trained Physical Therapists 21 NCAC 48E .0110

RESPIRATORY CARE BOARD

Application Process	21	NCAC	61	.0201
License Renewal	21	NCAC	61	.0302

COMMUNITY COLLEGES, STATE BOARD OF

Tuition and Fees for Curriculum Programs	23	NCAC	02D	.0202
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STATE PERSONNEL COMMISSION

Leave Credits	25	NCAC	01E	.0203
Sick Leave Credits	25	NCAC	01E	.0301
Leave Employee Transfer	25	NCAC	01E	.1004
Leave with Pay for Time to Locate New Residence	25	NCAC	01E	.1007
Leave with Pay When Moving to New Residence	25	NCAC	01E	.1008
Participation and Purpose	25	NCAC	01L	.0302
Responsibilities: Agencies	25	NCAC	01L	.0303
Course Scheduling and Site Selections	25	NCAC	01L	.0307

AGENDA
RULES REVIEW COMMISSION
November 18, 2004, 10:00 A.M.

Call to Order and Opening Remarks

Review of minutes of last meeting

Follow Up Matters

- (A) Criminal Justice Education and Training Standards Commission - 12 NCAC 9B .0304 (DeLuca)
- (B) Massage Board & Body Work Therapy – 21 NCAC 30 .0102; .0203-.0206; .0301-.0303; .0403; .0404; .0501-.0515; .0601-.0633; .0701; .0702; .0901-.0905 (DeLuca)
- (C) Board of Funeral Service – 21 NCAC 34B .0102; .0104; .0408; .0409; .0411-.0415 (Bryan)
- (D) State Personnel Commission – 25 NCAC 1L .0304; .0305 (DeLuca)

Review of Rules (Log Report #215)

Review of Temporary Rules (if any)

Commission Business

Next meeting: December 16, 2004

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter

James L. Conner, II
Beryl E. Wade
A. B. Elkins II

RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ABC COMMISSION</u>				
ABC Commission v. Pantry, Inc. T/A Pantry 355	03 ABC 1094	Gray	09/01/04	
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Nichos, Inc., T/A Mexican Store	04 ABC 0626	Gray	10/15/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream	04 ABC 0695	Wade	07/20/04	
ABC Commission v. KOL, Inc, T/A Wards Grocery	04 ABC 0872	Wade	09/21/04	
ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club	04 ABC 0938	Chess	10/19/04	
<u>VICTIMS COMPENSATION</u>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Compensation	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
Jean Stevens on Behalf of Amber Nichole Sewell v. Victim and Justice Services	04 CPS 0399	Chess	09/16/04	
Krista Chmiel v. Crime Victims Compensation Commission Case #CV-65-04-0020899	04 CPS 0992	Gray	09/31/04	
<u>DEPARTMENT OF AGRICULTURE</u>				
NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co.	04 DAG 0110	Gray	07/21/04	
<u>DEPARTMENT OF ADMINISTRATION</u>				
Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04	
<u>HEALTH AND HUMAN SERVICES</u>				
Bejeer Smiles Child Care Learning Center, Inc. v. DHHS, Div of Child Development	98 DHR 0235	Gray	09/16/04	
Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04	
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04	
Winter McCotter v. DHHS, Div. of Facility Services, Healthcare Personnel Registry Section	03 DHR 0905	Gray	10/20/04	

CONTESTED CASE DECISIONS

Blaine Ryan Walsh-Child, Bonnie L. Walsh-Mother v. DHHS, Div. of Medical Assistance	03 DHR 1113	Gray	10/15/04
Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04
Karen A. Anders v. DHHS, Div of Facility Services	03 DHR 1217	Gray	09/20/04
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04
Tomeeka K. Blount v. DHHS, Caswell Center	03 DHR 1728	Elkins	10/15/04
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04
Jacqueline Haltiwanger v. DHHS, Div of Facility Services	03 DHR 1818	Conner	09/24/04
Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04
Mooreville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04
Antonia Marie Collins v. DHHS, Div of Facility Services	03 DHR 2450	Mann	09/15/04
John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04
Donna R. Gardner v. Health Care Personnel Registry, DHHS, Div of Facility Services	04 DHR 0048	Gray	09/17/04
Johnny Rouse v. DHHS, Div of Facility Services	04 DHR 0107	Wade	10/07/04
Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
Martha Williams, Kidtz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Paulette Simato v. DHHS, Div of Facility Services	04 DHR 0302	Conner	09/22/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
Peter Young v. DHHS	04 DHR 0372	Conner	10/08/04
Paula Una Simon v. DHHS	04 DHR 0386	Chess	09/10/04
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
Johnny Street v. DHHS	04 DHR 0441	Wade	10/19/04
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
Bervin D. Pearson Sr. v. DHHS, Broughton Hospital	04 DHR 0476	Morrison	09/09/04
Tracy M. Anderson v. DHHS, Div. of Facility Services	04 DHR 0501	Conner	09/14/04
Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04
Edrica Mekoyo v. DHHS, Div. of Facility Services	04 DHR 0560	Gray	09/17/04
Shirly Thaggard v. DHHS, Div. of Facility Services	04 DHR 0588	Morrison	11/05/04
Maggie E. Clinding v. DHHS, Div. of Facility Services	04 DHR 0590	Conner	11/08/04
Judith Marie Carson v. DHHS, Broughton Hospital	04 DHR 0594	Gray	10/08/04
Emelie Kashangura v. DHHS, DFS	04 DHR 0602	Elkins	07/14/04
Rush Street Food Mart, Ghassan Dahir v. DHHS, WIC, Div. of Public Health	04 DHR 0640	Elkins	09/24/04
Zack's Food Mart, Nidal Dahir v. DHHS, WIC, Div of Public Health	04 DHR 0641	Elkins	09/24/04
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04
Amy Hensley v. DHHS	04 DHR 0696	Elkins	09/01/04
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04
Stacey Curtis v. Dorothea Dix Hospital	04 DHR 0791	Lassiter	09/01/04
Progressive Child Care, Inc. Drake Groves/Director v. Div of Child Development c/o Forsyth County Department of Social Services	04 DHR 0844	Mann	09/22/04
Tanya H. Dey v. Medicaid	04 DHR 0864	Elkins	11/10/04
Judy W. Dickson v. DHHS, Div. of Facility Services	04 DHR 0865	Elkins	10/11/04
Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Oyetoun M Oladipo v. Health Care Personnel Registry, DHHS	04 DHR 0887	Morrison	09/23/04
Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04
Winfred Keene v. Health Care Personnel Registry Section	04 DHR 0976	Lassiter	10/18/04
Sandra Elaine Patrick v. DHHS, Div of Facility Services	04 DHR 1073	Conner	10/01/04
New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS	04 DHR 1112	Lassiter	08/18/04
Roberta Bell v. DHHS, Div of Medical Assistance	04 DHR 1134	Wade	09/15/04
Manley Yates & Cynthis Yates, Ham Grocery, Inc. v. DHHS, WIC	04 DHR 1136	Elkins	09/14/04
Grace A. Wright v. Wake County Human Services Program Integrity – Dedi H. Bateman	04 DHR 1152	Mann	09/23/04
Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Assistance	04 DHR 1166	Gray	09/03/04
Wade Assisted Living, Inc., T/A Laurie Edwards	04 DHR 1174	Wade	11/08/04
Julia Matheson v. DHHS, Div. of Facility Services	04 DHR 1301	Wade	10/19/04
Martha Abare v. DHHS, Div. of Facility Services	04 DHR 1310	Wade	11/01/04
Lakresha McIver v. Health Care Registry	04 DHR 1330	Elkins	11/10/04
Renita M. Walton v. DHHS, Div of Facility Services	04 DHR 1359	Wade	10/14/04
Elizabeth D. Hedgepeth v. Dept. of Health Services	04 DHR 1364	Elkins	11/10/04
Cydra Pajiete Seegers v. DHHS, Div. of Facility Services	04 DHR 1366	Mann	11/09/04
Adib Abdullah v. DHHS	04 DHR 1380	Gray	10/22/04
Madeleine C. Pacheco v. DHHS, Div. of Facility Services	04 DHR 1381	Wade	10/14/04

CONTESTED CASE DECISIONS

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

DEPARTMENT OF JUSTICE

Larry Mitchel Batton, Jr. v. Crimianl Justice Educ. & Training Stds. Comm	03 DOJ 1067	Lassiter	06/15/04
Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 1702	Conner	05/10/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2354	Mann	07/19/04
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1 Combined Cases

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
02 DST 1029

COUNTY OF GASTON

Bryant Lee Deaton,)
)
 Petitioner,)
)
 v.)
)
 North Carolina Department of State Treasury,)
 Retirement Service Division,)
)
 Respondent.)

DECISION

THIS CAUSE came on for hearing before the Honorable Beecher R. Gray, presiding judge for the hearing of this contested case before the Office of Administrative Hearings, via conference call on August 23, 2004. The Petitioner is represented by John H. Russell, Jr. of Mullen Holland & Cooper, P.A. of Gastonia, North Carolina and the Respondent is represented by Robert M. Curran, assistant attorney general of Raleigh, North Carolina.

ISSUE

Whether the petitioner’s request to convert his early or service retirement benefit to a disability retirement benefit was filed in a timely manner as required by N.C. Gen. Stat §135-5(c).

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. § 135-5(c) and 135-5(d3).

FINDINGS OF FACT

Stipulated Facts

1. The Petitioner, Bryant Lee Deaton, was born July 26, 1945 and is 58 years old at the time of this hearing.
2. Mr. Deaton is a citizen and resident of Gaston County, North Carolina and presently resides in Belmont.
3. Mr. Deaton is married to Jane Underwood Deaton. Mrs. Deaton is not employed. She is dependant upon her husband’s retirement income from the Teachers and State Employees System. The Deatons have no children or other dependants.
4. From December 1974 to 1997, Mr. Deaton was employed by the State of North Carolina as an accountant. During this time, Mr. Deaton worked for several state agencies, including from 1976 until 1985 as Director of Systems and Procedures with the University of North Carolina at Chapel Hill. He held a similar position at North Carolina State University from 1985-1988.
5. In July 1992, Mr. Deaton was diagnosed with end-stage renal disease. He began dialysis in March 1994, and underwent kidney replacement surgery in December 1995. His condition is presently stable, but requires the use of certain medications to maintain kidney function.
6. In March 1993, Mr. Deaton was referred to Nicholas E. Stratas M.D., a psychiatrist in Raleigh, North Carolina, for evaluation and treatment of psychological problems related to his kidney failure. Dr. Stratas treated the Petitioner from 1993 through 1997, during which time he diagnosed the Petitioner with panic disorder, psychological problems secondary to his medical illness, and obsessive compulsive personality. In early 1997, Dr. Stratas noted the panic disorder was much improved and that the Petitioner had become “quite adept at his personal management.” A copy of Dr. Stratas’ January 29, 1997 review note was attached to the Stipulations, which previously were filed by the parties, as Exhibit A.
7. In 1996, due to his ongoing kidney problems, Mr. Deaton sought a position without management responsibilities, and transferred to an Accountant II position with the Department of Commerce on December 1, 1996.

8. Mr. Deaton held the position of Accountant II with the Department of Commerce until he retired from state employment on August 31, 1997.
9. Mr. Deaton submitted his resignation letter to his supervisor's wife on a Sunday afternoon in August 1997 after he failed to reach his supervisor several times by phone. His supervisor has since indicated that his wife believed Mr. Deaton was unstable at the time of his resignation. A copy of the supervisor's letter concerning the circumstances of the resignation was attached to the previously filed Stipulations as Exhibit B.
10. The Petitioner had no other job lined up following his retirement and did not consult with his wife in his decision to leave the Department of Commerce.
11. The Petitioner has not worked since his retirement from the state system in August 1997. Shortly after the petitioner's retirement, Mr. and Mrs. Deaton moved to Belmont in Gaston County. Mr. Deaton also did not continue his treatment with Dr. Stratas and did not receive any mental health treatment from August 1997 until March 1999.
12. In March 1999, the Petitioner appeared at Gaston Memorial Hospital in a confused, psychotic state. He was non-responsive to questioning and, in the opinion of the examiner, unable to function or to properly care for himself. He was admitted to the hospital for treatment and further evaluation. The Petitioner was stabilized on medication and discharged on March 29, 1999 with diagnoses of psychosis and major depression with psychotic features. Discharge instructions included follow up with a psychiatrist of his choice. A copy of the Discharge Summary was attached to the previously filed Stipulations as Exhibit C.
13. On March 31, 1999, Mr. Deaton was evaluated by Dr. Joseph L. Godfrey, M.D., of Psychiatric Associates in Gastonia. Based on the examination and history, Dr. Godfrey diagnosed Mr. Deaton with bi-polar disorder. Copies of Dr. Godfrey's office notes from March 31, 1999 were attached to the previously filed Stipulations as Exhibit D.
14. Prior to March 31, 1999, the Petitioner had not been diagnosed with bi-polar disorder, nor advised that he suffered from this condition. Mr. Deaton continues to be treated for this condition by Dr. Godfrey.
15. On March 20, 2002, the Petitioner filed a claim seeking to convert his service retirement to disability retirement pursuant to N.C.G.S. §135-5(c). This claim was filed within 3 years of his diagnosis with bi-polar disorder. A copy of Mr. Deaton's letter seeking retirement service disability was attached to the previously filed Stipulations as Exhibit E.
16. Following the Petitioner's request for disability, the Medical Board for the Retirement Systems Division conducted a review of Mr. Deaton's records to determine whether he is disabled and the onset date of any disability.
17. As part of its review, the Medical Board requested information from Dr. Stratas concerning the onset of the Petitioner's bi-polar disorder. In a letter dated February 18, 2004, Dr. Stratas advised that panic disorder is commonly an early symptom or episode in the progression of bi-polar disorder. Dr. Stratas further indicated that bi-polar disorder may begin with depression followed by an episode of panic disorder, and noted that the anti-rejection and other kidney medication included steroids, which have well known psychiatric side effects. Based on this background and the petitioner's subsequent mental health history, Dr. Stratas concluded that Petitioner was disabled from bi-polar disorder as of August 31, 1997, and that his failure to seek treatment from August 1997 to March 1999 was consistent with a manic high and further evidence of this illness. A copy of the letter from Dr. Stratas dated February 18, 2004 was attached to the previously filed Stipulations as Exhibit F.
18. The Medical Board also had before it a letter from the Petitioner's nephrologist, Dr. David W. Butterly, Associate Professor of Medicine, Division of Nephrology, Duke University Medical Center, dated November 12, 2003. Dr. Butterly indicated that two of the petitioner's medications, Prednisone and cyclosporine, prescribed to maintain kidney transplantation function, have psychiatric side effects and contributed to Mr. Deaton's psychiatric illnesses. A copy of Dr. Butterly's letter was attached to the previously filed Stipulations as Exhibit G.
19. Dr. Godfrey further has indicated that Petitioner's early retirement in August 1997 "was likely due to an overly optimistic vision of the world during a hypomanic or manic episode." A copy of Dr. Godfrey's letter, dated October 29, 2003, was attached to the previously filed Stipulations as Exhibit H.
20. On February 24, 2004, the Medical Board determined that the petitioner was permanently disabled as a result of his bi-polar disorder from further performance of his usual occupation as of his last day of service, August 31, 1997. A copy of a letter from J. Marshall Barnes, III, Deputy Director for the Retirement Services Division, notifying the Attorney General's Office of this decision was attached to the previously filed Stipulations as Exhibit I.

21. Mr. Deaton's bi-polar disorder was not diagnosed until after his hospitalization in March 1999, 18 months after his retirement from the Teachers' and State Employees System.

22. The petitioner filed his claim to convert his service retirement allowance into disability retirement benefits within 3 years of the diagnosis of his disabling illness, specifically bi-polar disorder, and within 3 years of notification by a physician of this diagnosis, but not within 3 years of his retirement.

23. The parties stipulate that the Petitioner would testify that he had no knowledge of the 3 year time limit for converting a service retirement allowance to disability retirement until after he filed his claim in March 2002.

24. The Teachers' and State Employees Retirement System benefits handbook in effect at the time of the Petitioner's retirement in August 1997 did not contain any information regarding disability retirement benefits in N.C.G.S. §135-5(c), nor did it contain any procedures or time limits for claiming disability retirement.

Additional Adjudicated Facts

25. The Medical Board for the Retirement Services determined that the petitioner was permanently disabled as a result of bi-polar disorder from further performance of his usual occupation as of his last day of service, August 31, 1997. These findings were indicated by letter from J. Marshall Barnes, Deputy Director of the North Carolina Retirement Systems, dated February 24, 2004. The parties stipulated to the letter and the findings of the Medical Board. Petitioner therefore has presented clear and convincing evidence that he would have met all applicable requirements for disability retirement benefits while still in service as a member.

26. Petitioner did not know that he suffered from bi-polar disorder until he was diagnosed by Dr. Joseph Godfrey on March 31, 1999. Further, the symptoms of his disease were not such that a reasonable person would have known that he suffered from a debilitating condition. To the contrary, the symptoms of bi-polar disorder not only mask the illness, but suggest to the affected individual a healthier picture than likely exists. The letter from Dr. Stratas states that in August of 1997, the petitioner was "moving into a manic high and believed he was doing well which is consistent with every manic patient whom I have seen." Exhibit F, February 18, 2004 letter from Dr. Nicholas E. Stratas.

27. The Petitioner's early retirement was likely due to the instability and manic episode associated with his bi-polar disorder. Dr. Godfrey stated that in his opinion, the Petitioner's early retirement "was likely due to an overly optimistic vision of the world during a hypomanic or manic episode." See Exhibit H, October 29, 2003 letter from Dr. Godfrey.

Based on the foregoing Findings of Fact and the arguments of the attorneys, the undersigned now makes the following

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter involved in this claim.

2. The petitioner's right to make a claim for disability retirement benefits, in the event that he met all applicable requirements, vested in 1979 after five years of employment with the State of North Carolina. Faulkenbury v. Teachers' and State Employees' Retirement System of the State of North Carolina, 345 N.C. 683, 483 S.E.2d 422 (1997).

3. The procedures for converting early or service retirement benefits to disability retirement benefits are contained in N.C. Gen. Stat. §135-5(c), which provides in part, "any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optimal allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member."

4. The petitioner has presented clear and convincing evidence that he would have met all applicable requirements for disability retirement benefits while still in service as a member.

5. Because the petitioner did not know and had no reason to know of either (1) the nature of his disability or (2) the relationship of his disability to his early retirement in August of 1997, the time limit to file his claim with the Retirement Services Division should run from the date of diagnosis by Dr. Godfrey on March 31, 1999. This conclusion is consistent with other areas of law, including the Workers Compensation Act, which provides that the filing of a claim for an occupational disease "shall run from the date that the employee has been advised by competent medical authority that he has same." N.C. Gen. Stat. 97-58(b). It is also consistent with the principle contained in the statutes governing limitations in Chapter 1 of the North Carolina General Statutes that actions for personal injury or property damage shall not accrue until the harm becomes apparent or ought reasonably to have become apparent. See, N.C. Gen. Stat §1-52 (16).

6. Because the petitioner's request to convert his early or service retirement benefit into a disability retirement benefit was made within three years of his diagnosis with bi-polar disorder and within three years of discovery of the relationship between his illness and his retirement from state service, his request was filed in a timely manner within the meaning of the applicable statutes.

7. Petitioner further has argued that the State should be estopped from relying on the three year time limit due to omissions in the Teachers' and State Employees' Retirement Benefits Handbook and the applicable statutes. Because the court finds the request to convert to disability retirement benefits was timely filed, however, it is unnecessary to reach the additional arguments raised by the petitioner.

DECISION

Petitioner's request to convert his early or service retirement benefit into a disability retirement benefit was filed within three years of (1) the diagnosis of his condition by Dr. Godfrey and (2) his discovery of the relationship between his disability and his early retirement in August of 1997. The request is therefore timely under N.C. Gen. Stat. §135-5(c) and the authorities cited in this opinion to interpret it.

ORDER

This case is referred to the Board of Trustees for the Teachers' and State Employees' Retirement System for consideration of this decision and the petitioner's request for disability retirement benefits pursuant to N.C. Gen. Stat. §135-5(d3). It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with G.S. § 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision and to present written arguments to those in the agency who will make the final decision. G.S. § 150B-36(a).

The agency is required by G.S. § 150B-36(b3) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Retirement Services Division of the North Carolina Department of the Treasury.

This the 3rd day of September, 2004.

Beecher R. Gray
Administrative Law Judge
The North Carolina Office of Administrative Hearings

5. Trooper Stevens parked his patrol car approximately three or four feet behind the Mazda. He approached the Mazda and asked the driver, Dove, for his license and registration. Dove handed Trooper Stevens his Virginia ID Card and stated that his license was revoked. Dove then searched the glove compartment, but registration was never produced.

6. Trooper Stevens was trained to park his patrol vehicle 15 to 20 feet behind any stopped vehicles for safety reasons.

7. Trooper Stevens requested that Dove accompany him to his patrol car. Dove went willingly. Trooper Stevens asked Dove for his consent to search him before they got into the patrol car. Dove gave his consent. A pat-down search revealed that Dove was not concealing any weapons on his person.

8. Trooper Stevens was trained to interview violators outside of the patrol car, either to the right front or right rear of the vehicle. He was also trained not to write a citation in the patrol car for a person that is not under arrest and who is un-handcuffed.

9. Dove sat in the right front passenger seat of the patrol car while Trooper Stevens (seated in the left front driver's seat) contacted Troop C Communications to have them run a license check. Troop C Communications reported that Dove's license was revoked in the state of Virginia and that the registration plate belonged to the vehicle. Trooper Stevens completed a citation charging Dove with Driving Without A License and Failure To Wear A Seat Belt. (Respondent's Exhibit 3).

10. Troop C Communications notified Trooper Stevens that the car that Dove was driving was 10-75 (stolen). Trooper Stevens exited the patrol car, walked around to the passenger side, and handcuffed Dove with his hands placed in front of his body. Trooper Stevens informed Dove that he was cuffing him for his safety. When Dove inquired as to what was going on, Trooper Stevens responded that he did not know and was waiting on further information.

11. Trooper Stevens was taught to handcuff suspects with their hands placed behind their back. (Transcript Vol. 1 p. 96 l. 7). While there are certain exceptions to this policy, such as when dealing with the sick, disabled, or elderly, none applied in this situation. It was possible in this situation for Trooper Stevens to handcuff Dove with his hands placed behind his back.

12. After failing to properly handcuff Dove, Trooper Stevens closed the passenger door and left Dove unattended in his patrol car, which had no transmission lock, while he proceeded to make his way around the patrol car to the driver's side. At this time, Dove opened the door and exited the vehicle. It is unlikely that Dove would have been able to open the door and get out had his hands been properly cuffed behind his back.

13. Dove circled the patrol car, his own car, and then ran toward an open field with Trooper Stevens in hot pursuit. During the course of the chase, Trooper Stevens dispensed his entire can of o.c. spray.

14. While running through the field, Dove fell down a number of times. Trooper Stevens noted that Dove's pants were quite large and kept falling down as he ran. Trooper Stevens used his ASP baton on the back of Dove's legs and tried to push him down using a disbalancing technique in an attempt to catch him. Dove fell, but got back up and continued running.

15. Dove ran into the yard of one Eddie Lawson and proceeded to lead Trooper Stevens in a chase around a tree. Dove lost his balance and fell and Trooper Stevens dispensed the remainder of his o.c. spray into Dove's face. At this point Dove gave up and asked for help because his eyes were hurting him.

16. Trooper Stevens got Dove to his feet and escorted him back to the patrol car where he again placed him in the front passenger's seat. Once in the patrol car, Trooper Stevens removed one of Dove's handcuffs so that he could properly handcuff him behind his back pursuant to patrol policy in such situations.

17. At this point, Trooper Stevens stated that Dove became uncooperative and would not give him his left hand. In Trooper Stevens' second interview, his memo and his proffer to the district attorney, he stated that he backed away from the patrol car when Dove grabbed his flashlight and raised it in his direction and verbally threatened to hit him. However, in Trooper Stevens' original interview, he did not state that Dove verbally threatened him with the flashlight.

18. Dove closed and locked the car door. Trooper Stevens ran around the car in an attempt to gain access. While Trooper Stevens was running, Dove slid over into the driver's seat and placed the vehicle into reverse and began going backwards.

19. As Dove was backing up, Trooper Stevens yelled to Dove to "turn around." When Dove stopped and turned around, Trooper Stevens shot him four times through the driver's side window of the patrol car. At the time that Trooper Stevens fired his weapon at Dove, he was not standing in the immediate pathway of the vehicle and the vehicle was not coming toward him. Stevens was standing beside the vehicle. The vehicle was at rest at the time that Trooper Stevens shot Dove.

20. Dove was hit four times in the left side of his chest; however, he sustained a total of eight gunshot wounds due to re-entry of some of the bullets. Once transported to the Maria Parham Hospital emergency room, Dove never regained consciousness and made no statements. Dove ultimately died as a result of these gunshot wounds.

21. According to eyewitness Eddie Lawson, Trooper Stevens was “right up on the car right where his [driver’s] side mirror is” when he fired at Dove.

22. In his testimony, Eddie Lawson said that throughout the whole incident, it seemed as if Dove was trying to get away from Trooper Stevens. (Transcript Vol. 1 p. 198 l. 5).

23. At the time of the incident, there were no arrest warrants for Dove. No weapons or contraband were found on Dove or in the car that he was driving.

Statements Made by Trooper H.B. Stevens

24. In regard to the events of January 20, 2003, Trooper Stevens was interviewed twice, submitted a memo, and gave a proffer to the district attorney. Each successive statement seemed to paint a more favorable portrait of the Petitioner. Dove, of course, gave no statements or versions of the incident which resulted in his death.

25. Statements made by Trooper Stevens contain conflicting information as to whether Dove was in fact wearing his seatbelt. In Respondent’s Exhibit 5, Trooper Stevens stated that when he stopped Dove, he asked him why he did not have his seatbelt on and Dove responded by stating that he had no reason for not wearing his seatbelt and that he could have put it on and lied, but that he did not because he respected Trooper Stevens. However, in Respondent’s 7 and his Proffer, Trooper Stevens maintained that when he approached Dove’s vehicle, Dove was wearing his seatbelt.

Violations of NC SHP Policy and Training

26. Trooper Stevens violated NC SHP Policy and Training when he:

- parked his patrol car three to four feet behind the Mazda
- initially placed Dove, unhandcuffed, into the front seat of a patrol car without a transmission lock
- handcuffed Dove with his hands in front of his body rather than behind his back, while Dove was inside the patrol car
- failed to request backup when Dove “jumped-and-ran” from the patrol car
- failed to decontaminate Dove after dispensing o.c. spray into his eyes—Trooper Stevens actually put Dove into his patrol car after spraying him; however, NC SHP Policy states that a member should wait for 15 minutes before transporting a subject to allow time for evaporation and to reduce the effects of the o.c. spray in the vehicle
- failed to call for backup after he had placed Dove into the patrol car for the second time
- proceeded to remove the handcuffs from one of Dove’s hands without having backup available on the scene
- failed to give Dove a verbal warning prior to using lethal force (in this situation it was feasible for Trooper Stevens to give Dove a verbal warning; in fact, Trooper Stevens did state that he told Dove to turn around and when Dove did turn around, Trooper Stevens shot him)

27. Trooper Burke Brooks testified that Trooper Stevens has failed to notify Raleigh of his location with regard to previous traffic stops and as a result had been counseled on the importance of notifying Raleigh. (Transcript Vol. 1 p. 219 l. 10-17).

28. While it has been established that Trooper Stevens did initially try to subdue Dove without using deadly force (by various means such as using the o.c. spray and baton), none of these measures would have been necessary (and certainly not deadly force), had Trooper Stevens initially followed NC SHP Policy of interviewing a suspect outside the patrol vehicle, properly handcuffing the suspect, and calling for backup.

29. Trooper Brooks noted that in his sixteen years on the NC SHP, he had been in similar situations; however, he did not fire his weapon. (Transcript Vol. 1 p. 222 l. 14). Trooper Stevens could have shot the vehicles tires instead of shooting Dove four times.

Investigations of the Incident

30. District Attorney Thomas J. Keith of Forsyth County was requested to serve as an independent prosecutor to investigate this shooting death. He did so with the assistance of the State Bureau of Investigation. In a report dated March 3, 2004, he concluded that “Based upon the foregoing review of all the evidence; Trooper Stevens lawfully exercised deadly force when he shot and killed Dove

and should not be charged with any criminal violation of North Carolina law.” DA Keith’s report did “not address violations of any standards or regulations of the North Carolina Highway Patrol except those that bear directly on the use of force. Enforcement of these rules are the sole responsibility of the Highway Patrol.” He did not review the Highway Patrol’s internal investigation of the incident which resulted in Petitioner’s employment being terminated.

31. In any case where an officer discharges his firearm, Internal Affairs is required to conduct an investigation. The investigation was led by Lieutenant N. K. Goering. Internal Affairs found that Trooper Stevens did not conduct himself in accordance with the standards and expectations of the NC SHP and that his job performance in relation to this incident was “grossly inefficient.” As such, Internal Affairs recommended that Trooper Stevens be dismissed from the NC SHP.

Pre-dismissal Conference

32. In accordance with the State Personnel Manual of the North Carolina Office of State Personnel, a Pre-dismissal Conference was held on Thursday August 21, 2003, at 2:00 pm. The purpose of the conference was to review the recommendation of Internal Affairs that Trooper Stevens be dismissed. Trooper Stevens had been notified of his Pre-dismissal Conference on Wednesday August 20, 2003, and told that he would be given the opportunity to respond to and refute information supporting the proposed recommendation. He attended and participated in the conference.

33. On August 22, 2003, Major W. D. Munday (Director, Office of Professional Standards), having reviewed the Internal Affairs report and the Pre-dismissal Conference transcripts, found that Trooper Stevens should be dismissed from the Patrol and so recommended to SHP Colonel R. W. Holden who agreed and ordered dismissal.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction to hear this contested case and issue this Decision.

2. N.C. Gen. Stat. § 126-35 (a) provides that “no career employee subject to the State Personnel Act shall be discharged . . . for disciplinary reasons, except for just cause.” Respondent has the burden to prove just cause for dismissal.

3. Pursuant to its rulemaking authority under N.C. Gen. Stat. § 126-35(a), the State Personnel Commission has defined just cause as either: 1) unsatisfactory job performance, including “grossly inefficient” job performance or 2) unacceptable personal conduct. N.C. ADMIN. CODE 25 01J .0604(b). When just cause is found to exist, a career state employee may be “warned, demoted, suspended or dismissed by the appointing authority.” N.C. ADMIN. CODE 25 01J .0604(a).

4. Grossly Inefficient Job Performance “occurs in instances in which the employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency and that failure results in . . . [t]he creation of the potential for death or serious harm to an employee(s) or members of the public or to a person(s) over whom the employee has responsibility[.]” N.C. ADMIN. CODE 25 01J .0614(e).

5. Petitioner’s failure to follow patrol policy and training was grossly inefficient job performance because it resulted in the “creation of the potential for death or serious harm to an employee(s) or members of the public.” Specifically, petitioner’s 1) failure to follow training for proper vehicle stops including failure to maintain a safe distance from the stopped vehicle and placing an unhandcuffed suspect in the front seat of the patrol vehicle; 2) failure to follow handcuff training; 3) failure to notify communications of a “jump and run”; 4) failure to request backup; and 5) removing handcuffs of suspect without backup present, was grossly inefficient job performance. Petitioner’s repeated failure to follow his training and department policy led to circumstances that resulted in placing Petitioner in the position where he used deadly force on the suspect.

6. In this situation, a less than lethal technique could have been used to de-escalate the incident and bring it under control. Moreover, the North Carolina Court of Appeals has held that a plaintiff’s use of lethal force was excessive when the “plaintiff had time to extricate himself from the pathway of the car, but failed to do so.” *Jordan v. Civil Service Board for the City of Charlotte*, 153 N.C. App. 691; 570 S.E.2d 912 (2002). Also, Trooper Stevens could have shot the four tires and disabled the vehicle instead of killing Dove on January 20, 2003.

7. Patrol management has met the burden of proving just cause to discipline the Petitioner up to and including dismissal for grossly inefficient job performance

DECISION

The decision of the Respondent to terminate the Petitioner's employment should be UPHELD as being for just cause.

ORDER AND NOTICE

The North Carolina State Personnel Commission will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

The agency is required to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. See N.C.G.S. §150B-36(b).

This the 27th day of October, 2004.

Fred G. Morrison Jr.
Senior Administrative Law Judge

NOTICE

The Agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

The Agency is required to give each party an opportunity to file exceptions to the decision and to present written arguments to those in the Agency who will make the final decision. N.C. Gen. Stat. § 150-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

In accordance with N.C. Gen. Stat. § 150B-36 the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 14th day of October, 2004.

James L. Conner, II
Administrative Law Judge