

NORTH CAROLINA

IN THIS ISSUE

REGISTER



**Volume 20, Issue 02
Pages 39 - 108**

July 15, 2005

This issue contains documents officially filed through June 23, 2005.

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North Carolina Register is published semi-monthly for \$195 per year by the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. *North Carolina Register* (ISSN 15200604) to mail at Periodicals Rates is paid at Raleigh, NC. POSTMASTER: Send Address changes to the *North Carolina Register*, 6714 Mail Service Center, Raleigh, NC 27699-6714.

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	
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18	SECRETARY OF STATE	25 Interpreter/Transliterator	
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		60 Refrigeration Examiners	
		61 Respiratory Care	
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		65 Therapeutic Recreation Certification	
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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 2005 – December 2005

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

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.

**EXECUTIVE ORDER NO. 75
REESTABLISHING AND MODIFYING PROGRAMS ESTABLISHED UNDER THE HURRICANE FLOYD RECOVERY
ACT OF 1999 (S.L. 1999-463 EXTRA SESSION) AND AMENDING EXECUTIVE ORDER #8**

WHEREAS, Article III, Section 5(10) of the Constitution of North Carolina authorizes and empowers the Governor to make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration; and

WHEREAS, the North Carolina General Assembly enacted the Hurricane Recovery Act of 2005, S.L. No. 2005-1, to provide necessary and appropriate relief and assistance from the effects of the hurricanes and tropical storms that hit the State of North Carolina in 2004; and

WHEREAS, Section 5.1.(a) of the Hurricane Recovery Act of 2005, S.L. No. 2005-1, states, "The Governor shall reestablish and may modify, as necessary, all of the programs implemented as part of the Hurricane Floyd Recovery Act of 1999 under S.L. 1999-463 Extra Session and the Report of the House Appropriations Committee on Hurricane Floyd Recovery dated December 15, 1999, as amended by S.L. 1999-463 Extra Session. The Governor shall also establish new programs and expand or modify, as necessary, existing programs to provide necessary and appropriate relief and assistance from the effects of the hurricanes that hit the State in 2004;" and

WHEREAS, Section 4 of the Hurricane Floyd Recovery Act of 1999 (S.L. 1999-463 Extra Session) states "... every agency, as defined in G.S. 150B-2, may adopt temporary rules necessary to implement the provisions of this act;" and

WHEREAS, temporary rules for the Hurricane Floyd Recovery Act of 1999 (S.L. 1999-463 Extra Session) were adopted at 4 NCAC 19L.1901, which states "The North Carolina Department of Commerce will follow the administrative rules for the North Carolina Community Development Block Grant Program, 4 NCAC 19L. in administering the Hurricane Floyd Recovery Assistance appropriated by the General Assembly in Session Law 1999-463 Extra Session House Bill 2;" and

WHEREAS, 4 NCAC 19L.1901, states that the administrative rules for the 1999 Hurricane Floyd CHAF programs will be in effect until January 1, 2010;" and

WHEREAS, Executive Order No. 8 transferred the North Carolina Redevelopment Center to the North Carolina Department of Crime Control and Public Safety and transferred the Crisis Housing Assistance functions previously carried out by the Housing and Business Redevelopment Office and the Division of Community Assistance of the Department of Commerce to the North Carolina Redevelopment Center, except for the Affordable Rental Housing, Predevelopment, and Land Acquisition programs. These programs remain in the Department of Commerce; and

WHEREAS, Section 4 of Executive Order No. 8 states, "All rules, regulations, and policies promulgated by the Office of the Governor, Housing and Business Redevelopment Office, Division of Community Assistance, the Hurricane Floyd Redevelopment Center, and the Department of Commerce regarding Crisis Housing Assistance, shall continue to apply to the agencies transferred to the Department of Crime Control and Public Safety and shall remain in effect until such rules, regulations, and policies are amended or rescinded by the Secretary of the Department of Crime Control and Public Safety;" and

WHEREAS, the North Carolina Redevelopment Center of the North Carolina Department of Crime Control and Public Safety previously administered the following 1999 Hurricane Floyd CHAF programs: (1) State Acquisition and Relocation Funds (SARF) for Homeowners Assistance; (2) SARF for Renters Assistance; (3) Low-Income Home Repair & Rehabilitation; (4) Low-Income Home Replacement; (5) Infrastructure to Local Governments; and (6) Aid to Local Government; and

WHEREAS, the 2005 CHAF programs to be administered by the North Carolina Redevelopment Center will not differ substantially from their 1999 counterparts, except for changes in policy that will be addressed in the program guidelines and other program documentation.

NOW, THEREFORE it is hereby ordered that,

Section 1. Pursuant to Section 5.1.(a) of the Hurricane Recovery Act of 2005, the 1999 Hurricane Floyd Crisis Housing Assistance Funds (CHAF) program is hereby reestablished and modified to provide necessary and appropriate relief and assistance

EXECUTIVE ORDERS

from the effects of the hurricanes and tropical storms that hit the State of North Carolina in 2004, by applying the rules of the 1999 Hurricane Floyd CHAF program at 4 NCAC 19L., to the 2005 CHAF program authorized by the Hurricane Recovery Act of 2005, S.L. No. 2005-1. The rules of the 1999 Hurricane Floyd CHAF program at 4 NCAC 19L. shall apply to the 2005 CHAF program authorized by the Hurricane Recovery Act of 2005, S.L. No. 2005-1.

Section 2. The North Carolina Redevelopment Center of the North Carolina Department of Crime Control and Public Safety will administer the following 2005 Hurricane Recovery Act CHAF programs: (1) State Acquisition and Relocation Funds (SARF) for Homeowners Assistance; (2) SARF for Renters Assistance; (3) Low-Income Home Repair & Rehabilitation; (4) Low-Income Home Replacement; (5) Aid to Local Government; and (6) Grants to Successful SBA Home Loan Applicants.

Section 3. Subject to the amendments herein, all provisions of Executive Order No. 8 shall remain in full force and effect.

Section 4. This order shall become effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 10th day of June 2005.

Michael F. Easley

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 76
EXTENDING EXECUTIVE ORDER NO. 1**

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order No. 1 regarding the North Carolina Board of Ethics, previously extended by Executive Order No. 51, is hereby extended.

This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 16th day of June 2005.

Michael F. Easley

ATTEST:

Elaine F. Marshall
Secretary of State

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

U.S. Department of Justice

Civil Rights Division

RJW:JBG:ALP:par
DJ 166-012-3
2005-1255
2005-1304

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

May 31, 2005

Karen M. McDonald, Esq.
City Attorney
433 Hay Street
Fayetteville, NC 28302

Dear Mr. Jerry Wilson
Reapportionment Group 2000
3009 Rainbow Drive, Suite 143
Decatur, Georgia 30034

Dear Ms. McDonald and Mr. Wilson:

This refers to eighteen annexations and their designation to districts, and the 2005 redistricting plan for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on April 4 and 8, 2005; supplemental information was received on May 18, 2005.

The Attorney General does not interpose any objection to seventeen annexations (Ordinance Nos. 2003-08-462, 2003-11-463, 2004-04-464, 2004-06-465, 2004-06-466, 2004-09-467, 2004-09-468, 2004-10-470, 2004-10-471, 2004-10-472, 2004-11-473, 2004-12-474, 2004-12-475, 2005-01-476, 2005-01-477, 2005-01-478, 2005-02-479) and the redistricting plan. 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 of the Voting Rights Act (28 C.F.R. 51.41).

We have been informed that Ordinance No. 2004-09-469 is the subject of pending litigation. A proposed change which is not finally enacted or capable of administration is not ripe for review by the Attorney General (with certain limited exceptions not applicable here). Accordingly, it would be inappropriate for the Attorney General to make a determination concerning your submission now. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.22(a) and 51.35). When this change is formally adopted, preclearance under Section 5 should be sought. Refer to File No. 2005-1255 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Rebecca J. Wertz
Acting 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 Child Care Commission intends to amend the rules cited as 10A NCAC 09 .0301, .0707, .0712-.0713, .1606, .1701, .1718, .2201, .2803.

Proposed Effective Date: January 1, 2006

Public Hearing:

Date: September 8, 2005

Time: 11:00 a.m. – 1:00 p.m.

Location: NC Division of Child Development, 319 Chapanoke Road, Suite 120, Raleigh, NC

Reason for Proposed Action: *The NC Child Care Commission proposes to adopt rules that set the requirements for safety of children in Child Care Facilities. In 2003, DHHS Secretary Carmen Hooker Odom brought together a group of stakeholders to consider ways to strengthen child care services provided to North Carolina's children. Much of the work of the Investigating Child Abuse and Neglect in Child Care Facilities Task Force focused on how to improve the system of investigating child abuse and neglect in child care facilities. The Task Force presented its final recommendations in January 2004. Task Force members included partners from the medical community, the North Carolina Child Care Commission, local departments of social services, law enforcement, child advocates, state agencies, child care providers, state legislators and parents.*

Procedure by which a person can object to the agency on a proposed rule: *Anyone wishing to comment on these proposed rules or to request copies of the rules should contact Dedra Alston, Rule-making, Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, at 919-662-4543 or Dedra.Alston@ncmail.net. Written comments will be accepted through September 30, 2005. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.*

Written comments may be submitted to: *Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201, at 919-662-4543, Fax 919-662-4568 or Dedra.Alston@ncmail.net.*

Comment period ends: September 30, 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** – 10A NCAC 09 .0301, .0707, .2201
- Local** – 10A NCAC 09 .0301, .0707, .2201
- Substantive** (≥\$3,000,000)
- None** – 10A NCAC 09 .0712-.0713, .1606, .1718, .2803

CHAPTER 09 - CHILD CARE RULES

SECTION .0300 - PROCEDURES FOR OBTAINING A LICENSE

10A NCAC 09 .0301 PRE-LICENSING REQUIREMENTS

(a) Anyone who wishes to obtain a license to operate a child care center shall first request pre-licensing consultation from the Division.

(b) Upon receiving a request a representative of the Division shall schedule a visit with the person requesting consultation, unless the person requesting consultation meets the criteria described in Rule .0302(g) of this Section. The Division shall furnish the forms required to be completed and submitted in order to apply for a license.

(c) The Division shall provide regularly scheduled licensing workshops for new and existing child care centers. A schedule of these workshops may be obtained from the Division at the address given in Rule .0102 of this ~~Chapter. Subchapter.~~ The operator of a child care center shall complete the licensing workshop provided by the Division prior to the Division issuing a license or Notice of Compliance to the child care center.

Authority G.S. 110-88(1); 110-88(5); 143B-168.3.

SECTION .0700 - HEALTH AND OTHER STANDARDS FOR CENTER STAFF

10A NCAC 09 .0707 IN-SERVICE TRAINING REQUIREMENTS

(a) Each center shall assure that each new employee who is expected to have contact with children receives a minimum of ~~40~~ 16 clock hours of on-site training and orientation within the first six weeks of employment. This training and orientation shall include:

- ~~(1)~~(4) training in the recognition of the signs and symptoms of child abuse ~~and~~ or neglect and in the employee's duty to report suspected abuse and neglect;
- ~~(2)~~(7) review of the center's operational policies, including the center's safe sleep policy for infants;
- ~~(3)~~ adequate supervision of children, taking into account their age, emotional, physical, and cognitive development;
- ~~(4)~~(1) first-hand observation of the center's daily operations;
- ~~(5)~~(2) instruction in the employee's assigned duties;
- ~~(6)~~(3) instruction in the maintenance of a safe and healthy environment;
- ~~(7)~~(5) review of the center's purposes and goals;
- ~~(8)~~(6) review of the center's personnel policies;
- ~~(9)~~(8) review of the child care licensing law and regulations;
- ~~(10)~~(9) an explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource; and
- ~~(11)~~(10) an explanation of the employee's obligation to cooperate with representatives of State and local government agencies during visits and ~~investigations.~~ investigations.

(b) Each new employee shall complete, within the first two weeks of employment, six clock hours of the training referenced in Subparagraphs (a)(1), (a)(2), and (a)(3) of this Rule.

~~(b)~~(c) The child care administrator and any staff who have responsibility for planning and supervising a child care program, as well as staff who work directly with children, shall participate in in-service training activities annually, according to the individual's assessed needs. Staff may choose one of the following options for meeting the ~~in-service~~ in-service requirement:

- (1) Each staff person shall complete ~~in-service~~ in-service training required in G.S. 110-91(11) as specified in the following Parts:
 - (A) persons with a four year degree or higher advanced degree in a child care related field of study from a regionally accredited college or university shall complete five clock hours of training annually.

10A NCAC 09 .0712 STAFF/CHILD RATIOS FOR CENTERS WITH A LICENSED CAPACITY OF LESS THAN 30 CHILDREN

(a) The staff/child ratios and group sizes for a child care center with a licensed capacity of less than 30 children are as follows:

- (B) persons with a two year degree in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Administration Credential or its equivalent shall complete eight clock hours of training annually.
 - (C) persons with a certificate or diploma in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Credential or its equivalent shall complete 10 clock hours of training annually.
 - (D) persons with at least 10 years documented, professional experience as a teacher, director, or caregiver in a licensed child care arrangement shall complete 15 clock hours of training annually.
 - (E) all other persons shall complete 20 clock hours of training annually.
- (2) For staff listed in Parts ~~(b)(1), (A), (c)(1)(A),~~ (B), (C) and (D) of this Rule, basic cardiopulmonary resuscitation (CPR) training required in Rule .0705 of this Section shall not be counted toward meeting annual in-service training. First aid training may be counted once every three years.
- (3) If a child care administrator or lead teacher is currently enrolled in coursework to meet the staff qualification requirements in G.S. 110-91(8), the coursework may be counted toward meeting the annual in-service training requirement.

~~(e)~~(d) For staff working less than 40 hours per week on a regular basis and choosing the option for 20 hours of ~~in-service~~ in-service training, the training requirement may be prorated as follows:

WORKING HOURS PER WEEK	CLOCK HOURS REQUIRED
0-10	5
11-20	10
21-30	15
31-40	20

Authority G.S. 110-91(11); 143B-168.3.

PROPOSED RULES

Age of Children	No. Children	No. Staff	Maximum Group Size	No. Staff
0 to 12 Months	5	1	10	2
12 to 24 Months	6	1	12	2
2 to 3 Years	10	1	20	2
3 to 5 Years	15	1	25	2
5 Years and Older	25	1	25	1

- (1) When only one caregiver is required to meet the staff/child ratio, and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties which are not direct child care responsibilities.
- (2) When only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:
- (A) The center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or
- (B) There shall be a second adult on the premises who is available to provide emergency relief.

(b) The staff/child ratios for a center located in a residence with a licensed capacity of three to 12 children when any preschool aged child is enrolled, or with a licensed capacity of three to 15 children when only school-aged children are enrolled are as follows:

Age of Children	No. Children	No. Staff	Additional number of school-aged children allowed
0 to 12 Months	5	1	3
12 to 24 Months	6	1	2
2 to 13 Years	10	1	0
3 to 13 Years	12	1	0
All school-aged	15	1	0

(c) The staff/child ratio applicable to a classroom shall be posted in that classroom in an area that parents are able to view at all times.

Authority G.S. 110-91(7); 143B-168.3.

10A NCAC 09 .0713 STAFF/CHILD RATIOS FOR CENTERS WITH A LICENSED CAPACITY OF 30 OR MORE CHILDREN

(a) The staff/child ratios and group sizes for single-age groups of children in centers with a licensed capacity of 30 or more children shall be as follows:

Age of Children	No. Children	No. Staff	Maximum Group Size	No. Staff
0 to 12 Months	5	1	10	2
12 to 24 Months	6	1	12	2
2 to 3 Years	10	1	20	2
3 to 4 Years	15	1	25	2
4 to 5 Years	20	1	25	2

(b) In any multi-age group situation, the staff/child ratio for the youngest child in the group shall be maintained for the entire group.

(c) Children younger than two years old may be cared for in groups with older children at the beginning and end of the operating day provided the staff/child ratio for the youngest child in the group is maintained.

(d) A child two years of age and older may be placed with children under one year of age when a physician certifies that the

developmental age of the child makes this placement appropriate.

(e) When determined to be developmentally appropriate by the operator and parent, a child age two or older may be placed one age level above his or her chronological age without affecting the staff/child ratio for that group. This provision shall be limited to one child per group.

(f) Except as provided in Paragraphs (c) and ~~(d)~~, (d) of this Rule, children under one year of age shall be kept separate from children two years of age and over.

(g) Children between the ages of 12 months and 24 months shall not be routinely grouped with older children unless all children in the group are less than three years old.

(h) When only one caregiver is required to meet the staff/child ratio, and no children under two years of age are in care, that person may concurrently perform food preparation or other duties which are not direct child care responsibilities as long as supervision of the children as specified in Rule .0714(f) of this Section is maintained.

(i) When only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:

- (1) The center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide

emergency relief and who can respond within a reasonable period of time; or

- (2) There shall be a second adult on the premises who is available to provide emergency relief.

(j) Except as provided in Paragraph (h) of this Rule, staff members and administrators who are counted in meeting the staff/child ratios as stated in this Rule shall not concurrently perform food preparation or other duties which are not direct child care responsibilities.

(k) The staff/child ratio applicable to a classroom shall be posted in that classroom in an area that parents are able to view at all times.

Authority G.S. 110-91(7); 143B-168.3.

SECTION .1600 - REQUIREMENTS FOR VOLUNTARY ENHANCED PROGRAM STANDARDS

10A NCAC 09 .1606 STAFF/CHILD RATIOS

(a) The center shall comply with the staff-child ratios and maximum group sizes set in this Rule.

AGE	STAFF	NO. OF CHILDREN	MAXIMUM GROUP SIZE	STAFF
Birth to 12 Months	1	5	10	2
1 to 2 Years	1	6	12	2
2 to 3 Years	1	9	18	2
3 to 4 Years	1	10	20	2
4 to 5 Years	1	13	25	2
5 to 6 Years	1	15	25	2
6 Years and Older	1	20	25	2

(b) All provisions, excluding staff/child ratios and group sizes of Rules .0712 and .0713 of this ~~Subchapter~~ Chapter shall apply.

(c) To achieve two points for program standards, centers shall meet all requirements for voluntary enhanced program standards in Section .1600 of this ~~Subchapter~~, Chapter, except that centers may meet either the staff/child ratios required in Paragraph(a) of this Rule or the space requirements in Rule .1604 (a) of this Section.

(d) The staff/child ratio applicable to a classroom shall be posted in that classroom in an area that parents are able to view at all times.

Authority G.S. 110-88(7); 143B-168.3.

SECTION .1700 –FAMILY CHILD CARE HOME REQUIREMENTS

10A NCAC 09 .1701 GENERAL PROVISIONS RELATED TO LICENSURE OF HOMES

(a) All family child care homes shall comply with the standards for licensure set forth in this Section. A one- star rated license shall be issued to a family child care home operator who complies with the minimum standards for a license contained in this Section and G.S. 110-91.

(b) If an additional individual provides care on a regular basis of at least once per week, while the operator is not on the premises, the additional individual shall meet all requirements for qualifications, training, and records as found in G.S. 110-91(8), 10A NCAC 09 .2702 and this Section. Copies of required information shall be on file in the home available for review and shall be transferable to other family child care homes where the individual is providing substitute care.

(c) An individual who is a regular substitute and provides care during planned absences of the operator such as vacations and

scheduled appointments, shall be at least 21 years old, have a high school diploma or GED, have completed a first aid course as described in Rule .1705, Paragraphs (a)(3) and (b)(2) of this Section, have completed a health questionnaire, have proof of negative results of a tuberculosis test completed within 12 months prior to the first day of providing substitute care, and submit criminal records check forms as required in 10A NCAC 09 .2702, Paragraph (j). Copies of required information shall be on file in the home available for review and shall be transferable to other family child care homes where the individual is providing substitute care.

(d) It shall be the operator's responsibility to review the appropriate requirements found in this ~~Subchapter~~ Chapter and in G.S. 110 with any individuals who are providing care prior to the individual's assuming responsibility for the children. The operator and individual providing care shall sign and date a statement which attests that this review was completed. This statement shall be kept on file in the home available for review.

(e) An individual who provides care during unplanned absences of the operator, such as medical emergencies, shall be at least 18 years old and submit criminal records check forms as required in

10A NCAC 09 .2702, Paragraph (j). The children of an emergency caregiver shall not be counted in the licensed capacity for the first day of the emergency caregiver's service.

(f) The provisions of G.S. 110-91(8) which exclude persons with certain criminal records or personal habits or behavior which may be harmful to children from operating or being employed in a family child care home are hereby incorporated by reference and shall also apply to any person on the premises with the operator's permission when the children are present. This exclusion shall not apply to parents or other persons who enter the home only for the purpose of performing parental responsibilities; nor does it include persons who enter the home for brief periods for the purpose of conducting business with the operator and who are not left alone with the children.

(g) The parent of a child enrolled in any family child care home subject to regulation under G.S. 110, Article 7 of these Rules shall be allowed unlimited access to the home during its operating hours for the purposes of contacting the child or evaluating the home and the care provided by the operator. The parent shall notify the operator of his or her presence immediately upon entering the premises.

(h) Any individual that has primary responsibility for the care of children enrolled in the family child care home shall not sleep while the children are in care. An operator licensed to care for children overnight may sleep during the nighttime hours when all the children are asleep provided:

- ~~(1) the operator and the children in care, excluding the operator's own children, are on ground level; and~~
- ~~(2) the operator can hear and respond quickly to the children if needed; and~~
- ~~(3) a battery operated smoke detector or an electrically operated (with a battery backup) smoke detector is located in each room where children are sleeping.~~

(i) A family child care home may be licensed to operate for a maximum of 17 hours during a 24-hour period.

Authority G.S. 110-85; 110-86(3); 110-88(1); 110-91; 110-99; 110-105; 143B-168.3.

10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS

The operator shall provide the following on a daily basis for all children in care:

- (1) meals and snacks which comply with the Meal Patterns for Children in Child Care standards which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food and number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care nutrition standards are incorporated by reference and include subsequent amendments. A copy of these standards is available free of charge from the Division at

the address in Rule .0102 of this ~~Subchapter~~ Chapter.

- (a) No child shall go more than four hours without a meal or a snack being provided.
- (b) Drinking water shall be freely available to children and offered at frequent intervals.
- (c) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products which have undergone an equivalent process to pasteurization shall be used. Any formula which is prepared by the operator shall be prepared according to the instructions on the formula package or label, or according to written instructions from the child's health care provider.
- (d) Each infant will be held for bottle feeding until able to hold his or her own bottle. Bottles will not be propped. Each child will be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.
- (e) The parent or health care provider of each child under 15 months of age shall provide the operator an individual written feeding schedule for the child. This schedule shall be followed at the home. This schedule shall include the child's name, be signed by the parent or health care provider, and be dated when received by the operator. Each infant's schedule shall be modified in consultation with the child's parent or health care provider to reflect changes in the child's needs as he or she develops.
- (2) frequent opportunities for outdoor play or fresh air.
- (3) an individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with individual linens for each pre-school aged child in care for four hours or more, or for all children if overnight care is provided, to rest comfortably. Individual sleep requirements for infants aged 12 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). Linens shall be changed weekly or whenever they become soiled or wet.
- (4) a quiet, separate area which can be easily supervised for children too sick to remain with other children. Parents shall be notified immediately if their child becomes too sick to remain in care.

- (5) visual adequate supervision for all children. children who are awake. The operator shall be able to hear and respond quickly to those children who are sleeping or napping. Adequate supervision shall mean that staff interact with the children while moving about the indoor or outdoor area, and are able to hear and see the children at all times, except when emergencies necessitate that direct supervision is impossible for brief periods of time.
- (6) a safe sleep environment by ensuring that when a child is sleeping, bedding or other objects shall not be placed in a manner that covers the child's face.
- (7) the opportunity each day for each child under the age of 12 months to play while awake while positioned on his or her stomach.
- (8) developmentally appropriate activities as planned on a written schedule. Materials or equipment shall be available to support the activities listed on the written schedule. The written schedule shall:
 - (a) show blocks of time usually assigned to types of activities and shall include periods of time for both active play and quiet play or rest; and
 - (b) be displayed in a place where parents are able to view; and
 - (c) reflect daily opportunities for both free-choice and guided activities.

Authority G.S. 110-88; 110-91(2),(12).

SECTION .2200 - ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES

10A NCAC 09 .2201 ADMINISTRATIVE PENALTIES: GENERAL PROVISIONS

- (a) Pursuant to G.S. 110-102.2, the secretary or designee may order one or more administrative penalties against any operator who violates any provision of Article 7 of Chapter 110 of the General Statutes or of this ~~Subchapter~~ Chapter.
- (b) Nothing in this Section shall restrict the Secretary from using any other statutory or civil penalty available. A civil penalty in accordance with G.S. 110-103.1 and Section .2200 of this ~~Subchapter~~ Chapter may be imposed in conjunction with any other administrative activity.
- (c) The issuance of an administrative penalty may be appealed pursuant to G.S. 150B-23.
- (d) Following the substantiation of any abuse or neglect complaint or the issuance of any administrative action against a child care facility, the operator shall notify the parents of the children currently enrolled that a complaint was substantiated or that an administrative action was taken against the facility.

- (1) The notification shall be in writing and shall include information on the nature of the

- substantiated complaint or the type of administrative action taken.
- (2) The operator shall maintain copies of documentation of the substantiated complaint investigation or the administrative action issued against the facility for the past three years in a binder, which shall be accessible to parents.
- (3) The written notice shall state where the binder containing copies of the substantiated complaint investigation or administrative action may be found on site for review by the parents.
- (4) The operator shall document the date that the written notice was given to all parents.

Authority G.S. 110-102.2; 110-103.1; 143B-168.3; 150B-23.

SECTION .2800 - VOLUNTARY RATED LICENSES

10A NCAC 09 .2803 PROGRAM STANDARDS FOR A RATED LICENSE FOR CHILD CARE CENTERS

- (a) To achieve two points for program standards for a star rating, the center shall meet all requirements for voluntary enhanced program standards in Section .1600 of this Chapter, except that either the space requirements in Rule .1604 of this ~~Subchapter~~ Chapter or the staff/child ratio requirements in Rule .1606 of this Chapter shall be met.
- (b) To achieve three points for program standards for a star rating, the center shall:
 - (1) Meet all requirements for voluntary enhanced program standards in Section .1600 of this Chapter; and
 - (2) Have an average score of 4.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.
- (c) To achieve four points for program standards for a star rating, the center shall:
 - (1) Meet all the requirements for voluntary enhanced program standards in Section .1600 of this Chapter; and
 - (2) Have an average score of 4.5 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.
- (d) To achieve five points for program standards for a star rating, the center shall:
 - (1) Meet all the requirements for voluntary enhanced program standards in Section .1600 of this Chapter, except for staff/child ratio requirements in Rule .1606 ~~in~~ of this Chapter; and
 - (2) Meet the staff/child ratios and group sizes set below;

	Maximum		Maximum	
Age of Children	No. Children	No. Staff	Group Size	No. Staff

PROPOSED RULES

0 to 12 months	4	1	8	2
1 to 2 years	5	1	10	2
2 to 3 years	8	1	16	2
3 to 4 years	9	1	18	2
4 to 5 years	12	1	24	2
5 to 6 years	14	1	25	2
6 and older	19	1	25	<u>2; 2; and</u>

(3) The staff/child ratio applicable to a classroom shall be posted in that classroom in an area that parents are able to view at all times; and

~~(3)~~(4) Have an average score of 5.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.

(e) For centers with a licensed capacity of three to twelve children located in a residence, a Family Day Care Rating Scale shall be the rating scale used in Subparagraphs (b)(2), (c)(2), and (d)(3) of this Rule.

Authority G.S. 110-88(7); 110-90(4); 143B-168.3.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to adopt the rule cited as 12 NCAC 07D .0405.

Proposed Effective Date: December 1, 2005

Public Hearing:

Date: July 30, 2005

Time: 1:00 p.m.

Location: PPSB Conference Room, 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Reason for Proposed Action: The Board has acknowledged that there are situations where a licensee should be able to include individuals in private protective services who are not currently licensed with the Board. The rule addresses those situations.

Procedure by which a person can object to the agency on a proposed rule: Written comments may be submitted to Wayne Woodard, Director, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609. Said comments should be submitted no later that September 13, 2005.

Written comments may be submitted to: Wayne Woodard, Director, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Comment period ends: September 13, 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 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0400 - PRIVATE INVESTIGATOR: COUNTERINTELLIGENCE

12 NCAC 07D .0405 STATUS OF UNLICENSED INDIVIDUALS PARTICIPATING IN RIDE-ALONG

(a) "Ride-along" is defined as an unlicensed and unregistered individual accompanying a licensed private investigator during a surveillance in order to familiarize themselves with the activities that occur within the industry.

(b) An unlicensed individual shall be permitted to observe a surveillance in the following situations:

- (1) An unlicensed individual may accompany a licensed private investigator; however, the private investigator shall notify the Board prior to taking the unlicensed individual on a surveillance. A private investigator shall not allow the prospective employee accompany the investigator more than five times or for more than 40 hours.
- (2) If a private investigator has a preplanned surveillance, the unlicensed individual may observe during the surveillance only with the prior written consent from the client.
- (3) For spontaneous occurrences where a private investigator must conduct an unplanned surveillance, an unlicensed individual is allowed to accompany the licensed private

investigator on that surveillance; however, the private investigator shall notify the Board the next business day that an unlicensed individual observed the surveillance and must notify the client within 24 hours of the completion of the surveillance. For spontaneous surveillance, it shall be prima facie evidence that the individual is an agent of the company and should be licensed if more than three spontaneous surveillances occur in a calendar year.

(c) The unlicensed individual's participation is limited to observation of the surveillance. This Rule shall not be construed as permission for the unlicensed individual to participate in a surveillance in any other way.

(d) Notification to the Board as is required in this subsection may be made by letter, facsimile, or by email. However, the notification shall be verifiable and the private investigator shall maintain verification of delivery to the Board for a period of three years.

Authority G.S. 74C-3(a)(8).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09E .0102, .0105.

Proposed Effective Date: January 1, 2006

Public Hearing:

Date: August 18, 2005

Time: 1:00 p.m.

Location: Department of Correction Office of Staff Development and Training, 2211 Schieffelin Rd, Apex, NC.

Reason for Proposed Action: The Commission has changed the required topics for annual In-Service Training for law enforcement officers. The following topics have been removed: Hazardous Materials, Bloodborne Pathogens, Juvenile Minority Sensitivity, Ethical Awareness, and Domestic Violence. The following topics have been added: Required In-Service Training and Department Topics of Choice. The total number of annual in-service training hours remains 24.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains, must be submitted in writing to Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114 West Edenton Street, Raleigh, NC 27602.

Written comments may be submitted to: Teresa Marrella, Department of Justice, 114 West Edenton Street, Raleigh, NC 27602, phone (919)716-6470, fax (919)716-6752, email tmarrella@ncdoj.com.

Comment period ends: September 13, 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 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM

12 NCAC 09E .0102 REQUIRED ANNUAL IN-SERVICE TRAINING TOPICS

The following topical areas are hereby established as minimum topics and hours to be included in the law enforcement officers' annual in-service training program:

- (1) Firearms Training and Qualification (8); (4);
- (2) ~~Legal Update (4);~~
- (3) ~~Hazardous Materials (2);~~
- (4) ~~Bloodborne Pathogens (2);~~
- (5) ~~Juvenile Minority Sensitivity (2);~~
- (6) ~~Ethical Awareness (2); and~~
- (7) ~~Domestic Violence (4).~~
- (2) Required In-Service Training Topics (12); and
- (3) Department Topics of Choice (8).

Authority G.S. 17C-6; 17C-10.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

The following specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) Firearms:
 - (a) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials.

- (b) Safety:
 - (i) range rules and regulations;
 - (ii) handling of a firearm;
 - (iii) malfunctions.
- (c) Review of Basic Marksmanship Fundamentals:
 - (i) grip, stance, breath control and trigger squeeze;
 - (ii) sight and alignment/sight picture;
 - (iii) nomenclature.
- (d) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

- (2) ~~Legal Update;~~ Required In-Service Training Topics;
- (3) ~~Hazardous Materials;~~ Department Topics of Choice; and
- (4) ~~Bloodborne Pathogens;~~
- (5) ~~Juvenile Minority Sensitivity;~~
- (6) ~~Ethical Awareness;~~
- (7) ~~Domestic Violence; and~~
- (8)(4) ~~With the exceptions of Hazardous Materials and Bloodborne Pathogens, the~~ The Required In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:
 North Carolina Justice Academy
 Post Office Drawer 99
 Salemburg, North Carolina 28385

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend the rules cited as 16 NCAC 06C .0305, .0307; 06D .0301, .0305, .0501-.0503; 06G .0305, .0312.

Proposed Effective Date: December 1, 2005

Public Hearing:

Date: August 2, 2005

Time: 10:00 a.m.

Location: Room 224 North, Education Building, 301 N. Wilmington St., Raleigh, NC

Reason for Proposed Action: All amendments are to comply with requirements of No Child Left Behind Act in accordance with guidance provided by the U.S. Dept. of Education.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections regarding the proposed rules to Harry Wilson, Staff Attorney, State Board of Education, 6302 Mail Service Center, Raleigh, NC 27699-6302.

Written comments may be submitted to: Harry E. Wilson, 6302 Mail Service Center, Raleigh, NC 27699-6302, phone (919)807-3406, fax (919)807-3198, email hwilson@dpi.state.nc.us.

Comment period ends: September 13, 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 06 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06C – PERSONNEL

SECTION .0300 – CERTIFICATION

16 NCAC 06C .0305 LICENSES FOR NON-TEACHER

Authority G.S. 17C-6; 17C-10.

EDUCATION GRADUATES

(a) A person who has not graduated from a teacher education program that has been approved under Rule .0202 of this Subchapter who later desires to teach shall have his/her credentials evaluated by an approved IHE or ~~teacher education consortium~~ regional alternative licensing center ("RALC") established by the Department. The person shall satisfy the assessment of his/her needs and be recommended by the IHE or ~~consortium~~ RALC for a license.

(b) Persons who have been selected for employment by a LEA under the lateral entry provisions of G.S. 115C-296(c) may obtain a license as follows:

(1) To be eligible for a lateral entry license, a person shall:

- (A) have attained a bachelor's degree in the license area from a regionally-accredited IHE;
- (B) be recommended for a lateral entry license by the employing LEA; and
- (C) have had a minimum cumulative grade point average of at least a ~~2.5~~ 2.5, have five years of experience considered relevant by the employing LEA, or have passed the NTE PRAXIS 1 exams (Preprofessional Skills Tests in Reading, Writing, and Mathematics) and have attained one of the following:

- (i) a grade point average of at least 3.0 on all work completed in the senior year;
- (ii) a grade point average of at least 3.0 in the major; or
- (iii) a grade point average of at least 3.0 on a minimum of 15 semester hours of coursework completed within the last five years.

(2) A person who holds a lateral entry license shall complete a program that includes the following components:

(A) ~~The employing LEA shall assess the person's transcripts and experience in collaboration with an approved teacher education program of an IHE or an alternative licensure program approved by the SBE. If the collaboration cannot occur, the LEA must document its efforts toward collaboration or the reasons why collaboration did not occur. The LEA must send that documentation with its recommendation that the person be issued a lateral entry license. As a result of the assessment, the LEA may identify competencies for which the person must receive training; Completion of an approved teacher education program in the area of~~

licensure at a college or university or completion of a program of study outlined by the RALC;

- (B) attaining a passing score on the PRAXIS subject exam(s) during the first two school years of holding the lateral entry license if the exam was not the basis of qualifying for the license;
- (C) completion of a staff development program that includes a two-week training course prior to beginning the work assignment;
- (D) completion of six semester hours of course work in the approved program each school year;
- (E) successful completion of at least a three-year initial licensure program in the lateral entry license area; and
- (F) completion of all the requirements of this Subparagraph (2) of this Rule within three years of becoming eligible for a lateral entry license and the recommendation of the IHE or RALC for a clear license.

(3) Individuals who possess five or more years of experience considered relevant by the employing LEA and who satisfy testing requirements for the licensure area within the first year of teaching shall be issued an initial license upon:

- (A) completion of the NC TEACH modules or the equivalent through an approved teacher education program:
 - (i) The Teacher, The Learner, and The School;
 - (ii) Diversity;
 - (iii) Content Area Pedagogy;

NOTE: The NC TEACH modules are offered and administered through North Carolina colleges and universities that have approved teacher education preparation programs.

- (B) completion of the NC TEACH module on Instructional Technology or its equivalent through an approved teacher education program, community college, or through professional development offered by the employing LEA; and
- (C) completion of one year of successful teaching as verified by the employing LEA.

~~(B)~~(4) The employing LEA shall commit in writing to:

- ~~(i)~~(A) provide a two-week pre-work orientation that includes lesson planning, classroom organization,

classroom management, and an overview of the ABCs Program including the standard course of study and end-of-grade and end-of-course testing;

- ~~(ii)(B)~~ assign the person a mentor on or before the first day on the job;
 - ~~(iii)(C)~~ provide working conditions that are similar to those for novice teachers;
 - ~~(iv)(D)~~ give regular focused feedback to the person for improving instruction; and
 - ~~(v)(E)~~ assist the person in accessing prescribed course work and professional development opportunities;
 - ~~(C)~~ The person shall attain passing scores on appropriate NTE specialty area or PRAXIS 2 exams during the first two years of assignment;
 - ~~(D)~~ The person shall complete a staff development program that includes a two week training course prior to beginning the work assignment, together with 9 renewal hours or 6 semester hours each year;
 - ~~(E)~~ The person shall successfully complete the three year initial licensure program in the lateral entry license area the person is seeking;
 - ~~(F)~~ The person shall present evidence from evaluations that demonstrates three years successful experience in the license area the person is seeking;
 - ~~(G)~~ The person shall attain a passing score on the PRAXIS principles of learning and teaching examination upon completion of the training identified as a result of the assessment described in Part (b)(2)(A) of this Rule;
 - ~~(H)~~ The person shall complete all requirements of this Rule within 5 years of becoming eligible for a lateral entry license; and
 - ~~(I)~~ The IHE or alternative licensure program approved by the SBE shall recommend to the Department that the person be licensed.
- ~~(e)(5)~~ A person who is qualified to hold at least a class "A" teaching license may be issued additional areas of licensure on a provisional basis as needed by LEAs. The person must satisfy deficiencies for full licensure at the rate of six semester hours per year. The person must complete this yearly credit before the beginning of the following school year and the credit must be directly applicable to the provisional area(s). The person must complete

all credit requirements by the end of the fifth year of provisional licensure.

- ~~(d)(6)~~ The Department shall issue an emergency license to persons who hold at least a baccalaureate degree but who do not qualify for a lateral entry license. The emergency license shall be valid for one year and may not be renewed. When it requests an emergency license for a person, the LEA must document that no appropriately licensed professionals or persons who are eligible for a lateral entry license are available to accept the position.
- ~~(1)(A)~~ To be eligible for an emergency license, the person must have attained a bachelor's degree from a regionally-accredited IHE and be recommended by the employing LEA.
- ~~(2)(B)~~ A person who holds an emergency license shall complete a program that includes the following components:
 - ~~(A)(i)~~ The employing LEA shall commit in writing to:
 - ~~(i)(I)~~ provide a two-week pre-work orientation that includes lesson planning, classroom organization, classroom management, and an overview of the ABCs Program including the standard course of study and end-of-grade and end-of-course testing;
 - ~~(ii)(II)~~ assign the person a mentor on or before the first day on the job;
 - ~~(iii)(III)~~ provide working conditions that are similar to those for novice teachers;
 - ~~(iv)(IV)~~ give regular focused feedback to the person for improving instruction; and
 - ~~(v)(V)~~ assist the person in obtaining a teaching license.
 - ~~(B)(ii)~~ The person shall complete a staff development program that includes a two-week training course prior to beginning the work assignment.

~~(C)~~(iii) The LEA shall provide the person with on-going support designed to enhance the person's classroom teaching performance.

Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, s. 5.

16 NCAC 06C .0307 LICENSE RENEWAL

(a) Licenses shall be valid for a period of five years from the effective date of issuance. Holders must renew their licenses within each five-year period. The Department shall apply license renewal credit to the person's license field(s) and professional duties.

(b) The Department shall base renewal or reinstatement of a license on 15 units of renewal credit. A unit of credit shall be equal to one quarter hour or two-thirds of a semester hour of IHE college or university credit, 10 hours of professional development, or one school year of teaching experience.

(c) Effective July 1, 2007, school administrators shall earn at least five renewal credits during each renewal cycle that focus on the principal's role in teacher effectiveness, teacher evaluations, teacher support programs, teacher leadership, teacher empowerment, and teacher retention.

~~(e)~~(d) Currently employed personnel shall maintain an individual growth plan. These persons may obtain renewal credit for the following activities:

- (1) college or university credit;
- (2) teaching experience (one unit for each year);
- (3) earning National Board for Professional Teaching Standards certification or completion of the National Board for Professional Teaching Standards certification ~~process (15 units of renewal credit); process, which shall result in fifteen units of renewal credit;~~
- ~~(4) completing National Board for Professional Teaching Standards certification renewal, which shall result in five units of renewal credit;~~
- ~~(4)(5) completion of activities that meet the following criteria (one unit of renewal credit per 10 clock hours): criteria based upon one unit of renewal credit per 10 clock hours:~~
 - (A) the activity shall be delivered in a minimum of 10 clock hours over time with on-the-job application, feedback, and follow-up;
 - (B) the activity shall have identified goals and objectives that are designed to increase knowledge or skills in the person's license area or job assignment;
 - (C) the activity shall include focused content and instruction that are sequenced to develop specified competencies of a specific population;
 - (D) the activity shall be conducted by instructional personnel approved by

the sponsoring school unit or employer; and

(E) the activity shall include a focused evaluation designed to gauge the change in learner knowledge or skill and to guide the development of future programs;

~~(5)~~(6) independent study of no more than five units of renewal credit per five-year renewal period which meets the following criteria:

(A) teachers and other licensed personnel help to develop local independent study procedures which the superintendent shall keep on file and periodically send to each licensed employee; and

(B) the employee and the superintendent or his or her designee shall plan the experience in advance, including identification of competencies to be acquired and an evaluation to determine satisfactory achievement of those competencies.

~~(d)~~(e) LEAs and governing boards of schools shall assure that all local courses, workshops and independent study activities which do not carry IHE credit meet the standards contained in this Rule.

~~(e)~~(f) LEAs may develop an alternative license renewal plan that is competency-based and results-oriented. The plan must describe the connection among professional development, the school improvement plan, and the individual's license area or job responsibilities through processes such as peer review and annual evaluation. The plan may waive specific hour requirements that a licensed employee must meet and focus instead on knowledge and skill acquired by participants. The plan must include outcome measures and must be submitted to the Department for review in advance of its implementation.

~~(f)~~(g) LEAs must adopt a procedure to determine the appropriateness of credit in advance of renewal activities. In determining appropriateness the LEA must consider direct relationship to critical job responsibilities, school improvement plans, and SBE strategic priorities to properly establish credit for the activity. Each LEA must report on participation in and effectiveness of professional development to the North Carolina Professional Teaching Standards Commission on an annual basis.

~~(g)~~(h) Persons who hold a North Carolina license but who are not currently employed in the public schools or by governing boards of nonpublic schools may earn renewal credit in college or university credit activities, or local courses and workshops on the same basis as currently employed persons. The Department shall evaluate the appropriateness of the credits based on their direct relationship to the license field, the suitability of the content level, and the requirements set out in Paragraph (c) of this Rule.

Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, s. 5.

SUBCHAPTER 06D – INSTRUCTION

SECTION .0300 - TESTING PROGRAMS.

16 NCAC 06D .0301 TESTING REQUIREMENTS AND OPPORTUNITIES

- (a) All public school students enrolled in the grades for which the SBE adopts a test, including every child with disabilities, shall participate in the testing ~~program unless excluded from testing as provided by 16 NCAC 6G .0305(g) program.~~
- (b) All public school students enrolled in the 9th, 10th, 11th and 12th grade shall have ~~at least one opportunity each school year to take the competency tests, tests and computer skills tests.~~ LEAs shall administer the tests so that any student who does not pass the tests shall have an opportunity to receive remediation. Students who fail to attain the required minimum standard for graduation in the ninth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the 12th grade. A student who attains a passing score, as defined in 16 NCAC 06D ~~.0103(a)(1), .0503,~~ on a portion of the competency ~~test reading or mathematics tests or a portion of the multiple choice or performance computer skills tests~~ does not need to retake ~~that portion of the test.~~ The LEA shall develop plans to provide remedial services to students who fail any of the competency ~~tests, tests or computer skills tests,~~ or who are identified as having a high risk of failing. The LEA shall design the plan to meet the needs of individual students.

Authority G.S. 115C-12(9)c.

16 NCAC 06D .0305 END-OF-COURSE ASSESSMENTS

- (a) The LEA shall include each student's end-of-course ~~test~~ assessment results in the student's permanent records and high school transcript.
- (b) The LEA shall give each end-of-course ~~test~~ assessment within the final 10 days of the course.
- (c) ~~Starting with the 2001-2002 school year~~ LEAs shall use results from all ~~multiple choice EOC tests (English I, Algebra I, Biology, US History, Economic Legal and Political Systems, Algebra II, Chemistry, Geometry, Physics, and Physical Science)~~ operational end-of-course assessments as at least 25% of the student's final grade for each respective course. LEAs shall adopt policies regarding the use of ~~EOC test~~ end-of-course assessment results in assigning final grades.
- (d) Students who are enrolled for credit in courses in which end-of-course ~~tests~~ assessments are required shall take the appropriate end-of-course ~~test~~ assessment.
- (e) Students who are exempt from final exams by local board of education policy shall not be exempt from end-of-course ~~tests~~ assessments.
- (f) Each student shall take the appropriate end-of-course ~~test~~ assessment the first time the student takes the course even if the course is an honors or advanced placement course.
- (g) Students shall take the appropriate end-of-course ~~test~~ assessment at the end of the course or an alternate assessment regardless of the grade level in which the course is offered.
- (h) Students who are identified as failing a course for which an end-of-course ~~test~~ assessment is required shall take the appropriate end-of-course ~~test~~ assessment.

- (i) ~~Effective with the 1999-2000 school year~~ Students may drop a course with an end-of-course ~~test~~ assessment within the first 10 days of a block schedule or within the first 20 days of a traditional schedule.

Authority G.S. 115C-12(9)c.; 115C-81(b)(4).

SECTION .0500 - DEFINITIONS

16 NCAC 06D .0501 DEFINITIONS

As used in this Subchapter:

- (1) "adequate progress" shall mean student performance at or near grade level as indicated by student work, assessment data, and other evaluation information.
- (2) "focused intervention" shall mean help for students in attaining competency goals and objectives. The help or assistance shall be based on a diagnosis of what the student knows and is able to do. The strategies for helping the student shall be based on the diagnosis of the student's work.
- (3) "grade level proficiency" shall mean Level III or above on end-of-grade tests in reading and mathematics in grades three-eight. In grades K-two, teachers shall identify those students who are not performing at grade-level expectations. The levels of student performance shall be defined as follows:
 - (a) "Level I" shall mean that the student fails to achieve at a basic level. Students performing at this level do not have sufficient mastery of knowledge and skills in this subject area to be successful at the next grade level.
 - (b) "Level II" shall mean that the student achieves at a basic level. Students performing at this level demonstrate inconsistent mastery of knowledge and skills ~~that are fundamental~~ in this subject area and ~~that are minimally sufficient~~ prepared to be successful at the next grade level.
 - (c) "Level III" shall mean that the student achieves at a proficient level. Students performing at this level consistently demonstrate mastery of grade level subject matter and skills and are well prepared for the next grade level.
 - (d) "Level IV" shall mean that the student achieves at an advanced level. Students performing at this level consistently perform in a superior manner clearly beyond that required to be proficient at grade level work.
- (4) "instructionally sound" shall mean a practice or strategy that reflects research findings and

the achievement needs of students. The practice shall take into account student learning styles, effective delivery of content and skills, diagnosis, monitoring, and evaluation.

Authority G.S. 115C-12(9b); 115C-81(b)(4); N.C. Constitution, Article IX, Sec. 5.

16 NCAC 06D .0502 STUDENT ACCOUNTABILITY STANDARDS

(a) Gateway 1 - Grade 3. In addition to meeting local promotion requirements, students in grade three shall demonstrate proficiency by having test scores at Level III or above on end-of-grade tests in both reading and mathematics. Students who score at Level III or above and who meet all local promotion requirements shall be promoted to grade four unless the school principal shall determine otherwise in consultation with teacher(s). These requirements shall become effective with the 2001-02 school year.

(b) Gateway 2 - Grade 5. In addition to meeting local promotion requirements, students in grade five shall demonstrate proficiency by having test scores at Level III or above on end-of-grade tests in both reading and mathematics. Additionally, LEAs shall use the grade four writing assessment as a screen to determine whether students are making adequate progress in developing writing skills. If a student has not scored at or above ~~proficiency level 2.5~~ grade level proficiency as defined in Rule .0501(3) of this Section on the grade four writing assessment, the school shall provide intervention and assistance to develop writing skills. The principal and teacher(s) shall use locally developed and scored writing samples during grade five to determine if students have made adequate progress in order to be promoted to grade six. Students who score at Level III or above on reading and mathematics, who meet all local promotion standards, and who make adequate progress in writing shall be promoted to grade six, unless the school principal shall determine otherwise in consultation with teacher(s). ~~These requirements shall become effective with the 2000-01 school year.~~

(c) Gateway 3 - Grade 8. In addition to meeting local promotion requirements, students in grade eight shall demonstrate proficiency by having test scores at Level III or above on an end-of-grade test in both reading and mathematics. Additionally, the LEA shall use the grade seven writing assessment as a screen to determine whether students are making adequate progress in developing writing skills. If a student has not scored at or above ~~proficiency level 2.5~~ grade level proficiency as defined in Rule .0501(3) of this Section on the grade seven writing assessment, the school shall provide intervention and assistance to develop writing skills. The principal and teacher(s) shall use locally developed and scored writing samples during grade eight to determine if students have made adequate progress to be promoted to grade nine. Students who score at Level III or above on reading and mathematics, who meet all local promotion standards, and who make adequate progress in writing shall be promoted to grade nine unless the school principal shall determine otherwise in consultation with teacher(s). ~~These~~

~~requirements shall become effective with the 2001-02 school year.~~

(d) Gateway 4—Grade 12. Students shall meet ~~the following requirements—state graduation requirements as defined by Rule .0503 of this Section and local school board requirements to receive a North Carolina high school diploma—diploma.~~

- (1) ~~meet existing local and state graduation requirements;~~
- (2) ~~score at proficiency level III or above on the exit exam of essential skills. Students shall take this exam in the spring of the students' 11th grade year. This requirement shall apply to students who enter the ninth grade for the first time in the 2001-2002 school year.~~
- (3) ~~achieve a passing score on the computer skills test as set forth in Rule .0503(e) of this Subchapter.~~

Authority G.S. 115C-12(9b); 115C-81(b)(4); N.C. Constitution, Article IX, Sec. 5.

16 NCAC 06D .0503 STATE GRADUATION REQUIREMENTS

(a) In order to graduate and receive a high school diploma, public school students shall meet the requirements of Paragraph (e) of this Rule and shall attain passing scores on competency tests adopted by the SBE and administered by the LEA. The passing score for the competency test, which is the same as grade-level proficiency as set forth in Rule .0502 of this Subchapter, shall be level III or higher.

(b) Students who satisfy all state and local graduation requirements but who fail the competency tests shall receive a certificate of achievement and transcript and shall be allowed by the LEA to participate in graduation exercises.

(c) Special education students, other than students who are following the occupational course of study in Paragraph (e)(1)(D) of this Rule, may apply in writing to be exempted from taking the competency tests. Before it approves the request, the LEA must assure that the parents, or the child if aged 18 or older, understand that each student must pass the competency tests to receive a high school diploma.

(d) Any student who has failed to pass the competency tests by the end of the last school month of the year in which the student's class graduates may receive additional remedial instruction and continue to take the competency tests during regularly scheduled testing until the student reaches maximum school age. Special education students who are following the occupational course of study in Paragraph (e)(1)(D) of this Rule shall not be required to pass the competency test or the exit exam referred to in 16 NCAC 06D .0502(d)(2) in order to graduate and receive a diploma.

(e) In addition to the requirements of Paragraph (a) of this Rule, students must successfully complete 20 course units in grades 9-12 as specified below.

- (1) Effective with the class entering ninth grade for the first time in the 2000-2001 school year, students shall select one of the following four courses of study:

NOTE: All students are encouraged, but not required, to include at least one elective course in arts education. Unless included as career/technical education credits in the career preparation course of study, courses in R.O.T.C. qualify for credit as electives in any of the courses of study.

(A) career preparation, which shall include:

- (i) four credits in English language arts, which shall be English I, II, III, and IV;
- (ii) three credits in mathematics, one of which shall be algebra I (except as limited by G.S. 115C-81(b));
- (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
- (iv) three credits in social studies, which shall be Civics and Economics, U.S. history, and World history;
- (v) one credit in health and physical education;
- (vi) four credits in career/technical education, which shall be in a career concentration or pathway that leads to a specific career field and which shall include a second-level (advanced) course; or four credits in one of the four disciplines in arts education: theatre, music, visual arts, or dance; or four credits in R.O.T.C.;
- (vii) two elective credits; and
- (viii) other credits designated by the LEA.

(B) college technical preparation, which shall include:

- (i) four credits in English language arts, which shall be English I, II, III, and IV;
- (ii) three credits in mathematics, which shall be either algebra I, geometry, and algebra II; or algebra I, technical mathematics I, and technical mathematics II; or integrated mathematics I, II, and III;
- (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
- (iv) three credits in social studies, which shall be

Civics and Economics, U.S. history, and World history:

- (v) one credit in health and physical education;
- (vi) four credits in career/technical education, which shall be in a career concentration or pathway that leads to a specific career field and which shall include a second-level (advanced) course;
- (vii) two elective credits; and
- (viii) other credits designated by the LEA.

NOTE: A student who is pursuing this course of study may also meet the requirements of a college/university course of study by completing one additional mathematics course for which Algebra II is a prerequisite and, effective with the class entering the ninth grade for the first time in the 2002-03 school year, two credits in the same second language.

(C) college/university preparation, which shall include:

- (i) four credits in English language arts, which shall be English I, II, III, and IV;
- (ii) three credits in mathematics, which shall be algebra I, algebra II, and geometry or a higher level course for which algebra II is a prerequisite; or integrated mathematics I, II, and III; however, effective with the class entering the ninth grade for the first time in the 2002-03 school year, this requirement shall become four credits in mathematics, which shall be algebra I, algebra II, geometry, and a higher level course for which algebra II is a prerequisite; or integrated mathematics I, II, III, and one course beyond integrated mathematics III;
- (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
- (iv) three credits in social studies, which shall be

- Civics and Economics, U.S. history, and World history:
 - (v) one credit in health and physical education;
 - (vi) two credits in the same second language or demonstration of proficiency in a language other than English as determined by the LEA;
 - (vii) four elective credits, except that effective with the class entering the ninth grade for the first time in the 2002-03 school year, this shall be reduced to three elective credits; and
 - (viii) other credits designated by the LEA.
 - (D) occupational, which shall include:
 - (i) four credits in English language arts, which shall be Occupational English I, II, III, and IV;
 - (ii) three credits in mathematics, which shall be Occupational Mathematics I, II, and III;
 - (iii) two credits in science, which shall be Life Skills Science I and II;
 - (iv) two credits in social studies, which shall be Government/U.S. History and Self-Advocacy/Problem Solving;
 - (v) one credit in health and physical education;
 - (vi) six credits in occupational preparation education, which shall be Occupational Preparation I, II, III, IV, 300 hours of school-based training, 240 hours of community-based training, and 360 hours of paid employment;
 - (vii) four vocational education elective credits;
 - (viii) computer proficiency as specified in the student's IEP;
 - (ix) a career portfolio; and
 - (x) completion of the student's IEP objectives.
- (2) Effective with the class entering ninth grade for the first time in the 2006-2007 school year, students who are following the career preparation, college technical preparation, or
- college/university preparation courses of study shall meet the following exit standards:
- (A) successfully complete a senior project that is developed, monitored, and scored within the LEA using state-adopted rubrics; and
 - (B) score at proficiency level III or above on the end-of-course assessment for English I, U.S. History, Biology, Civics and Economics, and Algebra I. A student who does not score at proficiency level III or above on the end-of-course assessment for any of these courses but who passes the course shall be offered the opportunity to retake the assessment no later than three weeks from the receipt of assessment results. If the student does not score at or above proficiency level III on the retest, school officials shall apply the review process described in Rule .0504 of this Section to provide focused intervention, a second retest opportunity, and a review of the student's documentation to determine whether the student has met the exit standard for the course. The principal shall make the final decision as to whether the student has met the exit standard.
- ~~(2)~~(3) LEAs may count successful completion of course work in the ninth grade at a school system which does not award course units in the ninth grade toward the requirements of this Rule.
 - ~~(3)~~(4) LEAs may count successful completion of course work in grades 9-12 at a summer school session toward the requirements of this Rule.
 - ~~(4)~~(5) LEAs may count successful completion of course work in grades 9-12 at an off-campus institution toward the locally-designated electives requirements of this Rule. 23 NCAC 2C .0305 shall govern enrollment in community college institutions.
- (f) Effective with the class of 2001, all students must demonstrate computer proficiency as a prerequisite for high school graduation. The passing scores for this proficiency shall be 47 on the multiple choice test and 49 on the performance test. This assessment shall begin at the eighth grade. A student with disabilities shall demonstrate proficiency by the use of a portfolio if this method is required by the student's IEP.
 - (g) Special needs students as defined by G.S. 115C-109, excluding gifted and pregnant, who do not meet the requirements for a high school diploma shall receive a graduation certificate and shall be allowed to participate in graduation exercises if they meet the following criteria:
 - (1) successful completion of 20 course units by general subject area (four English, three math,

three science, three social studies, one health and physical education, and 6 local electives) under Paragraph (e) of this Rule. These students are not required to pass the specifically designated courses such as Algebra I, Biology or United States history; and

- (2) completion of all IEP requirements.

*Authority G.S. 115C-12(9b); 115C-81(b)(4);
N.C. Constitution, Article IX, Sec. 5.*

**SUBCHAPTER 06G - EDUCATION AGENCY
RELATIONS**

**SECTION .0300 -SCHOOL-BASED MANAGEMENT
AND ACCOUNTABILITY PROGRAM**

16 NCAC 06G .0305 DEFINITIONS

For purposes of this Section, the following definitions shall apply:

- (1) "Accountability measures" are SBE-adopted tests designed to gauge student performance and achievement.
- (2) "Adequate yearly progress" or "AYP" shall have the same definition as set out in P.L. 107-110, section 1111(b)(2)(C).
- (3) "~~b₀~~" means the state average growth used in the regression formula for the respective grades and content areas (reading and mathematics) in grades 3 through 8; or the state average performance used in the prediction formula for respective high school end of course tests. The constant values for ~~b₀~~ shall be as follows:
 - (a) ~~for reading:~~
 - (i) ~~8.0 for grade 3;~~
 - (ii) ~~5.2 for grade 4;~~
 - (iii) ~~4.6 for grade 5;~~
 - (iv) ~~3.0 for grade 6;~~
 - (v) ~~3.3 for grade 7;~~
 - (vi) ~~2.7 for grade 8.~~
 - (b) ~~for mathematics:~~
 - (i) ~~14.3 for grade 3;~~
 - (ii) ~~7.3 for grade 4;~~
 - (iii) ~~7.4 for grade 5;~~
 - (iv) ~~7.1 for grade 6;~~
 - (v) ~~6.5 for grade 7; and~~
 - (vi) ~~4.9 for grade 8.~~
 - (c) ~~for EOC courses:~~
 - (i) ~~60.4 for Algebra I;~~
 - (ii) ~~55.2 for Biology;~~
 - (iii) ~~53.3 for English I;~~
 - (iv) ~~59.3 for Algebra II;~~
 - (v) ~~56.9 for Chemistry;~~
 - (vi) ~~58.5 for Geometry;~~
 - (vii) ~~53.8 for Physical Science;~~
and
 - (viii) ~~56.1 for Physics.~~

- (4) ~~"b₁" means the value used to estimate true proficiency in the regression formulas for grades 3 through 8. The values for b₁ shall be as follows:~~
 - (a) ~~for reading:~~
 - (i) ~~0.47 for grade 3; and~~
 - (ii) ~~0.22 for grades 4-8.~~
 - (b) ~~for mathematics:~~
 - (i) ~~0.20 for grade 3; and~~
 - (ii) ~~0.26 for grades 4 through 8.~~
- (5) ~~"b₂" means the value used to estimate regression to the mean in the regression formula for grades 3 through 8. The values for b₂ shall as follows:~~
 - (a) ~~for reading:~~
 - (i) ~~0.98 for grade 3; and~~
 - (ii) ~~0.60 for grades 4 through 8.~~
 - (b) ~~for mathematics:~~
 - (i) ~~0.58 for grade 3; and~~
 - (ii) ~~0.58 for grades 4 through 8.~~
- (6) ~~"b_{IRP}" means the value used to estimate the effect of the school's average reading proficiency on the predicted average EOC test score. The values for b_{IRP} shall be as follows:~~
 - (a) ~~0.71 for Biology;~~
 - (b) ~~1.01 for English I;~~
 - (c) ~~0.43 for Algebra II;~~
 - (d) ~~0.42 for Geometry; and~~
 - (e) ~~0.58 for Physical Science.~~
- (7) ~~"b_{IMP}" means the value used to estimate the effect, as determined by analysis of empirical data, of the school's average math proficiency on the predicted average EOC test score. The values for b_{IMP} shall be as follows:~~
 - (a) ~~0.88 for Algebra I;~~
 - (b) ~~0.32 for Biology;~~
 - (c) ~~0.39 for Geometry;~~
 - (d) ~~0.34 for Physical Science; and~~
 - (e) ~~0.58 for Physics.~~
- (8) ~~"b_{imp2}" means the value used to estimate the effect, as determined by analysis of empirical data, of the school's squared average math proficiency on the predicted average EOC test score. The value for b_{imp2} shall be 0.01 for Biology.~~
- (9) ~~"b_{imp3}" means the value used to estimate the effect, as determined by analysis of empirical data, of the school's cubed average math proficiency on the predicted average EOC test score. The value for b_{imp3} shall be 0.001 for Biology.~~
- (10) ~~"b_{IAP}" means the value used to estimate the effect of the school's average Algebra I proficiency on the predicted average EOC test score. The values for b_{IAP} shall be as follows:~~
 - (a) ~~0.89 for Algebra II;~~
 - (b) ~~0.18 for Chemistry; and~~
 - (c) ~~0.43 for Geometry.~~

- (11) ~~"bIBP" means the value used to estimate the effect of the school's average Biology proficiency on the predicted average EOC test score. The values for bIBP shall be 0.51 for Chemistry and 0.66 for Physics.~~
- (12) ~~"bIEP" means the value used to estimate the effect of the school's average English I proficiency on the predicted average EOC test score. The values for bIEP shall be 0.27 for Chemistry and 0.32 for Physics.~~
- (13)(3) "Compliance commission" means that group of persons selected by the SBE and authorized by SBE policy EEO-B-000 to advise the SBE on testing and other issues related to school accountability and improvement. The commission shall be composed of teachers, principals, central office staff representatives, local school board representatives, a charter schools representative, and at-large members who represent parents, business, and the community.
- (14) ~~"Composite score" means a summary of student performance in a school. A composite score shall include reading and mathematics in grades 3 through 8 and Algebra I & II, Biology, English I, Geometry, Chemistry, Physics, and Physical Science, in a school where one or more of these EOC tests are administered, as well as student performance on the NC Computer Skills Test, competency passing rate, change in dropout rates, and percent diploma recipients who satisfy the requirements for College University Prep/College Tech Prep courses of study in grades 9 through 12 to the extent that any apply in a given school.~~
- (4) "C-scale" means change scale, which is a standardized scale to measure student performance across the years and content areas. To convert the developmental scale scores to c-scale scores, subtract the state mean for the standard setting year from the developmental scale score, and then divide by the standard deviation for the standard setting year.
- (5) "C-ratio" means the ratio of student scores that achieve an academic change of "0.00" or greater to those with an academic change of less than "0.00", including in the numerator for high schools when used for calculating high growth, the factor for change in college tech prep and college university prep graduation rate and the change in competency test pass rate and including in the denominator, the factor for change in drop out rate.
- (15)(6) "Eligible students" means the total number of students in membership in the respective grades or enrolled in the respective EOC courses at the time the tests are administered in a statewide assessment.
- (16)(7) ~~"Expected growth" means the amount of growth in student performance that is projected through use of the regression formula in grades 3 through 8 in reading and mathematics having met the standard defined by students on average performing as well in their current grade or content as is typical for the same student in previous grades and contents when using the change scale to compare and allowing for a factor of regression to the mean as defined in this policy.~~
- (17)(8) ~~"High growth" means the amount of growth in student performance in grades 3 through 8 in reading and mathematics that is projected through use of the regression formula that includes the state average growth adjusted by an additional ten percent (10%). school has met the standard of having a c-ratio of 1.50 or greater.~~
- (18)(9) "Growth standards" means and includes collectively all the factors defined in this Rule that are used in the calculations described in Paragraph (h) of Rule .0312 of this Section to determine a school's growth/gain composite.
- (19) ~~"IRM" is the index of regression to the mean used in the regression formula. The SBE shall compute the IRM for reading by subtracting the North Carolina average (the state average) reading scale score from the local school average reading scale score. The SBE shall compute the IRM for mathematics by subtracting the state average mathematics scale score from the local school average mathematics scale score. For grades 3-8 the SBE shall base the state average (the baseline) on data from the 1994-95 school year. For the third grade pretest in reading the SBE shall base the state average on data from the 1996-97 school year. For the third grade pretest in mathematics the SBE shall base the state average on data from the 2000-01 school year.~~
- (20) ~~"ITP" is the index of true proficiency used in the regression formula. The SBE shall compute the ITP by adding the state average scale scores in reading and mathematics and subtracting that sum from the addition of the local school average scale scores in reading and mathematics. The SBE shall base the state averages (the baselines) on data from the school years specified in subdivision (19) of this Rule.~~
- (21) ~~"IRP" is the index of reading proficiency used in the prediction formula. The SBE shall compute the "IRP" by calculating the average reading scale score for students in the school and subtracting the average reading scale score~~

- for North Carolina schools. The SBE shall base the state average on data from the 1998-99 school year.
- (22) ~~"IMP" is the index of mathematics proficiency used in the prediction formula. The SBE shall compute the "IMP" by calculating the average mathematics scale score for students in the school and subtracting the state average mathematics scale score. The SBE shall base the state average (the baseline) on data from the 1998-99 school year.~~
- (23) ~~"IAP" is the index of Algebra I proficiency used in the prediction formula. The SBE shall compute the "IAP" by calculating the average Algebra I scale score for students in the school and subtracting the state average Algebra I scale score. The SBE shall base the state average (the baseline) on data from the 1998-99 school year.~~
- (24) ~~"IBP" is the index of Biology proficiency used in the prediction formula. The SBE shall compute the "IBP" by calculating the average Biology scale score for students in the school and subtracting the state average Biology scale score. The SBE shall base the state average (the baseline) on data from the 1998-99 school year.~~
- (25) ~~"IEP" is the index of English I proficiency used in the prediction formula. The SBE shall compute the "IEP" by calculating the average English I scale score for students in the school and subtracting the state average English I scale score. The SBE shall base the state average (the baseline) on data from the 1998-99 school year.~~
- (26)(10) "Performance Composite" is the percent of scores of students in a school that are at or above Achievement Level III, are at a passing level on the North Carolina Computer Skills Test (students in eighth grade only) as specified by 16 NCAC 06D .0503(f), and at proficiency level or above on the North Carolina Alternate Assessment Portfolio or the North Carolina Alternate Assessment Academic Inventory to the extent that any apply in a given school and consistent with United States Department of Education regulations concerning alternate assessments based on alternate achievement standards. assessments. The SBE shall:
- (a) determine the number of scores that are at Level III or IV in reading, or mathematics, or writing ~~(starting in the 2004-05 school year)~~ across grades three through eight, or on all EOC tests administered as a part of the statewide testing program; add the number of scores that are at a passing level on the ~~NC~~ North Carolina Computer Skills Test (students in eighth grade only); add the number of scores that are proficient or above on the North Carolina Alternative Assessment Portfolio; add the number of student scores on the North Carolina Alternate Assessment Academic Inventory and use the total of these numbers as the numerator; determine the number of student scores in reading, or mathematics, or writing (starting in the 2004-05 school year), across grades three through eight, or on all EOC tests administered as part of the statewide testing program; add the number of student scores on the N.C. Computer Skills Test ~~(students in eighth grade only);~~ students in grade eight; add the number of student scores on the North Carolina Alternate Assessment Portfolio; add the number of student scores on the North Carolina Alternate Assessment Academic Inventory and use the total of these numbers as the denominator; and total the numerators for each content area and subject, total the denominators for each content area and subject, and divide the denominator into the numerator and multiply the quotient by 100 to compute the performance composite.
- (27) ~~"Predicted EOC mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula.~~
- (28) ~~"Predicted EOC high mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula that includes the state average adjusted by an additional three percent (3%).~~
- (29) ~~"Prediction formula" means a regression formula used in predicting a school's EOC test mean for one school year.~~
- (30)(11) ~~"Regression formula-coefficient" means a-an adjustment factored into the expected growth formula that defines one variable in terms of one or more other variables for the purpose of making a prediction or constructing a model about expected student performance. For the purposes of figuring student growth (academic change) the factor shall be 0.08 when using the average of two previous assessments and 0.18 when using a single assessment.~~
- (31) ~~"Standard deviation" is a statistic that indicates how much a set of scores vary. Standard~~

deviation baseline values used for the growth standards are as follow:

- (a) for reading in grades K-8:
 - (i) 1.6 for grade 3;
 - (ii) 1.3 for grade 4;
 - (iii) 1.2 for grade 5;
 - (iv) 1.3 for grade 6;
 - (v) 1.1 for grade 7; and
 - (vi) 1.2 for grade 8.
 - (b) for mathematics in grades K-8:
 - (i) 1.7 for grade 3;
 - (ii) 2.1 for grade 4;
 - (iii) 2.0 for grade 5;
 - (iv) 2.1 for grade 6;
 - (v) 2.0 for grade 7; and
 - (vi) 1.7 for grade 8.
 - (c) for courses with an EOC test:
 - (i) 3.3 for Algebra I;
 - (ii) 2.6 for Biology;
 - (iii) 1.8 for English I;
 - (iv) 2.9 for Algebra II;
 - (v) 2.5 for Chemistry;
 - (vi) 2.5 for Geometry;
 - (vii) 2.5 for Physical Science;
 - (viii) 3.3 for Physics;
 - (ix) 10.0 for College University Prep/College Tech Prep (CUP/CTP);
 - (x) 12.8 for Competency Passing Rate; and
 - (xi) 2.1 for the ABCs Dropout Rate.
- (12) "Standard setting year" means the first year of the test edition implementation.
- (13) "Students with the most significant cognitive disabilities" means students with disabilities whose IEP has determined shall be assessed either by using the NCAAI three or more years below assigned grade level or the NCAAP as an alternate assessment.
- (14) "Students with persistent academic disabilities" means students with disabilities whose IEP team has determined shall be assessed by using the NCAAI one or two years below assigned grade level as an alternate assessment.
- ~~(32)~~(15) "Weight" means the number of students used in the calculation of the amount of growth/gain growth for a subject or content area—area, and the College University Prep/College Tech Prep, the Competency Passing Rate, and the ABCs Dropout Rate components.

both growth standards and performance standards. (NOTE: see SBE policy HSP-C-020, which lists the components of the ABCs Accountability Program including Adequate Yearly Progress (AYP).)

- (1) The SBE shall calculate the expected growth for grades 3 through 8 in an individual school by using the regression formula "Expected Growth = $b_0 + (b_1 \times \text{ITP}) + (b_2 \times \text{IRM})$." In grades 3-8, when two previous assessments are available, the expectation for student performance in the change scale shall be the average of the two previous assessments minus the results of multiplying the average by the factor for regression to the mean. When only one previous assessment is available, the expectation for student performance shall be the previous assessment score on the change scale minus the result of multiplying the previous score by the factor for regression to the mean as defined in 16 NCAC 06G .0305.
- (2) The SBE shall calculate the predicted EOC expected mean for courses in which end-of-course tests are administered by using the prediction formulas that follow. The expectation for EOC scores shall be the average of the two previous assessments as specified below (should they be available) or the one assessment specified below minus the result of multiplying the regression to the mean as defined in 16 NCAC 06G .0305 by either the average of the two previous assessments or the previous assessment. The expected performance for each EOC subject shall be based upon previous performance on the EOG or EOC scores as follows:
 - (A) "Predicted Algebra I Mean Score = $b_0 + (b_{\text{IMP}} \times \text{IMP})$," where $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency. For Biology, use EOG Reading Grade 8 and English I, if available, or EOG Reading Grade 8 if English I is not available.
 - (B) "Predicted Biology Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP}) + (b_{\text{IMP}^2} \times \text{IMP}^2) + (b_{\text{IMP}^3} \times \text{IMP}^3)$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency and $(b_{\text{IMP}} \times \text{IMP})$ is the impact of Mathematics Proficiency. For Physical Science, use EOG Mathematics Grade 8.
 - (C) "Predicted English I Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency. For Physics, use Chemistry and Geometry score.
 - (D) "Predicted Algebra II Mean Score = $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IAP}} \times \text{IAP})$," where $(b_{\text{IRP}} \times \text{IRP})$ is the impact of Reading Proficiency and $(b_{\text{IAP}} \times \text{IAP})$

Authority G.S. 115C-12(9)c4.

16 NCAC 06G .0312 ANNUAL PERFORMANCE STANDARDS

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

is the impact of Algebra Proficiency. For Chemistry, use Biology score.

(E) "~~Predicted Chemistry Mean Score = $b_0 + (b_{IAP} \times IAP) + (b_{IBP} \times IBP) + (b_{IEP} \times IEP)$," where $(b_{IAP} \times IAP)$ is the impact of Algebra Proficiency, $(b_{IBP} \times IBP)$ is the impact of Biology Proficiency, and $(b_{IEP} \times IEP)$ is the impact of English I Proficiency. For Algebra II, use Algebra I score.~~

(F) "~~Predicted Geometry Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP) + (b_{IAP} \times IAP)$," where $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency, $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency, and $(b_{IAP} \times IAP)$ is the impact of Algebra I Proficiency. For Algebra I, use EOG Mathematics Grade 8.~~

(G) "~~Predicted Physical Science Mean Score = $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP)$," where $(b_{IRP} \times IRP)$ is the impact of Reading Proficiency and $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency. For Geometry, use Algebra I and EOG Mathematics Grade 8 if available, or Algebra I only, if EOG Mathematics Grade 8 is not available.~~

(H) "~~Predicted Physics Mean Score = $b_0 + (b_{IMP} \times IMP) + (b_{IBP} \times IBP) + (b_{IEP} \times IEP)$," where $(b_{IMP} \times IMP)$ is the impact of Mathematics Proficiency, $(b_{IBP} \times IBP)$ is the impact of Biology Proficiency, and $(b_{IEP} \times IEP)$ is the impact of English I Proficiency.~~

(3) To be included in accountability measures for the growth standard, a student must:

(A) have a pre-test score and a post-test score as listed in subdivision (2) above or the previous two years EOG assessments if available, or last year's assessment if two years are not available.

(B) have been in membership for the full academic year, which is defined as 140 of 180 days as of the time of EOG or EOC testing in a school on traditional schedule, or 70 of 90 days as of the time of EOC testing in a school on block schedule.

(4) Students shall be included in the performance composite without reference to pretest scores or length of membership.

~~(b) Schools shall be accountable for student performance and achievement. This paragraph describes the conditions under which an eligible student's scores shall be included in the accountability measures for the school that the student attended at the time of testing.~~

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

(A) ~~have a pre-test score and a post-test score in reading and mathematics. For students in grade three the pre-test score refers to the score from the third grade end-of-grade test administered in the Fall of the third grade and the post-test score refers to the score from the end-of-grade test administered in the Spring of the third grade. For students in grades four through eight, the pre-test score refers to the score from the previous year's end-of-grade test and the post-test score refers to the score from the current year's end-of-grade test; and~~
 (B) ~~have been in membership for the full academic year (defined as 140 of 180 days as of the time of EOG testing.).~~

(2) ~~To be included in accountability measures for Algebra I, Algebra II, Biology, Chemistry, English I, Geometry, Physical Science, or Physics, a student must have scores for all tests used in the prediction formula.~~

(3) ~~Students shall be included in the performance composite without reference to pretest scores or length of membership.~~

~~(e)(b) Each K-8 school shall test at least 95 percent of its eligible students. All eligible students shall take the SBE-adopted tests. If a school fails to test at least 95 percent of its eligible students for two consecutive school years, the SBE may designate the school as low-performing and may target the school for assistance and intervention. Each school shall make public the percent of eligible students that the school tests.~~

~~(d)(c) High schools shall test at least 95 percent of enrolled students who are subject to EOC tests, regardless of exclusions. High schools that test fewer than 95 percent of enrolled students for two consecutive years may be designated as low-performing by the SBE. Demographic information from the state student information management system shall be used for each student. In the case of disagreement between the information coded on an answer document and the state student information system used by the LEA, the information in the student information management system shall be used. In the event that required demographic information is not a part of the state student information management system, the LEA shall comply with data requests, in electronic format or by coding on answer documents as required by the SBE.~~

~~(e) All students shall take the SBE-adopted tests. Every student in membership in a grade or course in which testing is required shall complete or have completed by a school employee designated by the principal an answer document. The requirement for a completed answer document shall not apply to writing tests.~~

~~(f)(d) Students identified as limited English proficient and students with disabilities shall be included in the statewide testing program as follows: standard test administration,~~

standard test administration with accommodations/modifications, accommodations, or the state-designated alternate assessments (North Carolina Alternate Assessment Academic Inventory (NCAAAI) or North Carolina Alternate Assessment Portfolio (NCAAP)). (NCAAAI).

- (1) ~~Limited Students identified as limited English proficient students~~ who have been assessed on the state identified English language proficiency test—tests as below intermediate/high in reading and who have been enrolled in United States schools for less than two years may participate in the NCAAAI as an alternate assessment for up to 2 years in US schools. The NCAAAI may be used as an alternate assessment in the areas of reading and mathematics at grades 3-8 and 10, writing at grades 4, 7, and 10, and in high school courses in which an end-of-course test is administered. Limited Students identified as limited English proficient students who have been assessed on the state identified English language proficiency test—tests (SBE policy HSP-A-011) as below superior in writing and who have been enrolled in United States schools for less than two years may participate in the NCAAAI in writing for grades 4, 7, and 10 for up to 2 years in US schools. 10.

- (2) ~~All students identified~~ To be identified as limited English proficient ~~students~~ must be assessed using the state identified English language proficiency test—tests at initial ~~enrollment~~ enrollment. All students identified as limited English proficient must be assessed using the state identified English language proficiency test and annually thereafter during the window of February 1 to April 30. A student who enrolls after January 1 does not have to be retested during the same school year. ~~Limited Students identified as limited English proficient students~~ who are administered the NCAAAI shall not be assessed off grade level. level unless they are identified as having an additional status as a student with a disability.

- (3) Schools shall:
- (A) continue to administer state ~~reading and—mathematics—~~ reading, mathematics, EOC assessments, and writing tests for ~~LEP—~~ students identified as LEP who score at or above intermediate/high on the ~~reading section of the state English language proficiency reading test~~ during their first year in US schools. Results from these assessments shall be included in the ABCs and AYP.
- (B) not require ~~LEP—~~ students identified as LEP who score below intermediate/high on the ~~reading~~

~~section of the state English language proficiency reading test~~ in their first year in US schools to be assessed on the reading end-of-grade tests, High School Comprehensive Test in Reading, NC writing assessment, or the NC Alternate Assessment Academic Inventory (NCAAAI) for ~~reading—reading,~~ or the NCAAAI for writing.

- (1) Scores from students who are in their first year in schools and have scored below intermediate high on the reading section of the state identified English language proficiency test shall not be included in either growth, the performance composite or AYP determinations for reading or mathematics.

- (2) For purposes of determining participation, the state identified English language proficiency reading test will be used as reading participation for the students identified in this section and participation in the state identified English language proficiency writing test will be used as writing participation for students identified in this section.

- (C) ~~for purposes of determining the 95% tested rule in reading, use the language proficiency test from the spring administration for these students.~~ include students previously identified as LEP, who have exited LEP identification during the last two years, in the calculations for determining the status of the LEP subgroup for AYP only if that subgroup already met the minimum number of 40 students required for a subgroup.

- ~~(D) not count mathematics results in determining AYP or ABCs performance composite scores for LEP students who score below Intermediate High on the reading section of the language proficiency test in their first year in US schools.~~

- ~~(E) include students previously identified as LEP, who have exited LEP identification during the last two years, in the calculations for~~

determining the status of the LEP subgroup for AYP only if that subgroup already met the minimum number of 40 students required for a subgroup.

- (4) ~~All students with disabilities including those identified under Section 504 in membership in grades 3-8 and 10 and in high school courses in which an end-of-course test is administered shall be included in the statewide testing program through the use of state tests with or without accommodations or an alternate assessment. The student's IEP team shall determine whether a testing accommodation is appropriate for that student's disability or whether the student should be assessed using the state designed NCAAAI as the alternate assessment.~~

~~(g)(c) Students~~ All students with disabilities including those identified under Section 504 in membership in grades 3-8 and 10 with serious cognitive deficits documented in their Individualized Education Programs (IEPs) who are three or more years below grade level shall participate in the North Carolina Alternate Assessment Portfolio or the North Carolina Alternate Assessment Academic Inventory (NCAAAI) as an alternate assessment, and in high school courses in which an end-of-course test is administered shall be included in the statewide testing program through the use of state tests with or without accommodations or an alternate assessment.

- (1) The student's IEP team shall determine whether a student can access the test without accommodations, with one or more accommodations, or whether the student should be assessed using a state-designed alternate assessment.

- (2) Students with disabilities in grades 3-8 and 10 with the most significant cognitive disabilities may participate either in the North Carolina Alternate Assessment Portfolio or the North Carolina Alternate Assessment Academic Inventory (NCAAAI) three or more years below assigned grade level as an alternate assessment.

(A) For the purposes of ABCs performance composite and AYP these students shall be evaluated by alternate achievement standards.

(B) LEAs shall be held to having a maximum of 1% of their students as described in Paragraph (2) in tested grades (3 through 8 and 10) proficient based on alternative achievement standards for AYP and ABCs purposes. This prohibition shall not apply to student level accountability. If an LEA finds that greater than 1% of its students in these grades are proficient based on alternate achievement standards, the LEA

superintendent may apply to the state superintendent for an exception as prescribed in the Federal Register Vol. 68 No. 236 page 68703 RIN 1810-AA95.

- (C) If an LEA does not receive an exception to the 1% limit and it has exceeded this limit, the state shall randomly reassign enough proficient student scores for students held to alternate achievement standards to non-proficient such that the LEA will fall within the 1% limitation. This process shall be done using a statistically random process across schools in the LEA and shall apply to AYP and ABCs statuses but not to students.

- (3) Students with disabilities in grades 3-8 and 10 with persistent academic disabilities as referenced in the NC Accountability workbook (as accepted by the US Department of Education) may participate in the North Carolina Alternate Assessment Academic Inventory (NCAAAI) below assigned grade level as an alternate assessment.

(A) For the purposes of ABCs performance composite and AYP these students shall be evaluated by alternate achievement standards.

(B) LEAs shall be held to having a maximum of 2% of their students as described in Paragraph (3) in tested grades (3 through 8 and 10) proficient based on alternative achievement standards for AYP and ABCs purposes. This prohibition shall not apply to student level accountability. If an LEA finds that greater than 2% of its students in these grades are proficient based on alternate achievement standards, the LEA superintendent may apply to the state superintendent for an exception as prescribed in the Federal Register Vol. 68 No. 236 page 68703 RIN 1810-AA95.

(C) If an LEA does not receive an exception to the 2% limit and it has exceeded this limit, the state shall randomly reassign enough proficient student scores for students held to alternate achievement standards to non-proficient such that the LEA will fall within the 2% limitation. This process shall be done using a statistically random process across schools in the LEA and shall apply to

AYP and ABCs statuses but not to students.

~~(h)(f)~~ The SBE shall calculate a school's ~~expected attainment of growth composite~~ in student performance using the following process:

- ~~(1)~~ Review expected and high growth standards for all grades, subjects, and EOC courses. Convert all student scores to the change scale.
- ~~(2)~~ Determine the actual growth in reading and mathematics at each grade level included in the state testing program, using data on groups of students identified by paragraph (b)(1) of this Rule and determine the actual EOC mean for EOC tests using data on the groups of students identified by paragraph (b)(2) of this Rule from one point in time to another point in time. Calculate the difference between the expectation for each student using the previous assessments as outlined in this policy (including the factor for regression to the mean) and the student's actual performance in the current year's assessments.
- ~~(3)~~ Subtract the expected growth from the actual growth in reading and mathematics at grades 3 through 8; then subtract the predicted EOC mean from the actual EOC mean for EOC tests. Average together all differences from all grades and subjects encompassed in the school. This is the Academic Change term.
- ~~(4)~~ Divide the differences for reading and mathematics by the standard deviations of the respective differences in growth/gain at each grade level and for each EOC to determine the standard growth score.
- ~~(5)(4)~~ The SBE shall calculate a school's growth component in college university prep/college tech prep using the following process:
 - (A) Compute the percent of graduates who receive diplomas (minus the diploma recipients who completed the Occupational Course of Study) who completed either course of study in the current accountability year. Students shall be counted only once if they complete more than one course of study.
 - (B) Find the baseline, which is the average of the two prior school years' percent of graduates who received diplomas and who completed a course of study (except for the Occupational Course of Study).
 - (C) Subtract the baseline from the current year's percentage.
 - (D) Subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero.
 - (E) Divide by 10.0, which is the associated standard deviation. The

result is the standard growth for college university prep/college tech prep. This number is then multiplied by the number of graduates for inclusion in the growth standards.

- ~~(6)(5)~~ The SBE shall calculate a school's ~~expected~~ growth component in the competency passing rate by comparing the grade 10 competency passing rate to the grade 8 passing rate for the group of students in grade 10 who also took the ~~8th grade~~ 8th grade end-of-grade test.
 - (A) Subtract the grade 8 rate from the grade 10 rate.
 - (B) Subtract 0.1.
 - (C) Divide by 12.8, which is the standard deviation. The result is the standard growth in competency passing rate. Multiply this number by the number of 10th graders included in the calculation for inclusion in the growth standards.
- ~~(7)(6)~~ Multiply the expected standard growth scores for reading and mathematics at each grade level from grade 3 to 8, EOC prediction, competency passing rate, college university prep/college tech prep, and change in ABCs dropout rate by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has made the expected growth standard. The SBE shall calculate a school's growth component in the drop out rate by comparing the average percent of dropouts from the two most recent years prior to the current drop out rate to the current drop out rate for the school.
 - (A) Subtract the current year drop out rate from the average of the two previous years drop out rate.
 - (B) Divide by 2.1 (the standard deviation). The result is the standard growth in drop out rate. Multiply this number by ¼ the school ADM for inclusion in the growth standards.
- ~~(7)~~ For expected growth, multiply the Academic Change for the school by the number of scores used in 2 and 3 above, add to that the results from 4, 5 and 6 above. Divide by the number of students included in 2 and 3 above plus 100, plus the number of 10th graders from 5 above plus the ¼ ADM from 6 above. If the resulting number is "0.00" or above, the school has met the expected growth standard.
- ~~(8)~~ The SBE shall compute high growth using as the high growth standard (b_o x 1.10) in the accountability formula for grades 3 through 8 in reading and mathematics, and (b_o x 1.03) for predicted EOC means. There is no high growth

- ~~standard for competency passing rate or college university prep/college tech prep a ratio of 1.50 or greater when the school has already met the expected growth standard.~~
- (9) ~~To determine the composite score for high growth standards:~~
- (A) ~~Subtract the high growth standard from the actual growth in reading and mathematics at grades 3 through 8; subtract the predicted high growth EOC mean from the actual EOC mean for each EOC test.~~
- (B) ~~Divide the differences in growth by the standard deviations of the respective differences in growth to determine the high standard scores.~~
- (C) ~~Multiply the high standard growth scores for reading and mathematics at each grade level from grade 3 to 8, EOC high standard growth scores, expected standard growth in Competency Passing Rate, Dropout Rate, and for College University Prep/College Tech Prep by the respective weight for each, as they may apply in a given school. These values shall be summed and divided by the sum of all the weights. If the resulting number is zero or above, the school has met the high growth standard.~~

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

(j)(h) In compliance with the No Child Left Behind Act of 2001 (P.L. 107-110), its subsequent final regulations (34 CFR Part 200) released November 26, 2002, and pursuant to GS 115C-105.35 the SBE shall incorporate adequate yearly progress (AYP) as the "closing the achievement gap" component of the ABCs. The calculations shall use forty (40) students' scores as the minimum number of scores for a group to be statistically reliable and valid for AYP purposes along with the use of a confidence interval around the percentage of students scoring proficient on the assessments.

(i) Upon written request by the Department, the SBE may waive specific factors in the accountability measures used to set growth expectations in this Rule upon consideration of:

- (1) the need for the waiver;
- (2) the degree of public benefit; and
- (3) whether the Department had control over the circumstances that required the requested waiver.

Authority G.S. 115C-12(9)c4.

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

CHAPTER 34 - BOARD OF FUNERAL SERVICE

Rule-making Agency: *Board of Funeral Services*

Rule Citation: *21 NCAC 34C .0101*

Effective Date: *June 30, 2005*

Date Approved by the Rules Review Commission: *June 16, 2005*

Reason for Action: *Recent legislation repealed the Board's general election procedures in favor of an appointed Board. However, the North Carolina Crematory Authority, an elected committee of the Board, was retained and used these procedures for its elections.*

The Crematory Authority is required to hold elections annually to comply with the staggered seating establish by G.S. 90-210.122. Due to the delayed appointment of new Board members under S.L. 2004-192, the Board could not complete both the permanent rulemaking process and an election cycle under existing procedures after a quorum had been appointed. Adhering to permanent rulemaking procedures would preclude elected candidates from serving their full terms or create ambiguity in the election process that could deny candidates and voter a fair opportunity to participate. The General Assembly has recognized the public interest favors abbreviated rulemaking proceedings "in order to preserve the integrity of upcoming elections and the elections process." G.S. 150B-21.1(a)(11)c.

The proposed temporary amendment makes minimal changes from the process used for previous elections. In addition to interested parties on the Board's rulemaking list, each crematory was mailed a copy of the proposed temporary amendment and a notice of the comment period and procedures. No comments or objections were received at any time.

In light of the foregoing, the Board finds that adhering to the normal adoption procedures would be contrary to the public interest and immediate adoption is required to complete its annual election cycle and provide a fair election.

SUBCHAPTER 34C - CREMATORIES

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 34C .0101 ELECTION TO CREMATORY AUTHORITY

(a) Definitions. As used in this Rule:

- (1) "Crematory operator" shall have the same meaning as the term "crematory licensee" defined in G.S. 90-210.121(12).
- (2) "Return official envelope" shall mean the envelope in which the crematory operator places a completed ballot for election to the Crematory Authority to return to the Board.
- (3) "Seat subject to election" means the seat held by a member of the Crematory Authority whose term expires December 31 of the calendar year in which the election is held.

(b) The nomination and election of members of the North Carolina Crematory Authority shall be conducted simultaneously with the nomination and election of members of the Board, and the procedures in G.S. 90-210.18(e) shall apply, except that nomination shall be made by a written petition signed by at least three crematory licensees as follows:

- (1) Every crematory operator with a current North Carolina license shall be eligible to vote. The list of crematory operators with a current North Carolina license at the time ballots are prescribed shall constitute the registration list for elections. The Board shall keep an official list of all crematory operators in its office. The Board shall post a list of crematory operators indicating whether a return official envelope has been returned during each election.
- (2) Nomination of candidates for election shall be made to the Board by a written petition pursuant to 21 NCAC 34A .0103. Petitions for nomination must be filed with the Board between July 1 and August 1 of the calendar year preceding the expiration of the term of the seat subject to election. Any candidate who is nominated may withdraw his or her name after filing written notice with the Board prior to the closing of the polls in any election.
- (3) The following procedures shall apply to ballots for election to the Crematory Authority:
 - (A) The Board shall prescribe ballots and determine the time allowed for voting at its first meeting after nominations have closed. The ballots shall contain a listing of the nominees in alphabetical order; instructions for voting; a method of identification; and other information the Board deems necessary as required by law.
 - (B) At the same meeting where ballots are prescribed, the Board shall

designate a day for ballots to be mailed; a deadline for the latest day and time for ballots to be returned; and the day and hour when ballots will be canvassed and counted. The Board shall set the deadline for ballots to be returned to be at least 10 days after the time ballots are mailed.

- (C) The Board shall mail to each crematory operator a ballot; a return official envelope; a notice designating the latest day and hour for ballots to be received by the Board; a notice of when ballots will be canvassed and counted; and other information the Board deems necessary as required by law. The return official envelope shall be addressed to the Board; shall bear a serial number; and shall have printed on the left portion of its face the following:

"Serial No. of Envelope _____
Signature of Voter _____
Address of Voter _____

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope)."

- (4) Ballots shall be canvassed publicly at the designated day and hour. Any eligible voter may be present. No ballot shall be canvassed unless it has been delivered in a sealed return official envelope to the Board by hand or by U.S. mail before the latest day and hour designated by the ballot for receipt.

- (5) Ballots shall be counted as follows:
 (A) All return official envelopes shall be displayed to the persons present. Any person present may challenge the qualification of the voter whose signature appears on the return official envelope or the validity of the return official envelope. Any challenged return official envelope shall be set aside, and the Board may hear the challenge either immediately or after all unchallenged ballots have been counted.

- (B) After all return official envelopes have been displayed, the Board shall open all unchallenged return official envelopes, extract the ballot without showing its marking as much as possible, and separate each ballot from its return official envelope.

- (C) After all ballots have been separated, the Board shall display all ballots. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election;

provided that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice or choices from the ballot. Any person present may challenge the validity of the ballot only on the grounds of defects appearing on the face of the ballot. The Board may hear the challenge either immediately or after all unchallenged ballots have been counted.

- (D) After all ballots have been displayed, all unchallenged ballots shall be counted, and all remaining challenges shall be resolved by the Board. The Board shall count the number of votes cast for each candidate and the total number of votes cast. If a candidate dies or withdraws his or her nomination before polls are closed in any election, he or she shall be eliminated from the contest, and any votes cast for him or her shall be disregarded and shall not count toward the total number of votes cast.

- (6) The following procedures shall apply to fill all seats subject to election:

- (A) To determine a majority of votes cast when there is one seat subject to election, the total number of votes cast for all candidates shall be divided by two, and any candidate receiving a number of votes exceeding one half of the total number of votes cast shall be deemed to have received a majority of votes cast and shall be deemed elected. If no candidate receives a majority of votes cast, the candidate receiving the highest vote total shall be deemed elected.

- (B) To determine the majority of votes cast when there are two seats subject to election, the total number of votes cast for all candidates shall be divided by four, and any candidate receiving a number of votes exceeding this sum shall be deemed to have received a majority of votes cast. Any candidate receiving a majority of votes cast shall be deemed elected, but if more than two candidates receive a majority of votes cast, the candidates receiving the two highest vote totals shall be deemed elected. If no candidate receives a majority of votes cast, the candidate receiving the highest vote total shall be deemed elected. If one candidate has been

deemed elected but one seat remains vacant because no other candidate received a majority of votes cast, the candidate receiving the highest vote total among candidates who did not receive a majority of votes cast shall be deemed elected.

(C) In any election where a candidate was deemed elected but failed to receive a majority of votes cast, the candidate who received the next highest vote total but was not elected may file a written petition requesting a second election within ten days after the first election. The second election shall be between the petitioner and the candidate who was deemed elected but did not receive a majority of votes cast. The procedures in Subparagraphs (b)(1) through (6) of this Rule shall apply to the second election except where inconsistent with this subparagraph. The candidate receiving the majority of votes cast in the second election shall be deemed elected.

(D) If there is a tie vote between candidates in any election, the tie shall be resolved by a vote of the Board. If there is a tie after a vote of the Board, the President of the Board may break the tie.

(E) If, after nominations have closed, there is only one candidate for each seat subject to election, the Board may declare the candidate or candidates elected without holding an election. If, after nominations have closed, there is no candidate for a seat subject to election or if a candidate receiving a majority of votes cast dies or withdraws after the election but before taking office, the Board may fill the position by majority vote.

(7) Each new member shall take office on the first day of his or her term unless the election to the Crematory Authority has not completed by the beginning of the term, in which case the new member shall take office immediately after the election has been completed.

(8) If a member of the Board is nominated for election to the Crematory Authority and does not withdraw his or her name, he or she shall be disqualified from all matters pertaining to that election, and the remaining members of the Board shall proceed without his or her participation.

(9) The Board shall keep the voting records required by 21 NCAC 34A .0104 for a period of six months following the election.

*History Note: Authority G.S. 90-210.122(c); 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. July 1, 2004;
Temporary Amendment Eff. June 30, 2005.*

APPROVED RULES

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting June 16, 2005, 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
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02	NCAC	43H	.0103*	19:13 NCR
02	NCAC	52A	.0101-.0102	19:13 NCR
02	NCAC	52A	.0103*	19:13 NCR
02	NCAC	52A	.0111	19:14 NCR
02	NCAC	52A	.0112	19:13 NCR
02	NCAC	52B	.0601*	19:13 NCR
02	NCAC	52D	.0101*	19:14 NCR
04	NCAC	05A	.0107	19:17 NCR
04	NCAC	05C	.0101	19:17 NCR
04	NCAC	05C	.0103*	19:17 NCR
04	NCAC	05C	.0105	19:17 NCR
04	NCAC	05C	.0202*	19:17 NCR
04	NCAC	05C	.0301*	19:17 NCR
09	NCAC	03M	.0101	19:18 NCR
09	NCAC	03M	.0102*	19:18 NCR
09	NCAC	03M	.0201-.0203*	19:18 NCR
09	NCAC	03M	.0301*	19:18 NCR
09	NCAC	03M	.0401*	19:18 NCR
09	NCAC	03M	.0501*	19:18 NCR
09	NCAC	03M	.0601*	19:18 NCR
09	NCAC	03M	.0701-.0702	19:18 NCR
09	NCAC	03M	.0703-.0704*	19:18 NCR
09	NCAC	03M	.0801-.0802*	19:18 NCR
10A	NCAC	09	.2601-.2607*	19:12 NCR
10A	NCAC	09	.2609-.2610*	19:12 NCR
11	NCAC	08	.0910*	19:13 NCR
12	NCAC	11	.0209*	19:13 NCR
21	NCAC	29	.0702-.0703*	19:16 NCR
21	NCAC	46	.1508	19:14 NCR
21	NCAC	57A	.0201-.0202*	19:18 NCR
21	NCAC	57A	.0206*	19:18 NCR
21	NCAC	57A	.0210*	19:18 NCR
21	NCAC	57A	.0301	19:18 NCR
21	NCAC	57A	.0303	19:18 NCR
21	NCAC	57A	.0401	19:18 NCR
21	NCAC	57A	.0403*	19:18 NCR
21	NCAC	57A	.0406-.0407*	19:18 NCR
21	NCAC	57A	.0501*	19:18 NCR
21	NCAC	57B	.0101	19:18 NCR
21	NCAC	57B	.0209-.0210*	19:18 NCR
21	NCAC	57B	.0302	19:18 NCR
21	NCAC	57B	.0303-.0304*	19:18 NCR
21	NCAC	57B	.0306*	19:18 NCR
21	NCAC	57B	.0603*	19:18 NCR

21	NCAC	57B	.0604	19:18 NCR
21	NCAC	57B	.0606*	19:18 NCR
21	NCAC	57B	.0608*	19:18 NCR
21	NCAC	61	.0308*	19:16 NCR
25	NCAC	01K	.0804-.0805*	19:14 NCR

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 43H .0103 STANDARDS FOR SHELL EGGS

(a) The United States Standards, Grades, and Weight Classes for Shell Eggs, adopted by the Agricultural Marketing Service of the United States Department of Agriculture as AMS-56, are incorporated by reference, including subsequent amendments and editions, and shall apply to all shell eggs sold, offered for sale, or advertised for sale in the state except the term "ungraded eggs" may be used to designate eggs exempt from grading pursuant to G.S. 106-245.15. Copies of this document may be obtained at no cost from the Division of Marketing, North Carolina Department of Agriculture and Consumer Services.

(b) Title 9, Code of Federal Regulations, Part 590, Inspection of Eggs and Egg Products, is incorporated by reference, including subsequent amendments and editions. Copies may be obtained at no cost from the United States Government Printing Office website at <http://www.gpoaccess.gov/cfr/index.html>.

(c) Cracked or checked eggs may be sold by producers or processors to a consumer for his or her personal use, except an "institutional consumer," as defined in G.S. 106-245.14. Said sales shall be made only at the premises of production or processing.

(d) Cracked or checked eggs may also be sold to a processing plant by a producer or processor for further processing.

(e) It shall be unlawful for cracked or checked eggs to be displayed, sold, or offered for sale in a retail outlet except as permitted by 02 NCAC 43H .0101(4) and Paragraph (a) of this Rule.

History Note: Authority G.S. 106-245.16; 106-245.21; Eff. August 1, 1982; Amended Eff. July 1, 2005; April 1, 1988; December 1, 1987.

02 NCAC 52A .0103 UNIFORM METHODS AND RULES: BRUCELLOSIS

The document entitled "Uniform Methods and Rules for the Eradication of Brucellosis" as published by the United States Department of Agriculture is incorporated by reference, including subsequent amendments and editions. Copies may be obtained at no charge from the United States Department of Agriculture website at http://www.aphis.usda.gov/vs/naahps/brucellosis/umr_bovine_bru c.pdf.

History Note: Authority G.S. 106-396; Eff. April 1, 1984; Amended Eff. July 1, 2005.

02 NCAC 52B .0601 NATIONAL POULTRY

IMPROVEMENT PLAN

(a) All provisions for the recognition, classification, control, and eradication of pullorum disease, fowl typhoid, and Mycoplasma Gallisepticum (MG) as contained in the United States Department of Agriculture National Poultry Improvement Plan and Auxiliary Provisions, as incorporated by reference at 02 NCAC 52A .0102, shall apply to all hatcheries in this state and provided further that egg type chicken flocks shall be treated as egg type chicken breeding flocks for determining compliance with the provisions of this Rule.

(b) All poultry and poultry products produced, sold, offered for sale, shipped into this state, or transported within this state shall originate from flocks that meet the requirements for the control of pullorum, fowl typhoid and Mycoplasma Gallisepticum as expressed in the National Poultry Improvement Plan and Auxiliary Provisions except that birds enroute to or from a show or exhibition that complies with 02 NCAC 52B .0502 need not comply with this Paragraph.

(c) Poultry that does not meet the standards prescribed in Paragraph (b) of this Rule shall be subject to the provisions of 02 NCAC 52B .0501 as applicable.

(d) Poultry slaughtered within 24 hours after entering the state need not comply with the provisions of this Rule, unless the poultry originates from a quarantined flock. Poultry originating from a quarantined flock shall be accompanied by a permit from the State Veterinarian.

History Note: Authority G.S. 106-539; 106-540; 106-543; Eff. April 1, 1984; Amended Eff. July 1, 2005; July 1, 1986.

02 NCAC 52D .0101 CERTAIN STANDARDS ADOPTED: EXCEPTIONS

The Rules, Regulations, Definitions and Standards of the United States Department of Agriculture governing meat and meat products inspection, poultry products inspection, voluntary inspection of poultry and humane methods for slaughtering animals, Title 9, Code of Federal Regulations, Parts 300 through 500, are hereby incorporated by reference, including subsequent amendments and editions, subject to the following exceptions:

- (1) To conform Federal regulations to North Carolina authority, references in the Federal regulations to the "Secretary of Agriculture," the "United States Department of Agriculture," the "Food Safety and Inspection Service," and its "Administrator" shall be deemed to refer to the corresponding North Carolina authority, the "Commissioner of Agriculture," the "North Carolina Department of Agriculture and Consumer Services," the "Meat and Poultry Inspection Service" and its "Director for Meat

and Poultry Inspection Service," respectively. References to "interstate commerce" shall be deemed to refer to "intrastate commerce" within North Carolina.

- (2) Statutory references to the "Federal Meat Inspection Act" shall be deemed to refer to the corresponding provisions of the "North Carolina Meat Inspection Law," Article 49B and Article 49C of G.S. 106.
- (3) Statutory references to the "Federal Poultry Products Inspection Act" shall be deemed to refer to the corresponding provisions of the "North Carolina Poultry Products Inspection Act," Article 49D of Chapter 106 of the North Carolina General Statutes.
- (4) References to federal marks of inspection, forms, overtime rates and charges shall be deemed to refer to the corresponding North Carolina marks of inspection, forms, and overtime rates and charges. These rates are established by the Commissioner pursuant to G.S. 106-549.69 to cover the cost of providing the service. Standards of the Federal Food, Drug, and Cosmetic Act incorporated in the federal regulations are applicable to these articles.

Copies of the above are available for inspection in the office of the Director of the State Meat and Poultry Inspection Service and may be obtained at no cost from the United States Government Printing Office website at http://www.access.gpo.gov/nara/cfr/waisidx_04/9cfrv2_04.html#301.

History Note: Authority G.S. 106-549.21; 106-549.22; 106-549.28;
Eff. April 1, 1984;
Amended Eff. July 1, 2005; July 1, 1998; July 1, 1986;
 April 1, 1985; January 1, 1985.

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 05C .0103 CHANGE OF CONTROL

(a) Any entity wishing to purchase or acquire control of an existing cemetery company shall first make written application to the Cemetery Commission on the commission's Application for Change of Control. This form provides space for the name and address of the present and proposed owner, along with the name of the corporation and the name of the cemetery. This form may be obtained by writing:

North Carolina Cemetery Commission
 1001 Navaho Drive, Suite 100
 Raleigh, North Carolina 27609.

(b) This form must be accompanied by a five hundred dollar (\$500.00) filing fee. The commission also requires the following:

- (1) an examination by the Commission's examiners be made to establish compliance to trust fund requirements, with the actual cost of

the examination to be paid by the applicant. The actual cost of said exam is determined by the actual mileage used to conduct said examination, and this mileage is billed based on the Motor Fleet Mileage Rate set forth in the North Carolina Department of Commerce Travel Expense Policy number FM 1. Subsistence and lodging allowed by this policy as expenses necessary to conduct a Change of Control examination shall be billed according to the rates set forth in Policy number FM 1.

- (2) a signed certificate assuming liabilities of the existing cemetery company;
- (3) a financial statement of the existing cemetery company showing net worth;
- (4) certification by title insurance policy or by certificate of an attorney-at-law that the cemetery land, subject to appropriate acreage requirements of G.S. 65-55(f)(3), is owned in fee simple, free of all encumbrances;
- (5) a financial statement of proposed owner, showing net worth and a statement of the proposed owner's experience in the cemetery business.

(c) No one shall take over the operation of a cemetery company in anticipation of a change of control until all necessary information concerning that change of control has been submitted to the administrator of the Cemetery Commission. No one shall change control of a cemetery company without first obtaining approval of the Cemetery Commission. Once a change of control has been approved by the Cemetery Commission, the change of control must be completed within 90 days of the date of the Cemetery Commission's approval. If the change of control is not completed within 90 days of the date of the Cemetery Commission's approval, then the entity wishing to effect the change of control shall make a new application to the Cemetery Commission in accordance with provisions of this Rule. Upon completion of the change of control, the entity requesting the change of control shall notify in writing the administrator of the Cemetery Commission of the completion. A representative of the buyer and the seller shall be present at any meeting when the commission is going to consider the change of control application.

History Note: Authority G.S. 65-49; 65-53(2); 65-55; 65-59;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. July 1, 2005; May 3, 1993; March 1, 1990;
 October 1, 1989; March 1, 1984.

04 NCAC 05C .0202 LICENSE FEES

The annual license fee for sales organizations, management organizations, and brokers is five hundred (\$500.00). These licenses have an expiration date of June 30 in each year.

History Note: Authority G.S. 65-49; 65-57;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. July 1, 2005.

04 NCAC 05C .0301 APPLICATION AND FILING FEE

Any person who offers to sell pre-need grave spaces, mausoleum crypts, niches, memorials, vaults or any other pre-need cemetery merchandise or services that are authorized for any cemetery, cemetery sales groups or cemetery management groups must first obtain a license from this commission. Applications for a license must be filed with the Commission on their Application for Persons Selling Pre-need Cemetery Property together with a fee in the amount of one hundred dollars (\$100.00), fifty dollars (\$50.00) of which shall constitute an application fee and fifty dollars (\$50.00) of which shall constitute a two year license fee. The form provides space for applicant's name, cemetery name, past address, previous employment and criminal record. The application form is available by contacting:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

This license has an expiration date of June 30 in each year, and is not transferable from the cemetery to which it is issued.

*History Note: Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. July 1, 2005; May 3, 1993.*

CHAPTER 09 - OFFICE OF THE GOVERNOR AND LT. GOVERNOR

09 NCAC 03M .0102 DEFINITIONS

As used in this Subchapter:

- (1) "Agency" shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the grantor agency to the Office of the State Auditor that states that the grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the grantor agency and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Division within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.

- (5) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and subgrantee.
- (6) "Fiscal Year" means the annual operating year of the non-State entity.
- (7) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (9) "Grant" means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.
- (10) "Grantee" has the meaning in G.S. 143-6.2(b).
- (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (12) "Non-State Entity" has the meaning in G.S. 143-6.2(a).
- (13) "Public Authority" has the meaning in G.S. 159-7(10).
- (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
- (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are subgranted to other organizations.
- (17) "Subgrantee" has the meaning in G.S. 143-6.2(b).
- (18) "Unit of Local Government" has the meaning in G.S. 159-7(15).

*History Note: Authority G.S. 143-6.2;
Eff. July 1, 2005.*

09 NCAC 03M .0201 ALLOWABLE USES OF STATE

FUNDS

Expenditures of State funds by any grantee shall be in accordance with the Cost Principles outlined in the Office of Management and Budget (OMB) Circular A-87. If the grant funding includes federal sources, the grantee shall ensure adherence to the cost principles established by the Federal Office of Management and Budget.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0202 GRANTEE RESPONSIBILITIES

A grantee that receives State funds shall ensure that those funds are utilized for the purpose of the grant and shall expend those funds in compliance with reporting requirements established by this Subchapter. Grantees shall:

- (1) Provide the information required by the grantor agency in order to comply with the procedures for disbursement of grant funds.
- (2) Maintain reports and accounting records that support the allowable expenditure of State funds. All reports and records shall be made available for inspection by both the awarding agency and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.
- (3) Ensure that subgrantees comply with all reporting requirements of the grantee.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0203 SUBGRANTEE RESPONSIBILITIES

A subgrantee that receives State funds must ensure that those funds are spent for the purpose of the grant and shall expend those funds in compliance with reporting requirements established by this Subchapter. Subgrantees shall:

- (1) Provide the information required by the grantor agency in order to comply with the procedures for disbursement of grant funds.
- (2) Maintain reports and accounting records that support the allowable expenditure of State funds. All reports and records shall be available for inspection by both the awarding agency and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.
- (3) Ensure that any subgrantees comply with all reporting requirement of the grantee.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0301 OFFICE OF THE STATE CONTROLLER RESPONSIBILITIES

All grantees receiving State funds shall enter into a disbursing agreement with the Office of the State Controller in accordance with G.S. 143-3 and G.S. 143-3.2.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0401 AGENCY RESPONSIBILITIES

(a) An agency that receives State funds and disburses those funds to a grantee shall:

- (1) Notify each grantee, at the time the grant is made, of the purpose of the grant and the reporting requirements established in this Subchapter.
- (2) Prior to disbursing any grant funds:
 - (A) register with the Office of State Budget and Management's Community Resources Information System (CRIS); and
 - (B) follow the procedures for disbursement of grant funds.
- (3) Develop compliance supplement reports that describe standards of compliance and audit procedures to give direction to independent auditors. This report shall be provided to the State and Local Government Finance Division with the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.
- (4) Provide the Office of the State Auditor with a listing of each grantee to which the agency disbursed State funds during the prior fiscal year by October 31st of each year including detailed information regarding the purpose and amount of the grant awarded.
- (5) Provide the Office of State Budget and Management with a listing of every grantee to which the agency disbursed State funds during the prior fiscal year by January 31st of each year. This report shall be consistent with the disbursement report previously provided to the Office of the State Auditor including whether the grantee has complied with the reporting requirements established in this Subchapter.
- (6) Hold grantees accountable for the expenditure of State funds by performing monitoring and oversight functions as required in this Subchapter.
- (7) Ensure that funds are spent consistent with the purposes for which they were granted.
- (8) Not disburse funds to grantees that are not in compliance with the reporting requirements for funds received during the prior fiscal year. Agencies shall consult with the Office of State Budget and Management in making this determination.
- (9) Determine that the applicable reporting requirement has been met by the grantee and that all reports have been completed and submitted. For grantees receiving less than five hundred thousand dollars (\$500,000), the grantor agency shall complete a Certification

of Compliance to the Office of the State Auditor.

- (10) Conduct periodic monitoring reviews to ensure that State awards are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements and that performance goals are achieved.
- (11) Monitor compliance by grantees with all terms of a contract. Upon determination of noncompliance, the agency shall give the grantee 60 days written notice to come into compliance. After the 60-day period, the grantor agency shall:
 - (A) terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures;
 - (B) suspend payments pending negotiation of a plan of corrective action; or
 - (C) offset future payments with the amount improperly spent.

(b) Each non-State entity shall ensure that subgrantees have complied with the applicable provisions of this Subchapter. Failure to comply with such provisions shall be the basis for an audit exception.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0501 OFFICE OF THE STATE AUDITOR RESPONSIBILITIES

Pursuant to the provisions of this Subchapter, the Office of the State Auditor shall:

- (1) Review submitted audit reports for those grantees receiving more than five hundred thousand dollars (\$500,000) in State funds to determine compliance with applicable reporting standards.
- (2) Maintain grantor agency submitted compliance data for grantees that receive State funds at levels below five hundred thousand dollars (\$500,000) demonstrating that the grantees have met the reporting requirements established by this Subchapter.
- (3) Notify disbursing agencies, by January 31st of each year, of all grantees for which no compliance data has been received.
- (4) Notify disbursing agencies of any material findings in the audits of grantees throughout the State fiscal year as reports are received.
- (5) Submit a list to the Office of State Budget and Management by January 31st of each year; of each grantee that received State funds in the prior fiscal year including the status of grantee compliance with the reporting requirements.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0601 OFFICE OF STATE BUDGET AND MANAGEMENT RESPONSIBILITIES

The Office of State Budget and Management shall:

- (1) Provide consultation to agencies as to whether grantees have complied with the required reporting requirements.
- (2) Consult with agencies to ensure that all grantees found in noncompliance have their funding ceased immediately upon that determination and ensure that no further funding will be provided until the grantee is in compliance.
- (3) Maintain a Suspension of Funding list readily accessible to any interested party that identifies any grantee found in noncompliance. This list shall serve as notice to other agencies that no further State grant funding may be provided to that grantee.
- (4) Maintain a Community Resources Information System database to record grant documentation required by this Subchapter.
- (5) In conjunction with the grantor agency, ensure reporting requirements have been met prior to the removal of any grantee from the Suspension of Funding listing. A grantee found in noncompliance may appeal to the Office of State Budget and Management for corrective action and reinstatement from the Suspension of Funding list. Once removed from the Suspension of Funding list, the grantee is eligible for current and future grants of State funds.
- (6) Take administrative action, when the Director of Budget finds that the grantee has spent or encumbered State funds for an unauthorized purpose, which includes reporting criminal violations to the Attorney General and the State Bureau of Investigation.
- (7) If the grant funds are a pass-through of funds granted by an agency of the United States, consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking actions authorized by this Subchapter.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0703 REQUIRED CONTRACT PROVISIONS

Each contract agreement shall contain:

- (1) A specification of the purpose of the grant, services to be provided, objectives to be achieved, and expected results;
- (2) The Source of funds (federal, state, etc.) must be identified (CFDA number if applicable) and percentages included where applicable;

- (3) Account coding information sufficient to provide for tracking of the disbursement through the grantor accounting system;
- (4) Agreement to maintain all grant records for a period of five years or until all audit exceptions have been resolved, whichever is longer;
- (5) Names of all parties to the terms of the contract; for the grantee or subgrantee, including the employer/tax identification number, address, contact information, and the grantee/subgrantee fiscal year end date;
- (6) Signatures indicating authorization by all parties to the terms of the contract;
- (7) Duration of the contract, including the effective and termination dates;
- (8) Amount of the contract and schedule of payment(s);
- (9) Particular duties of the grantee;
- (10) Required reports and reporting deadlines;
- (11) Provisions for termination by mutual consent with 60 days written notice to the other party, or as otherwise provided by law;
- (12) A provision that the awarding of the grants subject to allocation and appropriation of funds to the agency for the purposes set forth in the contract;
- (13) Provision that requires reversion of unexpended funds to the agency upon termination of the contract;
- (14) A provision that requires compliance with the rules and reporting requirements outlined in this Subchapter including audit oversight by the Office of the State Auditor, the provision of access to the accounting records by both the funding entity and the Office of the State Auditor, and availability of audit work papers in the possession of any auditor of any recipient of State funding;
- (15) A clause addressing assignability and subcontracting including the following:
 - (a) the grantee or subgrantee is not relieved of any of the duties and responsibilities of the original contract; and
 - (b) the subgrantee agrees to abide by the standards contained in this Subchapter, and to provide all information to allow the grantee to comply with these standards.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0704 GRANT MONITORING AND EVALUATION

(a) Agencies shall ensure that oversight and monitoring of grantee and subgrantees occurs to prevent the misuse of State funds. Grantees and subgrantees shall manage the day-to-day

operations of grant-supported activities. Grantors shall monitor grant-supported activities to assure compliance with applicable compliance requirements and that performance goals are being achieved. Grantee monitoring shall cover each program, function or activity. An evaluation must be performed with a comparison of actual accomplishments to the measurable objectives or outcomes established for the grant.

(b) Agencies shall:

- (1) Grant Identification - At the time the grant is made, the agency must provide information to the grantee including the required contract provisions as well as the applicable compliance requirements.
- (2) During the grant period, the agency shall monitor the grantee's use of State awards through reporting, site visits, regular contact, or other means to provide assurance that the grantee administers State funds in compliance with laws, rules, and the provisions of grant agreements and that performance goals are achieved.
- (3) Ensure that subgrantees expending five hundred thousand dollars (\$500,000) or more in State awards during the subgrantee's fiscal year have met the audit requirements of this Subchapter and that the required audits are completed within nine months of the end of the subgrantee's audit period; issue a management decision on audit findings within six months after receipt of the subgrantee's audit report; and ensure that the subgrantee takes timely corrective action on all audit findings.
- (4) Take action using sanctions when a subgrantee has demonstrated a continued inability or unwillingness to provide required audits.
- (5) Evaluate the impact of subgrantee activities on the agency's ability to comply with applicable State rules.
- (6) Evaluate the results and outcomes of the activities and accomplishments of the grantee or subgrantee to determine if results were achieved, the success of the activity, and whether the project activities should continue.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0801 NONCOMPLIANCE WITH RULES

(a) When a non-State entity does not comply with the requirements of this Subchapter, the agency shall take measures to ensure that the requirements are met including:

- (1) communicating the requirements to the non-State entity;
- (2) requiring a response from the non-State entity upon a determination of noncompliance; and
- (3) suspend payments to the non-State entity until the non-State entity is in compliance.

(b) Prior to disbursing any State funds, the grantor agency shall verify that the grantee has complied with the reporting requirements for the most recent applicable reporting period. The agency shall consult with the Office of State Budget and Management during this verification process. A grantor agency shall not disburse funds to any grantee that has been determined by the grantor agency to be noncompliant with the reporting requirements established by this Subchapter.

(c) If the grantor agency finds that a non-State entity has used State funds for an unauthorized purpose, the grantor agency shall report such findings to the Attorney General, the Office of the State Budget and Management, the Office of the State Auditor, and the Office of the State Controller.

(d) If a grantee has not met the reporting requirements established by this Subchapter and fails to submit revised reports in accordance with a grantor agency determination letter, the grantor agency shall suspend further payments to the grantee and report the grantee to the Office of the State Auditor and the Office of the State Controller.

(e) Each grantor agency shall ensure that grantees and subgrantees have complied with the applicable provisions of this Subchapter.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

09 NCAC 03M .0802 RECOVERY OF STATE FUNDS

(a) The Office of State Budget and Management shall be assisted by the Attorney General in the recovery and return of State funds in the event a grantee or subgrantee:

- (1) is unable to fulfill the obligations of the contractual agreement;
- (2) is unable to accomplish the purposes of the grant;
- (3) is noncompliant with the reporting requirements; or
- (4) has inappropriately used the State funds.

(b) Any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the use of State funds shall be reported by the Office of State Budget and Management to the Attorney General and State Bureau of Investigation.

History Note: Authority G.S. 143-6.2; Eff. July 1, 2005.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .2601 SCOPE

The rules in this Section apply to all child care centers offering pediatric day health care services to children who are medically fragile and their families. Care may be provided to children who are medically fragile as a component of a child care center, or care may be provided in a separate stand alone program. All rules in this Chapter shall apply except as provided in this Section.

History Note: Authority G.S. 110-88(13); Eff. October 1, 2005.

10A NCAC 09 .2602 DEFINITIONS

For the purposes of the rules in this Section:

- (1) "Health care professional" is defined as:
 - (a) a physician licensed in North Carolina;
 - (b) a nurse practitioner approved to practice in North Carolina;
 - (c) a nurse who holds an unencumbered license to practice in North Carolina; or
 - (d) a certified physician assistant.
- (2) "Medically fragile" is defined as having an acute or chronic health problem requiring therapeutic intervention and skilled nursing care during all or part of the day.
- (3) "Pediatric day health care" is defined as a family-centered health care service prescribed by a physician for children less than 13 years of age who are medically fragile or technologically dependent.
- (4) "Technology-dependent" means a child from birth to 13 years of age, who has a chronic disability, which requires specific nursing interventions to compensate for the deficit of a life sustaining body function. The child requires daily, ongoing, intermittent care or monitoring by health care professionals or other trained personnel as prescribed by a physician.
- (5) "Unlicensed personnel" is defined as a Nurse Aide I in good standing with the Division of Facility Services Nurse Aide I and Health Care Personnel Registries or a Nurse Aide II in good standing with the North Carolina Board of Nursing Nurse Aide II Registry.
- (6) "Program Director" is defined as the person responsible for day-to-day administration and clinical management of the center. The program director shall be a Registered Nurse with a Bachelor of Science degree in nursing (BSN) with a minimum of two years full-time work experience in the Pediatric Intensive Care Unit, Neonatal Intensive Care Unit or equivalent pediatric healthcare experience.

History Note: Authority G.S. 110-88(13); 110-91; Eff. October 1, 2005.

10A NCAC 09 .2603 SPECIAL PROVISIONS FOR LICENSURE

(a) A license shall be issued that indicates approval to provide services to children who are medically fragile. The license shall also indicate the designated areas where care will be provided. The designated area shall be used solely for the care of children who are medically fragile.

(b) Children who are medically fragile shall receive pediatric day health care services as prescribed by their primary physician who is licensed with the North Carolina Medical Board.

(c) To receive approval to provide care for children who are medically fragile the center shall have:

- (1) A temporary license with no pending administrative action; or
- (2) A four star rated license with at least four points in program standards.

(d) Prior to receiving a license, the applicant who shall be legally responsible for the operation of the center shall show proof of liability insurance for the center. The operator shall maintain liability insurance for as long as the license is active.

History Note: Authority G.S. 110-88(13); Eff. October 1, 2005.

10A NCAC 09 .2604 OPERATIONAL POLICIES

In addition to all other policies required in Section .1600 of this Chapter, the center shall develop written policies that contain the following:

- (1) Admission requirements;
- (2) Discharge requirements;
- (3) Health assessment procedures;
- (4) Procedures for obtaining physician's prescribed orders on admission, renewal every 60 days and when the condition of the child has a significant change;
- (5) Requirements for medical records and documentation;
- (6) Procedures for developing each child's individualized plan of care;
- (7) Plans for staff training and communication with parents and health care professionals;
- (8) Emergency readiness and procedures;
- (9) Inclusion/Exclusion criteria;
- (10) Transportation/field trips procedures;
- (11) Infection control procedures;
- (12) Clinical quality improvement plan;
- (13) Medication administration procedures; and
- (14) Coordination with community agencies and programs such as: Early Intervention, Department of Public Instruction, North Carolina Subsidized Child Care System, Community Alternatives Program for Children (CAP-C), Community Alternatives Program for Persons of Mental Retardation/Developmental Disabilities (CAP-MR/DD), and Child/Adult Care Food Program.

These policies shall be reviewed by the Division prior to enrolling children who are medically fragile.

History Note: Authority G.S. 110-88(13); Eff. October 1, 2005.

10A NCAC 09 .2605 STAFF/CHILD RATIOS

(a) The staff/child ratio shall be one health care professional or unlicensed personnel to three children regardless of the age of the children. The maximum group size shall be nine children.

(b) When determined to be developmentally appropriate by the program director, up to 12 children of the same age group may occupy the same space as long as the children are divided into two groups. The space requirements in Rule .2606 and staff qualification requirements in Rule .2607 of this Section must be maintained.

History Note: Authority G.S. 110-88(13); Eff. October 1, 2005.

10A NCAC 09 .2606 SPACE REQUIREMENTS

In the rooms designated for children who are medically fragile there shall be at least 50 square feet of inside space per child. When space is measured the following shall not be included: closets, hallways, storage areas, kitchens, bathrooms, utility areas, thresholds, foyers, space or rooms used for administrative activities or space occupied by adult-sized desks, cabinets, file cabinets; any floor space occupied by or located under equipment, furniture, or materials not used by children; and any floor space occupied by or located under built-in equipment or furniture.

History Note: Authority G.S. 110-88(13); Eff. October 1, 2005.

10A NCAC 09 .2607 STAFF QUALIFICATIONS

(a) All staff working with children who are medically fragile shall complete all requirements relevant in G.S. 110 and this Chapter pertaining to preservice training, in-service training and staff records based on job duties. In addition, the following requirements shall be met for staff that care for children who are medically fragile:

- (1) When on site, the program director may serve as the licensed Registered Nurse as required in Subparagraph (5) of this Paragraph. The program director may serve as the child care administrator as long as requirements set forth in G.S. 110-91(8) and Rule.0704 of this Chapter are being met. The program director shall be on site at least 50 percent of the total daily hours of operation, based on a normal working schedule; and that 50 percent may include times when the program director may be off site due to illness or vacation.
- (2) Staff needed to meet staff/child ratios set forth in Rule .2605 of this Section shall have a minimum of two years full-time nursing experience in pediatric health care.
- (3) Each group of children shall have a lead teacher or teacher present as required by Rule .0714(c) of this Chapter. This individual also may be one of the health care professionals or unlicensed personnel required to meet the staff/child ratios in Rule .2605 of this Section. The lead teacher shall have Infant/Toddler certification or B-K Licensure with a

minimum of two years full-time early childhood work experience prior to assuming care giving responsibilities. The teacher shall have the North Carolina Early Childhood Credential or its equivalent within six months of assuming care giving responsibilities.

- (4) When children are divided into two groups within the same space as specified in Rule .2605(b) of this Section, the combined groups shall be staffed by a licensed Registered Nurse, an additional health care professional, a lead teacher, and a teacher.
- (5) A minimum of one licensed Registered Nurse shall be with each group of children at all times, except as described in Subparagraph (a)(4) of this Rule.
- (6) A physician licensed by the North Carolina Medical Board who is a pediatrician, neonatologist, or who holds another pediatric subspecialty shall serve as the medical consultant. Responsibilities shall include:
 - (A) A liaison role with the medical community;
 - (B) A quarterly review of services to assure services provided are consistent with the needs of the child;
 - (C) Availability to provide consultation to center staff; and
 - (D) Review reports of accidents or unusual incidents quarterly.

(b) In addition to all other special training required in Rule .0705 of this Chapter, the following shall be completed:

- (1) Any one counted in staff/child ratios shall successfully complete a cardiopulmonary resuscitation (CPR) course within 12 months prior to assuming care giving responsibilities. The course shall be appropriate for the ages of children in care. The course shall be taken annually from the completion of the previous CPR course.
- (2) Any unlicensed personnel counted in staff/child ratios shall complete a course in basic first aid training within 12 months prior to assuming care giving responsibilities. Basic first aid training shall be completed every three years from the completion of previous basic first aid training.

History Note: Authority G.S. 110-88(13); 110-91; Eff. October 1, 2005.

10A NCAC 09 .2609 NUTRITION REQUIREMENTS

Meals and snacks shall be provided in accordance with Section .0900 of this Chapter unless a child's individualized plan of care specifies otherwise.

History Note: Authority G.S. 110-88(13); Eff. October 1, 2005.

10A NCAC 09 .2610 TRANSPORTATION

(a) If transportation is provided, it shall be provided in accordance with Section .1000 of this Chapter. In addition, the driver shall:

- (1) Be at least 21 years old;
- (2) Successfully complete a cardiopulmonary resuscitation (CPR) course within 12 months prior to transporting children. The course shall be completed annually from the completion of previous CPR course; and
- (3) Complete a course in basic first aid training within 12 months prior to transporting children. Basic first aid training shall be completed every three years from the completion of previous basic first aid training.

(b) The staff/child ratio requirements in Rule .2605 of this Section shall be maintained when transporting children, provided that:

- (1) Notwithstanding the staff/child ratio requirements in Rule .2605 of this Section, there must be at least two caregivers on the vehicle at all times;
- (2) At least one licensed Registered Nurse who may be counted in the staff/child ratio shall be on the vehicle at all times; and
- (3) The driver may be counted in the staff/child ratio.

(c) All vehicles used to transport children who are medically fragile shall be equipped with emergency medical supplies appropriate to children being transported as well as a fire extinguisher and a functioning cellular telephone or other functioning two-way voice communication device in case of an emergency situation.

History Note: Authority G.S. 110-88(13); 110-91; Eff. October 1, 2005.

DEPARTMENT OF INSURANCE

11 NCAC 08 .0910 COMPLAINT HANDLING AND INSPECTION PROCEDURE

(a) Complaints received by telephone shall be confirmed in writing over the signature of the owner or his or her agent; however, this shall not delay any action to resolve the complaint. Complaints shall be processed as follows:

- (1) The Manufactured Building Division shall forward complaints to the manufactured housing manufacturer, dealer, or set-up contractor as appropriate.
- (2) If the complaint is not resolved, the Manufactured Building Division shall schedule an on-site inspection or the deputy commissioner shall arrange a conference to discuss the problem. Unless otherwise agreed, concerned parties shall be given at least 72 hours notice, orally, in writing, or electronically, of the time and place of the

inspection or conference and the opportunity to attend the inspection or conference.

- (3) If the complaint is not resolved, the deputy commissioner shall refer the complaint to the Board. The secretary of the Board may recommend legal action be taken to ensure compliance with the applicable statutes and rules. Such action may include the convening of a public hearing.

(b) The Manufactured Building Division shall not knowingly attempt to resolve a complaint which is also the subject matter of a pending lawsuit filed by the complainant or on the complainant's behalf by the complainant's attorney unless authorized by the Board, which authorization shall occur upon mutual assent of all parties to the lawsuit, whether through the parties themselves or attorneys for the parties. If no lawsuit has been filed but the complainant has retained an attorney, the Manufactured Building Division shall, upon request by the complainant or the complainant's attorney, investigate a complaint, which investigation shall consist of inspecting the home for violations of the Code, as defined in G.S. 143-143.9, providing a copy of the inspection report to all the parties, and attempting to resolve the matter between the parties

History Note: Authority G.S. 143-143.10; 143-143.13; 143-143.14; 143-143.17; Eff. January 1, 1983; Amended Eff. June 1, 2005.

TITLE 12 – DEPARTMENT OF JUSTICE

21 NCAC 11 .0209 COMPANY BUSINESS LICENSE

(a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74D-2(a) shall submit an application for a company business license on a form provided by the Board. A sole proprietorship that is owned and operated by an individual holding a current alarm systems business license shall be exempt from this Rule. This application for license shall call for such information as the firm, association, or corporation name; the address of its principal office within the State; any past conviction for criminal offenses of any company director or officer; information concerning the past revocation, suspension or denial of a business or professional license to any director or officer; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms, associations, corporations or other entities owning 10 percent or more of the outstanding shares of any class of stock; and the name and address of the qualifying agent.

(b) In addition to the items required in Paragraph (a) of this Rule, an out-of-state company shall further qualify by filing with its application for a license, a copy of its certificate of authority to transact business in this state issued by the North Carolina Secretary of State in accordance with G.S. 55-15-01 and a consent to service of process and pleadings which shall be authenticated by its company seal and accompanied by a duly certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute said consent.

(c) After filing a completed written application with the Board, the Board shall conduct a background investigation to ascertain if the qualifying agent is in a management position. The Board shall also determine if the directors or officers have the requisite good moral character as defined in G.S. 74D-6(3). It shall be prima facie evidence of good moral character if a director or officer has not been convicted by any local, State, federal, or military court of any crime involving the use, carrying, or possession of a firearm; conviction of any crime involving the use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving assault or an act of violence; conviction of a crime involving breaking or entering, burglary, larceny, or any offense involving moral turpitude; or does not have a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this Section, "conviction" means and includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge or jury.

(d) Upon satisfactory completion of the background investigation, a company business license may be issued. This license shall be conspicuously displayed at the principle place of business within the State of North Carolina.

(e) The company business license shall be issued only to the corporation and shall not be construed to extend to the licensing of its directors, officers, or employees.

(f) The issuance of the company business license is issued to the firm, association, or corporation in addition to the license issued to the qualifying agent. Therefore, the qualifying agent for the firm, association, or corporation which has been issued the company business license shall be responsible for assuring compliance with G.S. 74D.

(g) Within 90 days of the death of a licensee, the existing qualifying agent or a newly designated replacement qualifying agent for the company may submit a written request to the Board, asking that the deceased licensee's license number remain on company advertisements. The Board shall permit the use of the deceased licensee's license number only if the current qualifying agent's license number is printed immediately adjacent to and in the same size print as the deceased licensee's license number.

History Note: Authority G.S. 74D-2(a); 74D-5; Eff. November 1, 1993; Amended Eff. July 1, 2005; March 1, 1995.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 29 - LOCKSMITH LICENSING BOARD

21 NCAC 29 .0702 DUE DATE

Applications for license renewal shall be submitted at least 90 days prior to the date of license expiration. Licensees who submit their application for renewal after the due date but before the license expiration date shall pay a late fee of one hundred fifty dollars (\$150.00) in addition to the license renewal fee specified in .0404 of these Rules. Applications shall be deemed

submitted on the date of their postmark or upon receipt by staff at the Board's offices, whichever is earlier.

History Note: Authority G.S. 74F-6; 74F-9; 74F-10; Eff. July 1, 2005.

21 NCAC 29 .0703 REINSTATEMENT OF EXPIRED LICENSE

A former licensee may apply for reinstatement of an expired license only if he has completed at least eight contact hours of continuing education within one year preceding the application. Applicants for reinstatement must pay the following fees:

- (1) License renewal fee as specified in .0404 of these Rules;
- (2) Late fee as specified in .0702 of these Rules; and
- (3) A reinstatement fee of one hundred fifty dollars (\$150.00).

History Note: Authority G.S. 74F-6; 74F-9; 74F-10; Eff. July 1, 2005.

CHAPTER 57 - REAL ESTATE APPRAISAL BOARD

21 NCAC 57A .0201 QUALIFICATIONS FOR TRAINEE REGISTRATION, APPRAISER LICENSURE AND CERTIFICATION

(a) Applicants for trainee registration, licensure as a licensed residential real estate appraiser and certification as a certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 as further set forth in Subparagraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this Rule, provided however that registration as a trainee or licensure as a licensed residential real estate appraiser is not prerequisite for certification as a certified residential or general real estate appraiser:

- (1) Applicants for trainee registration shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education in the areas of Introduction to Real Estate Appraisal, Valuation Principles and Practices, Applied Residential Property Valuation, and, effective January 1, 2003, the Uniform Standards of Professional Appraisal Practice (USPAP) or appraisal education found by the Board to be equivalent to such courses.
- (2) Applicants for licensure as a licensed residential real estate appraiser shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education as set forth in Subparagraph (a)(1) of this Rule, and shall have obtained at least 2,000 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum

period of 18 calendar months. Applicants must have been actively engaged in real estate appraising for at least 18 months prior to the date application is made.

- (3) Applicants for certification as a certified residential real estate appraiser shall have completed those courses required for registration as a trainee or licensure as a licensed residential real estate appraiser or equivalent education and, in addition, within the five-year period immediately preceding the date application is made, a course in Introduction to Income Property Appraisal consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 2,500 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two calendar years. Applicants must have been actively engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

- (4) Applicants for certification as a certified general real estate appraiser shall have completed those courses required for certification as a certified residential real estate appraiser or equivalent education and, in addition, within the five-year period immediately preceding the date application is made, courses in Advanced Income Capitalization Procedures and Applied Income Property Valuation each consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 3,000 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate. Applicants must have been actively engaged in real estate appraising for at least two and one-half calendar years prior to the date application is made. At least 50 percent of the non-residential appraisal experience must have been of complex properties or of improved properties in which the income approach was utilized in the appraisal process.

(b) Applicants for licensure or certification may be required to provide to the Board copies of appraisal reports in support of experience credit. All appraisals submitted in support of experience credit must comply with the Uniform Standards of

Professional Appraisal Practice (USPAP) and with any applicable state statutes or rules.

(c) When a trainee becomes a licensed or certified real estate appraiser or when a licensed real estate appraiser becomes certified as a real estate appraiser, his registration or licensure shall be immediately canceled by the Board. When a certified residential real estate appraiser becomes certified as a general real estate appraiser, his previous certification shall be immediately canceled by the Board.

(d) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee will be retained by the Board. An applicant whose application has been cancelled and who wishes to obtain a registration, license or certificate must start the licensing process over by filing a complete application with the Board and paying all required fees.

History Note: Authority G.S. 93E-1-6(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0202 FITNESS FOR REGISTRATION, LICENSURE OR CERTIFICATION

(a) The Appraisal Board shall consider the fitness for registration, licensure or certification of each applicant who has passed the appropriate examination. When the fitness of an applicant is in question, action by the Board shall be deferred until the applicant has affirmatively demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.

(b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his or her competency or fitness for registration, licensure or certification at a hearing before the Board.

(c) The inquiry into fitness for registration, licensure or certification may include consideration of whether the applicant has had any disciplinary action taken against any professional license in North Carolina or any other state, or whether the applicant has committed or done any act which, if committed or done by any real estate trainee or appraiser, would be grounds under the provisions hereinafter set forth for disciplinary action including the suspension or revocation of registration, licensure, or certification, whether the applicant has been convicted of or pleaded guilty to any criminal act, or whether any such actions or charges are pending.

(d) Notice to the applicant that his or her competency or fitness for registration, licensure or certification is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time shall constitute a waiver of the applicant's right to a hearing on his or her application for trainee registration, licensing or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for registration, licensure or certification.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0206 EXPIRED REGISTRATION, LICENSE OR CERTIFICATE

(a) Expired registrations, licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Board of the two-hundred dollar (\$200.00) renewal fee plus a late filing fee of five dollars (\$5.00) per month for each month or part thereof that such registration, license or certificate is lapsed, and provision of proof of having obtained the continuing education that would have been required had the registration, license or certificate been continuously renewed.

(b) If the registration, license or certificate has been expired for more than 12 months, a request for reinstatement shall be treated as an original application. In order to be considered for reinstatement, the applicant must pay the one-hundred fifty dollar (\$150.00) original registration, license or certificate fee and include in the application a description of the applicant's appraisal education and experience during the period of registration, licensure or certification and during the time of expiration. Such applications shall be reviewed by the Board to determine whether an examination, additional real estate appraisal education or additional appraisal experience shall be required. In addition, the Board may consider whether the applicant for reinstatement has any prior or current disciplinary actions, and may examine the applicant's fitness for registration, licensure or certification before granting the request for reinstatement.

(c) A request for reinstatement shall not be granted if the registration, license or certificate has been expired for more than 24 months.

(d) Reinstatement is effective the date it is issued by the Board. It is not retroactive.

History Note: Authority G.S. 93E-1-6(b); 93E-1-7; 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0210 TEMPORARY PRACTICE

(a) A real estate appraiser who does not reside in North Carolina and who is licensed or certified by the appraiser licensing or certifying agency in another state may apply to receive temporary appraiser licensing or certification privileges in this State by filing a notarized application with the Board.

(b) Upon filing a completed application accompanied by a fee of one hundred fifty dollars (\$150.00) and otherwise satisfying the Appraisal Board as to his or her qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. The fee must be paid by money order, certified

check or cashier's check. As part of the examination for moral fitness, the Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other state, and may consider all other information outlined in Rule .0202 of this Section.

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

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

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

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

History Note: Authority G.S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a); Eff. July 1, 1994; Amended Eff. July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999.

21 NCAC 57A .0403 ADVERTISING

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

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

(c) In the event that any trainee, licensee or certificate holder shall advertise in any manner using a firm name, corporate

name, or an assumed name which does not set forth the surname of the trainee, licensee or certificate holder, he shall first notify the Board in writing of such name and furnish the Board with a copy of each registration of assumed name certificate filed with the office of the county register of deeds in compliance with Section 66-68, North Carolina General Statutes.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999.

21 NCAC 57A .0406 BUSINESS PRACTICES

Each trainee or appraiser who has an ownership interest in an appraisal firm must assure that:

- (1) notification according to 21 NCAC 57A .0404 is given to the Board of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use; and
- (2) advertising of appraisal services by or in the name of the firm is conducted as set out in 21 NCAC 57A .0403.

History Note: Authority G.S. 93E-1-3(b); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

(a) A licensed or certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the licensed or certified real estate appraiser:

- (1) has been licensed or certified for at least two years;
- (2) has no more than one trainee working under his or her supervision at any one time, if the supervisor is a licensed real estate appraiser, or two trainees if the supervisor is a certified real estate appraiser, either as employees or as a subcontractors. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee;
- (3) actively and personally supervises the trainee. The supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments performed after the effective date of this Rule for which the trainee will perform more than 75% of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than

- 50 miles from the supervisor's primary business location;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized;
 - (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
 - (6) prepares and furnishes to each trainee, whose services were utilized in connection with the appraisal, a report describing the nature and extent of assistance rendered by the trainee in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal. In addition, the supervisor must make available to the trainee a copy of every appraisal report to the trainee where the trainee performs more than 75% of the work on the appraisal; and
 - (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means only an active suspension or a revocation.

(b) The trainee must maintain a log on a form prescribed by the Board that includes, but is not limited to, each appraisal performed by the trainee, the name of the supervisor for that appraisal, the supervisor's license or certificate number, whether the supervisor accompanied the trainee on the inspection of the subject property and the date the supervisor sent in the Supervisor Declaration Form to the Appraisal Board.

(c) A license or certificate holder who wishes to supervise a trainee must attend an education program regarding the role of a supervisor before such supervision may begin.

(d) Trainees must assure that the supervisor has properly completed and sent the Supervisor Declaration Form to the Appraisal Board on or before the trainee begins assisting the supervising appraiser. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Section.

(e) Supervising appraisers shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

History Note: Authority G.S. 93E-1-3(b); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57A .0501 APPRAISAL STANDARDS

Every registered trainee, and licensed and certified real estate appraiser shall, in performing the acts and services of a registered trainee, or licensed or certified real estate appraiser, comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation, which standards, including subsequent amendments and editions of those standards which may from time to time be approved, are hereby incorporated by reference. For the purpose

of this Rule, the "Uniform Standards of Professional Appraisal Practice" are the Definitions, Preamble, Ethics Rule, Competency Rule, Departure Rule, Jurisdictional Exception Rule, Supplemental Standards Rule, Statements on Appraisal Standards, and Standards 1, 2, and 3.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57B .0209 CERTIFICATE OF COURSE COMPLETION

Approved schools or course sponsors must provide each passing student with a course completion certificate. Certificates of course completion must be on a document bearing the letterhead or insignia of the school or course sponsor and must have the signature or signature stamp, which must be in an ink color other than black, of the school or course sponsor director. A student who has taken a prelicensing or precertification course, other than the 15 hour National USPAP course, for continuing education credit and who does not pass the examination shall not be given a course completion certificate, but shall be given a certificate of attendance for the course, provided that the student complies with the provisions of 21 NCAC 57B .0303. Either certificate shall be valid to obtain continuing education credit, in accordance with 21 NCAC 57B .0604.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002.

21 NCAC 57B .0210 COURSE RECORDS

Schools and course sponsors must:

- (1) retain on file for five years copies of all grade and attendance records for each approved course and must make such records available to the Board upon request;
- (2) retain on file for two years a master copy of each final course examination, and such file copy shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be made available to the Board upon request;
- (3) within 15 days of course completion, but not later than June 30 of each year, submit to the Board a roster of all students who satisfactorily completed the course along with the course evaluations. Rosters and evaluations must be sent together by mail, not by fax or other electronic means; and
- (4) participate in the Board's course and instructor evaluation program.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; July 1, 2003; August 1, 2002.

21 NCAC 57B .0303 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion must reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. A student's grade must be based solely on his or her performance on examinations and on graded homework and class work assignments.

(b) Course completion requirements must include a comprehensive final course examination which covers all prescribed subject areas and which accounts for at least 50 percent of a student's grade for the course. Take-home or open-book final course examinations are prohibited. Schools and course sponsors may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course, however any make up examination must be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the make up examination must be different from those used in the initial examination.

(c) The minimum attendance required for satisfactory course completion is 90 percent of all scheduled classroom hours for the course.

(d) The instructor may offer additional hours of instruction so that students can make up lost hours of instruction.

(e) Students who are taking a prelicensing or precertification course, other than the 15 hour National USPAP course, for continuing education credit are required to sit for the final course examination, but they are not required to pass the examination in order to receive continuing education credit. Students who pass the examination and who comply with the provisions of this Rule shall be given a course completion certificate. Students who do not pass the examination but who otherwise comply with the provisions of this Rule shall be given a certificate of attendance. Students who are taking the course as a result of a conditional dismissal, consent order or order of the Board after a hearing must take and pass the examination.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002.

21 NCAC 57B .0304 COURSE SCHEDULING

(a) All courses must have fixed beginning and ending dates, and schools and course sponsors may not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment is permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Paragraphs (c) and (d) of Rule .0303 of this Section.

(b) Courses may be scheduled in a manner that provides for class meetings of up to eight classroom hours in any given day; however credit for courses shall be limited to 30 classroom hours per seven-day period.

(c) A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of 10 minutes per hour must be scheduled and taken at reasonable times.

(d) Instruction must be given for a minimum of 30 classroom hours for R-1, R-2, G-1, G-2 and G-3, and a minimum of 15 hours for R-3 and USPAP. Instructors shall not accumulate unused break time to end the class early. The time for the final examination shall not be included in the credit hours.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002.

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal prelicensing and precertification courses or courses deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 120 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and either two years' full-time experience as a residential real estate appraiser within the previous five years or three years full time experience as a general real estate appraiser within the previous five years, with at least one-half of such experience being in residential property appraising. Instructors must also be either certified residential or general real estate appraisers.
- (2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-third of such experience being in income property appraising. Instructors must also be certified general real estate appraisers.
- (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area the lecturer is teaching.

(c) Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary;
- (2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate and to respond appropriately to questions from students;
- (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
- (4) The ability to effectively utilize instructional aids to enhance learning;
- (5) The ability to maintain an effective learning environment and control of a class; and
- (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students' backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape in a manner and format which depicts the instructor teaching portions of a prelicensing course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.

(e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act. This inquiry may include consideration of whether disciplinary action or criminal charges are pending.

(f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a reprimand, suspension (whether active or inactive) or a revocation.

(g) Proposed prelicensing or precertification instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, must supply the Board with copies of sample appraisal reports.

(h) Persons desiring to become instructors for prelicensing and precertification courses must file an application for approval with the Board. Board approval of instructors expires on the next June 30 following the date of issuance. Instructors who wish to renew their approval must file an application for renewal of approval annually on or before June 1. There is no fee for application for or renewal of instructor approval. Once an instructor has been approved to teach a specific prelicensing or

precertification course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer prelicensing and precertification courses.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; July 1, 2003; August 1, 2002.

21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction must be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (3) The course instructor(s) must:
 - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification; and
 - (b) either:
 - (i) two years' full-time experience that is directly related to the subject matter to be taught;
 - (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught;
 - (iii) two years' full-time experience teaching the subject matter to be taught; or
 - (iv) an equivalent combination of such education and experience.
- (4) If two or more instructors shall be utilized to teach a course during the approval period and the course shall be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or

- whether the instructor has been convicted of or pleaded guilty to any criminal act.
- (5) The course must be one involving a qualified instructor who, except as noted in Item (6) of this Rule, shall be physically present in the classroom at all times and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons shall not be considered to be the official course instructor and the official course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation.
- (6) A trainee or appraiser may receive up to 14 hours of credit every two years in the period ending on June 30 of each odd numbered year for participation in a course on a computer disk or on-line via the Internet. A sponsor seeking approval of a computer-based education course must submit a complete copy of the course on the medium that is to be utilized and, must make available at the sponsor's expense, all hardware and software necessary for the Board to review the submitted course. In the case of an internet-based course, the Board must be provided access to the course via the internet at a date and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, a computer-based continuing education course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The sponsor of a course on a computer disk must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may periodically log on and off of a computer-based continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. A course completion

certificate must be forwarded to the student as stated in Rule .0607 of this Section, and a course roster must be sent to the Appraisal Board in accordance with Rule .0608 of this Section.

- (7) The course must be an educational program intended to improve the knowledge, skill and competence of trainees, licensed and certified real estate appraisers. Activities not eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, trade conferences or similar activities.
- (8) The course sponsor must certify that the course shall be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; July 1, 2003; August 1, 2002.

21 NCAC 57B .0606 COURSE OPERATIONAL REQUIREMENTS

Course sponsors must at all times assure compliance with the criteria for course approval stated in Rule .0603 of this Section and must also comply with the following requirements relating to scheduling, advertising and conducting approved appraisal continuing education courses:

- (1) Courses must be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day and that includes appropriate breaks for each class session. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.
- (2) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Board for a course is less than the number of scheduled classroom hours for the course, any course advertisement or promotional materials which indicate that the course is approved for appraiser continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Board for the course.
- (3) Course sponsors must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.

- (4) Courses must be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom must be of sufficient size to accommodate comfortably all enrolled students, must contain a student desk or sufficient worktable space for each student, must have adequate light, heat, cooling and ventilation, and must be free of distractions that would disrupt class sessions. Sponsors are required to comply with all applicable local, state and federal laws and regulations regarding safety, health and sanitation. Sponsors shall furnish the Board with inspection reports from appropriate local building, health and fire inspectors upon the request of the Board.
- (5) The course sponsor must require students to attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course, even if the number of continuing education credit hours awarded by the Board for the course is less than the number of scheduled classroom hours. Attendance must be monitored during all class sessions to assure compliance with the attendance requirement. Instruction must be given for the number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (6) Instructors must require reasonable student attentiveness during class sessions. Students must not be permitted to engage in activities that are not related to the instruction being provided.
- (7) Course sponsors for which an application fee is required by Rules .0602(b) and .0611(b) of this Section must fairly administer course cancellation and fee refund policies. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.
- (8) Upon request of the Board, the course sponsor must submit to the Board a videotape in a manner and format which depicts the instructor teaching portions of any continuing education course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.
- (9) Course sponsors shall provide the Board with the dates and locations of all classes the sponsor is or will be offering in the State of North Carolina at least 30 calendar days before such class is offered, unless circumstances

beyond the control of the course sponsor require that the course be rescheduled. If the dates or location of the classes change after such information is provided to the Board, the course sponsor must notify the Board of such changes.

- (10) Course sponsors must participate in the Board's course and instructor evaluation program. Course sponsors must require that students complete a course evaluation form prior to or upon completion of the course. Course sponsors must also send the completed course evaluation forms to the Board together with the roster required pursuant to 21 NCAC 57B .0608.
- (11) Persons desiring to become instructors for continuing education courses must file an application for approval with the Board. Board approval of instructors expires on the next June 30 following the date of issuance. Instructors who wish to renew their approval must file an application for renewal of approval annually on or before June 1. There is no fee for application for or renewal of instructor approval. Once an instructor has been approved to teach a specific course, that person may teach the course for any course sponsor approved by the Appraisal Board to offer continuing education courses.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002.

21 NCAC 57B .0608 SPONSOR REPORTING OF CONTINUING EDUCATION CREDIT

Course sponsors must, within 15 days of course completion but no later than June 30 of each year, submit to the Board a roster of all North Carolina registered trainees, licensed and certified appraisers who satisfactorily completed the course. The roster must be sent by regular mail together with the course evaluation forms required by 21 NCAC 57B .6506(10). Rosters sent by fax or other electronic means shall not be accepted.

History Note: Authority G.S. 93E-1-8(c); 93E-1-1; Eff. July 1, 1994; Amended Eff. July 1, 2005; August 1, 2002.

CHAPTER 61 - THE NORTH CAROLINA RESPIRATORY CARE BOARD

21 NCAC 61 .0308 CONTINUING DUTY TO REPORT

(a) All licensed respiratory care practitioners and provisional licensees are under a continuing duty to report to the Board any and all:

- (1) convictions of, or pleas of guilty or nolo contendere to:
 - (A) any felony;
 - (B) any misdemeanor or other offense, such as fraud, when an element of the crime involves conduct by the licensee which indicates a lack of honesty, integrity, or competence directly relating to the licensee's delivery of respiratory care, including crimes whose elements include violations of Rule .0307(2), (5), (7), (10), (19), (21), (22), (23), (24) and (25) of this Chapter; and
 - (2) the existence of any civil suit which arises out of or is related to the licensee's practice of respiratory care.
- (b) All supervising respiratory care practitioners are under a continuing duty to report to the Board any and all:
- (1) terminations of any respiratory care practitioner for violations of the practice act or Board rules; and
 - (2) violations of the practice act or Board rules by any respiratory care practitioner under his or her supervision.
- (c) The reports required by this Rule must be made within 15 days of the occurrence.

*Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. July 1, 2005.*

TITLE 25 - OFFICE OF STATE PERSONNEL

25 NCAC 01K .0804 MENTORING PROGRAM PARTICIPATION

- (a) The selection process for participants in the Mentoring Program shall be based upon the agency's guidelines.
- (b) The Mentoring Program shall be open to all employees without any form of discrimination in terms of participation because of race, color, religion, sex, national origin, age, or disability.

*History Note: Authority G.S. 126-4;
Eff. July 1, 2005.*

25 NCAC 01K .0805 FUNDING FOR MENTORING PROGRAM

The agency shall provide resources for operation of its Mentoring Program.

*History Note: Authority G.S. 126-4;
Eff. July 1, 2005.*

History Note: Authority G.S. 90-652(2);

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday July 21, 2005, 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, July 18, 2005 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

July 21, 2005
August 18, 2005 September 15, 2005
October 20, 2005 November 17, 2005
December 15, 2005

**RULES REVIEW COMMISSION
JUNE 16, 2005
MINUTES**

The Rules Review Commission met on Thursday, June 16, 2005, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Graham Bell, Jim Funderburk, Thomas Hilliard, Jeffrey Gray, Robert Saunders, Lee Settle, Dana Simpson, and John Tart.

Staff members present were: Joseph DeLuca, Staff Counsel; Bobby Bryan, Rules Review Specialist; and Lisa Johnson, Administrative Assistant.

The following people attended:

Claud Whitener	NC Cemetery Commission
Larry J. Barther	Impact Youth and Family Services
Robert Ouellete	NC Appraisal Board
Kelly Schofield	Youth Quest Inc.
Stephen Dirksen	Board of Funeral Service
Peggy Oliver	Office of State Personnel
Charlene Shabazz	Office of State Personnel
Julie Brincefield	OAH
Dana Sholes	OAH
Sally Hunter	Office of State Budget and Management
Dedra Alston	Child Care Commission
Lorie Pugh	Child Care Commission
Nancy Pate	DENR
Frank W. Folger	Department of Insurance
Ellie Sprenkel	Department of Insurance
Donald Grantham	Omega ILS
Delwin Clark	Omega ILS
Tyrone McRae	Omega ILS
Jesse Chavis	RDI
Chris Simmons	United Family Network Inc.

Rosemary Nurankwo	Eagle Healthcare Service Inc.
Felicia Onuorali	Blessed Home Health Care
Leslie Merritt	OSA
David Nance	OSA
David McLeod	Department of Agriculture
Adrienne Elliott	Adrienne's House LLC
Ezume Asirn	Agape House
Dathan Bodie	Golden Rule of Charlotte

APPROVAL OF MINUTES

The meeting was called to order at 10:02 a.m. with Vice-Chairman Funderburk presiding.

He reminded the Commissioners of their obligations under the governor's Executive Order #1 to refrain from taking part in consideration of any rules for which they have or may appear to have a conflict of interest.

Vice-Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the May 19, 2005 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

11 NCAC 08 .0910: Manufactured Housing Board – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 61 .0308: Respiratory Care Board – The Commission approved the rewritten rule submitted by the agency.

25 NCAC 01K .0804; .0805: Personnel Commission – The Commission approved the rewritten rules submitted by the agency.

LOG OF FILINGS

Vice-Chairman Funderburk presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

04 NCAC 05C .0201: Cemetery Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. Item (1) is unclear and appears to be beyond the authority of the Cemetery Commission. The item requires a request for a waiver if an individual, officer, or partner has not been licensed as a cemetery salesman for a period of two years. First, there does not appear to be any requirement in statute or rule for two years experience, nor does there appear to be any authority for the Commission to establish such a requirement. The statutory requirements in G.S. 65-57(e) are good character and general fitness. Since there is no requirement for the experience, it makes no sense to require a request for a waiver. If there is authority for the requirement, it is not clear if one year general cemetery experience by itself is enough to receive a waiver. If not, it is not clear what the standards are. This objection applies to existing language in the rule.

09 NCAC 03M .0201: Office of State Budget and Management – This rule was withdrawn by the agency.

09 NCAC 03M .0205: Office of State Budget and Management – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (b), it is not clear what State cost principles circulars the rule is referring to, and if it is referring to some created by the Office of State Budget and Management, but not adopted as rules, there is no authority to require compliance with them. It is also not clear what other cost principles are applicable.

10 NCAC 09 .2608: Child Care Commission – The Commission objected to the rule due to ambiguity. In (a), it is not clear what other care providers would be considered “relevant” and who are therefore required to collaborate and sign off on an individualized plan of care. In (b), it is not clear what would constitute a “significant change”.

10A NCAC 27G .1301; .1701-1708; .1901-.1904: Commission for Mental Health – The Commission received two letters requesting that these rules be sent to the Office of State Budget and Management to determine whether the rules have a substantial economic impact. The rules will be sent to OSBM with that request.

Commissioners Gray did not participate in the discussion or vote concerning the Alarm Systems Licensing Board.

21 NCAC 57A .0204: Appraisal Board – The Commission objected to this rule based on ambiguity in (i). It is unclear for how long the extension may be granted, and it is unclear what constitutes a “similar condition” that might entitle the applicant to an extension of

time. It is also unclear whether the Appraisal Board truly means for this to be discretionary and, if so, what limits they might perceive on the discretion.

TEMPORARY RULES

Vice-Chairman Funderburk presided over the review of the log of temporary rules. All rules were approved unanimously with the following exceptions:

15A NCAC 01C .0412: DENR – The Commission objected to the temporary rule due to lack of statutory authority. The rule establishes minimum criteria designating actions for which the preparation of environmental documents is not required pursuant to the State Environmental Policy Act. G.S. 113A-11 states that in addition to all other rule-making requirements, rules establishing minimum criteria are subject to approval by the Secretary of Administration. The rule has not been so approved and there is therefore no authority for the rule.

Commissioner Gray did not participate in the discussion or vote concerning the Board of Funeral Service.

COMMISSION PROCEDURES AND OTHER BUSINESS

Commissioner Tart expressed his concerns about the Community College System and Board of Education being exempt from rulemaking. He stated he had spoken with several members of the House and asked commission members if they would express their concerns to the Senate as well.

The Commission discussed no new business.

The meeting adjourned at 11:50 a.m.

The next meeting of the Commission is Thursday, July 21, 2005 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

AGENDA
RULES REVIEW COMMISSION
July 21, 2005, 10:00 A.M.

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow-Up Matters
 - A. Cemetery Commission – 04 NCAC 5C .0201 (Bryan)
 - B. Office of State Budget and Management – 09 NCAC 03M .0205 (Bryan)
 - C. Child Care Commission – 10A NCAC 09 .2608 (Bryan)
 - D. Commission of Mental Health – 10A NCAC 27G .1301; .1701-.1708; .1901-.1904 (DeLuca)
 - E. Appraisal Board – 21 NCAC 57A .0204 (DeLuca)
- IV. Review of Rules (Log Report #223)
- V. Review of Temporary Rules
 - DENR - 15A NCAC 1C .0412 Temporary Rule Objection 6/16 (Bryan)
- VI. Commission Business
- VII. Next meeting: August 18, 2005

**Commission Review/Permanent Rules
Log of Filings
May 21, 2005 through June 20, 2005**

* Approval Recommended ** Objection Recommended *** Other

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 41 are Health and Epidemiology rules adopted by the Commission for Health Services. The rules in Subchapter 41A concern communicable disease control including rules about reporting (.0100); control measures (.0200 and .0300); immunizations (.0400); purchase and distribution of vaccine (.0500); special program and project funding (.0600); licensed nursing home services (.0700); grants and contracts (.0800); and the biological agent registry (.0900).

Method of Reporting	10A NCAC 41A .0102
Amend/*	

SOCIAL SERVICES COMMISSION

The rules in Chapter 71 are from the Social Services Commission and cover adult and family support. The rules in Subchapter 71S cover service cost sharing including purpose (.0100); and service cost sharing requirements (.0200).

Purpose of Consumer Contributions	10A NCAC 71S .0101
Amend/**	
Services Subject to Consumer Contributions	10A NCAC 71S .0201
Amend/**	
Initial and Annual Reviews	10A NCAC 71S .0202
Amend/**	
Annual Review	10A NCAC 71S .0203
Repeal/*	
Service Cost Sharing Form	10A NCAC 71S .0205
Repeal/*	
Service Cost Sharing Schedule	10A NCAC 71S .0206
Repeal/*	
Collection of Cost Contributions Revenue	10A NCAC 71S .0207
Amend/*	
Termination	10A NCAC 71S .0208
Amend/*	

INSURANCE, DEPARTMENT OF

The rules in Chapter 12 cover life and health insurance including general provisions applicable to all rules and all life and health insurance policies (.0100 - .0300); general life insurance provisions (.0400); general accident and health insurance provisions (.0500); replacement of insurance (.0600); credit insurance (.0700); medicare supplement insurance (.0800); long-term care insurance (.1000); mortgage insurance consolidations (.1100); accelerated benefits (.1200); small employer group health coverage (.1300); HMO and point-of-service coverage (.1400); uniform claim forms (.1500); retained asset accounts (.1600); viatical settlements (.1700); and preferred provider plan product limitations (.1800).

Purpose and Definitions	11 NCAC 12 .0815
Repeal/*	
Applicability and Scope	11 NCAC 12 .0816
Repeal/*	
Policy Definitions and Terms	11 NCAC 12 .0818
Repeal/*	
Policy Provisions	11 NCAC 12 .0819
Repeal/*	

RULES REVIEW COMMISSION

Minimum Benefit Standards Before January 1, 1992 Repeal/*	11	NCAC	12	.0820
Standards for Claims Payment Repeal/*	11	NCAC	12	.0821
Loss Ratio Standards and Refund or Credit of Premium Repeal/*	11	NCAC	12	.0822
Required Disclosure Provisions Repeal/*	11	NCAC	12	.0824
Requirements for Application Forms and Replacement Coverage Repeal/*	11	NCAC	12	.0825
Filing Requirements for Advertising Repeal/*	11	NCAC	12	.0826
Standards for Marketing Repeal/*	11	NCAC	12	.0827
Appropriateness of Recommended Purchase/Excessive Insurance Repeal/*	11	NCAC	12	.0828
Reporting of Multiple Policies Repeal/*	11	NCAC	12	.0829
Prohibitions in Replacement Policies or Certificates Repeal/*	11	NCAC	12	.0830
Permitted Compensation Arrangements Repeal/*	11	NCAC	12	.0834
Minimum Benefit Standards on or After January 1, 1992 Repeal/*	11	NCAC	12	.0835
Standard Medicare Supplement Benefit Plans Repeal/*	11	NCAC	12	.0836
Open Enrollment Repeal/*	11	NCAC	12	.0837
Filing and Approval of Policies/Certificates and Premium ... Repeal/*	11	NCAC	12	.0838
Medicare Select Policies and Certificates Repeal/*	11	NCAC	12	.0839
High Deductible Plans Repeal/*	11	NCAC	12	.0840
Creditable Coverage Repeal/*	11	NCAC	12	.0841
Guaranteed Issue for Eligible Persons Repeal/*	11	NCAC	12	.0842
NAIC Medicare Supplement Insurance Minimum Standards Mode... Adopt/*	11	NCAC	12	.0843

The rules in Chapter 16 are from the Actuarial Division and relate to fire and casualty statistical data (.0100); individual accident and health insurance (.0200); credit life accident and health rate deviation (.0400); credit unemployment minimum loss ratio standard (.0500); health maintenance organization filings and standards (.0600); health maintenance organization claim reserve data requirements (.0700).

Data Requirements for Rate Revision Submission Amend/*	11	NCAC	16	.0205
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CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 09 are from the Criminal Justice Education and Training Standards Commission. This Commission has

primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs). The rules in Subchapter 09B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Training Course Enrollment 12 NCAC 09B .0204
Amend/*

Criminal Justice Instructor Training 12 NCAC 09B .0209
Amend/*

The rules in Subchapter 9F cover concealed handgun training program.

Instructor Qualifications 12 NCAC 09F .0104
Amend/**

Sanctions 12 NCAC 09F .0106
Amend/**

SOIL AND WATER CONSERVATION COMMISSION

The rules in Chapter 6 are from the Soil and Water Conservation Commission and are intended to further the state policy of conserving soil resources and preventing soil erosion and floodwater and sediment damages to the farms, forests, and grazing land assets of the state. They cover the organization and operation of the Commission (6A); operation of district programs (6B); the small watershed program (6C) including loans (.0100), applications (.0200), plans (.0300) and grants (.0400); the agriculture cost share program for nonpoint source pollution controls (6E); animal waste management systems non-discharge rules (6F); conservation reserve enhancement program (CREP)(6G); and approval of technical specialists and BMPs for water quality protection (6H).

Allocation Guidelines and Procedures 15A NCAC 06E .0103
Amend/**

Technical Assistance Funds 15A NCAC 06E .0106
Amend/*

REVENUE, DEPARTMENT OF

The rules in Chapter 5 are the rules dealing with the corporate income tax and franchise tax. The rules in Subchapter 5C are corporate income tax rules and include corporations subject to the tax (.0100); computation of income (.0300); interest income on government obligations (.0400); allocation of income taxable in another state (.0600); apportionable and nonapportionable income (.0700); property factor (.0800); payroll factor (.0900); sales factor (.1000); amortization of bond premiums (.1400); net economic loans carry over (.1500); partnerships and the corporate partner (.1700); extension of time for filing return (.2000); dissolutions and withdrawals (.2100); and domestic international sales corporation (.2400).

Attribution/Expenses/Nontaxable Income 17 NCAC 05C .0304
Amend/*

LANDSCAPE ARCHITECTS, BOARD OF

The rules in Chapter 26 are from the N. C. Board of Landscape Architects and include statutory and administrative provisions (.0100); practice of registered landscape architects (.0200); examination and licensing procedures (.0300); rules, petitions and hearings (.0400); and board disciplinary procedures (.0500).

Unprofessional Conduct 21 NCAC 26 .0209
Amend/*

Dishonest Practice 21 NCAC 26 .0210
Amend/*

Incompetence 21 NCAC 26 .0211

Reinstatement After Revocation Amend/**	21	NCAC	26	.0306
Disciplinary Review Adopt/**	21	NCAC	26	.0510

NURSING, BOARD OF

The rules in Chapter 36 are the rules of the Board of Nursing including rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); implementation of Nurse Licensure Compact Act (.0700); and approval and practice parameters for nurse practitioners (.0800).

Definitions Amend/*	21	NCAC	36	.0120
Clinical Nurse specialist Practice Amend/**	21	NCAC	36	.0228
Listing and Renewal Amend/*	21	NCAC	36	.0404

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter*

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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ACUTIONEERS LICENSING BOARD</u>				
Robert H. Rankin, Jr., NCAL #6727 v. Auctioneers Licensing Board	04 CFA 1497	Mann	05/13/05	
<u>CRIME VICTIMS COMPENSATION</u>				
Rhonda Lynnette Rhodes v. NC Crime Victims Compensation Program	05 CPS 0484	Gray	06/23/05	
<u>BOARD OF ELECTIONS</u>				
Republican Governors Association & Holly Lynn Koerber v. State Board of Elections	04 BOE 2051	Morrison	06/30/05	20:02 NCR 100
<u>HEALTH AND HUMAN SERVICES</u>				
Jeffrey D. Cannon v. DHHS, Walter B Jones ADOACT	03 DHR 0488	Conner	06/29/05	
Geana E. Anderson v. DHHS, Division of Facility Services	03 DHR 2063	Gray	06/24/05	
Otis D. Wyche, Jr., v. DHHS, Div. of Facility Services	04 DHR 0294	Chess	05/16/05	
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 0539 ¹	Mann	06/03/05	
Jamie Lynn Hensley v. DHHS, Div. of Facility Services	04 DHR 0917	Wade	05/16/05	
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 1413 ¹	Mann	06/03/05	
Wake Forest University Health Sciences (Lessor) & Huntersville Dialysis Center of Wake Forest University d/b/a Huntersville Dialysis Center (Lessees)v. DHHS, Div. of Facility Services, CON Section and Bio-Med. Applications of NC, Inc. and Total Renal Care of North Carolina, LLC	04 DHR 1406	Conner	05/18/05	
Dawn Allison v. Div. of Medical Assistance	04 DHR 1444	Mann	05/27/05	
Gaile Thomas v. DHHS, Division of Facility Services	04 DHR 0110	Lassiter	06/21/05	
Tara Sue Clark-Grubb v. Guilford County Dept. of Social Services, Laura Blackwell, Tonya Dupree Freeman, Stacy Taylor-Greene	05 DHR 0243	Conner	06/10/05	
Teresa Sharon Pyles v. Mecklenburg Co. DSS, Kuralt Centre	05 DHR 0264	Wade	06/20/05	
Belinda Darnell Hawkins v. DHHS, Div of Facility Services	05 DHR 0265	Elkins	06/09/05	
Cherry Bruce Kearney, Operator 7 th Heaven Day Care v. DHHS, Div of Facility Services	05 DHR 0382	Wade	06/20/05	
Tammy Trejo v. Office of Administrative Hearings	05 DHR 0452	Gray	06/15/05	
Erdem Narter v. DHHS, Division of Facility Services	05 DHR 0463	Mann	06/16/05	
D'Jetta D Miley for Jordana Correa v. Wake Co. Dept. of Human Services	05 DHR 0570	Lassiter	06/02/05	
William Henry Lane v. DHHS, Div. of Medical Assistance	05 DHR 0571	Chess	05/31/05	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>DEPARTMENT OF JUSTICE</u>				
David Upchurch v. Criminal Justice Education and Training Stds. Comm.	04 DOJ 1157	Lassiter	05/13/05	
Edward Keith Royal v. Criminal Justice Education & Training Stds. Comm.	04 DOJ 2194	Gray	06/28/05	
Teddy Lynn Warren v. Criminal Justice Education & Training Stds. Comm.	05 DOJ 0505	Conner	06/23/05	
Amanda Gayle Talbert v. Criminal Justice Educ. and Training Stds. Comm.	05 DOJ 0648	Lassiter	06/15/05	

CONTESTED CASE DECISIONS

ENVIRONMENT AND NATURAL RESOURCES

Robert L. Grissett v. DENR	04 EHR 1237	Chess	05/16/05
Mathew and Kathy Johnson v. DENR	04 EHR 2163	Conner	06/01/05
Affordable Appliance, Jack Steale v. DENR	04 EHR 2164	Conner	05/31/05

OFFICE OF STATE PERSONNEL

Eddie Ray Creech v. Department of Corrections	03 OSP 0831	Wade	05/17/05
Kathy Sledge v. Department of Corrections	03 OSP 1092	Conner	06/27/05
Thomas A Horton v. Dept. of Crime Control and Public Safety	05 OSP 0389	Lassiter	06/02/05
Anthony Bruce Allen v Department of Transportation	05 OSP 0418	Chess	06/09/05
Derek H. Babson v. Department of Transportation	05 OSP 0515	Chess	05/31/05
Gloria Woodard v. Lyndo Tippet, Secretary, NC DOT	05 OSP 0588	Lassiter	06/24/05
Milton W. Nobles v. DHHS/Dorothea Dix Hospital	05 OSP 0815	Gray	06/15/05

SECRETARY OF STATE

Monica A Chitwood v. Dept. of Secretary of State	05 SOS 0237	Conner	06/17/05
Janice W. Craver v. Dept. of Secretary of State	05 SOS 0286	Conner	06/06/05

UNC HOSPITALS

Amanda Mathis Miller v. UNC Hospitals	05 UNC 0247	Lassiter	06/02/05
Darian C. Jones Ph.D v. UNC Hospitals	05 UNC 0315	Lassiter	06/02/05
Tereasa King v. UNC Hospitals	05 UNC 0376	Lassiter	06/02/05

1 – Combined Cases

had the responsibility to determine whether to impose a penalty and in what amount. N.C. Gen. Stat. §§ 163-278.22(14) and -278.34.

3. Following the September 9 hearing, the State Board, upon consideration of the evidence presented to it, found the following facts:

- a. The RGA is registered with the Internal Revenue Service as a political organization exempt from federal taxation pursuant to § 527 of the Internal Revenue Code.
- b. The purpose of the RGA as stated on its filings with the IRS is as follows: “The Republican Governors Association supports the election of Republican Governors and other nonfederal candidates, promotes Republican policies, and engages in other state election activities.”
- c. The RGA maintains a web site in the course of its regularly conducted association activity, with an Internet address of www.rga.org. The RGA routinely publishes information about its purposes and activities on this web site, relevant portions of which were reviewed by the State Board and include the following statements:
 - i. “[T]he RGA assists in the election of Republican gubernatorial candidates and the re-election of incumbent governors.”
 - ii. “The RGA mission is as follows:
 1. To assist in the election of Republican gubernatorial candidates and the re-election of incumbent Republican Governors.
 2. To utilize the talent, knowledge, creativity, of the governors to effectively debate and shape public policy on issues affecting the states; and
 3. To enable Republican Governors to express, develop and promote the philosophy of the Republican party at the state and local levels nationwide.”
 - iii. “In 2003, the RGA spent approximately \$10 million on the four governors’ races, winning three and increasing the Republican majority to 28 governors representing nearly 60 percent of the population. In 2004 there will be eleven (11) gubernatorial elections.”
- d. In solicitations posted on the web site, the RGA stated:

“There is no statutory limit on the amount a corporation, individual or PAC may contribute to the RGA. Contributions may be corporate, PAC or personal check. *All RGA expenditures will be made in compliance with state laws.*” and “Your support will help the RGA win battleground states in the all important 2003/2004 elections. Thank you in advance for supporting our Republican Governors and Candidates.”

(Emphasis original)

- e. The RGA’s web site also included the following statements in press releases, reprinted news articles and other documents on the web site:
 - i. “The Republican Governors Association (RGA) has passed the \$10 million fund-raising mark for 2004 and is poised to assist Republican governors and gubernatorial candidates across the country this fall, including in the hotly contested states of Indiana, Missouri, *North Carolina*, and Washington. . . . There’s a tremendous amount of interest in this year’s governor’s races and the RGA is poised to provide strong support to Republicans in these battleground states. . . . The RGA is the largest Republican 527 organization in the country and raised \$33 million in the previous two years (2002-03) while helping Republicans win 25 of the 40 governors’ races and defeating five of six Democratic governors seeking reelection.” (August 4, 2004 Press Release; emphasis added)
 - ii. “Republican Governors Association Executive Director Edward T. Tobin today said the RGA is on a pace to break its previous fundraising record for a single year following Monday night’s highly successful 10th Annual America’s Majority Celebration. The reception raised \$7.3 million, a record for an RGA event. . . .

‘Thanks to the generous support we’ve received, the RGA will be actively involved in the nation’s gubernatorial races this year,’ Tobin said.” (February 26, 2004 Press Release)

- iii. “‘The RGA will once again be a major factor in the nation’s gubernatorial campaigns,’ RGA Executive Director Edward T. Tobin said. ‘We’re on a record fundraising pace and that’s going to enable the RGA to provide strong support to our Republican incumbent governors, challengers and competitors for open seats.’” (April 19, 2004 Press Release)
- iv. “‘The Republicans’ fundraising success is the first sign in the 2004 election that Republican activists and donors are energized and *determined to defeat Mike Easley* in November. The Republican Governors Association (RGA) *has declared North Carolina one of three key battleground states in 2004.*” (April 27, 2004 Press Release; emphasis added)
- v. “‘We’ve taken four out of four Democratic gubernatorial incumbents in the South over the past two years,’” said RGA spokesman Harvey Valentine, “*and we’re hoping to make Governor Easley number five.*” (*Charlotte Observer*, April 5, 2004; emphasis added)
- vi. In the *RGA Chairman’s Report* posted on the web site: “Democrat-held seats will be contested in Delaware, Indiana, Missouri, *North Carolina*, Washington, and West Virginia. Several of these contests will provide opportunities for Republican pick-ups. . . . As in 2003, the RGA will evaluate each race and determine how it can best work to assist the Republican candidate.” (From *Looking Ahead: The Campaigns of 2004*; emphasis added)
- f. The explanation of the “RGA Under BCRA” prepared by the RGA’s counsel, Patton Boggs, LLP, Attorneys at Law, and posted on the web site, stated: “Since [the RGA] is no longer a “national party committee”, the RGA’s legal status under a state’s election laws may have changed. (It is most likely now a “PAC” under a state’s law).” (3 Sept. 2004 T., Ex. 1)
- g. The RGA, which had not registered as a political committee in North Carolina and had not filed any reports required of political committees, began running political advertisements featuring Patrick Ballantine, Republican candidate for Governor, on August 16, 2004, with an advertisement entitled, “New Ideas.” The voice-over for that advertisement was as follows:

“Do you believe North Carolina can do better?”

Patrick Ballantine does.

Not long ago, North Carolina was a leader in jobs and education achievement; now that’s lost. The Charlotte Observer says Ballantine embraces “new ideas.” (July 9, ‘04) And the experience to make a difference.

Patrick Ballantine . . . solid values; a new, positive momentum to help make North Carolina become competitive again.

More and better jobs, education that works – that’s the Ballantine agenda.

North Carolina can do better.”

The final scene of this advertisement had a picture of Ballantine next to a graphic in the shape and appearance of a bumper sticker or campaign sign, which contained the slogan, “Patrick Ballantine for North Carolina.” Directly below these words were the words “Paid for by Republican Governors Association” in letters larger than required by disclosure requirements.

- h. After the *Charlotte Observer* protested the accuracy of that portion of the advertisement that purported to quote the newspaper, the RGA revised it on August 24, 2004, and entitled the revised advertisement “Agenda.” The advertisement was also altered to remove the bumper sticker-style graphic “Patrick Ballantine for North Carolina,” replacing that slogan with “The Ballantine Agenda.”

- i. The RGA used funds donated by corporations and by individuals in amounts greater than \$4,000 to produce and distribute the first advertisement. James Kane, Chief Financial Officer for the RGA, stated in an affidavit filed with the State Board that “[t]he RGA used funds donated by corporations to produce each advertisement.” Corporate contributions and contributions from individuals had been commingled in the same account. The RGA admitted spending \$196,260.42 to produce and distribute the advertisement “New Ideas.”
4. The complainant in the proceeding before the State Board relied only on the first advertisement before its revision to support his allegations that the RGA failed to comply with North Carolina campaign reporting statutes, and the State Board considered only that advertisement in its resulting Order.
5. The State Board members reviewed the “New Ideas” advertisement.
6. While Patrick Ballantine was at the time the advertisement ran the Republican candidate for Governor of North Carolina within the meaning of N.C. Gen. Stat. § 163-278.6(4) and the “New Ideas” advertisement clearly identified him and showed him in campaign-style settings, it did not mention that he was a candidate for governor or call upon viewers to vote for him. He did not become the Republican nominee for governor until several days after the July 20 primary, which was less than one month before the advertisement first ran.
7. In its Response to the Petition filed with the State Board on August 27, 2004 (Ex. C in Exhibit Index), the RGA admitted in paragraph 11 the allegation that “[t]he RGA solicits and receives corporate contributions as well as individual contributions and imposes no limits on the size of the contributions that it solicits.” The RGA provided pages of reports filed with the IRS in which it documented receipt of contributions from corporations intermingled with contributions from individuals which were in many cases above the amounts authorized under N.C. Gen. Stat. § 163-278.13. These contributions were solicited and received by the RGA in the time period leading up to, during and after the running of the first Ballantine advertisement. Counsel for the RGA represented to the State Board in a letter dated September 8, 2004, “determining which sources of funds were used to pay for the costs of the aforementioned ad is an impossible task as the Republican Governors Association (“RGA”) receives donations from all over the country that are in no way earmarked for activities in any states, let alone for the costs of particular media ads.” (Ex. I of Exhibit Index) In addition, counsel for the RGA acknowledged that it had not segregated corporate from individual contributions, placing them in a commingled account. (Ex. L, pp. 6-7, of Exhibit Index)
8. The RGA spent \$196,260.42 in preparing and distributing the first Ballantine advertisement. The staff of the State Board spent approximately \$1,000 in time devoted to the investigation of the complaint.
9. Based on the undisputed facts described above, the State Board unanimously(5-0) concluded at its September 3 hearing, *inter alia*, that:
 - a. the advertisement “New Ideas” constituted support of the election of a clearly identified candidate (Patrick Ballantine) within the meaning of N.C. Gen. Stat. § 163-278.14A(a)(1);
 - b. the production and distribution of the advertisement “New Ideas” constituted an “expenditure” within the meaning of N.C. Gen. Stat. § 163-278.6(9);
 - c. that the RGA violated N.C. Gen. Stat. § 163-278.19 when it paid for the production and distribution of the advertisement from funds contributed by corporations and that it violated N.C. Gen. Stat. § 163-278.13 when it paid for the production and distribution of the advertisement from funds contributed by individuals in excess of North Carolina’s contribution limits;
 - d. the RGA has as a major purpose the support of Republican candidates for Governor of North Carolina and has made expenditures in North Carolina to support the election of Patrick Ballantine; and
 - e. the RGA was a political committee under N.C. Gen. Stat. § 163-278.6(14) as of the date of its production and distribution of its first advertisement in North Carolina.
10. Based on the undisputed facts described above, the State Board in a 3(Democrats)-2(Republicans) vote, concluded at its September 9 hearing, *inter alia*, that:
 - a. the RGA pay a civil penalty of \$196,260.42 (the amount spent on the express advocacy advertisement) to the State Board for deposit in the Civil Penalty and Forfeiture Fund of North Carolina and be assessed an additional \$1,000 to be paid to the State Board for the costs of investigation by its staff of this matter, which penalties were required to

either be paid or contested by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes within 30 days of service of the State Board's Order;

- b. the RGA file, within ten days of the service of the Order, the forms and information required to register as a political committee in North Carolina and appoint an assistant or deputy treasurer who is a resident of North Carolina with authorization to produce whatever records relating to North Carolina political activity the State Board deems necessary; and
 - c. in order for the RGA to fund any future activities as a political committee in North Carolina, it must establish and use a segregated fund in which is deposited only individual contributions that do not exceed the amounts permitted under N.C. Gen. Stat. § 163-278.13.
11. Petitioner filed a Petition for a Contested Case Hearing on November 12, 2004, against Respondents SBE, Attorney General Roy Cooper and Colon Willoughby, District Attorney for the 10th Judicial District, challenging the civil penalty levied for alleged violations of N.C. Gen. Stat. §§ 163.278.13 and 163.278.19, which prohibit a "political committee" from accepting contributions from corporations, and from individuals in excess of \$4,000 per election.
 12. Before broadcasting the "New Ideas" advertisement, the RGA relied upon the advice of counsel that this advertisement was an issues ad which did not support or oppose the nomination or election of one or more clearly identified candidates under N.C. Gen. Stat. § 163-278.14A. The relevant graphics portion of the advertisement included the phrase, "Patrick Ballantine for North Carolina" within a rectangle, along with the disclaimer, "Paid for [by] the Republican Governors Association," which is required by a Federal Communications Commission regulation. 47 C.F.R. § 73.1212. The FCC regulation required the disclaimer to use "letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds."
 13. The RGA's total disbursement activity during the four-year "election cycle" as reported to the IRS, was at least \$40,332,400.00¹. Thus, the amount spent on the "New Ideas" advertisement, \$196,260.42, was less than 0.48% of the RGA's total disbursement activity during the election cycle.
 14. During the same relevant time period, in August and early September, 2004, the State Capital Media Project (an association of former Democratic governors that is also organized under section 527 of the Internal Revenue Code "to run independent issue ads in targeted states ... featur[ing] the differences between Democratic and Republican Governors and Gubernatorial candidates on the critical issues in their states," broadcast the following television advertisement in North Carolina:

"Washington's bad trade deals continue to send tens of thousands of North Carolina jobs overseas....

...yet here in North Carolina, Patrick Ballantine voted to drastically cut worker retraining programs by hundreds of millions of dollars

According to the Winston Salem Journal, Ballantine would "Do nothing for laid-off workers"

Learn more about Patrick Ballantine's votes against job creation: [contained within a rectangle]

... Log onto BallantineVotesAgainstJobs.com...."
 15. On October 7, 2004, the SBE ruled by a 3(Democrats) to 2(Republicans) vote that the State Capital Media Project ("SCMP") advertisement did not "oppose" Patrick Ballantine's candidacy and thus the group was not a political committee. SBE Chairman Larry Leake, who broke a 2-2 tie with his vote, described the legal analysis regarding the SCMP advertisement as "whether the average North Carolinian viewing that ad would conclude that that's an effort to impact the governor's race" and that "there has to be an effort to tie the advertisement to an election." The State Board members also reviewed this advertisement.
 16. On October 13, 2004, after consulting with District Attorney Colon Willoughby, the SBE issued a written order assessing the aforementioned civil penalty which contained no finding or conclusion that RGA intentionally took illegal donations.

¹ Total expenditures during the election cycle actually exceeded this figure because disbursements aggregating \$500 or less during a reporting period do not have to be itemized and reported to the IRS. See IRS Form 8872 Instructions, <http://www.irs.gov/pub/irs-pdf/i8872.pdf>.

17. The SBE's October 13, 2004, Order relied upon the fact that the RGA is an Internal Revenue Code section 527 "political organization" and that one of the several purposes mentioned in the RGA's IRS Form 8871 registration filing was that it supports the election of Republican governors. The SBE Order also identified pages on the RGA's Web site indicating that it was soliciting funds to win battleground states in the 2003-2004 elections and was "poised to assist" Republican gubernatorial candidates in North Carolina, among several other "battleground" states. The SBE Order also referenced a page on the RGA's Web site containing portions of a memorandum from its legal counsel stating that, since the RGA is no longer a national party committee as it was before the passage of the congressional Bipartisan Campaign Reform Act, it is "most likely now a 'PAC' under a state's election laws." That same page on the RGA's Web site also included a statement that "[a]ll RGA expenditures will be made in compliance with state laws."
18. Attached to the SBE's October 13, 2004, written Order was a Notice of Emergency Meeting of the SBE scheduled for the next day. At this October 14, 2004, meeting, the SBE issued an oral Cease & Desist Order, decreeing that the RGA "cease and desist all electioneering activity in North Carolina until you [register as a PAC] and that you cease receiving contributions and making expenditures until you do so."
19. The RGA broadcast new advertisements on October 14 and 15, 2004, that had already been scheduled. On October 15, 2004, counsel for the RGA received a written CEASE AND DESIST ORDER, decreeing that it not "receiv[e] contributions and mak[e] expenditures in North Carolina until its delinquent reports have been filed and it has otherwise complied with the requirements of a political committee under Chapter 163 of the North Carolina General Statutes."
20. Attached to the written October 15, 2004, SBE Order was a copy of a letter from Colon Willoughby, District Attorney in North Carolina's Tenth Prosecutorial District, to all "General Managers of media outlets" informing them that they would be "aiding and abetting the violation of campaign reporting laws" if they accepted funds and ran the RGA's advertisements, "regardless of content."
21. On Friday evening, October 15, 2004, the RGA instructed all broadcasting stations to pull its advertisements because of the SBE's CEASE AND DESIST ORDER and the Willoughby letter.

CONCLUSIONS OF LAW

1. Pursuant to N.C. Gen. Stat. § 163-278.34(e), an assessment of a civil penalty by the State Board of Elections for late filings of campaign finance reports or for making or accepting illegal campaign contributions can be contested "by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes." Notably, the petition must be filed against the State Board of Elections, which assesses a civil penalty. District Attorney Colon Willoughby did not assess a civil penalty against Petitioners nor is he an agency or person defined in G. S. 150B-2(1a), so there is no jurisdiction over him and he is hereby dismissed as a party. As to Attorney General Roy Cooper, he is also dismissed as a party since he will not be requested to take any action to collect the civil penalty if Petitioners prevail in a final agency decision or during judicial review of such decision.
2. "The subject matter of a contested case hearing by the ALJ is an agency decision." *Britthaven, Inc. v. North Carolina Dept. Of Human Res.*, 118 N.C. App. 179, 382, 455 S.E.2d 455, 459, *disc. review denied*, 341 N.C. 418, 461 S.E.2d 754 (1995). "Under N.C. Gen. Stat. § 150B-23(a), the ALJ is required to determine whether the petitioner has met its burden in showing that the agency substantially prejudiced petitioner's rights, and that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule."
3. In assessing the \$196,260.42 civil penalty against Petitioner RGA, the State Board of Elections acted erroneously and failed to act as required by law or rule.
4. The Governor of North Carolina appoints the five members of the State Board of Elections who are required to take an oath that they will support the Constitutions of North Carolina and the United States which provide that no person shall be denied equal protection of the laws. The State Board's worldwide Web site states that **the agency's mission is to promote consistent administration and equal application of all elections and campaign finance laws, rules, and regulations.**
5. The SBE's voting to assess a civil penalty against the RGA seven days before finding that the anti-Ballantine advertisement broadcast by the SCMP did not "oppose" Patrick Ballantine, and its chairman signing an order assessing the penalty seven days after the latter finding, was not equal treatment under the law, which is a failure to act as required by law. The SCMP advertisement included an anti-Ballantine message within an analogous "bumper sticker-style image" that had formed a basis for the SBE's contrary determination with respect to the RGA's speech. Both 30 second ads by 527s ran during the beginning of the 2004 general election campaign in North Carolina. I have reviewed both ads very closely and the only clear

distinction which I find is that one supported Patrick Ballantine while the other opposed him. One conveyed a very positive image of him, while the other was a negative political spot against him.

6. Under the relevant statutory definition, a North Carolina “political committee” includes only an organization that accepts anything of value to “make . . . expenditures and has one or more of the following characteristics: . . . d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.” N.C. Gen. Stat. § 163-278.6(14) (emphasis added).
7. “Expend” or “expenditure” is defined as “any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure.” N.C. Gen. Stat. § 163-278.6(9) (emphasis added).
8. “An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it expends . . . during an election cycle more than three thousand dollars (\$3,000).” Id. (emphasis added.) However, the “presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle.” Id. (emphasis added).
9. “Candidate” means any individual who has qualified as a candidate with respect to a North Carolina public office listed in Gen. Stat. § 163-278.6(18). N.C. Gen. Stat. § 163-278.6(4). Consequently, for the purpose of determining the RGA’s “major purpose” under N.C. Gen. Stat. § 163-278.6(14)(d), a “candidate” does not include candidates for Federal office or for public offices in states other than North Carolina.
10. “Election cycle means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office.” N.C. Gen. Stat. § 163-278.6(7c). Thus, in this contested case, the election cycle began on January 1, 2001, and ended on December 31, 2004. Consequently, for the purpose of determining the RGA’s “major purpose” under N.C. Gen. Stat. § 163-278.6(14)(d), the RGA’s total disbursement activity between January 1, 2001, and December 31, 2004, is the proper consideration.
11. The RGA spent more than \$3,000 on the “New Ideas” advertisement and thus it is presumed to have had a “major purpose to support or oppose the nomination or election of one or more clearly identified candidates.” N.C. Gen. Stat. § 163-278.6(14)(d). Nonetheless, the RGA has rebutted any “major purpose” presumption because the \$196,260.42 giving rise to the presumption constituted less than 0.48% of the RGA’s activities during the four-year “election cycle” as defined by N.C. Gen. Stat. § 163-278.6(7c). Interpreting this minute percentage to be a “major” part of the RGA’s “election cycle” activities was erroneous. Notice is also taken that Patrick Ballantine was not declared the Republican nominee for governor until several days after our July 20, 2004, Primary Election, which was less than one month before the subject ad was broadcast.
12. Even if a major purpose of the RGA had been to support or oppose a North Carolina candidate during the election cycle, there is no evidence in the record, nor did the SBE written order find or conclude, that the RGA “intentionally” accepted a “contribution” in violation of North Carolina’s campaign finance law.
13. A “contribution” is “any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever . . . to a political committee.” N.C. Gen. Stat. § 163-278.6(6) (emphasis added).
14. There is no evidence in the record of any intent to make political committee-triggering “expenditures” at the time the RGA accepted corporate contributions. Since the RGA, as a 527 similar to SCMP, had intended to broadcast unregulated issue advertisements at the time it contracted with vendors to broadcast the “New Ideas” advertisement (which is the point at which an “expenditure” would have been made triggering “political committee” status, see N.C. Gen. Stat. § 163-278.6(9)), it could lawfully have accepted corporate and unlimited individual donations for unregulated free speech activity.
15. The statement on the RGA’s Web site that “[a]ll RGA expenditures will be made in compliance with state laws” evidences the RGA’s intent to avoid violating state law in any state, including North Carolina. The RGA believed that it could run issue ads without having to register and report in North Carolina.
16. The RGA’s reliance upon the advice of counsel that its “New Ideas” advertisement was not express advocacy under N.C. Gen. Stat. § 163-278.14A further evidences the absence of any intent to accept any illegal contributions in violation of North

Carolina law. The RGA believed it to be an issues ad.

17. The SBE acted erroneously in assessing a civil penalty in the absence of any evidence of the RGA’s intent to make political committee-triggering “support[ing] or oppos[ing]” communications at the time the RGA accepted donations from any corporation(s) or over-the-limit amounts from individuals.
18. Under N.C. Gen. Stat. § 163-278.14A(a), “[e]ither of the following shall be means, but not necessarily the exclusive or conclusive means, of proving that an individual or other entity acted ‘to support or oppose the nomination or election of one or more clearly identified candidates’”:
 - a. Evidence of financial sponsorship of communications to the general public that use phrases such as “vote for”, “reelect”, “support”, “cast your ballot for”, “(name of candidate) for (name of office)”, “(name of candidate) in (year)”, “vote against”, “defeat”, “reject”, “vote pro-(policy position)” or “vote anti-(policy position)” accompanied by a list of candidates clearly labeled “pro-(policy position)” or “anti-(policy position)”, or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say “(name of candidate)’s the One”, “(name of candidate) ‘98”, “(name of candidate)!””, or the names of two candidates joined by a hyphen or slash.
 - b. Evidence of financial sponsorship of communications whose essential nature expresses electoral advocacy to the general public and goes beyond a mere discussion of public issues in that they direct voters to take some action to nominate, elect, or defeat a candidate in an election. If the course of action is unclear, contextual factors such as the language of the communication as a whole, the timing of the communication in relation to the events of the day, the distribution of the communication to a significant number of registered voters for that candidate’s election, and the cost of the communication may be considered in determining whether the action urged could only be interpreted by a reasonable person as advocating the nomination, election, or defeat of that candidate in that election.
19. Subsection N.C. Gen. Stat. § 163-278.14A(a)(1) was enacted by the North Carolina General Assembly in response to the decision of the United States Fourth Circuit Court of Appeals in North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705 (4th Cir. 1999), which held the former definition of “political committee” in § 163-278.6(14) to be unconstitutionally vague and overbroad under the First Amendment. See North Carolina Right to Life, Inc. v. Leake, 344 F.3d 418, 421 (4th Cir. 2003) (“Responding to this court’s decision, the North Carolina General Assembly adopted legislation that amended, deleted, and added campaign finance statutes.”).
20. The United States District Court for the Eastern District of North Carolina held subsection N.C. Gen. Stat. § 163-278.14A(a)(2) to be unconstitutional under the First Amendment and enjoined the SBE’s further reliance upon the subsection. See North Carolina Right to Life, Inc. v. Leake, No. 5:99CV-798-BO(3) (E.D. N.C., August 8, 2002 and October 24, 2001). The court’s order was affirmed on appeal. 344 F.3d 418 (4th Cir. 2003). The Supreme Court vacated the U.S. Court of Appeals’ judgment and remanded the case to the Fourth Circuit “for further consideration in light of McConnell v. Federal Election Comm’n, 540 U.S. ---, 124 S. Ct. 619, 157 L.Ed. 491 (2003).” 124 S. Ct. 2065. The Fourth Circuit, in turn, remanded the case to the district court on August 12, 2004, for further consideration in light of McConnell. No. 02-2052 (4th Cir., Aug. 12, 2004). The district court’s original injunction remains in effect until further consideration.
21. Respondent incorrectly determined that the content of an organization’s communications is not an essential part of what triggers “political committee” status pursuant to N.C. Gen. Stat. § 163-278.6(14). When asked during discovery to “[a]dmit that in the event the RGA communication [at issue] is found not to ‘support or oppose’ the nomination or election of one or more clearly identified candidates as defined under N.C. Gen. Stat. § 163-278.14A(a)(1), there is no statutory authority upon which to base the civil penalty imposed by the State Board of Elections,” Respondent evinced a fundamental miscomprehension of the statute’s requirements with the following response:

DENIED. Based on the evidence provided in IRS submissions and information appearing on the website of the [RGA], the [RGA] meets North Carolina’s statutory definition of “political committee.” As a consequence any money spent by the [RGA] in North Carolina would trigger the requirement to register and disclose as a political committee. All payments or other transfers made by a political committee are considered “expenditures” and are, therefore, subject to the disclosure requirements. As a result, regardless of whether the communication in question was considered to contain evidence of supporting or opposing the election of a clearly identified candidate, the funds used to pay for the communication in question are subject to the same regulations as the funds of other political committees registered in North Carolina [(emphasis added)].

22. The additional factors identified by Respondent -- that the advertisement at issue contains “video images of Patrick

Ballantine on the campaign trail” and that the sponsorship disclaimer appearing below the relevant phrase is larger than minimum size required by Federal Communications Commission regulations² -- are irrelevant under N.C. Gen. Stat. § 163-278.14A(a) and thus irrelevant under N.C. Gen. Stat. § 163-278.6(14).

23. Respondent’s determination that the content of the RGA’s “New Ideas” advertisement was irrelevant to the RGA’s qualification as a North Carolina political committee is erroneous, and the assessment of the civil penalty against the RGA pursuant to that determination was erroneous.
24. Under N.C. Gen. Stat. § 150B-36(d), the OAH administrative law judge may grant summary judgment that disposes of all issues in the contested case. For any decision by the administrative law judge granting summary judgment that disposes of all issues in the contested case, the agency shall make a final decision. If the agency does not adopt the administrative law judge’s decision, it shall set forth the basis for failing to adopt the decision and shall remand the case to the administrative law judge for hearing. The party aggrieved by the agency’s decision shall be entitled to immediate judicial review in superior court under Article 4 of Chapter 150B.
25. Under N.C. Gen. Stat. § 1A-1, Rule 56, summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.”

DECISION

On the issue of whether Petitioner RGA was properly assessed a civil penalty under N.C. Gen. Stat. § 163-278.34(b) for “intentionally . . . accept[ing] a contribution in violation of [] Article [22A]”, there is no genuine issue as to any material fact, and Petitioners are entitled to judgment as a matter of law. Therefore, it is ORDERED, ADJUDGED and DECREED that Petitioners’ Motion for Summary Judgment should be, and hereby is, granted.

ORDER

This Decision will be sent to the State Board of Elections. It is hereby ORDERED that the State Board of Elections serve a copy of its final agency decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6417, in accordance with N.C. Gen. Stat. § 150B-36(b3).

NOTICE

The State Board of Elections, the agency making the final decision in this contested case, is required to give each party an opportunity to file exceptions to this Decision. The State Board of Elections is also required to give each party an opportunity to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. § 150B-36(a).

The State Board of Elections is required by N.C. Gen. Stat. § 150B-36(b3) to serve a copy of the final decision on all parties, furnish a copy to the parties’ attorneys of record, and furnish a copy to the Office of Administrative Hearings.

This the 30th day of June, 2005.

Fred G. Morrison Jr.
Senior Administrative Law Judge

² FCC regulations require a sponsorship disclaimer to use “letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.” 47 C.F.R. § 73.1212 (emphasis added).