

NORTH CAROLINA

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

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

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

NORTH CAROLINA REGISTER
 Publication Schedule for January 2006 – December 2006

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

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. 101

TO ESTABLISH THE RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS RULES EFFECTIVE DATE

WHEREAS, North Carolina is committed to providing a safe environment for children and adolescents in mental health residential treatment facilities ("group homes"); and

WHEREAS, the North Carolina Department of Health and Human Services (DHHS) launched an intensive inspection sweep, including the creation of a 50-person team, to make unannounced inspections of all the group homes across the state in January 2005; and

WHEREAS, North Carolina suspended licensing of any additional group homes until the Mental Health Commission acted on new Residential Treatment for Children and Adolescent rules proposed by DHHS; and

WHEREAS, on January 18, 2006, the Mental Health Commission adopted Residential Treatment for Children and Adolescents rules at 10A NCAC 27G .1301 and 10A NCAC 27G .1700, specifically .1701-.1708, and on February 16, 2006, the permanent rules were approved by the Rules Review Commission; and

WHEREAS, the rules serve to fill a gap in the staffing and training requirements for residential treatment facilities for children and adolescents; and

WHEREAS, without the rules, there would be no consistent requirements for training residential treatment staff in the proper care of children and adolescents, further endangering the health and safety of those children in group homes; and

WHEREAS, the effective date of the permanent rule under the Administrative Procedures Act, N.C.G.S. §150B-1 et seq., would be July 1, 2006, at the earliest; and

WHEREAS, the Administrative Procedures Act authorizes the Governor, by Executive Order, to make effective a permanent rule upon finding that it is necessary to protect public health, safety, and welfare.

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

Section 1. Findings.

It is necessary that the permanent rules regarding residential treatment for children and adolescents, 10A NCAC 27G .1301 and 10A NCAC 27G .1700, specifically .1701-.1708, become effective no later than April 3, 2006, in order to provide for the protection of the public health, safety, or welfare.

Section 2. Effective Date of the Rule.

The permanent rule regarding residential treatment for children and adolescents, 10A NCAC 27G .1301 and 10A NCAC 27G .1700, specifically .1701-.1708, is hereby made effective April 3, 2006, pursuant to the Executive Order Exception authority contained in the Administrative Procedures Act, N.C.G.S. §150B-21.3(c).

Section 3. Effective Date.

This Executive Order becomes effective April 3, 2006, and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-seventh day of March in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirtieth.

Michael F. Easley
Governor

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.

**PUBLIC NOTICE OF RULEMAKING BY THE
NORTH CAROLINA INDUSTRIAL COMMISSION CONCERNING AMENDMENTS TO WORKERS' COMPENSATION
RULES 104, 404A, 501, 502, 601, 701, 702, AND 903**

NOTICE IS HEREBY GIVEN that, pursuant to N.C. Gen. Stat. §97-80, the North Carolina Industrial Commission will hold a public hearing on amendments to the following Workers' Compensation Rules:

- Rule 104, Employer's Report of Injury
- Rule 404A, Trial Return to Work
- Rule 501, Agreements for Payment of Compensation
- Rule 502, Compromise Settlement Agreements
- Rule 601, Denial of Liability
- Rule 701, Appeal to the Full Commission
- Rule 702, Appeal to the Court of Appeals
- Rule 903, Employee's Obligation to Report Earnings

The Industrial Commission is proposing to amend the above listed Workers' Compensation Rules. A detailed list of the proposed revisions is attached to this notice and may also be viewed on the Commission's website at www.comp.state.nc.us. The Commission solicits oral and written comments of all interested persons, firms, and organizations wishing to comment concerning any aspect of the proposed amendments.

SUCH PUBLIC HEARING will be held on May 17, 2006, beginning at 9:30 a.m. in the Industrial Commission Hearing Room, second floor, Room 2173, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC, during which the Commission will hear the verbal comments of persons scheduled to speak. Those desiring to make an oral presentation, not to exceed 10 minutes in length, should submit a request on or before May 9, 2006. Speakers at the public hearing are encouraged to prepare a written summary of remarks for the use of the Commission.

PROPOSED EFF. DATE: July 1, 2006

WRITTEN COMMENTS, REQUESTS FOR A COPY OF THE PROPOSED RULE AMENDMENTS AND REQUESTS FOR ORAL PRESENTATIONS SHOULD BE ADDRESSED TO MS. CHRYSTINA KESLER, 4340 MAIL SERVICE CENTER, RALEIGH, NC 27699-4340, OR MADE BY TELEPHONE CALL TO MS. CHRYSTINA KESLER AT (919) 807-2510. COPIES OF THE PROPOSED RULE AMENDMENTS MAY ALSO BE OBTAINED ON THE INDUSTRIAL COMMISSION'S WEBSITE: <http://www.comp.state.nc.us/ncichome.htm>

WRITTEN COMMENTS SHOULD BE FAXED TO (919) 715-0283 OR MAILED TO 4340 MAIL SERVICE CENTER, RALEIGH, NC 27699-4340 NO LATER THAN JUNE 17, 2006.

**PROPOSED CHANGES TO
NC INDUSTRIAL COMMISSION RULES**

1. Rule 104 reads as rewritten:

Rule 104. Employer's Report of Injury.

An employer shall immediately report to its carrier or administrator any injury or occupational disease, or allegation by an employee of an injury or occupational disease, sustained in the course of employment for which the attention of a physician is needed or actually sought. Within five days of knowledge of the injury or allegation, the employer or carrier/administrator or its successor in interest shall file with the Industrial Commission and provide a copy to the employee of a Form 19, Employer's Report of Employee's Injury to the Industrial Commission, if injury causes the employee to be absent from work for more than one day ~~and~~ or the employee's medical compensation is greater than an amount which is established periodically by the Industrial Commission in its Minutes. The employer may record the employee's or another person's description of the injury on the Form 19 without admitting the truth of the information. In addition to providing the Form 19 to the employee, the employer shall also provide a blank Form 18 for use by the employee.

The front of the Form 19 shall prominently display the following statement: "To the Employee: This Form 19 is not your claim for workers' compensation benefits. To make a claim, you must complete and sign the enclosed Form 18 and mail it to the Claims Department, North Carolina Industrial Commission, 4334 Mail Service Center, Raleigh, NC 28799-4334 within two years of the date of your injury or within two years of the date your doctor told you that you have a work – related disease".

2. Section 7a. of Rule 404A, Trial return to work, reads as rewritten:

"Medical only" cases, defined as cases in which the employee is not absent from work more than one day ~~and~~or in which medical expenses are less than the amount periodically established by the Industrial Commission in its Minutes;

3. Rule 501 reads as rewritten:

Rule 501. Agreements for payment of compensation.

1. To facilitate the prompt payment of compensation within the time prescribed in N.C. Gen. Stat. § 97-18, the Industrial Commission will accept memoranda of agreements on Industrial Commission forms. ~~The agreements may be executed by the employer or the carrier/administrator where compensation payable under the agreement does not exceed 52 weeks.~~

~~2. In cases where the compensation payable under the agreement exceeds 52 weeks, the agreement must be executed by the employer as well as the carrier/administrator. For good cause shown, this requirement may be waived by the Industrial Commission.~~

~~3-2.~~ No agreement for permanent disability will be approved until all relevant the material medical; and vocational and nursing rehabilitation reports records known to exist in the case have been filed with the Industrial Commission. When requested by the Industrial Commission, the parties shall file any additional documentation necessary to determine whether the employee is receiving the disability compensation to which he or she is entitled and that an employee qualifying for disability compensation under both N.C. Gen. Stat. § 97-29 or -30 and N. C. Gen. Stat. § 97-31 have the benefit of the more favorable remedy.

~~4-3.~~ All memoranda of agreements must be submitted to the Industrial Commission in triplicate on Industrial Commission forms, as specified in paragraph 6 below. Agreements in proper form and conforming to the provisions of the Workers' Compensation Act will be approved by the Industrial Commission and a copy returned to the employer or carrier/administrator and a copy sent to the employee, unless amended by award, in which event a copy of the award will be returned with the agreement.

~~5-4.~~ The employer or carrier/administrator, or the attorney of record, if any, shall provide the employee and the employee's attorney of record, if any, a copy of a Form 21, Form 26, Form 26D, and Form 30, when the employee signs said forms, and the employer or carrier/administrator will send a copy of a Form 28B to the employee and the employee's attorney of record, if any, within 16 days after the last payment of compensation for either temporary or permanent disability, pursuant to N.C. Gen. Stat. § 97-18.

~~6-5.~~ All memoranda of agreements for cases which are currently calendared for hearing before a Commissioner or Deputy Commissioner shall be sent directly to that Commissioner or Deputy Commissioner at the Industrial Commission. Before a case is calendared, or once a case has been continued, or removed, or after the filing of an Opinion and Award, all memoranda of agreements shall be directed to the Claims Department of the Industrial Commission.

~~7-6.~~ After the employer or carrier/administrator has received a memorandum of agreement which has been signed by the employee and employee's attorney of record, if any, it shall have 20 days within which to submit the memorandum of agreement to the Industrial Commission for review and approval or within which to show good cause for not submitting the memorandum of agreement signed only by the employee; provided, however, that for good cause shown, the 20 day period may be extended.

4. Section 3 of Rule 502, Compromise settlement agreements, reads as rewritten:

3. No compromise agreement will be considered unless the following additional requirements are met:

a. ~~All~~The material medical, vocational, and rehabilitation reports known to exist, including but not limited to those pertinent to the employee's future earning capacity, must be submitted with the agreement to the Industrial Commission by the employer, the carrier/administrator, or the attorney for the employer.

b. ~~The~~The parties and all attorneys of record must have signed the agreement.

c. The settlement agreement must contain a list of all of the known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer or insurance carrier disputes, when the employer or carrier has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement.

d. If there are unpaid medical expenses which the employer or insurance carrier agree to pay under the settlement agreement, the agreement must contain a list of these unpaid medical expenses, if known, that will be paid by the employer or insurance carrier.

e. The settlement agreement must contain a finding that the positions of the parties to the agreement are reasonable as to the payment of medical expenses.

5. Rule 601 reads as rewritten:

Rule 601. Employer obligations upon notice, sanctions, and denial of liability.

1. The employer or its insurance carrier shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in N.C.Gen. Stat. § 97-18(b), (c), or (d).

2. When an employee files a claim for compensation with the Commission, the Commission may order reasonable sanctions against the employer or its insurance carrier which does not, within 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to be from exposure to chemicals, fumes, or other materials or substances in the workplace, or within such reasonable additional time as the Commission may allow, do one of the following:

(1) Notify the Commission and the employee in writing that it is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under N.C.Gen. Stat § 97-18(b).

(2) Notify the Commission and the employee that it denies the employee's right to compensation consistent with N.C.Gen. Stat § 97-18(c).

(3) Initiate payments without prejudice and without liability and satisfy the requirements of N.C.Gen. Stat § 97-18(d). For purposes of this Rule, reasonable sanctions shall not prohibit the employer or its insurance carrier from contesting the compensability of and its liability for the claim.

Requests for extensions of time to comply with this rule may be addressed to the Executive Secretary.

3. If the employer or insurance carrier denies liability in any case, a detailed statement of the basis of denial must be set forth in a letter of denial or Form 61, which shall be sent to the plaintiff or his attorney of record, if any, all known health care providers which have submitted bills to the employer/carrier, and the Industrial Commission.

The detailed statement of the basis of denial shall set forth a statement of the facts, as alleged by the employer, concerning the injury or any other matter in dispute; a statement identifying the source, by name or date and type of document, of the facts alleged by the employer; and a statement explaining why the facts, as alleged by the employer, do not entitle the employee to workers' compensation benefits.

~~Upon notice of a claim, the employer must admit or deny compensability of the claim to the Commission within 14 days after the employer has written or actual notice of the claim, or commence payment without prejudice pursuant to N.C. Gen.Stat. § 97-18(d). If, after 90 days from the date of filing of a Form 18, or if no Form 18 is filed, the filing of a Form 33 an employer has neither admitted the claim, filed the notice of denial of the claim with the Commission, or initiated compensation payments without prejudice pursuant to N.C. Gen. Stat. § 97-18(d), the employer may be sanctioned pursuant to Rule 802, in addition to any other sanctions available under the Act. Requests for waivers of this Rule or extensions may be addressed to the Executive Secretary. Defendant is not obligated to repeat grounds for denial previously given.~~

6. Rule 701 is amended by adding a new section to read:

(10) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit shall apply to the length of attachments. Briefs shall be prepared entirely using a 12 point font, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When quoting or paraphrasing testimony or other evidence in the transcript of the evidence, a parenthetic entry in the text, to include the exact page number location within the transcript of the evidence of the information being referenced shall be placed at the end of the sentence citing the information [Example: (T.p.38)]. When quoting or paraphrasing testimony or other evidence in the transcript of a deposition, a parenthetic entry in the text to include the name of the person deposed and exact page number location within the transcript of the deposition of the information being referenced shall be placed at the end of the sentence citing the information. [Example: (Smith p.15)].

7. The Rules are amended by adding a new Rule 702 A to read:

Rule 702A. Remand from the appellate courts.

When a claim is remanded to the Commission from the appellate courts, each party to the claim may file a statement with the Full Commission, supported by a brief if appropriate, setting forth its position on the actions or proceedings, including evidentiary hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission decision or the Chairman of the Industrial Commission if the Commissioner who authored the decision is no longer a member of the Industrial Commission.

8. Rule 903 reads as rewritten:

Rule 903. Employee's obligation to report earnings.

A self-insured employer, carrier or third party administrator may require the employee to complete a Form 90 Report of Earnings when reasonably necessary but not more than once every six months.

The Form 90 must be sent to the employee by certified mail, return receipt requested, and include a self-addressed stamped envelope for the return of the Form. When the employee is represented by an attorney, the Form 90 shall be sent to the attorney for the employee and not to the employee.

The employee shall complete and return the Form 90 Report of Earnings within 15 days after receipt of a Form 90. If the employee fails to complete and return the Report of Earnings within 30 days of receipt of the Form, the self-insured employer, carrier or third party administrator may seek an order from the Executive Secretary allowing the suspension of benefits. The self-insured employer, carrier or third party administrator shall not suspend benefits without Commission approval. If the Commission suspends benefits for failure to complete and return a Form 90 Report of Earnings, the self-insured employer, carrier or third party administrator shall immediately reinstate benefits to the employee with back payment as soon as the Report of Earnings is submitted by the employee. If benefits are not immediately reinstated, the employee should submit a written request for an Order from the Executive Secretary instructing the self-insured employer, carrier or third party administrator to reinstate benefits. If the employee's earnings report does not indicate continuing eligibility for partial or total disability compensation, then the self-insured employer, carrier or third party administrator may apply to the Commission to terminate or modify benefits pursuant to Commission procedure, including filing a Form 24, 36, and 33.

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 Commission for Health Services intends to adopt the rules cited as 10A NCAC 48A .0101 - .0102, .0201 - .0205; 10A NCAC 48B .0101 - .0103, .0201 - .0203, .0301 - .0305, .0401 - .0402, .0501 - .0503, .0601 - .0602, .0701 - .0703, .0801 - .0804, .0901 - .0904, .1001, .1101 - .1102, .1201 - .1204, .1301 - .1308.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: August 9, 2006

Time: 1:00 p.m.

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

Reason for Proposed Action: Ratified Senate Bill 804 of the 2005 Session of the N.C. General Assembly requires that the Commission for Health Services adopt Accreditation Standards for Local Health Departments that would be in effect by January 1, 2006. Consequently, appropriate rules were written to meet this requirement and were passed as temporary rules that became effective on the specified date. Those temporary accreditation rules expire on September 27, 2006, and so it is necessary to adopt this permanent version of the same rules before the temporary rules expire.

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

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

Comment period ends: June 30, 2006

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

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

CHAPTER 48 - LOCAL HEALTH DEPARTMENT ACCREDITATION

SUBCHAPTER 48A - LOCAL HEALTH DEPARTMENT ACCREDITATION – ADMINISTRATION

SECTION .0100 - GENERAL PROVISIONS

10A NCAC 48A .0101 PURPOSE

The rules of this Subchapter establish the process for local health departments to become accredited pursuant to G.S. 130A-34.1.

Authority G.S. 130A-34.1.

10A NCAC 48A .0102 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Board" is defined in G.S. 130A-2 (01).
- (2) "Institute" means the North Carolina Institute for Public Health.

Authority G.S. 130A-34.1.

SECTION .0200 - ACCREDITATION PROCESS

10A NCAC 48A .0201 SELF-ASSESSMENT

Each local health department shall complete a self-assessment based on the standards adopted in this Chapter. The local health department shall submit the self-assessment to the Institute within 90 days after notification by the Institute that the accreditation process for the department has begun.

Authority G.S. 130A-34.1.

10A NCAC 48A .0202 SITE VISIT

(a) The Institute shall select a site visit team composed of not fewer than four individuals with expertise or experience in local public health, including experience or expertise in environmental health, public health nursing, public health administration or policy development/governance.

(b) The site visit team shall visit the local health department, review the self-assessment and supporting documentation, interview local health department staff and other persons necessary to evaluate compliance with the standards and inspect the facilities in accordance with the standards. The team may request additional supporting documentation or other evidence as necessary to evaluate compliance with the standards.

(c) The site visit team shall prepare a report that makes a determination as to whether the standards have been met and shall submit the report to the Board and the local health department within 14 days of the end of the site visit. The site visit team shall make a recommendation regarding accreditation status to the Board.

Authority G.S. 130A-34.1.

10A NCAC 48A .0203 BOARD ACTION

The site visit team shall present the report to the Board and the local health department shall have the opportunity to respond to the presentation. Upon the local health department's request, the Board shall grant the local health department an additional 21 calendar days to submit additional written information to the Board. If no such request is made, the Board may take action on the site visit team's recommendation or may request additional information from the local health department and defer action on the recommendation to a later meeting. The action shall be taken within 90 days of the presentation of the site visit team to the Board.

Authority G.S. 130A-34.1.

10A NCAC 48A .0204 INFORMAL REVIEW PROCEDURES

If the Board assigns a status of "conditionally accredited" or "unaccredited," the local health department may make a written request within 10 calendar days for reconsideration of the decision. The written request shall state the specific objections to the decision and the basis for those objections. The Board shall act on the request within 60 calendar days.

Authority G.S. 130A-34.1.

10A NCAC 48A .0205 RE-ACCREDITATION

A local health department shall submit the self-assessment required by Rule .0201 no later than 6 months before the expiration date of its accreditation. The Board shall initiate a site visit in accordance with Rule .0202 and take action in accordance with Rule .0203 before the local health department's accreditation expires. If the Board re-accredits a local health department, accreditation is extended for an additional four years. The local health department may utilize the informal review procedures of Rule .0204.

Authority G.S. 130A-34.1.

SUBCHAPTER 48B. LOCAL HEALTH DEPARTMENT ACCREDITATION STANDARDS

SECTION .0100 - GENERAL PROVISIONS

10A NCAC 48B .0101 PURPOSE

The rules in this Subchapter establish the accreditation standards for local health departments pursuant to G.S. 130A-34.1.

Authority G.S. 130A-34.1.

10A NCAC 48B .0102 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Activities" means specific, documentable actions taken by a local health department or a local board of health.
- (2) "Consolidated agreement and agreement agenda" means the contract used by the Division to distribute state and federal public health funds to local health departments.
- (3) "Division" means the North Carolina Division of Public Health.
- (4) "Evidence-based health promotions/disease prevention strategies" means endeavors in which there is an informed and explicit use of evidence that has been derived from any of a variety of science and social science research and evaluation methods.

Authority G.S. 130A-34.1.

10A NCAC 48B .0103 ACCREDITATION REQUIREMENTS

(a) To receive an accreditation status of "accredited," a local health department must satisfy all of the accreditation standards contained in this Subchapter. In order to satisfy the accreditation standards, the local health department shall satisfy 33 of the 41 benchmarks. Two of the 33 benchmarks can come from any of the 3 standards listed below. Thirty-one of the benchmarks shall be met according to the following proportions:

- (1) Standard 1. Agency core functions and essential services:
 - (A) At least 6 of the benchmarks contained in Sections .0200 and .0300 of this Subchapter;
 - (B) At least 5 of the benchmarks contained in Sections .0400 through .0600 of this Subchapter;
 - (C) At least 11 of the benchmarks contained in Sections .0700 through .1100 of this Subchapter;
- (2) Standard 2. Facilities and administrative services: At least 3 of the benchmarks contained in Section .1200 of this Subchapter; and
- (3) Standard 3. Board of health: At least 6 of the benchmarks contained in Section .1300 of this Subchapter.

(b) In order to satisfy a benchmark, the local health department must carry out all of the activities prescribed for that benchmark. Failure to complete any activity associated with a benchmark means that the benchmark is not satisfied.

Authority G.S. 130A-34.1.

SECTION .0200 - MONITOR HEALTH STATUS

10A NCAC 48B .0201 BENCHMARK 1

(a) Benchmark: A local health department shall conduct and disseminate results of regular community health assessments.

(b) Activities:

- (1) The local health department shall conduct a comprehensive community health assessment every 48 months. The community health assessment must fulfill each of the following requirements:
 - (A) Provide evidence of community collaboration in planning and conducting the assessment
 - (B) Reflect the demographic profile of the population
 - (C) Describe socioeconomic, educational and environmental factors that affect health
 - (D) Assemble and analyze secondary data to describe the health status of the community
 - (E) Collect and analyze primary data to describe the health status of the community
 - (F) Compile and analyze trend data to describe changes in community health status and in factors affecting health
 - (G) Use defined methods for collecting and analyzing data
 - (H) Identify population groups at risk
 - (I) Identify existing and needed health resources
 - (J) Compare selected local data with data from other jurisdictions (e.g., local to state, local to local)
 - (K) Identify leading community health problems
- (2) The local health department shall update the community health assessment with an interim "State of the County's Health" report (or equivalent) annually. The report shall demonstrate that the local health department is tracking priority issues identified in the community health assessment, identifying emerging issues, and shall identify any new initiatives.
- (3) The local health department shall disseminate results of the most recent community health assessment and "State of the County's Health" report to the local health department's

stakeholders, community partners and the general population.

Authority G.S. 130A-34.1.

10A NCAC 48B .0202 BENCHMARK 2

(a) Benchmark: The local health department shall work with health care providers in the community to report reportable diseases and other health-related events and data.

(b) Activities:

- (1) The local health department shall collect local vital records of births and deaths and transmit them to the Division.
- (2) The local health department shall report annual childhood immunization data as required by statute and rule.
- (3) The local health department shall collect reports of communicable diseases and other reportable health conditions from community health care providers and transmits them to the Division.
- (4) The local health department shall analyze and note reportable events occurring within the community and shall report atypical incidence, if any, to the Division and the local board of health.

Authority G.S. 130A-34.1.

10A NCAC 48B .0203 BENCHMARK 3

(a) Benchmark: The local health department shall maintain skills and capacity to collect, manage, integrate and display health-related data.

(b) Activities:

- (1) The local health department shall assure agency staff has expertise and training to collect, manage, integrate and display health-related data.
- (2) The local health department shall conduct an annual evaluation of the agency's data system (hardware and software) and plans for upgrades to improve the accessibility, quality and utilization of health data.

Authority G.S. 130A-34.1.

SECTION .0300 - DIAGNOSE AND INVESTIGATE HEALTH PROBLEMS AND HEALTH HAZARDS IN THE COMMUNITY

10A NCAC 48B .0301 BENCHMARK 4

(a) Benchmark: The local health department shall engage in surveillance activities and assess, investigate and analyze health problems, threats and hazards, maintaining and using epidemiological expertise.

(b) Activities:

- (1) The local health department shall assure that a surveillance system is in place for identifying

health problems, threats and hazards that occur in the community.

- (2) The local health department shall monitor exposure to environmental health risks.
- (3) The local health department shall have access to, and consult with a Masters or Doctoral level epidemiologist when necessary to fully investigate and diagnose health problems and hazards within the community.

Authority G.S. 130A-34.1.

10A NCAC 48B .0302 BENCHMARK 5

(a) Benchmark: The local health department shall establish and maintain a system to receive and provide health alerts and public health response for health care providers, emergency responders, and communities on a 24-hour-a-day, 7-day-a-week basis.

(b) Activities:

- (1) The local health department shall have a system in place to receive reports of communicable diseases or other public health threats on a 24-hour-a-day, 7-day-a-week basis.
- (2) The local health department shall use two or more methods to disseminate health alerts and other advisories on real or potential disease threats, as they occur, to the local medical community, including pharmacists and veterinarians.
- (3) The local health department shall provide health alerts or advisories to the news media to inform the public when disease outbreaks or other potential public health threats occur.

Authority G.S. 130A-34.1.

10A NCAC 48B .0303 BENCHMARK 6

(a) Benchmark: The local health department shall be able to respond to a public health emergency on a 24-hour-a-day, 7-day-a-week basis.

(b) Activities:

- (1) The local health department shall be involved in a local emergency planning committee.
- (2) The local health department shall have a defined role in the county emergency operations plan to protect the public's health.
- (3) The local health department shall participate in regional emergency preparedness exercises and activities.

Authority G.S. 130A-34.1.

10A NCAC 48B .0304 BENCHMARK 7

(a) Benchmark: The local health department shall maintain and implement epidemiological case investigation protocols providing for rapid detection and containment of communicable disease outbreaks; environmental health hazards; potential biological, chemical and radiological threats.

(b) Activities:

- (1) The local health department shall have epidemiological case investigation protocols in place.
- (2) The local health department shall conduct communicable disease investigations, follow-up, documentation and reporting activities.
- (3) The local health department shall investigate and respond to environmental health complaints or referrals.
- (4) The local health department shall have a public health preparedness and response plan that:
 - (A) corresponds to existing local and state emergency and bioterrorism plans
 - (B) establishes roles and responsibilities of plan participants
 - (C) identifies training for participants in those roles
 - (D) establishes a chain of command among plan participants
 - (E) describes a system of emergency notification to local and state public health staff and other key decision makers
 - (F) is available to staff on site
- (5) The local health director shall maintain periodic communication with local emergency managers.
- (6) The local health department shall annually test or implement the local public health preparedness and response plan.
- (7) The local health department shall have one of the following:
 - (A) public health preparedness and response coordination team with an environmental health member and a public health preparedness response coordinator, or
 - (B) an epidemiology team with an environmental health member and an epidemiology team coordinator.

Authority G.S. 130A-34.1.

10A NCAC 48B .0305 BENCHMARK 8

(a) Benchmark: The local health department shall provide or have access to laboratory capacity capable of providing for rapid detection and containment of communicable disease outbreaks; environmental health hazards; potential biological, chemical and radiological threats.

(b) Activities:

- (1) The local health department shall have written policies and procedures for handling clinical and environmental laboratory samples.
- (2) The local health department laboratory and external laboratories utilized by the local health department shall comply with all applicable federal regulations for clinical and environmental laboratory testing.

- (3) The local health department shall provide or have access to laboratory services capable of meeting routine diagnostic and surveillance needs.
- (4) The local health department shall provide or have access to laboratory services to support investigations of public problems, hazards, and emergencies.

Authority G.S. 130A-34.1.

SECTION .0400 - INFORM, EDUCATE, AND EMPOWER PEOPLE ABOUT HEALTH ISSUES

10A NCAC 48B .0401 BENCHMARK 9

(a) Benchmark: The local health department shall provide the general public and elected and appointed officials with information on health risks, health status, and health needs in the community as well as information on policies and programs that can improve community health.

(b) Activities:

- (1) The local health department shall publish and disseminate data and information on current local health issues to the general public, community leaders, and elected and appointed officials.
- (2) The local health department shall have a mechanism by which the public can access community data and health status information maintained in the agency in accordance with applicable laws and rules.
- (3) The local health department shall provide information to the public on the availability and location of health data that are accessible in the public domain.
- (4) The local health department shall have written guidelines that it follows in responding to requests for information.
- (5) The local health department shall inform affected community members of changes in department policies or operations.
- (6) The local health department shall assure that information disseminated by the agency reflects the cultural and linguistic character of the local population as required by Title VI of the Civil Rights Act.

Authority G.S. 130A-34.1.

10A NCAC 48B .0402 BENCHMARK 10

(a) Benchmark: The local health department shall provide, support, and evaluate health promotion activities designed to influence the behavior of individuals and groups.

(b) Activities:

- (1) The local health department shall develop, implement and evaluate population-based health promotion/disease prevention programs and educational materials for the general public.

- (2) The local health department shall carry out or assist other agencies in the development, implementation and evaluation of health promotion/disease prevention programs and educational materials targeted to groups identified as at-risk in the community health assessment.
- (3) The local health department shall employ evidence-based health promotions/disease prevention strategies, when such evidence exists.
- (4) The local health department shall promote and support the use of evidence-based health promotion/disease prevention strategies by other community agencies and organizations.

Authority G.S. 130A-34.1.

SECTION .0500 - MOBILIZE COMMUNITY PARTNERSHIPS TO IDENTIFY AND SOLVE HEALTH PROBLEMS

10A NCAC 48B .0501 BENCHMARK 11

(a) Benchmark: The local health department shall convene key constituents and community partners to identify, analyze, and prioritize community health issues.

(b) Activities:

- (1) The local health department shall participate in a collaborative community steering committee to identify health issues and needs.
- (2) The local health department shall involve community members in assessing, setting priorities and establishing desired outcomes for addressing community health issues and needs.

Authority G.S. 130A-34.1.

10A NCAC 48B .0502 BENCHMARK 12

(a) Benchmark: The local health department shall develop strategies in collaboration with community partners to solve existing community health problems.

(b) Activities:

- (1) The local health department shall participate in a collaborative process to identify strategies for addressing community health problems.
- (2) The local health department shall participate in a collaborative process to assess resources needed, including personnel, funding, policy changes, and system change, to address community health problems.
- (3) The local health department shall participate in a collaborative process to implement population-based programs to address community health problems.

Authority G.S. 130A-34.1.

10A NCAC 48B .0503 BENCHMARK 13

(a) Benchmark: The local health department shall identify and build upon community assets and direct them toward resolving health problems.

(b) Activity: The local health department shall broaden existing partnerships by cultivating innovative and new community contacts, such as businesses and industries, healthcare practitioners, faith communities, and grassroots organizations, and increasing their awareness of public health through outreach and training.

Authority G.S. 130A-34.1.

SECTION .0600 - DEVELOP POLICIES AND PLANS THAT SUPPORT INDIVIDUAL AND COMMUNITY HEALTH EFFORTS

10A NCAC 48B .0601 BENCHMARK 14

(a) Benchmark: The local health department shall work with local, state and federal policymakers to enact policies, laws, rules, and ordinances that support individual and community health efforts.

(b) Activities:

- (1) The local health department shall disseminate information relative to public health needs to elected and appointed officials.
- (2) The local health department shall provide information and recommendations to support the local board of health and the board(s) of county commissioners in setting public health priorities and planning public health programs.
- (3) The local health department shall evaluate, with the local board of health, the need for additional rules or ordinances to protect the health of the public.
- (4) The local health department shall assist the local board of health in drafting local ordinances and rules as needed and presenting them to elected officials in order to implement or enforce needed local public health prevention and protection activities.

Authority G.S. 130A-34.1.

10A NCAC 48B .0602 BENCHMARK 15

(a) Benchmark: The local health department shall develop plans to guide its work.

(b) Activities:

- (1) The local health department shall develop or update annually an agency strategic plan that:
 - (A) includes a review and analysis of factors influencing the health department's ability to improve the community's health.
 - (B) uses local health status data and information to set goals and objectives.
 - (C) uses community input where applicable.

(D) states desired outcomes for each element.

(E) sets priorities, and

(F) uses community collaborations to implement activities.

(2) The local health department shall develop and adopt program policies and procedures that meet the following criteria:

(A) refer to the federal and state legislation, rules or regulations, or local rules or ordinances that provide the authority to carry out agency programs and activities, and

(B) delineate desired outcomes.

(3) The local health department shall have a written procedure providing for annual review, and revision if necessary, of all policies.

(4) The local health department shall assess the internal and external resources that are available or needed to implement proposed new or updated policies and procedures.

(5) The local health department shall ensure that new staff is oriented to program policies and procedures and existing staff receives training on any updated or revised program policies and procedures.

(6) The local health department shall ensure that program policies and procedures are accessible to all staff.

Authority G.S. 130A-34.1.

SECTION .0700 - ENFORCE LAWS AND REGULATIONS THAT PROTECT HEALTH AND ENSURE SAFETY

10A NCAC 48B .0701 BENCHMARK 16

(a) Benchmark: The local health department staff shall have knowledge of public health law and an understanding of the relationship between the law and public health practice.

(b) Activities:

(1) The local health director and unit directors, such as directors of communicable disease, nursing, clinical services and environmental health, shall receive ongoing training in current public health law and its application.

(2) Local health department new employee orientation shall address public health laws and rules.

(3) Environmental health staff shall be trained in the implementation of laws, rules and ordinances that they enforce and shall have access to copies of the laws, rules and ordinances.

Authority G.S. 130A-34.1.

10A NCAC 48B .0702 BENCHMARK 17

(a) Benchmark: The local health department shall monitor compliance with public health laws and rules.

(b) Activities:

- (1) The local health department shall conduct inspection and permitting activities for state mandated environmental health regulatory programs.
- (2) The local health department shall conduct inspection and permitting activities assigned to the local health department by local rules, ordinances, or policies.
- (3) The local health department shall monitor compliance with communicable disease control laws and rules.
- (4) The local health department shall monitor compliance with animal control laws, ordinances and rules if the local health department is responsible for animal control.

Authority G.S. 130A-34.1.

10A NCAC 48B .0703 BENCHMARK 18

(a) Benchmark: The local health department shall enforce public health laws, rules and ordinances.

(b) Activities:

- (1) The local health department shall have written policies and procedures addressing enforcement of public health laws, rules and ordinances.
- (2) The local health department shall take enforcement action for violations of public health laws, rules and ordinances.
- (3) The local health department shall have written policies and procedures for handling complaints related to enforcement of laws, rules and ordinances.
- (4) The local health department shall address complaints in accordance with its policies and procedures.

Authority G.S. 130A-34.1.

SECTION .0800 - LINK PEOPLE TO NEEDED PERSONAL HEALTH SERVICES TO ASSURE THE PROVISION OF HEALTH CARE WHEN OTHERWISE UNAVAILABLE

10A NCAC 48B .0801 BENCHMARK 19

(a) Benchmark: The local health department shall identify populations that are not receiving preventive services or are otherwise underserved with respect to health care.

(b) Activities:

- (1) The local health department shall assess use of public health programs and health care services by underserved, at-risk and vulnerable populations.
- (2) The local health department shall take actions to include linguistically and culturally representative persons in planning and implementing programs intended to reach underserved population groups.

Authority G.S. 130A-34.1.

10A NCAC 48B .0802 BENCHMARK 20

(a) Benchmark: The local health department shall mobilize the community to address health care resource needs.

(b) Activities:

- (1) The local health department shall collaborate with community health care providers to provide personal and preventive health services.
- (2) The local health department shall collaborate with community health care providers and agencies to reduce barriers to access to care.

Authority G.S. 130A-34.1.

10A NCAC 48B .0803 BENCHMARK 21

(a) Benchmark: The local health department shall lead efforts in the community to link individuals with preventive, health promotion, and other health services.

(b) Activities:

- (1) The local health department shall make available to the general public a current, comprehensive list of community health and wellness resources.
- (2) The local health department shall make available complete and up-to-date information about local health department programs, services and resources.
- (3) The local health department shall develop and implement strategies to increase use of public health programs and services.
- (4) The local health department shall assure that the program planning and implementation involve community health advocates that represent populations being served in the local health department.

Authority G.S. 130A-34.1.

10A NCAC 48B .0804 BENCHMARK 22

(a) Benchmark: The local health department shall serve as a health care provider when local needs and authority exist, and the agency capacity and resources are available.

(b) Activities:

- (1) When the local health department determines that there are compelling unmet health care needs in the community, the local health department shall develop a plan with community leaders and providers to meet the unmet needs, which may include the establishment and provision of such services by the local health department if the department has the authority, capacity and resources to address the unmet needs.
- (2) The local health department shall comply with laws, rules and contractual requirements for programs and services provided pursuant to

the local health department's consolidated agreement and agreement addenda, including requirements for corrective action.

- (3) The local health department shall comply with laws and rules relating to programs and services offered by local health department but not covered by the consolidated agreement and agreement addenda.

Authority G.S. 130A-34.1.

SECTION .0900 - ASSURE A COMPETENT PUBLIC HEALTH WORKFORCE AND PERSONAL HEALTH WORKFORCE

10A NCAC 48B .0901 BENCHMARK 23

(a) Benchmark: The local health department staff shall meet statutory and regulatory qualifications for their positions.

(b) Activities:

- (1) The local health department shall have, or be recruiting, a health director who meets the legal requirements for the position.
- (2) The local health department staff shall meet all registration, certification or licensure requirements for positions held and duties assigned.
- (3) The local health department shall employ or contract with one or more physicians licensed to practice in North Carolina to serve as medical director.

Authority G.S. 130A-34.1.

10A NCAC 48B .0902 BENCHMARK 24

(a) Benchmark: The local health department shall regularly evaluate staff training and development needs and provide opportunities for continuing education, training and leadership development.

(b) Activities:

- (1) The local health department shall have policies that promote and provide staff access to training.
- (2) The local health department shall have a staff development plan that includes identifying and addressing the training and continuing education needs of the staff.
- (3) The local health department staff shall participate in orientation and on-going training and continuing education activities required by law, rule or contractual obligation.

Authority G.S. 130A-34.1.

10A NCAC 48B .0903 BENCHMARK 25

(a) Benchmark: The local health department shall build relationships with entities that conduct education or research to enrich public health practice.

(b) Activities:

- (1) The local health department shall work with academic institutions and other programs such as universities, colleges, community colleges, Area Health Education Centers, CDC and professional associations to provide training opportunities for current staff and future public health practitioners.

- (2) The local health department shall work with at least two academic institutions and other programs such as universities, colleges, community colleges and Area Health Education Centers to facilitate research and evaluation of public health programs and issues.

Authority G.S. 130A-34.1.

10A NCAC 48B .0904 BENCHMARK 26

(a) Benchmark: The local health department shall promote diversity in the public health workforce.

(b) Activities:

- (1) The local health department shall have and implement a non-discrimination policy as required by state and federal law and train staff in its application.
- (2) The local health department shall develop and implement a plan consistent with the health department's non-discrimination policy to recruit and retain a management team and staff that reflects the population of the service area.
- (3) The local health department shall assure that agency staff receives training in cultural sensitivity and competency.

Authority G.S. 130A-34.1.

SECTION .1000 - EVALUATE EFFECTIVENESS, ACCESSIBILITY AND QUALITY OF PERSONAL AND POPULATION-BASED HEALTH SERVICES

10A NCAC 48B .1001 BENCHMARK 27

(a) Benchmark: The local health department shall evaluate all services it provides for effectiveness in achieving desired outcomes.

(b) Activities:

- (1) The local health department shall have in place a process for assessing consumer and community satisfaction with its services.
- (2) The local health department shall use data from the consumer and community satisfaction assessment to make changes to improve its services.
- (3) The local health department shall employ a quality assurance and improvement process to assess the effectiveness of services and improve health outcomes.

Authority G.S. 130A-34.1.

SECTION .1100 - RESEARCH FOR NEW INSIGHTS AND INNOVATIVE SOLUTIONS TO HEALTH PROBLEMS

10A NCAC 48B .1101 BENCHMARK 28

(a) Benchmark: The local health department shall use research to develop and evaluate public health programs.

(b) Activity: Before implementing a proposed public health program, the local health department shall review, when available, research evaluating the potential effectiveness of the program.

Authority G.S. 130A-34.1.

10A NCAC 48B .1102 BENCHMARK 29

(a) Benchmark: The local health department shall ensure that its participation in research meets ethical standards.

(b) Activity:

(1) The local health department shall develop and implement policies ensuring that state and federal requirements are followed regarding the rights of participants in local public health research programs and requiring that any requests to access health department clients have Institution Review Board approval obtained by the host research organization.

(2) The local health department shall develop and implement policies for participation in research activities that impact its clients or community members.

Authority G.S. 130A-34.1.

SECTION .1200 - PROVIDE FACILITIES AND ADMINISTRATIVE SERVICES

10A NCAC 48B .1201 BENCHMARK 30

(a) Benchmark: The local health department shall provide safe and accessible physical facilities and services.

(b) Activities:

(1) The local health department shall have facilities that are clean, safe and secure for the specific activities being carried out in the facility or any area of the facility, such as laboratory analyses or patient examinations.

(2) The local health department shall have facilities that are accessible to persons with physical disabilities and services that are accessible to persons with limited proficiency in the English language.

(3) The local health department shall have examination rooms and direct client service areas that are configured in a way that protects client privacy.

(4) The local health department shall ensure privacy and security of records containing privileged patient medical information or information protected by the federal Health Insurance Portability and Accountability Act.

(5) The local health department shall comply with OSHA regulations.

(6) The local health department shall ensure cleaning, disinfection and maintenance of clinical and laboratory equipment and service areas and shall document all cleanings, disinfections and maintenance.

(7) The local health department shall have and comply with policies and procedures for infection control required by law in providing clinical services.

(8) The local health department's hours of operation shall be based on documented community need.

(9) The local health department shall prohibit the use of tobacco in its facility.

(10) The local health department shall make efforts to prohibit the use of tobacco in all areas and grounds within fifty (50) feet of the health department facility.

Authority G.S. 130A-34.1.

10A NCAC 48B .1202 BENCHMARK 31

(a) Benchmark: The local health department shall develop and implement administrative policies and procedures.

(b) Activities:

(1) The local health department shall develop and implement policies and procedures regarding the administration of the local health department and shall assure policies and procedures are accessible to staff.

(2) The local health department shall have a current organizational chart showing lines of authority.

(3) The local health department shall have written personnel policies that address disciplinary, grievance and harassment issues.

(4) The local health department shall have current written position descriptions and qualifications for each staff position.

(5) The local health department shall implement a performance appraisal system for all staff.

(6) The local health department shall have an inventory of equipment that includes a plan for replacement.

Authority G.S. 130A-34.1.

10A NCAC 48B .1203 BENCHMARK 32

(a) Benchmark: The local health department shall operate a secure and effective management information system.

(b) Activities:

(1) The local health department shall have computer equipment and software needed to interface with state data management systems.

(2) The local health department shall ensure that staff are able to use the management information system to participate in electronic

communications and public health program implementation.

- (3) The local health department shall have a written policy regarding authorized and prohibited use of computer equipment, email and Internet.
- (4) The local health department shall have policies and procedures to assure management information system security, and use passwords and screensavers to safeguard the privacy of electronic information.

Authority G.S. 130A-34.1.

10A NCAC 48B .1204 BENCHMARK 33

(a) Benchmark: The local health department shall assure its financial accountability.

(b) Activities:

- (1) The local health department shall demonstrate that it receives financial support from a local taxing authority.
- (2) The local health department shall operate under a budget approved by the county commissioners.
- (3) The local health department shall follow generally accepted accounting principles.
- (4) The local health department shall have policies that assure segregation of financial management duties and accountability for funds.
- (5) The local health department shall determine the cost of services in setting fees.
- (6) The local health department shall develop and present periodic budget, expenditure and other financial tracking reports to the board of health for its review.
- (7) The local health department shall have a financial risk management system in place to address uncollected fees and bad debt.

Authority G.S. 130A-34.1.

SECTION .1300 - GOVERNANCE

10A NCAC 48B .1301 BENCHMARK 34

(a) Benchmark: The local board of health shall exercise its authority to adopt and enforce rules necessary to protect and promote the public's health.

(b) Activities:

- (1) If the local board of health has bylaws describing its operating procedures, the bylaws shall comply with state law.
- (2) The local board of health shall have access to legal counsel.
- (3) The local board of health shall follow the procedures for adopting rules in G.S. 130A-39.
- (4) The local board of health shall evaluate the need for the adoption or amendment of local rules or ordinances.

Authority G.S. 130A-34.1.

10A NCAC 48B .1302 BENCHMARK 35

(a) Benchmark: The local board of health shall assure a fair and equitable adjudication process.

(b) Activity: The local board of health shall assure it follows the procedures for adjudications in G.S. 130A-24.

Authority G.S. 130A-34.1.

10A NCAC 48B .1303 BENCHMARK 36

(a) Benchmark: The local health department shall provide training and reference materials for board of health members regarding service on the board.

(b) Activities:

- (1) The local health department shall provide board of health members with access to a written board handbook developed or updated within the past 12 months.
- (2) The local health department shall assure board of health members receive training on the authorities and responsibilities of the local board of health.

Authority G.S. 130A-34.1.

10A NCAC 48B .1304 BENCHMARK 37

(a) Benchmark: The local board of health shall assure the development, implementation and evaluation of local health services and programs to protect and promote the public's health.

(b) Activities:

- (1) The local board of health shall approve policies for the administration of local public health programs.
- (2) The local board of health shall describe and define the knowledge, skills, and abilities that must be met by the local health director, consistent with the requirements in GS 130A-40.
- (3) The local board of health shall review and approve the job description of the local health director.
- (4) The local board of health shall conduct an annual performance review of the health director.
- (5) The local board of health shall approve policies for the training and continuing education for agency staff.

Authority G.S. 130A-34.1.

10A NCAC 48B .1305 BENCHMARK 38

(a) Benchmark: The local board of health shall participate in the establishment of public health goals and objectives.

(b) Activities:

- (1) The local board of health shall annually review reports provided by the local health department on the community's health.

- (2) The local board of health shall review community health assessment data and citizen input used to plan and monitor progress toward health-related goals.
- (3) The local board of health shall assure that individuals, agencies, and organizations have the opportunity to participate in the community health improvement process.

- (1) The local board of health shall take actions to foster community input regarding public health issues.
- (2) The local board of health shall take actions to foster local health department partnership-building efforts and staff interactions with the community.
- (3) The local board of health shall take actions to foster the coordination of resources to enhance partnerships and collaboration to achieve public health objectives.

Authority G.S. 130A-34.1.

10A NCAC 48B .1306 BENCHMARK 39

(a) Benchmark: The local board of health shall assure the availability of resources to implement the essential services described in G.S. 130A-34.1(e)(2).

(b) Activities:

- (1) The local board of health shall communicate with the board of county commissioners, units of government and private foundations in support of local health department efforts to secure national, state and local financial resources.
- (2) The local board of health shall review fiscal reports to assure essential services of public health are being provided in accordance with local, state and federal requirements.
- (3) The local board of health shall annually review and approve the local health department budget and approve fees in accordance with G.S. 130A-39(g).
- (4) The local board of health shall communicate with the board of county commissioners, units of government and private foundations in support of the development, implementation and evaluation of public health programs and a community health improvement process.

Authority G.S. 130A-34.1.

10A NCAC 48B .1307 BENCHMARK 40

(a) Benchmark: The local board of health shall advocate in the community on behalf of public health.

(b) Activities:

- (1) The local board of health shall inform elected officials and community boards about community health issues.
- (2) The local board of health shall communicate support for the enactment and retention of laws and rules and the development of public health interventions that protect health and ensure safety.

Authority G.S. 130A-34.1.

10A NCAC 48B .1308 BENCHMARK 41

(a) Benchmark: The local board of health shall promote the development of public health partnerships.

(b) Activities:

Authority G.S. 130A-34.1.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Alarm Systems Licensing Board intends to amend the rules cited as 12 NCAC 11 .0201 - .0202, .0301.

Proposed Effective Date: *September 1, 2006*

Public Hearing:

Date: *May 16, 2006*

Time: *1:00 p.m.*

Location: *Conference Room, ASLB Offices, 1631 Midtown Pl., #104, Raleigh, NC 27609*

Reason for Proposed Action:

12 NCAC 11 .0201, .0301: *Applicants for a license or registration permit must submit to a criminal record check. The Board finds that it is in the interest of the public health, safety, and welfare to allow criminal record checks to be performed using the online database maintained by the North Carolina Administrative Offices of the Courts. The proposed rules will allow the submission of that record check for licensing and registration purposes.*

12 NCAC 11 .0202: *The Board proposes the amendment to place a time limit on the validity of the exam and to accept as experience the Certified Alarm Technician Level I course taught by the National Burglar and Fire Alarm Association.*

Procedure by which a person can object to the agency on a proposed rule: *Comments must be submitted in writing to Director Wayne Woodard, Alarm Systems Licensing Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609 and will be accepted up to and including the end of the comment period, with that date being June 30, 2006.*

Comments may be submitted to: *Wayne Woodard, 1631 Midtown Place, #104, Raleigh, NC 27609*

Comment period ends: *June 30, 2006*

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 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR LICENSEES

12 NCAC 11 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant card provided by the Board;
- (2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification one inch by one inch in size;
- (3) statements of the results of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediately preceding ~~48 months; and~~ 48 months or a statewide criminal history records search for the preceding 48 months conducted by an Administrative Offices of the Courts' approved firm that conducts criminal history searches and bases its search on the criminal history database maintained by the North Carolina Administrative Offices of the Courts; and
- (4) the applicant's application fee.

(b) Each applicant must provide evidence of high school graduation either by diploma, G.E.D. certificate, or other acceptable proof.

(c) Each applicant for a branch office license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by the branch office application fee.

Authority G.S. 74D-2; 74D-3; 74D-5; 74D-7.

12 NCAC 11 .0202 EXPERIENCE REQUIREMENTS FOR LICENSE

(a) Applicants for an alarm system license must meet the following minimum requirements which are additional to those specified in G.S. 74D:

- (1) Establish to the Board's satisfaction two year's experience within the past five years in alarm systems installation, service, or alarm systems business management; ~~or~~
- (2) ~~Successfully~~ No longer than one year prior to the application date, successfully pass an oral or written examination deemed by the Board to measure an individual's knowledge and competence in the alarm systems business; or
- (3) No longer than one year prior to the application date, successfully complete the Certified Alarm Technician Level I Course offered by the National Burglar and Fire Alarm Association.

(b) Any applicant who takes the examination administered by the Board under 12 NCAC 11 .0202(a)(2) and who does not successfully complete said examination after two attempts, must wait six months before being allowed to take the examination again.

Authority G.S. 74D-5.

SECTION .0300 - PROVISIONS FOR REGISTRANTS

12 NCAC 11 .0301 APPLICATION FOR REGISTRATION

(a) Each licensee or his appointed agent shall submit and sign an application form for the registration of his employee on a form provided by the Board. This form, when sent to the board, shall be accompanied by a set of classifiable fingerprints on a standard F.B.I. applicant card, two recent photographs of acceptable quality for identification one inch by one inch in size, statements of the results of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months or a statewide criminal history records search for the preceding 48 months conducted by an Administrative Offices of the Courts' approved firm that conducts criminal history searches and bases its search on the criminal history database maintained by the North Carolina Administrative Offices of the Courts, and the registration fee required by 12 NCAC Chapter 11 .0302.

(b) The employer of an applicant who is currently registered with another alarm business, shall complete an application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee.

(c) The employer of each applicant for registration shall retain a copy of the applicant's application in the individual applicant's personnel file in the employer's office.

(d) The employer of each applicant for registration shall complete and submit to the Board a certification of the background and criminal record check of every applicant signed by the licensee or qualifying agent. A copy of this certification

shall be retained in the individual applicant's personnel file in the employer's office.

Authority G.S. 74D-5; 74D-8.

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

SUBCHAPTER 01J - STATE CLEAN WATER REVOLVING LOAN AND GRANT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to adopt the rules cited as 15A NCAC 01J .1401 - .1402, .1501, .1601 - .1602, .1701, .1801, .1901 - .1902, .2001 - .2003, .2101 - .2102, .2201; and repeal rules cited as 15A NCAC 01J .0101 - .0102, .0201 - .0205, .0301 - .0304, .0401 - .0403, .0502 - .0505, .0601 - .0604, .0606, .0701 - .0704, .0801 - .0803, .0901 - .0904, .1001 - .1002, .1101 - .1102.

Proposed Effective Date: September 1, 2006

Public Hearing:

Date: May 24, 2006

Time: 10:00 a.m.

Location: Room 1B 420 Parker Lincoln Building, Raleigh, NC

Reason for Proposed Action: To implement S.L. 2005 -454 (H1095).

Procedure by which a person can object to the agency on a proposed rule: You may attend and participate in the public hearing or submit written comments to Sid Harrell of the Public Water Supply Section at the postal address, email address, or fax number listed in this notice.

Comments may be submitted to: Sid Harrell, 1634 Mail Service Center, Raleigh, NC 27699-1634, phone (919) 715-3216, fax (919) 715-4374, email sid.harrell@ncmail.net

Comment period ends: June 30, 2006

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

15A NCAC 01J .0101 PURPOSE

Loans and grants for wastewater treatment systems, wastewater collection systems and water supply systems from the various accounts in the North Carolina Clean Water Revolving Loan and Grant Fund established by G.S. 159G, except the Water Pollution Control Revolving Fund established by G.S. 159G-5(C) and the Drinking Water Treatment Revolving Loan Fund established by G.S. 159G 5(d), shall be made in accordance with this Subchapter.

Authority G.S. 159G-15.

15A NCAC 01J .0102 DEFINITIONS

In addition to the definitions in G.S. 159G 3, the following definitions apply to this Subchapter:

- (1) "Act" means the North Carolina Clean Water Revolving Loan and Grant Act of 1987, G.S. 159G.
- (2) "Award" means the offer by the receiving agency to enter into a loan or grant commitment for a specified amount.
- (3) "Award of contract" means the award by the loan or grant recipient to a contractor of a contract to construct the project as bid.
- (4) "Bid" means the amount of money for which a contractor offers to construct the project.
- (5) "Contingency costs" means unforeseen costs or situations not included in the estimate of project costs.
- (6) "Commitment" means a binding agreement to pay loan or grant funds in a lump sum or in installments to an eligible applicant at some future time.
- (7) "Date of completion" means the date on which the project has been completed, as determined by the receiving agency.
- (8) "Division of Environmental Health" means the Division of Environmental Health of the North Carolina Department of Environment and Natural Resources.
- (9) "Division of Environmental Management" means the Division of Water Quality of the North Carolina Department of Environment and Natural Resources.
- (10) "Effective date of receipt" means September 30 for applications postmarked or hand delivered to the principal offices of the receiving agency in Raleigh, North Carolina between April 1 and September 30, and means March 31 for applications postmarked or hand

delivered to the principal offices of the receiving agency in Raleigh, North Carolina between October 1 and March 31; except that for applications to the Emergency Wastewater or Water Supply Revolving Loan Account it means the date designated by the receiving agency for each priority review period established under Rule .0801(b) of this Subchapter.

- (11) "Fiscal year" means the state fiscal year, beginning on July 1 of a calendar year and ending on June 30 of the following calendar year. In referring to a specific fiscal year, the year named is the calendar year in which the fiscal year ends. For example, "Fiscal Year 1988" refers to the fiscal year beginning July 1, 1987 and ending June 30, 1988.
- (12) "Inspection" means inspection or inspections of a project to determine percentage completion of the project and compliance with applicable federal, state and local laws or rules.
- (13) "Orders" means any restrictive measure, related to the operation of its wastewater treatment facilities, issued to an applicant for a loan or grant from the wastewater accounts under this Subchapter. Such measures may be included in, but are not restricted to, Special Orders, Special Orders by Consent, Judicial Orders, or issued or proposed permits, permit modifications or certificates.
- (14) "Project" means the works described in the application for a loan or grant under this Subchapter.
- (15) "Loan" means "revolving loan" as defined in G.S. 159G-3(15).
- (16) "Priority period" means priority review period as established in Section .0800 of this Subchapter.
- (17) "Real property" means land and structures affixed to the land having the nature of real property or interests in land including easements or other rights of way purchased or acquired for water supply and wastewater facilities and works to be constructed as a part of the project for which a loan or grant is made under this Subchapter.
- (18) "Regional water supply system" means:
 - (a) A public water system that serves two or more local units of government, or
 - (b) A public water system that demonstrates each of the following:
 - (i) A specific plan to provide drinking water throughout the territory of a local unit of government, except that a municipality shall also demonstrate a specific plan to provide drinking water

outside its extraterritorial jurisdiction;

- (ii) Shares water supply facility resources with another public water system or eliminates an acute/imminent, immediate, chronic, or potential health hazard as described in Rule .0701 (a) through (d) of this Subchapter in an area containing at least 15 residential units which is not served by a public water system; and
 - (iii) An interlocal agreement or joint resolution to be a part of an interconnected regional water system within 10 years.
- (19) "Regional wastewater system" means a public wastewater collection or treatment system of a municipality, county, sanitary district, or other political subdivision of the State or combination thereof that serves two or more units of government.
 - (20) "Water Reclamation" means the production of a high level treated effluent as a reusable, non-potable water source.
 - (21) "Water Reuse" means the actual use or application of treated wastewater in or on areas which require water but do not require potable water quality.

Authority G.S. 159G-3; 159G-15.

SECTION .0200 - ELIGIBILITY REQUIREMENTS

15A NCAC 01J .0201 ELIGIBLE PROJECT COSTS

(a) Project costs eligible for a loan or grant under this Subchapter are limited to:

- (1) the actual costs of the works described in the project application; and
- (2) contingency costs, not to exceed ten percent of the estimated eligible construction costs for which a loan or grant award is made under this Subchapter.

Upon receipt of bids, the contingency costs shall be reduced to not more than five percent of the actual eligible construction costs as bid.

(b) Eligible costs do not include recurring annual expenditures for administration, repairs, or operation and maintenance of any wastewater treatment works, wastewater collection system or water supply system projects. Items not covered or allowed in the definition of "construction costs" in G.S. 159G-3(4) are also excluded.

Authority G.S. 159G-3(4); 159G-15.

15A NCAC 01J .0202 GRANTS FROM THE HIGH-UNIT COST ACCOUNTS

~~(a) Eligibility of an application for a grant from the High Unit Cost Wastewater Account or the High Unit Cost Water Supply Account, and the amount eligible for such a grant, will be determined by the receiving agency in accordance with G.S. 159G-6(b)(2) or 159G-6(c)(2), subject to the limitations in G.S. 159G-6(a)(2).~~

~~(b) For the purposes of Rule .0202(a) of this Subchapter, median household income in the local government unit in which the project is located will be as determined jointly each year by the U.S. Bureau of Census and the U.S. Department of Housing and Urban Development.~~

~~(c) Grants from the High Unit Cost Wastewater and Water Supply Accounts will be made only to approved projects that receive a commitment for the balance of project costs from any other source, including loans under this Subchapter and other loans from governmental or private sources.~~

~~(d) Grants from the High Unit Cost Water Supply accounts will be made only to applicants who have submitted a local water supply plan to the Department of Environment and Natural Resources in accordance with G.S. 143-355(l).~~

Authority G.S. 159G-6(a)(2); 159G-6(b)(2); 159G-6(c)(2); 159G-15.

15A NCAC 01J .0203 GRANTS FROM THE GENERAL REVOLVING LOAN AND GRANT ACCOUNTS

~~Eligibility of an application for a grant from the General Wastewater Revolving Loan and Grant Account established in G.S. 159G-6(b)(1) or the General Water Supply Revolving Loan and Grant Account established in G.S. 159G-6(c)(1), and the amount eligible for such a grant, will be determined by using the same criteria provided in the Act and this Subchapter for grants from the High Unit Cost Wastewater and Water Supply Accounts.~~

Authority G.S. 159G-2; 159G-6(a)(2); 159G-6(b)(1); 159G-6(c)(1); 159G-15.

15A NCAC 01J .0204 LOANS FROM THE EMERGENCY REVOLVING LOAN ACCOUNTS

~~(a) Projects required for repair or replacement of existing wastewater treatment or collection facilities where failure of such facilities creates or will create conditions jeopardizing the classified uses of the receiving waters, or resulting in a present or imminent serious public health hazard as certified by the Environmental Management Commission, or projects on moratorium are eligible for loans from the Emergency Wastewater Revolving Loan Account.~~

~~(b) Projects required to remedy a serious public health hazard related to the water supply system that is present or imminent in a community as certified by the Division of Environmental Health are eligible for loans from the Emergency Water Supply Revolving Loan Account.~~

~~(c) Project cost overruns on wastewater treatment, wastewater collection or water supply projects are not eligible for loans from~~

~~the Emergency Wastewater Revolving Loan Account or the Emergency Water Supply Revolving Loan Account, unless the original project loan commitment was from one of those accounts.~~

Authority G.S. 159G-6(b)(3); 159G-6(c)(3); 159G-15.

15A NCAC 01J .0205 DETERMINATION OF ELIGIBILITY

~~(a) Each application for loans or grants under this Subchapter will be reviewed by the receiving agency to determine whether it meets the eligibility requirements of the Act and this Subchapter.~~

~~(b) Each applicant will be notified by the receiving agency of its eligibility for consideration for a loan or grant award.~~

~~(c) Applications from ineligible applicants will be returned to the applicant.~~

Authority G.S. 159G-9; 159G-15.

SECTION .0300 - APPLICATIONS

15A NCAC 01J .0301 APPLICATION FILING DEADLINES

~~Applications to be considered for a loan or grant award under this Subchapter from funds available in the first semi-annual priority review period of a fiscal year shall have an effective date of receipt of September 30 of that year, which shall be the filing deadline for that priority review period. Applications to be considered for a loan or grant award under this Subchapter from funds available in the second semi-annual priority review period of a fiscal year shall have an effective date of receipt of March 31 of that year, which shall be the filing deadline for that priority review period.~~

Authority G.S. 159G-8; 159G-9; 159G-10; 159G-15.

15A NCAC 01J .0302 GENERAL PROVISIONS

~~(a) Applications for loans or grants under this Subchapter shall be submitted on the appropriate forms and accompanied by all documentation, assurances and other information called for in the instructions for completing and filing applications. Information concerning any grant or loan funds from any other source that the applicant has applied for or received for the project shall be disclosed on the application.~~

~~(b) An applicant shall furnish information in addition to or supplemental to the information contained in its application and supporting documentation upon request by the receiving agency.~~

~~(c) An applicant may amend an application having an effective date of receipt of the filing deadline for a priority review period to include additional data or information in support of its original application at any time prior to the date the receiving agency sets the priority rating for that priority review period.~~

~~(d) Any application that does not contain information sufficient to permit the receiving agency to review and approve the project by the date the receiving agency sets the priority rating for a priority review period shall not be included in the priority rating for that priority review period.~~

~~(e) An application shall be filed with the receiving agency before the award of contract on a project. The award of contract~~

on a project prior to consideration of the application for a loan or grant award will neither exclude the application from consideration nor guarantee the award of a loan or grant for the project.

(f) An application may be withdrawn from consideration upon request of the applicant but if resubmitted shall be considered as a new application.

(g) Applications to the General Wastewater Revolving Loan and Grant Account shall first be considered for funding from the Water Pollution Control Revolving Fund established by G.S. 159G-5(c). If the application does not receive full funding from that Fund, it shall be considered for funding from the General Wastewater Revolving Loan and Grant Account.

Authority G.S. 159G-8; 159G-9; 159G-10(a); 159G-15.

15A NCAC 01J .0303 FILING OF REQUIRED SUPPLEMENTAL INFORMATION

(a) Every application shall be accompanied by an environmental assessment document as required by G.S. 159G-8(b), by the date the receiving agency sets the priority rating for a priority review period.

(b) Any application that has not received approval by the receiving agency of the preliminary engineering report for the proposed project by the date the receiving agency sets the priority rating for a priority review period shall not be included in the priority rating for that priority review period.

(c) Any applicant for a water supply project not demonstrating approval of plans and specifications within four months from the end of the priority rating period shall be transferred to the next priority rating period for consideration unless this review is the second review in which case a new application shall be required for further consideration.

(d) Any application that is not accompanied by an adopted resolution as required by G.S. 159G-9(3) stating that the unit of government has complied or will substantially comply with all applicable federal, state and local laws or rules shall not be included in the priority rating for that priority review period. Such resolution shall be certified or attested to as a true and correct copy as adopted.

(e) If a public hearing is held on an application, the application shall not be included in the priority rating unless the hearing process is concluded by the date the receiving agency sets the priority rating for the priority review period.

(f) A certification shall be submitted by the local government unit stating that it will be in compliance with verifiable Minority Business Enterprise goals as stated in G.S. 143-128.

Authority G.S. 159G-8; 159G-9; 159G-10(a); 159G-15.

15A NCAC 01J .0304 APPLICATIONS FOR EMERGENCY LOANS

(a) Applications for loans from the Emergency Wastewater Revolving Loan Account shall be submitted to the Division of Environmental Management. The application will be processed and considered for approval by the Environmental Management Commission during the appropriate priority review period as established under Rule .0801(b) of this Subchapter.

(b) Applications for loans from the Emergency Water Supply Revolving Loan Account shall be submitted to the Division of Environmental Health. The application will be processed and considered for approval by the Division of Environmental Health during the appropriate priority review period as established under Rule .0801(b) of this Subchapter.

(c) Applications for emergency loans shall conform with this Subchapter, except that Rules .0301, .0302(e) and .0303(a) shall not apply.

Authority G.S. 159G-6(b)(3); 159G-6(c)(3); 159G-15.

SECTION .0400 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

15A NCAC 01J .0401 GENERAL CRITERIA

(a) During the review periods set forth in Section .0800 of this Subchapter all eligible applications shall be assigned a priority for loan or grant funds. Priorities shall be assigned by the Environmental Management Commission for applications for project loans or grants for wastewater treatment works and wastewater collection systems and by the Division of Environmental Health for applications for project loans or grants for water supply systems.

(b) In determining the priority to be assigned each eligible application, the Environmental Management Commission and the Division of Environmental Health will give consideration to the following priority factors:

- (1) Primary consideration shall be given to the public necessity of the project in promoting the public health, safety, and welfare and in providing or having the potential of providing the greatest benefit to the greatest number of persons.
- (2) Consideration shall also be given to the eligibility of the proposed project for federal funding; the compatibility of the proposed project with the state's general program of water supply and water pollution control, and any applicable regional planning program; the population to be served; the fiscal responsibility of the applicant; and the need of the applicant for funding assistance.
- (3) Additional consideration shall be given to eligible units of government which demonstrate practices for the conservation of water or which have a comprehensive land use plan.

(c) The categorical elements and items to be considered in assigning priorities to each application for which loan or grant funds are sought, and the points to be awarded to each categorical element and item are set forth in Sections .0500, .0600 and .0700 of this Subchapter. Unless otherwise specifically indicated, if an item for an element of a particular category applies specifically to the application under consideration, the application will be awarded the number of points assigned to that item for the categorical element; and if no item applies, no points will be awarded the application for that particular element.

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0402 CRITERIA FOR PLANNING AND WATER CONSERVATION

Maximum value 80 points:

- (1) An applicant may receive a maximum of 15 bonus points for meeting the following criteria as applicable:
(a) An applicant demonstrates it has a continuing I/I program in its wastewater sewer maintenance program. (Wastewater Projects Only) 5 points
(b) An applicant demonstrates it has a continuing water loss reduction program in its water supply system program. (Water Supply Projects Only) 5 points
(c) An applicant demonstrates it has a continuing program of water conservation education and information. 5 points
(d) An applicant demonstrates it has established a water conservation incentive rate structure; created incentives for new or replacement installation of low flow faucets, shower heads, and toilets; or has a water reclamation or reuse system. 5 points
(2) An applicant may receive a maximum of 25 bonus points for meeting the following criteria:
(a) An applicant demonstrates that it has adopted a comprehensive land use plan that meets the requirements of G.S. 153A, Article 18 or G.S. 160A, Article 19, or applicant is a local government unit that is not authorized to adopt a comprehensive land use plan but that is located in whole or in part in another local government unit that has adopted a comprehensive land use plan, and that the proposed project is consistent with the plan. 7 points
(b) An applicant demonstrates that the comprehensive land use plan exceeds the minimum state standards for the protection of water resources. 8 points
(c) An applicant demonstrates that actions have been taken toward implementation of the comprehensive land use plan. These actions

may include the adoption of a zoning ordinance or any other measure that results in the implementation of the comprehensive land use plan.

- 10 points
(3) An applicant may receive a maximum of 20 bonus points for the following criteria:
(a) An Applicant has developed a capital improvement plan as defined in Session Laws 1998 Chapter 132. 15 points
(b) Proposed project is consistent with the water supply watershed protection requirements of G.S. 143-214.5. 5 points
(4) An applicant may receive a maximum of 20 bonus points for the following criteria:
(a) An applicant demonstrates voluntary water supply watershed protection activities in excess of the minimum requirements of G.S. 143-214.5, or 15 points
(b) An applicant demonstrates it has developed a wellhead protection program approved by the Division of Environmental Health under the agency's voluntary "N.C. Wellhead Protection Program," or 15 points
(c) An applicant demonstrates it has both Subparagraphs (1) and (2) of this Paragraph. 20 points

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0403 CRITERIA FOR GRANT INCREASES

After award of a state grant under this Subchapter, increases may be made for approved projects provided:

- (1) A new application containing adequate information including revised cost data is submitted.
(2) That, based on its effective date of receipt, the new application is rated for priority along with all other eligible applications during the same priority period.
(3) The new application's priority rating is adequate to support the award of the additional funding.

Authority G.S. 159G-10; 159G-15.

SECTION .0500 - PRIORITY CRITERIA FOR WASTEWATER TREATMENT WORKS PROJECTS

15A NCAC 01J .0502 APPLICABLE CONDITIONS Maximum Value 65 Points:

The value of this Rule will be the sum of the points assigned under Items (1), (2), (3) and (4) of this Rule.

- (1) Proposed project will comply with established water quality standards and priority points will be assigned on the basis of the classification assigned to the receiving waters as follows:
 - (a) Class "SA" (Shellfish Waters), Class "WS I" or "WS II" (Water Supply Source), Class "ORW" (Outstanding Resource Waters), or "HQW" (High Quality Waters). 20 points
 - (b) Class "WS III", "WS IV", or "WS V" (Water Supply Source) 15 points
 - (c) Class "B" or "SB" (Bathing Waters) 10 points
 - (d) Class "C" or "SC" (Fishing) 5 points
- (2) Proposed projects will provide for a regional wastewater collection or treatment system. 15 points
- (3) Proposed project will provide wastewater treatment processes for the removal of nutrients. 5 points
- (4) Proposed project will result in a reduction of the overall volume of effluent discharged to the state's waters by using alternative methods of wastewater treatment and disposal. 25 points

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0503 FINANCIAL NEED OF APPLICANT

Maximum Value 15 Points:

- (1) The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \text{Points} = \frac{50 (\text{Total Bonded Indebtedness})}{\text{Total Appraised Property Valuation}} + \text{Total Estimated Project Cost}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.
 "Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.
 "50" is used in the formula to provide point values for this categorical element. 5 points
- (2) The applicant is located within a county which has been designated as "distressed" by the Secretary of Commerce in accordance with G.S. 105-130.40(e);

G.S. 105-151.17(e) and G.S. 143B-437A. 10 points

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0504 FISCAL RESPONSIBILITY OF THE APPLICANT

Maximum Value 25 points:

The value of this Rule will be the sum of the points assigned to either Item (1) or (2) of this Rule plus the value assigned to Items (3) and (4) of this Rule:

- (1) The applicant has adopted a sewer use ordinance approved by the Division of Water Quality which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project, or 6 points
- (2) The applicant has developed a draft sewer use ordinance which will be adopted and placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project. 2 points
- (3) The applicant has established by resolution of its governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with application.) 4 points
- (4) The applicant has followed proper accounting and fiscal reporting procedures as evidenced by the applicant's most recent report of audit and the applicant is in compliance with provisions of the general fiscal control laws of the state. 15 points

The Environmental Management Commission may seek the comments of the Secretary of the Local Government Commission in determining whether to assign values to Items (3) and (4) of this Rule.

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0505 PROPERTY ACQUISITION

Maximum Value 10 points:

All necessary sites, rights of way or easements have been acquired. An opinion by title counsel shall be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the sites, rights of way or easements free and clear of any preexisting deeds of trusts, liens or other encumbrances. 10 points

Authority G.S. 159G-10; 159G-15.

(2) The applicant is located within a county which has been designated as "distressed" by the Secretary of Commerce in accordance with G.S. 105-130.40(c), G.S. 105-151.17(c) and G.S. 143B-437A. 10 points

Authority G.S. 159G-10; 159G-15.

SECTION .0600 – PRIORITY CRITERIA FOR WASTEWATER COLLECTION SYSTEM PROJECTS

15A NCAC 01J .0601 PUBLIC NEED

Select One; Maximum Value 25 points:

- (1) Project is intended to improve or expand an existing system for which adequate wastewater treatment facilities will be provided by:
 - (a) a regional wastewater system. 25 points
 - (b) the applicant. 20 points
- (2) Project is intended to provide a basic system for a unit of government which is not presently served by an approved system and adequate wastewater treatment will be provided by:
 - (a) a regional wastewater system. 20 points
 - (b) the applicant. 15 points

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0602 PUBLIC HEALTH NEED

Maximum Value 20 points:

Project will eliminate a critical or emerging public health hazard as certified by the local health department. 20 points

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0603 FINANCIAL NEED OF THE APPLICANT

Maximum Value 15 points:

- (1) The financial need of the applicant will be determined by the following formula:
$$\text{Points} = \frac{50 (\text{Total Bonded Indebtedness}) + \text{Total Estimated Project Cost}}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

"50" is used in the formula to provide point values for this categorical element. 5 points

15A NCAC 01J .0604 FISCAL RESPONSIBILITY OF THE APPLICANT

Maximum Value 25 points:

The value of this Rule will be the sum of the points assigned to either Item (1) or (2) plus the value assigned to Items (3) and (4) of this Rule:

- (1) The applicant has adopted a sewer use ordinance approved by the Division of Water Quality which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges, providing that each category of users shall pay its proportional part of the total cost of the operation, and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project, or 6 points
- (2) The applicant has developed a draft sewer use ordinance which will be adopted and placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges, providing that each category of users shall pay its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project. 2 points
- (3) The applicant has established by resolution of the governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with application.) 4 points
- (4) The applicant has followed proper accounting and fiscal reporting procedures, as evidenced by the applicant's most recent report of audit, and the applicant is in compliance with provisions of the general fiscal control laws of the state. 15 points

The Division of Environmental Management may seek the comments of the Secretary of the Local Government Commission in determining whether to assign values to Items (3) and (4) of this Rule.

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0606 PROPERTY ACQUISITION

Maximum Value 10 points:

All necessary sites, rights-of-way or easements have been acquired. An opinion by title counsel shall be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the sites, rights of way or easements free and clear of any preexisting deeds of trusts, liens or other encumbrances. 10 points

Authority G.S. 159G-10; 159G-15.

SECTION .0700 – PRIORITY CRITERIA FOR WATER SUPPLY SYSTEMS PROJECTS

15A NCAC 01J .0701 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE

Maximum Value 130 points:

(1) System and Service Area Needs (Select one) (Maximum Points 20):

(a) The project is intended to increase the source of water to meet existing service area needs or to alleviate water shortage problems. 12 points

(b) The project is intended to improve an existing system with no increase in the area to be served. 12 points

(c) The project is intended to increase the existing area to be served without improvement of the existing system. 12 points

(d) The project is intended to increase the existing area to be served and includes improvements to the existing system. 16 points

(e) The project is intended to increase the existing area to be served and includes improvements to the existing system and either is a component of or will create a regional water supply system. 20 points

(f) The project is intended to provide for construction of a basic system for an area which is not presently served by an approved public water supply system and service by an existing system is not feasible. 20 points

(2) Public health and compliance points may be awarded to a project based on the following criteria. A proposed project shall be necessary to facilitate compliance with the N.C. Drinking Water Act or the federal Safe Drinking Water Act and to alleviate the type of public health

concern for which points are awarded. A project shall receive only points in the highest sub-category for which it may qualify:

(a) Acute/Imminent Health Hazards. 90 points shall be awarded to projects that propose to eliminate any one or more of the following acute, ongoing health hazards to the consumer:

(i) Projects that address documented nitrate, nitrite or fecal coliform MCL violations, or contaminant levels in drinking water which constitute acute health risks as defined in 40 C.F.R. 141.32(a)(1)(iii) which is incorporated by reference at 15A NCAC 18C .1523; or

(ii) Projects that eliminate any contaminant in the public water system that poses an acute risk or imminent hazard to public health as determined by the State Health Director or a health risk assessment from the Division of Epidemiology, Department of Health and Human Services in accordance with G.S. 130A-2(3).

(b) Immediate Health Hazards. 60 points shall be awarded to projects that propose to eliminate any one or more of the following immediate health hazards to the consumer:

(i) Projects that address surface water treatment technique violations occurring for two or more consecutive months;

(ii) Projects that resolve any microbiological MCL problems for a water system with three or more microbiological MCL violations during the previous 12 months;

(iii) Projects that propose filtration for a surface water source or for a well that is determined to be under the direct influence of surface water by the Department that does not currently have filtration;

(iv) Projects that address the inability of a public water system to inactivate giardia and viruses in accordance

- with 15A NCAC 18C .2001;
or
- (v) ~~Projects that address documented recurrent water outages or low pressure below the requirements of 15A NCAC 18C .0901. Only problems that affect human consumption of drinking water shall be considered for award of points under this criteria.~~
- (e) ~~Chronic Health Hazards. 36 points shall be awarded to projects that propose to eliminate any one or more of the following chronic health hazards to the consumer:~~
 - (i) ~~Projects that address exceedances of the lead and copper action levels under 15A NCAC 18C .1507;~~
 - (ii) ~~Projects that address violations of inorganic or organic chemical or contaminant MCLs under 15A NCAC 18C .1510, .1517, and .1518;~~
 - (iii) ~~Projects that address violations of radiological contamination MCLs under 15A NCAC 18C .1520 and .1521; or~~
 - (iv) ~~Projects that address a chronic health hazard as determined by the State Health Director or a health risk assessment from the Division of Epidemiology, Department of Health and Human Services.~~
- (d) ~~Potential Health Hazards. 24 points shall be awarded to projects that propose to eliminate any one or more of following potential health hazards to the consumer:~~
 - (i) ~~Projects that address low chlorine residuals in the distribution system;~~
 - (ii) ~~Projects that address periodic violations of an MCL;~~
 - (iii) ~~Projects for line installation or extensions to areas with poor water quality or limited quantity;~~
 - (iv) ~~Projects to develop new sources of water, to augment existing sources, or to expand treatment capacity to~~

- ~~meet current demand when the average daily demand for the previous 12 months equals or exceeds the available water supply as calculated in local water supply plans prepared in accordance with G.S. 143-355(l) or the maximum day demand for the previous 12 months equals or exceeds the approved water treatment plant design capacity; or~~
- (v) ~~Projects to provide disinfection for a system that currently does not have disinfection.~~
- (e) ~~System Improvements. 12 points shall be awarded for projects that shall provide any one or more of the following general system improvements when needed for public health purposes:~~
 - (i) ~~Projects that replace water supply production or treatment equipment that is undersized, malfunctioning or has exceeded its useful life;~~
 - (ii) ~~Projects that replace undersized or leaking water lines;~~
 - (iii) ~~Projects that address other water quality concerns such as iron, manganese, taste, and odor;~~
 - (iv) ~~Projects to bring existing facilities to current design standards which affect water quality such as treatment, chemical storage and application, pumping facilities, finished storage, distribution systems;~~
 - (v) ~~Projects that eliminate dead ends and provide looping in a distribution system.~~
 - (vi) ~~Projects that increase water storage capacity;~~
 - (vii) ~~Projects to develop new sources of water, to augment existing sources, or to expand treatment capacity to meet current demand when the average daily demand for the previous 12 months exceeds 80 percent of the available water supply as calculated in local water~~

supply plans prepared in accordance with G.S. 143-355(1) or the maximum day demand for the previous 12 months exceeds 80 percent of the approved water treatment plant design capacity; or

(viii) Projects for installation or upgrade of water treatment plant waste disposal facilities.

(3) Capacity for Future Growth (Select One) (Maximum Points 20):

(a) The project is intended to provide for the immediate needs. _____
_____ 6 points

(b) The project is intended to provide for the reasonable growth needs of the area during the next 5 to 20 year planning period. _____
_____ 10 points

(c) The project is a proposed regional system or a major component of a regional system which is intended to provide for the reasonable growth needs of the area to be served during the next 20 or more years. _____
_____ 20 points

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0702 PROJECT PLANNING

Maximum Value 15 points:

The value of this categorical element is the sum of the points awarded to Item (1) and the points assigned to Item (2) of this Rule:

(1) The project is compatible with the State Water Supply Plan and the applicable local water supply facility plan submitted under G.S. 143-355(1). _____
_____ 5 points

(2) The project demonstrates planning, through inter local agreements, leading to systems of regional water supply. _____
_____ 10 points

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0703 FINANCIAL CONSIDERATIONS

Maximum Value 40 Points:

(1) Financing of the Project (Select One) (Maximum Points 10):

(a) Applicant has applied for but not received a commitment for funding from a federal agency for a portion of the project costs. _____
_____ 5 points

(b) Applicant has funds available or has received a commitment for funding from a federal agency, or bonds have been authorized to cover project costs over and above the state grant or loan funds requested. _____
_____ 10 points

(c) The loan funds requested cover all the estimated project costs. _____
_____ 10 points

(2) Fiscal Responsibility of the Applicant (Maximum Points 15). The value of this categorical element shall be the sum of the points awarded Items (a) to (c) of this Paragraph:

(a) The applicant has followed proper accounting and fiscal reporting procedures as reflected in the applicant's most recent report of audit, and the applicant is in substantial compliance with the provisions of the general fiscal control laws of the state. _____
_____ 2 points

(b) The applicant water system is fiscally self sufficient. _____
_____ 2 points

(c) Estimated revenues will provide funds for proper future operation, maintenance and administration, reasonable expansion of the project and estimated annual principal and interest requirements for the project debt plus annual principal and interest requirements on the outstanding debt incurred for existing facilities. _____
_____ 11 points

In determining the points to be awarded this categorical element, the Division of Environmental Health may seek the comments of the Secretary of the Local Government Commission.

(3) Financial Need of the Applicant (Maximum Points 15). The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \frac{150 (\text{Total Bonded Indebtedness plus Total Estimated Project Cost})}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.

~~"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located. "150" is used in the formula to provide point values for this categorical element.~~

~~Authority G.S. 159G-2; 159G-8(c); 159G-10; 159G-15.~~

~~Authority G.S. 159G-10; 159G-15.~~

15A NCAC 01J .0704 ENVIRONMENTAL ASSESSMENT

~~No points will be awarded to this categorical element. However, both the beneficial and adverse effects of the project on the environment will be considered in the award of points on related applicable elements and items in Rules .0701 and .0702 of this Section.~~

~~Authority G.S. 159G-10; 159G-15.~~

SECTION .0800 - PRIORITY REVIEW PERIODS: ASSIGNMENT OF PRIORITIES

15A NCAC 01J .0801 PRIORITY REVIEW PERIODS

~~(a) The first semi-annual priority review period of a fiscal year for applications to the General Wastewater and Water Supply Revolving Loan and Grant Accounts and the High Unit Cost Wastewater and Water Supply Accounts shall be from July 1 through December 31 of that year. The second semi-annual priority review period of a fiscal year for applications to those accounts shall be from January 1 through June 30 of each fiscal year.~~

~~(b) Priority review periods for loans from the Emergency Wastewater and Water Supply Revolving Loan Accounts shall be established by the receiving agency as it deems appropriate with respect to the timely remedy of present or imminent serious public health hazards.~~

~~Authority G.S. 159G-10; 159G-15.~~

15A NCAC 01J .0802 ASSIGNMENT OF PRIORITIES

~~(a) All applications that have been reviewed and approved by the receiving agency by the date the receiving agency sets the priority rating for a priority review period will be assigned a priority rating according to the applicable criteria set forth in Sections .0400, .0500, .0600, and .0700 of this Subchapter. A separate priority rating will be established for each wastewater and water supply account in each priority review period.~~

~~(b) The receiving agency may exercise its discretionary authority in the matter of establishing a priority rating for any project application in cases where:~~

- ~~(1) two or more applications receive the same number of priority points, or~~
- ~~(2) the local Health Director and the State Health Director certify that there is a present or imminent serious public health hazard, which the project will redress.~~

15A NCAC 01J .0803 ASSIGNMENT OF CATEGORY TO WASTEWATER APPLICATIONS

~~(a) Applications to the General Wastewater Revolving Loan Account or the High Unit Cost Wastewater Account will be assigned a category as follows, during review of the applications:~~

- ~~(1) All applications for projects that are under orders, under moratorium, at or above 80 percent of permitted capacity during the previous calendar year, experiencing excessive infiltration/inflow, or that would qualify for an Emergency Loan under Rule .0204 of this Subchapter, and that have submitted final project plans and specifications for review and approval by the receiving agency, shall be placed in Category 1.~~
- ~~(2) All applications for projects that are under orders, under moratorium, at or above 80 percent permitted capacity during the previous calendar year, experiencing excessive infiltration/inflow, or that would qualify for an Emergency Loan under Rule .0204 of this Subchapter that have not submitted final project plans and specifications for review and approval by the receiving agency shall be placed in Category 2.~~
- ~~(3) All applications for projects for expanding infrastructure primarily to support additional development and that have submitted final project plans and specifications for review and approval by the receiving agency, shall be placed in Category 3.~~
- ~~(4) All applications for projects for expanding infrastructure primarily to support additional development that have not submitted final project plans and specifications for review and approval by the receiving agency shall be placed in Category 4.~~

~~(b) All applications in Category 1 for a specific wastewater account will be funded before applications in Category 2 in the same account. All applications in Category 2 for a specific wastewater account will be funded before applications in Category 3 in the same account. All applications in Category 3 will be funded before applications in Category 4 in the same account.~~

~~Authority G.S. 159G-2; 159G-15.~~

SECTION .0900 - LOAN AND GRANT AWARD AND COMMITMENT: DISBURSEMENT OF LOANS AND GRANTS

15A NCAC 01J .0901 DETERMINATION OF LOAN AND GRANT AWARDS

~~(a) All funds appropriated to each account under this Subchapter for a fiscal year and all other funds accruing to each~~

account in the first priority review period of the fiscal year from loan principal repayments, interest payments, interest earned on funds in the account, excess funds not awarded in the previous priority review period, and any other source, will be available in the first priority review period of the fiscal year.

(b) Funds accruing to each account from loan principal repayments, interest payments, interest earned on funds in the account, excess funds not awarded in the previous priority review period, and any other source, will be available in the second priority review period of the fiscal year.

(c) If the receiving agency designates more than two priority review periods in a fiscal year for the Emergency Wastewater or Water Supply Revolving Loan Account, any funds accruing to the account in those periods from any source will be available in those periods.

(d) Of the funds available at the beginning of a priority review period in the General Wastewater and Water Supply Revolving Loan and Grant Accounts and the Emergency Wastewater and Water Supply Revolving Loan Accounts, five percent of each account will be set aside for potential adjustments under Rule .0903 of this Subchapter to loans made from each account. Any funds set aside for this purpose from an account that are not used to adjust loans during a priority review period will return to the account in the next priority review period.

(e) No more than ten percent of the funds available in a priority review period in the General Wastewater Revolving Loan and Grant Account, and no more than three percent of the funds available in a priority period in the Water Supply Revolving Loan and Grant Account, will be awarded as grants in that period.

(f) The funds available in each account in a given priority review period will be awarded in the descending order of priority rating and Category as determined under Sections .0400, .0500, .0600, .0700, and .0800 of this Subchapter.

(g) Commitment of the loan or grant will be made upon the acceptance of the award by the applicant.

(h) If an application is not awarded a loan or grant in a priority review period because of its priority rating, the receiving agency will inform the applicant and will consider the application as a new application during the next priority review period. If the application again is not awarded a loan or grant because of its priority rating, the receiving agency will inform the applicant and return the application.

Authority G.S. 159G-10; 159G-15.

15A NCAC 01J .0902 CERTIFICATION OF ELIGIBILITY

(a) The receiving agency shall create a certificate of eligibility for each application for which a loan or grant commitment has been made.

(b) The certificate of eligibility shall indicate that the applicant meets all eligibility criteria and that all other requirements of the Act have been met.

(c) The certificate of eligibility shall also indicate the amount and the fiscal year of the loan or grant commitment.

Authority G.S. 159G-12; 159G-15.

15A NCAC 01J .0903 CRITERIA FOR LOAN ADJUSTMENTS

Upon receipt of bids, a loan commitment may be adjusted as follows:

(1) The loan commitment may be decreased by the receiving agency provided the project cost as bid is less than the estimated project cost.

(2) Loan commitments may be increased by the receiving agency to a maximum of five hundred thousand dollars (\$500,000), provided: the project cost as bid is greater than the estimated project cost; the project as bid is in accordance with the project for which the loan commitment was made; the receiving agency has reviewed the bids and determined that substantial cost savings would not be available through project revisions without jeopardizing the integrity of the project; and adequate funds are available in the account from which the loan was awarded. Increases greater than ten percent of the loan commitment meeting the above criteria shall be approved jointly by the receiving agency; the Local Government Commission; and, for wastewater projects, the Environmental Management Commission.

Authority G.S. 159G-12; 159G-15.

15A NCAC 01J .0904 DISBURSEMENT OF LOANS AND GRANTS

(a) Disbursement of loan and grant monies shall be made at intervals as work progresses and expenses are incurred. No disbursement shall be made until the receiving agency receives satisfactory documentation of incurred costs. At no time shall disbursement exceed the allowable costs which have been incurred at that time.

(b) Project inspection shall confirm work progress, and a final inspection is required prior to the final disbursement of loan monies.

(c) No disbursement shall be made until the receiving agency receives documentation of compliance with the verifiable percentage goal for participation by minority businesses in accordance with G.S. 143-128.

(d) The receiving agency shall notify the Office of the Controller of the Department of Environment and Natural Resources to make loan or grant disbursements. A check in the amount of the disbursement authorized by the receiving agency shall be written to the loan or grant recipient by the Office of the Controller.

Authority G.S. 159G-12; 159G-15.

SECTION .1000 - LOAN REPAYMENTS

15A NCAC 01J .1001 INTEREST RATES

The interest rate to be charged on loans under this Subchapter will be set in each priority review period at the lesser of four percent per annum or one half the prevailing national market rate

as derived from the Bond Buyer's 20 Bond Index in accordance with G.S. 159G-4(c). The interest rate will be the same for all loans awarded from any account, including the Emergency Wastewater or Water Supply Account, during the priority review periods established in Rule .0801(a).

Authority G.S. 159G-4(c); 159G-15.

15A NCAC 01J .1002 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS

(a) The debt instrument setting the terms and conditions of repayment of loans under this Subchapter will be established after the receipt of bids and after any adjustments are made under Rules .0903 and .0905 of this Subchapter.

(b) The maximum maturity on any loan under this Subchapter shall not exceed 20 years.

(c) Interest on the debt instrument will begin to accrue on the original date that a project's contracts are scheduled to be completed. Extensions of this deadline are not allowed.

(d) All principal payments will be made annually on or before May 1 or November 1 of each year. All interest payments will be made semiannually on or before May 1 and November 1 of each year. The first payment is due not earlier than six months after the date of completion of the project. In no case will the first payment be later than 18 months from the original scheduled completion date.

(e) All principal and interest payments shall be made payable to the appropriate account as specified in the debt instrument.

Authority G.S. 159G-13; 159G-15; 159G-18.

SECTION .1100 - INSPECTION AND AUDIT OF PROJECTS

15A NCAC 01J .1101 INSPECTION

Inspection of a project to which a loan or grant has been committed under this Subchapter may be made to determine the percentage of completion of the project for disbursements, and for compliance with all applicable laws and rules.

Authority G.S. 159G-14; 159G-15.

15A NCAC 01J .1102 AUDIT OF PROJECTS

All projects to which a loan or grant has been committed under this Subchapter will be audited in accordance with G.S. 159-34.

Authority G.S. 159G-15.

SUBCHAPTER 01J – WATER INFRASTRUCTURE PROGRAM

SECTION .1400 - GENERAL PROVISIONS

15A NCAC 01J .1401 PURPOSE

Loans and grants for wastewater systems and public water systems from the reserve accounts in the Water Infrastructure Fund shall be made in accordance with this Subchapter.

Authority G.S. 159G-44.

15A NCAC 01J .1402 DEFINITIONS

In addition to the definitions in G.S. 159G-20, the following definitions apply to this Subchapter:

- (1) "Act" means the Water Infrastructure Act of 2005, G.S. 159G.
- (2) "Award" means the offer by the receiving agency to enter into a commitment for a specified amount.
- (3) "Award of contract" means the award by the recipient to a contractor of a contract to construct the project as bid.
- (4) "Bid" means the amount of money for which a contractor offers to construct the project.
- (5) "Contingency costs" means unforeseen costs or situations not included in the estimate of project costs.
- (6) "Commitment" means a binding agreement to pay loan or grant funds to an eligible applicant at some future time.
- (7) "Date of completion" means the date on which the project has been completed, as determined by the receiving agency.
- (8) "Effective date of receipt" means the date an application is postmarked or received at the principal offices of the receiving agency in Raleigh, North Carolina.
- (9) "Fiscal year" means the state fiscal year, beginning on July 1 of a calendar year and ending on June 30 of the following calendar year. In referring to a specific fiscal year, the year named is the calendar year in which the fiscal year ends. For example, "Fiscal Year 1988" refers to the fiscal year beginning July 1, 1987 and ending June 30, 1988.
- (10) "Inspection" means inspection or inspections of a project to determine percentage completion of the project and compliance with applicable federal, state and local laws or rules.
- (11) "Orders" means any restrictive measure, related to the operation of its water or wastewater system, issued to an applicant. Such measures may be included in, but are not restricted to, Administrative Orders, Special Orders, Special Orders by Consent, Judicial Orders, or issued or proposed permits, permit modifications or certificates.
- (12) "Project" means the works described in the application.
- (13) "Priority review period" means July 1 through December 31 and January 1 through June 30 of each fiscal year.
- (14) "Receiving agency" means the Division of Environmental Health with respect to receipt of applications related to public water systems and the Division of Water Quality with respect to receipt of applications related to wastewater systems.

- (15) "Regional water supply system" means:
 - (a) A public water system that serves two or more local units of government, or
 - (b) A public water system that demonstrates each of the following:
 - (i) A specific plan to provide drinking water throughout the territory of a local unit of government, except that a municipality shall also demonstrate a specific plan to provide drinking water outside its extraterritorial jurisdiction;
 - (ii) Shares water supply facility resources with another public water system; and
 - (iii) An interlocal agreement or joint resolution to be a part of an interconnected regional water system within 10 years.
- (16) "Regional wastewater system" means a wastewater system of a municipality, county, sanitary district, or other political subdivision of the State or combination thereof that serves two or more units of government.
- (17) "Water Reclamation" means the production of a high level treated effluent as a reusable, non-potable water source.
- (18) "Water Reuse" means the actual use or application of reclaimed water in or on areas which require water but do not require potable water quality.

Authority G.S. 159G-44.

SECTION .1500 - ELIGIBILITY REQUIREMENTS

15A NCAC 01J .1501 ELIGIBLE PROJECT COSTS

- (a) Project costs eligible under this Subchapter are limited to:
 - (1) the actual costs of the works described in the project application; and
 - (2) contingency costs, not to exceed ten percent of the estimated eligible construction costs. Upon receipt of bids, the contingency costs shall be reduced to not more than five percent of the actual eligible construction costs as bid.
- (b) Eligible costs do not include recurring annual expenditures for administration, repairs, or operation and maintenance of any wastewater system or public water system projects.

Authority G.S. 159G-44.

SECTION .1600 - APPLICATIONS

15A NCAC 01J .1601 APPLICATION FILING DEADLINES

Applications to be considered in the first semi-annual priority review period of a fiscal year shall have an effective date of receipt of September 30 of that year, which shall be the filing deadline for that priority review period. Applications to be considered in the second semi-annual priority review period of a fiscal year shall have an effective date of receipt of March 31 of that year, which shall be the filing deadline for that priority review period.

Authority G.S. 159G-44.

15A NCAC 01J .1602 GENERAL PROVISIONS

- (a) An application shall be filed with the receiving agency before the award of contract on a project.
- (b) An application may be withdrawn from consideration upon request of the applicant but if resubmitted shall be considered as a new application.
- (c) An application shall be accompanied by an adopted resolution stating that the applicant has complied or will substantially comply with all applicable federal, state and local laws or rules and has the financial capacity to pay the principal of and the interest on its proposed obligation and loans and designating an authorized representative. Such resolution shall be certified or attested to as a true and correct copy as adopted or the application will not be ranked.
- (d) Applications for emergency loans shall conform with this Subchapter, except that Rules .1601 and .1602(a) shall not apply.

Authority G.S. 159G-44.

SECTION .1700 – COMMON CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

15A NCAC 01J .1701 COMMON CRITERIA

- (a) Conservation or reuse of water - An applicant may receive a maximum of 6 bonus points for meeting the following criteria as applicable:
 - (1) An applicant demonstrates it has a continuing I/I program in its wastewater sewer maintenance program. (Wastewater Projects Only) - 2 points
 - (2) An applicant demonstrates it has a continuing water loss reduction program in its water supply system program. (Water Supply Projects Only) - 2 points
 - (3) An applicant demonstrates it has:
 - (A) Established a water conservation incentive rate structure - 2 points
 - (B) Created effective incentives for new or replacement installation of low flow faucets, shower heads, and toilets - 1 point
 - (C) A water reclamation and/or reuse system - 2 points
- (b) Comprehensive Land-use Plan - An applicant may receive a maximum of 6 bonus points for meeting the following criteria:
 - (1) An applicant demonstrates that steps have been taken toward adoption of a

comprehensive land-use plan such as the adoption of a zoning ordinance. - 1 point

(2) An applicant demonstrates that it has adopted a comprehensive land-use plan that meets the requirements of G.S. 153A, Article 18 or G.S. 160A, Article 19, or applicant is not authorized to adopt a comprehensive land-use plan but is located in whole or in part in a local government unit that has adopted a comprehensive land-use plan, and that the proposed project is consistent with the plan. - 2 points

(3) An applicant demonstrates that the comprehensive land-use plan exceeds the minimum state standards for the protection of water resources. - 2 points

(4) An applicant demonstrates that actions have been taken toward implementation of the comprehensive land-use plan. - 2 points

(c) Flood Hazard Ordinance - An applicant may receive a maximum of 4 bonus points for the following criteria:

(1) A project that is located in a city or county that has adopted a flood hazard prevention ordinance under G.S. 143-215.54A or no part of the service area of the project is located within the 100-year floodplain. - 2 points

(2) This plan (ordinance) exceeds the minimum standards. - 2 points

(d) Sound management – Fiscal responsibility of the applicant (maximum points--6). The value of this categorical element shall be the sum of the points awarded Items (1) to (3) of this Paragraph and the receiving agency may seek the comments of the Secretary of the Local Government Commission:

(1) The applicant has followed proper accounting and fiscal reporting procedures as reflected in the applicant's most recent report of audit, and the applicant is in substantial compliance with the provisions of the general fiscal control laws of the state. - 2 points

(2) The applicant public water system or wastewater system is fiscally self-sufficient. - 2 points

(3) Estimated revenues will provide for future administration, operation, debt principal and interest, and capital outlay and reserve. - 2 points

(e) Financial need (maximum points--5 points). The value of this Rule will be the sum of the points assigned under Items (1) or (2), and (3) of this Rule.

(1) The annual average residential cost of water, wastewater, and stormwater fees exceeds 2.0% of the median household income of the community – 3 points, or

(2) The annual average residential cost of water, wastewater – 2 points, and stormwater fees exceeds 1.5% of the median household income of the community, and

(3) 20 (Total Indebtedness plus Total Estimated Project Cost) divided by the total Appraised

Property Valuation. – 2 points Note: 20 is a factor to add points.

(f) Capital Improvement Plan - The project implements an applicant's capital improvement plan as defined in G.S. 159G-23(7). - 4 points

(g) Coastal Habitat Protection Plan – The project is either in a county not subject to the Plan or implements a plan as defined in G.S. 159G-23(8). - 4 points

Authority G.S. 159G-44.

SECTION .1800 - ASSIGNMENT OF CATEGORY TO WASTEWATER SYSTEM APPLICATIONS

15A NCAC 01J .1801 ASSIGNMENT OF CATEGORY TO WASTEWATER SYSTEM APPLICATIONS

(a) Applications to the Wastewater Accounts will be assigned a category as follows, during review of the applications:

(1) All applications for a project that improves a system that is not in compliance with permit requirements, under orders, experiencing documented infiltration and inflow into the sewer system or replaces failing septic tanks, and that have submitted final project plans and specifications for review and approval by the receiving agency, shall be placed in Category 1.

(2) All applications for a project that improves a system that is not in compliance with permit requirements, under orders, experiencing documented infiltration and inflow into the sewer system or replaces failing septic tanks, and that have not submitted final project plans and specifications for review and approval by the receiving agency shall be placed in Category 2.

(3) All applications for other projects shall be placed in Category 3.

(b) All applications in Category 1 for a specific wastewater account will be funded in priority order before applications in Category 2 in the same account. All applications in Category 2 for a specific wastewater account will be funded in priority order before applications in Category 3 in the same account.

Authority G.S. 159G-44.

SECTION .1900 – CRITERIA FOR EVALUATION OF WASTEWATER SYSTEM APPLICATIONS

15A NCAC 01J .1901 EXISTING CONDITIONS

The maximum value - 8 points, the value of this Rule will be the value of the points assigned under Items (1) or (2) or (3) or (4) of this Rule. The proposed project includes one or more of the following classifications.

(1) Surface Water Pollution

(a) Sanitary Sewer Overflow (SSO) - 8 points

(b) Wastewater Treatment Facilities (WWTP) - 7 points

- (c) Excessive Infiltration and Inflow - 6 points
- (d) Collection System/Pump Station/Force Main (No SSO) - 3 points
- (2) Stormwater Treatment/Management Facility
 - (a) Addresses/Removes Direct Discharge - 8 points
 - (b) Other Stormwater Quality Project - 5 points
- (3) Groundwater Pollution
 - (a) Documented Failing Septics - 7 points
 - (b) Landfill Leachate Collection/Treatment - 7 points
 - (c) Other Groundwater Pollution Source Problem - 5 points
- (4) Aquatic/Riparian Habitat and Stream Degradation
 - (a) Streams, Creeks, and Estuary Restoration - 5 points

Authority G.S. 159G-44.

15A NCAC 01J .1902 WATER QUALITY IMPROVEMENT CRITERIA

The maximum value - 10 points, the value of this Rule will be the sum of the points assigned under Items (1) or (2) or (3) and (4) of this Rule. The project will benefit one or more of the following water quality classifications.

- (1) Surface Water Restoration
 - (a) Project benefits a waterbody on the North Carolina 303 (d) list of impaired waters with a Total Maximum Daily Load (TMDL) - 8 points
 - (b) Project benefits a waterbody on the North Carolina 303 (d) list of impaired waters without a Total Maximum Daily Load (TMDL) - 6 points
- (2) Surface Water Protection
 - (a) Class "SA" (Shellfish Waters), Class "WS-I" or "WS-II" (Water Supply Source), Class "ORW" (Outstanding Resource Waters), or "HQW" (High Quality Waters) - 10 points
 - (b) Class "WS-III", "WS-IV", or "WS-V" (Water Supply Source) - 8 points
 - (c) Class "B" or "SB" (Bathing Waters) - 6 points
 - (d) Class "C" or "SC" (Fishing) - 4 points
- (3) Groundwater Protection
 - (a) Project benefits groundwater - 8 points
- (4) Universal Stormwater Management Plan
 - (a) The project will be implemented in an area where the Universal Stormwater Management Program (USMP) has

been adopted and approved by the Environmental Management Commission. - 2 points

Authority G.S. 159G-44.

SECTION .2000 - PRIORITY CRITERIA FOR PUBLIC WATER SYSTEM PROJECTS

15A NCAC 01J .2001 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE

(a) Applications to the Drinking Water Reserve will be assigned a category as follows:

- (1) All applications for a project that eliminates by consolidation a public water system demonstrating a lack of technical, financial, and/or management capacity in accordance with the Safe Drinking Water Act, Sections 1402(b)(1) and 1414(h), and 15A NCAC 18C .0300, shall be placed in Category 1. The Division may generate the application for such a project.
- (2) All applications for a project that eliminates compliance problems due to existing violations of the NC Drinking Water Act or anticipated violations based on data and state or federal rulemaking shall be placed in Category 2.
- (3) All applications for a project addressing source or treatment needs by improving the available water supply or treatment capacity to supply existing users, improving treated water quality, or providing a permanent or emergency interconnection between systems shall be placed in Category 3.
- (4) All other eligible public water system projects shall be placed in Category 4.

(b) All applications in Category 1 for a specific drinking water account will be funded in priority order before applications in Category 2 for the same account. Similarly all applications in Category 2 for a specific drinking water account will be funded in priority order before applications in Category 3 for the same account, and all applications in Category 3 for a specific drinking water account will be funded in priority order before applications in Category 4 for the same account.

Authority G.S. 159G-44.

15A NCAC 01J .2002 PROJECT PLANNING

The maximum value - 3 points, the value of this categorical element is the sum of the points awarded to Item (1) and the points assigned to Item (2) of this Rule:

- (1) The project is compatible with the State Water Supply Plan and the applicable local water supply facility plan submitted under G.S. 143-355(1) - 1 point.
- (2) The project demonstrates long range planning, through inter-local agreements, leading to systems of regional water supply - 2 points.

Authority G.S. 159G-44.

15A NCAC 01J .2003 SOURCE WATER PROTECTION

The maximum value - 5 points:

- (1) Participation in existing source water protection activities or programs that efficiently protect the public health; points may be awarded in Sub-Items (a) and (b) of this Item up to the maximum, as follows:
 - (a) Voluntary surface source water protection program, approved by the Division, pursuant to the Safe Drinking Water Act, Section 1454 - 3 points.
 - (b) Voluntary wellhead protection program, approved by the Division, pursuant to the Safe Drinking Water Act, Section 1428 - 3 points.

Authority G.S. 159G-44.

SECTION .2100 – LOAN AND GRANT AWARD AND COMMITMENT: DISBURSEMENT OF LOANS AND GRANTS

15A NCAC 01J .2101 CRITERIA FOR LOAN ADJUSTMENTS

(a) Upon receipt of bids, a loan commitment may be adjusted as follows:

- (1) The loan commitment may be decreased by the receiving agency provided the project cost as bid is less than the estimated project cost.
- (2) Loan commitments may be increased by the receiving agency if the project cost as bid is greater than the estimated project cost and adequate funds are available in the account from which the loan was awarded. Increases greater than ten percent of the loan commitment meeting the above criteria shall be approved jointly by the receiving agency and the Local Government Commission.

Authority G.S. 159G-44.

15A NCAC 01J .2102 DISBURSEMENT AND INSPECTION

(a) Project inspection shall confirm work progress, and a final inspection is required prior to the final disbursement.

(b) The receiving agency shall notify the Office of the Controller of the Department of Environment and Natural Resources to make disbursements.

Authority G.S. 159G-44.

SECTION .2200 – LOAN REPAYMENTS

15A NCAC 01J .2201 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS

(a) The interest rate to be charged on loans under this Subchapter will be set on March 31 of every year at the lesser of four percent per annum or one half the prevailing national market rate as derived from the Bond Buyer's 20-Bond Index. The interest rate will be the same for all loans awarded from any account except target interest rate loans.

(b) The debt instrument setting the terms and conditions of repayment of loans under this Subchapter will be established after the receipt of bids and after any adjustments are made under Rule .2101 of this Subchapter.

(c) Interest on the debt instrument will begin to accrue on the original date that a project's contracts are scheduled to be completed. Extensions are not allowed.

(d) All principal payments will be made annually on or before May 1 of each year. All interest payments will be made semiannually on or before May 1 and November 1 of each year. The first payment is due not earlier than six months after the date of actual completion of the project. In no case will the first payment be later than 18 months from the original scheduled completion date.

(e) All principal and interest payments shall be made payable to the appropriate account as specified in the debt instrument.

Authority G.S. 159G-44.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02D .2501-.2511.

Proposed Effective Date: November 1, 2006

Public Hearing:

Date: May 25, 2006

Time: 7:00 p.m.

Location: Chamber Room CH-14, Charlotte-Mecklenburg Government Center, 600 East 4th Street, Charlotte, NC 28202

Date: June 1, 2006

Time: 7:00 p.m.

Location: Ground Floor Hearing Room, The Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604

Date: June 8, 2006

Time: 7:00 p.m.

Location: Lessie Building, Room 143, Pitt Community College, 1986 Pitt Tech Road, Winterville, NC 28590

Reason for Proposed Action: To implement EPA's guidelines, 40 CFR Part 60, Subpart HHHH-Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units, for mercury emissions.

Procedure by which a person can object to the agency on a proposed rule: Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The

hearing record will remain open until June 30, 2006, to receive additional written statements. To be included in the hearing record, the statement must be received by the Division by June 30, 2006.

In addition to comments on the entire new rule Section 15A NCAC 02D .2500, Mercury Rules For Electrical Generators, the Environment Management Commission (EMC) invites comments on each of the five subjects discussed below. Additional explanations relevant to these eight subjects may be reviewed at <http://daq.state.nc.us>.

1. Should Paragraphs 2511(a) through (d) be replaced with a paragraph that states that the EMC will use the 2013 report to determine if any additional mercury reductions are necessary?
2. Should all uncontrolled Clean Smokestacks Act (CSA) boilers be required to control mercury over two phases (2017 and 2022) or should all uncontrolled CSA boilers be required to control mercury emissions by December 31, 2017?
3. Is the proposed "at least 110 percent" standard appropriate? If not, what would be appropriate and why?
4. Should new coal-fired utility boilers be required to meet the federal new source performance standard, reduce mercury emissions by 90 percent, or install best available control technology?
5. What process could be developed to encourage earlier reductions in mercury emissions prior to 2010?
6. Provide information on costs and effectiveness of mercury control technology.
7. Should the EMC determine mercury control requirements for remaining boilers not controlled under CSA prior to or after 2013?
8. Should additional emission reduction options be allowed for all uncontrolled CSA boilers?

Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting: Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641, phone (919) 733-1489, fax (919) 715-7476, email thom.allen@ncmail.net.

Comments may be submitted to: Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641, phone (919) 733-1489, fax (919) 715-7476, email thom.allen@ncmail.net

Comment period ends: June 30, 2006

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

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

SECTION .2500 –MERCURY RULES FOR ELECTRIC GENERATORS

15A NCAC 02D .2501 PURPOSE AND APPLICABILITY

(a) Purpose. The purpose of this Section is to control mercury emissions from coal-fired electric steam generating units and to comply with the mercury emission caps of 1.133 tons per year between 2010 and 2017 inclusive and 0.447 tons per year for 2018 and thereafter as set out in 40 CFR 60.24.

(b) Applicability. This Section applies to:

- (1) any stationary coal-fired boiler or coal-gasification unit servicing any stationary combustion turbine serving at any time, since the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale;
- (2) for a unit that qualifies as a cogeneration unit during the 12-month period starting on the date that the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to Subparagraph (1) of this Paragraph starting on the day on which the unit first no longer qualifies as a cogeneration unit; or
- (3) the sources identified in the table in Rule .2503, of this Section.

(c) Retired unit exemption. Any unit that is permanently retired shall be exempted from the annual trading program if it complies with the provisions of 40 CFR 60.4105.

(d) Effect on other authorities. No provision of this Section, any application submitted or any permit issued pursuant to Rule .2504 of this Section, or any exemption under 40 CFR 60.4105, shall be construed as exempting any source or facility covered under this Section or the owner or operator or designated representative of any source or facility covered under this

Section from complying with any other requirements of this Subchapter or Subchapter 15A NCAC 02Q.

(e) Additional controls. The Commission shall require additional reductions in mercury emissions when needed to reduce mercury concentrations to levels that do not cause or contribute to mercury-related health problems.

Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10).

15A NCAC 02D .2502 DEFINITIONS

(a) For the purpose of this Section, the definitions in 40 CFR 60.4102, shall apply.

(b) For the purpose of this Section, the abbreviations and acronyms listed in 40 CFR 60.4103 shall apply.

Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10).

15A NCAC 02D .2503 MERCURY EMISSION

(a) Allocations. The table in this Paragraph contains allocations in ounces of total mercury.

<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOCATION FOR 2010 – 2017 (ounces)</u>	<u>ALLOCATION FOR 2018 AND LATER (ounces)</u>
<u>Duke Energy, Belews Creek</u>	<u>1</u>	<u>3595</u>	<u>1419</u>
	<u>2</u>	<u>3356</u>	<u>1325</u>
<u>Duke Energy, Buck</u>	<u>5</u>	<u>55</u>	<u>22</u>
	<u>6</u>	<u>57</u>	<u>22</u>
	<u>7</u>	<u>62</u>	<u>24</u>
	<u>8</u>	<u>310</u>	<u>122</u>
	<u>9</u>	<u>345</u>	<u>136</u>
<u>Duke Energy, Cliffside</u>	<u>1</u>	<u>64</u>	<u>25</u>
	<u>2</u>	<u>65</u>	<u>26</u>
	<u>3</u>	<u>104</u>	<u>41</u>
	<u>4</u>	<u>90</u>	<u>36</u>
	<u>5</u>	<u>1567</u>	<u>619</u>
<u>Duke Energy, Dan River</u>	<u>1</u>	<u>107</u>	<u>42</u>
	<u>2</u>	<u>118</u>	<u>47</u>
	<u>3</u>	<u>264</u>	<u>104</u>
<u>Duke Energy, G G Allen</u>	<u>1</u>	<u>365</u>	<u>144</u>
	<u>2</u>	<u>339</u>	<u>134</u>
	<u>3</u>	<u>628</u>	<u>248</u>
	<u>4</u>	<u>684</u>	<u>270</u>

PROPOSED RULES

<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOCATION FOR 2010 – 2017 (ounces)</u>	<u>ALLOCATION FOR 2018 AND LATER (ounces)</u>
	<u>5</u>	<u>642</u>	<u>254</u>
<u>Duke Energy, Marshall</u>	<u>1</u>	<u>1084</u>	<u>428</u>
	<u>2</u>	<u>1134</u>	<u>448</u>
	<u>3</u>	<u>1880</u>	<u>742</u>
	<u>4</u>	<u>1917</u>	<u>757</u>
<u>Duke Energy, Riverbend</u>	<u>7</u>	<u>195</u>	<u>77</u>
	<u>8</u>	<u>188</u>	<u>74</u>
	<u>9</u>	<u>340</u>	<u>134</u>
	<u>10</u>	<u>337</u>	<u>133</u>
<u>Progress Energy, Asheville</u>	<u>1</u>	<u>649</u>	<u>256</u>
	<u>2</u>	<u>601</u>	<u>237</u>
<u>Progress Energy, Cape Fear</u>	<u>5</u>	<u>362</u>	<u>143</u>
	<u>6</u>	<u>426</u>	<u>168</u>
<u>Progress Energy, L V Sutton</u>	<u>1</u>	<u>204</u>	<u>80</u>
	<u>2</u>	<u>207</u>	<u>82</u>
	<u>3</u>	<u>946</u>	<u>373</u>
<u>Progress Energy, Lee</u>	<u>1</u>	<u>200</u>	<u>79</u>
	<u>2</u>	<u>197</u>	<u>78</u>
	<u>3</u>	<u>634</u>	<u>250</u>
<u>Progress Energy, Mayo</u>	<u>1A</u>	<u>1241</u>	<u>490</u>
	<u>1B</u>	<u>1205</u>	<u>476</u>
<u>Progress Energy, Roxboro</u>	<u>1</u>	<u>1087</u>	<u>429</u>
	<u>2</u>	<u>2017</u>	<u>796</u>
	<u>3A</u>	<u>1035</u>	<u>409</u>

PROPOSED RULES

<u>FACILITY</u>	<u>SOURCE</u>	<u>ALLOCATION FOR 2010 – 2017 (ounces)</u>	<u>ALLOCATION FOR 2018 AND LATER (ounces)</u>
	<u>3B</u>	<u>1053</u>	<u>416</u>
	<u>4A</u>	<u>1031</u>	<u>407</u>
	<u>4B</u>	<u>958</u>	<u>378</u>
<u>Progress Energy, W H Weatherspoon</u>	<u>1</u>	<u>117</u>	<u>46</u>
	<u>2</u>	<u>116</u>	<u>46</u>
	<u>3</u>	<u>185</u>	<u>73</u>
<u>Dwayne Collier Battle Cogeneration Facility</u>	<u>1A</u>	<u>119</u>	<u>47</u>
	<u>1B</u>	<u>110</u>	<u>43</u>
	<u>2A</u>	<u>111</u>	<u>44</u>
	<u>2B</u>	<u>113</u>	<u>45</u>
<u>Elizabethtown Power</u>	<u>1</u>	<u>29</u>	<u>11</u>
	<u>2</u>	<u>27</u>	<u>11</u>
<u>Lumberton Power</u>	<u>1</u>	<u>32</u>	<u>13</u>
	<u>2</u>	<u>54</u>	<u>21</u>
<u>Primary Energy, Roxboro</u>	<u>1</u>	<u>100</u>	<u>40</u>
<u>Primary Energy, Southport</u>	<u>1</u>	<u>123</u>	<u>48</u>
	<u>2</u>	<u>124</u>	<u>48</u>
<u>Westmoreland-LG&E Partners Roanoke Valley</u>	<u>1</u>	<u>512</u>	<u>202</u>
	<u>2</u>	<u>179</u>	<u>71</u>

(b) The allocations in the table in Paragraph (a) of this Rule shall be reduced under Rule .2508 of this Section by:

- (1) five percent in 2010 through 2017 and
- (2) three percent in 2018 and thereafter.

(c) Compliance. The emissions of mercury of a unit listed in the table in Paragraph (a) of this Rule shall not exceed the number of allowances that it has in its compliance account established under Rule .2510 of this Section.

(d) Emission measurement requirements. The emissions measurements recorded and reported according to 40 CFR 60.4170 through 60.4176 shall be used to determine compliance by each source identified in this rule with its emissions limitation according to 40 CFR 60.4106(c).

(e) Excess emission requirements. The provisions of 40 CFR 60.4106(d) shall be used for excess emissions.

(f) Liability. The owner or operator of any source covered under this Section shall be subject to the provisions of 40 CFR 60.4106(f).

(g) Modification and reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source for the purposes of this Section; it could be considered a new source under Rule 15A NCAC 02D .0524, New Source Performance Standards, or 40 CFR Part 60. A source that is modified or reconstructed shall retain its emission allocation under Paragraph (a) of this Rule. If one or more sources covered under this Rule is replaced, the new source shall receive the allocation of the source, or sources, that it replaces instead of an allocation under Rule .2508 of this Section. If the owner of a source changes, the emission allocations under this Rule and revised emission allocations made under Rule .2509 of this Section shall remain with the source. If a source is retired, the owner or operator of the source shall follow the procedures in 40 CFR 60.4105. The allocations of a retired source shall remain with the owner or operator of the retired source until a reallocation occurs under Rule .2509 of this Section when the allocation shall be removed and given to other sources if the retired source is still retired.

Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5), (10).

15A NCAC 02D .2504 PERMITTING

(a) The owner or operator of any source covered under this Section shall submit permits applications to comply with the requirements of this Section following the procedures and requirements in 40 CFR 60.4106(a), 60.4121, and 60.4122 and in Subchapter 15A NCAC 02Q.

(b) The Director shall review applications submitted under Paragraph (a) of this Rule and issue permits for compliance with this Section following the procedures and requirements in 40 CFR 60.4106(a), 60.4120, 60.4123, and 60.4124 and in Subchapter 15A NCAC 02Q.

Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10); 143-215.108.

15A NCAC 02D .2505 MONITORING, REPORTING, AND RECORDKEEPING

(a) The owner or operator of a source covered under this Section shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.4106(b) and (e) and in 40 CFR 60.4170 through 60.4176.

(b) To approve or disapprove monitors used to show compliance with Rule .2503 of this Section, the Division shall follow the procedures in 40 CFR 60.4171.

Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5), (10).

15A NCAC 02D .2506 DESIGNATED REPRESENTATIVE

(a) Designated representative. The owner or operator of any source covered under this Section shall select a designated representative according to 40 CFR 6.4110. The designated representative shall have the responsibilities and duties set out in 40 CFR 60.4110.

(b) Alternate designated representative. The owner or operator of any source covered under this Section shall select an alternate designated representative according to 40 CFR 60.4111. The alternate designated representative shall have the responsibilities and duties set out in 40 CFR 60.4111.

(c) Changing designated representative and alternate designated representative. The owner or operator of any source covered under this Section may change the designated representative or the alternate designated representative using 40 CFR 60.4112.

(d) Changes in owners and operators. Whenever the owner or operator of a source covered under this Section changes, the provisions in 40 CFR 60.4112(c) shall be followed.

Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10).

15A NCAC 02D .2507 COMPUTATION OF TIME

Time periods shall be determined as described in 40 CFR 60.4107.

Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10).

15A NCAC 02D .2508 NEW SOURCE GROWTH

(a) The procedures in 40 CFR 60.4142(c) shall be used to create allocations for sources that commenced construction on or after January 1, 2001 and are not listed in the table in Rule .2503 of this Section.

(b) The number of allowances allocated to a source under this Rule shall not exceed the source's actual emissions of mercury.

Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10).

15A NCAC 02D .2509 PERIODIC REVIEW AND REALLOCATIONS

(a) In 2010 and every five years thereafter, the Environmental Management Commission shall review the emission allocations of sources covered under Rules .2503 of this Section and new sources covered under this Section that have been permitted but are not named in Rule .2503 of this Section and decide if any revisions are needed. In making this decision the Environmental Management Commission shall consider the following:

- (1) the size of the allocation pool for new source growth under Rule .2508 of this Section;
- (2) the amount of emissions from sources receiving allocations under Rule .2508 of this Section;
- (3) the amount of emissions allocations available through the trading program under Rule .2510 of this Section;
- (4) the impact of reallocation on existing sources;
- (5) the impact of reallocations on sources receiving allocations under Rule .2508 of this Section;
- (6) impact of future growth; and
- (7) other relevant information on the impacts of reallocation.

(b) The Division of Air Quality shall report to the Commission in July 2008, July 2011, and July 2013. Each report shall provide the Commission and public updated information on the regulation of mercury emissions. The 2008 and 2011 reports shall include the information under Subparagraphs (1) through (12) of this Paragraph, where available. The 2013 report shall include all the following information:

- (1) actual emissions from sources covered under this Section since 2010 and all other principal sources of mercury;
- (2) estimates of the amounts of the different species of mercury being emitted;
- (3) a mercury balance for North Carolina, including imported, exported, and in-state mercury emissions and the fate and transport of mercury in the air and waters of the State;
- (4) projected mercury emissions for 2015, 2018, 2023, and 2025;
- (5) the amount of new source growth and projected new source growth through 2025;
- (6) the state of mercury control technology, including technological and economic feasibility;
- (7) an assessment of cost and performance of mercury control technology as it may be applied to uncontrolled sources of mercury in North Carolina, including both coal-fired electric steam generating units and other sources that emit mercury and including as assessment of technology used to satisfy requirements of the Clean Smokestacks Act (G.S. 143-215.107D) and other requirements for controlling nitrogen oxide and sulfur dioxide emissions;
- (8) a recommendation of mercury control technology, including the cost and expected reductions in mercury;
- (9) results of studies and monitoring on mercury in fish in North Carolina, including an evaluation of the impact of reduced mercury emissions from coal-fired power plants on the levels of mercury observed in fish tissue;
- (10) a summary of mercury-related health problems in North Carolina, including accumulation of mercury in humans and mercury exposures from non-air emitting sources; and
- (11) results of studies on mercury deposition, applying monitoring techniques, back trajectory analysis, source attribution methodology, and any other relevant methodologies to assess the role of coal-fired units in North Carolina deposition.
- (12) recommendations, if any, on rule revisions.

Based on the 2013 report, the Commission shall determine mercury control requirements for the units identified in Paragraphs (a) and (c) of Rule .2511 and decide if any other rule changes are needed.

(c) Any changes made as a result of the review under Paragraph (a) or report under Paragraph (b) of this Section shall be made through rulemaking.

Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10).

15A NCAC 02D .2510 TRADING PROGRAM AND BANKING

(a) EPA to administer. The United States Environmental Protection Agency (EPA) shall administer the allowance tracking system according to the procedures in 40 CFR 60.4151 through 60.4162.

(b) Compliance account. The owner or operator of each source covered under this Section shall have a compliance account in the EPA administered tracking system that satisfies the requirements of 40 CFR 60.4151(a).

(c) General account. Any person may apply to open a general account to hold and transfer allowances by using the procedures and meeting the requirements in 40 CFR 60.4151(b) and may close that account using the procedures in 40 CFR 60.4157.

(d) Allowance transfers. Any person who has a compliance or general account established under 40 CFR 60.4151 may transfer allowances using the procedures in 40 CFR 60.4160.

(e) Submittal of information. Persons with accounts shall submit information to EPA following the requirement of 40 CFR 60.4152.

(f) Banking. Any person who has a compliance account or a general account may bank allowances for future use or transfer under 40 CFR 60.4155.

Authority G.S. 143-215.3(a); 143-215.107(a)(5), (10).

15A NCAC 02D .2511 MERCURY EMISSION LIMITS

(a) Duke Energy. With the exception allowed under Paragraph (b) of this Rule, the owner or operator of the facilities listed in this Paragraph shall shut down or install and operate mercury control technology in compliance with mercury control requirements determined by the Commission under Rule .2509 of this Section on eight of the units listed in this Paragraph by December 31, 2017. Duke Energy shall not operate any unit listed in this Paragraph after December 31, 2022 unless mercury control technology has been installed on each unit and is operating as permitted. The owner or operator shall determine the eight units on which to install and operate mercury control technology by December 31, 2017.

(1) Duke Energy, Buck units 5, 6, 7, 8, and 9;

(2) Duke Energy, Cliffside units 1, 2, 3, and 4;

(3) Duke Energy, Dan River units 1, 2, and 3;

(4) Duke Energy, Riverbend units 7, 8, 9, and 10.

(b) Duke Energy alternative. Duke Energy may propose mercury reductions from one or more of the Belews Creek; GG Allen and Marshall units in lieu of the installation of mercury control technology on a unit regulated under Paragraph (a) of this Rule (a "regulated unit"). The Director shall approve the alternative mercury reductions upon finding that they will result in at least 110 percent of the reductions in mercury emissions that would be achieved through control of the regulated unit in compliance with the mercury control requirements adopted by the Commission.

(c) Progress Energy. With the exception allowed under Paragraph (d) of this Rule, the owner or operator of the facilities listed in this Paragraph shall shut down or install and operate mercury control technology in compliance with mercury control requirements determined by the Commission under Rule .2509 of this Section on four of the units listed in this Paragraph by December 31, 2017. Progress Energy shall not operate any unit listed in this Paragraph after December 31, 2022 unless mercury control technology has been installed on each unit and is operating as permitted. The owner or operator shall determine the four units on which to install and operate mercury control technology by December 31, 2017.

- (1) Progress Energy, L. V. Sutton units 1 and 2;
- (2) Progress Energy, Lee units 1, 2, and 3;
- (3) Progress Energy, W. H. Weatherspoon units 1, 2, and 3.

(d) Progress Energy alternative. Progress Energy may propose mercury reductions from one or more of the Asheville, Cape Fear, Mayo, and Roxboro units in lieu of the installation of mercury control technology on a unit regulated under Paragraph (c) of this Rule (a "regulated unit"). The Director shall approve the alternative mercury reductions upon finding that it will result in at least 110 percent of the reductions in mercury emissions that would be achieved through control of the regulated unit in compliance with the mercury control requirements adopted by the Commission.

(e) Source testing. Duke Energy and Progress Energy shall each test several of its boilers in North Carolina, but no less than four boilers in North Carolina each, for mercury emissions that represent boiler types and control device configurations in North Carolina. The tests shall be conducted before installation of sulfur dioxide control devices and after the installation of sulfur dioxide control devices. All testing shall occur between the effective date of this Rule and January 1, 2009. Either continuous emission monitors that comply with Rule .2505 of this Section or Method 101 or 102 of 40 CFR Part 61 Appendix B shall be used to measure mercury emissions. Each company shall submit a testing plan within nine months from the effective date of this Rule to the Director for his approval. The plan shall include:

- (1) the identity of the boilers to be tested and an explanation of why they were selected,
- (2) a schedule for testing the boilers, and
- (3) a testing protocol including testing procedures.

(f) Approval of testing. The Director shall approve the testing plan submitted under Paragraph (e) of this Rule if he finds that:

- (1) the elements required under Paragraph (e) of this Rule have been submitted,
- (2) the boilers selected represent the boiler types and control device configurations that the company has in North Carolina, and
- (3) the testing protocol and procedures are appropriate for the testing to be done.

(g) New sources.

Option 1:

Any coal-fired electric steam generating unit to which this Section applies and which begins operation after January 30, 2004 shall reduce its emissions of total mercury to no more than 0.021 pounds per gigawatt hour on an output basis.

Option 2:

Any coal-fired electric steam generating unit to which this Section applies and which begins construction after the effective date of this Rule shall:

- (1) reduce its emissions of total mercury by 90 percent by weight across the control device as calculated under Paragraph (b) of this Rule or to no more than 0.0060 pounds per gigawatt hour averaged over a 12 month rolling average, and
- (2) have enough allowances in its compliance account established under Rule .2510 of this Section to offset its actual emissions of mercury.

Option 3:

Any coal-fired electric steam generating unit to which this Rule applies and which begins construction after the effective date of this Rule shall install and operate best available control technology for mercury. For purposes of this Rule, "best available control technology" means an emissions limitation based on the maximum degree of reduction of mercury from coal-fired electric steam generating units that is achievable for such units taking into account energy, environmental, and economic impacts and other costs. The Director shall identify best available control technology on a case by case basis. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60, 61, or 63.

Authority G.S. 143-215.3(a); 143-215.107(a)(5).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Soil and Water Conservation Commission intends to amend the rules cited as 15A NCAC 06G .0101-.0105.

Proposed Effective Date: September 1, 2006

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Requests for public hearing should be made in writing to: David Harrison, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614.

Reason for Proposed Action: The proposed amendments clarify the procedure for public participation in the Conservation Reserve Enhancement Program. There is a name change for the state Ecosystem Enhancement Program.

Procedure by which a person can object to the agency on a proposed rule: Objections to the proposed amended rule should be submitted to David Harrison, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, voice mail (919) 715-6108, fax (919) 715-3559, email David.Harrison@ncmail.net.

Comments may be submitted to: David Harrison, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, voice mail (919) 715-6108, fax (919) 715-3559, email David.Harrison@ncmail.net

Comment period ends: June 30, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal Impact:

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

SUBCHAPTER 06G – CONSERVATION RESERVE ENHANCEMENT PROGRAM (CREP) – STATE PORTION OF THE PROGRAM

15A NCAC 06G .0101 OBJECTIVES

(a) The North Carolina Conservation Reserve Enhancement Program (CREP) is a state/federal/local partnership that combines existing federal Conservation Reserve Program (CRP) funding and state funding from various sources, including the Agriculture Cost Share Program (ACSP), to take environmentally sensitive land out of crop production. For purposes of this Rule the generic term "CREP" references either the federal portion or the combined federal and state portions of the program. The combined federal and state portion of CREP is referred to as NC-CREP. Under CREP, landowners may voluntarily enroll eligible land in 10-year, 15-year, 30-year or permanent agreements or contracts. The Commission operates the state portion of NC CREP program as the lead agency for the State of North Carolina (State), and may from time to time delegate activities to the Division.

(b) The program objectives for the Commission, which are the same as those of the multi-agency CREP team, are the following: to reduce agricultural non-point source pollution; to enroll eligible land in 10-year, 15-year, 30-year or permanent ~~contracts or easements;~~ easements or leases; to encourage voluntary sign-ups for the program; and to enhance ecological aspects and wildlife habitat of areas near watercourses.

(c) There shall be an initial enrollment period beginning March 1, 1999, which shall last five years unless otherwise extended, during which time requests to enroll acreage shall be received.

The Division, or its agent, shall seek eligible applicants for enrollment into the program. Landowner payments shall be made in accordance with state and federal requirements, and shall be subject to the availability of funds.

(d) The applicable standards, rules, regulations, and practices of the Natural Resource Conservation Service (NRCS) NRCS Field Office Technical Guide, the Farm Service Agency (FSA) 2-CRP Manual, the Division of Forest Resources, 15A NCAC 09C .0400 and the ~~Wetlands Restoration~~ Ecosystem Enhancement Program, G.S. 143-214.8 are incorporated herein by reference, and such incorporation includes subsequent amendments and editions of the referenced material. Likewise, the provisions of the United States Department of Agriculture's 2-CRP Manual are incorporated herein by reference, and such incorporation includes subsequent amendments and editions of the referenced material. Copies of all of these materials are available at the offices of the Division, and the cost of any copies shall not exceed ten cents (\$.10) per page.

Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165.

15A NCAC 06G .0102 ELIGIBILITY

(a) Persons may offer to enroll acreage to CREP at any time within the enrollment period or any extension thereof. Acreage enrolled into the CREP is referred to as "CREP Enrollments." Acreage enrolled into NC-CREP is referred to as NC-CREP Enrollments. In order to be enrolled into the CREP, all of the following shall be met:

- (1) the producer eligibility requirements within the 2-CRP Manual;
- (2) the cropland and marginal pasture land requirements within the 2-CRP Manual;
- (3) Acreage offered is eligible under the 2-CRP Manual and applicable NRCS standards, and is suitable for the intended practice; and
- (4) Producer accepts the maximum payment rate based on the payment formula described in Rule .0105 of this Section.

(b) The Commission may refuse enrollment where water quality benefits do not justify the payments, or where the acquisition is impractical or nuisance conditions exist on the land.

- (c) The following acreage is ineligible to be enrolled in CREP:
 - (1) federally-owned land unless the applicant has a prior written lease for the time frame in which the land is under the Conservation Reserve Program (CRP);
 - (2) land on which a federal agency restricts the use in a mortgage or an easement;
 - (3) acreage permanently under water, including acreage currently enrolled in CRP;
 - (4) land currently enrolled in other federal programs and still under lifespan requirements;
 - (5) land already enrolled in CRP; or
 - (6) acreage withdrawn, terminated or otherwise released from the CRP after enrollment and before the contract expiration date.

(d) For the NC-CREP, landowners may enroll into one of the enrollment options included in the 2-CRP Manual. ~~in one of the following options:~~

- ~~(1) 30-year contract or easement;~~
- ~~(2) Permanent easement with timber harvest allowed outside the 100-foot no-cut zone; or~~
- ~~(3) Permanent easement with no timber harvest allowed~~

(e) Existing forested buffers may be enrolled under NC-CREP according to the limitations in the 2-CRP Manual. ~~if the following conditions are met:~~

- ~~(1) land must be enrolled in a permanent easement;~~
- ~~(2) land must be adjacent to enrolled cropland/marginal pasture land (land between enrolled cropland/ marginal pasture land and waterbody, adjacent to cropland/marginal pasture land, across the qualifying waterbody of the enrolled cropland/marginal pasture land if owned by same landowner, or up gradient from enrolled cropland /marginal pasture land if it meets condition 3 below;~~
- ~~(3) existing buffer must be either within 300 feet of qualifying waterbody or in the 100-year floodplain, whichever is greater;~~
- ~~(4) landowner may enroll existing forest buffers up to an equal number of cropland acres (1:1) that are adjacent to existing buffer;~~
- ~~(5) if the eligible acreage is 80% of the parent tract and enrolling the entire parent tract will eliminate the need for a survey, then the landowner may exceed the 1:1 ration and enroll the entire parent tract.~~

(f) ~~The portion of an An unmanageable field remnant that does not~~ may qualify for enrollment subject to the conditions in the 2-CRP Manual. ~~under FSA rules may be enrolled under NC-CREP and will qualify for the current state bonus payment being applied to the total NC CREP enrollment, if the landowner uses one of the permanent easement options for the total enrollment.~~

(g) Landowners may switch from a 30-year contract/easement to one of the permanent easement options or may enroll additional land under the payment schedule existing at the time of the change in enrollment.

~~(h) Landowners may enroll additional forested buffers into one of the permanent easement options under the payment schedule at the time of additional enrollment.~~

~~(i) Landowners may enroll field remnants into one of the permanent easement options under the payment schedule existing at the time of change in the enrollment.~~

~~(j)(h)~~ Eligibility for the CREP shall be determined by the local District, Farm Service Agency (FSA), NRCS and the Division. An eligible applicant may enter into the federal agreements (10-years to 15-years), as well as the State agreements (30-year or permanent). Persons and land qualifying for the federal portion of CREP may also be qualified for enrollment under NC-CREP. Any landowner enrolling 10 acres or greater per tract, regardless of the length of enrollment, must enter into a 30-year or permanent State agreement.

Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165.

15A NCAC 06G .0103 CONSERVATION PLAN

(a) A conservation plan is required for all CREP Enrollments. The conservation plan is a record of the applicant's decisions and supporting information for the treatment of a unit of land or water as a result of the planning process that meets the NRCS Field Office Technical Guide quality criteria for each natural resource and that addresses economic and social considerations. The plan shall describe the schedule of operations and activities required to solve identified natural resource concerns. Conservation plans shall be prepared according to all applicable federal, state and local environmental laws, executive orders, and rules. The conservation plan shall be consistent with any conservation easement protecting the enrollment area. This applies regardless of eligibility for cost-share funds. Participants shall also agree to establish and maintain approved practices according to the conservation plan of operations and forest management plans, for the duration of the agreement. Practices included in the conservation plan must cost-effectively achieve a reduction in soil erosion and nutrient transport. All forestry management practices must be completed according to a forestry management plan approved by a registered forester. The Division and the Commission may review conservation plans at any time while CREP agreements are effective.

(b) All CREP Enrollments must provide interception of water from the crop or pasture land into the enrollment area. All CREP Enrollments must maintain a contiguous buffer with the water course. Enrollments of wetland restoration areas shall be accepted only ~~if lands are hydrologically restored to the greatest extent practicable and~~; if enrollments shall be in trees, in those areas where trees would be the natural cover. The riparian forested buffer or wetland practice may include an outer buffer layer of native grasses between cropped areas and the trees, as specified in the practice criteria.

Hydrologic restoration to the greatest extent practicable shall occur on all NC-CREP Enrollments. Hydrologic restoration to the greatest extent practicable means to improve/increase hydrology and to retain water to the maximum extent as long as there are no adverse impacts to non-enrolled lands. This may be accomplished through the following means: creating sheet flow; reducing concentrated flow areas; blocking or filling artificial drainage; or using water control structures in conjunction with buffers. All shall meet or exceed appropriate NRCS standards. Water infiltration and retention shall be maximized on non-hydric soils by creating sheet flow and by reducing concentrated flow areas. Plans shall provide for improved wildlife habitat. The establishment of CREP practices shall be:

- (1) consistent with conservation compliance provisions;
- (2) at the participant's own expense;
- (3) included in the approved conservation plan;
- (4) approved by the local District; and
- (5) subject to FSA and Division approval where applicable.

(c) 30-year contracts/easements and permanent easements for which the participant chooses the timber harvest option shall require a ~~100-foot no-cut~~ minimal impact zone adjacent to the

qualifying waterbody. Timber management and harvesting may be allowed in the remaining portion of the CREP enrollment as outlined in the contract/easement.

(d) A modification to an approved conservation plan must be in the best interest of CREP, and consistent with any conservation easement protecting the enrollment area. Such plans shall be revised as needed. Circumstances necessitating a revision include but are not limited to:

- (1) adding or revising a CREP practice;
- (2) substituting CREP practices;
- (3) scheduling reapplication of a CREP practice;
- (4) reflecting change in ownership; or
- (5) implementing other non-cost shared conservation measures, if producer agrees to install according to the approved conservation plan on CREP land already seeded to an acceptable cover.

Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165.

15A NCAC 06G .0104 APPROVING STATE AGREEMENTS

(a) Final approval for all NC-CREP agreements shall be the responsibility of the Division. ~~Thirty-year and permanent agreements including more than 9.9 acres and all permanent agreements~~ require recording of a conservation easement or conservation lease in the appropriate county registry. The intent is to provide that the NC-CREP Enrollment Area shall be protected for the life of the signed agreement. The Division shall provide a mechanism to acquire and record easements and leases for NC-CREP. The Division shall provide a survey where needed to develop legal description of the easement area. Conservation easements and leases entered into shall be consistent with the requirements of the Department of Administration and with 01 NCAC 06B .0210.

- (b) For approval under NC-CREP, the Division must receive:
- (1) the State CREP form signed by the local District and the applicant;
 - (2) a copy of landowner's deed(s) to the land to be enrolled;
 - (3) a completed conservation ~~easement(s);~~ easement(s) or lease(s);
 - (4) latitude and longitude coordinates locating the easement or lease site; and
 - (5) descriptions (maps, surveys, directions to site, etc.) identifying the easement or lease site.

(c) Under a CREP 30-year or permanent conservation ~~easement;~~ easement or lease, the title of the land still resides with the landowner. The landowner may use the land under the conservation easement or lease in a manner that does not violate the conditions and terms of the ~~easement.~~ easement or lease. The conservation easement or lease does not restrict the owner from selling or devising the land, however the easement or lease shall run with the land and remain an encumbrance thereon. The State must be allowed access to monitor the NC-CREP conservation easement or lease area.

Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165.

15A NCAC 06G .0105 PAYMENT

(a) The NC-CREP combines federal and state funding to achieve the goals of the program. For that reason, the eligible person may receive two separate payments (i.e. federal and state) to meet expectations set by the applicable contracts.

(b) The State payment shall be dependent on the length of the contract signed. The State payment shall consist of a one-time bonus payment for executed contracts for 30-year ~~contracts and 30-year~~ and permanent ~~easement~~ easement or lease enrollments that require a conservation ~~easement.~~ easement or lease. The State shall also pay a portion of cost-sharable practices implemented within the guidelines of the ACSP subject to availability of funds to the District. Any agricultural cost share payments shall be consistent with all Commission requirements, including but not limited to those in 15A NCAC 06E .0101-.0108.

(c) For enrollments involving the ACSP, all cost-share practices are subject to terms and policies as set forth in the ACSP rules and best management practices manual. State cost-share percentages, listed below, shall be dependent on the length of enrollment. All payments involving ACSP funds shall require approval of the local District Board of Supervisors, and are subject to the availability of funds to the District.

10 year	25%
15 year	30%
30 year	40%
permanent agreement	50%

(d) The maximum one-time bonus payment under NC-CREP that an eligible person can receive shall be limited by the maximum payment allowed under the federal payment. The payment for enrollment of land in ~~30-year contracts,~~ 30-year or permanent conservation easements or leases shall be made once the ~~contract or~~ conservation easement or lease is executed by the State and a technical representative has determined that the participant is actively engaged in the applicable practices.

(e) The formula for payment of the one-time State bonus shall be as established in the 2-CRP Manual, subject to the availability of funds.

Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165.

TITLE 21 – DEPARTMENT OF LICENSING BOARDS AND COMMISSIONS

CHAPTER 54 – NORTH CAROLINA PSYCHOLOGY BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to amend the rule cited as 21 NCAC 54 .2006.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: July 19, 2006

Time: 9:00 a.m.

Location: La Quinta Inn & Suites, 191 Crescent Commons, Cary, NC

Reason for Proposed Action: To more clearly define the activities which require supervision when performed by a licensed psychological associate.

Procedure by which a person can object to the agency on a proposed rule: Submit written objections to Martha Storie, Executive Director, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607. Letters of objections must be received no later than July 19, 2006.

Comments may be submitted to: Martha N. Storie, Executive Director, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607, fax (828) 265-8611, email mstorie@charter.net.

Comment period ends: July 19, 2006

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

SECTION .2000 - SUPERVISION

21 NCAC 54 .2006 PSYCHOLOGICAL ASSOCIATE ACTIVITIES

(a) Activities involving overall personality appraisal or classification are subject to review by a supervisor. Such appraisal and classification requiring supervision is defined as any assessment or evaluative technique (i.e., testing, observation, interviewing, or reports of others) which leads to conclusions, inferences, and hypotheses regarding personality functioning. Included are all statements relative to personality attributes, features, traits, structure, dynamics, and pathology or assets, whether or not these lead to a diagnosis or diagnostic impression. Techniques include but are not limited to the following: observation; open ended and structured interviewing;

word association tests; diagnostic play therapy; autobiographical techniques; mental status examinations; and, the use of "projective" and "objective" techniques. "Projective" techniques include such instruments as the Rorschach, Thematic Apperception Test, Tasks of Emotional Development, the Children's Apperception Test, the House-Tree-Person Technique, the Draw A Person (when used to assess personality), Kinetic Family Drawings, sentence completion tests, and all similar tests. "Objective" personality tests include the Minnesota Multiphasic Personality Inventory, the Millon tests, the California Personality Inventory, the 16PF, the California Test of Personality, and all other self-report inventories and questionnaires, as well as scales and check lists completed by others. The tests identified in this Rule as requiring supervision do not constitute an exhaustive list, only the most commonly-utilized measures.

(b) Neuropsychological evaluation requires supervision.
(e) Not requiring supervision are neuropsychological screening and interviewing and observation which lead to simple behavioral descriptions. Initial screening interviews which may lead to referral for more extensive evaluation or treatment do not require supervision. Also not requiring supervision are adjective check lists, behavior rating scales, and other rating devices which may be completed by a variety of professional and non-professional observers and are subsequently interpreted by other parties.

(d) Activities involving personality counseling or personality readjustment techniques are subject to review by a supervisor. In determining whether or not supervision is required, the following must be considered:

- (1) the nature of the techniques to be used;
(2) the target behavior, attitude, affect, habit, or other personality attribute or feature to be acquired or modified; and
(3) the population which is treated or addressed.

(e) Supervision is required for activities if any one of the following is met:

- (1) techniques: Those requiring supervision, whether utilized by the psychological Associate or those supervised by him/her, include but are not limited to psychotherapy, group therapies, therapeutic counseling or therapeutic interviewing, and hypnotherapeutic procedures. Also included are behavior management and behavior modification techniques which utilize punishment (negative reinforcers, aversive stimulation, and, in some instances, the withdrawal of positive reinforcers), extended "time out" (beyond several minutes), seclusion (in which a client is locked in a room or otherwise prevented from leaving), and all physical restraint. Also included are any other techniques which are physically intrusive, are restrictive of basic human rights, or are experimental in nature in which the efficacy and degree of risk are unknown. Biofeedback techniques, however, do not require supervision;

- (2) ~~target behaviors or symptoms: These include behaviors, attitudes, affects, habits, or other personality attributes or features, which, when addressed either directly with the person or in consultation, include activity which is actually or is potentially maladaptive or harmful to the person, others, or the physical environment. These include but are not limited to: adjustment difficulties; attention deficit; hyperactivity; impulsivity; sexual difficulties; aggression; somatization; anxiety; self-injurious behavior; substance use; antisocial behavior; conduct disturbances; elimination and eating disturbances; depression or other deviant mood; psychotic activity; interpersonal difficulty; and, any other seriously self-defeating or self-compromising behavior. Supervision is required regardless of whether the behavior or symptoms meet the criteria for formal diagnosis; and~~
- (3) ~~clinical populations: All interventions with clinical populations require supervision. These are comprised of persons with discernible mental, behavioral, emotional, psychological, and psychiatric disorders as evidenced by an established Axis I or Axis II diagnosis or V Code condition in the then current DSM, and all persons meeting the criteria for such diagnoses. Not included, however, would be persons with mental retardation diagnoses or specific developmental disorders (learning disabilities) when the psychological associate's interventions are in the domain of cognition rather than personality, and when there is no accompanying behavior or personality disorder. Not requiring supervision are techniques designed to stop or reduce cigarette smoking in otherwise non-clinical populations. Any person who carries a diagnosis from an alternative nosology (e.g., GAP or ICD), or is a Willie M. Class member, or qualifies for an educational placement based on an emotional or behavioral condition, or meets the diagnostic criteria from DSM or any of the above, whether established or not, is considered to be a member of a clinical population. Most persons in outpatient psychiatric or psychological treatment and many children with juvenile court involvement would thus be included. Supervision is required for a psychological associate who provides clinical supervision to other service providers who are engaged in activities which would require supervision if directly provided by the psychological associate.~~

(f) Psychological associates may use non-therapy, non-punitive, non-intrusive, non-experimental techniques without supervision

~~to teach or facilitate new behaviors in the absence of maladaptive behavior or psychopathological conditions.~~

(a) The assessment of overall personality functioning by a psychological associate requires supervision. The assessment of personality functioning involves any assessment or evaluative technique which leads to conclusions, inferences, and hypotheses regarding personality functioning. This includes:

- (1) all statements regarding personality attributes, features, traits, structure, dynamics, and pathology or assets;
- (2) the use of personality assessment techniques which include, but are not limited to, observation, interviewing, mental status examinations, word association tests, diagnostic play therapy, and autobiographical techniques; and
- (3) the use of standardized personality techniques or tests. Examples of techniques or tests include, but are not limited to, the following: Rorschach, Thematic Apperception Test, sentence completion tests, the House Tree Person, Minnesota Multiphasic Personality Inventory, the California Personality Inventory, The Millon tests, the 16PF, and all other self-report inventories and questionnaires, as well as scales and check lists completed by others. The tests identified in this Rule as requiring supervision do not constitute an exhaustive list, only the most commonly utilized measures.

Not requiring supervision are screening techniques which lead to simple descriptors of persons which may be completed by a variety of professional and non-professional observers and are interpreted by other parties.

(b) The conduct of neuropsychological evaluations by psychological associates requires supervision. Not requiring supervision are neuropsychological screenings which lead to simple behavioral descriptions or the administration of rating devices which may be completed by a variety of professional and non-professional observers and are subsequently interpreted by other parties.

(c) Psychotherapy, counseling, and any other interventions with a clinical population for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior provided by a psychological associate require supervision. Clinical populations include persons with discernible mental, behavioral, emotional, psychological, and/or psychiatric disorders as evidenced by an established Axis I or Axis II diagnosis or V Code condition in the then current DSM and all persons meeting the criteria for such diagnoses. Interventions other than psychotherapy and counseling that are encompassed by this definition include, but are not limited to, psychological assessment, psychoanalysis, behavior analysis/therapy, biofeedback, and hypnosis. Supervision is required when the psychological associate is providing an intervention to persons within a clinical population, directly with the person(s) or in consultation with a third party, for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior. Supervision is required for the design and/or clinical oversight of

interventions for persons within a clinical population, such as biofeedback techniques and behavior intervention programs; however, supervision is not required for the actual implementation of such interventions that were designed for others to implement, which may or may not constitute ancillary services.

(d) The use, including authorization, of intrusive, punitive, or experimental procedures, techniques, or measures by a psychological associate requires supervision. These procedures, techniques, or measures include, but are not limited to, seclusion, physical restraint, the use of protective devices for behavioral control, isolation time-out, and any utilization of punishment techniques involving aversive stimulation. Also

included in this definition are any other techniques which are physically intrusive, are restrictive of human rights or freedom of movement, place the client at risk for injury, or are experimental in nature (i.e., in which the efficacy and degree of risk have not previously been clinically established).

(e) Supervision is required for a psychological associate who provides clinical supervision to other service providers who are engaged in activities which would require supervision if directly provided by the psychological associate.

Authority G.S. 90-270.5(e); 90-270.9.

APPROVED RULES

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting March 16, 2006 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
10A	NCAC	09	.0102*	20:07 NCR
10A	NCAC	09	.0304*	20:07 NCR
10A	NCAC	09	.0305	20:07 NCR
10A	NCAC	09	.1601-.1602	20:07 NCR
10A	NCAC	09	.1604	20:07 NCR
10A	NCAC	09	.1606	20:07 NCR
10A	NCAC	09	.1612-.1613	20:07 NCR
10A	NCAC	09	.1615	20:07 NCR
10A	NCAC	09	.2801*	20:07 NCR
10A	NCAC	09	.2803-.2805*	20:07 NCR
10A	NCAC	09	.2806	20:07 NCR
10A	NCAC	09	.2807-.2810*	20:07 NCR
10A	NCAC	09	.2817-.2823*	20:07 NCR
10A	NCAC	13B	.5501	20:07 NCR
10A	NCAC	13B	.5505-.5506*	20:07 NCR
10A	NCAC	27G	.1801-.1805*	20:09 NCR
10A	NCAC	27G	.1806	20:09 NCR
10A	NCAC	27G	.4401-.4403*	20:10 NCR
10A	NCAC	27G	.4501-.4503*	20:10 NCR
10A	NCAC	39A	.1005*	n/a G.S. 150B-21.5(a)(3)
10A	NCAC	41A	.0205	20:12 NCR
10A	NCAC	41F	.0101-.0102	20:12 NCR
10A	NCAC	41F	.0103*	20:12 NCR
11	NCAC	08	.1202*	20:12 NCR
12	NCAC	02J	.0101	20:09 NCR
12	NCAC	02J	.0102*	20:09 NCR
12	NCAC	02J	.0103	20:09 NCR
12	NCAC	02J	.0104*	20:09 NCR
12	NCAC	02J	.0201*	20:09 NCR
12	NCAC	02J	.0202	20:09 NCR
12	NCAC	02J	.0203-.0204*	20:09 NCR
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12	NCAC	02J	.0206-.0208*	20:09 NCR
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12	NCAC	02J	.0304*	20:09 NCR
15A	NCAC	02G	.0601	20:11 NCR
15A	NCAC	02G	.0602*	20:11 NCR
15A	NCAC	13A	.0111*	19:23 NCR
15A	NCAC	13A	.0113*	19:23 NCR
17	NCAC	07B	.0104*	n/a G.S. 150B-1(d)(4)

17	NCAC	07B	.0106*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0109*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0111*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0113*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0115*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0123*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0801*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0803*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0805-.0806*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0811*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0901-.0902*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.0904*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.1001-.1003*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.1302-.1303*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.1601-.1602*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.2001-.2002*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.2302*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.2502-.2503*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.2901-.2902*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4702*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4705-.4708*	n/a G.S. 150B-1(d)(4)
17	NCAC	07B	.4710-.4717*	n/a G.S. 150B-1(d)(4)
21	NCAC	12	.0204*	20:06 NCR
21	NCAC	12	.0205	20:06 NCR
21	NCAC	12	.0408*	20:06 NCR
21	NCAC	12	.0701*	20:06 NCR
21	NCAC	16B	.0406*	20:09 NCR
21	NCAC	16M	.0101*	20:09 NCR
21	NCAC	32S	.0103	20:09 NCR
21	NCAC	32S	.0108*	20:09 NCR
21	NCAC	32S	.0110-.0112*	20:09 NCR
21	NCAC	32S	.0118*	20:09 NCR
21	NCAC	34C	.0101*	20:10 NCR
21	NCAC	36	.0322	20:09 NCR
21	NCAC	46	.2502*	20:06 NCR
21	NCAC	57A	.0201*	20:10 NCR
21	NCAC	57A	.0301*	20:10 NCR
21	NCAC	58A	.0902	20:10 NCR
21	NCAC	58A	.1902*	20:10 NCR
21	NCAC	58C	.0103*	20:10 NCR
21	NCAC	58C	.0302*	20:10 NCR
21	NCAC	58F	.0102*	20:10 NCR

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Chapter shall be defined as follows except when the content of the rule clearly requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" as used in Section .2200 of this Chapter, means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke

Road, Suite 120, Raleigh, North Carolina 27603.

- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care Training" (BSAC Training) means the seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development for the Division of Child Development on the elements of quality school-age care.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both,

- which are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Chapter, includes but is not limited to the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel and drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (10) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1998, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2005 is fourteen dollars and ninety-five cents (\$14.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (11) "Family Day Care Rating Scale" (Harms and Clifford, 1989, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2005 is fourteen dollars and ninety-five cents (\$14.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (12) "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Chapter, using space which is identifiable for each group.
- (13) "Household member" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (14) "Infant/Toddler Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1990, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2005 is fourteen dollars and ninety-five cents (\$14.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (15) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development for caregivers of children ages 12 months and younger.
- (16) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.
- (17) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual (published by the NC Community College System Office). These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection or copying at no charge during regular business hours.

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| <p>(18) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.</p> <p>(19) "Owner" means any person with a five percent or greater equity interest in a child care facility.</p> <p>(20) "Parent" means a child's parent, legal guardian, or full-time custodian.</p> <p>(21) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.</p> <p>(22) "Passageway" means a hall or corridor.</p> <p>(23) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.</p> <p>(24) "Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.</p> <p>(25) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2005 is fourteen dollars and ninety-five cents (\$14.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.</p> <p>(26) "School-aged child" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of the school to be gifted and mature enough to justify admission to the school, and is enrolled no later than the end of the first month of the school year.</p> <p>(27) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).</p> <p>(28) "Section" means Division of Child Development.</p> | <p>(29) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.</p> <p>(30) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.</p> <p>(31) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.</p> <p><i>History Note: Authority G.S. 110-88; 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989; Temporary Amendment Eff. January 1, 1996; Amended Eff. May 1, 2006; May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1, 1998; April 1, 1997.</i></p> <p>10A NCAC 09 .0304 ON-GOING REQUIREMENTS FOR A PERMIT</p> <p>(a) Each operator shall schedule a fire inspection within 12 months of the center's previous fire inspection. The operator is responsible for notifying the local fire inspector when it is time for the center's annual fire inspection. The operator shall submit the original of the completed annual fire inspection report to the Division's representative within one week of the inspection visit on the form provided by the Division.</p> <p>(b) Each center shall be inspected at least annually by an Environmental Health Specialist for compliance with applicable sanitation requirements adopted by the Health Services Commission as described in 15A NCAC 18A .2800.</p> <p>(c) A new building inspection shall not be required unless the operator plans to begin using space not previously approved for child care, has made renovations to the building, has added new construction, or wants to remove any restriction related to building codes currently on the permit.</p> <p>(d) When the Division's representative documents noncompliance during a visit, the representative may:</p> <ol style="list-style-type: none"> (1) Advise the operator to submit written verification that the noncompliance has been corrected; (2) Return to the center for an unannounced visit at a later date to determine if compliance has been achieved; or (3) Recommend issuance of a provisional license in accordance with Section .0400 of this Chapter or recommend the revocation of the permit or administrative actions in accordance with Section .2200 of this Chapter. <p>(e) The Division shall assess the compliance history of a center by evaluating the violations of requirements that have occurred. Demerits shall be assigned for each occurrence of violations of these requirements: supervision of children (6 points), staff/child ratio (6 points), staff qualifications and training (2-5 points), health and safety practices (3-6 points), discipline (6 points), developmentally appropriate activities (2-4 points), adequate</p> |
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space (6 points), nutrition and feeding practices (1-3 points), program records (1-3 points), and transportation (1-3 points), if applicable. The point value of each demerit shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits from the total demerits possible and converting to a percentage. The yearly compliance history percentage shall be averaged over the specified time period as in accordance with G.S. 110-90(4) for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Section.

History Note Authority G.S. 110-88(5); 110-93; 143B-168.3; 150B-3; Eff. July 1, 1998; Amended Eff. May 1, 2006.

SECTION .2800 - VOLUNTARY RATED LICENSES

10A NCAC 09 .2801 SCOPE

- (a) This Section shall apply to all child care facilities that have achieved a voluntary rated license of two stars or higher or that apply to be assessed for a voluntary rated license of two stars or higher.
- (b) A child care facility is eligible for a voluntary rated license of two through five stars.
- (c) No requirement in any component of a two-star or higher rating shall be less than the requirements for a one-star rating described in G.S. 110-91 and this Chapter. Prior to issuance of an initial two through five-star rating, all minimum requirements in G.S. 110-91 and this Chapter must be in compliance at the time the program is assessed. The requirements for a voluntary rated license of two stars or higher are in addition to the minimum standards found in G.S. 110-91 and this Chapter.
- (d) Any program operating prior to January 1, 2006 may choose to be assessed for a star rating as described in Rules .2803-.2816 of this Section until January 1, 2008. The operator may request assessment of their star rating based on Rules .2817 - .2823 of this Section prior to that date.
- (e) For any program that began operation after January 1, 2006 and applies for a voluntary rated license of two through five stars, the rating shall be assessed according to Rules .2817 - .2823 of this Section.
- (f) Nothing in this Section is to preclude or interfere with issuance of an administrative action as allowed by G.S. 110 and this Chapter.
- (g) As used in this Section a two component license refers to a license issued based on an evaluation of program standards and education standards. A three component license refers to a license issued based on an evaluation of program standards, education standards and compliance history.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Amended Eff. May 1, 2006.

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

- (a) This Rule applies to evaluating the program standards for a three component rated license for child care centers.
- (b) To achieve two points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2810(b) of this Section, except that either the space requirements in Rule .2809 of this Section or the staff/child ratio requirements in Rule .2810(b) of this Section shall be met.
- (c) To achieve three points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2810(b) of this Section, and 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.
- (d) To achieve four points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2810(b) of this Section, and 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.
- (e) To achieve five points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2810(c) of this Section, and 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.
- (f) 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 Paragraphs (c), (d), and (e) of this Rule.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Amended Eff. May 1, 2006; January 1, 2006.

10A NCAC 09 .2804 ADMINISTRATIVE POLICIES

Centers seeking two or more points for program standards shall have administrative policies and practices which provide for selection and training of staff; communication with and opportunities for participation by parents; operational and fiscal management; and objective evaluation of the program, management and staff in accordance with the rules of this Section.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Amended Eff. July 1, 2000; Prior to amendment of May 1, 2006 this language was located in Rule .1601; Amended Eff. May 1, 2006.

10A NCAC 09 .2805 OPERATIONAL AND PERSONNEL POLICIES

- (a) Each center shall have written policies which describe the operation of the center and the services which are available to parents and their children. The operational policies shall include at least the following information:

- (1) the days and hours the center operates;

- (2) age range of children served;
- (3) admission requirements and enrollment procedures;
- (4) parent fees and payment plan;
- (5) information about services provided by the center, i.e. number of meals served, before/after school care, transportation;
- (6) items, if any, to be provided by parents;
- (7) a schedule of daily, weekly, and monthly cleaning duties;
- (8) written procedures for reporting suspected child abuse and neglect;
- (9) the center's discipline policy for behavior management;
- (10) a description of opportunities for parent participation; and
- (11) nutrition policies.

(b) Operational policies shall be discussed with parents at the time they inquire about enrolling their child in the center. A copy of the policies shall be given to the parents when their child is enrolled and they shall be notified in writing of any changes.

(c) Copies of operational policies and any subsequent changes to those policies shall be distributed to the staff.

(d) Each center in which more than two staff are required to meet the enhanced standards for staff/child ratios shall have written personnel policy which includes at least the following information:

- (1) job descriptions for each position;
- (2) minimum qualifications for each position including reference checks;
- (3) health and medical requirements;
- (4) requirements and provisions for in-service training;
- (5) provisions for leave time and other absence;
- (6) procedures for on-going supervision and regular evaluation of work performance; and
- (7) resignation and termination procedures.

(e) Personnel policies shall be discussed with each employee at the time of employment and a copy of the policies shall be available to all staff. Staff shall be notified in writing of any changes in personnel policies.

(f) In addition to all records required in Rule .0302(d) of this Chapter, each employee's personnel file shall contain an annual staff evaluation and staff development plan.

(g) All personnel files of employees hired after April 1, 1999 shall also contain:

- (1) a signed and dated statement verifying that the employee received a copy of his/her job description(s) and has reviewed the personnel and operational policies; and
- (2) documentation that information concerning the enhanced standards was included during the employee's orientation.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Prior to amendment of May 1, 2006 this language was located in Rule .1602;

Amended Eff. May 1, 2006.

10A NCAC 09 .2807 PARENT PARTICIPATION

(a) Each center shall have a plan which will encourage parent participation and inform parents about the program and its services. The plan shall be discussed with parents at the time the child is enrolled and shall be posted in the center or a copy shall be given to parents at the time of enrollment.

(b) The plan shall include the following:

- (1) a procedure for registering a child for child care which involves both parents when possible and which encourages a visit to the center by the child and the child's parents before the child begins attending the center;
- (2) opportunities for caregiving staff to meet with parents on a regular basis to discuss their child's needs and progress and to exchange information about the program;
- (3) activities which provide parents opportunities to participate in the center's program on an individual basis and as a group;
- (4) a procedure for parents who need information or have complaints about the child care program.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Prior to amendment of May 1, 2006 this language was located in Rule .1613; Amended Eff. May 1, 2006.

10A NCAC 09 .2808 NIGHT CARE

(a) A variety of activities and experiences shall be available for children during the evening hours. Quiet activities shall be planned just before bedtime. Children shall have opportunities to develop good personal care and health habits through routines.

(b) Schedules for the children receiving nighttime care must be flexible and individually planned.

(c) When possible, children shall be left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Prior to amendment of May 1, 2006 this language was located in Rule .1615; Amended Eff. May 1, 2006.

10A NCAC 09 .2809 SPACE REQUIREMENTS

(a) There shall be at least 30 square feet inside space per child per the total licensed capacity and 100 square feet outside space per the total licensed capacity. Or, there shall be at least 35 square feet inside space per child per the total licensed capacity and 100 square feet outside space per child for at least 50 percent of the total licensed capacity.

(b) There must be an area which can be arranged for administrative and private conference activities.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Prior to amendment of May 1, 2006 this language was located in Rule .1604; Amended Eff. May 1, 2006.

10A NCAC 09 .2810 STAFF/CHILD RATIOS FOR A THREE COMPONENT RATED LICENSE

(a) This Rule applies to evaluating the staff/child ratios and maximum group sizes for the program standards for a three component rated license for child care centers.

(b) The center shall comply with the following staff/child ratios and maximum group sizes.

AGE OF CHILDREN	RATIO STAFF/CHILDREN	MAXIMUM GROUP SIZE
0 to 12 Months	1/5	10
1 to 2 Years	1/6	12
2 to 3 Years	1/9	18
3 to 4 Years	1/10	20
4 to 5 Years	1/13	25
5 to 6 Years	1/15	25
6 Years and Older	1/20	25

(c) To earn five points for program standards, the center shall comply with the following staff/child ratios and maximum group sizes.

AGE	RATIO STAFF/CHILDREN	MAXIMUM GROUP SIZE
0 to 12 Months	1/4	8
1 to 2 Years	1/5	10
2 to 3 Years	1/8	16
3 to 4 Years	1/9	18
4 to 5 Years	1/12	24
5 to 6 Years	1/14	25
6 Years and Older	1/19	25

(d) The provisions of rules 10A NCAC 09 .0712(a)(1), (2) and .0713(b) through (j) shall apply in evaluating the staff/child ratios and maximum group sizes within this Rule.

(e) 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.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Amended Eff. January 1, 2006; Prior to amendment of May 1, 2006 this language was located in Rule .1606 and 2803; Amended Eff. May 1, 2006.

10A NCAC 09 .2817 PROGRAM STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR CHILD

CARE CENTERS

(a) This Rule applies to evaluating the program standards for a two component rated license for child care centers.

(b) To achieve two points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2808 of this Section, and either the staff/child ratio requirements in Rule .2818(b) or the space requirements in Rule .2809 of this Section shall be met.

(c) To achieve three points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2808 and either the staff/child ratio requirements in Rule .2818(b) or the space requirements in Rule .2809 of this Section shall be met, and 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.

(d) To achieve four points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2808 and .2818(b) of this Section, and have an average combined score of 4.5, with no one classroom score lower than 4.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section for all classrooms evaluated.

(e) To achieve five points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2808 and .2818(b) of this Section, and have an average combined score of 4.75, with no one classroom score lower than 4.0, on the appropriate environment rating scale referenced in Rule .2802(e) of this Section for all classrooms evaluated.

(f) To achieve six points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2809 and .2818(b) of this Section, and have an average combined score of 5.0, with no one classroom score lower than 4.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section for all classrooms evaluated.

(g) To achieve seven points for program standards, the center shall meet all the applicable requirements in Rules .2804 - .2809 and .2818(c) of this Section, and 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.

(h) For centers with a licensed capacity of 3 to 12 children located in a residence, a Family Day Care Rating Scale shall be the rating scale used in Paragraphs (c), (d), (e), (f) and (g) of this Rule.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. May 1, 2006.

10A NCAC 09 .2818 STAFF/CHILD RATIOS FOR A TWO COMPONENT RATED LICENSE FOR CHILD CARE CENTERS

(a) This Rule applies to evaluating the staff/child ratios and maximum group sizes for a two component rated license for child care centers.

(b) The center shall comply with the following staff-child ratios and maximum group sizes.

AGE	RATIO STAFF/CHILDREN	MAXIMUM GROUP SIZE
0 to 12 Months	1/5	10

1 to 2 Years	1/6	12
2 to 3 Years	1/9	18
3 to 4 Years	1/10	20
4 to 5 Years	1/13	25
5 to 6 Years	1/15	25
6 Years and Older	1/20	25

(c) To earn seven points for program standards, the center shall comply with the following staff-child ratios and maximum group sizes.

AGE	RATIO STAFF/CHILDREN	MAXIMUM GROUP SIZE
0 to 12 Months	1/4	8
1 to 2 Years	1/5	10
2 to 3 Years	1/8	16
3 to 4 Years	1/9	18
4 to 5 Years	1/12	24
5 to 6 Years	1/14	25
6 Years and Older	1/19	25

(d) The provisions of rules 10A NCAC 09 .0712(a)(1), (2) and .0713(b) through (j) shall apply in evaluating the staff/child ratios and maximum group sizes within this Rule.

(e) 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.

History Note: Authority G.S. 110-88(7); 143B-168.3; Eff. May 1, 2006.

10A NCAC 09 .2819 EDUCATION STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR CHILD CARE CENTERS

(a) This Rule applies to evaluating the education standards for a two component rated license for child care centers.

(b) To achieve two points for education standards, staff in the center shall meet the following requirements:

- (1) The on-site administrator shall have:
 - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) Two years of full-time verifiable early childhood work experience; or one year experience in child care administration.
- (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
- (3) 75 % of lead teachers shall have:
 - (A) The North Carolina Early Childhood Credential or its equivalent; and
 - (B) Completed or are enrolled in three semester hours in early childhood education or child development (not

including North Carolina Early Childhood Credential coursework).

(4) 50% of the teachers counted in staff/child ratios shall:

- (A) Have one year full time verifiable early childhood work experience, or
- (B) Be enrolled in three semester hours in early childhood education or child development.

(5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (a)(1) through (a)(4) of this Rule:

- (A) The administrator shall have at least 150 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC Training;
- (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have completed or be enrolled in three additional semester hours of school-age care related coursework; or have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting;
- (C) For centers providing school-age care with 200 or more school-aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed all the applicable staff requirements in Rule .2510(b) of this Chapter; and
- (D) All group leaders shall have completed the BSAC training.

(c) To achieve three points for education standards, staff in the center shall meet the following requirements:

- (1) The on-site administrator shall have:
 - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) Six semester hours in early childhood education or child development (not

- including North Carolina Early Childhood Administration Credential coursework); and
 - (C) Two years of full-time verifiable early childhood work experience; or one year experience in child care administration.
- (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
- (3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:
 - (A) Completed three semester hours in early childhood education and be enrolled in three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); or
 - (B) One year full time verifiable early childhood work experience.
- (4) 50% of the teachers counted in staff/child ratios shall have:
 - (A) Completed the North Carolina Early Childhood Credential or its equivalent; or
 - (B) Completed three semester hours in early childhood education or child development; or
 - (C) Two years full time verifiable early childhood work experience.
- (5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (b)(1) through (b)(4) of this Rule;
 - (A) The administrator shall have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC Training;
 - (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have completed three additional semester hours of school-age care related coursework; or shall have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting;
 - (C) For centers providing school-age care with 200 or more school-aged children enrolled, there shall be two program coordinators on site; one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements of Rule .2510(b) of this Chapter; and
 - (D) All group leaders shall have completed the BSAC training, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or shall have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or shall have completed or be enrolled in at least two semester hours of school-age care related coursework.
- (d) To achieve four points for education standards, staff in the center shall meet the following requirements:
 - (1) The on-site administrator shall have:
 - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) 18 semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework), and one year experience in child care administration; or
 - (C) Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework), and 10 years experience in child care administration.
 - (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
 - (3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% shall have:

- (A) Completed six semester hours in early childhood education or child development (not including the North Carolina Early Childhood Credential coursework), and be enrolled in three semester hours in early childhood education, or
 - (B) Completed three semester hours of early childhood education and shall have three years full-time verifiable early childhood work experience, or
 - (C) Five years full-time verifiable early childhood work experience.
- (4) 50% of the teachers counted in staff/child ratios shall have the North Carolina Early Childhood Credential or its equivalent.
- (5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (c)(1) through (c)(4) of this Rule:
- (A) The administrator shall have at least 450 hours of verifiable experience working with school-aged children in licensed child care program, or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC Training;
 - (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have completed three additional semester hours of school-age care related coursework and shall have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or shall have at least 450 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting;
 - (C) For centers providing school-age care with 200 or more school-aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter;
- (D) All group leaders shall have completed the BSAC training, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or shall have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or have completed at least two semester hours of school-age care related coursework; and
 - (E) Assistant group leaders shall be at least 16 years of age.
- (e) To achieve five points for education standards, staff in the center shall meet the following requirements:
- (1) The on-site administrator shall have:
 - (A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) Two years of full-time verifiable early childhood work experience.
 - (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
 - (3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall:
 - (A) Have completed nine semester hours in early childhood education or child development (not including the North Carolina Early Childhood Credential coursework);
 - (B) Be enrolled in three additional semester hours in early childhood education; and
 - (C) Have one year of full-time verifiable early childhood work experience.
 - (4) 50% of the teachers counted in staff/child ratios shall have:
 - (A) The North Carolina Early Childhood Credential or its equivalent; and
 - (B) Three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework).
 - (5) For centers providing school-age care, the following requirements shall also apply.

Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (d)(1) through (d)(4) of this Rule:

- (A) The administrator shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC training;
- (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have completed three additional semester hours of school-age care related coursework and shall be enrolled in three additional semester hours of school-age care related coursework; or shall have at least 600 hours of verifiable experience working with school-age children in a licensed child care program; or at least 750 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting;
- (C) For centers providing school-age care with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter;
- (D) All group leaders shall complete the BSAC training, and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall have completed at least two semester hours of school-age care related coursework; and
- (E) Assistant group leaders shall be at least 16 years of age and shall complete the BSAC training, or shall have at least 250 hours of verifiable

experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(f) To achieve six points for education standards, staff in the center shall meet the following requirements:

- (1) The on-site administrator shall:
 - (A) Have a Level II North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) Have completed 18 semester hours in early childhood education or child development (not including the North Carolina Early Childhood Administration Credential coursework or hours earned during the completion of the A.A.S degree); and
 - (C) Have three years of full-time verifiable work experience in an early childhood center teaching young children, or three years of administrative experience, or three years of a combination of both.
- (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
- (3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 50% of the lead teachers shall:
 - (A) Have at least an A.A.S degree in early childhood education or child development or an A.A.S degree in any major with 12 semester hours in early childhood education or child development and shall have one year of full-time verifiable early childhood work experience, or
 - (B) Have completed 60 semester hours towards a BA/BS degree program with at least 12 semester hours in early childhood education and one year full-time verifiable early childhood work experience.
- (4) 50% of the teachers counted in staff/child ratios shall have:
 - (A) The North Carolina Early Childhood Credential or its equivalent; and
 - (B) Three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); and

- (C) One year of full-time verifiable early childhood work experience.
- (5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (e)(1) through (e)(4) of this Rule:
 - (A) The administrator shall have at least 750 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 1150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC training;
 - (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have at least 750 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting and shall have completed at least six additional semester hours of school-age care related coursework; or shall have a BA/BS degree with at least three additional semester hours of school-age care related coursework;
 - (C) For centers providing school-age care with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter;
 - (D) All group leaders shall have completed the BSAC training, and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester hours of school-age related coursework; and
 - (E) Assistant group leaders shall be at least 17 years of age and shall complete the BSAC training or shall have at least 250 hours of verifiable experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
- (g) To achieve seven points for education standards, staff in the center shall meet the following requirements:
 - (1) The on-site administrator shall have:
 - (A) A Level III North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) Four years of full-time verifiable work experience in an early childhood center teaching young children, or four years of administrative experience, or four years of a combination of both.
 - (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
 - (3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:
 - (A) At least an A.A.S. degree in early childhood education or child development or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development; and
 - (B) Two years of full-time verifiable early childhood work experience.
 - (4) 50% of the teachers counted in staff/child ratios shall have:
 - (A) The North Carolina Early Childhood Credential or its equivalent; and
 - (B) Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); and
 - (C) Two years of full-time verifiable early childhood work experience.
 - (5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience

requirements in Subparagraphs (f)(1) through (f)(4) of this Rule:

- (A) The administrator shall have at least 900 hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 1350 hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting, or shall complete the BSAC Training;
- (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting and shall have completed at least six additional semester hours of school-age care related coursework; or at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting and shall have completed at least nine additional semester hours of school-age related coursework; or at least 300 hours of verifiable experience working with school-aged children in a licensed school-age care program or 450 semester hours of working with school-aged children in an unlicensed school-age care or camp setting and a BA/BS degree or higher with at least six additional semester hours of school-age related coursework;
- (C) For centers providing school-age care with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter;
- (D) All group leaders shall have completed the BSAC training, and 75% of the individuals designated as

group leaders as allowed in Rule .2510 of this Chapter shall each have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting; or shall have completed at least two semester hours of school-age care related coursework and have completed; or be enrolled in at least two additional semester hours of school-age related coursework; and

- (E) Assistant group leaders shall be at least 18 years of age and shall complete the BSAC training.

(h) For centers with a licensed capacity of 3 to 12 children located in a residence, when an individual has responsibility both for administering the child care program and for planning and implementing the daily activities of a group of children, the educational requirements for lead teacher in this Rule shall apply. All other teachers shall follow the educational requirements for teachers in this Rule.

(i) As used in this Rule, the definition of the term "experience working with school-aged children" in Rule .2510(i) of this Chapter shall apply.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. May 1, 2006.

10A NCAC 09 .2820 EDUCATION STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR CENTERS THAT PROVIDE CARE ONLY TO SCHOOL-AGED CHILDREN

(a) This Rule applies to evaluating the education standards for a two component rated license for centers that provide care only to school-aged children.

(b) For child care programs that serve school-aged children only, the following staff education requirements apply instead of those in Rule .2819 of this Section.

(c) To achieve two points for education standards, staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have a Level I North Carolina Early Childhood Administration Credential or its equivalent or shall have enrolled in coursework as required in G.S. 110-91(8) and have at least 1600 hours of verifiable experience performing administrative duties in a licensed school-aged program;

- (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:

- (A) Completed or be enrolled in three additional semester hours of school-age care related coursework, or
 - (B) At least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
 - (3) All group leaders shall have completed the BSAC training.
- (d) To achieve three points for education standards, staff in the school-age care program shall meet the following requirements:
- (1) The administrator shall have:
 - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 300 additional hours of verifiable experience performing administrative duties in a licensed child care program, or at least 450 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
 - (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
 - (A) Completed three additional semester hours of school-age care related coursework, or
 - (B) At least 300 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
 - (3) All group leaders shall have completed the BSAC training, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or shall have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall have completed or be enrolled in at least two semester hours of school-age care related coursework.
- (e) To achieve four points for education standards, staff in the school-age care program shall meet the following requirements:
- (1) The administrator shall have:
 - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 600 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 750 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
 - (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
 - (A) Completed three additional semester hours of school-age care related coursework and shall have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or
 - (B) At least 450 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
 - (3) All group leaders shall have completed the BSAC training, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or have completed at least two semester hours of school-age care related coursework.
 - (4) Assistant group leaders shall be at least 16 years of age.
- (f) To achieve five points for education standards, standards for a star rating, staff in the school-age care program shall meet the following requirements:
- (1) The administrator shall have:
 - (A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 600 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 750 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
 - (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
 - (A) Completed three additional semester hours of school-age care related coursework and shall have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or
 - (B) At least 450 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
 - (3) All group leaders shall have completed the BSAC training, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or have completed at least two semester hours of school-age care related coursework.
 - (4) Assistant group leaders shall be at least 16 years of age.

- (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
 - (A) Completed three additional semester hours of school-age care related coursework and shall be enrolled in three additional semester hours of school-age care related coursework, or
 - (B) At least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 750 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
- (3) All group leaders shall complete the BSAC training, and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting, or shall have completed at least two semester hours of school-age care related coursework.
- (4) Assistant group leaders shall be at least 16 years of age and shall complete the BSAC training or shall each have at least 250 hours of verifiable experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting.
- (g) To achieve six points for education standards, staff in the school-age care program shall meet the following requirements:
 - (1) The administrator shall have:
 - (A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 750 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 1150 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
 - (2) The individual designated as the program coordinator shall have:
 - (A) Completed all the applicable requirements in Rule .2510(b) of this Chapter;
 - (B) At least 750 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; and
- (C) Completed at least six additional semester hours of school-age care related coursework or shall have a BA/BS degree with at least three additional semester hours of school-age care related coursework.
- (3) All group leaders shall have completed the BSAC training, and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting, or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester hours of school-age related coursework.
- (4) Assistant group leaders shall be at least 17 years of age and shall complete the BSAC training or shall each have at least 250 hours of verifiable experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
- (h) To achieve seven points for education standards, staff in the school-age care program shall meet the following requirements:
 - (1) The administrator shall have:
 - (A) A Level III North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 900 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 1350 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
 - (2) The individual designated as the program coordinator shall:
 - (A) Have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

care or camp setting, and have completed at least six additional semester hours of school-age care related coursework; or

(B) Have least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, and have completed at least nine additional semester hours of school-age care related coursework; or

(C) Have at least 300 hours of verifiable experience working with school-aged children in a licensed school-age care program or 450 semester hours of working with school-aged children in an unlicensed school-age care or camp setting and a BA/BS degree or higher with at least six additional semester hours of school-age related coursework.

(3) All group leaders shall have completed the BSAC training, and 75% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester hours of school-age related coursework.

(4) Assistant group leaders shall be at least 18 years of age and shall complete the BSAC training.

(i) For programs with a licensed capacity of 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter.

(j) As used in this Rule, the definition of the term "experience working with school-aged children" in Rule .2510(i) of this Chapter shall apply.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. May 1, 2006.

10A NCAC 09 .2821 PROGRAM STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR FAMILY CHILD CARE HOMES

(a) This Rule applies to evaluating the program standards for a two component rated license for family child care homes.

(b) To achieve two points for program standards, the operator shall have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice.

(c) To achieve three points for program standards, the operator shall:

(1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.

(2) Have an average score of 4.0 or higher on the Family Day Care Rating Scale.

(d) To achieve four points for program standards, the operator shall:

(1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.

(2) Have an average score of 4.25 or higher on the Family Day Care Rating Scale.

(e) To achieve five points for program standards, the operator shall:

(1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.

(2) Have an average score of 4.5 or higher on the Family Day Care Rating Scale.

(f) To achieve six points for program standards, the operator shall:

(1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule;

(2) Have an average score of 4.75 or higher on the Family Day Care Rating Scale; and

(3) Of the five preschoolers allowed to be enrolled, no more than four children shall be under one year of age.

(g) To achieve seven points for program standards, the operator shall:

(1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule;

(2) Have an average score of 5.0 or higher on the Family Day Care Rating Scale; and

(3) Of the five preschoolers allowed to be enrolled, no more than three children shall be under one year of age.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. May 1, 2006.

10A NCAC 09 .2822 EDUCATION STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR FAMILY CHILD CARE HOMES

(a) This Rule applies to evaluating the education standards for a two component rated license for family child care homes.

(b) To achieve two points for education standards, the operator shall have completed:

- (1) The North Carolina Family Child Care Credential or its equivalent;
- (2) Four semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); or
- (3) Five years verifiable early childhood work experience and eight additional clock hours of annual in-service training.

(c) To achieve three points for education standards, the operator shall have completed the North Carolina Family Child Care Credential or its equivalent.

(d) To achieve four points for education standards, the operator shall have completed:

- (1) The North Carolina Family Child Care Credential or its equivalent; and
- (2) Six semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework).

(e) To achieve five points for education standards, the operator shall have completed:

- (1) The North Carolina Family Child Care Credential or its equivalent;
- (2) 12 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); and
- (3) Two of 12 semester hours in early childhood education are in child care administration or one year verifiable early childhood work experience.

(f) To achieve six points for education standards, the operator shall have completed:

- (1) The North Carolina Family Child Care Credential or its equivalent;
- (2) 18 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); and
- (3) Five of the 18 semester hours in early childhood education are in child care administration or two years verifiable early childhood work experience.

(g) To achieve seven points for education standards, the operator shall have completed:

- (1) At least an A.A.S. degree in any major with at least 12 semester credit hours in early childhood education/child development coursework and two years of full-time verifiable early childhood work experience; or
- (2) At least an A.A.S. in early childhood education/child development and 18 months of full-time verifiable early childhood work experience.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. May 1, 2006.

10A NCAC 09 .2823 QUALITY POINT OPTIONS

Operators may earn one additional quality point as follows:

- (1) Education options:
 - (a) Completion by staff of additional education coursework as follows:
 - (i) 75% of infant/toddler teachers have obtained an Infant/Toddler Certificate, or
 - (ii) 75% of teachers have completed an A.A.S. or higher in early childhood education/child development, or
 - (iii) 75% of lead teachers have completed a BA/BS or higher in early childhood education/child development, or
 - (iv) All lead teachers have completed an A.A.S. or higher in early childhood education/child development, or
 - (v) 75% of group leaders have obtained a North Carolina School Age Care Credential or have completed six semester hours in school-age coursework, or
 - (vi) A family child care home provider has obtained an Infant/Toddler Certificate or has a BA/BS or higher in early childhood education/child development.
 - (b) Completion of 20 additional annual in-service training hours for full-time lead teachers and teachers, and staff working part-time shall complete additional hours based on the chart in Rule .0707(c) of this Chapter.
 - (c) Completion of 20 additional annual in-service training hours for family child care home providers.
 - (d) 75% of lead teachers and teachers shall have at least 10 years verifiable early childhood work experience.
 - (e) All lead teachers and teachers shall have at least five years verifiable early childhood work experience employed by no more than two different employers.
 - (f) Having a combined turnover rate of 20% or less for the administrator,

- program coordinator, lead teachers, teachers and group leader positions over the last 12 months if the program has earned at least four points in education.
- (g) In a stand alone school age program, 75% of group leaders shall have at least five years verifiable school-age work experience employed in no more than two different school-age settings.
- (2) Programmatic options:
 - (a) Use of age/developmentally appropriate curriculum that addresses five domains of development.
 - (b) Having group sizes decreased by at least one child per age group from the seven point level as described in Rule .2818(b) of this Section.
 - (c) Having staff/child ratios decreased by at least one child per age group from the seven point level as described in Rule .2818(b) of this Section.
 - (d) Meeting at least two of the following three programs standards:
 - (i) Having enhanced policies which include the following topics: emergency evacuation plan, field trip policy, staff development plan, medication administration, enhanced discipline policy, and health rules for attendance.
 - (ii) Having a staff benefits package that offers at least four of the following six benefits: paid leave for professional development, paid planning time, vacation, sick time, retirement or health insurance.
 - (iii) Having evidence of an infrastructure of parent involvement which would include at least two of the following: parent newsletters offered at least quarterly, parent advisory board, periodic conferences for all children, or parent information meetings offered at least quarterly.
 - (e) Completion of a 30 hour or longer business training course by a family child care home provider.
 - (f) Completion of a business training course and a wage/hour training by

the center administrator that is at least 30 hours total.

- (g) Restricting enrollment to four preschool children in a family child care home.
- (h) Reducing infant capacity by at least one child from the seven point level for a family child care home as described in Rule .2821(f)(3) of this Section.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. May 1, 2006.

10A NCAC 13B .5505 PERIOPERATIVE CARE AND FACILITY SUPPORT

- (a) The donor surgical team shall have primary concern and responsibility for the donor's care and welfare throughout his or her entire hospital stay. The donor surgical team consists of the donor surgeon, his or her surgical and medical partners, fellows, residents, and physician assistants or nurse practitioners.
- (b) Preoperative Preparation
 - (1) The facility shall have the ability to allow donors to bank a minimum of one unit of blood before surgery. Facilities shall have the ability to store and transfuse autologous blood;
 - (2) The transplant coordinator or another team member shall be assigned the responsibility of providing updates to the families of both the donor and transplant recipient during the surgical procedures; and
 - (3) For live donor liver procedures, surgeries shall be scheduled only when staffing will be available for the postoperative period. If surgery is scheduled on a Thursday or Friday, the hospital shall ensure that there is adequate attending physician, resident physician, physician assistant or nurse practitioner, and registered nursing coverage during the weekend.
- (c) Postoperative Care
 - (1) After live donor nephrectomy, the patient shall receive post-operative care equivalent to that provided for abdominal procedures under general anesthesia; and
 - (2) For live liver donors:
 - (A) Day 0-1: The live adult liver donor shall receive care in the intensive care unit (ICU) or post-anesthesia care unit (PACU);
 - (B) Day 2: If stable and cleared for transfer by the donor surgical team, the donor shall be cared for in a hospital unit that is dedicated to the care of transplant recipients or a hospital unit in which patients who

undergo hepatobiliary resectional surgery are provided care. Liver donors shall not at any time be cared for on any other unit unless a specific medical condition of the donor warrants such a transfer;

- (C) The donor shall be evaluated at least daily by a liver transplant attending physician with documentation in the medical record;
- (D) The donor surgical team shall be responsible for the clinical management of the donor;
- (E) The patient care staff shall be familiar with the common complications associated with the donor and transplant recipient operations and have appropriate monitoring in place to detect these problems if they arise; and
- (F) If there is an emergent complication requiring re-operation, these patients shall be prioritized for access to the operating room based on the facility's operating room policies and guidelines.

(d) Medical Staffing. For live donor nephrectomy patients, there shall be continuous physician coverage available for patient evaluation as needed. These patients shall be provided post-operative care equivalent to patients undergoing a nephrectomy.

(e) Nurse Staffing

- (1) Nursing staff shall be familiar with recovery of nephrectomy patients. They shall be aware of the signs and symptoms of hypovolemia due to post-operative bleeding or to excessive diuresis. They shall have ready access to the surgical team responsible for the patient's post-operative care;
- (2) For live liver donors, nursing staff shall have ongoing education and training in live donor liver transplantation nursing care for both donors and recipients. This shall include education on the pain management issues particular to the donor. The registered nursing to patient ratio in the ICU or PACU level setting shall be appropriate for the acuity level of the patients. For live liver donors, the same registered nurse shall not take care of both the donor and the recipient. For live liver donors, the nursing service shall provide the potential donor with pre-surgical information including, if possible, a tour of the unit before surgery; and
- (3) For all donors, the names and beeper numbers of the donor surgical team or team responsible for the donor's post-operative surgical care (e.g. urology service or laparoscopic general surgery service for some donor nephrectomy

patients) shall be posted on all units receiving transplant donors.

(f) Radiology. For facilities performing live donor nephrectomies, radiological staff shall be available for pre-operative assessment, peri-operative care, and post-operative follow-up as required.

History Note: Authority G.S. 131E-75; 131E-79; 143B-165; Eff. April 1, 2006.

10A NCAC 13B .5506 DISCHARGE PLANNING

(a) Pre-Donation. At the time of evaluation by the IDAT, a discussion shall be held between the IDAT social worker and the potential donor and his or her family or next of kin to address the following areas:

- (1) Living arrangements after discharge from the surgery or while the donor recuperates until able to travel;
- (2) Transportation arrangements from the hospital to the donor's accommodations or back to follow up appointments;
- (3) Caregivers to provide assistance or support upon discharge; if the donor has children or other dependents, a plan for the children's or dependent's care while the donor recuperates;
- (4) Financial considerations: Encourage donor to discuss with employer about medical leave or disability. This discussion shall include checking with health or life insurance carriers about future "pre-existing conditions" or "exclusions" that may result from donation;
- (5) Provided consent is first obtained, referrals to other living organ donors from that particular facility and suggestions from other resources such as publications and websites; and
- (6) Emotional issues surrounding the organ donation process.

(b) Day of Discharge

- (1) A written discharge plan shall be provided to the donor with the following instructions:
 - (A) Restrictions on activities;
 - (B) Permitted activities (i.e. return to work);
 - (C) Diet;
 - (D) Pain medication with prescription;
 - (E) Follow up appointments with surgeon;
 - (F) Contact numbers for the Independent Donor Advocate Team should the donor have questions, concerns or problems; and
 - (G) Additional instructions for caregivers, if any.
- (2) The discharge plan shall be reviewed with the donor by the facility discharge planner or primary care nurse.

(c) Post Discharge medical follow-up, social, psychological and financial support

- (1) Post-operative visits shall be scheduled by the donor with the surgeon to assess the following:
 - (A) Wound healing;
 - (B) Signs and symptoms of infections; and
 - (C) Laboratory results as appropriate to the organ type, as well as any imaging or other diagnostic findings.
- (2) Dictated summaries of surgery and follow-up visits shall be sent to the donor's primary care physician by the facility to ensure appropriate medical care.
- (3) Referrals shall be made to community agencies to address the donor's emotional and psychological issues if needed or requested by the donor, his or her designee, family, next of kin or the IDAT to:
 - (A) Provide the donor the opportunity to participate in a support group; and
 - (B) Provide the donor recognition as determined by the facility.
- (d) Any questions or concerns regarding the discharge plan or discharge planning process by the donor, the donor's designee, the donor's next of kin or legally responsible party shall be addressed by facility staff.

History Note: Authority G.S. 131E-75; 131E-79; 143B-165; Eff. April 1, 2006.

SECTION .1800 – INTENSIVE RESIDENTIAL TREATMENT FOR CHILDREN OR ADOLESCENTS

10A NCAC 27G .1801 SCOPE

- (a) An intensive residential treatment facility is one that is a 24-hour residential facility that provides a structured living environment within a system of care approach for children or adolescents whose needs require more intensive treatment and supervision than would be available in a residential treatment staff secure facility.
- (b) It shall not be the primary residence of an individual who is not a client of the facility.
- (c) The population served shall be children or adolescents who have a primary diagnosis of mental illness, severe emotional and behavioral disorders or substance-related disorders; and may also have co-occurring disorders including developmental disabilities. These children or adolescents shall not meet criteria for acute inpatient psychiatric services.
- (d) The children or adolescents served shall require the following:
 - (1) removal from home to an intensive integrated treatment setting; and
 - (2) treatment in a locked setting.
- (e) Services shall be designed to:
 - (1) assist in the development of symptom and behavior management skills;
 - (2) include intensive, frequent and pre-planned crisis management;

- (3) provide containment and safety from potentially harmful or destructive behaviors;
 - (4) promote involvement in regular productive activity, such as school or work; and
 - (5) support the child or adolescent in gaining the skills needed for reintegration into community living.
- (f) The intensive residential treatment facility shall coordinate with other individuals and agencies within the child or adolescent's system of care.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

10A NCAC 27G .1802 REQUIREMENTS OF LICENSED PROFESSIONALS

- (a) Each facility shall have at least one full-time licensed professional. For purposes of this Rule, licensed professional means an individual who holds a license or provisional license issued by the governing board regulating a human service profession in the State of North Carolina. For substance related disorders this shall include a Licensed Clinical Addiction Specialist or a Certified Clinical Supervisor.
- (b) The governing body responsible for each facility shall develop and implement written policies that specify the clinical and administrative responsibilities of its licensed professional(s). At a minimum these policies shall include:
 - (1) supervision of direct care staff;
 - (2) oversight of emergencies;
 - (3) provision of direct clinical psychoeducational services to children, adolescents or families;
 - (4) participation in treatment planning meetings; and
 - (5) coordination of each child or adolescent's treatment plan.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

10A NCAC 27G .1803 REQUIREMENTS OF QUALIFIED PROFESSIONALS

- (a) Each facility shall have at least one full-time qualified professional as set forth in 10A NCAC 27G .0104(18). In addition, the qualified professional shall have two years of direct client care experience.
- (b) For each facility:
 - (1) a qualified professional shall perform clinical and administrative responsibilities a minimum of 40 hours each week; and
 - (2) 75% shall occur when children or adolescents are awake and present in the facility.
- (c) The governing body responsible for each facility shall develop and implement written policies that specify the clinical and administrative responsibilities of its qualified professional(s). At a minimum these policies shall include:
 - (1) management of the day to day operations of the facility;

- (2) supervision of paraprofessionals regarding responsibilities related to the implementation of each child or adolescent's treatment plan;
- (3) participation in treatment planning meetings; and
- (4) provision of basic case management functions.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

10A NCAC 27G .1804 MINIMUM STAFFING REQUIREMENTS

- (a) A Qualified Professional shall be available by telephone or page. A direct care staff shall be able to reach the facility within 30 minutes at all times.
- (b) If children or adolescents are cared for in separate units/buildings, the minimum staffing numbers shall apply to each unit/building.
- (c) The minimum number of direct care staff required when children or adolescents are present and awake is as follows:
 - (1) three direct care staff shall be present for up to six children or adolescents;
 - (2) four direct care staff shall be present for seven, eight or nine children or adolescents; and
 - (3) five direct care staff shall be present for 10, 11 or 12 children or adolescents.
- (d) During child or adolescent sleep hours three direct care staff shall be present of which two shall be awake and the third may be asleep.
- (e) In addition to the minimum number of direct care staff set forth in Paragraphs (a)-(d) of this Rule, more direct care staff may be required in the facility based on the child or adolescent's individual needs as specified in the treatment plan.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

10A NCAC 27G .1805 OPERATIONS

- (a) Each facility shall serve no more than 12 children or adolescents.
- (b) Family members or other legally responsible persons shall be involved in development of plans in order to assure a smooth transition to a less restrictive setting.
- (c) Educational services within the facility shall be arranged and designed to maintain the educational and intellectual development of the child or adolescent. Treatment staff shall coordinate with the local education agency to ensure that the child or adolescent's educational needs are met as identified in the education plan.
- (d) Psychiatric consultation shall be available as needed for each child or adolescent.
- (e) If an adolescent has his 18th birthday while receiving treatment in the facility, he may remain for six months or until the end of the state fiscal year, whichever is longer.
- (f) Each child or adolescent shall be entitled to age-appropriate personal belongings unless such entitlement is counter-indicated in the treatment plan.

- (g) Each facility shall operate 24 hours per day, seven days per week, and each day of the year.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

SECTION .4400 – SUBSTANCE ABUSE INTENSIVE OUTPATIENT PROGRAM

10A NCAC 27G .4401 SCOPE

- (a) A substance abuse intensive outpatient program (SAIOP) is one that provides structured individual and group addiction treatment and services that are provided in an outpatient setting designed to assist adults or adolescents with a primary substance-related diagnosis to begin recovery and learn skills for recovery maintenance.
- (b) Treatment support activities may be adapted or specifically designed for persons with physical disabilities, co-occurring disorders including mental illness or developmental disabilities, pregnant women, chronic relapse and other homogenous groups.
- (c) Each SAIOP shall have a structured program, which includes the following services:
 - (1) individual counseling;
 - (2) group counseling;
 - (3) family counseling;
 - (4) strategies for relapse prevention, which incorporate community and social supports; life skills;
 - (5) crisis contingency planning;
 - (6) disease management;
 - (7) service coordination activities; and
 - (8) biochemical assays to identify recent drug use (e.g. urine drug screens).

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

10A NCAC 27G .4402 STAFF

- (a) Each SAIOP shall be under the direction of a Licensed Clinical Addictions Specialist or a Certified Clinical Supervisor who is on site a minimum of 50% of the hours the program is in operation.
- (b) When a SAIOP serves adult clients there shall be at least one direct care staff who meets the requirements of a Qualified Professional as set forth in 10A NCAC 27G .0104 (18) for every 12 or fewer adult clients.
- (c) When a SAIOP serves adolescent clients there shall be at least one direct care staff who meets the requirements of a Qualified Professional as set forth in 10A NCAC 27G .0104 (18) for every 6 or fewer adolescent clients.
- (d) Each SAIOP shall have at least one direct care staff present in the program who is trained in the following areas:
 - (1) alcohol and other drug withdrawal symptoms; and
 - (2) symptoms of secondary complications due to alcoholism and drug addiction.
- (e) Each direct care staff shall receive continuing education that includes the following:
 - (1) understanding of the nature of addiction;

- (2) the withdrawal syndrome;
 - (3) group therapy;
 - (4) family therapy;
 - (5) relapse prevention; and
 - (6) other treatment methodologies.
- (f) When a SAIOP serves adolescent clients each direct care staff shall receive training that includes the following:
- (1) adolescent development; and
 - (2) therapeutic techniques for adolescents.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

10A NCAC 27G .4403 OPERATIONS

- (a) A SAIOP shall operate in a setting separate from the client's residence.
- (b) Each SAIOP shall operate at least three hours per day, at least three days per week with a maximum of two days between offered services.
- (c) A SAIOP shall provide services a maximum of 19 hours for each client.
- (d) Each SAIOP shall provide services a minimum of nine hours per week for each client.
- (e) Group counseling shall be provided each day program services are offered.
- (f) Each SAIOP shall develop and implement written policies to carry out crisis response for their clients on a face to face and telephonic basis 24 hours a day, seven days a week, which shall include at a minimum the capacity for face to face emergency response within two hours.
- (g) Before discharge, the program shall complete a discharge plan and refer each client who has completed services to the level of treatment or rehabilitation as specified in the treatment plan.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

**SECTION .4500 – SUBSTANCE ABUSE
COMPREHENSIVE OUTPATIENT TREATMENT
PROGRAM**

10A NCAC 27G .4501 SCOPE

- (a) A substance abuse comprehensive outpatient treatment program (SACOT) is one that provides a multi-faceted approach to treatment in an outpatient setting for adults with a primary substance-related diagnosis who require structure and support to achieve and sustain recovery.
- (b) Treatment support activities may be adapted or specifically designed for persons with physical disabilities, co-occurring disorders including mental illness or developmental disabilities, pregnant women, chronic relapse, and other homogenous groups.
- (c) SACOT shall have a structured program, which includes the following services:
 - (1) individual counseling;
 - (2) group counseling;
 - (3) family counseling;

- (4) strategies for relapse prevention to include community and social support systems in treatment;
- (5) life skills;
- (6) crisis contingency planning;
- (7) disease management;
- (8) service coordination activities; and
- (9) biochemical assays to identify recent drug use (e.g. urine drug screens).

(d) The treatment activities specified in Paragraph (c) of this Rule shall emphasize the following:

- (1) reduction in use and abuse of substances or continued abstinence;
- (2) the understanding of addictive disease;
- (3) development of social support network and necessary lifestyle changes;
- (4) educational skills;
- (5) vocational skills leading to work activity by reducing substance abuse as a barrier to employment;
- (6) social and interpersonal skills;
- (7) improved family functioning;
- (8) the negative consequences of substance abuse; and
- (9) continued commitment to recovery and maintenance program.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

10A NCAC 27G .4502 STAFF

- (a) The SACOT shall be under the direction of a Licensed Clinical Addictions Specialist or a Certified Clinical Supervisor who is on site a minimum of 90% of the hours the program is in operation.
- (b) For each SACOT there shall be at least one direct care staff who meets the requirements of a Qualified Professional as set forth in 10A NCAC 27G .0104 (18) for every 10 or fewer clients.
- (c) Each SACOT shall have at least one direct care staff present in the program who is trained in the following areas:
 - (1) alcohol and other drug withdrawal symptoms; and
 - (2) symptoms of secondary complications due to alcoholism and drug addiction.
- (d) Each direct care staff shall receive continuing education that includes the following:
 - (1) understanding of the nature of addiction;
 - (2) the withdrawal syndrome;
 - (3) group therapy;
 - (4) family therapy;
 - (5) relapse prevention; and
 - (6) other treatment methodologies.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

10A NCAC 27G .4503 OPERATIONS

- (a) A SACOT shall operate in a setting separate from the client's residence.
- (b) Each SACOT shall provide services a minimum of 20 hours per week.
- (c) Each SACOT shall operate at least four hours per day, at least five days per week with a maximum of two days between offered services.
- (d) Each SACOT shall provide a structured program of services in the amounts, frequencies and intensities specified in each client's treatment plan.
- (e) Group counseling shall be provided each day program services are offered.
- (f) Each SACOT shall develop and implement written policies to carry out crisis response for their clients on a face to face and telephonic basis 24 hours a day, seven days a week, which shall include at a minimum the capacity for face to face emergency response within two hours.
- (g) Psychiatric consultation shall be available as needed.
- (h) Before discharge, the program shall complete a discharge plan and refer each client who has completed services to the level of treatment or rehabilitation as specified in the treatment plan.

History Note: Authority G.S. 122C-26; 143B-147; Eff. April 1, 2006.

10A NCAC 39A .1005 APPLICATION PROCESS

- (a) Applications for assistance must be submitted and shall be processed in accordance with 10A NCAC 45A. All necessary forms may be obtained from the Purchase of Medical Care Services, Office of the Controller, Department of Health and Human Services, 1904 Mail Service Center, Raleigh, N.C. 27699-1904.
- (b) Applications must be renewed at least annually for the fiscal year beginning July 1, and ending June 30.

History Note: Authority G.S. 130A-5(3); Eff. January 1, 1996; Temporary amendment Eff. July 1, 2005; Amended Eff. April 1, 2006; January 1, 2006; October 1, 2005.

10A NCAC 41A .0205 CONTROL MEASURES – TUBERCULOSIS

- (a) The local health director shall investigate all cases of tuberculosis disease and their contacts in accordance with the provisions of the Control of Communicable Diseases Manual which is hereby incorporated by reference including subsequent amendments and editions. Copies of this publication may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldorf, MD 20604 for a cost of twenty-two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling. A copy is available for inspection in the Division of Public Health, 1931 Mail Service Center, Raleigh, North Carolina 27699-1931.

- (b) The following persons shall be skin tested for tuberculosis and given appropriate clinical, microbiologic and x-ray examination in accordance with the "Diagnostic Standards and Classification of Tuberculosis in Adults and Children," published by the American Thoracic Society. The recommendations contained in this reference shall be the required control measures for evaluation, testing, and diagnosis for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions:

- (1) Household and other high priority contacts of active cases of pulmonary and laryngeal tuberculosis. For purposes of this Rule, a high priority contact is defined in accordance with Centers for Disease Control and Prevention guidelines which are incorporated by reference in Rule .0201 of this Section. If the contact's initial skin test is negative (0-4mm), and the case is confirmed by culture, a repeat skin test shall be performed 8 to 10 weeks after the exposure has ended;
- (2) Persons reasonably suspected of having tuberculosis disease;
- (3) Inmates in the custody of, and staff with direct inmate contact in, the Department of Corrections upon incarceration or employment, and annually thereafter;
- (4) Patients and staff in long term care facilities upon admission or employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months;
- (5) Staff in adult day care centers providing care for persons with HIV infection or AIDS upon employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months; and
- (6) Persons with HIV infection or AIDS.

A copy of "Diagnostic Standards and Classification of Tuberculosis in Adults and Children" is available by contacting the Division of Public Health, 1931 Mail Service Center, Raleigh, North Carolina 27699-1931 or by accessing the Centers for Disease Control and Prevention website at http://www.cdc.gov/nchstp/tb/pubs/mmwrhtml/Maj_guide/cdc_a_ts_guidelines.htm.

- (c) Treatment and follow-up for tuberculosis infection or disease shall be in accordance with "Treatment of Tuberculosis," published by the American Thoracic Society. The recommendations contained in this reference shall be the required control measures for testing, treatment, and follow-up for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions. Copies of this publication are available by contacting the Division of Public Health, 1931 Mail Service Center, Raleigh, North Carolina 27699-1931 or by accessing the Centers for Disease Control and Prevention website at

http://www.cdc.gov/nchstp/tb/pubs/mmwrhtml/Maj_guide/cdc_a ts_guidelines.htm.

(d) The attending physician or designee shall instruct all patients treated for tuberculosis regarding the potential side effects of the medications prescribed and prescribed medications, including instructions to promptly notify the physician or designee if side effects occur.

(e) Persons with active tuberculosis disease shall complete a standard multi-drug regimen, unless otherwise approved by the State Tuberculosis Medical Director or designee, and shall be managed using Directly Observed Therapy (DOT), which is the actual observation of medication ingestion by a health care worker (HCW).

(f) Persons with suspected or known active pulmonary or laryngeal tuberculosis who have sputum smears positive for acid fast bacilli are considered infectious and shall be managed using airborne precautions, including respiratory isolation, or isolation in their home, with no new persons exposed. These individuals are considered noninfectious and use of airborne precautions, including respiratory isolation or isolation in their home, may be discontinued when:

- (1) They have three consecutive sputum smears collected at least eight hours apart which are negative; and
- (2) They have been compliant on tuberculosis medications to which the organism is judged to be susceptible and there is evidence of clinical response to tuberculosis treatment.

(g) Persons with suspected or known active pulmonary or laryngeal tuberculosis who are initially sputum smear negative do not require respiratory isolation once they have been started on tuberculosis treatment.

History Note: Authority G.S. 130A-135; 130A-144; Eff. March 1, 1992; Amended Eff. April 1, 2006, April 1, 2003; August 1, 1998; October 1, 1994.

10A NCAC 41F .0103 METHOD OF REPORTING

(a) A report of a pesticide-related illness or injury shall be submitted to the Occupational and Environmental Epidemiology Branch on a form provided by or approved by the Branch according to these Rules. The form shall include the following information:

- (1) The name, address, telephone number, date of birth, race, ethnicity, gender, and occupation of the affected person;
- (2) The physical location of the affected person at the time of exposure to the pesticide, if known (be as specific as possible and include address and telephone number);
- (3) The name of the pesticide, if known; and
- (4) The name, address, and telephone number of the physician or medical facility.

(b) To minimize cost and to avoid duplicate reporting, the physician is not required to report a case of a pesticide-related illness or injury to the Occupational and Environmental Epidemiology Branch if the physician has already reported that case to the state poison control center. The state poison control

center shall report all such cases to the Occupational and Environmental Epidemiology Branch.

(c) Reporting forms are available at the Occupational and Environmental Epidemiology Branch, Division of Public Health, 1931 Mail Service Center, Raleigh, NC 27699-1931 or at <http://www.epi.state.nc.us/epi/oii.html>.

History Note: Authority G.S. 130A-5(2); Eff. April 1, 2006.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 08 .1202 COMPLAINTS

(a) Anyone who believes that a licensee is or has been engaged in any conduct set out in G.S. 143-151.56(a) may file a written complaint against that licensee. The Board may, upon its own motion, initiate an investigation of a licensee. The Board shall not consider complaints that are received by the Board more than three years from the dates of the inspection.

(b) An information memo containing instructions for filing the complaint shall be mailed to anyone requesting complaint information from the Board.

(c) The complaint shall specifically identify the licensee and describe the conduct complained about.

(d) Supporting information shall be included to justify the complaint. Supporting information shall refer to specific violations of the Board's rules or of the General Statutes. If the complaint involves items included in the Standards of Practice that the licensee did not observe, a list of those items must be submitted with the complaint. This information may be provided by the complainant, an architect, professional engineer, licensed contractor, another licensed home inspector, or other person with knowledge of the Standards of Practice. A copy of the contract agreement, the inspection report, and any reports made by other consultants shall be included with the complaint.

(e) The complaint shall be in writing, signed by the complainant, and dated. The complaint shall include the complainant's mailing address and a daytime phone number at which the complainant may be reached. The street address of the structure must be included.

(f) The Board shall not consider services that are under the jurisdiction of other regulatory agencies or licensing boards, such as termite inspections, appraisals, services rendered by licensed architects, engineers, or general contractors, unless the persons rendering those services claim to be home inspectors.

(g) The Board has no jurisdiction over persons who make specialized inspections as part of their repair or maintenance businesses, such as roofing repair contractors, chimney sweeps, duct cleaning, and interior environment specialists.

History Note: Authority G.S. 143-151.49; 150B-38(h); Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. April 1, 2006.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 02J .0102 PURPOSES

The purposes of the Attorney General's Office in granting campus police commissions are:

- (1) to allow those private institutions of higher education described in G.S. 74G-2 to apply for certification as a campus police agency;
- (2) to allow those private institutions of higher education described in G.S. 74G-2 to employ individuals commissioned as campus police officers pursuant to G.S. 74G-6; and
- (3) to ensure the integrity, proficiency, and competence of campus police officers and to establish, in addition to the requirements set out in G.S. 74G-8, minimum standards for obtaining and maintaining both campus police officer commissions and campus police agency certifications.

History Note: Authority G.S. 74G-2; 74G-6; Eff. April 1, 2006.

12 NCAC 02J .0104 DEFINITIONS

In addition to any definitions set forth in G.S. 74G, the following definitions will apply throughout this Chapter, unless the context clearly defines otherwise:

- (1) "Agency Records" means those records specified pursuant to this Subchapter and that documentation required to be maintained and compiled under the requirements of G.S. 74G.
- (2) "Badge" means a shield bearing the title of "Campus Police" and the name of the certified campus police agency and the officer's issued identification card provided by the Attorney General which identifies the individual as a campus police officer.
- (3) "Calendar Year" shall be defined solely for the purpose of in-service training as a period beginning January 1 and ending on December 31.
- (4) "Certification" means:
 - (a) campus police officers - the authority granted by the North Carolina Criminal Justice Education and Training Standards Commission to those individuals who meet the minimum requirements as a sworn law enforcement officer pursuant to Title 12, Chapter 9B of the North Carolina Administrative Code.
 - (b) campus police agency - the authority granted by the Attorney General to those Campus Police agencies who meet the minimum requirements established for such agencies pursuant to this Chapter.

- (5) "Commission" as it pertains to criminal offenses, means a finding by an administrative body, pursuant to the provisions of G.S. 150B, that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (6) "Commissioned Campus Police Officer" means those individuals authorized by the Campus Police Administrator to exercise all law enforcement powers within the constraints provided in G.S. 74G and classified as a campus police officer pursuant to G.S. 74G-6(b).
- (7) "Campus Police Administrator" means the individual who serves as the head of the administrative staff to whom the Attorney General designated the authority to act upon any campus police agency commission or campus police agency certification pursuant to the provisions of G.S. 74G and the rules promulgated thereunder. Said administrator is responsible for the individual officer's or agency's compliance with the Campus Police Act.
- (8) "Campus Police Agency" means any police agency certified as a campus police agency on a public or private campus or institution of higher learning, as defined by G.S. 74G-2(b).
- (9) "Conviction or convicted" means and includes, for the purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilty by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (10) "Department Head" means the chief administrator of any campus police agency. The Department Head is to include the Campus Police Chief or a designee formally appointed in writing as the Department Head, and who shall hold and maintain a commission as a campus police officer.
- (11) "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.
- (12) "High School" means a school accredited as a high school by:
 - (a) the Department or Board of Education of the state in which the high school is located; or
 - (b) the recognized regional accrediting body; or
 - (c) the state university of the state in which the high school is located.

- (13) "In-Service Training" means any and all training as prescribed in 12 NCAC 2J .0201 which must be satisfactorily completed by campus police officers, in accordance with the standards established therein, during each full calendar year of commissioning as a campus police officer.
- (14) "Insurance Carrier" means any entity, corporation, campus or professional association as defined in G.S. 58 and who is authorized by the North Carolina Commissioner of Insurance to do business in North Carolina as an insurance carrier or underwriter.
- (15) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Criminal Justice Education and Training Standards Commission.
 - (a) "Class A Misdemeanor" is defined in 12 NCAC 9A .0103(22)(a).
 - (b) "Class B Misdemeanor" is defined in 12 NCAC 9A .0103(22)(b).
- (16) "On Duty" means that period of time which the commissioned campus police officer is being compensated for his or her services by the officer's employer and ending once the officer's compensation for his duties terminates.

History Note: Authority G.S. 74G-4; Eff. April 1, 2006.

SECTION .0200 - COMMISSIONING

12 NCAC 02J .0201 MINIMUM STANDARDS FOR CAMPUS POLICE OFFICERS

Every campus police officer must meet the following requirements to obtain and maintain a campus police commission:

- (1) be a citizen of the United States;
- (2) be a high school graduate or have passed the General Educational Development Test indicating high school equivalency. A specific exception to this educational requirement is granted to:
 - (a) an applicant who was the holder of a valid campus police commission on June 30, 1972; or
 - (b) an applicant properly certified as a law enforcement officer by the Criminal Justice Education and Training Standards Commission on March 14, 1973.

In either case, the exception will not be applicable if the applicant has had more than a 12 month break in service;

- (3) have attained a score of not less than 80 percent on a written examination of basic

knowledge of laws of arrest, search, and investigation, and of these Rules to be administered by a representative of the North Carolina Department of Justice;

Note: All examination questions will be based on the book Arrest, Search, and Investigation as published by and available from the Institute of Government, the University of North Carolina at Chapel Hill, Chapel Hill, North Carolina 27514, and these Rules.

Applicants will be advised in writing of test dates and sites at least five days prior to the examination. In the event an applicant fails to successfully complete the examination, only one re-test will be allowed. Upon an applicant's failure to successfully complete the second test, the applicant must successfully complete accredited Basic Law Enforcement Training coursework prior to re-testing;

- (4) meet the minimum standards for criminal justice officers established by the North Carolina Criminal Justice Education and Training Standards Commission, appearing in Title 12, Chapter 9 of the North Carolina Administrative Code; which Standards are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced material;
- (5) applicants who do not hold general certification as a law enforcement officer issued by the Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission, must submit to and successfully complete a polygraph examination administered by the State Bureau of Investigation;
- (6) be at least 20 years of age;
- (7) have produced a negative result on a drug screen administered according to the following specifications:
 - (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive test result using a gas chromatography mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
 - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
 - (c) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;

- (d) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced material. Copies of this publication may be inspected at the office of the agency:

Campus Police Program
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Raleigh, North Carolina 27602

and may be obtained at no charge from the office of the agency:

Campus Police Program
 North Carolina Department of Justice
 Post Office Box 310
 Raleigh, North Carolina 27602

- (e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
- (f) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Item (7)(c) of this Rule; and
- (g) every agency head shall be responsible for making adequate arrangements for the services of a Medical Review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;
- (8) notify the Campus Police Administrator in writing of all criminal offenses for which the officer is arrested, pleads no contest, pleads guilty, or is found guilty of. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Item, as an offense where the maximum punishment allowable is 60 days or less. The notifications required must specify the nature of the offense, the court in which the case was handled and the date of the conviction if applicable. The notifications must be received by the Campus Police Administrator within 30

days of the date of the case disposition. Applicants and officers required to notify the Campus Police Administrator under this Item shall also make the same notification to their Department Head within 20 days of the date the case was disposed of in court. However, the notification to the Campus Police Administrator does not excuse the officer from making an independent notification otherwise required by either the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission. The notifications required by this section shall be required while the application is pending as well as subsequent to a commission being issued;

- (9) be of good moral character as referred to in G.S. 17C-10(c); and
- (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 2J .0209(b), such that the applicant would be ineligible for commissioning as a Campus Police officer.

History Note: Authority G.S. 74G-4; Eff. April 1, 2006.

12 NCAC 02J .0203 APPLICATION FOR CAMPUS POLICE OFFICER

The application for a campus police officer must contain:

- (1) a written request from the Department Head of the campus, or agency requesting that a campus police commission be issued to the applicant. An oral request will not satisfy this requirement; and
- (2) if the applicant holds general certification issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission, the application must contain the following:
 - (a) Medical History Statement (Form F-1);
 - (b) Medical Examination Report (Form F-2);
 - (c) Two complete fingerprint cards;
 - (d) One digital photograph of applicant, not more than three months old, in JPEG format to be emailed to the Campus Police Administrator for picture I.D;
 - (e) Proof of a negative drug screen as specified in 12 NCAC 2J .0201(7);
 - (f) Proof of successful completion of all in-service training requirements specified by the North Carolina Criminal Justice Education and

Training Standards Commission, which standards are hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced material. Copies of these standards may be inspected at the office of the agency:

Campus Police Program
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Raleigh, North Carolina 27602

and may be obtained at no charge from the office of the agency:

Campus Police Program
North Carolina Department of Justice
Post Office Box 310
Raleigh, North Carolina 27602

- (g) Authorization for release of records (CP-1);
 - (h) Drug Screen Consent Form (CP-2);
 - (i) Appropriate fees as specified in 12 NCAC 2J .0205;
 - (j) An appropriate background investigation as specified in 12 NCAC 2J .0204 (Form F-8); and
 - (k) Personal History Statement (Form F-3) not more than three months old;
- (3) if the applicant does not hold general certification, the application must contain the following:
- (a) Medical History Statement (Form F-1);
 - (b) Medical Examination Report (Form F-2);
 - (c) Personal History Statement not more than three months old, (Form F-3);
 - (d) Report of Qualification Appraisal Interview (Form F-4);
 - (e) Proof of High School graduation or GED;
 - (f) Two complete fingerprint cards;
 - (g) One digital photograph of applicant, not more than three months old, in JPEG format to be emailed to the Campus Police Administrator for picture I.D;
 - (h) Proof of satisfactory completion of a Criminal Justice Education and Training Standards Commission accredited basic law enforcement training course;
 - (i) Proof of a negative drug screen;
 - (j) Authorization for Release of Records (CP-1);
 - (k) Drug Screen Consent Form (CP-2);
 - (l) Appropriate fees as specified in 12 NCAC 2J .0205; and

- (m) Background investigation as specified in 12 NCAC 2J .0204 (Form F-8); or
- (4) if the applicant is commissioned as a company police officer or a campus police officer under Chapter 74E all documentation not specifically listed in this rule, but contained in the commissioned officer's file, shall be transferred to a new file for the officer under Chapter 74G.

History Note: Authority G.S. 74G-4; Eff. April 1, 2006.

12 NCAC 02J .0204 BACKGROUND INVESTIGATION

(a) Any campus police agency contemplating the commissioning of an applicant as a campus police officer shall, prior to employment, complete a background investigation on such applicant. The investigation shall examine the applicant's character traits and habits relevant to performance as a campus police officer and shall determine whether the applicant is of good moral character as referred to in G.S. 17C-10(c). The campus police agency shall submit the investigation to the Campus Police Administrator utilizing the Commission provided Form F-8 (Summary of Background Investigation).

(b) Prior to the investigation, the applicant shall complete a Personal History Statement (Form F-3) to provide a basis for the investigation.

(c) The Department Head shall conduct the applicant's background investigation. The Department Head shall document the results of the investigation and shall include in the report of investigation:

- (1) biographical data;
- (2) family data;
- (3) scholastic data;
- (4) employment data;
- (5) interviews with the applicant's references; and
- (6) a summary of the Department Head's findings and conclusions regarding the applicant's moral character as referred to in G.S. 17C-10(c).

(d) The agency may use the method of documenting the results of the background investigation it deems most appropriate to its needs. However, the campus police program's "Summary of Background Investigation" form shall be used as a guide for minimum information collected and recorded by the investigator.

(e) In the event that an individual applying for commission as a campus police officer is the Department Head, he shall not conduct his own background investigation. The investigation must be performed by a city or county agency in the county where the campus police agency has jurisdiction, or contract with a private investigator.

History Note: Authority G.S. 74G-4; Eff. April 1, 2006.

12 NCAC 02J .0206 OATH

Every campus police officer so appointed shall, before entering upon the duties of his office, take and subscribe to the oath for law enforcement officers, provided for in G.S. 11-11 before an officer authorized by G.S. 11-7.1 to administer oaths, and shall forward a copy of the executed oath within 10 days of the day on which the oath is subscribed to the Campus Police Administrator.

History Note: Authority G.S. 11-11; 74G-6; Eff. April 1, 2006.

12 NCAC 02J .0207 LIABILITY INSURANCE

(a) Any applicant for a non-public campus police agency certification must file with the Campus Police Administrator, either a copy of the liability insurance policy or a certificate of self insurance, at the following address:

Campus Police Administrator
Campus Police Program
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6470

(b) The campus police agency shall deliver any notice of cancellation by an insurance carrier by certified mail, return receipt requested, to the following address:

Campus Police Administrator
Campus Police Program
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6470

History Note: Authority G.S. 74G-3; 74G-4; Eff. April 1, 2006.

12 NCAC 02J .0208 SUSPENSION, REVOCATION OR DENIAL OF AGENCY CERTIFICATION

(a) A campus police agency certification may be suspended, revoked or denied upon a finding that the agency has:

- (1) failed to pay any required fees;
- (2) failed to produce or maintain a copy of a liability insurance policy or a certificate of self insurance;
- (3) failed to provide all of the required documentation pursuant to 12 NCAC 2J .0202;
- (4) failed to allow for the reasonable inspection of the Campus Police agency records pursuant to G.S. 74G-4(3);
- (5) failed to ensure compliance by the agency's campus police officers with all in-service training requirements as specified by 12 NCAC 9E .0100;
- (6) failed to submit the required in-service training compliance reports as required by 12 NCAC 9E .0100;
- (7) failed to submit all reports, notification or other information required or requested by the Campus Police Administrator according to Chapter 74G or these Rules;
- (8) knowingly made a material misrepresentation of any information required for certification or

commissioning from the Campus Police Administrator or the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;

- (9) knowingly and willfully by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training, certification or commissioning from the Campus Police Administrator of the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;
- (10) aided another in obtaining or attempting to obtain credit, training, or certification from the Campus Police Administrator, the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission by means of deceit, fraud or misrepresentation or cheating; or
- (11) failed to ensure that any employee not commissioned as a campus police officer is not violating a prohibition set forth in 12 NCAC 2J .0302.

(b) An agency whose certification has been suspended, revoked, or denied may appeal the action in accordance with the provisions of G.S. 150B.

History Note: Authority G.S. 74G-4; Eff. April 1, 2006.

12 NCAC 02J .0210 PERIOD OF SUSPENSION, REVOCATION OR DENIAL

(a) When the Attorney General, or his designee, suspends or denies the commission of a campus police officer, the period of sanction shall not be less than three years. However, the Attorney General, or his designee, may either reduce or suspend the period of sanction, or substitute a period of probation in lieu of suspension of a commission following an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a crime other than those listed in Paragraph (a) of Rule 12 NCAC 2J .0208;
- (2) refusal to submit to the applicant or lateral transferee drug screen required by 12 NCAC 2J .0201(7);
- (3) production of a positive result on a drug screen reported to the Campus Police Administrator where the positive result cannot be explained to the Campus Police Administrator's satisfaction;
- (4) material misrepresentation of any information required for campus police commissioning;
- (5) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person

attempting to obtain credit, training or commissioning as a campus police officer by any means of false pretense, deception, defraudation, misrepresentation or cheating;

- (6) failure to make either of the notifications as required by 12 NCAC 2J .0201(8).

(b) When the Attorney General, or his designee, suspends or denies the commission of a campus police officer, the period of sanction shall be continued so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy all basic training requirements;
- (2) failure to meet or maintain the minimum standards of employment specified in 12 NCAC 2J .0201(4);
- (3) discharge from a criminal justice agency for impairment of physical or mental capabilities; or
- (4) failure to meet the in-service training requirements as prescribed by the North Carolina Criminal Justice Education and Training Standards Commission.

History Note: Authority G.S. 74G-4; Eff. April 1, 2006.

12 NCAC 02J .0302 PROHIBITED ACTS

In addition to the prohibited acts set forth elsewhere in these Rules and in Chapter 74G, the following acts are prohibited and may result in civil or criminal action or both:

- (1) use of excessive force while in the performance of their official duties;
- (2) carrying a concealed weapon except:
 - (a) when on his own business property or at home;
 - (b) in conformity with G.S. 74G-6;
- (3) activating or operating a red light in or on any vehicle in this State unless such vehicle is exempted from the provisions of G.S. 20-130.1(b);
- (4) activating or operating a blue light in or on any vehicle in this State except:
 - (a) when operating a motor vehicle used primarily by campus police in the performance of their official duties;
 - (b) when in property jurisdiction limitations specifically described under G.S. 74G-6;
 - (c) when in continuous or immediate pursuit of a person for an offense committed upon real property owned by or in the possession or control of their employer or real property or in the possession and control of a person who has contracted with the employer to provide on-site police security personnel services for the property;

- (d) during the transportation of an arrestee, which the campus policy agency has taken into custody;
- (5) activating or operating a siren when operating any motor vehicle used primarily by any campus police agency in the performance of their official duties when outside of the property jurisdiction limitations specifically described under G.S. 74G-6 unless in immediate and continuous pursuit;
- (6) representing in any manner at any time that the campus police officer is a federal, state, county, or municipal law enforcement officer, unless the campus police officer is dually certified as one of the classifications listed in this Rule;
- (7) impeding traffic, stopping motorists or pedestrians, or in any manner imposing or attempting to impose the campus police officer's will upon another person as police authority unless:
 - (a) the campus police officer is on the property specifically described under G.S. 74G-6; or
 - (b) when in immediate and continuous pursuit of any person for an offense which occurred within the property jurisdiction limitations specifically described under G.S. 74G-6;
- (8) using or attempting to use authority granted under a campus police commission pursuant to this Subchapter outside the political boundaries of North Carolina; or
- (9) violating Rule .0304 of this Section.

History Note: Authority G.S. 74G-4; 74G-6; Eff. April 1, 2006.

12 NCAC 02J .0304 BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION

All campus police agencies shall comply with the provisions of this rule for badges, vehicles, uniforms, as follows:

- (1) Badges:
 - (a) All campus police officers shall, when on duty, wear a badge bearing the name of the certified campus police agency and the general title of Campus Police.
 - (b) The badge is to be carried at all times by the campus police officer. The badge shall always be worn in plain view, except in situations where the officer's weapon is concealed under the provisions set forth in Rule .0302 of this Section.
 - (c) No identification card shall be issued to or possessed by any campus police officer except in the form of

identification issued to the officer by the Attorney General.

- (2) Uniforms:
 - (a) All campus police officers shall, when on duty, wear the uniform of the campus police agency unless directed to wear other attire by the Department Head.
 - (b) When wearing civilian attire, the campus police officer shall comply with 12 NCAC 2I .0304(a).
 - (c) Those campus police agencies which employ both campus police commissioned and non-commissioned security personnel shall provide the commissioned campus police officers with a uniform of a different color that would distinguish the campus police officer from other employees of the agency.
 - (d) The uniform of the campus police officer shall bear shoulder patches that contain:
 - (i) the term "Campus Police,"; and
 - (ii) the name of the campus police agency.
- (3) Vehicles:
 - (a) Each marked vehicle used by a campus police agency subject to this Rule shall prominently display the agency name and the agency classification of " Campus Police".
 - (b) The Department Head shall ensure that employees who have not been commissioned as campus police officers do not operate any marked vehicle used by the campus police agency.
 - (c) The Department Head shall ensure that employees who are not commissioned as a campus police officer do not operate any campus police vehicle with a blue light contained therein.
 - (d) The Department Head shall ensure that any marked campus police agency vehicle is not operated outside of those property jurisdiction limitations set forth in G.S. 74G-6, unless such operation is performed by an on-duty officer in the performance of his official duties and authorized by the Department Head.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02G .0602 NOXIOUS AQUATIC WEED LIST

The Secretary of the Department of Environment and Natural Resources has designated the following plants as noxious aquatic weeds:

- (1) Species Listed on the Federal Noxious Weed List.
 - Azolla pinnata R. Brown - Pinnate mosquitofern
 - Eichhornia azurea (Sw.) Kunth - Anchored waterhyacinth
 - Hydrilla verticillata (L.f.) Royle - Hydrilla
 - Hygrophila polysperma (roxb.) T. Anderson - Indian hygrophila
 - Ipomoea aquatica Forsk. - Swamp morning glory, water spinach
 - Lagarosiphon major (Ridley) Moss - African elodea
 - Linnophila sessiliflora (Vahl) Blume-Linnophila
 - Melaleuca quinquenervia (Cav.) Blake-Melaluca
 - Monochoria hastata (L.) Solms - Arrowleaved monochoria
 - Monochoria vaginalis (Burm. f.) Kunth - Monochoria
 - Sagittaria sagittifolia L. - Arrowhead
 - Salvinia auriculata Aubl. - Giant salvinia
 - Salvinia biloba Raddi - Giant salvinia
 - Salvinia herzogii de la Sota - Giant salvinia
 - Salvinia molesta Mitch. - Giant salvinia
 - Sparganium erectum L. - Branched burreed
 - Stratiotes aloides L. - Crab's claw, Water-aloe
- (2) Additional species.
 - Alternanthera philoxeroides (Mart.) Griseb - Alligatorweed
 - Crassula helmsii (Kirk) - Swamp stonecrop
 - Egeria densa Planch. - Brazilian elodea, Anacharis
 - Eichhornia crassipes (Mart.) Solms. -Water hyacinth
 - Lagarosiphon spp. (All species) - African elodea
 - Ludwigia hexapetala (Hooker & Arnott) Zardi. - Uruguay waterprimrose, Creeping waterprimrose
 - Lythrum salicaria L. - Purple loosestrife
 - Myriophyllum aquaticum (Vell.) Verdc. - Parrotfeather
 - Myriophyllum spicatum L. - Eurasian watermilfoil
 - Najas minor All. - Brittleleaf naiad, Slender naiad
 - Phragmites australis (Cav.) Trin. ex Steud. - Common reed

History Note: Authority G.S. 74G-7; Eff. April 1, 2006.

Pistia stratiotes L. - Water lettuce
Salvinia spp. (All except S. rotundifolia) -
Water fern
Trapa spp. (All species) - Water chestnut

History Note: Authority G.S. 113A-222;
Eff. September 1, 1992;
Amended Eff. April 1, 2006.

**15A NCAC 13A .0111 STDS FOR THE MGMT OF
SPECIFIC HW/TYPES HWM FACILITIES - PART 266**

- (a) 40 CFR 266.20 through 266.23 (Subpart C), "Recyclable Materials Used in a Manner Constituting Disposal", are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 266.70 (Subpart F), "Recyclable Materials Utilized for Precious Metal Recovery", is incorporated by reference including subsequent amendments and editions. Off-site recycling facilities that receive materials described in 40 CFR 266.70(a) must manage the materials in accordance with and comply with 40 CFR 262.34(a) as incorporated by reference in 15A NCAC 13A .0107(c), excluding 262.34(a)(3). Each container and tank holding recyclable materials at off-site precious metal recycling facilities must be labeled or marked with the words, "Recyclable Material".
- (c) 40 CFR 266.80 (Subpart G), "Spent Lead-Acid Batteries Being Reclaimed", is incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 266.100 through 266.112 (Subpart H), "Hazardous Waste Burned in Boilers and Industrial Furnaces", are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 266.200 through 266.206 (Subpart M), "Military Munitions", are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal", are incorporated by reference including subsequent amendments and editions.
- (g) Appendices to 40 CFR Part 266 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c); 150B-21.6;
Eff. July 1, 1985;
Amended Eff. June 1, 1990; June 1, 1988; February 1, 1988;
December 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0039 Eff. April 4, 1990;
Recodified from 15A NCAC 13A .0012 Eff. August 30, 1990;
Amended Eff. January 1, 1995; April 1, 1993; August 1, 1991;
October 1, 1990;
Recodified from 15A NCAC 13A .0011 Eff. December 20, 1996;
Amended Eff. April 1, 2006; April 1, 2003; April 1, 1999; August 1, 1998.

**15A NCAC 13A .0113 THE HAZARDOUS WASTE
PERMIT PROGRAM - PART 270**

- (a) 40 CFR 270.1 through 270.6 (Subpart A), "General Information", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 270.1(c).
- (b) 40 CFR 270.10 through 270.29 (Subpart B), "Permit Application", are incorporated by reference including subsequent amendments and editions.
- (c) The following are additional Part B information requirements for all hazardous waste facilities:

- (1) Description and documentation of the public meetings as required in 15A NCAC 13A .0109(r)(7);
- (2) A description of the hydrological and geological properties of the site including flood plains, depth to water table, ground water travel time, seasonal and long-term groundwater level fluctuations, proximity to public water supply watersheds, consolidated rock, soil pH, soil cation exchange capacity, soil characteristics and composition and permeability, existence of cavernous bedrock and seismic activity, slope, mines, climate, location and withdrawal rates of surface water users within the immediate drainage basin and well water users within a one mile radius of the facility; water quality information of both surface and groundwater within 1000 feet of the facility, and a description of the local air quality;
- (3) A description of the facility's proximity to and potential impact on wetlands, endangered species habitats, parks, forests, wilderness areas, historical sites, mines, and air quality;
- (4) A description of local land use including residential, industrial, commercial, recreational, agricultural and the proximity to schools and airports;
- (5) A description of the proximity of the facility to waste generators and population centers; a description of the method of waste transportation; the comments of the local community and state transportation authority on the proposed route, and route safety. Comments shall include proposed alternative routes and restrictions necessary to protect the public health;
- (6) A description of facility aesthetic factors including visibility, appearance, and noise level; and
- (7) A description of any other objective factors that the Department determines are reasonably related and relevant to the proper siting and operation of the facility.

(d) In addition to the specific Part B information requirements for hazardous waste disposal facilities, owners and operators of hazardous waste landfills or longterm storage facilities shall provide the following information:

- (1) Design drawings and specifications of the leachate collection and removal system;
 - (2) Design drawings and specifications of the artificial impervious liner;
 - (3) Design drawings and specifications of the clay or clay-like liner below the artificial liner, and a description of the permeability of the clay or clay-like liner; and
 - (4) A description of how hazardous wastes will be treated prior to placement in the facility.
- (e) In addition to the specific Part B information requirements for surface impoundments, owners and operators of surface impoundments shall provide the following information:
- (1) Design drawings and specifications of the leachate collection and removal system;
 - (2) Design drawings and specifications of all artificial impervious liners;
 - (3) Design drawings and specifications of all clay or clay-like liners and a description of the clay or clay-like liner; and
 - (4) Design drawings and specifications that show that the facility has been constructed in a manner that will prevent landsliding, slippage, or slumping.
- (f) 40 CFR 270.30 through 270.33 (Subpart C), "Permit Conditions", are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 270.40 through 270.43 (Subpart D), "Changes to Permit", are incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 270.50 through 270.51 (Subpart E), "Expiration and Continuation of Permits", are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 270.60 through 270.68 (Subpart F), "Special Forms of Permits", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 270.68 is not incorporated by reference.
- (j) 40 CFR 270.70 through 270.73 (Subpart G), "Interim Status", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 1, 1986" shall be substituted for "November 8, 1985" contained in 40 CFR 270.73(c).
- (k) 40 CFR 270.235, (Subpart I), "Integration with Maximum Achievable Control Technology (MACT) Standards", is incorporated by reference including subsequent amendments and editions.
- (l) The following are additional permitting requirements for hazardous waste facilities.
- (1) An applicant applying for a permit for a hazardous waste facility shall submit a disclosure statement to the Department as a part of the application for a permit or any time thereafter specified by the Department. The disclosure statement shall be supported by an affidavit attesting to the truth and completeness of the facts asserted in the statement and shall include:
 - (A) A brief description of the form of the business (e.g. partnership, sole proprietorship, corporation, association, or other);
- (B) The name and address of any hazardous waste facility constructed or operated after October 21, 1976 by the applicant or any parent or subsidiary corporation if the applicant is a corporation; and
 - (C) A list identifying any legal action taken against any facility identified in Part (l)(1)(B) of this Rule involving:
 - (i) any administrative ruling or order issued by any state, federal or local authority relating to revocation of any environmental or waste management permit or license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection;
 - (ii) any judicial determination of liability or conviction under any state or federal law or local ordinance relating to waste management or environmental protection; and
 - (iii) any pending administrative or judicial proceeding of the type described in this Part.
 - (D) The identification of each action described in Part (l)(1)(C) of this Rule shall include the name and location of the facility that the action concerns, the agency or court that heard or is hearing the matter, the title, docket or case number, and the status of the proceeding.
- (2) In addition to the information set forth in Subparagraph (l)(1) of this Rule, the Department shall require from any applicant such additional information as it deems necessary to satisfy the requirements of G.S. 130A-295. Such information may include:
- (A) The names, addresses, and titles of all officers, directors, or partners of the applicant and of any parent or subsidiary corporation if the applicant is a corporation;
 - (B) The name and address of any company in the field of hazardous waste management in which the applicant business or any of its officers, directors, or partners, hold an equity interest and the name of the officer, director, or partner holding such interest; and

- (C) A copy of any administrative ruling or order and of any judicial determination of liability or conviction described in Part (1)(1)(C) of this Rule, and a description of any pending administrative or judicial proceeding in that item.
- (3) If the Department finds that any part or parts of the disclosure statement is not necessary to satisfy the requirements of G.S. 130A-295, such information shall not be required.
- (m) An applicant for a new, or modification to an existing, commercial facility permit, shall provide a description and justification of the need for the facility.
- (n) Requirements for Off-site Recycling Facilities.
 - (1) The permit requirements of 15A NCAC 13A .0109 apply to owners and operators of off-site recycling facilities unless excluded in Subparagraph (2) of Paragraph (n).
 - (2) Requirements of 15A NCAC 13A .0113(n)(4), (5), (6), (7) and (8) do not apply to owners and operators of off-site recycling facilities that recycle only precious metals as described in 40 CFR 266.70(a), as incorporated by reference in 15A NCAC 13A .0111(b).
 - (3) Off-site facilities that recycle precious metals shall follow the regulations as described in 15A NCAC 13A .0111(b).
 - (4) Notwithstanding any other statement of applicability, the following provisions of 40 CFR Part 264, as incorporated by reference, shall apply to owners and operators of off-site recycling facilities except those excluded in 15A NCAC 13A .0113(n)(2):
 - (A) Subpart B - General Facility Standards;
 - (B) Subpart C - Preparedness and Prevention;
 - (C) Subpart D - Contingency Plan and Emergency Procedures;
 - (D) Subpart E - Manifest System, Recordkeeping and Reporting;
 - (E) Subpart G - Closure and Post-closure;
 - (F) Subpart H - Financial Requirements;
 - (G) Subpart I - Use and Management of Containers;
 - (H) Subpart J - Tank Systems;
 - (I) 264.101 - Corrective Action for Solid Waste Management Units;
 - (J) Subpart X - Miscellaneous Units; and
 - (K) Subpart DD - Containment Buildings.
 - (5) The requirements listed in Subparagraph (n)(4) of this Rule apply to the entire off-site recycling facility, including all recycling units, staging and process areas, and permanent and temporary storage areas for wastes.
 - (6) The following provisions of 15A NCAC 13A .0109 shall apply to owners and operators of off-site recycling facilities:
 - (A) The substitute financial requirements of Rule .0109(i)(1), (2) and (4); and
 - (B) The additional standards of Rule .0109(r)(1), (2), (3), (6) and (7).
 - (7) The owner or operator of an off-site recycling facility shall keep a written operating record at his facility.
 - (8) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:
 - (A) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or recycling at the facility;
 - (B) The location of all hazardous waste within the facility and the quantity at each location. This information must include cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and
 - (C) Documentation of the fate of all hazardous wastes received from off-site or generated on-site. This shall include records of the sale, reuse, off-site transfer, or disposal of all waste materials.
- (o) Permit Fees for Commercial Hazardous Waste Facilities.
 - (1) An applicant for a permit modification for a commercial hazardous waste facility shall pay an application fee as follows:
 - (A) Class 1 permit modification \$100;
 - (B) Class 2 permit modification \$1,000; or
 - (C) Class 3 permit modification \$5,000.
 - Note: Class 1 permit modifications which do not require prior approval of the Division Director are excluded from the fee requirement.
 - (2) The application fee for a new permit, permit renewal, or permit modification must accompany the application, and is non-refundable. The application shall be considered incomplete until the fee is paid. Checks shall be made payable to: Division of Waste Management.

History Note: Authority G.S. 130A-294(c); 130A-294.1; 130A-295(a)(1),(2), (c); 150B-21.6; Eff. November 19, 1980; Amended Eff. November 1, 1989; June 1, 1988; February 1, 1988; December 1, 1987; Transferred and Recodified from 10 NCAC 10F .0034 April 4, 1990; Amended Eff. August 1, 1990; Recodified from 15A NCAC 13A .0014 Eff. August 30, 1990; Amended Eff. April 1, 1993; August 1, 1991; October 1, 1990; Recodified from 15A NCAC 13A .0013 Eff. December 20, 1996; Amended Eff. April 1, 2006; August 1, 2004; April 1, 2001; August 1, 2000.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 07B .0104 RETURNS

(a) General -- G.S. 105-164.16 establishes the filing frequency of sales and use tax returns and the content of the returns. G.S. 105-164.4(c) requires a retailer and a wholesale merchant to register with the Department and obtain a certificate of registration. G.S. 105-164.6 requires a retailer who delivers property for storage, use, or consumption but does not have a place of business in this State to register with the Department and obtain a certificate of registration. A person who is engaged in business, is not otherwise required to file a sales and use tax return, and, on two or more occasions within a twelve-month period, purchases property subject to use tax must register with the Department and begin filing sales and use tax returns. A person who is engaged in business, is not otherwise required to file a sales and use tax return, and purchases property subject to use tax only once in a twelve-month period must file a return and pay the tax due within 20 days after the end of the month in which the purchase was made.

(b) Schedules. -- A retailer who files a return that reports tax payable by more than one location in the State must attach two schedules to the return. One schedule must list the amount of State tax due for each location in the State and the other must list the amount of local tax due for each county.

(c) No Sales or Purchases By Business -- A retailer who does not make any sales during a reporting period must file a return for that period and enter 0.00 (zero) on the Total Due line on the return. Similarly, a person who is not a retailer but is engaged in business, purchases tangible personal property for the business that is subject to use tax, and does not make any taxable purchases during a reporting period must file a return for that period and enter 0.00 (zero) on the Total Due line on the return.

(d) Seasonal Business. -- A retailer who engages in business for six or fewer consecutive months in each year may register as a seasonal filer and indicate the months in which the retailer engages in business. A retailer who is registered as a seasonal filer is not required to file a return for an off-season reporting period in which the retailer did not engage in business.

(e) Wholesale Merchant -- A person who engages exclusively in the business of making wholesale sales is not required to file a return. A person who, on two or more occasions within a twelve-month period, either makes taxable sales to users, consumers, or nonregistered merchants or makes purchases subject to use tax is not engaged exclusively in the business of making wholesale sales and must begin filing sales and use tax returns. A wholesale merchant who is not required to file a sales and use tax return and who, on only one occasion within a twelve-month period, either makes taxable sales to users, consumers, or nonregistered merchants or makes purchases subject to use tax must file a return and pay the tax due within 20 days after the end of the month in which the sale or purchase was made.

(f) Non-Business Use Tax -- An individual who is not engaged in the business of selling tangible personal property at retail and who purchases for a non-business purpose tangible personal

property that is subject to use tax must report the tax due on an annual basis. An individual who is required to file an individual income tax return must pay the use tax with the individual income tax return for that year. An individual who is not required to file an individual income tax return must report the tax due on Form E-554. Form E-554 is due annually by the date set under G.S. 105-164.16.

History Note: Authority G.S. 105-164.3; 105-164.16; 105-262; 105-269.14; Eff. February 1, 1976; Amended Eff. April 1, 2006; August 1, 2002; July 1, 2000; July 1, 1999; August 1, 1998; October 1, 1993; October 1, 1991; October 1, 1990; April 1, 1986.

17 NCAC 07B .0106 CERTIFICATES OF EXEMPTION: SALES FOR RESALE

(a) A purchaser of tangible personal property who is properly registered with the Sales and Use Tax Division of the North Carolina Department of Revenue or in a taxing jurisdiction outside this State and is engaged in the business of selling tangible personal property at retail or wholesale and makes purchases of tangible personal property for the purpose of resale shall furnish to his vendors as their authority for not collecting the tax, either:

- (1) Streamlined Sales Tax Agreement Certificate of Exemption, Form E-595E, or
- (2) other evidence in writing adequate to support the conclusion that he is registered with the Department of Revenue or in a taxing jurisdiction outside this State for sales and use tax purposes and that the property is being purchased for the purpose of resale.

Such certificates or other written evidence shall be completed in duplicate and a copy retained by both the vendor and the vendee in their files. In the absence of such certificates or other adequate written evidence, vendors selling taxable tangible personal property to wholesale and retail merchants shall be deemed to be making retail sales and shall be liable for collecting and paying the tax thereon at the applicable rate.

(b) Certificates of exemption being issued for the purpose of resale shall not be used to purchase tangible personal property which is to be used or consumed by the purchaser. The Secretary may revoke the license of any licensed merchant who makes such use of the certificate of exemption. Vendors shall charge the applicable rate of tax on sales to registered merchants when the property sold is for use by the purchaser and not for resale. Merchants purchasing tangible personal property for resale on a regular basis from a vendor shall only be required to furnish one certificate of exemption or other written evidence to the vendor for such purchases. Whenever a person makes purchases of tangible personal property for resale and the property is not generally and ordinarily the type of property the purchaser will resell, the vendor shall require certificates of exemption or other written evidence in connection with individual purchases supporting that the property is being purchased for resale.

(c) Persons who issue certificates of exemption to vendors to obtain property without payment of tax when due are subject to assessment of the penalties set out in G.S. 105-236(5) and (5a) and may be guilty of a Class H felony. The penalty for misuse of a certificate of exemption is applicable only to a purchaser. The act of executing a certificate of exemption by a vendee and furnishing the document to a vendor does not constitute a use or misuse of the certificate. The actual use or misuse occurs when a purchase is made and the vendor, relying on the certificate furnished by the vendee, does not charge sales or use tax thereon on the basis that the sale is a "wholesale sale" as defined in G.S. 105-164.3(24). A single purchase is considered to be the tangible personal property purchased at one time as reflected on the bill of sale. The penalty shall be applied only once to each invoice or bill of sale for which a misuse of the certificate has occurred. This penalty is subject to the discretionary authority of the Secretary of Revenue pursuant to G.S. 105-237.

(d) The Secretary may extend to a registered merchant written permission to make purchases for his own use pursuant to the certificate of exemption and assume liability for payment of the applicable tax to the Department when the character of the business of the purchaser is such that it would impose undue hardship upon the vendor and vendee to determine the transactions upon which the vendor would ordinarily be required to impose the tax. The purchaser shall furnish written evidence of such assumption of liability to the purchaser's vendors; the vendors must retain the documentation in their files.

(e) This rule applies to sales to resident and nonresident retail or wholesale merchants. Reference is made to 17 NCAC 7B .2301 for the treatment of sales to nonresident retail or wholesale merchants.

History Note: Authority G.S. 105-164.28; 105-236; 105-262; Eff. February 1, 1976; Amended Eff. April 1, 2006; October 1, 1993; February 1, 1988; May 11, 1979.

17 NCAC 07B .0109 APPLICATION OF TAX TO FISH BAIT

Sales of bloodworms or crickets to users other than commercial fishermen for bait are subject to the applicable statutory state and any applicable local sales or use tax except when such products are sold in their original or unmanufactured state by the producer in his capacity as the producer. Sales of shrimp or seafood to users other than commercial fishermen for bait are subject to only the two percent local sales or use tax except when sold in their original or unmanufactured state by the producer in his capacity as the producer.

History Note: Authority G.S. 105-164.4; 105-164.13B; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .0111 STAMPS, COINS, ETC.

Persons engaged in the business of selling collectible stamps, coins and related items to collectors must register with the Department of Revenue for the purpose of collecting and

remitting the applicable statutory state and local sales or use tax on such sales. Sales of stamps through vending machines or in any other manner for use as United States postal fees are exempt from the tax. Casual or isolated sales of coins and stamps by individuals who are not engaged in the business are exempt from tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; March 1, 1984.

17 NCAC 07B .0113 AUCTIONEERS AND AUCTION SALES

(a) Auctioneers who buy or acquire tangible personal property by consignment or otherwise which they sell at retail on their own account shall collect and remit the tax due on such sales and must have a Certificate of Registration. This includes persons who operate auction barns or similar places of business where they regularly receive merchandise on a consignment or some other basis and sell such items at auction.

(b) Auctioneers are not liable for collecting and remitting sales tax when they sell tangible personal property for the owners strictly in the capacity of an auctioneer and charge or receive a percentage of the sales price or other fee as compensation for their services. In these type transactions, the auctioneer is acting as agent for the owner of the property. Examples of auction sales on which no sales tax is due are estate sales of household possessions and sales of farm machinery and equipment for a farmer going out of business when such sales are conducted at the property owner's home or farm.

(c) If a retail or wholesale business conducts an auction sale as, for example, when it is going out of business, it shall collect and remit sales tax on any retail sales of the inventory of goods which it held for resale. The tax base is the sales price of the item before deducting the compensation paid to the auctioneer. Sales of store fixtures and equipment held for use in operating the business are exempt from sales tax as occasional or isolated sales by someone not engaged in the business of selling that kind of property.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. April 1, 2006; October 1, 1993.

17 NCAC 07B .0115 RESEARCH SERVICES

Sales of scientific or research equipment to independent contract research organizations for use in performing research services for clients are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976;

Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

**17 NCAC 07B .0123 COMMERCIAL FISHERMEN –
CERTIFICATE OF EXEMPTION**

(a) Certificate. - A commercial fisherman may complete a Streamlined Sales Tax Agreement Certificate of Exemption, form E-595E. The certificate authorizes a retailer or a wholesale merchant to whom it is presented to sell property that is exempt from sales and use tax under G.S. 105-164.13(9) to the commercial fisherman without collecting sales and use tax. A retailer or a wholesale merchant who does not collect tax on an item sold to a commercial fisherman and does not have a certificate to support the tax-free sale must have other written evidence that supports the tax-free sale.

(b) Items Covered by Certificate. - The items listed in G.S. 105-164.13(9) can be purchased under a certificate of exemption if the items are to be used principally in commercial fishing operations. Commercial fishing operations include charter boat and head boat operations that charge people to take them fishing. Items that may be exempt under G.S. 105-164.13(9) and, therefore, purchased under a certificate include paint brushes, paint rollers, acetylene, oxygen, funnels, sanding discs, welding rods, saw blades, drill bits, foul weather gear, gloves, and life vests. These items are exempt if they are for use principally in commercial fishing operations.

(c) Items Not Covered By Certificate. - Only items that are described in G.S. 105-164.13(9) and are for use principally in commercial fishing operations are exempt from tax and therefore eligible to be purchased under a certificate. Items for personal use by a commercial fisherman are not exempt under G.S. 105-164.13(9) and, therefore, may not be purchased under a certificate. Personal items include tableware, toothpaste, soap, food, and clothing. Items for use in catching marine mammals, fish, shellfish, and crustaceans for recreation or personal use or consumption are not exempt and may not be purchased under a certificate.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. July 5, 1980;
Amended Eff. April 1, 2006; July 1, 2000; August 1, 1998;
November 1, 1995; April 1, 1995; October 1, 1993; July 1, 1989.*

**17 NCAC 07B .0801 ADJUSTMENTS AND
REPLACEMENTS**

(a) Whenever any taxable article is returned to the manufacturer for adjustment, replacement, or exchange under a guaranty as to its quality or service and pursuant thereto a new article is given free, or at a reduced price, the sales or use tax shall be computed on the actual amount, if any, paid to the manufacturer for the new article.

(b) Dealers using tangible personal property to fulfill sales warranties or guaranty obligations to a customer without cost to the customer are not liable for the applicable statutory state and local sales or use tax on the dealer's cost price of all tangible personal property so used.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.*

17 NCAC 07B .0803 CABINETMAKERS

(a) Cabinetmakers who fabricate and sell cabinets to homeowners, contractors and others for use in this state are liable for collecting and remitting the applicable statutory state and local sales or use tax on the sales price of such property. Any cost of labor or services rendered in installing or affixing such property when separately stated on sales invoices given to customers at the time of sale shall not be included as a part of the sales price.

(b) Cabinetmakers who, pursuant to a construction or performance-type contract with or for the benefit of the owner of real property, install or affix tangible personal property, including cabinets, in or to real property are liable for tax on the cost or purchase price of materials and other such property used in performing the contract.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; October 1, 1988.*

**17 NCAC 07B .0805 SIGN FABRICATING AND
PAINTING**

(a) Retail sales of electrical, neon or other made-to-order signs are subject to the applicable statutory state and local sales or use tax. If the vendor makes a separate charge for installing signs which he makes and sells, the charge for installation shall not be subject to tax provided it is in addition to the sales price of the sign and is separately stated on the customer's invoice and in the vendor's records. If the vendor enters into a separate contract to furnish maintenance or repair service subsequent to the sale of the sign, charges for such services are not subject to the sales or use tax, but receipts from the sale of all tangible personal property used in making the repairs are taxable.

(b) Persons engaged in the business of painting signs on buildings or other real or personal property belonging to others are rendering services, and their gross proceeds are not subject to sales or use tax. Sales of paint, brushes, and other tangible personal property to such sign painters are sales to purchasers for use or consumption and subject to the applicable statutory state and local sales or use tax.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.*

**17 NCAC 07B .0806 REPAIRS AND ALTERATIONS:
GENERALLY**

(a) Sales of tangible personal property by persons engaged in the business of making repairs or alterations for users or consumers are subject to the sales or use tax. Any charges for labor or services rendered in installing or applying such repair or alteration parts are not subject to tax provided such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to tax.

(b) Sales of tangible personal property to those engaged in repair work or alterations are sales for the purpose of resale if the property is to be attached to or is to become a part of the property which is being repaired or altered. Sales of tools, equipment and similar items to persons who use said property in making repairs or alterations are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;

Eff. February 1, 1976;

Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .0811 FIRE EXTINGUISHERS: RECHARGING

Chemicals and other tangible personal property sold in connection with refilling fire extinguishers are subject to the applicable statutory state and local sales or use tax. Any labor charges in connection with the refilling of fire extinguishers belonging to others are exempt from tax provided such charges are stated separately on the invoice given to the customer. In the absence of such separation the entire charge is taxable.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;

Eff. February 1, 1976;

Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .0901 ADVERTISING AND ADVERTISING AGENCIES

(a) Professional Services. -- Advertising agencies are engaged in the business of rendering professional services when they produce advertising, such as radio and television spots or newspaper, magazine, or billboard advertising, and contract in their own behalf with radio and television stations, newspaper or magazine publishers, outdoor advertising companies, or other media for time or space to televise, broadcast, publish, or otherwise display their advertising. Receipts derived by advertising agencies from furnishing these professional services are not subject to sales or use tax. However, their purchases of taxable tangible personal property for use in producing the advertising are subject to the applicable statutory state and local sales or use tax.

Agencies rendering professional services rely on expertise in advertising strategy, media buying, and in graphic arts production in their specialized fields to secure and retain clients. Usually agreements to provide professional advertising services also have the following characteristics:

- (1) The agency selects or advises the client on the different kinds of advertising to be used.
- (2) The agency is primarily responsible for developing the concept or design of the advertising.
- (3) The agency produces or arranges for the production of the advertising.
- (4) The agency places or arranges for the placement of the advertising on radio or television stations or in newspapers, magazines, or other media and the agency has purchased time or space in the media to display the advertising instead of delivering it to the client for placement or distribution.

Advertising agencies are also engaged in the business of rendering services when they contract to do market research, consulting, statistical analysis, or other services that result only in a report of their findings to the client.

The tax is due on all tangible personal property purchased by these agencies for use in the performance of the services in this Paragraph regardless of whether the property is acquired in the name or account of the advertising agencies or their clients. Advertising agencies that, in performing these services, purchase paper, ink, printing plates, positives, negatives, color separations, photographs, filmed or recorded commercials that are not exempt audiovisual masters, and any other tangible personal property from suppliers in North Carolina or from out-of-state suppliers who charge the applicable tax must pay the tax due directly to their suppliers. Advertising agencies that purchase tangible personal property, from out-of-state suppliers who do not charge and remit the applicable tax must remit the use tax due directly to the Department on the purchase price of the property without any deduction on account of the cost of the materials used, labor or service costs, transportation charges, or any expenses whatsoever.

(b) Retail Sales. -- Advertising agencies are considered to be retailers when they produce, cause to be produced, fabricate, purchase, or otherwise acquire catalogs, magazines, handbills, brochures, programs, pamphlets, or similar printed matter or any other tangible personal property they sell and deliver to their clients or to others on behalf of their clients for delivery or distribution as advertising material or for any use or purpose other than for resale. Advertising agencies making retail sales of tangible personal property, other than exempt audiovisual masters, must collect and remit the applicable statutory state and local sales or use tax on the sales price of the property whether it is prepared by the agency or acquired from outside sources. The sales price to which the tax applies is the total amount for which the tangible personal property is sold including all charges for services rendered in the production, fabrication, manufacture, or delivery of the property, such as charges for commissions, supervision, research, transportation charges, postage, telephone and telegraph messages, copy, models' fees, stage props, printing, printing plates, film, positives, negatives, transparencies and color separations, even though the agency may separately state the charges on the invoice rendered to the client and in the agency's records.

(c) Retainer and Consultation Fees. -- Charges by advertising agencies to their clients for retainer fees that are directly related

to the purchase, acquisition, fabrication, or production and sale of tangible personal property are subject to sales or use tax. Charges by advertising agencies for retainer fees to their clients are generally paid in advance to cover future services and if no sale of tangible personal property is involved are not subject to sales or use tax. Consultation fees charged to clients in connection with oral or written reports only and not in connection with the sale of tangible personal property are also exempt from sales or use tax. Consultation fees directly involved in transactions that require the purchase, acquisition, fabrication or production and sale of tangible personal property, such as pamphlets and brochures, are a part of the sales price and are subject to sales and use tax even though the fees may be separately stated on the customer's invoice. If an advertising agency is retained to perform market research, analyze statistics, and develop an advertising concept on which a report is presented, either orally or in writing to the client, the charges for these services are not taxable. After considering the report, if the client decides to pursue the advertising concept and contracts with the same agency to develop and produce advertising material to be placed on radio or television spots or in space in newspapers, magazines, or on billboards, the agency must remit sales or use tax on its purchase of all taxable tangible personal property used in producing the advertising material. If the advertising concept calls for the production, fabrication, purchase, or acquisition of catalogs, magazines, handbills, brochures, programs, pamphlets, or similar printed matter or any other tangible personal property they sell and deliver to their clients or to others for their clients, the advertising agency is making retail sales subject to sales and use tax on the sales price of the property. The sales price to which the tax applies includes all the items and services described in Paragraph (b) of this Rule.

(d) **Purchases for Resale.** -- Purchases by advertising agencies of paper, ink, and other tangible personal property that become a part of tangible personal property sold by advertising agencies at retail or wholesale, including purchases for resale in the same form, are exempt from sales or use taxes when the purchases are supported by properly completed Streamlined Sales Tax Agreement Certificates of Exemption, Form E-595E, or other evidence in writing adequate to support the conclusion that the property is being purchased by a registered merchant for the purpose of resale. The term "part of tangible personal property" includes only those items that are incorporated into and become a part of property sold and does not include those items that are merely used or incidentally consumed in its production. For example, a photograph, transparency, printing plate, positive, negative, or color separation does not become an ingredient or component part of property sold even though the image thereon is reproduced as a part of the property sold.

(e) **Purchasing for Use.** -- Purchases by advertising agencies of film, printing plates, photographs, positives, negatives, transparencies, color separations, and similar tangible personal property for use in the production of advertising material are subject to the applicable statutory state and any local sales or use tax because the property does not become incorporated into or become a component part of the property produced for sale. When advertising agencies purchase items for use in the production of property for sale, they are the users or consumers of the property and must pay the state and local sales or use tax

on the cost price without regard to the disposition that may be made of the items by the advertising agency.

(f) **Acting as Agent.** -- An agent is one who represents another, called the principal, with third parties. For sales and use tax purposes, to establish that a particular acquisition is made by an agency as agent for its client and not on the agency's own behalf, all of the following must apply:

- (1) The agency must disclose to the supplier the name of the principal for whom the agency is acting as agent and establish that it has the authority to bind the principal with respect to the purchase.
- (2) The agency must be able to document that its status as agent existed prior to the acquisition.
- (3) The price billed by the agency to the principal for the personal property, exclusive of any agency fee, must be the same as the amount paid to the supplier.
- (4) The agency may make no use of the property for its own account.

An advertising agency must remit the tax due on its purchases to suppliers within this state and suppliers outside this state who collect and remit the applicable tax. An advertising agency that purchases tangible personal property on behalf of a principal from out-of-state suppliers who do not charge and remit the applicable tax must remit the use tax due, as agent for its principal, directly to the Department on the purchase price of the tangible personal property without any deduction on account of the cost of the materials used, labor or service costs, transportation charges, or any expenses whatsoever. All acquisitions by advertising agencies of tangible personal property such as catalogs, brochures, pamphlets, and the like are regarded as purchases by agencies on their own behalf for resale or for use unless the agency establishes with respect to any acquisition that it is acting as agent for its principal pursuant to a prior express contract. An advertising agency purchasing tangible personal property as an agent on behalf of its client for the client's use may not issue its certificate of exemption to the supplier. An advertising agency that issues its certificate of exemption to its supplier is presumed to be purchasing tangible personal property in its own behalf for resale rather than acting as agent for its principal.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13(22a); 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; August 1, 1998; October 1, 1993; October 1, 1991;
December 1, 1984; May 11, 1979.

17 NCAC 07B .0902 ADVERTISING ARTISTS

Advertising artists who actually produce paintings, portraits, negatives, photographs, or other tangible artistic creations and sell them to users or consumers are liable for collecting and remitting the applicable statutory state and local sales or use tax on the sales price of such articles.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; July 5, 1980.

17 NCAC 07B .0904 PUBLIC RELATIONS FIRMS

(a) Public Relations Firm Rendering Professional Services: If a public relations firm is retained to plan and conduct a public relations program which requires it to conduct research, opinion polls and surveys, compile data, analyze all of the foregoing and present a written or oral report of its findings to its client, the charges for these services are not subject to sales or use tax. The public relations firm shall pay the applicable statutory state and local sales or use tax on the cost price of any tangible personal property purchased for use in performing the aforementioned services. If the client decides to pursue the plan or concept developed by the public relations firm and such action results in the development or acquisition of tangible personal property by the public relations firm for its use in carrying out the goals or objectives of the plan or concept, it is liable for paying the applicable statutory state and local sales or use tax on such purchases.

(b) Public Relations Agency Making Retail Sales: If the plan or concept calls for the production, fabrication, purchase or acquisition of tangible personal property by the public relations firm which it sells and delivers to its client or sells to its client and delivers to others on behalf of its client, the public relations firm is making retail sales which are subject to sales or use tax on the sales price of such property. Tax shall apply to the sales price of the property and shall include fees directly involved in the production of the property and those charges specifically associated with the fabrication, manufacture or delivery of the property, such as charges for commissions, supervision, research, transportation charges, postage, telephone and telegraph messages, copy, models' fees, stage props, printing, printing plates, film, positives, negatives, transparencies and color separations even though the firm may separately state such charges on the invoice rendered to the client and in the firm's records.

Note: For Retainer and Consultation Fees: See 17 NCAC 7B .0901(c).

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. October 1, 1993; Amended Eff. April 1, 2006.

SECTION .1000 - BARBERS; BEAUTY SHOP OPERATORS; SHOE REPAIRMEN; WATCH REPAIRMEN

17 NCAC 07B .1001 BARBER AND BEAUTICIAN SUPPLIES

(a) Sales to barber and beauty shop operators of tools, furniture, fixtures, equipment, materials, health and beauty aids and any and all other supplies purchased for use in connection with the

operation of their business are subject to the applicable statutory state and local sales or use tax. Barber and beauty shop supply houses and other businesses making sales of the above items to barber and beauty shop operators to be used or consumed in rendering personal services to their customers are liable for collecting and remitting the applicable statutory state and local sales or use tax to this Department on such sales.

(b) Barber and beauty shop operators who purchase hair tonics, cosmetics and other health and beauty aids for resale and who maintain an inventory and facilities for regularly and continuously making retail sales of such items to their customers shall register with this Department as retail merchants and are liable for collecting and remitting the applicable statutory state and local sales or use tax on such sales. Barber and beauty shop operators purchasing hair tonics, cosmetics and other health and beauty aids, some of which are regularly and continuously sold to their customers and some of which are used or consumed in rendering personal services to their customers, may purchase such items without payment of tax to barber and beauty shop supply houses and other suppliers by furnishing the suppliers with properly executed Streamlined Sales Tax Agreement Certificates of Exemption, Form E-595E. By executing the certificates, the barber and beauty shop operators assume responsibility for payment of tax directly to this department on the sales price of items sold to their customers and on the cost price of items used or consumed in rendering personal services to their customers. The above provisions do not apply to barber and beauty shop operators who make occasional or infrequent sales of hair tonics and other health and beauty aids from their stock of merchandise which was purchased to be used in rendering services to their customers. Receipts of barber and beauty shop operators derived from rendering personal services are not taxable.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .1002 SHOE REPAIRMEN

(a) Charges for materials used by shoe repairmen in repairing shoes or other articles for their customers are subject to the applicable statutory state and local sales or use tax. A segregation may be made between the retail charge for the materials furnished and the charge for labor or services rendered and in such case the tax does not apply to the labor or service charge separately stated.

(b) If no segregation is made between the charges for the materials furnished and the charges for labor and services performed in connection with the repair work, shoe repairmen may collect and remit the tax on 40 percent of the combined price or charge made for the materials, labor and services as representing the retail charge for the materials furnished.

(c) The sales or use tax applies to the full retail selling price of tangible personal property such as shoes, shoe laces and shoe polish sold by shoe repairmen.

(d) All shoe repair machinery, parts therefor, tools, equipment and supplies, other than those described in Paragraph (e) of this

Rule, sold to persons engaged in the business of repairing shoes and which are used or consumed by such persons in shoe repair operations are subject to the applicable statutory state and local sales or use tax.

(e) Sales to registered merchants of leather, rubber or like products, cement, thread and other items of a similar nature which ordinarily become a part of or attach to shoes which are repaired and are sold to and delivered with the repaired shoes to customers, including bags for delivery of the shoes, are sales for resale and may be sold on Streamlined Sales Tax Agreement Certificates of Exemption, form E-595E. If registered shoe repairmen purchase other tangible personal property for resale to their customers, their suppliers shall also secure certificates of exemption in connection with such sales. If the items that shoe repairmen generally purchase for use are purchased by them for the purpose of resale to other shoe repairmen, or other users, their suppliers shall secure a certificate of exemption with each such sale to support the claim for the exemption from the retail tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .1003 WATCH: CLOCK AND JEWELRY REPAIRMEN

(a) Charges for repair parts and other materials used by watch, clock and jewelry repairmen in repairing watches, clocks, jewelry and other articles for their customers are subject to the applicable statutory state and local sales or use tax. A segregation may be made between the retail charge for the materials furnished and the charge for labor or services rendered and in such case the tax does not apply to the labor or service charges separately stated.

(b) If no segregation is made between the charges for the materials furnished and the charges for labor and services performed in connection with such repair work, repairmen may collect and remit the tax on ten percent of the combined price or charge made for the materials, labor and services as representing the retail charge for the materials furnished.

(c) Sales of watches, clocks, watch bands, watch chains, trophies, jewelry and other taxable tangible personal property are subject to the applicable statutory state and local sales or use tax on the full retail sales price. Any charges for labor or services rendered in engraving tangible personal property selected by a vendee and left with the vendor to be engraved are exempt from tax when such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; February 1, 1988.

17 NCAC 07B .1302 IN-STATE DELIVERIES

Sales of tangible personal property delivered in this state to the buyer or his agent, if such agent is not a common carrier, are subject to the applicable statutory state and local sales or use tax, notwithstanding that the buyer may subsequently transport, or employ someone else to transport, the property out of this state, except as provided by G.S. 105-164.13.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; January 1, 1982;
February 8, 1981.

17 NCAC 07B .1303 DELIVERIES TO DONEES

A donee is a person to whom the buyer of tangible personal property gives the property without charge. When a North Carolina retailer sells tangible personal property to a buyer and the retailer, at the direction of the buyer, delivers the property to the buyer's donee instead of to the buyer, the sale by the retailer is subject to applicable statutory State and local sales tax only if the delivery to the donee is made inside the State. If the delivery to the donee is made outside the State, no State or local sales or use tax applies. A retailer who, at the direction of a buyer, delivers property to the buyer's donee at a point outside the State must have acceptable proof of delivery in accordance with 17 NCAC 07B .1301.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; July 18, 2002; July 1, 1999; October 1, 1993; October 1, 1991; March 1, 1984; January 3, 1984.

SECTION .1600 – SALES TO OR BY HOSPITALS: EDUCATIONAL: CHARITABLE OR RELIGIOUS INSTITUTIONS: ETC.: AND REFUNDS THERETO

17 NCAC 07B .1601 SALES TO OR BY NONPROFIT ENTITIES

(a) Sales To Nonprofits -- Sales of taxable tangible personal property to a nonprofit entity for use or consumption by that entity are subject to sales or use tax. Nonprofit entities include hospitals not operated for profit, educational institutions not operated for profit, churches, and civic groups such as chambers of commerce, fraternities, sororities, and scout clubs. Sales of building materials, supplies, fixtures, and equipment to contractors for use in the performance of contracts with a nonprofit entity are also subject to sales or use tax. A nonprofit entity must pay sales tax charged on its purchases and is liable for use tax on its purchases when no sales tax is collected. A nonprofit entity that owes use tax must file a return in accordance with 17 NCAC 7B .0104.

(b) Sales By Nonprofits. - Sales by nonprofit entities are subject to sales or use tax unless a specific exemption applies to the sale. A nonprofit entity that makes taxable retail sales must register with the Department and file sales and use tax returns. A nonprofit entity that is registered with the Department may execute a Streamlined Sales Tax Agreement Certificate of Exemption, form E-595E. The certificate shall not be used for items the nonprofit entity intends to use or consume.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. April 1, 2006; July 1, 2000; October 1, 1993; October 1, 1991; January 1, 1982; July 5, 1980.

17 NCAC 07B .1602 REFUNDS TO NONPROFIT ENTITIES

(a) Eligibility -- A nonprofit entity listed in G.S. 105-164.14(b) may file a claim for refund for sales or use tax paid by it on items purchased for its use and for sales and use tax paid indirectly by it on building materials, supplies, fixtures, and equipment that become part of a building it owns or leases and uses to conduct its nonprofit activity. A claim for refund must be filed on a form provided by the Department. A claim for refund applies to taxes paid during the period for which the claim for refund is filed.

(b) Proof for Direct Purchases -- A claim for refund must be supported by documentation showing the amount of tax paid. For items purchased by a nonprofit entity for its use, adequate documentation is an invoice or copy of an invoice that sets out the item purchased, the date of the purchase, the cost of the item, and the amount of sales or use tax paid.

(c) Proof for Contractor Purchases -- A claim for refund for sales or use tax paid indirectly on building materials, supplies, fixtures, and equipment must be supported by adequate documentation showing the amount paid. Adequate documentation is a certified statement from the contractor or subcontractor that purchased the items. The statement must indicate the item purchased, the vendor from whom it was purchased, the invoice number of the purchase, the cost of the item, and the amount of sales or use tax paid. Only items that become part of a building the nonprofit entity owns or leases and uses to conduct its nonprofit activity are eligible for a refund. A contractor may not include in its statement items the contractor purchased and used to fulfill the contract but did not become part of the building constructed. Examples of items that are not to be included in the contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment repair parts, equipment rentals, and blueprints.

(d) Items Not Refundable -- The refund provisions of this Rule do not apply to sales taxes incurred by employees on purchases of food, lodging, or other taxable travel expenses paid by employees and reimbursed by a nonprofit entity listed in G.S. 105-164.14(b). These expenses are personal to the employee because the contract for food, shelter, and travel is between the employee and the provider and payment of the tax is by the employee individually and personally. In this circumstance, a nonprofit entity has not incurred any sales tax liability and has

not paid any sales tax; instead, it has chosen to reimburse a personal expense of the employee. The refund provisions of this Rule do not apply to any of the following:

- (1) Charges for electricity and telecommunications services;
- (2) Occupancy taxes levied and administered by certain counties and cities in this State;
- (3) Prepared food and beverage taxes levied by various local governments in this State;
- (4) Highway use taxes paid on the purchase, lease, or rental of motor vehicles;
- (5) The white goods disposal tax levied on new white goods;
- (6) The scrap tire disposal tax levied on new tires; or
- (7) The dry-cleaning solvent tax levied on dry-cleaning solvent purchased by a dry cleaning facility.

History Note: Authority G.S. 105-164.14; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. April 1, 2006; July 1, 2000; July 1, 1999; August 1, 1998; April 1, 1997; August 1, 1996; October 1, 1993; March 1, 1993; June 1, 1992; October 1, 1991.

SECTION .2000 - SALES AND GIFTS BY EMPLOYERS TO EMPLOYEES OR OTHER USERS

17 NCAC 07B .2001 SALES TO EMPLOYEES

Sales of tangible personal property by any employer, manufacturer, processor, wholesaler, distributor or jobber to his employees or others for use or consumption are subject to the applicable statutory state and local sales or use tax, unless specifically exempt, notwithstanding that such sales are infrequent or comprise only a small fraction of the vendor's total business, and every employer, manufacturer, processor, wholesaler, distributor or jobber making such sales must register with the department and collect and remit the tax due thereon. The fact that any such vendor only makes sales to his employees shall not relieve him of this requirement.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Eff. February 1, 1976; Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .2002 GIFTS TO EMPLOYEES

Gifts of tangible personal property by any employer, manufacturer, processor, wholesaler, distributor or jobber to his employees or other persons are subject to the applicable statutory state and local sales or use tax, unless the donor paid sales or use tax on the sales or purchase price of the donated property at the time he acquired the same. The tax due by reason of any such gift shall be paid by the donor and shall be computed on the donor's cost price of the property donated,

irrespective of whether fabricated, produced, manufactured or processed by the donor, or acquired elsewhere.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .2302 INTERSTATE SALE

Sales made by merchants in North Carolina to out-of-state purchasers where actual delivery of the property is made by the resident vendor to such nonresident vendee at a point beyond the boundaries of this state and actual possession is retained by the vendor until delivery is made, or where the delivery is made by a resident vendor to a common carrier for delivery to such nonresident vendee at a destination beyond the boundaries of this state, are sales in interstate commerce. Streamlined Sales Tax Agreement Certificates of Exemption, Form E-595E, are not required for sales in interstate commerce.

History Note: Authority G.S. 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; February 1, 1988.

17 NCAC 07B .2502 MOVING AND PACKING MATERIALS

Crating, boxing, packaging and packing materials purchased by warehousemen to be used by them in moving, storing, packing or shipping tangible personal property are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .2503 SECONDHAND FURNITURE

Except as provided in 17 NCAC 7B .2504, sales by warehousemen of secondhand furniture or other tangible personal property to which they have acquired title are subject to the applicable statutory state and local sales or use tax and warehousemen making such sales must register with the department and collect and remit the tax due on such sales.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

SECTION .2900 – VENDING MACHINES

17 NCAC 07B .2901 SALES THROUGH VENDING MACHINES

(a) Requirement -- A person who sells tangible personal property through a vending machine must register with the Department and remit sales tax on the sales price of the property

sold, unless the sale is exempt from tax. The sale of an item in a vending machine for one cent is exempt from tax.

(b) Sales Price -- The "sales price" of an item sold in a vending machine differs depending on the item. For tobacco products sold through vending machines, the sales price is 100% of the price at which the item is sold in the vending machine. For all other items, the sales price is 50% of the price at which the item is sold in the vending machine. A vending machine retailer may calculate receipts from items sold, separate the receipts from items that are taxable at 100% of their price from those that are taxable at 50% of their price, and then divide the receipts by the appropriate number to determine the amount of receipts on which sales tax is due.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; July 1, 2000; October 1, 1993; June 1, 1992; July 1, 1989.

17 NCAC 07B .2902 SALES OF VENDING MACHINES

Sales of vending machines to any person for use are subject to the applicable statutory state and local sales or use tax. The lease or rental of vending machines to users are subject to the applicable statutory state and local sales or use tax. Sales of vending machines to registered merchants for leasing purposes or for the purpose of resale are not subject to the tax when supported by properly executed Streamlined Sales Tax Agreement Certificates of Exemption, Form E-595E.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .4702 PRINTING OF CONTAINERS

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Repealed Eff. April 1, 2006.

**17 NCAC 07B .4705 PRINTING SURFACE SUPPLIES
 17 NCAC 07B .4706 OFFSET PRINTING
 EQUIPMENT**

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1993; October 1, 1991;
Repealed Eff. April 1, 2006.

17 NCAC 07B .4707 PRINTING CHEMICALS

Sales of chemicals to commercial printers or publishers which enter into or become an ingredient or component part of printed matter which such purchasers sell are exempt from sales and use

tax. Chemicals used by commercial printers and publishers for sanitation purposes are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;
July 5, 1980.

17 NCAC 07B .4708 POSTAGE CHARGES BY PRINTERS

When a printer purchases postal cards or stamped envelopes and prints and sells them to customers for use, the printer is liable for collecting and remitting the applicable statutory state and local sales or use tax on the charge to the customer; except the postage charges on the printed cards or envelopes are exempt from tax when separately stated on the customer's invoice.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;
July 5, 1980.

17 NCAC 07B .4710 BOOKBINDERS

(a) Persons engaged in the business of binding books, magazines, or other printed matter belonging to other persons are rendering services, and the receipts therefrom are not subject to sales or use tax. Sales of cloth, leather, cardboard, glue, thread or other such items of tangible personal property to bookbinders for use in performing such services are subject to the applicable statutory state and local sales or use tax.

(b) Sales of cloth, leather, cardboard, glue, thread or other such items of tangible personal property to registered bookbinders for use in binding their own books, magazines or other printed matter for sale or for use in making loose-leaf or detachable binders for sale are wholesale sales and are exempt from tax when supported by properly completed Streamlined Sales Tax Agreement Certificates of Exemption, Form E-595E. Such bookbinders must collect and remit the applicable statutory state and local sales or use tax on their retail sales of tangible personal property.

History Note: Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .4711 GAS SOLD TO PRINTERS
17 NCAC 07B .4712 METAL FOR MAKING TYPE

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1993; May 1, 1985;

Repealed Eff. April 1, 2006.

17 NCAC 07B .4713 TYPEWRITERS SOLD TO PRINTERS

Typewriters used for administrative purposes are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .4714 MOUNTING TAPE SOLD TO PRINTERS

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Repealed Eff. April 1, 2006.

17 NCAC 07B .4715 NEWSPAPER PUBLISHERS: MACHINERY

Sales of machines to newspaper publishing companies for use in printing their customers' addresses are subject to the applicable statutory state and local sales or use tax without any maximum tax applicable thereto. Sales of addressograph plates to commercial printers for use in the mailing and shipping process are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991.

17 NCAC 07B .4716 TYPESETTING

Charges made by typesetters for setting type for users, are charges for services rendered and receipts therefrom are exempt from tax. Typesetters are liable for remitting the applicable statutory state and local sales or use tax on purchases of metal or other tangible personal property for use in performing such services. Charges by typesetters to commercial printers for reproduction proofs used in the production of printed matter are not subject to the tax. Purchases of proof paper and ink by typesetters for use in the production of proofs for sale are subject to the applicable statutory state and local sales or use tax.

History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44;
Eff. February 1, 1976;
Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;
October 1, 1990.

17 NCAC 07B .4717 PHOTOGRAPHS: NEWSPAPERS

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Repealed Eff. April 1, 2006.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

21 NCAC 12 .0204 ELIGIBILITY

- (a) Limited License. The applicant for a limited license must: (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter; (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000.00); (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant; and (4) Provide to the Board an audited financial statement with a classified balance sheet as part of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within seven years prior to the filing of the application. This requirement does not apply to shareholders of an applicant that is a publicly traded corporation. (b) Intermediate License. The applicant for an intermediate license must: (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter; (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant. (c) Unlimited License. The applicant for an unlimited license must: (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;

- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant. (d) In lieu of demonstrating the required level of working capital, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of three hundred fifty thousand dollars (\$350,000) for a limited license, one million dollars (\$1,000,000) for an intermediate license, and two million dollars (\$2,000,000) for an unlimited license. The bond shall list State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule shall subject the applicant to additional disciplinary action by the Board. (e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S.87-15.1. However, the applicant must comply with all other requirements of these rules to be eligible to be licensed in North Carolina as a general contractor. (f) Accounting and reporting standards. Working capital, balance sheet with current and fixed assets, current and long

SECTION .0700 - BOARD DISCIPLINARY PROCEDURES

term liabilities, and other financial terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted accounting principles" as promulgated by the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, and, if applicable, through pronouncements of the Governmental Accounting Standards Board, or their predecessor organizations. An audited financial statement, an unqualified opinion, and other financial reporting terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" as promulgated by the American Institute of Certified Public Accountants through pronouncements of the Auditing Standards Board.

History Note: Authority G.S. 87-1; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 1983; ARRC Objection March 19, 1987; Amended Eff. May 1, 1989; August 1, 1987; Temporary Amendment Eff. June 28, 1989 for a Period of 155 Days to Expire on December 1, 1989; Amended Eff. December 1, 1989; Temporary Amendment Eff. May 31, 1996; RRC Removed Objection Eff. October 17, 1996; Amended Eff. August 1, 1998; April 1, 1997; Temporary Amendment Eff. August 24, 1998; Amended Eff. April 1, 2006; March 1, 2005; August 1, 2002; April 1, 2001; August 1, 2000.

21 NCAC 12 .0408 PERSON TAKING EXAMINATION

(a) Persons other than the applicant, if the applicant is an individual, may take the required examination under certain conditions. Persons associated with a firm or corporation may take the required examination on behalf of the firm or corporation under certain conditions. The conditions are described in G.S. 87-10. The term "responsible managing" as used in G.S. 87-10 to describe persons who may take an examination on behalf of an applicant means that the person shall be actively engaged in the work of the applicant a minimum of 20 hours per week or a majority of the hours operated by the applicant, whichever is less. The term "members of the personnel" as used in G.S. 87-10 to describe persons who may take an examination on behalf of an applicant means that the person shall be a responsible managing employee of the applicant and shall not be an independent contractor. A partner may take an examination on behalf of a partnership.

(b) More than one person associated with an applicant may take the required examination. If one person associated with the applicant fails, and another passes, the license shall be granted to that applicant.

History Note: Authority G.S. 87-1; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2006; September 1, 1992; May 1, 1989.

21 NCAC 12 .0701 IMPROPER PRACTICE

(a) Preferring Charges. Any person who believes that any licensed general contractor is in violation of the provisions of G.S. 87-11 may prefer charges against that person or corporation by setting forth in writing those charges and swearing to their authenticity. The charges shall be filed with the Secretary-Treasurer of the Board at the Board's address in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination.

- (1) A charge, properly filed, shall be initially referred to the review committee.
- (2) The review committee shall be a committee made up of the following individuals:
 - (A) one member of the Board, and
 - (B) the legal counsel of the Board, and
 - (C) the Secretary-Treasurer.
- (3) The review committee shall determine prior to a full-scale hearing, whether or not a charge is unfounded or trivial. The decision of the review committee shall be final.
- (4) Once a charge is referred to the review committee, a written notice of and detailed explanation of the charge shall be forwarded to the person or corporation against whom the charge is made and a response is requested of the person or corporation so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given by first class mail to the last known address of the person or corporation.
- (5) If the respondent denies the charge brought against him, then, the review committee may direct that a field investigation be performed by an investigator retained by the Board.
- (6) After all preliminary evidence has been received by the review committee, it shall make a threshold determination of the charges brought. From the evidence, it shall recommend to the Board that:
 - (A) The charge be dismissed as unfounded or trivial;
 - (B) When the charge is admitted as true by the respondent, the Board accept the respondent's admission of guilt and order the respondent not to commit in the future the specific act or acts admitted by him to have been violated and, also, not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or
 - (C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge

in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11. Prior to the matter being heard and determined by the Board, it may be resolved by consent order approved by the review committee.

- (7) Notice of the threshold determination of the review committee shall be given to the party against whom the charges have been brought and the party preferring the charge within ten days of the review committee's decision. Though it is not forbidden to do so, the review committee shall not be required to notify the parties of the reasons of the review committee in making its threshold determination.

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

History Note: Authority G.S. 87-11; 150B-3; 150B-38; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2006; April 1, 2003; May 1, 1989.

21 NCAC 16B .0406 BOARD CONDUCTED REEXAMINATION

(a) A complete application is required in case of reexamination. For purposes of this Rule:

- (1) any person who has taken the clinical portion of the Board conducted clinical examination one time without passing, is considered to have failed the clinical portion of the examination; and
(2) any person who has taken the written portion of the Board conducted written examination three times without passing, is considered to have failed the written portion of the examination.

(b) Any applicant who has failed the clinical portion of the examination three times, regardless of having passed the written portion of the examination, shall successfully complete an additional course of study in clinical dentistry encompassing at least one academic year, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination and shall provide additional experience and expertise in clinical dentistry for the applicant. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

(c) Any applicant who has not passed the written portion of the examination may retake the written portion of the examination two additional times during the twelve month period from the date of the initial examination. The applicant must wait a minimum of 72 hours before attempting to retake a written

examination. Any applicant who has failed the written portion of the examination as defined in Paragraph (a), shall successfully complete an additional course of study, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

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

History Note: Authority G.S. 90-28; 90-30; 90-48; Eff. April 1, 2006.

SUBCHAPTER 16M - FEES PAYABLE

SECTION .0100 – FEES PAYABLE

21 NCAC 16M .0101 DENTISTS

- (a) The following fees shall be payable to the Board:
(1) Application for general dentistry license \$395.00
(2) Renewal of general dentistry license \$189.00
(3) Application for instructor's license or renewal thereof \$140.00
(4) Application for provisional license \$100.00
(5) Application for intern permit or renewal thereof \$150.00
(6) Certificate of license to a resident dentist desiring to change to another state or territory \$25.00
(7) Duplicate license \$25.00
(8) Reinstatement of license \$225.00
(9) Fee for late renewal of any license or permit \$50.00
(10) Application for license by credentials \$2000.00
(11) Application for limited volunteer dental license \$100.00
(12) Renewal of limited volunteer dental license \$25.00
(13) Board conducted examination processing fee \$805.00

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

History Note: Authority G.S. 90-28; 90-39; 90-48; 150B-19(5); Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. August 1, 1998; December 1, 1994; May 1, 1989; March 1, 1988; May 1, 1987; Temporary Amendment Eff. October 28, 1998; Amended Eff. August 1, 2000; Temporary Amendment Eff. January 1, 2003;

Amended Eff. April 1, 2006; March 1, 2004; January 1, 2004; April 1, 2003.

21 NCAC 32S .0108 SCOPE OF PRACTICE

(a) Physician assistants perform medical acts, tasks or functions with physician supervision pursuant to the supervisory arrangement as defined by Rule .0101(7) of this Section. Physician assistants perform those duties and responsibilities, including the prescribing and dispensing of drugs and medical devices, that are delegated by their supervising physician(s).
(b) Physician assistants shall be considered the agents of their supervising physicians in the performance of all medical practice-related activities, including the ordering of diagnostic, therapeutic and other medical services.

History Note: Authority G.S. 90-18(c)(13); 90-18.1; Eff. May 1, 1999; Amend. Eff. April 1, 2006.

21 NCAC 32S .0110 SUPERVISION OF PHYSICIAN ASSISTANTS

(a) A physician assistant may perform medical acts, tasks, or functions only under the supervision of a physician. Supervision shall be continuous but, except as otherwise provided in the rules of this Subchapter, shall not be construed as requiring the physical presence of the supervising physician at the time and place that the services are rendered.
(b) Each team of physician(s) and physician assistant(s) shall ensure that the physician assistant's scope of practice is identified; that delegation of medical tasks is appropriate to the skills of the supervising physician(s) as well as the physician assistant's level of competence; that the relationship of, and access to, each supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established. A primary supervising physician and a physician assistant in a new practice arrangement shall meet monthly for the first six months to discuss practice relevant clinical problems and quality improvement measures. Thereafter, regular meetings between the primary supervising physician and the physician assistant shall occur no less than every six months. A record of these meetings shall be signed and dated by both the supervising physician and the physician assistant, and shall be available for inspection upon request by the Board's representative. A statement, as defined by Rule .0101(7) of this Section, describing these supervisory arrangements in all settings must be signed by each supervising physician and the physician assistant and shall be kept on file at all practice sites. This statement describing supervisory arrangements and instructions for prescriptive authority shall be available upon request by the Board or its representatives.
(c) Entries by a physician assistant into patient charts of inpatients (hospital, long term care institutions) must comply with the rules and regulations of the institution.

History Note: Authority G.S. 90-18(c)(13); 90-18.1; Eff. May 1, 1999; Amend. Eff. April 1, 2006; May 1, 2004.

21 NCAC 32S .0111 SUPERVISING PHYSICIANS

(a) A physician wishing to serve as a primary supervising physician must exercise supervision of the physician assistant in accordance with rules adopted by the Board. The physician shall retain professional responsibility for the care rendered by the physician assistant within the scope of the supervisory arrangements established pursuant to Rule .0110 of this Section.
(b) A physician wishing to serve as a back-up supervising physician must be licensed to practice medicine by the Board, not prohibited by the Board from supervising a physician assistant, and approved by the primary supervising physician as a person willing and qualified to assume responsibility for the care rendered by the physician assistant in the absence of the primary supervising physician. An ongoing list of all approved back-up supervising physicians, signed and dated by each back-up supervising physician, the primary supervising physician, and the physician assistant, must be retained as part of the inspectable supervisory arrangements statement described in Rule .0110 of this Section.
(c) The supervising physicians shall ensure that the physician assistant has adequate back-up for any procedure performed by the physician assistant in any practice location (office, home, hospital, etc.).

History Note: Authority G.S. 90-18(c)(13); 90-18.1; Eff. May 1, 1999; Amended Eff. April 1, 2006.

21 NCAC 32S .0112 NOTIFICATION OF INTENT TO PRACTICE

(a) Prior to the performance of any medical acts, tasks, or functions under the supervision of any primary supervising physician, a physician assistant licensed by the Board shall submit notification of such intent on forms provided by the Board. The physician assistant shall not commence practice until acknowledgment of the notification of intent to practice form is received from the Board. Such notification of intent to practice shall include:
(1) the name, practice addresses, and telephone number of the physician assistant; and
(2) the name, practice addresses, and telephone number of the primary supervising physician(s).
(b) The physician assistant shall notify the Board of any changes or additions in a previously acknowledged practice setting within 15 days of the occurrence.

History Note: Authority G.S. 90-14(a)(11); 90-18(c)(13); 90-18.1; Eff. May 1, 1999; Amend. Eff. April 1, 2006.

21 NCAC 32S .0118 PRACTICE DURING A DISASTER

A physician assistant licensed in this State or in any other state may perform acts, tasks, or functions as a physician assistant under the supervision of a physician licensed to practice medicine in North Carolina during a disaster within a county in

which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared (in accordance with G.S. 166A-6). A team of physician(s) and physician assistant(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required in Rules .0109 and .0110 of this Section. The Board may waive other regulatory requirements regarding licensure and practice to facilitate a physician assistant practicing during a disaster consistent with G.S. 90-12.2.

History Note: Authority G.S. 90-12.2; 166A-6; Eff. May 1, 1999; Amended Eff. April 1, 2006.

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 Crematory Authority shall be conducted 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 paragraphs (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 shall 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 shall 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; Amended Eff. April 1, 2006.

21 NCAC 46 .2502 RESPONSIBILITIES OF PHARMACIST-MANAGER

- (a) The pharmacist-manager shall assure that prescription legend drugs and controlled substances are safe and secure within the pharmacy.
- (b) The pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but shall be present for at least one-half the hours the pharmacy is open or 32 hours a week, whichever is less. A pharmacist employee not meeting this requirement may serve as pharmacist-manager of the permit holder temporarily for a period not to exceed 90 days from the departure date of the previous pharmacist-manager, if the pharmacist employee is present at least 20 hours per week in the pharmacy.
- (c) Whenever a change of ownership or change of pharmacist-manager occurs, the successor pharmacist-manager shall complete an inventory of all controlled substances in the pharmacy within 10 days. A written record of such inventory, signed and dated by the successor pharmacist-manager, shall be maintained in the pharmacy with other controlled substances records for a period of three years.
- (d) The pharmacist-manager shall develop and implement a system of inventory record-keeping and control which will enable that pharmacist-manager to detect any shortage or discrepancy in the inventories of controlled substances at that pharmacy at the earliest practicable time.
- (e) The pharmacist-manager shall maintain authority and control over any and all keys to the pharmacy and shall be responsible for the security of the pharmacy. A pharmacy shall be secured to prohibit unauthorized entry if no pharmacist will be present in the pharmacy for a period of 90 minutes or more.
- (f) These duties are in addition to the specific duties of pharmacist-managers at institutional pharmacies and pharmacies in health departments as set forth in the Rules in this Chapter.

- (g) A person shall not serve as pharmacist-manager at more than one pharmacy at any one time except for limited service pharmacies.
- (h) When a pharmacy is to be closed permanently, the pharmacist-manager shall inform the Board and the United States Drug Enforcement Administration of the closing, arrange for the proper disposition of the pharmaceuticals and return the pharmacy permit to the Board's offices within 10 days of the closing date. If possible, notice of the closing shall be given to the public by posted notice at the pharmacy at least 30 days prior to the closing date and 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request. Absent specific instructions from the patient or customer, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy for maintenance of patient therapy and shall inform the public of such transfer by posted notice at the pharmacy for 15 days after the closing date, if possible. Controlled substance records shall be retained for the period of time required by law.
- (i) If possible, the pharmacist-manager shall ensure that notice of the temporary closing of any pharmacy for more than 14 consecutive days is given to the public by posted notice at the pharmacy at least 30 days prior to the closing date, and 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request.
- (j) The pharmacist-manager shall prepare a plan to safeguard prescription records and pharmaceuticals and minimize the interruption of pharmacy services in the event of a natural disaster such as hurricane or flood.
- (k) The pharmacist-manager shall separate from the dispensing stock all drug products more than six months out of date.
- (l) The pharmacist-manager shall report to the Board of Pharmacy information that reasonably suggests that there is a probability that a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient or customer. This report shall be filed in writing on a form provided by the Board within 14 days of the owner representative or pharmacist-manager's becoming aware of the event. The pharmacist-manager shall retain all documents, labels, vials, supplies, substances and internal investigative reports relating to the event. All such items shall be made available to the Board upon request.
- (m) The Board shall not disclose the identity of a pharmacist-manager who makes a report under Paragraph (l) of this Rule, except as required by law. No report made under

Paragraph (l) of this Rule shall not be released except as required by law.

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

(o) The pharmacist-manager shall ensure that all starter doses of medication supplied to doctors' offices from the pharmacy are accompanied by written materials advising the patient that such doses of medication may be supplied by any pharmacy. Starter doses shall be limited to a 24 hour dose supply per patient.

History Note: Authority G.S. 90-85.6; 90-85.21; 90-85.25; 90-85.26; 90-85.32; Eff. May 1, 1989; Amended Eff. April 1, 2006; February 1, 2005; August 1, 2002; December 1, 2001; April 1, 2001; April 1, 1999; July 1, 1996; March 1, 1992; October 1, 1990.

SECTION .0200 – TRAINEE REGISTRATION, APPRAISER LICENSING AND CERTIFICATION

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 a 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 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. Applicants shall also have taken and passed the licensed residential examination as specified in 57A .0301 of these Rules within the two-year period immediately preceding 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 as set forth in Subparagraph (a)(1) of this Rule and, in addition, within the five-year period immediately preceding the date application is made, the 15 hour Uniform Standards of Professional Appraisal Practice (USPAP) course, and a course in Introduction to Income Property Appraisal that consists 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. Applicants shall also have taken and passed the certified residential examination as specified in 57A .0301 of these Rules within the two-year period immediately preceding the date application is made.
- (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, the 15 hour Uniform Standards of Professional Appraisal Practice (USPAP) course, and 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. Applicants shall also have taken and passed the certified general examination as specified in 57A .0301 of these Rules within the two-year period immediately preceding the date application is made.

(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. April 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.

SECTION .0300 - APPRAISER EXAMINATIONS

21 NCAC 57A .0301 TIME AND PLACE

(a) Until December 31, 2007, trainees and appraisers who hold a current, valid registration, license or certification issued by the Board and who wish to apply for licensure or for a higher level of certification may apply to take the examination for that license or higher certification level once they have completed all preclicensing or precertification education required as stated in 21 NCAC 57A .0201. The examination approval form is valid for three attempts at the examination or for one year from date of issuance, whichever comes first.

(b) Examinations for real estate trainee registrations, appraiser licenses and certificates shall be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants for the examination shall be scheduled for examination based on their successful completion of appraiser educational qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. Violation of examination procedures and instructions shall be

grounds for denial, suspension or revocation of a license or certificate.

(c) Examination results are valid for 24 months from the date the examination is successfully completed.

(d) Effective January 1, 2008, applicants must have completed both the education and experience requirements as set forth in 21 NCAC 57A .0201 before they will be issued an examination approval form. Examinations successfully completed before January 1, 2008 will remain valid for 24 months from the date passed even if the application for upgrade is received after January 1, 2008.

History Note: Authority G.S. 93E-1-6(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. April 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 58A .1902 POSTLICENSING EDUCATION REQUIREMENT

(a) The 90 classroom hour postlicensing education program shall consist of three 30 classroom hour courses prescribed by the Commission which may be taken in any sequence. A provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) must satisfactorily complete at least one of the 30-hour courses during each of the first three years following the date of his or her initial licensure as a broker in order to retain his or her eligibility to actively engage in real estate brokerage. Upon completion of all three courses by a provisional broker, the provisional status of the broker's license shall be terminated by the Commission. The three courses shall be devoted to:

- (1) real estate brokerage relationships and responsibilities;
- (2) real estate contracts and transactions; and
- (3) specialized topics, including commercial real estate, rental management, real estate finance, real estate appraisal, real estate development, and real estate regulation.

(b) If a provisional broker as describe in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete the required postlicensing education described in paragraph (a) of this Rule by the end of either the first or second year following the date of his or her initial licensure as a broker, his or her license shall be placed on inactive status. Between the end of the first year after initial licensure and the end of the third year after initial licensure, a provisional broker who is subject of the postlicensing education requirement and who desires to activate a license that is on inactive status shall make up any postlicensing education deficiency as well as satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter, satisfy the requirement for supervision by a broker-in-charge described in Rule .0506 of this Subchapter and file with the Commission a request for license activation as described in Rule .0504 of this Subchapter.

(c) If a provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete all three postlicensing courses within three years following the date of his or her initial licensure, his or her license shall be cancelled and, in order to

reinstate such license, the former broker must satisfy the requirements described in G.S. 93A-04(a1) and Rule .0505 of this Subchapter.

History Note: Authority G.S. 93A-4; 93A-4(a1);
Eff. April 1, 2006.

21 NCAC 58C .0103 CRITERIA FOR APPROVAL

(a) After due investigation and consideration, approval shall be granted to a school when it is shown to the satisfaction of the Commission that:

- (1) The school has submitted a complete and accurate application for approval;
- (2) The school is a North Carolina post-secondary educational institution licensed or approved by the State Board of Community Colleges or the Board of Governors of the University of North Carolina or a North Carolina private business or trade school licensed under G.S. 115D-90; and
- (3) The courses to be conducted comply with the standards described in Section .0300 of this Subchapter.

(b) A North Carolina college or university which grants a baccalaureate or higher degree with a major or minor in the field of real estate, real estate brokerage, real estate law, real estate finance, real estate development, or other similar fields shall request that appropriate real estate and related courses in its curriculum be approved by the Commission as equivalent to the real estate prelicensing education program prescribed by G.S. 93A-4(a). The Commission shall grant such approval and shall exempt such school from compliance with the course standards set forth in Section .0300 of this Subchapter.

History Note: Authority G.S. 93A-4;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. April 1, 2006; July 1, 1994; May 1, 1990;
February 1, 1989; November 1, 1987.

21 NCAC 58C .0302 PROGRAM STRUCTURING AND ADMISSION REQUIREMENTS

(a) The real estate prelicensing education program shall consist of a single course consisting of at least 75 classroom hours of instruction. Schools may establish course admission standards that require students to demonstrate to the satisfaction of the school that they possess the basic reading, writing and mathematics skills necessary to be successful in the prelicensing course, and these standards may include a requirement to complete additional instruction prior to enrollment.

(b) The real estate postlicensing education program shall consist of three courses, prescribed by the Commission in 21 NCAC 58A .1902, each consisting of at least 30 classroom hours of instruction, which may be taken by students in any sequence. Licensure as a broker in North Carolina or another state shall be a prerequisite for enrollment in these courses.

History Note: Authority G.S. 93A-4(a1); 93A-33;
Eff. September 1, 1979;
Amended Eff. February 1, 1989; September 1, 1984; September 1, 1983; January 1, 1981;
Transferred and Recodified from 21 NCAC 58A .1102 Eff. November 27, 1989;
Temporary Amendment Eff. July 5, 1990, For a Period of 180 Days to Expire on January 1, 1991;
Amended Eff. January 1, 1991; February 1, 1991;
Temporary Amendment Eff. April 5, 1991, For a Period of 180 Days to Expire on October 2, 1991;
Temporary Amendment Eff. May 9, 1991, For a Period of 146 Days to Expire on October 2, 1991;
Amended Eff. April 1, 2006; September 1, 2002; October 1, 2000; July 1, 1994; October 1, 1991.

21 NCAC 58F .0102 COURSE CONTENT

The broker transition course shall consist of instruction on real estate brokerage relationships, real estate broker responsibilities, real estate contracts, and other subjects more specifically described in the Broker Transition Course Syllabus, real estate law and regulation, and other topics pertinent to brokerage practice and real estate tenure.

History Note: Authority G.S. 93A-4;
Eff. April 1, 2006.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday April 20, 2006, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. 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
John Tart

RULES REVIEW COMMISSION MEETING DATES

May 18, 2006 June 15, 2006
July 20, 2006 August 17, 2006

**RULES REVIEW COMMISSION
APRIL 20, 2006
MINUTES**

The Rules Review Commission met on Thursday, April 20, 2006, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jeffrey Gray, Jennie Hayman; Thomas Hilliard; Robert Saunders, Lee Settle, and Dana Simpson.

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

The following people attended:

Chris Sinha	Division of Social Services/Attorney General's Office
J. Marion Eaddy III	DENR/Radiation Protection Section
Susan Dail	DHHS/Division of Social Services
JoAnn Lamm	DHHS/Division of Social Services
Carlotta Dixon	DHHS/Division of Social Services
Terri Reichert	DHHS/Division of Social Services
David Cobb	Wildlife Resources Commission
Kate Pipkin	Wildlife Resources Commission
Kent Nelson	Wildlife Resources Commission
Lancie Bailey	DENR
Barry Gupton	Department of Insurance/Building Code Council
Dedra Alston	Child Care Commission
Lorie Pugh	Child Care Commission
Nancy Pate	DENR
John Hoomani	Department of Labor
Jennifer Chrisohon	Department of Labor
Jean Stanley	Board of Nursing
Nick Fountain	Attorney/Plumbing, Heating & Fire Sprinkler Contractors
Denise Stanford	Attorney/ Board for Licensing General Contractors
Robert Hamilton	Auctioneer Board
Jeff Horton	DHHS/Division Facility Services

APPROVAL OF MINUTES

The meeting was called to order at 10:10 a.m. with Chairman Hayman presiding.

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the March 16, 2006 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

10A NCAC 09 .2802; .2825: Child Care Commission – The commission approved the rewritten rules submitted by the agency.

10A NCAC 13B .5502; .5503; .5504: Medical Care Commission – The Commission approved the rewritten rules submitted by the agency. Rule .5502 was approved with the condition of receiving a technical change by the end of the business day. The change was subsequently received.

21 NCAC 12 .0302; .0506: Board of General Contractors – The Commission approved the rewritten rules submitted by the agency.

21 NCAC 32S .0101; .0102; .0104: Medical Board – The Commission approved the rewritten rules submitted by the agency.

21 NCAC 36 .0120; .0232: Board of Nursing – The Commission approved the rewritten rules submitted by the agency. Rule .0120 was approved with the condition that the agency change Item (4) to read: "Active Practice means activities that are performed, either for compensation or without compensation, consistent with the scope of practice for each level of licensure as defined in G.S. 90-171.20(4), (7) and (8)" and deliver it to RRC by the end of the business day. The change was subsequently received.

21 NCAC 61 .0202: Respiratory Care Board – This rule was withdrawn by the agency.

041214 Items B-2, B-1, B-2D1 903.2.7: Building Code Council – The Commission received a response from the agency to the objection that essentially repeated the previous arguments in favor of the rule. No action was taken and the rule will be removed from further consideration by the Commission.

051213 Item D-3 10.10 and Article 100: Building Code Council – The Commission received a response from the agency with some slight changes in its findings of need for the temporary rule. However, no action was taken since the permanent rule was approved and the temporary rule will be removed from further consideration by the Commission.

LOG OF FILINGS

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

Commissioner Hayman changed the order of the rules on the log at the outset of the log review in order to consider the Auctioneer Licensing Board rules. This was due to her need to leave early. Commissioner Gray would be presiding over the meeting after her departure but would need to recuse himself from any discussion or consideration of or voting on those particular rules. Commissioner Gray did not participate in the discussion of nor vote on the rules concerning the Auctioneer Licensing Board.

Commissioner Gray took over as Chairman of the meeting at 11:15 a.m.

15A NCAC 18D .0201: Water Treatment Facility Operators Certification Board – The rule was approved conditioned on receiving a technical change by the end of the day. The change was subsequently received.

21 NCAC 14P .0105: Cosmetic Art Examiners – The Commission objected to the rule due to lack of statutory authority. There is no authority cited for paragraph (f). No prohibition or teaching without a license is cited. If it is not unlawful to teach without a license, then the agency may not assess a penalty for doing so. Commissioner Simpson did not vote nor participate in the discussion on the rule concerning the Cosmetic Art Examiners.

21 NCAC 50 .0306: Plumbing, Heating and Fire Sprinkler Contractors Board – The Commission objected to the rule due to ambiguity. In (a), it is not clear what evidence an applicant is expected to present to establish good character.

21 NCAC 50 .1404: Plumbing, Heating and Fire Sprinkler Contractors Board - The Commission objected to the rule due to ambiguity. In (b), it is not clear when the Board will grant prior approval for a course to be taught by an instructor or alternate other than those listed when the course was approved.

COMMISSION PROCEDURES AND OTHER BUSINESS

The meeting adjourned at 11:50 a.m.

Mr. DeLuca reminded the Commissioners of the notice that the Supreme Court had granted the Pharmacy Board's petition for discretionary review of the constitutional questions it had raised. There was a brief discussion concerning this and the future possible timetable for the case.

The next scheduled meeting of the Commission is Thursday, May 18, 2006 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

**LIST OF APPROVED PERMANENT RULES
April 20, 2006 Meeting**

CHILD CARE COMMISSION

<u>Application for a Voluntary Rated License</u>	10A	NCAC	09	.2802
<u>How an Operator May Request or Appeal a Change in Rating</u>	10A	NCAC	09	.2825

MEDICAL CARE COMMISSION

<u>Independent Donor Advocate Team</u>	10A	NCAC	13B	.5502
<u>Informed Choice</u>	10A	NCAC	13B	.5503
<u>Evaluation Protocol for Living Organ Donors</u>	10A	NCAC	13B	.5504

HHS-MEDICAL ASSISTANCE

<u>Therapeutic Leave</u>	10A	NCAC	22O	.0409
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SOCIAL SERVICES COMMISSION

<u>Purpose</u>	10A	NCAC	70A	.0101
<u>Confidentiality Central Registry Responsible Individuals ...</u>	10A	NCAC	70A	.0102
<u>Definitions</u>	10A	NCAC	70A	.0104
<u>When Abuse, Neglect or Dependency is Found</u>	10A	NCAC	70A	.0107
<u>Assuming Temporary Custody of a Child</u>	10A	NCAC	70A	.0110
<u>Case Records for Protective Services</u>	10A	NCAC	70A	.0112
<u>Expunction Process</u>	10A	NCAC	70A	.0114

BUILDING CODE COUNCIL

<u>Electrical Code - (Item B-2) Articles 10.10, 100 Equipmen...</u>	11	NCAC	08	
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LABOR, DEPARTMENT OF

<u>Passenger Tramway Inspection Fee Schedule</u>	13	NCAC	15	.0705
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WILDLIFE RESOURCES COMMISSION

<u>Dog Training and Field Trials</u>	15A	NCAC	10B	.0114
<u>Wild Birds Defined</u>	15A	NCAC	10B	.0121
<u>Importation of Animal Parts</u>	15A	NCAC	10B	.0124
<u>Bear</u>	15A	NCAC	10B	.0202
<u>Deer</u>	15A	NCAC	10B	.0203
<u>Squirrels</u>	15A	NCAC	10B	.0206
<u>Crow</u>	15A	NCAC	10B	.0215
<u>Striped Skunk</u>	15A	NCAC	10B	.0221
<u>Open Seasons</u>	15A	NCAC	10B	.0302
<u>Public Mountain Trout Waters</u>	15A	NCAC	10C	.0205

RULES REVIEW COMMISSION

<u>Open Seasons: Creel and Size Limits</u>	15A	NCAC	10C	.0305
<u>Manner of Taking Non-game Fishes</u>	15A	NCAC	10C	.0401
<u>Taking Non-game Fishes for Bait</u>	15A	NCAC	10C	.0402
<u>General Regulations</u>	15A	NCAC	10D	.0102
<u>Hunting on Game Lands</u>	15A	NCAC	10D	.0103
<u>Perquimans County</u>	15A	NCAC	10F	.0355
<u>Cherokee</u>	15A	NCAC	10F	.0359
<u>Hertford</u>	15A	NCAC	10F	.0372
<u>General Regulations Regarding Use of Conservation Areas</u>	15A	NCAC	10J	.0102

RADIATION PROTECTION COMMISSION

<u>Definitions</u>	15A	NCAC	11	.0104
<u>Financial Assurance and Recordkeeping for Decommissioning</u>	15A	NCAC	11	.0353
<u>Occupational Dose Limits for Adults</u>	15A	NCAC	11	.1604

WATER TREATMENT FACILITY OPERATORS CERTIFICATION BOARD

<u>Definitions</u>	15A	NCAC	18D	.0105
<u>Grades of Certification</u>	15A	NCAC	18D	.0201
<u>Examinations</u>	15A	NCAC	18D	.0202
<u>Application for Exam</u>	15A	NCAC	18D	.0301
<u>Application for Reciprocity</u>	15A	NCAC	18D	.0302
<u>Certification Reinstatement</u>	15A	NCAC	18D	.0309
<u>Reciprocal Certificates</u>	15A	NCAC	18D	.0405
<u>Operator in Responsible Charge</u>	15A	NCAC	18D	.0701

REVENUE, DEPARTMENT OF

<u>Extensions</u>	17	NCAC	03C	.0108
<u>Extensions</u>	17	NCAC	06B	.0107
<u>Fraud Penalty</u>	17	NCAC	06B	.3206
<u>Nonresidents</u>	17	NCAC	06B	.3902
<u>Requirements for Filing</u>	17	NCAC	06D	.0102
<u>General</u>	17	NCAC	06D	.0201
<u>Period of Underpayment</u>	17	NCAC	06D	.0210

AUCTIONEER LICENSING BOARD

<u>Definitions</u>	21	NCAC	04B	.0103
<u>Application Forms</u>	21	NCAC	04B	.0201
<u>Subject Matter</u>	21	NCAC	04B	.0301
<u>License Number Display of License and Pocket Card</u>	21	NCAC	04B	.0401
<u>Requirements for Approval Minimum Standards</u>	21	NCAC	04B	.0502
<u>Advertising</u>	21	NCAC	04B	.0602
<u>Contracts, Consignment Records, Sales Records, and Bidder...</u>	21	NCAC	04B	.0604
<u>Bidding</u>	21	NCAC	04B	.0605
<u>Auction Firms</u>	21	NCAC	04B	.0606
<u>Non-Auction Firm Businesses</u>	21	NCAC	04B	.0607
<u>Course Completion Reporting</u>	21	NCAC	04B	.0806

RULES REVIEW COMMISSION

<u>Alternative Compliance</u>	21	NCAC	04B	.0819
GENERAL CONTRACTORS, LICENSING BOARD FOR				
<u>Request</u>	21	NCAC	12	.0302
<u>Charge for Status of Licensure Affidavit</u>	21	NCAC	12	.0506
MEDICAL BOARD				
<u>Definitions</u>	21	NCAC	32S	.0101
<u>Qualifications for License</u>	21	NCAC	32S	.0102
<u>Inactive License Status</u>	21	NCAC	32S	.0104
NURSING, BOARD OF				
<u>Definitions</u>	21	NCAC	36	.0120
<u>Continuing Competence</u>	21	NCAC	36	.0232
PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS FOR				
<u>Qualifications Determined by Examination</u>	21	NCAC	50	.0301
<u>Employees Exempted From Licensure</u>	21	NCAC	50	.0512
<u>Limited Fire Sprinkler Maintenance Technician License</u>	21	NCAC	50	.0515
<u>Continuing Education Requirements</u>	21	NCAC	50	.1401
<u>Exemptions and Credits</u>	21	NCAC	50	.1402
VETERINARY MEDICAL BOARD				
<u>Application and Examination</u>	21	NCAC	66	.0301
COMMUNITY COLLEGES, BOARD OF				
<u>Donated or Loaned Property</u>	23	NCAC	02C	.0503
<u>Open-End Design Agreements</u>	23	NCAC	02D	.0605

AGENDA
RULES REVIEW COMMISSION
May 18, 2006, 10:00 A.M.

- I. Reminder of Governor's Executive Order #1
- II. Review of minutes of last meeting
- III. Follow-Up Matters
 - A. Cosmetic Art Examiners – 21 NCAC 14P .0105 (Bryan)
 - B. Plumbing, Heating and Fire Sprinkler Contractors Board – 21 NCAC 50 .0306; .1404 (Bryan)

- IV. Review of Rules (Log Report)
 - V. Review of Temporary Rules (If any)
 - VI. Commission Business
 - VII. Next meeting: June 15, 2006
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Commission Review/Permanent Rules
Log of Filings
March 21, 2006 through April 20, 2006

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 are from Coastal Management.

The rules in Subchapter 7I concern secretary's grant criteria and procedures for local implementation and enforcement programs under the coastal area management act and include purpose (.0100); policy and standards (.0200); generally applicable standards (.0400); local implementation and enforcement plans (.0500); amendment of local management plan (.0600); and failure to enforce and administer plan (.0700).

<u>Authority</u>	15A	NCAC	07I	.0101
Amend/*				
<u>Future Funding</u>	15A	NCAC	07I	.0206
Amend/*				
<u>Grant Administration</u>	15A	NCAC	07I	.0305
Amend/*				
<u>Definitions</u>	15A	NCAC	07I	.0502
Amend/*				
<u>Allocation of Authority</u>	15A	NCAC	07I	.0506
Amend/*				
<u>Notice of Civil Action</u>	15A	NCAC	07I	.0509
Amend/*				

The rules in Subchapter 7J concern procedures for handling major development permits: variance requests: appeals from minor development permit decisions: and declaratory rulings including definitions (.0100); permit required; hearing procedure (.0300); final approval and enforcement (.0400); general permits (.0500); declaratory rulings and petitions for rulemaking (.0600); procedures for considering variance petitions (.0700); dredge and fill: permit processing procedure: standard (.0800); dredge and fill: emergency permit procedure (.0900); dredge and fill: review hearing procedures (.1000); and general permit procedure (.1100).

<u>General Definitions</u>	15A	NCAC	07J	.0102
Amend/*				

PARKS AND RECREATION AUTHORITY

The rules in Chapter 12 are Parks and Recreation Area Rules.

The rules in Subchapter 12K cover the allocation and warding of grants for qualified local governmental units for local park and recreation purposes.

<u>Evaluation of Applications</u>	15A	NCAC	12K	.0105
Amend/				

<u>Grant Agreement</u>	15A	NCAC	12K	.0106
Amend/*				
<u>Eligible Projects and Costs</u>	15A	NCAC	12K	.0108
Amend/*				

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100); sanitation of scallops (.0200) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); food and beverage vending machines (.1100); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); and primitive camps (.3500).

<u>Definitions</u>	15A	NCAC	18A	.1935
Amend/*				
<u>Criteria for Design of Alternative Sewage</u>	15A	NCAC	18A	.1957
Amend/*				
<u>Approval and Permitting of on-Sitewastewater Systems</u>	15A	NCAC	18A	.1969
Amend/*				
<u>Advanced Wastewater Pretreatment System</u>	15A	NCAC	18A	.1970
Adopt/*				

REVENUE, DEPARTMENT OF

The rules in Chapter 7 are sales and use tax.

The rules in Chapter 7B concern state sales and use tax including (general provisions (.0100); general application of law to manufacturing and industrial processing (.0200); specific tangible personalty classified for use by industrial users (.0300); specific industries (.0400); exempt sales to manufacturers (.0500); sales of mill machinery and accessories (.0600); specific industry purchases (.0700); adjustments: replacements: alterations and installation sales (.0800); advertising and advertising agencies: public relations firms (.0900); barbers: beauty shop operators: shoe repairmen: watch repairmen (.1000); sales of bulk tobacco barns: farm machines and machinery (.1100); hotels: motels: tourist camps and tourist cabins (.1200); sales in interstate commerce (.1300); sales of medicines: drugs and medical supplies (.1400); finance companies: finance charges and carrying charges (.1500); sales to or by hospitals: educational: charitable or religious institutions: etc.: and refunds thereto (.1600); sales to or by the state: counties: cities: and other political subdivisions (.1700); hospitals and sanitariums (.1800); tire recappers and retreaders: tire and tube repairs (.1900); sales and gifts by employers to employees or other users (.2000); electricity: piped natural gas: bottled gas: coal: coke: fuel oil: oxygen: acetylene: hydrogen: liquefied petroleum gas and other combustibles (.2100); food and food products for human consumption (.2200); sales to out-of-state merchants for resale (.2300); sales of medical supplies and equipment to veterinarians (.2400); furniture and storage warehousemen (.2500); liability of contractors: use tax on equipment brought into state: building materials (.2600); dentists: dental laboratories and dental supply houses (.2700); florists: nurserymen: greenhouse operators and farmers (.2800); vending machines (.2900); articles taken in trade: trade-ins: reposessions: returned merchandise: used or secondhand merchandise (.3000); radio and television stations: motion picture theatres (.3100); telecommunications and telegraph companies (.3200); orthopedic appliances (.3300); memorial stone and monument dealers and monument manufactures (.3400); machinists: foundrymen: pattern makers (.3500); funeral expenses (.3600); lubricants: oils and greases (.3700); premiums: gifts and trading stamps (.3800); containers: wrapping: packing and shipping materials (.3900); fertilizer: seeds: feed and insecticides (.04000); artists: art dealers: photographers: etc. (.4100); sales to the united states government or agencies thereof (.4200); refunds to interstate carriers (.4300); lease or rental (.4400); laundries: dry cleaning plants: launderettes: linen rentals: and solicitors for such businesses (.4500); motor vehicles and boats (.4600); printers and newspaper or magazine publishers (.4700); basis or

reporting (.4800); transportation charges (.4900); eyeglasses and other ophthalmic aids and supplies oculists: optometrists and opticians (.5000); leased departments and transient sellers (.5100); baby chicks and poult (.5200); certificate of authority: bond requirements (.5300); and forms used for sales and use tax purposes (.5400).

<u>Farm Machines Machinery Tobacco Items</u> Amend/*	17	NCAC	07B	.1101
<u>Trackers Backhoes Draglines</u> Amend/*	17	NCAC	07B	.1103
<u>Irrigation Equipment</u> Amend/*	17	NCAC	07B	.1104
<u>Egg Cleaning Detergent</u> Amend/*	17	NCAC	07B	.1107
<u>Ventilators</u> Amend/*	17	NCAC	07B	.1111
<u>Snapbean Graders</u> Amend/*	17	NCAC	07B	.1115
<u>Liquid Fertilizer Applicators</u> Amend/*	17	NCAC	07B	.1116
<u>Mechanical Post Hole Diggers</u> Amend/*	17	NCAC	07B	.1117
<u>Sickle Grinders</u> Amend/*	17	NCAC	07B	.1118
<u>Tobacco Tying Machines</u> Amend/*	17	NCAC	07B	.1119
<u>Cotton Bags and Sheets</u> Amend/*	17	NCAC	07B	.1120
<u>Right-of-way Equipment</u> Amend/*	17	NCAC	07B	.1122
<u>Certain Sales to Commercial Animal Farmers</u> Amend/*	17	NCAC	07B	.1123
<u>Florists Nurserymen Greenhouse Operators and Farmers</u> Amend/*	17	NCAC	07B	.2801
<u>Florists" Delivery Associations</u> Amend/*	17	NCAC	07B	.2802
<u>Fertilizer and Seeds</u> Amend/*	17	NCAC	07B	.4002
<u>Household Insecticides, Etc.</u> Amend/*	17	NCAC	07B	.4006
<u>Chicks Eggs Exemption</u> Amend/*	17	NCAC	07B	.5201
<u>Chicks Eggs Taxable</u> Amend/*	17	NCAC	07B	.5202

ARCHITECTURE, BOARD OF

The rules in Chapter 2 are from the Board of Architecture and include general provisions (.0100); practice of architecture (.0200); examination procedures (.0300); rules: petitions: hearings (.0400); declaratory rulings (.0500); administrative hearings: procedures (.0600); administrative hearings: decisions: related rights (.0700); judicial review (.0800); and continuing education (.0900).

<u>Name of Firm</u> Amend/*	21	NCAC	02	.0205
<u>Requirement for and Use of Professional Seal</u> Amend/*	21	NCAC	02	.0206

<u>Dishonest Conduct</u> Amend/*	21	NCAC	02	.0208
<u>Unprofessional Conduct</u> Amend/*	21	NCAC	02	.0209
<u>Incompetence</u> Amend/*	21	NCAC	02	.0210
<u>Individual Licenses</u> Amend/*	21	NCAC	02	.0213
<u>Architect Emeritus</u> Amend/*	21	NCAC	02	.0217
<u>Examination</u> Amend/*	21	NCAC	02	.0302
<u>Registration by Reciprocity Without Written Examination</u> Amend/*	21	NCAC	02	.0303
<u>Scope</u> Amend/*	21	NCAC	02	.0901
<u>Determination of Credit</u> Amend/*	21	NCAC	02	.0904
<u>Exceptions</u> Amend/*	21	NCAC	02	.0906
<u>Non-Compliance</u> Amend/*	21	NCAC	02	.0910

COSMETIC ART EXAMINERS, BOARD OF

The rules in Subchapter 14J cover the cosmetology curriculum including the beginners' department (.0100); the advanced department (.0200); combined studies (.0300); the course of study (.0400); and credit for study outside of North Carolina (.0500).

<u>Approval of Credit for Cosmetology Instruction/Another Co...</u> Amend/*	21	NCAC	14J	.0502
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DENTAL EXAMINERS, BOARD OF

The rules in Chapter 16 cover the licensing of dentists and dental hygienists.

The rules in Subchapter 16C are dental hygienist licensure rules including general provision (.0100); qualifications (.0200); application and examination (.0300); and licensure by credentials (.0400).

<u>Licensure</u> Amend/*	21	NCAC	16C	.0101
<u>Student May Apply</u> Amend/*	21	NCAC	16C	.0202
<u>Transcripts Required</u> Repeal/*	21	NCAC	16C	.0203
<u>Application for Licensure</u> Amend/*	21	NCAC	16C	.0301
<u>Board Approved Examinations</u> Amend/*	21	NCAC	16C	.0303
<u>Other Requirements</u> Repeal/*	21	NCAC	16C	.0304
<u>Time for Filing</u> Repeal/*	21	NCAC	16C	.0305
<u>Examinations</u>	21	NCAC	16C	.0306

<u>Clinical Examination</u> Repeal/*	21	NCAC	16C	.0307
<u>Supplies</u> Repeal/*	21	NCAC	16C	.0308
<u>Patient</u> Repeal/*	21	NCAC	16C	.0309
<u>Reexamination</u> Repeal/*	21	NCAC	16C	.0310
<u>Application for Examination Conducted by the Board</u> Adopt/*	21	NCAC	16C	.0401
<u>Time for Filing</u> Adopt/*	21	NCAC	16C	.0402
<u>Examination Conducted by the Board</u> Adopt/*	21	NCAC	16C	.0403
<u>Patients and Supplies for Board Conducted Clinical Examin...</u> Adopt/*	21	NCAC	16C	.0404
<u>Board Conducted Reexamination</u> Adopt/*	21	NCAC	16C	.0405

The rules in Subchapter 16M are fee setting rules.

<u>Dental Hygienists</u> Amend/*	21	NCAC	16M	.0102
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PHARMACY, BOARD OF

The rules in Chapter 46 are from the Board of Pharmacy and cover organization of the Board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Registration</u> Amend/*	21	NCAC	46	.3301
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RECREATIONAL THERAPY LICENSURE, BOARD OF

The rules in Chapter 65 are from the North Carolina Board of Recreational Therapy Licensure and include requirements of practice (.0200); requirements for licensure (.0300); application (.0400); fees (.0500); license renewal requirements (.0600); reinstatement (.0700); inactive status (.0800); reciprocity (.0900) and revocation, suspension or denial of licensure.

<u>Minimum Level of Education and Competency for Licensed Re...</u> Adopt/*	21	NCAC	65	.0301
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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

Beryl E. Wade

Melissa Owens Lassiter

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL AND BEVERAGE COMMISSION</u>				
Richard S Blazak, Park View Lounge v. ABC	96 ABC 0053	Gray	07/06/05	
ABC Comm. & City of Asheville v. Elijah Ulysses Jones T/A Jones Convenience Store	98 ABC 0962	Gray	07/12/05	
ABC Comm v. Rudean Robinson Harris T/A Rudean's Diner & Lounge 3	03 ABC 1214	Conner	06/28/05	
ABC Comm v. Desperado's Inc T/A Desperado's	04 ABC 1192	Wade	07/20/05	
ABC Commission v. Don Mariachi Ventures, Inc, T/A El Mariachi Gordo	05 ABC 0188	Morrison	02/01/06	
ABC Comm. v Nuntia Ester Davis T/A N and R Grocery 2	05 ABC 0209	Lassiter	09/13/05	
Cameron's One Stop, Sank Cameron v. ALE Agent B Haynes, Ann H. Johnson, Permit Comm Mgr.	05 ABC 0799	Elkins	07/28/05	
ABC Commission v Carlos Salas, T/A Boom Room Night Club	05 ABC 1831	Conner	01/11/06	
ABC Commission v. Loeffler Enterprises, Inc.,	05 ABC 1842	Conner	01/11/06	
ABC Commission v. Partnership, T/A John Boys County Store	05 ABC 1843	Conner	01/11/06	
<u>BOARD OF LICENSING OF GEOLOGISTS</u>				
James W King, PG v Board of Licensing of Geologists	05 BOG 0149	Morrison	08/10/05	
<u>BOARD OF MEDICAL EXAMINERS</u>				
Ricky E. Townsend v. Medical Board	05 BME 1435	Morrison	12/12/05	
<u>AUCTIONEERS LICENSING BOARD</u>				
Robert H. Rankin, Jr., NCAL #6727 v. Auctioneers Licensing Board	04 CFA 1497	Mann	05/13/05	
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Robert Baxter Wilkerson III v Private Protective Services Board	05 DOJ 1074	Bryan	08/22/05
Charles Michael Campbell v. Criminal Justice Education & Training Standards Commission	05 DOJ 1149	Gray	12/29/05
Steven William Neu v Sheriffs' Education & Training Standards Comm.	05 DOJ 1169	Lassiter	09/08/05
Timothy Robert Parker v. Sheriffs' Education and Training Standards Comm.	05 DOJ 1187	Gray	12/28/05
Sybil Yvonne Murrill v. Sheriffs' Education & Training Stds. Comm.	05 DOJ 1188	Lassiter	09/19/05
Curtis Eugene Jenkins v. Sheriffs' Education and Training Standards Comm.	05 DOJ 1238	Chess	02/24/06
Errin Gerome Bryant v. Sheriffs' Education & Training Standards Comm.	05 DOJ 1239	Chess	01/10/06
Rodney Thomas Edens v. Sheriffs' Education and Training Standards Comm.	05 DOJ 1247	Morrison	12/22/05
Timothy Neal Foster v. Sheriffs' Education and Training Standards Comm.	05 DOJ 1339	Lassiter	03/09/06
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Robert Lee Walker v. Sheriffs' Education & Training Standards Comm.	05 DOJ 1670	Chess	02/28/06
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Robert G. Prince, Jr., v. Alarm Systems Licensing Board	05 DOJ 2035	Wade	12/30/05
Nicholas Scott Bowlin v. Alarm Systems Licensing Board	05 DOJ 2036	Wade	12/30/05

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Jeremy Marlow Jackson v. Alarm Systems Licensing Board	06 DOJ 0045	Morrison	03/14/06	
David G. Graham v. Private Protective Services Board	06 DOJ 0047	Morrison	03/14/06	
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<u>DEPARTMENT OF TRANSPORTATION</u>				
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George L Brown v Dept of St. Treasurer, Retirement Systems Division	05 DST 0147	Morrison	07/22/05	
Tony M Martin v Dept. of State Treasurer, Retirement Systems Division	05 DST 0253	Lassiter	08/31/05	
Robert A. Gabriel , Sr., v. Dept. of State Treasurer	05 DST 0586	Gray	10/21/05	
Cynthia Lee Williams v. DST, Retirement Systems Division	05 DST 0964	Lassiter	11/10/05	
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Robert A. Gabriel v. Dept. of State Treasurer	05 DST 1358	Gray	09/23/05	
Queen Thompson v. State Treasurer's Office	05 DST 2187	Lassiter	03/03/06	
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Harry Talmadge Englebort v. State Board of Education	03 EDC 1548	Gray	01/06/06	
Susan Hebach v. Dept. of Public Instruction	05 EDC 0140	Lassiter	09/27/05	
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JFG, Inc, Mr. Wayne Pierce, Pres. v. Onslow Co Health Dept & DEH&NR, Division of Environmental Health	95 EHR 0110	Gray	07/06/05	
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Sandy Mitchell & E Ward Norris v. Mecklenburg Co Health Dept and DEHNR	95 EHR 0306	Gray	07/06/05	
Ralph K & Carolyn Emery v. Montgomery Co Health & Env. Section	95 EHR 0317	Gray	07/06/05	
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Rosalind Nixon, All Good Detail Inc, v. DENR	05 EHR 1215	Lassiter	10/13/05
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Keith Spain, Rosewood Farms, LLC v. DENR	05 EHR 1442	Wade	12/07/05
Betty C. Penuel v. Duplin Co. Environmental Health	05 EHR 1476	Conner	12/21/05
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Pentech Infusions, Inc., AS/Assignee of Betty W. Green and Ava Cathey v. Teachers' and State Employees' Comprehensive Major Medical Plan	03 INS 1518	Elkins	10/07/05
Rachael Elizabeth Ragin v. Teachers' and State Employees' Comprehensive Major Medical Plan	04 INS 1299	Conner	09/26/05
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Arlene R Burwell v Department of Corrections	03 OSP 0621	Conner	09/12/05
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Daisy L. Smith v. Cumberland Co Mental Health Center	04 OSP 1558	Elkins	07/28/05
Jacqueline Hightower v Wayne Co Dept of Social Services	04 OSP 1563	Lassiter	09/09/05
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Robert D Jones v Hendseson County Dept. of Public Health	04 OSP 2081	Gray	08/01/05
Mary Cogdell v. Wayne Co. Dept. of Social Services, Judy Pelt, Director	04 OSP 2117	Wade	10/11/05
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Thomas Freeman, Jr. v. DHHS/Murdoch Center	05 OSP 0071	Wade	08/15/05
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Anthony Bruce Allen v Department of Transportation	05 OSP 0418	Chess	06/09/05
Peggy Anderson v. Whitaker School, NC DHHS	05 OSP 0427	Gray	10/25/05
Angela Twitty v DOC, Marion Correctional Institution	05 OSP 0491	Wade	08/31/05
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Willie Gadden v. Winston-Salem State University	05 OSP 0904	Chess	10/10/05
Destrik A. Burns v. Albemarle Correctional Institution	05 OSP 0924	Gray	03/13/06
Susan Hilbourn v. Cumberland County Department of Social Services	05 OSP 0970	Gray	12/07/05
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Harvey White v. Dept. of Secretary of State	05 SOS 2130	Lassiter	02/23/06

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Darian C. Jones Ph.D v. UNC Hospitals	05 UNC 0315	Lassiter	06/02/05
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Ellen Griffith v. UNC Hospitals	05 UNC 0585	Conner	07/26/05
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Margarida Goulart v UNC Hospitals	05 UNC 0683	Conner	07/26/05
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Robert C. Green v. UNC Hospitals	05 UNC 0751	Wade	01/06/06
Audrey Ghia v UNC Hospitals	05 UNC 0856	Gray	09/14/05
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Josephine Perdue v. WRC	05 WRC 1440	Gray	11/18/05
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